

Issue: Access/access to the grievance procedure; Qualification/ Termination/poor performance; Ruling Date: May 10, 2005; Ruling #2005-1026; Agency: Department of Motor Vehicles; Outcome: grievant does not have access; issues not qualified.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ACCESS and QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Motor Vehicles
Ruling No. 2005-1026
May 10, 2005

The grievant has requested a qualification ruling on her February 23, 2005 grievance with the Department of Motor Vehicles (DMV or the agency). The agency qualified those issues of the grievance directly relating to the grievant's termination, but denied qualification of the remaining issues raised by the grievant. For the following reasons, the grievant does not have access to the grievance procedure with respect to issues other than her termination and her request for qualification is therefore denied.

FACTS

The grievant was employed by the agency as a Program Support Technician. On January 25, 2005, the grievant was advised that her employment with the agency was being terminated effective February 9, 2005. On February 23, 2005, the grievant initiated a grievance challenging her termination, as well as several other alleged agency actions. The other agency actions grieved include allegedly giving the grievant an arbitrary and capricious performance evaluation in October 2004, breaching the confidentiality of employee personnel records, improperly transferring the grievant to a new job and failing to provide training necessary for that job, and slandering the grievant. After the parties failed to resolve the grievance during the management resolution steps, the agency qualified the grievance issues directly related to her termination, but denied qualification of all remaining issues. The grievant has appealed the denial of qualification to this Department.

DISCUSSION

Under the grievance procedure, employees "must have been employed by the Commonwealth at the time the grievance is initiated (unless the *action grieved* is a termination or involuntary separation)."¹ Thus, once an employee has been terminated from state employment, the only claim for which the employee has access to the grievance procedure and for which relief may be granted is a challenge to the termination. A terminated employee does not have access to the grievance procedure for claims not directly related to his or her termination; and for that reason, such claims may not be qualified for hearing.

¹ *Grievance Procedure Manual* § 2.3 (emphasis added).

In this case, it is undisputed that the grievant was terminated from employment on February 9, 2005, and that her grievance was not filed until February 23, 2005, after her termination. Because the grievant initiated her grievance after her termination, the only claims on which she may proceed are those directly relating to her termination. These claims have been qualified by the agency for hearing. The grievant does not have access to the grievance procedure for any other claims raised in her grievance, and therefore, we find that these remaining claims do not qualify for hearing. We note, however, that testimony and documentation relating to these remaining claims may be offered at hearing as background evidence in support of her termination claim, if the hearing officer considers such evidence to be relevant to her termination.

APPEAL RIGHTS AND OTHER INFORMATION

For more information regarding actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal the determination that she does not have access to the grievance procedure to circuit court, she should notify the Human Resources Office, in writing, within five workdays of receipt of this ruling.

Claudia T. Farr
Director

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