

Issue: Access/P-14 status and the grievance procedure; Ruling Date: August 9, 2005;
Ruling #2006-1096; Agency: Department of Professional and Occupational Regulation;
Outcome: access denied.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ACCESS RULING OF DIRECTOR

In the matter of Department of Professional and Occupational Regulation
Ruling Number 2006-1096
August 9, 2005

The grievant has requested a ruling on whether he had access to the grievance procedure when he initiated his July 12, 2005 grievance. The Department of Professional and Occupational Regulation (DPOR or the agency) claims that the grievant does not have access to the grievance procedure because he was a P-14 status wage employee when he initiated his grievance. For the reasons set forth below, this Department concludes that the grievant did not have access to the grievance process.

FACTS

The grievant was employed by the agency as a Criminal Investigator. He held a non-classified position for which he was compensated on an hourly basis. Although the grievant states that he was unaware during his employment with DPOR that he did not have access to the grievance procedure, he does not dispute that he held P-14 status and was a wage employee. On June 16, 2005, the grievant was discharged from employment.

DISCUSSION

The General Assembly has provided that all non-probationary state employees may utilize the grievance process, unless exempted by law.¹ Pursuant to Virginia Code § 2.2-2905 (11), "employees compensated on an hourly or daily basis" are exempted from the Virginia Personnel Act (VPA). Under Va. Code § 2.2-3002(4), employees "in positions designated in § 2.2-2905 as exempt from the Virginia Personnel Act (§ 2.2-2900 et seq.)" do not have access to the grievance procedure. Because the grievant was employed as a wage (hourly) employee at the time his employment was ended, he was exempt from the VPA and did not have access to the grievance procedure.²

¹ Va. Code § 2.2-3001(A) and *Grievance Procedure Manual* § 2.3.

² The Department of Human Resources Management (DHRM) Policy 2.20 III (C)(4) reflects that "[w]age employees are not entitled to use the Grievance Procedure for State Employees."

APPEAL RIGHTS AND OTHER INFORMATION

For the reasons discussed above, this Department has determined that the grievant does not have access to the grievance procedure. For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal this Department's access determination to the circuit court, the grievant should notify the human resources office, in writing, within five workdays of receipt of this ruling.

Claudia T. Farr
Director

Gretchen M. White
EDR Consultant