

Issue: Access/access to the grievance procedure; Ruling Date: November 2, 2005;  
Ruling #2006-1151; Agency: Department of Social Services; Outcome: grievant has  
access to the grievance procedure



*COMMONWEALTH of VIRGINIA*  
*Department of Employment Dispute Resolution*

ACCESS RULING OF DIRECTOR

In the matter of Department of Social Services  
Ruling Number 2006-1151  
November 2, 2005

The grievant has requested a ruling on whether she had access to the grievance procedure when she initiated her August 12, 2005 grievance with the Department of Social Services (DSS or the agency). For the reasons set forth below, this Department concludes that the grievant has access to the grievance procedure.

FACTS

The grievant was employed with the agency as a Program Manager. On June 28, 2005, the grievant voluntarily tendered her resignation to the agency, to be effective August 1, 2005. On July 27, 2005, prior to her separation from employment, the grievant submitted a written request to her supervisor to rescind her resignation. Her supervisor denied her request.

On July 29, 2005, her last day of work, the grievant initiated a grievance challenging the agency's refusal to allow her to rescind her resignation. In the July 29 grievance, she alleges that the agency misapplied and/or unfairly applied Department of Human Resource Management (DHRM) Policy 1.70. After the agency head denied the grievant's request to qualify her July 29<sup>th</sup> grievance for hearing, the grievant appealed to this Department. This Department's decision on the grievant's appeal is pending.

On August 12, 2005, the grievant initiated a second grievance challenging the agency's failure to allow her to rescind her resignation. In this second grievance, the grievant asserts that the agency's actions were arbitrary and capricious and were in retaliation for her allegedly "threaten[ing]" to use the grievance procedure. The agency rejected the August 12, 2005 grievance on the ground that the grievant lacks access to the grievance procedure.

DISCUSSION

To have access to the grievance procedure, an employee "must have been employed by the Commonwealth at the time the grievance is initiated (unless the *action*

*grieved* is a termination or involuntary separation).”<sup>1</sup> Thus, once an employee separates from state employment, the only claim for which he or she may have access to the grievance procedure is a challenge to a termination or an involuntary separation. Employees who voluntarily resign their employment may not have access to the grievance process, depending upon the surrounding circumstances, such as the nature of their claim or when the grievance is initiated. For example, this Department has long held that any grievance initiated by an employee *prior* to the effective date of a voluntary resignation may, at the employee’s option, continue through the grievance process, assuming it otherwise complied with the 30-day calendar rule. On the other hand, this Department has also long held that once an employee’s voluntary resignation becomes effective, he or she may not file a grievance. This ruling addresses and clarifies, for purposes of access only, the effect of an attempted rescission prior to the effective date of a voluntary notice of resignation.

The grievant in this case asserts that she has access to the grievance procedure because her separation from employment was involuntary due to the agency’s refusal to allow her to rescind her resignation prior to its effective date. Although the agency does not appear to dispute the grievant’s claim that she attempted to rescind her resignation, it argues in effect that because the grievant voluntarily tendered her notice of resignation on June 28, to be effective August 1, she lacks access to the grievance procedure to challenge her separation as involuntary, notwithstanding her attempted rescission prior to her separation.

As noted above, this Department has previously held that employees do not have access following the effective date of a voluntary resignation.<sup>2</sup> For example, in EDR Ruling No. 2005-1043, we held that a grievant who attempted to rescind his voluntary resignation *after* its effective date lacked access to the grievance procedure. The present case differs from this earlier ruling, because the grievant in this case attempted to rescind her resignation *prior* to its effective date, while she was still employed by the agency.

This distinction in timing is critical. Where an attempt to rescind a voluntary resignation comes *after* the resignation’s effective date, the action directly resulting in the separation of employment is the grievant’s own voluntary decision to resign. In contrast, the grievant here claims that at the time her employment with the agency terminated, her separation was involuntary, because the agency had refused to allow her to rescind her resignation. As the grievance procedure specifically allows access for post-termination grievances challenging an involuntary separation, under the particular circumstances presented in this case, we find that the grievant has access to the grievance procedure to pursue the claims raised in her August 12, 2005 grievance. We note, however, that this ruling is limited to the issue of access and does not address the underlying merits of the grievant’s claims against the agency.

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<sup>1</sup> *Grievance Procedure Manual* § 2.3 (emphasis added). In addition, the employee must satisfy the other requirements for access to the grievance procedure, such as non-probationary status. *See id.*

<sup>2</sup> *See, e.g.*, EDR Ruling No. 2005-1043.

CONCLUSION

The grievant has access to the grievance procedure for purposes of her August 12, 2005 grievance. If the grievant wishes to continue with her grievance, she has five workdays from receipt of this ruling to return the grievance to the second-step respondent so that he or she may conduct the mandated second-step meeting and address the grievance on the merits.<sup>3</sup>

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Claudia T. Farr  
Director

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<sup>3</sup> Because the grievant elected to use the expedited grievance process, the grievance advances immediately to the second resolution step.