

Issue: Access/does grievant have access to the grievance procedure; Ruling Date: March 20, 2006;
Ruling #2006-1305; Agency: Department of Social Services; Outcome: access denied.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ACCESS RULING OF DIRECTOR
In the matter of Department of Social Services
Ruling No. 2006-1305
March 24, 2006

The grievant has requested a ruling on whether she had access to the grievance procedure when she initiated her January 9, 2006 grievance.

FACTS

The grievant is a former employee of the Department of Social Services (DSS or the agency).¹ On June 28, 2005, she submitted a memorandum of resignation to the agency.² She advised the agency that her resignation would be effective August 1, 2005.³ On July 27, 2005, she attempted to rescind her resignation, but the agency refused to allow her to do so.⁴ On July 29, 2005 and August 12, 2005, the grievant initiated grievances challenging the agency's refusal to allow her to rescind her resignation.⁵ A hearing was held on these grievances on February 16, 2006; and on February 17, 2006, the hearing officer issued a decision denying the grievant's request for relief.⁶

The grievant asserts that on August 12, 2005, the agency posted the job opening for her former position. She states that she applied for the open position, but that she was not certified for an interview by the agency. On January 9, 2006, the grievant initiated a grievance challenging the agency's action. The agency asserts that the grievant does not have access to the grievance procedure because she was not an employee of the agency or the Commonwealth at the time she initiated her January 9th grievance.

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)."⁷ Thus, once an employee has been terminated or involuntarily separated 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 or involuntary separation. A terminated

¹ Hearing Decision in Case Nos. 8257 and 8258 (Hearing Decision) at 2.

² *Id.*

³ *Id.*

⁴ *Id.* at 3-4.

⁵ *Id.* at 1-2.

⁶ *Id.* at 1, 9.

⁷ *Grievance Procedure Manual* § 2.3 (emphasis added).

or involuntarily separated employee does not have access to the grievance procedure for agency actions that did not directly result in his or her termination or involuntary separation.⁸

In this case, it is undisputed that at the time the grievant initiated her January 9, 2005 grievance, she was no longer an employee of the Commonwealth of Virginia. While the grievant had access to the grievance procedure to challenge her alleged involuntary separation, and in fact has done so, she does not have access to the grievance procedure to challenge a subsequent decision by the agency not to interview her. Accordingly, this Department concludes that the grievant did not have access to the grievance procedure when she initiated her January 9, 2006 grievance.

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

Gretchen M. White
EDR Consultant

⁸ See, e.g., EDR Ruling Nos. 2005-961, 2005-962, 2005-963, 2005-964, 2005-965, EDR Ruling No. 2005-1026.