

Issue: Grievance Procedure: Access to the grievance process; Ruling Date: May 7, 2007; Ruling #2007-1639; Agency: Virginia Commonwealth University; Outcome: Access denied.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ACCESS RULING OF DIRECTOR

In the matter of Virginia Commonwealth University
Ruling Number 2007-1639
May 7, 2007

The grievant has requested a ruling on whether he had access to the grievance procedure when he initiated his March 1, 2007 grievance with the Virginia Commonwealth University (or agency). For the reasons set forth below, this Department concludes that the grievant did not have access to the grievance procedure.

FACTS

The grievant was previously employed by the agency but submitted an undated letter of resignation with an effective date of January 5, 2007. In his resignation letter the grievant made reference to a potential contractual obligation related to police academy training that he had received. He requested "a detailed breakdown of costs associated with the amount," should the agency deem that he must repay the agency for costs associated with that training.

On the grievant's last day of work, January 5th, the grievant met with the Captain to bring several issues to his attention. Not satisfied with the Captain's response, the grievant then attempted to raise those same concerns with the Senior Vice President of Finance and Administration, but he was not available. A meeting was nevertheless arranged to take place on January 9, 2007. The grievant asserts that at approximately 5:30 p.m. that same afternoon, he received a call from the Chief of Police who stated that he desired to meet with the grievant and hoped that the meeting would eliminate the need for the scheduled January 9th meeting with the Senior Vice President of Finance and Administration. According to the grievant, a meeting with the Chief occurred and the Chief purportedly appeared to be sympathetic to the concerns raised by the grievant. The Chief allegedly agreed to follow-up with the grievant following the meeting but never did.

On February 9, 2007, the grievant received a letter from the Director of Administration and Business Operations stating that the grievant owed the agency a pro-rated share of the funds spent on his academy training. On March 1, 2007, the grievant

initiated a grievance in which he (i) challenged the agency's position on the training expenditure repayments; and (ii) asserted that he had been required to work in a hostile workplace.

DISCUSSION

To have access to the grievance procedure, an employee “[m]ust 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 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.

Here, the grievant's resignation occurred on January 5, 2007. Thus after January 5th, the grievant did not have access to grieve his dispute over repayment for costs associated with his academy training. Also, while the grievant asserts in his grievance that his separation from state employment was due to the allegedly harassing conduct that occurred during his employment, any challenge based on an involuntary separation must have been initiated within 30 calendar days of his separation on January 5th. As noted here, the grievance was initiated on March 1, 2007, well beyond 30 calendar days of his last day of employment, January 5, 2007.²

CONCLUSION

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 he does not have access to the grievance procedure to circuit court, he should notify the Human Resources Office, in writing, within five workdays of receipt of this ruling.

Claudia T. Farr
Director

¹ *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. *Id.*

² The grievance procedure requires that a grievance be initiated within 30 calendar days of the event being grieved even when informal discussions are taking place, unless the parties have agreed in writing to extend the 30 day timeframe. *Grievance Procedure Manual* § 2.2.