

Issue: Access to the grievance procedure; Ruling Date: June 6, 2007; Ruling #2007-1692; Agency: Department of Rehabilitative Services; Outcome: Access denied , granted in part on termination issue only.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ACCESS RULING OF DIRECTOR

In the matter of Department of Rehabilitation Services
Ruling No. 2007-1692
June 6, 2007

The Department of Rehabilitation Services (DRS or the agency) has partially qualified the grievant's March 26, 2007 grievance for hearing and requested the appointment of a hearing officer. For the reasons stated below, this Department finds that the grievant lacks access to the grievance procedure for any claim other than a challenge to her termination. A hearing officer will be appointed to hear the qualified portion of the March 26th grievance.

FACTS

The grievant is a former employee of DRS. She was removed from employment effective February 26, 2007, after receiving a Group III Written Notice for alleged marijuana use during work hours. On March 26, 2007, the grievant initiated an expedited grievance challenging her termination, as well as the agency's alleged misapplication of policy and falsification of documents.

After the parties failed to resolve the grievances during the management resolution steps, the grievant asked the agency head to qualify the grievances for hearing. On May 18, 2007, the agency head responded to the grievant's request, stating, "This grievance is qualified for a hearing solely on the issue relating to Grievant's termination."¹ On May 22, 2007, this Department received the agency's Form B Request for Appointment of a Hearing Officer.

DISCUSSION

Section 4.3 of the *Grievance Procedure Manual* provides that where an agency head qualifies some, but not all, of the issues grieved in a grievance, the employee may appeal to this Department to qualify any remaining unqualified issues. In this case, it appears the grievant may not have had an opportunity to make such an appeal, as the agency made its request for a hearing officer prior to completion by the grievant of the last

¹ During the course of this Department's investigation for this ruling, the agency clarified that the agency head's intent was "to be clear . . . that the purpose of the hearing is to discuss [the grievant's] situation and not a forum for her to make irrelevant accusations against others."

portion of the Grievance Form A.² This issue is moot, however, because the grievant lacks access to the grievance procedure to pursue any claims other than those involving her termination (*i.e.*, those claims which were qualified by the agency head).

To have access to the grievance procedure, a state employee must: (1) not be listed as exempt from the Virginia Personnel Act under § 2.2-2905 of the Code of Virginia; (2) be non-probationary at the time the event that formed the basis of the dispute occurred; *and* (3) be employed at the time the grievance was initiated (unless the action grieved is a termination or involuntary separation, in which case the employee may initiate a grievance within 30 days of the termination or separation).³ These access requirements may not be waived or modified by the parties.

The grievant was not employed by the agency or the Commonwealth at the time the March 26th grievance was initiated. As a consequence, her access to the grievance procedure is limited to challenges to actions directly resulting in her termination or involuntary separation.⁴ Therefore, to the extent the grievant seeks in her March 26th grievance to challenge actions other than those directly resulting in her termination, she lacks access to pursue those claims. We note, however, that should the grievant seek to present evidence at hearing relating to other employees, such evidence may be admitted by the hearing officer, in his or her discretion, if it is relevant to the grievant's claims regarding 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

² Under § 4.2 of the *Grievance Procedure Manual*, agencies are required to submit a Form B Request for Appointment of a Hearing Officer within five workdays of a qualification decision. Where, however, a grievance is qualified only in part, the Grievance Form A should be returned to the grievant to allow an appeal to EDR.

³ *Grievance Procedure Manual* § 2.3 (emphasis added).

⁴ See, *e.g.*, EDR Ruling Nos. 2005-961, 2005-962, 2005-963, 2005-964, 2005-965, EDR Ruling No. 2005-1026.