

Issue: Access to the Grievance Procedure; Ruling Date: July 31, 2006; Ruling ## 2007-1399, 2007-1400; Agency: Virginia Polytechnic Institute and State University; Outcome: grievant did not have access for April 27, 2006 grievance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ACCESS RULING OF DIRECTOR

In the matter of Virginia Polytechnic Institute and State University
Ruling Nos. 2007-1399, 2007-1400
July 31, 2006

Virginia Polytechnic Institute and State University (VPI & SU or the agency) has requested the appointment of a hearing officer for the grievant's April 18, 2006 and April 27, 2006 grievances. For the reasons stated below, this Department finds that the grievant lacked access to the grievance procedure with respect to the April 27th grievance and therefore denies the agency's request for appointment of a hearing officer on that grievance. A hearing officer will be appointed for the April 18, 2006 grievance.

FACTS

The grievant is a former employee of VPI & SU. He was removed from employment effective March 29, 2006, after receiving a Group III Written Notice for allegedly violating the agency's Anti-Discrimination and Harassment Prevention Policy. On April 18, 2006, the grievant initiated a grievance challenging the disciplinary action and his removal from employment.

The grievant initiated a second grievance on April 27, 2006. This grievance challenges a Group III Written Notice issued to him on March 30, 2006, for conduct allegedly occurring as he was being escorted out of the building after his March 29th termination.

After the parties failed to resolve the grievances during the management resolution steps, the agency qualified the grievances for hearing and requested the appointment of a hearing officer.

DISCUSSION

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; (3) *and* 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).¹ These access requirements may not be waived or modified by the parties.

¹ *Grievance Procedure Manual* § 2.3 (emphasis added).

The grievant was not employed by the agency or the Commonwealth at the time the April 18th and April 27th grievances were initiated. As a consequence, his access to the grievance procedure is limited to challenges to actions directly resulting in his termination or involuntary separation.²

In this case, the grievant has access with respect to his April 18th grievance, as that grievance challenges his March 29th termination. However, he does not have access in regard to his April 27, 2006 grievance, which challenges a Group III Written Notice purportedly issued on March 30, 2006, for conduct occurring after his termination. The issuance of the March 30th Written Notice did not result in his termination or involuntary separation, as he was no longer employed by the agency. Moreover, we have been advised by the Department of Human Resource Management (DHRM), the agency charged with developing and interpreting policies affecting state employees,³ that DHRM Policy 1.60, "Standards of Conduct," does not apply to former employees, and therefore a Written Notice should not be issued to an individual no longer employed by the state. As a result, it would appear that the March 30, 2006 Group III Written Notice was null and void upon its issuance, and had no effect on the grievant's status.⁴

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 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

² See, e.g., EDR Ruling Nos. 2005-961, 2005-962, 2005-963, 2005-964, 2005-965, EDR Ruling No. 2005-1026.

³ Va. Code § 2.2-3006 (A); *Grievance Procedure Manual* § 7.2 (a)(2).

⁴ We note, however, that if the grievant is reinstated as a result of the hearing on his April 18th grievance, and the agency subsequently takes disciplinary action against him for his alleged March 29th conduct, the grievant would have access to the grievance procedure to challenge that disciplinary action.