

Issue: Access/separation from state/involuntary resignation; Ruling Date: November 1, 2006; Ruling #2007-1458; Agency: Department of Transportation; Outcome: access granted in part re: involuntary resignation



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

**ACCESS RULING OF DIRECTOR**

In the matter of Department of Transportation  
Ruling Number 2007-1458  
November 1, 2006

The grievant has requested a ruling on whether he had access to the grievance procedure when he initiated his August 29, 2006 grievance with the Department of Transportation (the agency). For the reasons set forth below, this Department concludes that the grievant has access to the grievance procedure for a portion of the claims alleged.

FACTS

The grievant was previously employed by the agency, but submitted a letter of resignation on July 26, 2006, with an effective date of August 26, 2006. The grievant notified the agency that he wished to rescind his resignation at least as early as August 3, 2006. On August 16, 2006, the agency informed the grievant that it would honor the original resignation rather than permitting him to rescind it. The grievant's final day of work was August 25, 2006.

The grievant initiated this grievance on August 29, 2006, after he no longer worked at the agency. The grievant challenges the agency's refusal to allow him to rescind the resignation and seeks to have his employment reinstated. The grievant has also asserted that he endured allegedly harassing and/or retaliatory conduct for a long period of time, including during the last month of his employment with the agency. At the first resolution step, the agency determined that the grievant did not have access to the grievance procedure because he had voluntarily resigned. The grievant thereafter requested access from the agency head. He appealed the agency head's denial of access to the grievance procedure to this Department.

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

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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. *Id.*

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.

The grievant in this case asserts that he has access to the grievance procedure because his separation from employment was involuntary due to the agency's refusal to allow him to rescind his resignation prior to its effective date. Although the agency does not appear to dispute the grievant's claim that he attempted to rescind his resignation, it argues in effect that because the grievant voluntarily tendered his notice of resignation on July 26, 2006, to be effective August 26, 2006, he lacks access to the grievance procedure to challenge his separation as involuntary, notwithstanding his attempted rescission prior to his separation.

When an employee's 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 his employment with the agency terminated, his separation was involuntary, because the agency had refused to allow him to rescind his 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 his August 29, 2006 grievance.<sup>2</sup> 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.

The grievant has also grieved allegedly harassing and/or retaliatory conduct that occurred during his employment with the agency. These issues appear unrelated to the grievant's separation from employment. As such, the grievant does not have access to the grievance procedure as to the claims of harassment and/or retaliation. However, to the extent that harassment and/or retaliation may have influenced the agency's decision not to rescind the grievant's resignation, the grievant has access to the grievance procedure as to the issues of harassment and/or retaliation for purposes of challenging the agency's refusal to rescind the resignation. Therefore, it is the ruling of this Department that the grievant has access to the grievance procedure for purposes of his August 29, 2006 grievance as to the claim challenging his separation from employment with the agency, i.e., the agency's refusal to allow the grievant to rescind his resignation.

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<sup>2</sup> See EDR Ruling No. 2006-1151.

CONCLUSION

The grievant has access to the grievance procedure for purposes of his August 29, 2006 grievance, but only as to the portion indicated above. If the grievant wishes to continue with his grievance, he has five workdays from receipt of this ruling to return the grievance to the step respondent with whom the grievance was initiated so that he or she may address the grievance on the merits.<sup>3</sup>

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Claudia T. Farr  
Director

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<sup>3</sup> The grievant initiated the grievance with someone other than his immediate supervisor because he was alleging discrimination and/or retaliation.