

Issue: Access to the Grievance Procedure; Ruling Date: August 3, 2009;  
Ruling #2009-2319; Agency: University of Virginia Health System; Outcome:  
Access Denied.



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

**ACCESS RULING OF DIRECTOR**

In the matter of the University of Virginia Health System  
Ruling No. 2009-2319  
August 3, 2009

The grievant has requested a ruling on whether she had access to the grievance procedure when she initiated her grievance against the University of Virginia Health System on March 31, 2009. For the reasons set forth below, this Department concludes that the grievant does not have access to the grievance procedure with respect to her March 31<sup>st</sup> grievance.

FACTS

The grievant is a former employee of the agency. On March 25, 2009, the grievant resigned from her employment with the agency.<sup>1</sup> She made the decision to resign following a meeting with her supervisors, in which the grievant's alleged failure to follow procedures was discussed.

On March 31, 2009, after her resignation, the grievant appears to have mailed a grievance to the Department of Employment Dispute Resolution. This grievance, signed and dated by the grievant on March 24, 2009, challenges an alleged reprimand of the grievant by her supervisors occurring on March 10, 2009. On April 14, 2009, the grievant subsequently mailed the University president a letter with a copy of her grievance.

The agency has advised the grievant that she does not have access to the grievance procedure, on the grounds that the grievance was initiated after her resignation.<sup>2</sup> The grievant has appealed the agency's determination to this Department.

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; *and* (3) be employed at the time the grievance was initiated (unless the action grieved is a

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<sup>1</sup> According to the agency, the grievant's resignation was effective on March 28, 2009.

<sup>2</sup> The agency also asserts that the grievance was untimely, as it was initiated more than 30 days after the alleged reprimand. As resolution of this argument is not necessary to our conclusion in this matter, the timeliness of the grievance will not be addressed in this Ruling.

termination or involuntary separation, in which case the employee may initiate a grievance within 30 days of the termination or separation).<sup>3</sup> These access requirements may not be waived or modified by the parties.

For purposes of this Ruling only, we will assume that the grievant's grievance was initiated on March 31, 2009, when she appears to have mailed the grievance to this Department. At that time, she was not employed by the agency or the Commonwealth. As a consequence, her access to the grievance procedure is limited to challenges to actions directly resulting in her termination or involuntary separation.<sup>4</sup> Because the March 30<sup>th</sup> grievance challenges a March 10<sup>th</sup> reprimand, (and not a termination or involuntary separation) she did not have access to the grievance procedure for purposes of initiating that 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.

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Claudia T. Farr  
Director

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<sup>3</sup> *Grievance Procedure Manual* § 2.3 (emphasis added).

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