

Issue: Access to the Grievance Procedure; Ruling Date: June 11, 2010; Ruling #2010-2664; Agency: Department of Corrections; Outcome: Access Denied.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ACCESS RULING OF DIRECTOR

In the matter of Department of Corrections
Ruling Number 2010-2664
June 11, 2010

The grievant has sought a ruling from this Department concerning his attempts to initiate a grievance to challenge his termination from the Department of Corrections (the agency). Because it appears that the grievant was terminated from his employment during his probationary period, this ruling will address whether he has access to the grievance procedure to initiate such a grievance. For the reasons set forth below, this Department concludes that the grievant does not have access to the grievance process to initiate his grievance.

FACTS

The grievant began working with the agency on February 25, 2009. In early February 2010, the grievant was given a probationary progress review form that extended his probationary period until May 26, 2010 for performance reasons. The form reflects the grievant's apparent failure to arrive at work on time consistent with the agency's policies. On May 19, 2010, the grievant was terminated by the agency. It is unclear whether the grievant submitted his grievance, dated May 20, 2010, to the agency initially. However, he has now requested a hearing from this Department regarding his termination.

DISCUSSION

Department of Human Resource Management (DHRM) Policy 1.45 provides that employees "who begin original employment or re-employment in classified positions must serve 12-month probationary periods effective from the dates of their employment."¹ The policy further provides that "[p]ro probationary periods may be extended for up to 6 additional months for performance reasons."² The grievant was given notice of the extension of his probationary period to May 26, 2010. As such, the grievant had not completed his probationary period when he was terminated on May 19, 2010.

¹ DHRM Policy 1.45, *Probationary Period*.

² *Id.*

The General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.³ Employees who have not completed their probationary period do not have access to the grievance procedure.⁴ Accordingly, the grievant does not have access to the grievance procedure to initiate a grievance to challenge his termination.⁵

APPEAL RIGHTS AND OTHER INFORMATION

For more information regarding actions that you may take as a result of this ruling, please refer to the enclosed sheet. If you seek to appeal the determination that you do not have access to the grievance procedure to circuit court, please notify your Human Resources Office, in writing, within five workdays of receipt of this ruling.⁶

Claudia T. Farr
Director

³ Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

⁴ *E.g.*, EDR Ruling No. 2005-1032.

⁵ While the grievant does not have access to file a grievance, there may be other options available to him. For instance, “[a] probationary employee who claims that termination or other disciplinary action was based on race, sex, color, national origin, religion, sexual orientation, age, political affiliation, veteran status, or disability may file a discrimination complaint with the Office of Equal Employment Services (OEES) in the Department of Human Resource Management or other agencies as appropriate.” DHRM Policy 1.45, *Probationary Period*. OEES can be contacted by calling 1-800-533-1414 or (804) 225-2136.

⁶ *See Grievance Procedure Manual* § 2.3.