

Issue: Qualification – Grievance Procedure (Access); Ruling Date: September 28, 2011; Ruling #2011-2777; Agency: Department of Behavioral Health and Developmental Services; Outcome: Access Granted.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

RECONSIDERED QUALIFICATION RULING OF DIRECTOR

In the matter of Department of Behavioral Health and Developmental Services
EDR Ruling No. 2011-2777
September 28, 2010

The Department of Behavioral Health and Development Services (the “agency”) has asked this Department to reconsider EDR Ruling No. 2010-2699. The agency asserts that this Department prematurely qualified the grievant’s May 18, 2010 grievance for hearing. We agree.

FACTS

The facts of this grievance are set forth in greater detail in EDR Ruling No. 2010-2699. The pertinent facts are that on Friday, April 30, 2010, the grievant had a discussion with her supervisor, a discussion characterized very differently by the two. The grievant’s supervisor asserts that the grievant verbally resigned her position with the agency. The grievant, on the other hand, claims she did not resign. On May 18, 2010, the grievant challenged her separation from employment using the expedited grievance process. The grievant presented her Expedited Grievance Form A to the second step respondent, who denied the grievant access to the grievance process on the basis that the grievant had voluntarily resigned her position. The second step respondent appropriately instructed the grievant that she could appeal her decision to the agency Commissioner. The grievant did so, checking the box labeled “I request qualification of my grievance” instead of the box marked “I want the agency head to determine whether I have access to the grievance procedure.” The agency head responded to her grievance in Section III (“Qualification for Hearing/Agency Head”) at the prompt “Qualified for a Hearing,” by indicating “N/A.” In the “Reasons” subsection of Section III he indicated “Access denied—see attached letter.” The attached letter basically reiterated the reason for the denial of access which was that the grievant had purportedly voluntarily resigned her position. In EDR Ruling No. 2010-2699, this Department granted the grievance access and qualified the grievance for hearing holding that the central question in this case of whether the grievant voluntarily resigned her employment will turn on the factual determinations and a hearing officer is better positioned to make findings of fact.

DISCUSSION

The agency notes that by qualifying the grievance at this stage in the process, it has not been granted the opportunity to respond to the merits of the grievance. The agency is correct. EDR Ruling No. 2011-2699 erroneously viewed the agency's response in the "Qualification" box as a denial of qualification on the basis of access. Accordingly, the grievance is returned to the second step respondent who shall schedule a second step fact-finding meeting within five workdays of the receipt of this ruling. Should the grievance not be resolved to the satisfaction of the grievant at the second step, the grievant may request from the agency Commissioner qualification of her grievance, and must do so within five workdays of receipt of the second step response.

Claudia Farr
Director