

Issue: Access to the Grievance Procedure; Ruling Date: May 4, 2011; Ruling No. 2011-2940; Agency: Department of Behavioral Health and Developmental Services; Outcome: Access Denied.



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

**ACCESS RULING OF DIRECTOR**

In the matter of Department of Behavioral Health and Developmental Services  
Ruling Number 2011-2940  
May 4, 2011

The grievant has requested a ruling on whether she had access to the grievance procedure when she initiated her February 4, 2011 grievance concerning her termination. The Department of Behavioral Health and Developmental Services (the agency) claims that the grievant does not have access to the grievance procedure because she was a probationary employee. For the reasons set forth below, this Department concludes that the grievant did not have access to the grievance process when she initiated her grievance.

FACTS

On or about February 11, 2008, the grievant began working with the agency in a wage position. Approximately two years later, the grievant applied for a classified position within the agency, i.e., Direct Service Associate II. The grievant was hired as a Direct Service Associate II and began work as such on May 25, 2010. As a condition of her employment, the grievant was required to complete a one-year probationary period in her new position. Before the completion of her probationary period, the grievant was terminated by the agency. She submitted her February 4, 2011 grievance to challenge her termination. The agency asserts that the grievant did not have access to the grievance procedure because she was still in her one-year probationary period. The grievant now appeals that determination to this Department.

DISCUSSION

Department of Human Resource Management (DHRM) Policy 1.45 provides that employees “who begin either original employment or re-employment in classified positions must serve 12-month probationary periods effective from the dates of their employment.”<sup>1</sup> Here, the grievant began employment as a Direct Service Associate II on May 25, 2010 and as such, was still serving a probationary period when she was

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<sup>1</sup> DHRM Policy 1.45, *Probationary Period*.

terminated and initiated her February 4, 2011 grievance. The General Assembly has provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.<sup>2</sup> Employees who have not completed their probationary period do not have access to the grievance procedure.<sup>3</sup> Accordingly, the grievant did not have access to the grievance procedure to initiate the February 4, 2011 grievance.

#### 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 wish 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.<sup>4</sup>

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Claudia T. Farr  
Director

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<sup>2</sup> Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

<sup>3</sup> *E.g.*, EDR Ruling No. 2005-1032.

<sup>4</sup> *See Grievance Procedure Manual* § 2.3.