

Issue: Access to the Grievance Procedure; Ruling Date: May 4, 2011; Ruling No. 2011-2965; Agency: James Madison University; Outcome: Access Denied.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ACCESS RULING OF DIRECTOR

In the matter of James Madison University
Ruling Number 2011-2965
May 4, 2011

The grievant has attempted to initiate a grievance to challenge her termination from James Madison University (the University). For the reasons set forth below, this Department concludes that the grievant does not have access to the grievance process to initiate this grievance.

FACTS

The grievant began working with the agency on April 10, 2010 in a classified position. On April 1, 2011, the grievant was given a probationary progress review form that indicated the probationary period was satisfactorily completed. The form also reflects that the projected end date for the grievant's probationary period was April 10, 2011. On April 8, 2011, the grievant was terminated. The grievant submitted a grievance to challenge the termination directly to this Department after being told by the University that she did not have access to file a grievance.¹

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."² The grievant had not completed her probationary period, which was scheduled to end on April 10, 2011, when she was terminated on April 8, 2011. This Department has found no provision in DHRM Policy 1.45 that would permit an agency to

¹ Under the grievance procedure, a grievance is initiated with the employing agency rather than EDR. See *Grievance Procedure Manual* § 2.4. Therefore, in cases such as this, an employee would typically submit a grievance and the agency would determine that the grievant does not have access to use the grievance procedure. Following a denied appeal to the agency head, an employee could seek this Department's review regarding the access determination. *Grievance Procedure Manual* § 2.3. Although this was not the process utilized here, in the interests of administrative efficiency, we will address the threshold matter of access in this ruling.

² DHRM Policy 1.45, *Probationary Period*.

end an employee's 12-month probationary period prior to the end of the full twelve months. Therefore, the signed probationary progress review form could not effectively conclude the grievant's probationary period until the 12 months had lapsed. Accordingly, the grievant was a probationary employee when she was terminated.

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 her termination, whether she was attempting to file it directly with this Department or the University.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 her. 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.