

Issues: Access to the Grievance Procedure, and Compliance – Grievance Procedure (30-Day Rule); Ruling Date: August 1, 2011; Ruling No. 2011-3023, 2011-3034; Agency: Virginia Museum of Fine Arts; Outcome: Access Denied, Grievant Not in Compliance.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ACCESS RULING OF DIRECTOR

In the matter of Virginia Museum of Fine Arts
Ruling Numbers 2011-3023 and 2011-3034
August 1, 2011

The grievant has requested a ruling on whether he had access to the grievance procedure when he initiated his April 26, 2011 and June 1, 2011 grievances. The Virginia Museum of Fine Arts (the agency) claims that the grievant does not have access to the grievance procedure because he was a wage employee at the time of his termination. For the reasons set forth below, this Department concludes that the grievant did not have access to the grievance process to initiate his April 26th and June 1st grievances.

FACTS

The grievant was employed by the agency in the Food Services and Special Events Department. On April 7, 2011, the grievant was terminated from his employment with the agency for excessive tardiness and absenteeism. The grievant subsequently challenged his termination by initiating two grievances dated April 26, 2011 and June 1, 2011 respectively. The agency denied the grievant access to the grievance process because at the time of his termination, he was compensated on an hourly basis. In addition, the agency asserts that the June 1, 2011 grievance was initiated more than 30 calendar days after his termination and is duplicative of the April 26, 2011 grievance. The grievant now appeals the agency's determinations to this Department.

DISCUSSION

The General Assembly has provided that all non-probationary state employees may utilize the grievance process, unless exempted by law.¹ Pursuant to Virginia Code § 2.2-2905 (11), “employees compensated on an hourly or daily basis” are exempted from the Virginia Personnel Act (VPA). Under Va. Code § 2.2-3002(4), employees “in positions designated in § 2.2-2905 as exempt from the Virginia Personnel Act (§ 2.2-2900 et seq.)” do not have access to the grievance procedure. Because the grievant was employed as a wage (hourly) employee, he was exempt from the VPA and did not have access to the grievance procedure to initiate his April 26th or June 1st grievances.²

Moreover, this Department is compelled to note that even if access had existed, the June 1, 2011 grievance would not be timely and as such, could be administratively closed by the agency. A grievance challenging an employee’s termination must be initiated within 30 calendar days of the termination, absent just cause for any delay.³ Here, the June 1, 2011 grievance was initiated well beyond the 30 calendar period following his April 7, 2011 termination, and the grievant has not asserted any just cause for the delay.

APPEAL RIGHTS AND OTHER INFORMATION

For the reasons discussed above, this Department has determined that the grievant does not have access to the grievance procedure. For information regarding the actions the grievant may take as a result of this ruling, please refer to the enclosed sheet. If the grievant wishes to appeal this Department’s access determination with regard to the April 26th grievance to the circuit court, the grievant should notify the human resources office, in writing, within five workdays of receipt of this ruling.

Claudia T. Farr
Director

¹ Va. Code § 2.2-3001(A) and *Grievance Procedure Manual* § 2.3.

² See also Department of Human Resources Management (DHRM) Policy 2.20, stating that “[w]age employees are not eligible to use the state grievance procedure.”

³ *Grievance Procedure Manual* § 2.3.