

Issue: Access to the Grievance Procedure; Ruling Date: November 7, 2011; Ruling No. 2012-3165; Agency: Department of Corrections; Outcome: Access Granted.



COMMONWEALTH of VIRGINIA
Department of Employment Dispute Resolution

ACCESS RULING OF DIRECTOR

In the matter of the Department of Corrections
Ruling Number 2012-3165
November 7, 2011

The grievant has requested a ruling on whether she had access to the grievance procedure to initiate her October 20, 2011 grievance with the Department of Corrections (the agency). For the reasons set forth below, this Department concludes that the grievant has access to the grievance procedure for this grievance.

FACTS

The grievant was on short-term disability. She states that she was notified that her short-term disability period was ending on October 19, 2011. She was told to report to work on October 20, 2011. However, the agency determined that the grievant had rolled into long-term disability as of October 20, 2011, and, thus, she was no longer considered employed by the agency. Accordingly, the grievant initiated a grievance concerning her apparent separation from employment. The agency determined that the grievant was not eligible to file the grievance because she is no longer employed. The grievant appeals that determination to this Department and requests access to the grievance procedure for her October 20, 2011 grievance.

DISCUSSION

To have access to the grievance procedure, an employee “must have been employed by the Commonwealth at the time the grievance is initiated (unless the action grieved is a termination or involuntary separation).”¹ Thus, after an employee separates from state employment, the only claim for which he or she may have access to the grievance procedure is a challenge to a termination or an involuntary separation. However, that is precisely the matter raised by the grievant in her October 20, 2011 grievance: her apparent termination/separation from employment. Therefore, her grievance complies with the access provisions of the grievance procedure and must be allowed to proceed.

¹ *Grievance Procedure Manual* § 2.3 (emphasis added). In addition, the employee must satisfy the other requirements for access to the grievance procedure, such as non-probationary status. *Id.*

CONCLUSION

The grievant had access to the grievance procedure to challenge her apparent termination/separation from employment when she initiated this grievance on or about October 20, 2011. The agency has **five workdays from receipt of this ruling** to return the grievance package to the appropriate member of management for scheduling of the second step meeting.

Claudia T. Farr
Director