

Issue: Access to the Grievance Procedure; Ruling Date: August 30, 2012; Ruling No. 2013-3420; Agency: Department of Behavioral Health and Developmental Services; Outcome: Access Denied.



**COMMONWEALTH of VIRGINIA**  
**Department of Human Resource Management**  
**Office of Employment Dispute Resolution**

**ACCESS RULING**

In the matter of the Department of Behavioral Health & Developmental Services  
Ruling Number 2013-3420  
August 30, 2012

The grievant has attempted to initiate a dismissal grievance to challenge his separation from a facility of the Department of Behavioral Health & Developmental Services (the agency). For the reasons set forth below, EDR 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 or about April 10, 2012. On or about July 24, 2012, while he was a probationary employee, the grievant submitted a resignation. The grievant submitted a purported dismissal grievance<sup>1</sup> directly to the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) on August 23, 2012, indicating that he was pressured to resign. Having received this grievance and reviewing the potential access problem discussed below, EDR opened this ruling to address the matter.

DISCUSSION

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 does not have access to the grievance procedure to initiate a grievance to challenge his separation from employment. Because the grievant does not have access due to his probationary status, we need not reach the question of whether his resignation was voluntary.<sup>4</sup> Thus, the grievant's August 23, 2012 dismissal grievance is now closed and will not be processed further. EDR's access rulings are final and nonappealable.<sup>5</sup>

A handwritten signature in black ink, appearing to read "Chris M. Grab".

Christopher M. Grab  
Senior Consultant  
Office of Employment Dispute Resolution

<sup>1</sup> See *Grievance Procedure Manual* § 2.5.

<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> EDR has also long held that once an employee's voluntary resignation becomes effective, he or she is not covered by the grievance procedure and accordingly may not initiate a grievance. E.g., EDR Ruling No. 2005-1043.

<sup>5</sup> Va. Code § 2.2-1202.1(5).