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ACCESS RULING

In the matter of the Virginia Department of Motor Vehicles
Ruling Number 2024-5688
April 19, 2024

On or about March 28, 2024, the grievant submitted a Dismissal Grievance Form to the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM). The agency, after reviewing the grievance documentation received from EDR, has asserted that the grievant was a probationary employee at the time of her separation and, thus, lacks access to the grievance procedure.

DHRM Policy 1.45, *Probationary Period*, states 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.”¹ The General Assembly has further provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.² Employees who have not completed their probationary period do not have access to the grievance procedure.³

Here, it appears that the grievant began her employment with the agency on March 25, 2023. On March 22, 2024, the agency notified the grievant of her separation from employment, citing misconduct occurring on March 16. The agency’s notice of separation may have caused some confusion on the issue of access, as it erroneously referenced a Group III Written Notice (it does not appear that any such notice was actually issued) and confirmed the grievant’s access to the grievance procedure. However, the agency has indicated that these references were inadvertent errors, as agency management was aware that the grievant’s 12-month probationary period had not concluded. The agency later issued a second notice on March 29, 2024, which stated the grievant’s employment was terminated “immediately.”

Based on the information provided by the parties, EDR finds that, despite the confusion raised by the two notices of separation, the agency effectively separated the grievant’s employment as of March 22, 2024. The agency clearly intended to terminate the grievant’s employment on that date and notified her of this ultimate action, although certain procedural information in the notice

¹ DHRM Policy 1.45, *Probationary Period*, at 1.

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

³ E.g., EDR Ruling No. 2020-5017; EDR Ruling No. 2019-4920.

was incorrect. Moreover, there is nothing to indicate that the March 29 notice was intended to rescind or void the March 22 notice.

Based on these findings, the grievant had not completed her probationary period at the time of her separation. Accordingly, she does not have access to the grievance procedure. Her dismissal grievance will not proceed to a hearing, and EDR will close its file.⁴

EDR's access rulings are final and nonappealable.⁵

Christopher M. Grab
Director
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⁴ This ruling does not address whether any legal or other remedy may be available to the grievant for the issues raised in her grievance. This ruling determines only that she is ineligible to pursue her claims through the state employee grievance procedure.

⁵ Va. Code § 2.2-1202.1(5).