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ACCESS RULING

In the matter of the Virginia Department of Corrections
Ruling Number 2025-5884
June 13, 2025

On or about April 16, 2025, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) received a Dismissal Grievance Form A from the grievant. In response, the Virginia Department of Corrections (the “agency”) challenges whether the grievant has access to the grievance procedure.

It appears that the grievant began working as a corrections officer at one of the agency’s facilities on or about November 25, 2023. On February 25, 2024, the grievant’s supervisor prepared a three-month probationary progress review indicating contributor-level performance. However, on June 15, 2024, it appears that agency management completed another progress review extending the probationary period for three months, through February 25, 2025. The reason given was that the grievant was approximately 2.5 hours late for his scheduled shift on June 13, 2024. On November 26, 2024, management completed another probation review that further extended the probationary period to May 25, 2025. The reason given was that the grievant had “accrued a significant number of unanticipated absences” and failed to report for two “mandatory draft” shifts.

On March 13, 2025, the grievant experienced an injury at work and submitted to a drug test per the agency’s standard workers’ compensation evaluation process. The test returned positive results for marijuana, as confirmed by the testing facility’s medical review officer on March 26, 2025. The grievant indicates he was informed of the results by phone that day.

The parties offer different accounts of what occurred next. According to the agency, after learning of the positive drug test, the grievant told human resources staff that he used medical marijuana but wanted to quit rather than be terminated based on the positive drug test. Staff advised the grievant to submit his resignation in writing. The agency has provided a handwritten note stating: “I resign effective immediately,” signed [REDACTED] and dated March 26, 2025. The following day, March 27, the grievant “showed up . . . for work as if nothing had happened.” After being instructed to leave the premises, the grievant requested a discussion with the facility warden. The warden and other managers then participated in a call with the grievant. According to the warden, during the call the grievant acknowledged his resignation but felt he had no choice and

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“should not be let go,” requesting a medical accommodation to include the use of marijuana. The warden advised that his record would indicate a resignation in lieu of termination.

The grievant denies indicating a resignation and maintains he did not write the resignation note provided by the agency. Instead, it appears he filed two grievances that day – one asserting harassment and retaliation by management, and the other disputing the positive drug result and requesting a retest. He claims his call to the warden was to understand his employment status, and he never received a response as to that issue until he followed up with his facility’s human resources staff on April 16, 2025, who told him his employment had been terminated. He also contends the absences cited as the basis for extending his probationary period were due to specific medical circumstances of which he properly informed management. Essentially, the grievant claims that the extensions of his probationary period lacked a legitimate foundation, his drug test results were inaccurate, and the resignation note provided by the agency was “fraudulent.”

The agency now asks EDR to determine that the grievant lacks access to the grievance procedure as to all three grievances he submitted, on grounds that he voluntarily resigned on March 26, 2025 and also had not completed his probationary period at the time of his separation.

Probationary Status

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 policy further provides that “[p]robationary periods may be extended for up to 6 additional months for performance reasons. The reasons for the extensions must be documented on a Probationary Progress Review form. . . .”² The General Assembly has further provided that all *non-probationary* state employees may utilize the grievance process, unless exempted by law.³

The grievant would have completed his probationary period by March 26, 2025, had the agency not extended it as reflected in the Probationary Progress Review form dated November 26, 2024. As grounds for the extension, management stated the following:

[The grievant] has accrued a significant number of unanticipated absences ([eight dates over approximately six months]). In addition to the above mentioned unanticipated absences, [the grievant] failed to report to his mandatory draft on 9/23/24 and again on 10/17/24. According to the Employee Work Profile section “L” you are measured by the degree to which you report to work and training as scheduled. It also states that you must seek approval from the supervisor in advance of any changes to the established work schedule including the use of leave, late or early arrivals and or departures.

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

² *Id.* at 2.

³ Va. Code § 2.2-3001(A); *Grievance Procedure Manual* § 2.3.

The grievant argues that, on the dates identified, he was either not absent or absent due to medical reasons and followed required call-out procedures.

Based on the totality of information provided by the parties, EDR is unable to determine whether the grievant's probationary period was appropriately extended. An employee's unanticipated need to be absent from work – such as for medical reasons – would not, without more, normally implicate assessments of their job performance. Certainly, performance may include adherence to established policies and expectations, including those regarding how to seek approval for absences. However, the parties here disagree about whether the grievant was actually absent on the days cited, whether he had legitimate needs to be absent on those days, and whether he followed appropriate procedures in communicating those needs with management. Because we are unable to resolve those issues on the record presented, we accordingly do not resolve the question of access to the grievance procedure on grounds of whether the grievant was in an extended probationary period consistent with DHRM Policy 1.45.

Resignation

The agency has also challenged access on grounds that the grievant resigned prior to filing his dismissal grievance. In order to have access to the grievance procedure, a state employee “[m]ust not have voluntarily concluded their employment with the Commonwealth prior to initiating the grievance.”⁴ EDR has long held that once an employee's voluntary resignation becomes effective, they are not covered by the grievance procedure and accordingly may not initiate a grievance.⁵

Here, EDR concludes that the grievant tendered a voluntary resignation on March 26, 2025.⁶ The parties agree that, on that date, the grievant learned that his drug test results were positive for marijuana. Three human resources staff members at the grievant's former facility provided written statements describing that they were present when the grievant inquired about resigning, following the drug test results. One staff member confirmed that the grievant wrote his resignation note on a yellow legal pad and returned it to her, then left the human resources office. Another staff member relayed that she took a call from the grievant later that afternoon, stating that he wished to rescind his resignation. After consulting with her supervisor, she told the grievant his request “could not be accommodated.” In addition, according to the facility warden, a substantial part of her discussion the next day with the grievant was premised on the fact that he had tendered his resignation, which he acknowledged but indicated he wanted to rescind.

⁴ *Grievance Procedure Manual* § 2.3.

⁵ *E.g.*, EDR Ruling No. 2005-1043.

⁶ Because the grievant's assertion to EDR is that he did not tender a resignation, he has not argued that any such resignation was involuntary. However, we note that, in general, the voluntariness of a resignation is presumed. See *Rosario-Fabregas v. Merit Sys. Prot. Bd.*, 833 F.3d 1342, 1346 (Fed. Cir. 2016). The fact that an employee may be faced with the unpleasant alternatives of resignation or termination, or the fact that they regret their decision upon further reflection, would not normally render a resignation involuntary. See *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 167, 174 (4th Cir. 1988); *e.g.* *Schultz v. U.S. Navy*, 810 F.2d 1133, 1136 (Fed. Cir. 1987). Here, the record presents no indication that the grievant's resignation on March 26, 2025, as credibly described by agency witnesses, was procured by misrepresentation or coercion.

EDR is the finder of fact on questions of access.⁷ Upon a thorough review of the information provided by the parties, the evidence indicates that the grievant did submit an immediate resignation on March 26, 2025. The grievant argues that the resignation letter provided does not match his handwriting as it appears on other documents, such as his grievance forms. However, EDR is unable to identify any such discrepancies suggesting forgery, and ultimately we are not persuaded by his argument in light of consistent statements provided by multiple agency witnesses.

Because we find that the grievant submitted a resignation on March 26, 2025 that was accepted by the agency, and because there is no indication that the grievant was prevented from making a free and informed choice to resign at that time, we conclude that he voluntarily ended his employment. Therefore, he lacked access to the grievance procedure from that date forward. As a result, the two grievances apparently submitted to the agency on March 27, 2025 may be administratively closed, and the dismissal grievance dated April 16, 2025 will not proceed to a hearing. EDR's file on the dismissal grievance will be closed.

This ruling makes no determinations as to the merits of any claims raised in the grievant's dismissal grievance; nor does it address whether any legal or other remedy may be available to the grievant as to his claims. This ruling determines only that he is ineligible to pursue his claims through the state employee grievance procedure.

EDR's access rulings are final and nonappealable.⁸

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⁷ See Va. Code § 2.2-1202.1(5); see, e.g., EDR Ruling No. 2024-5612; see also *Grievance Procedure Manual* § 2.3.

⁸ Va. Code § 2.2-1202.1(5).