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ACCESS RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2025-5758
September 18, 2024

On September 3, 2024, 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 Department of Behavioral Health and Developmental Services (the “agency”) challenges whether the grievant has access to the grievance procedure, on grounds that he was separated during his probationary period.

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]ro probationary 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

It appears that the grievant began his employment with the agency on July 17, 2023. On or about July 3, 2024, the agency completed a probationary progress review recommending continued employment but also indicating that the grievant’s probationary period would be extended until October 15, 2024. As part of an overall review of the grievant’s performance, the review stated that the grievant “has received multiple counselings” during his employment, including multiple instances in which the grievant was looking at his phone or otherwise not being sufficiently attentive while providing patient care. The review also noted that the grievant “struggles with receiving feedback” from unit management. According to the grievant, the agency terminated his employment on or about August 29, 2024, after which he filed a dismissal grievance.

As it appears the grievant’s employment ended while he was still in his probationary period, he does not have access to the grievance procedure to challenge his termination. In his grievance, the grievant asserts that he has “not been reprimanded on job performance.” However,

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 agency has provided multiple documents reflecting performance counseling of the grievant from December 2023 through August 2024. In situations where an agency is considering extending the employee's probationary period for performance reasons, DHRM Policy 1.45 requires that the employee be given documentation reflecting the needed performance improvements and be informed in writing of the probationary period extension, both of which occurred here. Thus, EDR is unable to identify any facts that could establish that the grievant's probationary period extension was invalid under policy.

Employees who have not completed their probationary period do not have access to the grievance procedure.⁴ Because the grievant's probationary period had not concluded at the time of his termination, he does not have access to the grievance procedure to initiate a grievance challenging his termination.⁵ Therefore, this dismissal grievance will not proceed to a hearing and EDR will close its file.

EDR's access rulings are final and nonappealable.⁶

Christopher M. Gralk
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⁴ E.g., EDR Ruling No. 2020-5017; EDR Ruling No. 2019-4920.

⁵ This ruling makes no determinations as to whether the grievant's termination itself was consistent with law. This ruling also does not address whether any legal or other remedy may be available to the grievant based on his concerns about his termination. This ruling only determines that he is ineligible to pursue his claims through the state employee grievance procedure. Further, EDR's ruling only addresses the procedural question of whether the grievant has access to the state employee grievance procedure and does not make determinations on the substantive matters raised in the grievance.

⁶ Va. Code § 2.2-1202.1(5).