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ACCESS RULING

In the matter of the Department of Behavioral Health and Developmental Services
Ruling Number 2026-5922
August 1, 2025

On or about July 16, 2025, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) received a dismissal grievance that challenged the grievant's separation from employment at the Department of Behavioral Health and Developmental Services (the "agency"). The agency subsequently requested a ruling from EDR on whether the grievant has access to the grievance procedure, due to her resignation.

FACTS

Based on the information available to EDR, agency management placed the grievant on administrative leave on June 18, 2025, due to an investigation of an allegation of neglect. On July 3, 2025, the grievant submitted a written resignation from employment, "effective immediately."¹ On July 16, 2025, the grievant submitted a dismissal grievance to EDR seeking to resume her position. In response, the agency maintains the grievant resigned voluntarily and was not issued any formal disciplinary action or termination.

The General Assembly has provided that "[u]nless exempted by law, all nonprobationary state employees shall be covered by the grievance procedure"² Upon the effective date of a voluntary resignation from state service, a person is no longer a state employee. Thus, to have access to the grievance procedure, the employee "[m]ust not have voluntarily concluded their employment with the Commonwealth prior to initiating the grievance."³ 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.⁴

¹ The letter is dated June 30, 2025, though written notation on the letter indicates it was received at the agency on July 3, 2025.

² Va. Code § 2.2-3001(A).

³ *Grievance Procedure Manual* § 2.3.

⁴ *E.g.*, EDR Ruling No. 2005-1043.

EDR is the finder of fact on questions of access.⁵ The determination of whether a resignation is voluntary is based on an employee's ability to exercise a free and informed choice in making a decision to resign.⁶ Generally, the voluntariness of an employee's resignation is presumed.⁷ A resignation may be viewed as involuntary only where it was (1) "obtained by the employer's misrepresentation or deception" or (2) "forced by the employer's duress or coercion."⁸

In this case, the grievance materials do not present any basis for EDR to find that the grievant's resignation was involuntary.⁹ Accordingly, the grievant's separation from employment appears to have been voluntary, and thus she does not have access to the grievance procedure. The dismissal grievance will not proceed to hearing and EDR's file will be closed.

EDR's rulings on access are final and nonappealable.¹⁰

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⁵ See Va. Code § 2.2-1202.1(5); see also *Grievance Procedure Manual* § 2.3.

⁶ *Stone v. Univ. of Md. Med. Sys. Corp.*, 855 F.2d 167, 174 (4th Cir. 1988).

⁷ See *Rosario-Fabregas v. Merit Sys. Prot. Bd.*, 833 F.3d 1342, 1346 (Fed. Cir. 2016).

⁸ *Stone*, 855 F.2d at 174.

⁹ "[W]here an employee is faced merely with the unpleasant alternatives of resigning or being subject to removal for cause, such limited choices do not make the resulting resignation an involuntary act." *Schultz v. U.S. Navy*, 810 F.2d 1133, 1136 (Fed. Cir. 1987).

¹⁰ Va. Code § 2.2-1202.1(5).