STATE OF NEW JERSEY

In the Matter of Krishnachand Harduar, Department of Military and Veterans Affairs	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2016-887	Administrative Appeal

ISSUED: FEBRUARY 14, 2020 (SLK)

Krishnachand Harduar, a former Residential Services Worker, Department of Military and Veterans Affairs, represented by Richard P. Galler, Esq., appeals his resignation in good standing effective August 12, 2015.

In a letter dated August 17, 2015, the appellant appealed to the Civil Service Commission (Commission), claiming in essence that he was forced to resign. Specifically, he states that on August 12, 2015 he was summoned to the office of Human Resources Manager Twanna McKenzie-Walters, who accused him of leaving the workplace "a couple of times" in the presence of his union representative. The appellant states that he told McKenzie-Walters that he had his supervisor's permission whenever he left the workplace. Nevertheless, he alleges that McKenzie-Walters informed him that he could either resign or be terminated, but that he would not lose his benefits if he resigned. He states that she then handed him a piece of paper and told him to write on it that he wanted to resign. During this time, he states that he was "shocked, confused, nervous and weak," and in this state of mind he resigned. The appellant therefore contends that "his rights were seriously undermined" because "he was not given a chance to speak to his union representative or to his attorney."

In response, the appointing authority asserts that the appellant's resignation was not under duress. In this regard, it claims that on August 12, 2015, McKenzie-Walters confronted the appellant about his pattern of scanning into work and then leaving the premises without scanning out in the presence of his union representative. The appellant initially claimed that he had left work only once to

have his blood drawn and claimed that his Department Head was aware of it. The appellant also claimed that his supervisor was aware each time he left and provided a written statement indicating such. However, upon being informed that the appointing authority had video recordings of his pattern of leaving work without scanning out, the appellant "admitted to leaving the facility regularly, stating that he had to take his wife to work." McKenzie-Walters then presented the appellant with two options: resign immediately or be terminated. After conferring with his union representative and discussing the matter with other employees of the appointing authority, the appellant resigned from his employment, effective August 12, 2015. The appointing authority contends that the appellant was never threatened with a loss of his benefits nor was he forced to resign. It further claims that he was never placed under duress or treated inappropriately. Rather, "he was simply presented with evidence of his infractions and provided with two options." In support, the appointing authority provides written statements from the union representative, McKenzie-Walters and other employees that describe the meeting.

The appellant responds that the appointing authority did not provide its response within the requested 20 days from its receipt of the Division of Appeals and Regulatory Affairs' (DARA) August 27, 2015 letter acknowledging receipt of the appellant's appeal. He further contends that the appointing authority did not provide him with copies of the attachments to its response. Accordingly, the appellant requests that the Commission base its decision solely upon his submission.[1]

Furthermore, the appellant maintains that his resignation was made under duress and without proper representation. In this regard, he asserts that the only representation he received was through an inexperienced union representative. The appellant indicates that he was called to a meeting and confronted with charges of leaving his post without authorization and a hearing was held without any discovery, without any review, without any paperwork, without any e-mails and without any firm proof presented. He states that there was no documentation concerning his skipping breaks and lunch when he was busy, making up for lost time. The appellant claims that there was no proof that any time was lost and that he did not simply use his 15-minute break to take his wife to work, which was only one town over. He asserts that there was no employment contract presented, which stated that all employees needed to scan out for shorts breaks. Instead, he was only given the option to resign or be charged. The appellant highlights that he had only one minor discipline is his nine years of employment. He explains that when he took longer breaks, he received permission from his supervisor. The appellant argues that his leaving the premises for 15 minutes is no different than others who

[1] It is noted that on September 15, 2015, the appointing authority contacted DARA to request a one-week extension to file its response, which was granted. However, it appears that this request and approval was not copied to the appellant.

take a 15-minute break to get coffee on the premises. The appellant contends that when someone is not highly educated, does not have an attorney and does not have proper representation, it is difficult for that person to make an immediate decision as to whether someone should resign or be requested to repay money gained fraudulently. He represents that if monies were to be repaid, it could have been resolved by a repayment plan and continued employment or probationary period. Additionally, the appellant claims that his alleged infractions were not made clear and his "[t]ermination was a harsh and unneeded result."

CONCLUSION

Initially, the appellant asserts that the appointing authority's response to his appeal should not have been considered by the Commission as it was filed beyond the 20 days provided by DARA. However, this time period is not jurisdictional and may be extended. *See e.g., In the Matter of Michael Compton* (MSB, decided May 18, 2005). DARA granted the appointing authority's request for a one-week extension of time. Moreover, the appointing authority's response was filed only a few days after the 20-day period. Even in the absence of an extension, such a *de minimus* infraction of the time period would not render the submission unacceptable under the circumstances. Additionally, in order for the Commission to make a reasoned decision in the matter, the Commission must review a complete record. Therefore, there is no basis to disregard the response. The Commission notes that while the appellant also contends that he was not provided a copy of the appointing authority's attachments, he appears not to dispute his receipt of the submission.

In New Jersey, the law concerning the concept of duress has been extensively examined. As stated by Administrative Law Judge Robert S. Miller and affirmed by the Commission's predecessor, the Merit System Board, in *In the Matter of Dean Fuller* (MSB, decided May 27, 1997):

> Duress is a force, threat of force, moral compulsion, or psychological pressure that causes the subject of such pressure to become overborne and deprived of the exercise of free will. *Rubenstein v. Rubenstein*, 20 *N.J.* 359, 366 (1956) . . . This test is subjective, and looks to the condition of the mind of the person subjected to coercive measures, not to whether the duress is of "such severity as to overcome the will of a person of ordinary firmness." [*Shanley & Fisher, P.C. v. Sisselman*, 215 *N.J. Super.* 200, 212 (App. Div. 1987)] (citation omitted). Therefore, "the exigencies of the situation in which the alleged victim finds himself must be taken into account." *Id.* at 213, *quoting Ross Systems v. Linden Dari-Delite, Inc.,* 35 *N.J.* 329, 336 (1961).

However, a party will not be relieved of contractual obligations "in all instances where the pressure used has had its designed effect, in all cases where he has been deprived of the exercise of his free will and constrained by the other to act contrary to his inclination and best interests." *Wolf v. Marlton Corp.*, 57 *N.J. Super.* 278, 286 (App. Div. 1959). Rather, "the pressure must be wrongful, and not all pressure is wrongful." *Rubenstein, supra* at 367. Further, "it is not enough that the person obtaining the benefit threatened intentionally to injure . . . provided his threatened action was legal . . ." *Wolf, supra* at 286, *quoting* 5 Williston, Contracts (rev. ed. 1937), § 1618, p. 4523.

It is a "familiar general rule . . . that a threat to do what one has a legal right to do does not constitute duress." *Wolf, supra* at 287. "A 'threat' is a necessary element of duress, and an announced intention to exercise a legal right cannot constitute a threat." *Garsham v. Universal Resources Holding, Inc.,* 641 *F. Supp.* 1359 (D.N.J. 1986). Thus, as long as the legal right is not exercised oppressively or as a means of extorting a settlement, the pressure generated by pursuit of that right cannot legally constitute duress. *See generally, Great Bay Hotel & Casino, Inc. v Tose*, 1991 W.L. 639131 (D.N.J. 1991) (unrep.) and citations therein.

Additionally, the ALJ concluded in *Fuller*, that:

It is clear that respondent [the appointing authority] had a legal right to pursue disciplinary action against appellant. Therefore, respondent's conduct cannot constitute duress unless it pursued its legal right in an oppressive manner or purely as a means to extort a settlement. None of the facts alleged by appellant, however, indicates that respondent acted in an oppressive manner. Respondent pursued disciplinary action and gave appellant due notice thereof. Appellant was informed of the conduct upon which the disciplinary action was based. There has been no showing that respondent's conduct was any more "oppressive" than it would have been in any other action to remove an employee.

There is also no evidence suggesting that respondent instituted the disciplinary action to extort a settlement from appellant . . . As stated by the court in *Ewert v. Lichtman*, 141 *N.J. Eq*. 34, 36 (Ch. Div. 1947), "Assuredly action taken by one voluntarily and as a result of a deliberate choice of available alternatives cannot ordinarily be ascribed to duress." (citation omitted). Thus, although appellant may have accepted the settlement under the weight of adversity and was subject to stress, courts . . . should act with supreme caution in abrogating and

> countermanding such dealings. The qualities of the bargain which the litigant once regarded as expedient and pragmatical ought not to be reprocessed by the court into actionable duress. *Id.* at 38.

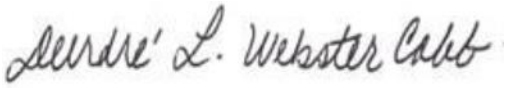
Upon its review, the Commission finds that the appellant was not forced to act against his will. Although the appellant claims that he resigned because he was "shocked, confused, nervous and weak" when he resigned, the appellant has not provided any evidence to support his claim. In the appellant's own words, he admits that he was given the **choice** of resignation or having the appointing authority pursue his removal. As indicated above, an appointing authority has the legal right to pursue disciplinary action. It is not considered a form of duress unless the appointing authority pursues its legal right in an oppressive manner or purely as a means to extort a settlement. The facts of this case do not reveal that the appointing authority acted in an oppressive manner. *See e.g.*, *In the Matter of Claudia Grant* (MSB, decided June 8, 2005) (Appellant's decision to resign was a personal choice given her belief that she would have been removed from employment and that disciplinary action, absent evidence of force or intimidation, does not constitute illegal duress). On the contrary, the appellant was given an opportunity to privately speak with his union representative and he was given the choice to resign or go through the disciplinary process. Thus, the record reflects that the appellant submitted his resignation voluntarily and the appointing authority did not engage in any behavior that rose to the level of duress or coercion. Therefore, the Commission finds that the appellant has not sustained his burden of proof in this matter.

ORDER

Therefore, it is ordered that this appeal be denied.

This is the final administrative determination in this matter. Any further review should be pursued in a judicial forum.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 12th DAY OF FEBRUARY, 2020



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