STATE OF NEW JERSEY

In the Matter of Kathleen Walker,
Ancora Psychiatric Hospital

CSC Docket No. 2019-2599

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

Administrative Appeal

ISSUED: AUGUST 5, 2019 (SLK)

Kathleen Walker, a Therapy Aide with Ancora Psychiatric Hospital, appeals her voluntary demotion from Principal Payroll Clerk to Therapy Aide, effective March 2, 2019.

By way of background, personnel records indicate that the appellant was a Payroll Clerk from August 2011 to October 2015, then a Senior Payroll Clerk from October 2015 to September 2017. Thereafter, she was provisionally appointed as a Principal Payroll Clerk in September 2017 and subsequently permanently appointed in this title, effective October 29, 2018. In a February 22, 2019 letter, the appellant signed a statement indicating that she agreed to be reassigned to another department and work as a Therapy Aide. Further, the statement indicates that she understood that this reassignment was a demotion. Thereafter, she was permanently appointed as a Therapy Aide, effective March 2, 2019.

On appeal, the appellant presents that she was summoned to appear in court as a witness on January 16, 2019. Therefore, she requested under *N.J.A.C.* 4A:6-1.20 to receive compensation for her time. In response, the appointing authority advised that her subpoena did not meet State standards and she would have to use her own time and would not be compensated. Thereafter, the appellant was subpoenaed again to appear in court as a witness on February 20, 2019. She asserts that centralized payroll advised her that her subpoenas met State standards; however, she was again denied compensation for her time. Consequently, the appellant filed a grievance and she requested that the central

office handle her grievance as she claimed there was a conflict of interest. Instead, on February 7, 2019, a hearing officer who was not associated with the central office denied her grievance as he determined that the subpoenas did not meet State standards. Subsequently, she claims that on February 8, 2019 the appointing authority advised her that she was "not a good fit for HR", that her working test period as a Principal Payroll Clerk would be considered unsatisfactory, and she would be reassigned to another unit. The appointing authority indicated that her working test period was unsatisfactory because she made several mistakes. However, the appointing authority initially refused to give her details concerning these mistakes.

The appellant highlights that her December 29, 2018 working test period probation report was satisfactory. Further, she states that she was not even working in the payroll department as the appointing authority had her working out-of-title to process leave requests. Therefore, the appellant questions how it could be determined that her work as a Principal Payroll Clerk was unsatisfactory. The appellant complains that it was never brought to her attention that she was making mistakes. Finally, after making several requests, the appointing authority provided her a list of the alleged mistakes, and she claims that 95 percent of them were inaccurate. The appellant states that although the appointing authority indicated that a union was complaining that she was making mistakes processing leaves, when she contacted the union, the union leaders denied that they ever made such claims. Thereafter, on February 22, 2019, the appointing authority indicated that she could either agree to be reassigned to another unit and accept a demotion or she would be "terminated." Therefore, she signed a document indicating that she was requesting this demotion. She emphasizes that she did not request to be reassigned and demoted, but only signed the document because she would have been terminated otherwise. The appellant argues that the appointing authority claimed that she failed her working test period, reassigned her to another unit, demoted her, and changed her work hours all because she exercised her right to file a grievance. She accuses the appointing authority of engaging in nepotism as the daughter of the employee who is second-in-charge was given her job duties and promoted to a higher title than she even though the appellant worked there for eight years and the daughter only worked there for one month on a part-time basis. The appellant requests that she be re-appointed as a Principal Payroll Clerk with the same salary and salary step that she previously had and the same hours that she worked for the prior seven and one-half years. Additionally, she requests compensation for the dates that she appeared as a witness.

In response, the appointing authority states that the appellant's claim that she was demoted as a result of filing a grievance is incorrect. Instead, it indicates that the appellant was made permanent as a Principal Payroll Clerk before asking for and receiving a demotion to Therapy Aide, effective March 2, 2019. Concerning the nepotism charge, the appointing authority presents that another employee was

asked to take over the appellant's duties, but declined. Thereafter, the assignment was given to the next person in line, who was the daughter of the employee who was second-in-charge. The appointing authority submits its February 8, 2019 letter to the appellant that lists the job duties needing improvement and/or correction and it indicates that her probationary period, which was expiring on March 1, 2019, was unsatisfactory at that time.[1] It also attaches the appellant's February 22, 2019 letter where the appellant agreed to the reassignment, the demotion to Therapy Aide, and her current work hours. Additionally, the appointing authority presents the subpoenas the appellant received to testify concerning a traffic accident. Additionally, it provides letters and communications regarding the appellant's work to demonstrate her performance issues. Further, the appointing authority submits a letter from a Personnel Assistant 2, Human Resources to the appointing authority explaining how the appellant created a hostile work environment. Thereafter, the Personnel Assistant 2, Human Resources withdrew her Workplace Violence complaint against the appellant when the appellant agreed to be reassigned to another unit. It attaches documentation concerning an official written reprimand the appellant received for refusing to accept new assignments on October 3, 2016. The hearing for the appellant's appeal of this minor discipline was heard on January 30, 2019 and on February 4, 2019 the hearing officer issued a decision sustaining the official written reprimand. Also, the appointing authority submits its Performance Assessment Review (PAR), that was signed on November 28, 2018 by the appellant, which indicates that she understood that her major duties as a Principal Payroll Clerk were to process Leave of Absence paperwork. Moreover, it provides statements from human resources and employee relations personnel that indicate that the appellant requested to be moved out of the unit.

In reply, the appellant emphasizes that the documents that she submitted for the subpoena qualify for payment. She highlights that her initial probationary progress report indicated that her performance was satisfactory. Further, contrary to the statements of the Personnel Assistant 2, Human Resources that she had been advising the appellant for several months that she was making mistakes, it was only in February 2019, for the first time, that she was given notice that she was committing mistakes and she was never given the opportunity to correct them. The appellant denies that she ever spoke to the Personnel Assistant 2, Human Resources in an unprofessional way or in any way created a hostile working environment. The appellant states that she only questioned how the Personnel Assistant 2, Human Resources could fail her in her working test period when she did not have the competency herself to perform these duties. She states that the

[1] It is noted that based on the appellant's official personnel record, she is to be considered to have successfully completed her working test period. In this regard, her reassignment was effective March 2, 2019, after her working test period should have been completed. Further, there is nothing in her official record or submitted by the appointing authority, other than the February 8, 2019 letter indicating that she failed her working test period, indicating that she was being returned to her permanent title of Senior Payroll Clerk prior to her voluntary demotion.

only discipline that she previously received related to the October 2016 incident and that she previously had an excellent working relationship with the Personnel Assistant 2, Human Resources. The appellant asserts that the statement that she requested to be reassigned is untrue. She reiterates that she only agreed to the reassignment and demotion because she was advised she would have been otherwise "terminated." The appellant claims to have witnesses who overheard her superiors stating that since they did not have grounds to fire her, they would attempt to aggravate her to the point where she caused a scene and then they could fire her. The appellant also submits an April 15, 2019 letter indicating that she will be promoted to Therapy Program Assistant upon return of her current leave of absence.

CONCLUSION

N.J.A.C. 4A:2-4.3(b) provides that an employee terminated from service or returned to his or her former permanent title at the conclusion of a working test period due to an unsatisfactory performance has the burden of proof to establish that the action was in bad faith.

In this matter, a review of personnel records indicates that on October 29, 2018, the appellant was promoted to Principal Payroll Clerk. Her former permanent title was Senior Payroll Clerk. In a letter dated February 8, 2019, which the appellant states that she received on February 12, 2019, the appellant received notice of her job duties that needed improvement or correction. The letter further indicates that her working test period was expiring on March 1, 2019, and at that time, her performance was unsatisfactory. Thereafter, in a February 22, 2019 letter to the appointing authority, the appellant indicated, "Per our conversation on 02/22/19, I am in agreement with transferring to the Rehab Department and working Monday thru Friday from 8 a.m. to 4:00 p.m. as a Therapy Aid, Effective 02/25/19. I do understand that this transfer is a demotion." Subsequently, the appellant was demoted to Therapy Aide, effective March 2, 2019. As such, the record indicates that she agreed to the reassignment and voluntary demotion. Concerning her claim that she only agreed because the appointing authority threatened to "terminate" her, it is noted that the appellant could not have been "terminated" simply for unsatisfactory performance during her working test period. Instead, unless the appointing authority was bringing disciplinary charges against her, at worst, she would have been returned to former permanent title, Senior Payroll Clerk. Further, even if the appointing authority was threatening disciplinary action against her, the appellant's decision to agree to a reassignment and a voluntary demotion was a personal choice given her belief that she would have been removed from employment. In this regard, disciplinary action, absent evidence of force or intimidation, does not constitute illegal duress. *See In the Matter of Claudia Grant* (MSB, decided June 8, 2005).

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.

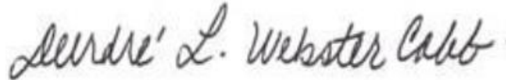
In other words, the appellant had a choice, she could have appealed an adverse working test period determination or disciplinary charges if ultimately proferred. Instead, she chose to be reassigned and demoted rather than face the consequences of potential adverse actions. Additionally, on appeal, the appellant claims that she has witnesses who overheard her superiors conspiring against her to try to get her to act in a manner which would lead to discipline and her removal. However, the appellant had the opportunity to submit statements from these witnesses in this appeal, but she failed to do so, and she has the burden of proof. Finally, the appellant's request for compensation for being a witness is untimely as she states that she was denied her grievances on February 7, 2019 and the record indicates that her e-mailed appeal was dated March 12, 2019, which is after 20 days from her grievance denial. *See N.J.A.C.* 4A:2-1.1(b).

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 31st DAY OF JULY, 2019



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