STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION

In the Matter of Stephen Cooper, Jr.
Department of Transportation

Administrative Appeal
(Corrected Decision)

CSC Docket No. 2022-42

ISSUED: SEPTEMBER 7, 2021 (BW)

Stephen Cooper, Jr., a former Realty Specialist 2, Transportation, with the Department of Transportation (DOT), appeals his resignation in good standing effective August 1, 2020.[1]

As background, the appellant was served with a Preliminary Notice of Disciplinary Action (PNDA) on July 23, 2020, on charges of insubordination, violation of DOT guidelines, inability to perform job duties, and conduct unbecoming a public employee. Specifically, on April 28, 2020, the appellant returned to work without informing his employer as previously requested. The appellant became sick on the same date and was found in the men's room. Although the appellant was ill, he had to be told to leave work. He was told that medical personnel were notified, and he refused treatment. Appellant exited the building and was approaching his personal vehicle, when he was approached by the Commissioner of DOT, who persuaded him to accept medical treatment. The PNDA indicated that his returning back to work while still sick, as well as intending to drive his personal vehicle, had the potential to put the appellant, his colleagues and the driving public at risk of harm. On June 25, 2020, the appellant submitted to a Fitness for Duty Evaluation to assess his ability to perform his job duties. The evaluator determined that he was unfit for duty for the foreseeable future. Therefore, the DOT sought his removal from employment. Ultimately, the parties settled the disciplinary matter in July 2020, where the appellant agreed to retire in lieu of removal.

[1] Retirement from public employment, for Civil Service purposes, is considered a resignation in good standing where an employee has qualified for, applied for and been approved for retirement.

By letter dated June 8, 2021, to the Civil Service Commission (Commission), the appellant requested that he be returned to his duties at the DOT as a Realty Specialist 2, Transportation. The appellant stated that "I was not aware of the CSC/DARA unit."[2] He acknowledges that he signed a settlement agreement in July 2020, as well as his representative, which stated that he would retire in lieu of removal. He further stated that he signed the agreement under duress and in fear of being removed and losing his pension and benefits.[3]

The appellant states that he was never given the opportunity to dispute the charges against him in a hearing.[4] He also indicates that he received an email around 2:00 or 3:00 p.m. stating that he had until end of day July 31, 2020, to sign the agreement and with the time restraint, he could not have his union representative and or an attorney represent him. The appellant also states that he is a veteran with no criminal record and feels he was being removed due to race.

Despite being provided the opportunity, the appointing authority did not provide a response to the appellant's appeal.

CONCLUSION

Initially, *N.J.A.C.* 4A:2-1.1(b) provides, in pertinent part, that an appeal must be filed within 20 days after either the appellant has notice or should reasonably have known of the decision, situation, or action being appealed. In this case, the appellant takes issue with signing the settlement agreement which took place on July 31, 2020, yet his appeal was not filed until June 8, 2021. For that reason, the appeal has not been timely presented. Nor is there any basis in this case to extend or to relax the time for appeal. *See N.J.A.C.* 4A:1-1.2(c) (the Commission has the discretionary authority to relax rules for good cause). In this regard, it is appropriate to consider whether the delay in asserting the petitioner's right to appeal was reasonable and excusable. *Appeal of Syby*, 66 *N.J. Super.* 460, 464 (App. Div. 1961) (construing "good cause" in appellate court rules governing the time for appeal); *Atlantic City v. Civil Service Com'n*, 3 *N.J. Super.* 57, 60 (App. Div. 1949) (describing the circumstances under which delay in asserting rights may be excusable). Among the factors to be considered are the length of delay and the reasons for the delay. *Lavin v. Hackensack Bd. of Educ.*, 90 *N.J.* 145 (1982). *See e.g., Matter of Allen*, 262 *N.J. Super.* 438 (App.

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[2] "DARA" is the agency's Division of Appeals and Regulatory Affairs, which process all appeals presented to the Commission. The appellant has filed several various appeals with the Commission throughout the years. Thus, the Commission is dubious of this assertion.

[3] The retirement has not been entered into the Personnel Management Information System.

[4] It is noted that the appellant's title is covered under the Communication's Workers of America contract. Per the contract agreement, all major discipline appeals go to the Governor's Office of Employee Relations. The Commission has no jurisdiction over the appellant's major disciplinary appeal process.

Div. 1993) (allowing relaxation of former Merit System Board's appeal rules where police officer repeatedly, but unsuccessfully, sought clarification of his employment status). In this regard, appellant claims that he was not aware of this agency's appeal unit. This claim is unpersuasive, and the Commission finds that the appellant's appeal is dismissed as untimely. Nevertheless, the Commission, for informational purposes, finds it necessary to address the appellant's arguments as discussed below.

N.J.A.C. 4A:2-6.1(d) stated that where it is alleged that a resignation was the result of duress or coercion, an appeal may be made to the Commission under *N.J.A.C.* 4A:2-1.1. Considering the instant matter, the Commission finds that, although the appellant suggested that he had no choice but to retire because he was afraid of losing his pension and benefits, the appellant did not act against his will in resigning from his position as an Realty Specialist 2, Transportation. The record demonstrates that the appointing authority proffered disciplinary charges and could have proceeded as it 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 such a manner. It is emphasized that the appellant was represented by his union regarding his employment status. Moreover, and most importantly, all the appellant had to do was reject the settlement and proceed with the disciplinary process and demonstrate he was not guilty of the charges if he believed the charges were unwarranted. His choice not to do so cannot be considered undue duress or coercion.

The law in New Jersey concerning the perception of duress has been examined at length. As stated in part by Administrative Law Judge Robert S. Miller and affirmed 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).
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> 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 the 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 pursed 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.

As indicated previously, the appellant was given a choice to fight the charges lodged against him or retire. Appellant signed the agreement, as did his union representative accepting the retirement. There is nothing in the record that points to threats or intimidation towards the appellant to sign the settlement agreement. There is also no evidence on the record that the retirement was based on invidious or discriminatory reasons. Accordingly, the appellant has failed to demonstrate that his resignation and retirement was the result of duress or coercion by the DOT.

ORDER

Therefore, it is ordered that this appeal be dismissed as untimely. Additionally, the Division of Agency Services is ordered to update the personal record of Stephen Cooper, Jr.

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 1ST DAY OF SEPTEMBER, 2021

Deirdré L. Webster Cobb

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