



STATE OF NEW JERSEY

**FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION**

In the Matter of D.A.R., City of
Jersey City

CSC Docket No. 2021-1308

Administrative Appeal

**ISSUED: SEPTEMBER 7, 2021
(DASV)**

D.A.R., represented by Robert K. Chewning, Esq., appeals her resignation as a Police Officer with the City of Jersey City effective February 18, 2021.

By way of background, D.A.R. appealed the removal of her name from the Police Officer (S9999U), City of Jersey City, eligible list. The Civil Service Commission (Commission) granted the appeal and afforded D.A.R. a retroactive date of appointment to December 9, 2019, upon successful completion of her working test period.¹ See *In the Matter of D.A.R.* (CSC, decided November 24, 2020). Subsequently, D.A.R. entered the Bergen County Police Academy (Academy), but she received a Dismissal Notice on February 17, 2021 for “Failure of Functional Area 13, Physical Fitness.” On March 9, 2021, D.A.R. filed an appeal to the Commission of her resignation as a Police Officer with the City of Jersey City.

On appeal, the appellant indicates that she was injured during academy training, which affected her ability to perform the push-up portion of the physical conditioning tests. Upon receipt of the Dismissal Notice, which she submits with

¹ It is noted that the appointing authority has not amended the April 10, 2019 (OL190405) certification of the Police Officer (S9999U), City of Jersey City, eligible list to reflect D.A.R.’s appointment nor entered D.A.R.’s actual date of appointment and separation in the County and Personnel Management System.

her appeal, the appellant states that she “contemporaneously filed²” an appeal with the Police Training Commission. The appellant alleges that she was “forced . . . to execute a voluntary resignation” effective February 18, 2021. She maintains that this resignation amounts to a bad faith layoff and disability discrimination. With regard to the latter, the appellant states that she suffered a partial tear to her hamstring during her training at the Academy. She did not disclose this injury because the “instructors repeatedly stated that any injury would be an automatic disqualification” and that she believed that “she would have sufficient time to heal and prepare for the second physical conditioning test during the required remedial sessions that the Academy was supposed to provide her.” She maintains that the “Academy set [her] up to fail” because they did not offer her the remedial sessions. As such, the appellant asserts that her forced resignation was “arbitrary, capricious, and made in error,” and thus, she should be reinstated.

Therefore, the appellant requests that her resignation be rescinded, she attend the next available academy class, and that she receive back pay, benefits, seniority, and attorney fees and costs. Alternatively, she asks that she be granted a hearing at the Office of Administrative Law on why the appointing authority forced her to resign rather than provide her with the opportunity to attend the next academy class. In support of her appeal, she submits a certification attesting to the foregoing information and maintains that “Jersey City forced [her] to either voluntarily resign or be terminated without providing [her] with the opportunity to go to the next available academy” as similarly situated recruits have had. The appellant also presents her Recruit Resignation Form, signed February 18, 2021, which states that “[b]y my signature below, I am voluntarily submitting my resignation as a Police Officer Recruit to the Jersey City Police Department. . . I am unable to complete the mandatory ‘Basic Course for Police Officers’ training as required in the Conditional Offer of Employment. I understand that this resignation terminates my employment with the Jersey City Police Department and any further consideration for this position.”

In response, the appointing authority, represented by James B. Johnston, Assistant Corporation Counsel, initially indicates that the appellant was not separated by way of layoff action. Rather, the appellant was dismissed from the Academy. She was also not disciplined. The appointing authority maintains that the appellant chose to voluntarily resign. Her claim of a forced resignation “is a self-serving attempt to deflect attention away from the fact that she acknowledged in writing that if she failed Police Academy training, the employee-employer relationship between her and the City would end.” The appointing authority explains that the Training Unit offered the appellant “the opportunity to simply resign to avoid the harshness of being terminated.” “No one forced, influenced, or coerced” her “ultimate choice to resign.” Moreover, the appointing authority

² Other than the appellant’s indication that she filed an appeal with the Police Training Commission, no further information on the status of that appeal has been provided by either party.

disputes that the appellant's resignation was motivated by discriminatory reasons. It contends that it was not aware of the appellant's injury at the time of her resignation. It notes that the appellant does not submit medical records of her purported injury which "she admits the City has no knowledge of." Moreover, it emphasizes that any issues pertaining to Academy training should be raised with the Academy or the Police Training Commission. The appointing authority submits that once the appellant was dismissed, it was not obligated to provide her with a second opportunity. It reiterates that it permitted her to resign instead of terminating her which it "has no issue with doing so." The appellant was treated with "dignity and respect." In support of its position, the appointing authority presents certifications of Police Lieutenants who are assigned to the Background Investigation Unit. They state that "[a]t all times before and after her Academy dismissal," the appellant was treated with "the utmost in politeness, courtesy and respect" and they did not see anyone mistreat her. Rather, she was provided with the option of either being removed from employment or resigning and was informed that "the choice of either option was hers alone." One of the Police Lieutenants, who met with the appellant on February 18, 2021 and signed her Recruit Resignation Form, also certifies to the fact that he was not told of the appellant's claimed injury by the appellant or anyone else. He first knew of the injury upon the appellant's appeal.

CONCLUSION

N.J.A.C. 4A:2-6.1(d) provides 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. The appellant requests a hearing in this matter. However, appeals of resignation are generally treated as reviews of the written record. See *N.J.S.A.* 11A:2-6(b). Hearings are granted in those limited instances where it has been determined that a material and controlling dispute of fact exists which can only be resolved through a hearing. See *N.J.A.C.* 4A:2-1.1(d). No material issue of disputed fact has been presented which would require a hearing. See *Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978). Moreover, it is noted that any dispute over Academy training or the appellant's dismissal from the Academy should be raised in the appellant's appeal to the Police Training Commission. The Commission, however, is authorized to review the appellant's claim of a forced resignation from employment as a Police Officer.

In that regard, in New Jersey, the law concerning the concept of duress has been extensively examined. As stated by Administrative Law Judge Robert S. Miller (ALJ) and affirmed in *In the Matter of Dean Fuller* (MSB, decided May 27, 1997):

Duress is 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). Thus, consent given under such circumstances is illusory, and agreements entered into under such circumstances are voidable by the party so coerced. *Shanley & Fisher, P.C. v. Sisselman*, 215 N.J. Super. 200, 212 (App. Div. 1987). When determining whether consent to an agreement was given while under duress courts look to “[a]ll attendant circumstances, including age, capacity and relation of the parties.” *Ibid.* 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.” *Ibid.* (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 act 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, 1372 (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 the instant matter, the Commission finds that the appellant’s resignation was not coerced or made under duress. She resigned due to her dismissal from the Academy. There is nothing in the record that demonstrates psychological pressure which would have forced the appellant to sign the Recruit Resignation Form against her will. The appellant’s reaction of resigning was a personal choice. She was specifically advised that she had the option of either being removed from

employment or resigning and it was her decision to make. In other words, there was no act so oppressive to deprive the appellant of her free will. Moreover, the appointing authority would have the legal right to pursue disciplinary action. Disciplinary action, absent evidence of force or intimidation, does not constitute illegal duress or coercion. See *In the Matter of Nyanate Senyon* (CSC, decided September 6, 2017); *In the Matter of Sean Nally* (CSC, decided December 2, 2009); *In the Matter of Claudia Grant* (MSB, decided June 8, 2005).

In addition, the appellant's claim of a bad faith layoff and disability discrimination fails. It is clear that the appellant was not separated due to a layoff action, nor can it be argued that her separation was a *de facto* layoff. She resigned. Further, the appointing authority was not aware of the appellant's injury, and she admits that she did not disclose her injury for fear of "automatic disqualification." As noted above, any issues pertaining to Academy training, including the offer of remedial sessions, is not for the Commission to decide. Therefore, the Commission finds that the appellant submitted her resignation voluntarily, albeit without fully considering the consequences of her actions.

The Commission notes that if the appellant is successful in her appeal with the Police Training Commission, she is not entitled to reinstatement as she has been found to have resigned. In this regard, *N.J.A.C.* 4A:2-6.1(a) allows an employee to resign in good standing by giving the appointing authority written or verbal notice. *N.J.A.C.* 4A:2-6.1(b) states that such resignation "shall be considered accepted by the appointing authority upon receipt of the notice of resignation." Therefore, once the resignation is accepted, an appointing authority is under no obligation to rescind the resignation. Nonetheless, should the appointing authority in this case wish to permit the appellant to rescind her resignation in the event of a successful appeal with the Police Training Commission, the parties may petition the Commission at that time.

ORDER

Therefore, it is ordered that this appeal be denied. Additionally, the City of Jersey City is to record D.A.R.'s appointment and separation in the County and Personnel Management System consistent with this determination.

This is the final administrative action in the 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

Deirdre' L. Webster Cobb

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