B-4

STATE OF NEW JERSEY

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

In the Matter of Nyanate Senyon,
Correction Officer Recruit (S9988T),
Department of Corrections

List Removal Appeal

CSC Docket No. 2017-2445

ISSUED: SEP 0 6 2017 (HS)

Nyanate Senyon appeals the removal of his name from the eligible list for Correction Officer Recruit (S9988T), Department of Corrections (DOC), on the basis of his failure to complete preemployment processing.

The appellant, a non-veteran, took and passed the open competitive examination for Correction Officer Recruit (S9988T). The resulting eligible list promulgated on July 23, 2015 and expired on July 22, 2017. On November 21, 2016, the appellant received a temporary appointment to the title of Correction Officer Apprentice. On December 9, 2016, the appellant withdrew from the training academy (academy) for "personal reasons," and his temporary appointment was discontinued effective that same date. Therefore, the appointing authority removed the appellant's name from the subject eligible list on the basis of his failure to complete preemployment processing.

On appeal to the Civil Service Commission (Commission), the appellant explains that on December 8, 2016, approximately three weeks into his attendance at the academy, he injured his shoulder during physical training at the academy and was taken to the emergency room. The doctor concluded that the appellant could participate in classroom, but not physical activities. The appellant states that on December 9, 2016, a DOC officer took him to another doctor for a second opinion. The second doctor advised that the appellant would need two weeks of physical therapy, followed by a reexamination, and an MRI. According to the appellant, the academy has a policy that calls for the dismissal of any attendee who receives 10 physical training "zeros." The appellant asserts that he spoke to a sergeant, who

told him that since he was injured, he could resign and be medically recycled into the next academy class rather than be terminated for missing two weeks and accumulating 10 zeros. The appellant avers that it was his understanding that if he resigned due to an injury, he would be medically recycled into the next academy class. The appellant adds that after his resignation, he successfully filed a worker's compensation claim and it was determined that surgery was required. The appellant maintains that he was wrongfully denied being medically recycled into the next academy class and wrongfully removed from the subject eligible list. He requests that his name be restored to the list and that he be medically recycled into another academy once he is physically cleared. In support, the appellant submits documentation of his doctor's visits and worker's compensation claim and other related documents. It is noted that this documentation includes a "Patient Visit Summary and Instructions" sheet, signed by the appellant, which indicates that the appellant was treated by Dr. H.C. on December 9, 2016 and that his next appointment, a "Work Comp Follow-up Visit," was scheduled for December 14, 2016. The documentation also includes a prescription, dated December 9, 2016, for two weeks of physical therapy.

In response, the appointing authority maintains that it properly removed the appellant's name from the subject eligible list. It indicates that the appellant withdrew from the academy on December 9, 2016 and signed two statements that he was resigning from his trainee position due to his shoulder injury. The appointing authority also states that the appellant was not approved to be medically recycled due to his failure to attend a follow-up medical appointment. In support, the appointing authority submits, among other documents, the appellant's two statements of resignation. In the first statement, the appellant indicated that he was "resigning from his position as a Trainee at the [DOC] Training Academy effective 12/9/16" due to his shoulder injury. In the second statement, the appellant indicated that he was "withdrawing from the [Correctional Staff Training Academy (CSTA)] because I hurt my shoulder during physical activity. I am not medically cleared to continue at the CSTA therefore I am withdrawing from the CSTA."

In reply, the appellant asserts that he was never told that he would need to attend a follow-up medical appointment before resigning in order to be medically recycled. He states that he was treated by the appointing authority's doctor on the day after he was injured. He reiterates that he was told that in light of his scheduled two weeks of physical therapy, it was best that he resign in order to be medically recycled rather than be terminated for missing too many physical training days. The appellant asserts that two weeks of physical therapy would have equaled 10 physical training zeros. Therefore, had he stayed, he would have been terminated. The appellant maintains that this is the reason he was told to resign.

## CONCLUSION

*N.J.A.C.* 4A:4-4.7(a)11 allows the Commission to remove an eligible's name from an eligible list for other valid reasons. *N.J.A.C.* 4A:4-6.3(b), in conjunction with *N.J.A.C.* 4A:4-4.7(d), provides that the appellant has the burden of proof to show by a preponderance of the evidence that an appointing authority's decision to remove his name from an eligible list was in error.

*N.J.A.C.* 4A:3-3.7B(a) provides that the appointment of an employee to the title of Correction Officer Apprentice shall be a temporary appointment from a certification of Correction Officer Recruit eligibles on an entry-level law enforcement eligible list. The purpose of this temporary appointment is to ensure that individuals so appointed shall receive training appropriate to the duties of a Correction Officer Recruit in accordance with the Police Training Act. *See N.J.S.A.* 52:17B-66 *et seq.* *N.J.A.C.* 4A:3-3.7B(d) provides that upon successful completion of the residential training program required by the Police Training Act, and in-service training provided by DOC under the authority of the Police Training Commission, the employee serving in the title of Correction Officer Apprentice shall receive a regular appointment to the title of Correction Officer Recruit.

It is noted that an appellant has the burden of proving by a preponderance of the evidence that a resignation was the result of duress or coercion on the appointing authority's part. 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 former 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).
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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.
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> 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 this matter, the record indicates that the appellant resigned from his position as a Correction Officer Apprentice due to an injury that prevented him from completing a training academy as required. The appellant asserts that he was informed that he had to resign or be terminated. However, he does not provide any substantive evidence that establishes that the appointing authority exerted any pressure on him in this regard. The appellant's decision to resign was a personal choice and his belief that he would have been terminated from employment absent evidence of force or intimidation, does not constitute illegal duress. *See In the Matter of Sean Nally* (CSC, decided December 2, 2009); *In the Matter of Claudia Grant* (MSB, decided June 8, 2005). Further, the Commission notes that pursuant to *N.J.S.A.* 52:17B-66 *et seq.* (Police Training Act), Correction Officer Recruits are required to successfully complete a training course before performing the duties of that title. The purpose of the appellant's temporary appointment as a Correction Officer Apprentice was to ensure that he received this training. *See N.J.A.C.* 4A:3-3.7B(a). However, as the appellant could not complete his training, the only options left to the appointing authority were to terminate the appellant, allow the appellant to attend a later academy class, or permit the appellant to resign. In this matter, the appointing authority chose to allow the appellant to resign rather than terminate him.

The decision not to allow the appellant to attend a later academy class was solely at the discretion of the appointing authority and this decision will not be reviewed by the Commission without some evidence of discriminatory conduct or invidious motivation. *See Nally, supra.* Although the appellant claims that he was unaware of the need to attend a follow-up medical appointment prior to resigning and being approved to be medically recycled, the December 9, 2016 "Patient Visit

Summary and Instructions" sheet, signed by the appellant, indicates that he was scheduled for a follow-up appointment on December 14, 2016. However, the appellant resigned prior to that date, on December 9, 2016. Moreover, while the appellant notes, as the reason for resigning, his concern that attending two weeks of physical therapy would have led to his termination, the date of the follow-up appointment was actually *within* two weeks of the date he chose to resign.

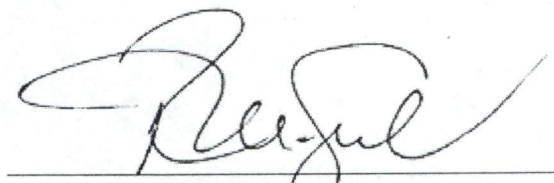
Accordingly, the appellant has failed to demonstrate that his resignation was the result of duress or coercion by the appointing authority or that the removal of his name from the subject eligible list was improper. Therefore, the appellant has not sustained his burden of proof in this matter.

## 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 6TH DAY OF SEPTEMBER, 2017



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