STATE OF NEW JERSEY

In the Matter of Robert Jedziniak, *et al.*, Jersey City	**FINAL ADMINISTRATIVE ACTION OF THE CIVIL SERVICE COMMISSION**
CSC Docket No. 2019-1460, *et al.*	Administrative Appeal

ISSUED: FEBRUARY 22, 2019 (SLK)

Robert Jedziniak, Geovanni Molina, Kevin Muller, Christopher Pellegrino and Juliette Vogt, represented by Michael L. Prigoff, Esq., former Fire Fighters with Jersey City, appeal their resignations in good standing.[1]

By way of background, Jersey City appointed the appellants as Fire Fighters on certification OL180630, effective October 8, 2018. Thereafter, the appellants submitted signed resignations letters to the appointing authority.

On appeal, the appellants state that they were compelled by the appointing authority to sign written resignations letters in lieu of being terminated from their positions as Fire Fighters. They indicate that they were terminated because they were dismissed from the Basic Course at the Morris County Public Safety Fire Training Division (Academy), on either October 26 or 29, 2018, for alleged failure to complete a certain number of repetitions of calisthenics on a single re-test less than three weeks into the Basic Course, notwithstanding that each of the candidates had significantly improved their physical conditioning during the program. The appellants request that these matters be transmitted to the Office of Administrative Law (OAL) for a hearing as they assert that there are numerous factual issues to be resolved and believe that the discovery concerning the Academy and its standards is essential for the appellants to present their cases. The appellants argue that the

[1] Personnel records still have the appellants as being active Fire Fighters. As such, the effective dates of the resignations are unclear.

Academy adopted an arbitrary standard for physical fitness to be achieved at the beginning of the course and then failed to even follow its own standard in the administration thereof. They state that this is the only Academy in the State that uses such a standard, which does not comport with the detailed and well-reasoned standard mandated by the Police Training Commission (PTC) for training Police Officers.

Additionally, the appellants argue that the appointing authority's subsequent actions, which forced them to sign written resignations from their positions rather than processing terminations and advising them of their appeal rights, was improper. Therefore, they request that the Civil Service Commission (Commission) finds that their resignations were invalid and require the appointing authority to commence disciplinary proceedings. The appellants submit one of the signed resignation letters that was addressed to the appointing authority's Director, Department of Public Safety as a sample of all the resignation letters that the appellants signed and submitted. The representative letter states:

> I am voluntarily submitting my resignation as a fire fighter recruit to the Jersey City Fire Division. I am unable or unwilling to complete the mandatory, "Basic Course for Fire Fighters" training as required in the Conditional Offer of Employment. I understand that this resignation terminates my employment with the City of Jersey City, Fire Division, and further consideration for this position based on my current Civil Service rank and status.

Although given the opportunity, the appointing authority has not responded.

CONCLUSION

The appellants request that these matters be transmitted to the OAL for a hearing. However, resignation in good standing appeals are generally decided on the written record and hearings are only granted when a material dispute of fact that cannot be resolved on the written record is presented. *See In the Matter of Christopher Darcy* (CSC, decided November 21, 2018). In this regard, for the reasons set forth below, there are no material or controlling disputes of fact that cannot be resolved on the written record.

N.J.A.C. 4A:2-6.1(d) allows an employee to appeal a resignation in good standing if the resignation was the result of duress or coercion. In this regard, an appellant has the burden of proving by a preponderance of the evidence that the 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 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.

The plain language of the resignation letters indicates that the appellants *voluntarily* resigned and understood that their resignations terminated their employment with the appointing authority. There is absolutely no evidence in the record that the appellants' resignations were the result of duress or coercion. In fact, their signatures on the letters establishes exactly the opposite. Moreover, the spectre of 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). Clearly, the appellants could have just as easily opted not to sign the resignation letters and proceed with the disciplinary process. Further, any

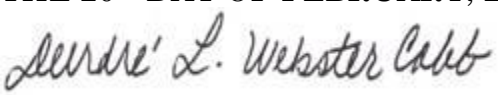
complaints concerning the standards and actions of the Academy is irrelevant to the determination as to whether the appellants voluntarily resigned from the appointing authority. Accordingly, the Commission denies the appellants' appeals of their resignations in good standing.

ORDER

Therefore, it is ordered that these appeals 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 20th DAY OF FEBRUARY, 2019



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