



STATE OF NEW JERSEY

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

In the Matter of A.G., City of Newark

Administrative Appeal

CSC Docket No. 2017-822

ISSUED: FEBRUARY 28, 2020 (HS)

A.G., a former Municipal Court Administrator with the City of Newark (Newark), represented by Lynsey A. Stehling, Esq., appeals her resignation in good standing, effective September 7, 2016.

On appeal to the Civil Service Commission (Commission), the appellant states that she received a promotion to a management position in June 2007.¹ She has felt strongly that, since that time, Newark and management officials treated her differently due to her sexual orientation. Specifically, her salary was not increased while Newark increased the salary of other managers during the time she was a manager. Other managers, which included her supervisor, specifically excluded the appellant when they went to lunch together. During the appellant's tenure as a manager with Newark, the management team gave managers birthday cakes and cards on their birthdays but never celebrated the appellant's birthday at work while she was a manager. The appellant was rarely allowed to be part of the interview committees/process during her tenure as a manager, while the other Court Administrator managers were always involved in the interview process. The management team rarely asked for the appellant's opinion about candidate selections in the Municipal Court. During the appellant's tenure as a Court Administrator, she was often denied approval to attend training or continuing education courses during work hours notwithstanding the fact that several other Court Administrator managers were approved to attend the same training or

¹ Agency records indicate that the appellant's employment with Newark began in February 1999. She was appointed to the title of Deputy Municipal Court Administrator in June 2007 and the title of Municipal Court Administrator in May 2013.

continuing education course without the loss of their accrued time. In those instances, if the appellant wanted to attend the training or continuing education course, she had to use her personal time.

The appellant states that due to the discriminatory treatment, she began seeking other employment opportunities in the State court system. The appellant interviewed for and was offered a position with the City of Passaic as a Municipal Court Administrator. After substantial deliberation and discussion with her family, the appellant decided to accept that position.² She did not want to leave her position with Newark because she was born and raised there and felt a substantial connection to it and its residents. On or about August 14, 2016, the appellant verbally advised her supervisor and the Chief Judge that she would be submitting a formal letter of resignation because she had accepted another position. On or about August 15, 2016, the appellant submitted a formal letter of resignation to her supervisor advising that her resignation date would be effective September 7, 2016. The letter read as follows:

It is with great heartache that I must inform you of my resignation from Newark Municipal Court effective September 7, 2016.

I have accepted a position as Municipal Court Administrator with the City of Passaic. I am beyond grateful for the relationships, skills, and tools I have gained while employed at Newark Municipal Court. After nearly seventeen years, it is time for me to move on to pursue my personal career goals.

I will certainly work with you or your designee to ensure my replacement is adequately trained and prepared to take over.

Once again thank you and Newark Municipal Court for the opportunity to learn and grow within the Judiciary. I wish you and the Court as a whole much success in all your future endeavors.

Later, while recovering from a medical procedure, the appellant had a change of heart about resigning because of her ties to Newark. The appellant contacted her supervisor on August 29, 2016 via telephone and e-mail and requested to formally withdraw her resignation. Her supervisor advised that she could not come back to her job because the position had already been filled. While it was the appellant's understanding that an employee was being trained to take her position, it was her understanding that that employee had not yet been formally appointed to the position. Newark later confirmed that it would not allow the appellant to rescind her resignation.

² Agency records do not reflect that the appellant ever became employed by the City of Passaic.

The appellant maintains that she should be allowed to rescind her resignation as she had been a productive and competent employee with Newark for 17 years. In addition, the appellant contends that she should be allowed to rescind based on equitable principles. In this regard, the appellant maintains she was subjected to inappropriate, illegal and humiliating treatment based upon her sexual orientation and was emotionally impacted by Newark's inappropriate treatment since she sought to leave her employment after 17 years of exemplary performance with exceptional evaluations and multiple promotions. She also points to the vesting of her pension as further reason to allow her to rescind. Further, she sought to rescind her resignation well in advance of the resignation date. In support, the appellant relies on *Evaul v. Bd. of Educ., City of Camden*, 35 N.J. 244 (1961); *In the Matter of Elizabeth Harmon* (MSB, decided March 11, 1997); and *In the Matter of George Cooke* (MSB, decided September 9, 1992), all cases in which the respective employee's resignation was rescinded on equitable grounds.

In response, Newark, represented by Eric S. Pennington, Esq., disputes the appellant's allegations of discrimination. Specifically, while the appellant's salary was not increased, there was a longstanding salary freeze, which impacted other employees. Moreover, it notes that the appellant did not seek a salary increase. As to lunches, even if it is accepted that someone neglected to invite the appellant, this would not be evidence of discrimination based on sexual orientation. Further, Newark maintains that it exercises no control over these alleged informal lunch gatherings. Regarding birthdays, Newark notes that the appellant's allegations that the "management team" was responsible for giving cakes and cards to other managers is false. Rather, upon information and belief, to the extent any manager's birthday was celebrated, it was that manager's subordinates who coordinated giving cakes and cards out of their own time and expense, and Newark exercises no control over the gatherings. In addition, Newark notes that the appellant was involved and participated in any and all interviews that involved her unit. Other managers may have more frequently engaged in interviewing processes, but this was likely the result of their managing larger units and/or their units having a greater number and need for interviews. Further, Newark maintains that during the appellant's tenure, it provided her with an exceedingly generous support system permitting her to take advantage of preparation classes for the court administrator's examination and other training. She was also allotted time to attend training in connection with her preparation for the court administrator's examination.

Newark argues that any claim of duress is untenable as there were no coercive measures in connection with the appellant's resignation. Newark contends that the appellant secured alternative employment and made a conscious, educated decision to resign. It also maintains that there are no grounds to apply equitable principles as the cases cited by the appellant are distinguishable. In this regard, the appellant never suffered any harassing behavior and never reported any harassment; there is no evidence to suggest that the appellant suffered any

emotional problems; the appellant did not have an excellent work history as her tenure included two minor disciplinary actions; the appellant waited weeks before communicating her change of heart as she formally tendered her written resignation August 15, 2016 but did not advise that she wanted to rescind until August 29, 2016; and Newark took action in reliance upon the resignation as it hired a replacement due to the urgency the appellant created by resigning and then going on sick leave immediately thereafter for essentially the entirety of time between her tendering notice and her last day. As such, Newark maintains that the appellant properly tendered her resignation, and it was under no obligation to accept her attempted rescission.

In reply, the appellant disputes Newark's response and reiterates that she should be provided the opportunity to rescind her resignation.

CONCLUSION

N.J.A.C. 4A:2-6.1(c) provides that a request to rescind a resignation prior to its effective date may be consented to by the appointing authority. In this matter, the appellant attempted to rescind her retirement by telephone and e-mail on August 29, 2016. However, these actions occurred after the appellant tendered, and the appointing authority accepted, the appellant's resignation from employment. See *N.J.A.C.* 4A:2-6.1(b) ("The resignation shall be considered accepted by the appointing authority upon receipt of the notice of resignation.") Once a resignation is accepted, the appointing authority is under no obligation to rescind the resignation. *N.J.A.C.* 4A:2-6.1(c) expressly grants the appointing authority the discretion to consider such requests to rescind, but there is no obligation to accept.

Additionally, the cases cited by the appellant differ from this matter. In *Cooke, supra*, the appellant resigned from his position hastily and without giving the requisite two weeks' notice of his departure. Thus, in accordance with *N.J.A.C.* 4A:2-6.2(a), his separation was recorded as a resignation not in good standing. The appellant in *Cooke* attempted to rescind his resignation shortly after it was tendered, but the appointing authority would not consent. The former Merit System Board (Board) reversed the resignation not in good standing after considering a number of factors. Specifically, the Board relied on the employee's long term employment, his record of good performance, and the increased stress and conflict in the appellant's workplace, which ultimately led to the hasty declaration of his resignation. Based on "the unique circumstances" presented in *Cooke*, the Board concluded that his resignation must be considered rescinded. Similarly, in *Evaul, supra*, the appellant resigned from her position hastily following a heated discussion with her superiors, where she felt falsely accused of unspecified wrongdoing. Based on the conditions under which her resignation was tendered, as well as her long term employment, the New Jersey Supreme Court reversed the appellant's resignation, finding it "unduly harsh for appellant to lose rights

acquired during the many years she served as a teacher,” which included her pension. In *Harmon, supra*, the Board reversed an employee’s resignation in good standing, based on a number of factors including the fact that she had been subjected to “harsh and humiliating treatment” by her supervisor, she had been suffering a number of medical and emotional problems around the time of her resignation, she had a long and positive work history, she attempted to rescind her tendered resignation within a few days of offering it, and there was no evidence that the appointing authority had taken any action in reliance on her resignation prior to her attempt to rescind.

Unlike the appellants in the cases above, there is no evidence in the record that the appellant’s decision to resign was made in haste or was anything other than voluntary. Although the appellant maintains that she was facing sexual orientation discrimination, Newark disputes this and the appellant appears not to have made any contemporaneous complaints.³ The circumstances surrounding her decision to resign differ from the appellants in the cited cases in that her resignation was not offered hastily following a confrontation. Rather, her decision-making appears to have been measured as she obtained an offer of employment with another municipality; deliberated over and discussed the offer with her family before accepting it; and only then communicated her intention to resign from Newark in a resignation letter written in a polite tone. Moreover, the appellant did not communicate her desire to rescind her resignation until two weeks after submitting her resignation letter, and Newark apparently took some action in reliance on her resignation as another employee was being trained to replace her. Further, while the appellant had a long career with Newark, it was not spotless as it included two minor disciplinary actions. Accordingly, the cases cited by the appellant are distinguishable, and there is no basis in this case to permit the appellant to rescind her resignation.

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.

³ In any event, the Commission lacks jurisdiction over discrimination complaints in local service. See *N.J.A.C. 4A:7-1.1(g)*. The appellant may wish to pursue her discrimination claims in another forum, such as the New Jersey Department of Law and Public Safety’s Division on Civil Rights, the U.S. Equal Employment Opportunity Commission or both.

DECISION RENDERED BY THE
CIVIL SERVICE COMMISSION ON
THE 26TH DAY OF FEBRUARY, 2020



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