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STATE OF NEW JERSEY

FINAL ADMINISTRATION ACTION  
OF THE  
CIVIL SERVICE COMMISSION

In the Matter of Timothy Walsh

CSC Docket Nos. 2015-316 and 2015-406

Administrative Appeal and  
List Removal Appeal

ISSUED: NOV 20 2015 (CSM)

Timothy Walsh, represented by Nicholas J. Palma, Esq., appeals his resignation as a Police Officer with the Township of Nutley (Nutley). Mr. Walsh also appeals the determination of the former Division of Classification and Personnel Management (CPM)<sup>1</sup> which found that Essex County had presented a sufficient basis to remove his name from the eligible list for Sheriff's Officer (S9999M), Essex County on the basis of an unsatisfactory background report. These appeals have been consolidated due to common issues presented.

**Resignation Appeal**

By way of background, the appellant received a regular appointment as a Police Officer with Nutley on September 12, 2011. On May 18, 2012, the appellant submitted a letter dated the same day indicating:

I am writing to formally notify you that I am resigning from my position as a Police Officer with the Township of Nutley. My resignation will be effective immediately. Thank you for your attention to this matter.

The appointing authority accepted the appellant's written resignation that day. Thereafter, the appellant filed a verified complaint to rescind his resignation with the Superior Court of New Jersey, Law Division, Essex County. On July 18,

<sup>1</sup> Now the Division of Agency Services.

2013, the parties agreed to a Consent Order and the matter of the appellant's resignation was transferred to the Commission for review.

In his appeal to the Commission, the appellant states that Nutley was aware when it hired him as a Police Officer that he had a hobby of writing song lyrics. However, when he was nearing the end of his field training, some of his old lyrics were re-posted on the Internet. Although the lyrics were not new lyrics, the Internal Affairs Division launched an investigation and forced him to undergo a second psychological examination without being formally charged. The appellant states that he completed the second evaluation, but was never provided with a copy of the results of the evaluation. Subsequently, on May 17, 2012, Police Chief John Holland told the appellant that he failed the second psychological evaluation and advised him that he had 24 hours to tender his resignation and, if he failed to do so, his name would be forever tarnished because he would be fired. The appellant notes that he did not have the benefit of counsel during this meeting and claims that he was sent back out on duty with his service weapon for approximately three hours before being ordered to go home for the day. When he arrived home, the appellant states that his mother became ill and an ambulance had to be called to the family home to take her to the hospital. The appellant accompanied his mother to the hospital where he remained with her for several hours. Nevertheless, despite being aware that the appellant was undergoing a family emergency within a 24 hour time frame, the appellant asserts that Holland told him to come to his office at 10:00 a.m. the next morning in order to sign his resignation. In this regard, he contends that Holland coerced him into signing the resignation, particularly given the threat against his "family name," as his mother is also employed by the Nutley Police Department. Therefore, the appellant maintains that he was discharged under duress and that he is entitled to a hearing regarding his termination.

In response, Nutley, represented by Alan Genitempo, Township Attorney, presents that after graduating from the police academy, the appellant unsuccessfully participated in an eight week field training program which resulted in his being "recycled" for a second eight week program. During the second eight week field training program, Nutley learned that the appellant performed as a rap singer "Poe Pro." Nutley asserts that the appellant's song lyrics contained racially charged comments and domestic violence references. Moreover, the appellant appeared on his album cover wearing clothing that contained marijuana leaves. Therefore, after an internal affairs investigation, Nutley sent the appellant for a fitness for duty evaluation where it was determined that he was not fit for duty. As such, the appellant was given the option to resign voluntarily or face departmental charges that called for his dismissal based on the Internet posting, the fact that he was still in his working test period, and the results of the fitness for duty examination. Additionally, Nutley contends that the appellant consulted with his union representative and he resigned. Subsequently, almost ten months after he resigned, the appellant filed a lawsuit alleging that he was coerced into resigning by

Holland. Thus, Nutley contends that the appellant properly resigned from his position and, if he failed to resign, it had good cause to initiate disciplinary action.

### **List Removal Appeal**

In disposing of the August 15, 2013 certification for Sheriff's Officer, Essex County (Essex) requested the removal of the appellant's name, contending that the appellant had an unsatisfactory background report. In support of its request, Essex provided its background investigation indicating that the appellant stated on his application that he agreed to resign from the Nutley Police Department in lieu of disciplinary action. Essex also indicated that the appellant answered "no" to the question on his application asking if he was ever subjected to disciplinary action with any prior employment, but its investigation found that he was served with an internal investigation complaint on April 17, 2012. Additionally, Essex indicated that the appellant had performance issues during his training period as a Police Officer and that the appellant posted on the Internet sexist and possibly racist rap song lyrics, which included an album cover containing a picture of the appellant wearing clothing with marijuana leaves on it. Agency Services determined that Essex sufficiently documented its request to remove the appellant's name from the subject list.

On appeal, the appellant states that he was intimidated into signing a "pre-printed" resignation or face disciplinary action when he was employed as a Police Officer with Nutley. In this regard, the appellant notes that it was agreed that if he resigned, it would be in good standing. Additionally, the appellant provides a copy of a medical report for his mother, who is a dispatcher with Nutley, and states that he spent the evening at the hospital with his mother just prior to his resignation. The appellant argues that the circumstances of his mother's health, as well as the pressure of making an immediate deadline decision regarding his job barely a half a day later, put him under a considerable amount of stress. Therefore, the appellant requests that his name be restored to the subject list.

Although provided the opportunity, Essex did not provide any additional information or argument for the Commission to review in this matter.

### **CONCLUSION**

#### **Resignation**

*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 by the 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).

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.

In the instant matter, the record shows that the appellant voluntarily tendered his resignation to Nutley on May 18, 2012. Based on the findings of its internal investigation as well as the fitness for duty evaluation, Nutley advised the appellant that he could either resign or face disciplinary action. Notwithstanding

his argument that the situation involving his mother placed him under undue stress when he made the decision to resign, there is not one scintilla of evidence which establishes that the appointing authority exerted any improper pressure on the appellant in this regard. Additionally, as noted by Nutley, the appellant pursued the matter of his resignation with the Law Division in March 2013, almost ten months after he tendered his resignation. An appointing authority has a legal right to pursue disciplinary action against an employee. Thus, the pursuit of disciplinary action cannot constitute duress unless an appointing authority pursued its legal right in an oppressive manner or purely as a means to extort a settlement. As stated by the court in *Ewert v. Lichtman*, 141 N.J. Eq. 34 (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.

Therefore, there is nothing in the record to demonstrate that the appellant's resignation was not voluntary.

### **List Removal**

*N.J.A.C.* 4A:4-4.7(a)1, in conjunction with *N.J.A.C.* 4A:4-6.1(a)9, allows the removal of an eligible's name from an eligible list for other sufficient reasons. Removal for other sufficient reasons includes, but is not limited to, a consideration that based on a candidate's background and recognizing the nature of the position at issue, a person should not be eligible for appointment.

In this matter, it was appropriate to remove the appellant's name from the subject list. The Commission has removed candidates from eligible lists under circumstances where the candidate, in his or her prior employment, resigned while disciplinary charges were pending or resigned in good standing in lieu of discipline. *See Strasser v. Camden County* (MSB, decided May 28, 1992) (Removal of an eligible from an open competitive list based on the eligible's employment history which showed that he had resigned while disciplinary charges imposing a removal were pending was upheld). *See also, In the Matter of Darren Grossman* (MSB, decided January 17, 2001) (Appellant's employment history as a Police Officer with Jackson Township was sufficient to remove him from the Police Officer, Township of Marlboro, eligible list since he resigned in good standing in exchange for Jackson not proceeding with disciplinary charges).

In this case, the appellant indicated on his application that he resigned from the Nutley Police Department in lieu of facing disciplinary action. In this regard, the appellant explained that he resigned because there was a conflict with his "1<sup>st</sup> Amendment rights." However, the appellant has not rebutted Essex's findings that his song lyrics posted on the Internet contained sexist and possibly racist terms and that there is a photograph of him on his album cover wearing a hoodie with images of marijuana leaves on it. In this regard, it is recognized that a Sheriff's Officer is a law enforcement employee who must help keep order and promote adherence to the law. Sheriff's Officers, like municipal Police Officers, hold highly visible and sensitive positions within the community and the standard for an applicant includes good character and an image of utmost confidence and trust. *See Moorestown v. Armstrong*, 89 N.J. Super. 560 (App. Div. 1965), *cert. denied*, 47 N.J. 80 (1966). *See also In re Phillips*, 117 N.J. 567 (1990). The public expects Sheriff's Officers to present a personal background that exhibits respect for the law and rules. The appellant's resignation in lieu of discipline as well as his questionable postings and images on the Internet do not present an image of trust and confidence or exhibit respect for law and rules required to hold the position of Sheriff's Officer.

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 18<sup>TH</sup> DAY OF NOVEMBER, 2015



Robert M. Czech  
Chairperson  
Civil Service Commission

Inquiries  
and  
Correspondence

Henry Maurer  
Director  
Division of Appeals  
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P.O. Box 312  
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**Attachment**

c: Timothy Walsh  
Nicholas Palma, Esq.  
Alan Genitempo, Esq.  
Armando Fontoura  
Joe Hill  
Joseph Gambino



Chris Christie  
Governor  
Sam Guadagno  
Lt. Governor

STATE OF NEW JERSEY  
CIVIL SERVICE COMMISSION  
DIVISION OF CLASSIFICATION AND PERSONNEL MANAGEMENT  
P. O. Box 313  
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Robert M. Czecch  
Chair, Chief Executive Officer

July 21, 2014

**Timothy J. Walsh**

**Title: Sheriffs Officer**  
**Symbol: S9999M**  
**Jurisdiction: Essex County**  
**Certification Number: OL131099**  
**Certification Date: 08/15/13**

**Initial Determination: Removed – Unsatisfactory Background Report**

This is in response to your correspondence regarding the removal of your name from the Sheriffs Officer eligibility list in association with the certification cited above.

The Appointing Authority requested removal of your name in accordance with N.J.A.C. 4A:4-6.1(a)9, which permits the removal of an eligible candidate's name from the eligible list for "Other sufficient reasons". This includes, but is not limited to, an unsatisfactory background and unsatisfactory employment history. N.J.S.A. 11A:4-10 states eligibles may be questioned as to criminal convictions and pending criminal charges. Eligibles for law enforcement, firefighter, or correction officer titles may also be questioned as to any arrest.

In support of its decision, the Appointing Authority provided information which was determined by the Appointing Authority to be sufficient to remove your name. The information included documentation showing that you resigned from employment with the Nutley Police Department in lieu of disciplinary action for various performance and conduct related issues.

After a thorough review of our records and all the relevant material submitted, we find that there is not a sufficient basis to restore your name to the eligible list. Therefore, the Appointing Authority's decision to remove your name has been sustained and the appeal is denied.

In accordance with Merit System Rules, you may appeal this decision to the Division of Appeals and Regulatory Affairs (DARA) within 20 days of receipt of this letter. You must submit all proofs, arguments and issues which you plan to use to substantiate the issues raised in your appeal. Please submit a copy of this determination with your appeal to DARA. You must put all parties of interest on notice of your appeal and provide them with copies of all documents submitted for consideration.




Please be advised that pursuant to P.L. 2010 C.26, effective July 1, 2010, there shall be a \$20 fee for appeals. Please include the required \$20 fee with your appeal. Payment must be made by check or money order only, payable to the NJ CSC. Persons receiving public assistance pursuant to P.L. 1947, C. 156 (C.44:8-107 et seq.), P.L. 1973, c.256 (C.44:7-85 et seq.), or P.L. 1997, c.38 (C.44:10-55 et seq.) and individuals with established veterans preference as defined by N.J.S.A. 11A:5-1 et seq. are exempt from these fees.

Address all appeals to:

Henry Maurer, Director  
Division of Appeals and Regulatory Affairs  
Written Appeals Record Unit  
PO Box 312  
Trenton, NJ 08625-0312

Sincerely,  
For the Director,

  
Elliott Cohen  
Human Resource Consultant  
Certifications Unit

Armando Fontoura, Sheriff

