CSC
B-71

STATE OF NEW JERSEY

In the Matter of Luis Aguilar,
Motor Vehicle Commission

CSC Docket No. 2014-1813

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

Administrative Appeal

ISSUED: JUL 18 2014 (EG)

Luis Aguilar, a former Technician, MVC with the Motor Vehicle Commission (MVC) appeals his resignation in good standing.

The record reflects that the appellant commenced his employment with the MVC as a Customer Service Representative Trainee in August 2007 and received a permanent appointment to Technician, MVC in July 2010. The appellant resigned in good standing effective December 13, 2013.

On appeal, the appellant explains that on October 7, 2013, his physician had placed him on temporary disability until November 7, 2013. He received a letter dated October 11, 2013, indicating that his leave request did not qualify for Federal Family and Medical Leave Act (FMLA) leave and that he was required to return to work on October 15, 2013. The appellant states that he returned to work at that time. Thereafter, the appellant was seen by a psychiatrist who recommended that he go out on leave. The appellant states that this leave request was also found to not qualify for FMLA and he was ordered to return to work on November 14, 2013. He returned to work on November 19, 2013. The appellant claims that he submitted a letter of resignation on November 26, 2013, but that he did this unknowingly as he was under medication. In this regard, the appellant asserts that his medication was being adjusted at that time. The appellant states that on November 27, 2013, he attempted to rescind his resignation. In support of his contentions, the appellant submits the letters from the appointing authority requiring his return to work, his requests for leave, and various doctors' notes indicating that the appellant was receiving treatment. Further, the appellant

indicates that he received a Preliminary Notice of Disciplinary Action (PNDA) seeking an eight day suspension for his failure to return to work on November 19, 2013.

In response, the appointing authority contends that the appellant had submitted a resignation letter on February 4, 2013, and it allowed him to return when he rescinded the request. It adds that the appellant has verbally informed his supervisor on at least two other occasions that he was resigning and was allowed to rescind those requests. Further, the appointing authority asserts that there was no coercion or duress on its part in any way to make the appellant resign.

## CONCLUSION

*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 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.

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 indicates that the appellant submitted a resignation letter. There is not one scintilla of substantive evidence which establishes that the appointing authority exerted any wrongful pressure on the appellant in this regard. In fact, the appellant makes no such claim. Rather, the appellant claims that due to medication he was receiving, he did not know what he was doing when he tendered his resignation. However, while the appellant submits documentation that he was under a physician's care at that time, he does not submit any medical documentation which corroborates his claim that his judgment would be impaired to the extent that he would not realize that he was submitting his resignation. Accordingly, the appellant has failed to demonstrate that his resignation was the result of duress or coercion by the appointing authority. 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 16TH DAY OF JULY, 2014

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