

CSC
B-97



STATE OF NEW JERSEY

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

In the Matter of Andrew Triandafilou

Reconsideration

CSC Docket No. 2015-243

ISSUED: FEB 06 2015 (EG)

Andrew Triandafilou petitions the Civil Service Commission (Commission) for reconsideration of the attached final administrative decision, rendered on May 7, 2014, in which the Commission denied the appellant's appeal of his resignation in good standing.

By way of background, the record indicates that the petitioner retired from State service effective November 1, 2012. The petitioner had filed a lawsuit against the appointing authority in Federal District Court which resulted in an Order of Dismissal from the Court and a Release signed by the petitioner pursuant to a settlement agreement reached between the parties. The petitioner appealed to the Commission arguing that the Release he signed was entered into without his full understanding of how his pension was calculated. He argued that he did not know that he needed to work for a full year with the new salary to receive a sizable increase in his pension. Further, the petitioner claimed that his resignation was not valid as he conditioned it upon receiving the increased pension calculation.

In its decision, the Commission found that it did not have jurisdiction to review the Release in this matter. It stated that the Order of Dismissal from the District Court clearly indicated that it retained jurisdiction of the matter to the extent necessary to enforce the terms and conditions of any settlement entered into between the parties. Thus, the Commission found that the proper forum for the appellant to seek a review of the terms of the Release was the District Court. Further, the Commission indicated that even assuming it could review the matter, there was not one scintilla of evidence which established that the appointing

authority exerted any pressure on the appellant to sign any agreement or submit a resignation letter. *See N.J.A.C. 4A:2-6.1(d)*. The only arguments offered by the appellant concerned his misunderstanding of how his pension would be calculated. The Commission found that the appellant's misunderstanding did not represent duress by the appointing authority.

In the instant matter, the petitioner reiterates his prior arguments. He states that he entered into the Release without his full understanding of how his pension was calculated. He reiterates that he did not know that he needed to work for a full year with the new salary in order to receive an increase to his pension. The petitioner restates that he believed that he was signing a fair settlement and he trusted the Judge and attorneys when he signed the Release. Further, the petitioner asserts that the appointing authority contacted him and demanded that he resign by the end of October. In this regard, he contends that, after August 2012, the Human Resources Director for the appointing authority threatened him to sign resignation papers or he would make everything in the Release "go away." The petitioner provides the name of an alleged witness to this event but does not submit any substantive evidence to support his claims.

The appointing authority, despite being provided the opportunity, has not provided any further arguments or evidence for the Commission to review.

CONCLUSION

N.J.A.C. 4A:2-1.6(b) sets forth the standards by which a prior decision may be reconsidered. This rule provides that a party must show that a clear material error has occurred or present new evidence or additional information not presented at the original proceeding which would change the outcome of the case and the reasons that such evidence was not presented at the original proceeding.

In the instant matter, the petitioner has not presented any new evidence nor has he shown that a clear material error occurred. The petitioner's arguments are essentially the same as in his prior appeal. In this regard, the petitioner has not provided any substantive arguments or evidence that the Commission has jurisdiction to review this matter. As previously indicated, the Order of Dismissal from the District Court clearly indicates that it retained jurisdiction of the matter to the extent necessary to enforce the terms and conditions of any settlement entered into between the parties. Therefore, the proper forum for the petitioner to seek a review of the terms of the Release is the District Court.¹ Therefore, the petitioner

¹ In this regard, the Commission makes no determination regarding the petitioner's claim that he was threatened and/or forced to submit his resignation by the Human Resource Director after August 2012. However, the Commission notes that the Release clearly states that the petitioner would retire effective August 1, 2012. Accordingly, it does not appear unreasonable for the appointing authority to have demanded that the petitioner comply with those terms after that date.

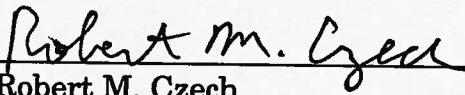
presents absolutely no basis to disturb the Commission's prior determination. Accordingly, under the circumstances presented, the Commission finds no grounds on which to grant reconsideration of its prior decision.

ORDER

Therefore, it is ordered that the petitioner's request 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 4TH DAY OF FEBRUARY, 2015


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Chairperson
Civil Service Commission

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and
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Attachment

- c: Andrew Triandafilou
- Kathleen Hernandez
- Jennifer J. McGruther, DAG
- Faruque Chowdhury
- Kenneth Connolly
- Joseph Gambino

Regardless, as stated now in both Commission decisions, and as explicitly indicated in the Order of Dismissal, any actions taken by either party in conjunction with the terms or propriety of the Release are solely within the District Court's jurisdiction to review.



STATE OF NEW JERSEY

In the Matter of Andrew
Triandafilou, Kean University

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

CSC Docket No. 2013-1491

Administrative Appeal

ISSUED: MAY 08 2014 (EG)

Andrew Triandafilou, a former Associate Supervisor 2, Facilities with Kean University, represented by Kathleen Hernandez, Vice-President, CWA Local 1031, appeals his resignation in good standing.

The record reflects that the appellant commenced his employment with Kean University as a Locksmith in June 1982. He was permanently appointed to the title of Associate Supervisor 2, Facilities in March 2006. The appellant retired from State service effective November 1, 2012.

Initially, the appellant asserts that he filed a lawsuit against the appointing authority in Federal District Court based on an EEOC matter involving not being properly compensated. In February 2012, the Judge ordered the parties to attempt a settlement. During discussions, the appellant indicated that he wanted to retire in the near future and wanted his pension increased. A Release was drawn up by the appointing authority which indicated that the appellant would be moved to step 10 and that he would retire effective August 1, 2012. The appellant signed this agreement believing that his pension would increase. He signed the Release without the benefit of representation by his union or an attorney. The resignation date was moved due to approval needed from this agency. The appellant's salary was adjusted effective September 10, 2012. Thereafter, the appellant claims that the appointing authority contacted him and demanded that he resign by the end of October. The appellant submitted a letter indicating his retirement on October 31, 2012 conditioned upon the step 10 salary being used in his retirement formula. Subsequently, the appellant contacted his Union and was advised to rescind his

resignation. The appointing authority did not accept the appellant's rescission. He adds that he showed up for work on November 1, 2012, but was not permitted to work.

The appellant argues that the Release he signed was entered into without his full understanding of how his pension was calculated. He explains that he did not know that he needed to work for a full year with the new salary to receive a sizable increase in his pension. In this regard, the appellant states that he is a veteran and that his pension is based on his last year's salary. He believed that he was signing a fair settlement. He trusted the Judge and attorneys when he signed the Release. Moreover, he contends that his resignation is not valid as he conditioned it upon receiving the increased pension calculation. Further, the appellant argues that the appointing authority did not meet the deadlines provided for in the Release and as such he should be permitted to rescind his retirement. He requests to be reinstated with back pay and retroactive health benefits.

In reply, the appointing authority, represented by Jennifer J. McGruther, DAG, asserts that the Release memorialized an agreement reached between it and the appellant. The Release indicates that the appellant would receive a two-step increase in addition to a step he received in March 2012 and in exchange, the appellant would not seek anything further from it and that he would retire effective August 1, 2012. Upon the parties' agreement to settle the matter, the District Court issued an Order of Dismissal which expressly indicated that it retained jurisdiction over disputes arising from the settlement. Thus, it argues that the Civil Service Commission (Commission) does not have jurisdiction in the present matter. Further, the appointing authority contends that the appellant's retirement was not conditioned upon his pension calculation as indicated in his October 2012 letter of resignation as the appellant argues, but rather, was based upon the terms of the Release, which does not make any mention of the appellant's pension. Moreover, it asserts that the appellant's contention that its delay in obtaining the salary step increases should relieve him of his obligation to retire is disingenuous. In this regard, the appointing authority submits a letter from the appellant to the District Court Judge indicating that if it took longer to implement the terms of the Release, it would be acceptable to him. The appointing authority also indicates that the delay in obtaining the two step increase was beyond its control. Finally, it argues that the appellant's attempt to rescind his resignation would constitute a breach of the Release and would fall under the jurisdiction of the District Court.

CONCLUSION

N.J.A.C. 4A:2-6.1(b) indicates that a resignation shall be considered accepted by the appointing authority upon receipt of the notice of resignation. *N.J.A.C.* 4A:2-6.1(c) states, in pertinent part, a request to rescind the resignation *may* be consented to by the appointing authority. Finally, *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, the Commission's predecessor, 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.

Initially, the Commission finds that it does not have jurisdiction to review to the Release in this matter. The Order of Dismissal from the District Court clearly indicates that it retained jurisdiction of the matter to the extent necessary to enforce the terms and conditions of any settlement entered into between the parties. Therefore, the proper forum for the appellant to seek a review of the terms of the Release is the District Court.

Further, even assuming, *arguendo*, that the Commission could review the instant matter, there is not one scintilla of evidence which establishes that the appointing authority exerted any pressure on the appellant to sign any agreement or submit a resignation letter. The only arguments offered by the appellant concern his misunderstanding of how his pension would be calculated. Clearly, the appellant's misunderstanding does not represent duress by the appointing authority. Further, while the appellant argues that he did not have an attorney or union representative present during his meeting with the appointing authority or when he signed the Release, he does not indicate that he requested such representation and his request was denied.

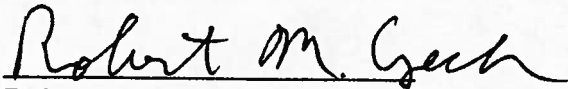
Accordingly, the appellant has failed to demonstrate that his resignation was the result of duress or coercion by the appointing authority. Therefore, the appellant has not sustained his burden of proof in this matter.

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 7TH DAY OF MAY, 2014



Robert M. Czech
Chairperson
Civil Service Commission

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