CSC
B-52

STATE OF NEW JERSEY

In the Matter of Wally Nance,
Trenton

CSC Docket No. 2015-1013

FINAL ADMINISTRATIVE ACTION
OF THE
CIVIL SERVICE COMMISSION

Administrative Appeal

ISSUED: JUN 08 2015

Wally Nance, a former Heavy Equipment Operator with Trenton appeals his resignation in good standing.

The record reflects that the appellant commenced his employment with Trenton as a Laborer 1 in October 1989 and received a permanent appointment to Heavy Equipment Operator in March 2000. The record also reveals that on January 2011, the appellant was indicted on nine counts of official misconduct, bribery, and theft by deception. The appellant was indefinitely suspended pending the outcome of the indictment. Thereafter, the appellant entered into a plea agreement with the Mercer County Prosecutor. This agreement required the appellant to resign his positon with Trenton to allow for his admission into a pre-trial intervention (PTI) program. The appellant resigned in good standing effective November 12, 2013.

On appeal, the appellant claims that because the charges against him were dropped on December 16, 2013[1], he should be reinstated to his positon with back pay and benefits. The appellant also states that on November 19, 2014, he terminated his involvement in the PTI intervention program. In support of this assertion, the appellant submits a PTI Order of Termination dated November 19, 2014, indicating the termination of his participation in the program and the reactivation of the charges against him. The appellant also submits a copy of his PTI Special Conditions of PTI Supervision form signed by the appellant and dated

[1] There is no evidence in the record supporting this claim.

November 1, 2013, which indicates that the appellant was to resign from his current pubic employment position. Additionally, the appellant argues that his supervisor forced and coerced him to resign from his position without any due process. Further, the appellant claims that he has had issues with his pension and that his union failed to properly represent him. Finally, the appellant requests a hearing at the Office of Administrative Law.

In response, the appointing authority, represented by Elizabeth M. Garcia, Esq., contends that the appellant had submitted a resignation letter on November 6, 2013, and that it accepted this resignation. It submits a copy of the resignation letter. In addition, it argues that the Mercer County Prosecutor never instructed or otherwise informed it that the appellant's resignation would be rescinded upon completion of the PTI program. Further, it asserts that the appellant unequivocally resigned from his positon without any conditions and his resignation was accepted without any conditions. The appointing authority argues that the appellant voluntarily surrendered his public employment in exchange for admission into the PTI program.

CONCLUSION

Initially, the appellant requests a hearing on this matter. Appeals of this nature are treated as a review of the written record. *See N.J.S.A.* 11A:2-6(b). Hearings are granted only in those limited instances where the Civil Service Commission (Commission) determines that a material and controlling dispute of fact exists which can only be resolved through a hearing. *See N.J.A.C.* 4A:2-1.1(d). For the reasons discussed below, no material issue of disputed fact has been presented which would require a hearing. *See Belleville v. Department of Civil Service*, 155 *N.J. Super.* 517 (App. Div. 1978).

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).

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. It is clear that the appellant resigned as a condition to enter a PTI program. In this regard, the Commission notes that it was the Mercer County Prosecutor's Office that set the terms of the PTI program and not the appointing authority. Further, the fact that the appellant terminated his involvement in the PTI program does not mean he must be reinstated to his position with the appointing authority. The appellant voluntarily entered into the PTI program and voluntarily resigned his position. 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.

With regard to the appellant's claims regarding his pension, any such issues should be raised with the Department of the Treasury, Division of Pensions and Benefits. Further, regarding the union issues raised by the appellant, the Commission does not have jurisdiction to address such matters. Complaints about such issues should be addressed to the Public Employment Relations Commission.

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 3RD DAY OF JUNE, 2015

Robert M. Czech
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