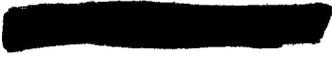


**BEFORE THE
DEPARTMENT OF PERSONNEL ADMINISTRATION
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal by

Case No. 98-E-0185


Employee Program Representative
To Set Aside Resignation

Represented by:

Joyce M. Lee
Attorney
California State Employees Association
3200 West Temple Street
Los Angeles, CA 90026

Respondent:

Employment Development Department
Personnel Programs Division – MIC-54
P.O. Box 826880
Sacramento, CA 94280-0001

Represented by:

David E. Paulsen
Senior Staff Counsel
Employment Development Department
Legal Office
800 Capitol Mall, MIC-53
Sacramento, CA 95814

DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted as the Department's Corrected Decision in the above matter.

IT IS SO ORDERED:

April 13, 1999.



K. WILLIAM CURTIS

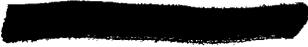
Chief Counsel

Department of Personnel Administration

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PROPOSED DECISION

This matter was heard before Mary C. Bowman, Administrative Law Judge, Department of Personnel Administration (DPA) at 11:00 a.m. on February 2, 1999, at Glendale, California.

Appellant,  was present and was represented by Joyce M. Lee, Attorney, California State Employees Association.

Respondent, Employment Development Department (EDD), was represented by David E. Paulsen, Senior Staff Counsel.

Evidence having been received and duly considered, the Administrative Law Judge makes the following findings of fact and Proposed Decision.

I

JURISDICTION

On November 20, 1998, appellant filed a petition (appeal) to set aside a resignation effective November 9, 1998. The appeal complies with the procedural requirements of Government Code section 19996.1.

II

WORK HISTORY

Appellant began working for the State as an Employment Program Representative with EDD on September 14, 1992.

The duties of an Employment Program Representative are to perform a variety of professional work that is necessary to administer a number of departmental programs including employability, placement and related services and unemployment insurance benefit payments.

III

CAUSE FOR APPEAL

Respondent resigned appellant effective November 9, 1998, based upon her psychiatrist's notification to EDD that appellant would not be returning to work at EDD. Appellant appealed the resignation on the grounds that she never executed a resignation and no one authorized to act on her behalf executed a resignation.

IV

CIRCUMSTANCE SURROUNDING THE RESIGNATION

Appellant was hospitalized from October 28, 1998, to November 9, 1998, at the University of California, Los Angeles Medical Center's psychiatric ward. During her hospitalization, appellant's treating psychiatrist contacted her supervisor at EDD and provided a *Tarasoff* warning (*Tarasoff v. Regents of the University of California (1976) 17 Cal. 3d 425*). Appellant was released at approximately 5:00 p.m. on November 9, 1998.

At 1:50 p.m. on November 9, 1998, appellant's attending psychiatrist, [REDACTED] notified appellant's second-level supervisor that appellant was being released later that day, that she was not returning to work and that she had no intention of hurting anyone. The psychiatrist had previously agreed to notify EDD when appellant was released.

Appellant's second-line supervisor called the EDD Legal Office at approximately 3:35 p.m. that same day and spoke with one of the attorneys¹ regarding the statements made by

¹ The attorney was not Mr. Paulsen.

are rendered or the date the resignation is tendered to the appointing power whichever is later.”

The Personnel Management Handbook for EDD provides at section 3-1820 as follows,

“A voluntary resignation is an *unconditional statement by an employee* that he/she intends to terminate or relinquish his/her employment on a specific date. ...

When the question of resignation arises, supervisors should take the following precautions in order to avoid misunderstanding:

- Give the employee time to think over his/her decision to resign. This is an important decision and the employee should not feel that he/she is being pressured. The supervisor’s actions should demonstrate his/her consideration of the employee’s interests as well as those of the Department.
- Be absolutely sure that any information given the employee regarding the effect of his/her resignation is correct. The supervisor should not guess or generalize. ...’

It is difficult to determine why respondent resigned appellant based solely upon oral representations made by a third party. Appellant did not submit an “unconditional statement” that she intended to terminate her employment. Further, appellant took no action to resign. And, her psychiatrist had no authority to submit a resignation on her behalf, if he did so.

Given the *Tarasoff* warning, it is understandable that respondent was anxious not to have appellant return to the work site. However, respondent exercised poor judgment in relying on the oral representations of a third party as appellant’s voluntary resignation. Accordingly, the resignation should be rescinded because it was not the free, voluntary and binding act of appellant.

* * * * *

WHEREFORE IT IS DETERMINED that the petition of [redacted] to set aside her resignation from the position of Employment Program Representative with EDD effective November 9, 1998, is granted; and appellant is reinstated to said position retroactive to November 9, 1998.

In the event the parties are unable to determine the amount of back pay due— if any, DPA shall retain jurisdiction to determine back pay, pursuant to Government Code section 19996.1(a).

* * * * *

([REDACTED] continued)

The above constitutes my Proposed Decision in the above-entitled matter. I recommend its adoption by the DPA as its decision in the case.

DATED: April 12, 1999

Mary C. Bowman
MARY C. BOWMAN
Administrative Law Judge
Department of Personnel Administration