

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

In the Matter of the Appeal by

Case No. 98-E-0182


Senior Word Processing Technician
For Reinstatement After Automatic
Resignation (AWOL)

Represented by:
Without Representation

Respondent:

Department of Transportation
Office of Personnel Operations
P.O. Box 168037
Sacramento, CA 95816-8037

Represented by:

Jeanell Bradley
Personnel Analyst
Office of Personnel Operations
Southern Administrative Service Center
2501 Pullman Street
Santa Ana, CA 92705

DECISION

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

IT IS SO ORDERED:

March 1, 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 9, 1999, at San Diego, California.

Appellant, , was present without representation.

Respondent, Department of Transportation (Caltrans), was represented by Janell Bradley, Personnel Analyst.

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

I

JURISDICTION

Appellant was automatically resigned effective September 29, 1998. He filed a request (appeal) for reinstatement after automatic resignation on October 30, 1998. The appeal complies with Government Code section 19996.2.

The matter was originally set for hearing on January 6, 1999, but was continued at the request of appellant due to the death of his mother. It was reset for February 9, 1999.

II

WORK HISTORY

Appellant was a Senior Word Processing Technician with Caltrans at San Diego at the time of his automatic resignation. He began working for Caltrans on October 2, 1989. He began working for the State with the Department of Industrial Relations on December 27, 1982. He has also worked for the Department of Corrections.

The duties of a Senior Word Processing Technician are to supervise the work of a small word processing unit and personally perform the most difficult word processing work or to assist in the supervision of a medium size or large word processing center. Word Processing Technicians are distinguished from other clerical classes by being regularly required to operate on a full-time basis electronic text editing equipment.

III

CAUSE FOR APPEAL

Respondent automatically resigned appellant for being absent without leave from September 30 through October 14, 1998. Appellant appealed on the grounds that he had a satisfactory explanation for being absent and not obtaining leave and that he is currently ready, able and willing to return to work.

IV

REASON FOR BEING ABSENT

Appellant was on an approved medical leave of absence from April 14, 1998, through September 29, 1998. During that period of time, he was receiving Nonindustrial Disability Insurance (NDI) benefit. The benefits ended September 29, 1998.

On October 2, 1998, appellant's supervisor, [REDACTED] mailed appellant a letter stating in relevant part,

"We've talked a number of times during your absence, and you've frequently told me that you would be back to work 'next Monday,' referring to whichever Monday followed our phone conversations. During the week of September 21, 1998, you telephoned and told me that you and your doctor had

agreed that you would be back to work on Monday, September 28, 1998. When I called you on the 28th as you had not come into the office, you said that you would be here on October 1, 1998. However, you didn't return to work that day, either. Therefore, as you are no longer covered by NDI, you are currently considered Absent Without Leave (AWOL).

You are hereby instructed to return to work immediately and be ready, willing and able to return to work. Your failure to either return to work or let me know if your NDI has been extended will result in appropriate action being taken. Please return to work immediately or call me by Friday, October 9, 1998, concerning your NDI."

Appellant did not call his supervisor and he did not return to work.

As a result of his inaction, appellant was automatically resigned and the notice of automatic resignation was mailed to him on October 14, 1998.

Appellant testified that he was absent from work prior to September 1998 because of clinical depression. On August 8, 1998, his psychologist, [REDACTED] prepared a written report regarding appellant's medical status (prognosis). It stated appellant was "gradually improving" and "while continuing with supportive psychotherapy and medication, he should be expected to maintain a stable adjustment and return to work within one or two weeks."

Appellant did not submit the report to his employer when he received it. He testified he later went back and had his doctor change the date of the status report to October 14, 1998. Appellant also testified that he has not been treated by a doctor since September 1998. He stated he stopped going because his medical insurance ran out.

Appellant claimed he did not return to work on September 30, 1998, because he could not "get it together." He also claimed he did not feel emotionally ready to return at that time.

From the documentation provided, it is unclear whether appellant had a medical reason for being off work between September 30 and October 14, 1998, or whether he chose not to return to work.

V

REASON FOR NOT OBTAINING LEAVE

Appellant testified that his supervisor called him and encouraged him to return to work. He also testified he told her he would return. He claimed he did not follow the required procedures for obtaining medical substantiation for further absence after September 29, 1998, because he had become "emotionally unstable." He claimed that the nature of his illness was such that he "lost control and it really took over."

VI

READY, ABLE AND WILLING

Appellant testified he is currently ready, able and willing to return to work. He is working two jobs and has been since the middle of October 1998. He is a personal assistant to a real estate agent and works in advertising. He claims he works 30 to 40 hours each week and has no medical problems keeping him from working. He has not been treated by a doctor since September 1998 and provided no medical evidence of his current psychiatric condition.

* * * * *

PURSUANT TO THE FOREGOING FINDINGS OF FACT THE ADMINISTRATIVE LAW JUDGE MAKES THE FOLLOWING DETERMINATION OF ISSUES:

Government Code section 19996.2 provides an automatically separated employee with the right to file a request for reinstatement with the DPA. Section 19996.2 also provides:

“Reinstatement may be granted only if the employee makes a satisfactory explanation to the department [DPA] as to the cause of his or her absence and his or her failure to obtain leave therefor, and the department finds that he or she is ready, able, and willing to resume the discharge of the duties of his or her position or, if not, that he or she has obtained the consent of his or her appointing power to a leave of absence to commence upon reinstatement.”

In *Coleman v. Department of Personnel Administration* (1991) 52 Cal.3d 1102, the Court held that an employee terminated under the automatic resignation provision of section 19996.2 has a right to a hearing to examine whether he/she is ready, able, and willing to return to work. DPA is *not* charged with examining whether the appointing power acted properly with regards to the actual termination. Further, appellant has the burden of proof in these matters and must prove by a preponderance of the evidence that he/she had a valid excuse for his/her absence and failure to obtain leave and that he/she is currently able to return to work or that the employer had consented to a leave of absence.

In this case, appellant claims that he was unable to work and did not obtain a leave of absence because of clinical depression. He also claims that his condition has stabilized such that he is able to return to work. The only medical evidence he produced to support these claims was the prognosis of [REDACTED] prepared in August 1998 and altered to October 1998. Appellant has the burden of proof and he has not met that burden because the testimony and that document do not prove that appellant was unable to work and so disabled he was unable to

([REDACTED] continued)

arrange for leave approval for the period September 30 through October 14, 1998. It also does not prove his current mental state.

For the reasons set forth above, appellant should not be manditorily reinstated to the position of Senior Word Processing Technician at Caltrans.

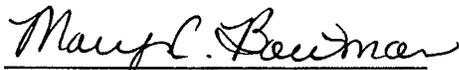
* * * * *

WHEREFORE IT IS DETERMINED that the appeal [REDACTED] for reinstatement after automatic resignation from the position of Senior Word Processing Technician with Caltrans effective September 29, 1998, is denied.

* * * * *

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

DATED: March 3, 1999.



MARY C. BOWMAN
Administrative Law Judge
Department of Personnel Administration