

STATE OF CALIFORNIA
BEFORE THE
DEPARTMENT OF PERSONNEL ADMINISTRATION

In the Matter of the Request by) Case No. 97-1204
)
)
) DECISION
)
To Set Aside Resignation)
from the position of Cadet with)
the Department of California)
Highway Patrol at West Sacramento)
_____)

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: January 27, 1998



K. WILLIAM CURTIS
Chief Counsel
Department of Personnel
Administration

BEFORE THE DEPARTMENT OF PERSONNEL ADMINISTRATION
OF THE STATE OF CALIFORNIA

In the Matter of the Petition by:

[REDACTED]

Case No. 97-1204

To set aside a resignation from the position of Cadet with the Department of California Highway Patrol at West Sacramento

PROPOSED DECISION

This matter came on regularly for hearing before Shawn P. Cloughesy, Administrative Law Judge (ALJ), State Personnel Board (SPB or Board), on December 5, 1997,¹ at San Luis Obispo, California. The matter was submitted for decision on December 15, 1997 after respondent submitted its written response to petitioner's citation of a case in his oral closing argument.

The petitioner, [REDACTED], was present and was represented by Adam Fairbairn, Esq.

The respondent, Department of California Highway Patrol (CHP), was represented by Daniel E. Lungren, Attorney General, by Nho-Trong Nguyen, Deputy Attorney General.

Evidence having been received and duly considered, the ALJ makes the following findings of fact and Proposed Decision:

¹ The hearing was initially set for September 11, 1997, but was continued due to scheduling conflicts and the unavailability of witnesses.

I

JURISDICTION

On February 9, 1997,² petitioner submitted his resignation from the CHP effective immediately. On or about February 26, the Department of Personnel Administration (DPA) received petitioner's petition to set aside his resignation as he was under the assumption that he could return to his former position at the Department of Water Resources (DWR). The appeal was timely under Government Code section 19996.1.

On July 3, DPA forwarded the appeal to the SPB Hearing Office for hearing, where it was received on July 7.

The above petition to set aside resignation complies with Government Code section 19996.1.

II

EMPLOYMENT HISTORY

Petitioner was appointed as a Junior Civil Engineer with DWR on December 1, 1993 and was later appointed as an Assistant Civil Engineer on December 1, 1994. Petitioner was appointed as a Cadet with CHP on December 2, 1996. Petitioner resigned from his position as a Cadet on February 9, 1997.

III

ALLEGATIONS

Petitioner claims that his resignation was submitted as a result of mistake of fact and mistake of law.

² All references are for the year 1997, unless stated otherwise.

IV

FINDINGS OF FACT

Petitioner began his employment as a CHP Cadet at the CHP Academy in West Sacramento on December 2, 1996. On January 2, 1997, he signed a December 19, 1996 Notice of Personnel Action Report of Appointment (NOPA) which listed his appointment to CHP Cadet on December 2, 1996. The document further stated:

You have accepted an appointment on a permanent basis. Return to your former class is only with the approval of the appointing power unless you are rejected during your probationary period. You then have a right to return to your former class or a closely related class.

Petitioner testified that he did not read this paragraph before signing the NOPA.

V

Approximately two weeks before February 9, petitioner began having doubts of his desire to be a State Traffic Officer (STO) for the CHP. During the evening of February 9, petitioner was driving to the academy from his home in Grover Beach. As he drove, he contemplated whether he should resign from his position at the CHP. Petitioner believed that he would not be happy as a STO as the enforcement duties opened his eyes to the danger of the position. Petitioner did not telephone anyone at DWR to insure that he was able to reinstate to his former position, but he was aware of a hiring freeze at DWR.

[REDACTED] continued)

At approximately 8:00 p.m., petitioner telephoned his wife on his cellular phone and informed her that he was going to resign from his cadet position when he arrived at the academy and he would return to his prior position at DWR. He stated that he would call DWR the next day in order to determine what he needed to do to return to his old job. Petitioner told his wife that he would be spending the night with a DWR friend of his in Sacramento and would speak with DWR personnel about returning to work the next day.

After speaking with his wife, petitioner telephoned his friend [REDACTED]. Petitioner had met [REDACTED] when petitioner was working at DWR. Petitioner told [REDACTED] that he would be resigning from the CHP and transferring back to his former position at DWR. [REDACTED] asked petitioner if he was certain that he could return to his prior position.

VI

Petitioner arrived at the academy between 8:30 p.m. and 9:00 p.m. He contacted CHP Staff Officer [REDACTED] and stated that he wanted to resign and return to his prior position at DWR. [REDACTED] attempted to dissuade petitioner from resigning and asked him to not make the decision now, but to stay until the next day and speak with a sergeant.³ Petitioner informed [REDACTED] that he would not enjoy being a STO because he realized the

³ A staff officer is required to refer a cadet to a sergeant when the cadet requests to resign.

[REDACTED] continued)

danger of the job as set forth in the Enforcement Tactics class. When [REDACTED] realized that he could not dissuade petitioner and that his mind was made up, he decided to process petitioner's resignation by having him complete resignation forms and an exit interview.

When petitioner told [REDACTED] that he was returning to DWR, petitioner did not discuss the details of his return with [REDACTED]. Petitioner expressed confidence in his ability to obtain his former position at DWR. [REDACTED] nodded at petitioner's statement and wished him luck. [REDACTED] was not familiar with reinstatement rights. Petitioner believed that he would be able to automatically reinstate with DWR after his resignation from the CHP. Petitioner signed a document stating that he resigned from the CHP on February 9 at 10:01 p.m.

VII

During the morning of February 10, petitioner went to the DWR personnel office. He asked what he needed to do to return to his former position at DWR. Petitioner was informed that since he resigned, he could not return to his prior position as he did not have mandatory reinstatement rights and there was a hiring freeze in effect.

At approximately 12:15 to 12:30 p.m., petitioner returned to the CHP Academy so that he could speak to the CHP Academy Commander, [REDACTED]. Eventually, petitioner met with [REDACTED] and CHP Lt. [REDACTED].

[REDACTED] continued)

Petitioner candidly explained that DWR was not willing to take him back because he resigned, but he would have mandatory reinstatement rights to DWR if he was rejected during probation.

Petitioner asked [REDACTED] to "change his status" so that he would have mandatory reinstatement rights. [REDACTED]

sympathized with petitioner's predicament, but would not take him back as he stated on February 9 that he did not want to be a STO.

[REDACTED] did not want to manipulate the civil service to create return rights for him.

* * * * *

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

Government Code section 19996.1 provides in relevant part:

No resignation shall be set aside on the ground that it was given or obtained pursuant to or by reason of mistake, fraud, duress, undue influence or that for any other reason it was not the free, voluntary and binding act of the person resigning, unless a petition to set it aside is filed with the department within 30 days after the last date upon which services to the state are rendered or the date the resignation is tendered to the appointing power, whichever is later.

This statutory language requires the trier of fact to consider the action of the petitioner at the time of the resignation, and determine if the resignation was, for any reason, not free, voluntary and binding. A petitioner bears the burden of persuasion and proof of setting aside his or her resignation, since the act of severing state employment is that of the former

([REDACTED] continued)

employee. Petitioner specifically claims that his resignation was tendered as a result of mistake of fact and/or mistake of law; that petitioner did not know that he did not have mandatory return rights to his former position at DWR when he resigned. Government Code sections 19140(a) and 19140.5.

California Civil Code sections 1577 and 1578 provides:

Section 1577: Mistake of fact is a mistake, not caused by the neglect of a legal duty on the part of the person making the mistake, and consisting in:

1. An unconscious ignorance or forgetfulness of a fact past or present, material to the contract; or,
2. Belief in the present existence of a thing material to contract, which does not exist, or in the past existence of such a thing, which has not existed.

Section 1578: Mistake of law constitutes a mistake, within the meaning of this article, only when it arises from:

1. A misapprehension of the law by all parties, all supposing that they knew and understood it, and all making substantially the same mistake as to the law; or,
2. A misapprehension of the law by one party, of which the others are aware at the time of contracting, but which they do not rectify.

Civil Code section 1689 provides that a party may rescind a contract based upon mistake if it was "exercised by or with the connivance of the party as to whom he rescinds..." In regards to unilateral mistake, "rescission is available for a unilateral mistake when the unilateral mistake is known to the other contracting party and is encouraged or fostered by that party."

Bunnett v. Regents of University of California (1995)

[REDACTED] continued)

35 Cal.App.4th 843, 855 and *Merced County Mutual Fire Insurance v. State of California* (1991) 233 Cal.App.3d 765, 772.

These Civil Code sections and its surrounding case law set forth the requirements of mistake in order to determine whether a contract can be rescinded. Government Code section 19996.1 uses other terms such as fraud, duress, and undue influence which all describe situations where a contracting party did not consent to enter into a contract. While the act of resignation is not tantamount to a contract, the Civil Code definitions and surrounding case law are helpful in determining whether petitioner freely consented to the act of resignation and will be allowed to rescind the resignation.

The fact that petitioner truly believed that he had mandatory reinstatement rights back to his former position at DWR when he resigned on February 9, 1997 is unrebutted. He claims that he did not read the December 19, 1996 NOPA notifying him that he only had a mandatory right to return to his former position if he was rejected during his probationary period. In general, one who agrees to a contract cannot avoid its terms on the ground that he failed to read it before signing it. Indeed, in one recent case, a party's request for relief pursuant to mistake was denied for such an excuse. *Hernandez v. Badger Construction Equipment Co.* (1994) 28 Cal.App.4th 1791, 1816.

Additionally, petitioner failed to demonstrate that respondent in any way knew of petitioner's mistake and encouraged

[REDACTED] continued)

it. Indeed, [REDACTED] discouraged petitioner from resigning and asked that he spend the night so that he could talk to a sergeant in the morning. When petitioner informed [REDACTED] that he was returning to DWR, [REDACTED] had no way of knowing whether petitioner had made prior arrangements to return to work because petitioner did not provide these details to [REDACTED]. [REDACTED] did not know that petitioner believed that he had mandatory return rights to DWR.

[REDACTED] did not suffer from the same misconception as petitioner as he did not know anything about mandatory or permissive reinstatement rights. As petitioner did not demonstrate that respondent knew or encouraged his misunderstanding, the remedy of rescission of the resignation is not available to him.

Additionally, petitioner did not demonstrate that both respondent and petitioner misapprehended the law regarding reinstatement, thereby not establishing mistake of law.

Petitioner failed to demonstrate by a preponderance of the evidence that petitioner resignation was obtained pursuant of mistake of fact or mistake of law. Therefore, the resignation was binding upon petitioner pursuant to Government Code section 19996.1 and the petition to set aside his resignation is denied.

* * * * *

[redacted] continued)

WHEREFORE IT IS DETERMINED that the petition to set aside the resignation of petitioner [redacted] from the position of Cadet with the Department of California Highway Patrol, effective February 9, 1997 is hereby denied.

* * * * *

I hereby certify that the foregoing constitutes my Proposed Decision in the above-entitled matter and I recommend its adoption by the Department of Personnel Administration as its decision in the case.

DATED: December 19, 1997



Shawn P. Cloughesy
Administrative Law Judge
State Personnel Board