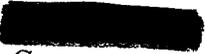


**BEFORE THE
DEPARTMENT OF PERSONNEL ADMINISTRATION
OF THE STATE OF CALIFORNIA**

In the Matter of the Appeal by


Correctional Officer
To Set Aside Resignation

Case No. 98-F-0174

Represented by:
Without Representation

Respondent:
Department of Corrections
Office of Personnel Management
P.O. Box 942883
Sacramento, CA 94283-0001

Represented by:
Neil Robertson, Staff Counsel
Department of Corrections
Office of Internal Affairs
P.O. Box 3009
Sacramento, CA 95812

DECISION

The attached Proposed Decision of the Hearing Officer is hereby adopted at the Department's Decision in the above matter.

IT IS SO ORDERED:

January 20 1999.


K. WILLIAM CURTIS
Chief Counsel
Department of Personnel Administration

**STATE OF CALIFORNIA
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PROPOSED DECISION

This matter was heard before Mary C. Bowman, Hearing Officer, Department of Personnel Administration (DPA) at 10:00 a.m. on January 4, 1999, at Sacramento, California.

Appellant was present without representation.

Respondent, Department of Corrections (CDC), was represented by Neil Robertson, Staff Counsel, Office of Internal Affairs.

Evidence having been received and duly considered, the Hearing Officer makes the following findings of fact and Proposed Decision.

I

JURISDICTION

Appellant resigned effective October 19, 1998. He filed a request with CDC to set aside his resignation on October 21, 1998. It was denied. On October 23, 1998, he filed an appeal to set aside his resignation with DPA. The appeal complies with Government Code section 19996.1.

II

WORK HISTORY

CDC first employed appellant on June 3, 1983. At the time of his resignation he was employed at California Medical Facility (CMF) at Vacaville, California.

Appellant's duties as a Correctional Officer were to act under supervision as a sworn peace officer, to provide the public protection by enforcing laws and administrative regulations while supervising the conduct of inmates; and to do other related work.

III

CAUSE FOR APPEAL

Respondent claimed that he was unduly influenced and subject to duress when he submitted his resignation; and that for those reasons it should be rescinded.

IV

CIRCUMSTANCES SURROUNDING APPELLANT'S RESIGNATION

Appellant was served with a Notice of Adverse Action of Dismissal in October 1998. The adverse action was to be effective close of business October 19, 1998.

On October 14, 1998, a *Skelly* hearing was held before the Warden and the Employee Relations Officer at CMF. Appellant attended with his California Correctional Peace Officers Association (CCPOA) attorney.

On October 19, 1998, appellant met with his representative who recommended that he resign before close of business that day to avoid having a dismissal action on his record.

Relying upon advice from his representative, appellant went to CMF and submitted a written resignation to one of the secretaries or assistants. It stated, "I hereby resign for personal reasons effective 10-19-98." The resignation was clocked in by CMF at 4:52 p.m.

After appellant left CMF, he went home and talked to his wife. He decided he had

made a mistake and he did not want to resign. Instead, he wanted to fight the dismissal. On October 21, 1998, appellant submitted a written request to the Associate Warden to that effect.

At the time of the hearing appellant testified he made a mistake in resigning because he wanted to challenge his dismissal action. However, he acknowledged he knew what he was doing when he resigned.

* * * * *

PURSUANT TO THE FOREGOING FINDINGS OF FACT THE HEARING OFFICER MAKES THE FOLLOWING DETERMINATION OF ISSUES:

Government Code section 19996.1 provides that an employee who resigns from State service may have his/her resignation set aside on the basis 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, so long as a petition to set aside the resignation is filed 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.”

The employee bears the burden of proof that the resignation should be set aside.

In this case, appellant claims that his resignation was obtained through duress or undue influence. Duress supposes some unlawful action by a party that causes the other party to consent by fear. *Odorizzi v Bloomfield School District* (1996) 246 Cal.App.2d 123, 128. Undue influence involves taking unfair advantage of another. (*Id.* at 132, citing Civil Code section 1575.)

While appellant was not happy with his choices—resign or be dismissed, there is no evidence to support his claim that respondent imposed duress or undue influence upon him in order to obtain his resignation. Appellant’s action in resigning was prompted by his desire to avoid a dismissal action and by the advice of his own counsel. Accordingly, the resignation should not be set aside.

* * * * *

WHEREFORE IT IS DETERMINED that the appeal of ██████████ to set aside his resignation from the position of Correctional Officer with CDC effective October 19, 1998, is denied because his resignation was free and voluntary.

* * * * *

████ continued)

The above 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: January 19, 1999.

Mary C. Bowman
MARY C. BOWMAN
Hearing Officer
Department of Personnel Administration