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ACCESS RULING

In the matter of the Department of Corrections
Ruling Number 2025-5754
August 29, 2024

On or about August 12, 2024, the Office of Employment Dispute Resolution (EDR) at the Department of Human Resource Management (DHRM) received a dismissal grievance that challenged the grievant's separation from employment at the Department of Corrections (the "agency"). The agency subsequently requested a ruling from EDR on whether the grievant has access to the grievance procedure due to his resignation.

FACTS

On or about July 27, 2024, the grievant was told to report to a meeting on July 29 with management at the agency facility where he works. According to the agency, the meeting was to discuss a report that the grievant had been asleep while on duty at a hospital on July 26. At the meeting, one of the managers advised the grievant that they would "proceed with due process for the incident with termination as the possible outcome." Management also advised the grievant that he could resign instead. The grievant indicated he wished to take that option, and he provided a letter of resignation to the agency dated the same day. According to human resources staff who attended the meeting, the grievant was informed that "his record would reflect resigned in lieu of termination and he would be listed as ineligible for rehire."

On or about August 12, 2024, the grievant submitted a dismissal grievance seeking reinstatement. He claims that, when presented with the option to resign, "[o]ut of fear from the [manager]'s tone I chose resignation. I didn't know which was the best option. Assuming that resigning was better than being fired because I could still contest, only to learn that was not the case." However, the agency asserts that the grievant does not have access to the grievance procedure due to his voluntary resignation.

DISCUSSION

The General Assembly has provided that "[u]nless exempted by law, all nonprobationary state employees shall be covered by the grievance procedure . . . ."[1] Upon the effective date of a voluntary resignation from state service, a person is no longer a state employee. Thus, to have access to the grievance procedure, the employee "[m]ust not have voluntarily concluded their employment with the Commonwealth prior to initiating the grievance."[2] EDR has long held that once an employee's voluntary resignation becomes effective, they are not covered by the grievance procedure and accordingly may not initiate a grievance.[3] In this case, the grievant has essentially alleged that his resignation was tendered under duress and thus was not voluntary.

EDR is the finder of fact on questions of access.[4] The determination of whether a resignation is voluntary is based on an employee's ability to exercise a free and informed choice in making a decision to resign.[5] Generally, the voluntariness of an employee's resignation is presumed.[6] A resignation may be viewed as involuntary only where it was (1) "obtained by the employer's misrepresentation or deception" or (2) "forced by the employer's duress or coercion."[7] In this case, the grievance materials do not suggest an allegation that the grievant's resignation was procured by misrepresentation or deception. As such, this ruling will address only the issue of potential duress or coercion.

A resignation can be viewed as forced by the employer's duress or coercion if "it appears that the employer's conduct . . . effectively deprived the employee of free choice in the matter."[8] Factors to consider are "(1) whether the employee was given some alternative to resignation; (2) whether the employee understood the nature of the choice [they were] given; (3) whether the employee was given a reasonable time in which to choose; and (4) whether [they were] permitted to select the effective date of resignation."[9]

Cases that ordinarily implicate this analysis involve situations where the employer presents the employee with the options that they can resign or be dismissed, which is essentially what occurred in this case.[10] "[W]here an employee is faced merely with the unpleasant alternatives of resigning or being subject to removal for cause, such limited choices do not make the resulting resignation an involuntary act. On the other hand, inherent in that proposition is that the agency has reasonable grounds for threatening to take an adverse action. If an employee can show that the agency knew that the reason for the threatened removal could not be substantiated, the threatened

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[1] Va. Code § 2.2-3001(A).
[2] *Grievance Procedure Manual* § 2.3.
[3] *E.g.*, EDR Ruling No. 2005-1043.
[4] *See* Va. Code § 2.2-1202.1(5); *see also Grievance Procedure Manual* § 2.3.
[5] Stone v. Univ. of Md. Med. Sys. Corp., 855 F.2d 167, 174 (4th Cir. 1988).
[6] *See* Rosario-Fabregas v. Merit Sys. Prot. Bd., 833 F.3d 1342, 1346 (Fed. Cir. 2016).
[7] *Stone*, 855 F.2d at 174.
[8] *Id.*
[9] Benjamin v. Sparks, 986 F.3d 332, 349 (4th Cir. 2021) (citing *Stone*, 855 F.2d at 174) (noting that no single one of the four recognized factors is dispositive of voluntariness); *see, e.g.*, EDR Ruling No. 2013-3564.
[10] The grievant alleges that the alternative presented by the agency was to be fired. The agency claims that the alternative was to proceed with due process, with the "possible outcome" of termination. The differences between these two accounts do not ultimately affect our analysis here, as there is no apparent dispute that the grievant resigned in order to avoid the outcome of termination.

action by the agency is purely coercive."[11] Here, although the grievant appears to dispute the agency's charges against him, this case does not appear to be one where the agency *knew* that its plan to terminate the grievant's employment could not be substantiated. To the contrary, there is evidence of some level of reasonably alleged misconduct and/or unsatisfactory performance obtained through the appropriate process.[12] Therefore, considering the first *Stone* factor of whether alternatives to resignation were given, the alternatives apparently available to the grievant in this case do not, in and of themselves, support his claim that his selection of one alternative – resignation – was involuntary.[13]

As to the other factors, EDR is not persuaded that the facts support a conclusion that the grievant's resignation was procured through duress or coercion. The evidence does suggest that the grievant may have felt he had a limited time to choose between resignation and termination. Moreover, the grievant alleges that, during the meeting, a manager referred to him as a "joker" and spoke to him in a humiliating and intimidating manner. While such allegations are concerning if true, we cannot say that the totality of these facts undermine the presumption of voluntariness. Although human resources staff was in attendance at the meeting, the record presents no indication that the grievant sought additional guidance or information regarding the effects of his choice. There is also no indication that the grievant sought and was denied additional time to gather appropriate information to make his decision.

Having considered the totality of the circumstances in this particular case, EDR finds that the evidence is insufficient to demonstrate that the agency procured the grievant's resignation by duress or coercion that nullified the grievant's exercise of free choice. Thus, the facts presented do not support a finding of involuntariness in view of the general presumption of a voluntary resignation. Accordingly, we conclude that the grievant's separation from employment was based on a voluntary resignation, and thus he does not have access to the grievance procedure. The dismissal grievance will not proceed to hearing and EDR's file will be closed.

EDR's rulings on access are final and nonappealable.[14]

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[11] Schultz v. U.S. Navy, 810 F.2d 1133, 1136 (Fed. Cir. 1987).
[12] *See* DHRM Policy 1.60, *Standards of Conduct*.
[13] *See Stone*, 855 F.2d at 174; *see also* EDR Ruling No. 2024-5612.
[14] Va. Code § 2.2-1202.1(5).