

Notice: This decision may be formally revised before it is published in the *District of Columbia Register*. Parties should promptly notify the Office Manager of any formal errors so that this Office can correct them **before** publishing the decision. This notice is not intended to provide an opportunity for a substantive challenge to the decision.

**THE DISTRICT OF COLUMBIA**  
**BEFORE**  
**THE OFFICE OF EMPLOYEE APPEALS**

In the Matter of:	)	
	)	
PAULA LaGRAND,	)	OEA Matter No. J-0194-12
Employee	)	
	)	Date of Issuance: June 10, 2014
DISTRICT OF COLUMBIA	)	
METROPOLITAN POLICE	)	
DEPARTMENT,	)	
Agency	)	

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Paula LaGrand (“Employee”) worked as a Police Lieutenant for the Metropolitan Police Department (“Agency”). On December 6, 2011, Employee received a notice of proposed adverse action stemming from charges of inefficiency and conduct unbecoming an officer.<sup>1</sup> On May 8, 2012, Employee informed Agency that she was resigning from her position, effective June 2, 2012.<sup>2</sup> However, on May 25, 2012, Employee submitted a request to rescind the resignation.<sup>3</sup> Her request was ultimately denied by the Chief of Police.<sup>4</sup> On May 30, 2012, Agency issued its final notice of adverse action against Employee which removed her from her

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<sup>1</sup> *Metropolitan Police Department’s Answer to the Petition*, Tab #3 (September 17, 2012).

<sup>2</sup> *Id.*, Tab #10.

<sup>3</sup> *Employee’s Response to Agency’s Motion for Summary Disposition*, p. 4 (September 14, 2012).

<sup>4</sup> *Metropolitan Police Department’s Answer to the Petition*, Tabs #11 and #12 (September 17, 2012).

position effective July 13, 2012.<sup>5</sup> On June 21, 2012, the Chief of Police issued the final agency decision denying Employee's appeal of the decision to terminate her.<sup>6</sup>

Employee filed a Petition for Appeal with the Office of Employee Appeals ("OEA") on August 10, 2012. In it, she argued that her removal "was not because [she] resigned or had been terminated . . . [but] because [her] request to rescind [the] resignation was denied by the Chief of Police." Employee explained that after she submitted her request to rescind the resignation, she was informed that she was terminated. She provided that an Adverse Action Panel found her guilty of Inefficiency and Conduct Unbecoming of an Officer. She requested that OEA overturn the panel's decision because the penalty for these charges was excessive and unreasonable; not supported by substantial evidence; and the charge of inefficiency was not supported by law.<sup>7</sup>

Thereafter, Agency submitted a Motion for Summary Disposition. In the motion, Agency explained that its denial of Employee's request to rescind her resignation was outside of OEA's jurisdiction. Therefore, it requested that its motion be granted, and the appeal be dismissed for lack of jurisdiction.<sup>8</sup>

After the matter was assigned to an OEA Administrative Judge ("AJ"), he ordered Employee to respond to Agency's motion.<sup>9</sup> In Employee's submission, she provided that because she was under federal guidelines,<sup>10</sup> she had a right to withdraw her resignation before its effective date. Furthermore, Employee provided that if Agency declined the request, it needed to have a valid reason. Employee argued that because Agency violated the Code of Federal

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<sup>5</sup> *Petition for Appeal*, p. 11-14 (August 10, 2012).

<sup>6</sup> *Id.*, 55-57.

<sup>7</sup> *Id.*, 5-10.

<sup>8</sup> *Respondent Metropolitan Police Department's Memorandum in Support of Motion for Summary Disposition* (July 13, 2012).

<sup>9</sup> *Order to Employee Regarding Jurisdiction* (August 24, 2012). Thereafter, Agency submitted its answer to the Petition for Appeal denying all of Employee's claims. *Metropolitan Police Department's Answer to the Petition* (September 17, 2012).

<sup>10</sup> Employee explained that because she was hired prior to October 1, 1987, Title 5 of the Code of Federal Regulations ("C.F.R."), § 715.202(b), applied to her.

Regulations, she involuntarily resigned from her position. As a result, she submitted that OEA had jurisdiction over her involuntary resignation.<sup>11</sup>

The AJ subsequently ordered Agency to submit a legal brief of its position.<sup>12</sup> In response, Agency argued that D.C. Official Code § 5-105.01, the relevant section which provided that its members shall be appointed and promoted in accordance with Title 5 of the United States Code, no longer applied to sworn members hired after 1980. It explained that in 1980, the Comprehensive Merit Personnel Act (“CMPA”) was passed, and its provisions repealed and replaced D.C. Official Code § 5-105.01.<sup>13</sup> Therefore, Agency submitted that because Title 5 of the United States Code no longer applied to Employee, OEA lacked jurisdiction over Employee’s request to rescind her resignation.<sup>14</sup>

The Initial Decision was issued on February 15, 2013. The AJ found that Employee’s claim that she had a right to rescind her resignation was not supported by statute or regulation. Further, the AJ found that after 1980, personnel issues and grievances between employees and the District were governed by the CMPA.<sup>15</sup> The AJ also cited to *District of Columbia v. Thompson*, 593 A.2d 621, 634 (D.C. 1991) wherein the court stated that “. . . the Council ‘plainly intended’ the CMPA to create a mechanism for addressing virtually every conceivable personnel issue among the District [and] its employees . . . .” Accordingly, because Employee was hired on September 27, 1987, she was not governed by federal guidelines regarding personnel, and therefore, the AJ found that the Federal Civil Service Regulations did not apply to her. Thus, the

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<sup>11</sup> *Employee’s Response to Agency’s Motion for Summary Disposition* (September 14, 2012).

<sup>12</sup> *Order to Agency* (October 25, 2012).

<sup>13</sup> Agency provided that D.C. Official Code § 1-632.03(a)(1)(B) in conjunction with § 1-636.02(m)(4) repealed D.C. Official Code § 5-105.01.

<sup>14</sup> *Agency’s Response to Employee’s Response to Agency’s Motion for Summary Disposition*, p. 3-4 (November 21, 2012).

<sup>15</sup> The AJ explained that the CMPA became law on March 3, 1979, and in accordance with D.C. Official Code § 1-204.22, the CMPA superceded federal laws and established a permanent merit system. The AJ cited *District of Columbia v. Brown*, 739 A.2d 832 (D.C. 1999) and found that employees who were hired before 1980 were only provided personnel benefits that were available prior to 1980. *Initial Decision*, p. 4-5 (February 15, 2013).

AJ held that OEA lacked jurisdiction to consider Employee's grievance regarding Agency's denial of her request to withdraw her resignation, and the appeal was dismissed.<sup>16</sup>

Employee filed a Petition for Review with the OEA Board on March 22, 2013. She concedes that she was not under federal guidelines; however, she states that the CMPA does not offer any guidance on rescinding a resignation. She submits that the language of the CMPA “. . . is so ambiguous that it denies [her] right to due process.” In addition, she provides that neither Agency nor the AJ cite any law that gave the Chief of Police the right to deny her request to rescind her resignation. Employee offers that the reason for her resignation was because she secured another position at Georgetown University. However, the offer was rescinded from Georgetown prior to her start date. Ultimately, Employee believes that the offer was revoked because Agency ‘blackballed’ her.<sup>17</sup> Additionally, it was her position that Agency's denial of her request to rescind her resignation amounted to a forced resignation. Therefore, she requests that the Petition for Review be granted.<sup>18</sup>

### Resignation Requirements

Contrary to Employee's contentions, there are statutes and regulations that specifically address resignations of Metropolitan Police Department employees who are under disciplinary investigation. The relevant sections of D.C. Official Code § 5-803 provide the following:

- (a) If a member of the Metropolitan Police Department retires or resigns while under disciplinary investigation, that member shall be deemed to be in conditional retirement until the disciplinary investigation is completed and factual findings are made.
  
- (c) The Metropolitan Police Department shall complete the disciplinary investigation of any member in conditional retirement within 25 days from the date that the

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<sup>16</sup> *Id.*, 5-6.

<sup>17</sup> Employee explains that Agency contacted Georgetown with negative information, causing Georgetown to revoke its offer of employment. She provides that her request to rescind the resignation was submitted on the same day the potential employer revoked the job offer.

<sup>18</sup> *Petition for Review* (March 22, 2013).

member retired or resigned. If the Metropolitan Police Department has not completed the investigation 25 days from the date of retirement or resignation, the matter shall be deemed to be closed and the allegations of misconduct not sustained.

- (d) If the Metropolitan Police Department sustains the allegations of serious misconduct, the disciplinary process shall proceed as if the member in conditional retirement continued to be a member of the Metropolitan Police Department. The member shall be accorded all rights to which he is entitled under federal and District of Columbia law and regulations, police regulations, and any applicable labor agreement.

Additionally, 6-B D.C. Municipal Regulation (“DCMR”) § 877 provides the following:

- 877.1 A member who decides to resign from the department shall submit a written notification through his or her chain of command to the Chief of Police at least thirty (30) days from the date he or she wishes to resign.
- 877.10 The member against whom a penalty has been assessed, shall be afforded all rights to which he or she is entitled under federal and District of Columbia law and regulations, police regulations, and any applicable labor agreement as if they were still an employee of MPD.
- 877.11 If the allegations of misconduct are not sustained, or the investigation is not completed within twenty-five (25) days from the effective date of the member’s resignation or retirement, the matter shall be deemed as closed and the final payments due to the member released.

In the current matter, Employee submitted her resignation notice on May 8, 2012; the resignation was to be effective on June 2, 2012. Both the statute and regulation require that the investigation be completed within twenty-five days of the effective date of Employee’s resignation. Thus, Agency had until June 27, 2012, to sustain the charges or complete the investigation. A decision sustaining the charges against Employee was rendered by Agency on May 30, 2012. This was well within the twenty-five day requirement. Therefore, the matter was considered closed on May 30<sup>th</sup>. Agency further complied with the statute and regulation by properly providing Employee with her appeal rights and addressing how all payments and

benefits were to be processed.<sup>19</sup> Thus, Agency complied with the D.C. Official Code and DCMR as it pertains to Employee's resignation during the investigation.

### Rescinding Resignation

Employee argues on Petition for Review that the Chief of Police did not have the right to deny her request to rescind her resignation. The D.C. Court of Appeals has addressed this issue in numerous cases. The Court in *Watson v. District of Columbia Water and Sewer Authority*, 923 A.2d 903, 907 (2007) held that "once an employee voluntarily resigns from her job, the employer's decision not to accept a subsequent withdrawal of that resignation does not transform the employee's act into an involuntary one." The facts of the current case are analogous with those in *Wright v. District of Columbia Department of Employment Services*, 560 A.2d 509 (1989). Similar to this case, in *Wright*, agency accepted the resignation letter on the date it was tendered. Days prior to the effective resignation date, the employee in *Wright* attempted to withdraw her resignation. However, agency refused to accept the withdrawal.

The Court in *Wright* (citing *Guy Gannett Publishing Co. v. Maine Employment Security Commission*, 317 A.2d 183, 187 (1974), reasoned that:

a resignation, when voluntary, is essentially an unconditional event the legal significance and finality of which cannot be altered by the measure of time between the employee's notice and the actual date of departure from the job. An employer who accepts an unequivocal notice of resignation from an employee is entitled to rely upon it . . . unless, of course, the employer chooses to return to status quo by rehiring the employee, or accepting a retraction of the notice.

The Court went on to provide that "requir[ing] an employer to accept a withdrawal of a resignation at any time prior to its effective date would severely hamper the employer's ability to

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<sup>19</sup> *Metropolitan Police Department's Answer to the Petition*, Tab #7 (September 17, 2012).

function efficiently.”<sup>20</sup> Therefore, Agency was not required to accept Employee’s withdrawal of her resignation. As noted in *Wright*, Employee should have been sure of what she was doing before deciding to take such drastic action to resign from her position. In *Wright*, the Court of Appeals ruled that the “burden should rest with the employee who initiated the action by giving the initial notice and who in every real and practical sense is the moving party[;] . . . it would be a distortion of reason and common sense to hold under these circumstances that the employer is the moving party and that the severance of the employment was involuntary.”<sup>21</sup>

### Involuntary Resignation

In *District of Columbia Metropolitan Police Department v. Stanley*, 942 A.2d 1172, 1175-1176 (2008), the D.C. Court of Appeals held that “the fact that an employee is faced with an inherently unpleasant situation or that his choice is limited to two unpleasant alternatives is not enough by itself to render the employee’s choice involuntary.” It provided that the test to determine voluntariness is an objective one that, considering all the circumstances, the employee was prevented from exercising a reasonably free and informed choice. The Court provided that as a general principle, an employee’s decision to resign is considered voluntary “if the employee is free to choose, understands the transaction, is given a reasonable time to make his choice, and is permitted to set the effective date. With meaningful freedom of choice as the touchstone, courts have recognized that an employee’s resignation may be involuntary if it is induced by the employer’s application of duress or coercion, time pressure, or the misrepresentation or withholding of material information.”

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<sup>20</sup> The Court offered reasoning that the employer would be “unable to hire and train a replacement for the vacated position, or otherwise adjust his work force to prepare for the employee’s absence, except at his peril; the employee might at any time, at his whim, decide to rescind his resignation, thereby wasting both the time and financial resources expended in training his replacement.” *Wright v. District of Columbia Department of Employment Services*, 560 A.2d 509, 512 (1989).

<sup>21</sup> *Id.* at 513.

In the current case, Employee provides on Petition for Review that her decision to resign was based on her securing other employment at Georgetown University.<sup>22</sup> It was Employee who set the effective resignation date, as evidenced in her notice to Agency.<sup>23</sup> The record does not reflect, nor does Employee contend, that Agency applied any duress, coercion, time pressure, misrepresented facts, or withheld information. Employee had freedom of choice. Thus, under the circumstances, Employee's resignation can only be deemed voluntary.

### Conclusion

In accordance with the D.C. Official Code and DCMR, Agency adequately complied with the requirements pertaining to a resignation during a disciplinary investigation. Additionally, the D.C. Court of Appeals has ruled that Agency was under no obligation to accept Employee's request to rescind her resignation. Finally, Employee's decision to resign was voluntary. Therefore, this Board must DENY Employee's Petition for Review.

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<sup>22</sup> *Petition for Review* (March 22, 2013).

<sup>23</sup> *Metropolitan Police Department's Answer to the Petition*, Tab #10 (September 17, 2012).



**ORDER**

Accordingly, it is hereby **ORDERED** that Employee's Petition for Review is **DENIED**.

FOR THE BOARD:

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William Persina, Chair

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Sheree L. Price, Vice Chair

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Vera M. Abbott

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A. Gilbert Douglass

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Patricia Hobson Wilson

The Initial Decision in this matter shall become a final decision of the Office of Employee Appeals 5 days after the issuance date of this order. An appeal from a final decision of the Office of Employee Appeals may be taken to the Superior Court of the District of Columbia within 30 days after formal notice of the decision or order sought to be reviewed.