

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: |) | |
| |) | |
| ROBERT WASHINGTON |) | |
| Employee |) | |
| |) | OEA Matter No.: J-0041-02 |
| v. |) | |
| |) | Date of Issuance: September 5, 2007 |
| DEPARTMENT OF CORRECTIONS |) | |
| Agency |) | |

OPINION AND ORDER
ON
PETITION FOR REVIEW

Robert Washington ("Employee") was a Correctional Officer with the D.C. Department of Corrections ("Agency"). On October 31, 2001 Agency subjected Employee to a routine drug test. Employee's urine tested positive for marijuana. Employee then requested that his urine sample be submitted for independent testing. The results of that test were positive as well. As a result, on December 21, 2001 Agency notified Employee of its proposal to remove him from his position. On February 21, 2002 Agency notified Employee that he would be removed effective February 27, 2002. One day before the removal was to take effect, Employee resigned from his position.

On March 5, 2002 Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”). Because Employee had resigned from his position prior to the removal action taking effect, Employee had to prove that OEA had jurisdiction over his appeal. He claimed that because the resignation was the product of duress, it was involuntary. Additionally he claimed that because Agency had told him he could resign and still file an appeal, he was misinformed. Under these circumstances, according to Employee, his resignation amounted to a constructive removal over which OEA would have jurisdiction.

On April 22, 2003 the Administrative Judge conducted an evidentiary hearing to address the issue of jurisdiction. An agency witness stated that she spoke with Employee on the day before he submitted his resignation and another agency witness stated that she spoke with Employee on the day he resigned. Both witnesses testified, however, that neither of them told Employee he could resign and then appeal to OEA. Rather, one witness testified that she told Employee he could appeal to the D.C. Office of Human Rights if he believed he was a victim of discrimination. Based on these accounts the Administrative Judge found that Agency had not misinformed Employee.

The substance of Employee’s testimony with respect to the duress claim was that he believed duress meant that “he was acting under duress because if he did not resign he would have problems finding future employment because he would have a termination on his work record.”¹ The Administrative Judge held however, that “the act of resigning in lieu of being terminated does not constitute ‘duress’ for the purpose of determining

¹ Initial Decision at 5.

whether a resignation is involuntary.”² Employee had not shown that he resigned under duress. Thus, in an Initial Decision issued April 27, 2005 the Administrative Judge held that Employee’s resignation was voluntary and accordingly that his appeal must be dismissed for lack of jurisdiction.

On May 31, 2005 Employee filed a Petition for Review. Therein he admits that he resigned but states that he was misled and did not understand what the word ‘duress’ meant. Even though Employee makes these statements, he fails to develop his argument. Without more we have no basis upon which to reverse the Initial Decision. For this reason we deny Employee’s Petition for Review and uphold the Initial Decision.

² *Id.*

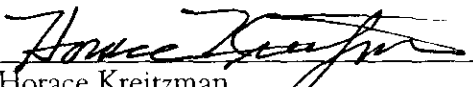
ORDER

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

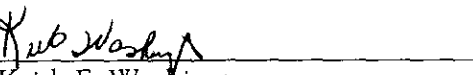
FOR THE BOARD:



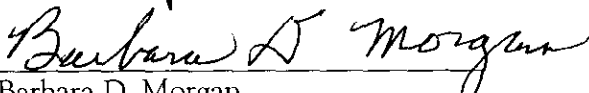
Brian Lederer, Chair



Horace Kreitzman



Keith E. Washington



Barbara D. Morgan

Richard F. Johns

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.