

ARBITRATION DECISION NO.:

632

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Rehabilitation
and Corrections, Southeastern
Correctional Institution

DATE OF ARBITRATION:

March 25, 1997

DATE OF DECISION:

April 15, 1997

GRIEVANT:

Emma McKibben

OCB GRIEVANCE NO.:

27-24-(95-07-25)-0296-01-03

ARBITRATOR:

Marvin J. Feldman

FOR THE UNION:

Jamie G. Parsons
Michael A Hill

FOR THE EMPLOYER:

John A. McNally
Michael P. Duco

KEY WORDS:

Employee Assistance
Program
Harassment by Supervisor
Resignation

ARTICLES:

Article 25 - Grievance
Procedure
§25.01-Process

FACTS:

The Grievant was employed as a Corrections Officer(CO) by the Department of Rehabilitation of Corrections. On May 24, 1995 the grievant was transferred from the Hocking Correction Facility to the Southeastern Correctional Institution. The grievant was on sick leave and under a physician's care from June 19, 1995 to June 26, 1995. The grievant had been going through some personal problems, including a

divorce, and became increasingly depressed. The grievant indicated that she was taking medication, at the direction of her physician, to battle her depression. On July 7, 1995, the grievant informed her supervisor that she wished to resign and that she wished the resignation to be effective on July 7, 1995.

The personnel officer on duty on July 7 testified that the grievant stated to the personnel officer that the grievant was having a lot of personal problems and that the best thing for her was to resign. After spending an hour talking with the grievant, the personnel officer asked the grievant if she really wanted to resign, and the grievant again stated that she wished to resign.

On July 12, 1995, the grievant sent a letter to the warden requesting to withdraw her resignation. The warden responded by sending the grievant a letter that stated her resignation had already been accepted, and that if the grievant wished to seek employment at the facility, she should apply by following the usual application process through the Ohio Corrections Assessment Center.

UNION'S POSITION:

The Union argued that the grievant was under duress at the time her resignation form was signed, due to an ongoing conflict with her supervisor. The grievant had recently transferred to the Southeastern Correctional Institution, and on July 7, the grievant's relationship with her supervisor reached the breaking point, as the grievant became upset with her supervisor constantly being "on her case." Coupled with the divorce the grievant was going through, these events simply overwhelmed her at the time of her resignation.

Furthermore, an increase in the grievant's medication from the week prior to her resignation had led to a change in her behavior. Because the grievant's resignation coincided with the increase in her medication, the Employer should have insisted that the grievant enter an Employee Assistance Program.

Finally, on July 12, the grievant sent the warden a letter requesting that her July 7 resignation be withdrawn. Management could not have taken any action in that time to replace the grievant, therefore the grievant's request to withdraw her resignation should be honored.

The Union requested that the grievant's resignation be rescinded and that she be reinstated to her former position.

EMPLOYER'S POSITION:

The Employer first argued that the grievant lacked standing to bring her claim because at the time of the filing of the grievance she was a former employee and not an employee as defined in Section 25.01 of the Agreement.

The Employer stipulated that in some cases an employee's resignation may be withdrawn upon the request of the employee if withdrawn prior to the effective date of the resignation. In the present case, however, the grievant had requested that the resignation be effective on the date it was signed. Therefore, the grievant could not have withdrawn her resignation prior to the effective date because the resignation had already been made effective.

ARBITRATOR'S OPINION:

The basic issue in the case is whether the grievant is entitled to an adjudication of a request to rescind her resignation. The Arbitrator quickly dismissed the Employer's claim that the grievant lacked standing, finding that Section 25.01 of the Agreement provides that a grievance is simply the result of a dispute between the Employer and the Union or any employee regarding the application, meaning, or interpretation of the Agreement.

The Arbitrator did not find any evidence in the record of coercion or duress placed upon the grievant by the Employer. The fact that there was stress in the grievant's personal life, that the grievant may have been improperly medicated, and that she was at a new facility are not reasons for the Employer to allow a rescission of the grievant's resignation. The resignation occurred on the date it was signed, and at the request of the grievant it was effective immediately.

The Arbitrator also found it apparent that the personnel director at the facility took great pains in discussing this entire matter with the grievant and spent about an hour talking to the grievant before he would allow the grievant to sign the resignation form. The personnel officer even asked the grievant if she wanted to wait and sign off on another date. The evidence shows, however, that the grievant insisted on

signing the form and thus resigned effective immediately.

The Arbitrator also noted that the Employee Assistance Program is a voluntary program, and nothing in the Agreement mandates that the Employer must direct an employee to participate.

AWARD:

The grievance was denied.

TEXT OF THE OPINION:

**VOLUNTARY ARBITRATION PROCEEDINGS
27-24-(95-07-25)-0296-01-03
Emma L. McKibben, Grievant**

THE STATE OF OHIO
The Employer

-and-

**OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION, AFSCME LOCAL 11
AFL-CIO**
The Union

OPINION AND AWARD

APPEARANCES

For the Employer:

John A. McNally, Advocate
Michael P. Duco, Attorney
David V. Crabtree, Labor Relations Officer-SCI
Heskell Wagoner, Personnel Director-SCI
Betty Jane Mitchell, Warden-SCI

For the Union:

Jamie G. Parsons, Staff Representative
Michael A. Hill, Staff Representative
Emma McKibben, Grievant
Alice M. Barlett, Witness

MARVIN J. FELDMAN
Attorney-Arbitrator

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I. SUBMISSION

This matter came before this arbitrator pursuant to the terms of the collective bargaining agreement by

and between the parties, the parties having failed resolve of this matter prior to the arbitral proceedings. The hearing in this cause was scheduled and conducted on the 25th day of March, 1997, at the conference facility of the union in Columbus, Ohio, whereat the parties presented their evidence in both witness and document form. The parties stipulated and agreed that this matter was properly before the arbitrator; that the witnesses should be sworn and sequestered and that post hearing briefs would be filed. It was upon the evidence and argument that this matter was heard and submitted and that this Opinion and Award was thereafter rendered.

II. STATEMENT OF FACTS

The grievant was employed with the Department of Rehabilitation and Correction of the State of Ohio from the period of August 23, 1995, to July 7, 1995. Her only classification was that of a correction officer. The grievant worked for a period of time at the Hocking Correction Facility and on May 24, 1995, she was transferred by request to the Southeastern Correctional Institution. The record further revealed that the grievant was off on sick leave and under doctor's care from June 19, 1995, to June 26, 1995.

It appeared that the grievant had been involved in some serious personal problems and she sought and received a transfer from Hocking Correctional Facility to Southeastern Correctional Facility in the same classification. Within a few months at Southeastern, the grievant became more depressed, presumably from her personal problems; from a new work environment and perhaps from her medical treatment which caused her certain medication problems. At any rate, on July 7, 1995, the grievant told her supervisor that she wanted to resign from the facility and as a matter of fact, wanted her resignation to be effective that day, i.e. July 7, 1995, and executed a resignation form in the following manner:

"TO: WARDEN, SOUTHEASTERN CORRECTIONAL INSTITUTION
FROM:
SUBJECT: RESIGNATION
DATE:

PLEASE ACCEPT THIS AS MY FORMAL RESIGNATION FROM SERVICE AT THE SOUTHEASTERN CORRECTIONAL INSTITUTION. EFFECTIVE DATE OF RESIGNATION WILL BE JULY 07, 1995, MONTH, DAY, AND YEAR.

MY REASON (S) FOR RESIGNATION ARE:
STRESS RELATED

I FULLY UNDERSTAND THAT I WILL NOT RECEIVE MY FINAL PAYROLL CHECK UNTIL I SURRENDER MY KEYS, BADGES, UNIFORMS, IDENTIFICATION CARD, ETC.

WITNESS:
/s/Alice Barlett

RESPECTFULLY,
Emma McKibben
Signature

C.O.
Classification"

In September of 1995, or a few months thereafter, the personnel officer who was present when the grievant executed her resignation wrote the following memo concerning that particular resignation:
"To: Whom it May Concern

From: Heskell Wagoner, Personnel Officer, SCI
Date: September 25, 1995

This is in response to the resignation of Emma McKibben.

On July 7, 1995 at approximately 4:40 pm, Ms McKibben's supervisor called my office and stated that Ms. McKibben wanted to resign. I told the supervisor to have her come to personnel.

When she arrived at approximately 4:45 pm Ms. McKibben seemed nervous. I talked to Ms. McKibben and asked her if she wanted to take some time to think about resigning. she (sic) stated that she was having a lot of personal problems and the best thing for her to do was to resign. As I prepared the resignation paperwork I talked with Ms. McKibben about many different things, trying to get her to relax. After spending close to an hour with Ms. McKibben and seeing that she was much more relaxed then when what she was when she first came into my office, I again asked her if this is what she wanted to do, and again she stated that she wanted to resign.

When Ms. McKibben left my office I felt she did exactly what she wanted to do and was under no pressure to resign."

The grievant decided thereafter to withdraw her letter of resignation. She called the warden at the correction institution and wrote the warden a letter. That letter under date of July 12, 1995, revealed the following:

"July 12, 1995

Warden Mitchell;

I would like to withdrawl (sic) my letter of resignation dated on July 7, 1995 at Southeastern Correctional Institution.

At the time I was under a great deal of duress. I was going through a divorce, my future ex-husband was harassing and stalking me and he had other people following me. I was also under a physicans care and takeing (sic) prescribed medication. The final thing was that I was being harassed by a Lt. at work in the chow hall.

I would like you to know that I am now starting counseling for these problems and I am getting my life straight.

I offer my sincere apologies and hope you will give me another chance to prove myself. Thank you for your consideration in this matter.

Sincerely,

Emma McKibben"

In response to that letter and on the next day, the warden wrote the grievant a letter and it revealed the following:

"July 13, 1995

Emma McKibben

P.O. Box 276
Buchtel, Ohio 45716

RE: Letter of Resignation

Dear Ms. McKibben:

I received your letter dated July 12, 1995 requesting to rescind your resignation. I had already accepted your resignation after review of the incident reports from you and your supervisor, Lt. Ash. Both reports indicated your refusal to comply with his direction. Your subsequent offer of resignation and my acceptance of that resignation are congruent with your demonstrated non-compliance with supervisory instruction.

You can reapply for employment by using the usual application process through the Ohio Corrections Assessment Center.

Sincerely,

/s/Betty J. Mitchell
Warden"

When there was a turn-down to the letter, a protest was filed and that protest revealed the following:

"Statement of Facts (who, what, where, when?): On July 7, 1995, Ms. McKibben resigned her position as C.O. while under duress. On July 10, 1995, she called the institution and asked for it to be rescinded, and put it in writing July 12, 1995 to Warden Mitchell. The warden responded on July 13 advising she accepted the resignation. By not rescinding the resignation before the appointing authority signed off, constitutes construction for discharge without just cause, and due process.

One week prior, Ms. McKibben had been off on sick leave as per Dr. instruction and was prescribed Depaicote and was tested for chemical imbalance. The week returning to work the prescription was increased. Ms. McKibben had been under great stress, due to a divorce process, transferring (sic) to a different institution and the medication did not seem to be helping."

The remedy sought by the grievant was that her resignation be rescinded and Ms. McKibben be reinstated to her former position and made whole for any other negotiated settlement:

"Remedy sought: Resignation rescinded and Ms. McKibben reinstated to former position, to be made whole or any other negotiated settlement. Signature: Jamie Parsons, Staff Rep., (Grievant/Union Representative)
Date: 7-21-95 "

A Step 3 hearing was had and the notes of the Ohio Department of Rehabilitation and Correction relevant to that Step 3 meeting, revealed the following:

"Statement of Fact:

The grievant completed a resignation on 7/7/95.

Union Contention:

A) That the grievant attempted to rescind the resignation on 7/10/95 followed by a letter to the Warden on 7/12/95; B) The grievant was under duress at the time of the resignation; C) That the grievant had a change and increased medication from a chemical imbalance from the week prior to the resignation.

Discussion:

The grievant, through the union, argues that on 7/7/95 she became extremely upset with Lt. Ashe in the Food

Service Area because he was continuously harassing her and on her 'case' relative to performing the job in the Food Service Area. The grievant indicates that she had finally reached the breaking point and decided that rather than break down in front of the inmates that she would in fact resign her position. She called the Personnel office and told them that she wished to resign her position after telling the Lt. that she was quitting. The grievant met with the Personnel Officer for some time prior to completing the form for resignation.

However, upon leaving the institution after the resignation, the grievant realized what she had done and attempted to call her Staff Representative from OCSEA who advised her to immediately call the institution on Monday since there was no one left in Personnel on the weekend and advise that she wished to rescind the resignation. She was advised that she would have to talk to the Warden the next day and was advised to put her request for rescindment of the resignation in writing which was done on 7/12/95. The Warden returned a letter to her on 7/13/95 indicating that her resignation had been accepted and she could not rescind the resignation.

The union offers as mitigation the chemical imbalance and the period of time under which she was under doctor's care and having medication changed to counteract the chemical imbalance and that the stress placed on her by the Lt. caused her to take an action for which she regretted almost immediately thereafter.

The Hearing Officer understood that the grievant spent a considerable amount of time with the Personnel Officer and the Hearing Officer invited the Personnel Officer to submit a document relative to that conversation when the grievant indicated she wished to resign. The Personnel Officer indicated that she was in distress at the time she came to his office at the time she wanted to resign and he took approximately 1 hour in an attempt to allay some of her anxiety. At the conclusion of that time, she seemed to be in a more relaxed state and he asked if a resignation was what she really wanted to do and she replied in the affirmative.

It is the opinion of the Hearing Officer that case precedent suggests that if an employee requests rescindment of a resignation prior to the effective date that management, unless they have already taken an affirmative action toward the resignation, must in fact allow the employee to rescind the resignation or withdraw that resignation. However, in this case the resignation was effective the moment the employee wrote the resignation. Therefore, anytime thereafter the action had already been concluded and had been signed off as acceptance of the resignation. Therefore, the grievant could not in fact withdraw prior to the effective date because it had already been made effective. On that basis, the Hearing Officer has no alternative but to deny the grievance.

For the Director,

/s/Joseph B. Shaver
Chief, Labor Relations"

At hearing the grievant explained her marital problems, separation and divorce thereunder, medical problems and an indication that she was improperly medicated --- all of which caused her to seek a transfer. Apparently the transfer compounded her depressed state since she was not used to the new workload or to supervision. That caused her, according to the grievant, an immediate desire to terminate her employment by way of resignation from her activities with the State of Ohio. At this point the grievant stated that she immediately changed her mind. The grievant stated that she wanted to return to work at the earliest possible moment in this particular matter.

It was upon these facts that this matter rose to arbitration for Opinion and Award.

III. OPINION AND DISCUSSION

The first question raised by the employer is that the grievant has no standing in that she at the time of filing, was a former employee of the State of Ohio and not an employee within the meaning and terms of the contract of collective bargaining. It might be noted at page 73 of the contract that a grievance is defined as follows:

"25.01 - Process

A. A grievance is defined as any difference, complaint or dispute between the Employer and the Union or any employee regarding the application, meaning or interpretation of this Agreement. The grievance procedure shall be the exclusive method of resolving grievances."

It might be noted from the reading of that short restatement of the contract, that a grievance is any dispute between the employer and the union or any employee regarding the application meaning or interpretation of the agreement. Thus, only the result of an arbitration award could determine whether or not the person filing was an employee or not. In this particular case the union signed off on the grievance and it is my belief that this matter is properly before the arbitrator because there is a difference of opinion between the union and the employer in this particular matter.

The basic issue in this particular case is whether the grievant was entitled to an adjudication of a request to rescind her resignation. It might be noted that the resignation was effective immediately upon her affixing her signature to that resignation. It was signed off on July 7, 1995, and that was, according to the grievant, the date of resignation of the grievant. It is also apparent from the evidence in this case that the personnel director took great pains in discussing this entire matter with the grievant and spent an hour or so before he would allow the grievant to execute the resignation. As a matter of fact, according to the testimony, the personnel officer asked the grievant if she wanted to wait and sign off on another date. According to the evidence, the grievant insisted to sign off and thus resigned effective immediately.

The fact that there was stress in the grievant's life, the fact that the grievant may have been improperly medicated, the fact that the grievant was at a new facility and the fact that all of these activities, in the aggregate, were impacting in a stressful manner upon the grievant, is simply not a reason for the employer to allow a rescission of a resignation. A resignation occurred on the date that it was signed because it became effective immediately and that is what this case is all about.

The union has argued in this particular matter that this is a matter of a just cause discharge. Such is not the case. The grievant sought out the employer to execute a resignation. There was not disciplinary action pending against the grievant nor did the evidence show any disciplinary action that was going to be involved in this particular matter against the grievant. The grievant caused her own dilemma. The grievant cannot now use her stressful background as a reason to excuse yourself from the resignation that she signed voluntarily and without coercion.

There is no evidence in the record of any coercion or duress placed upon the grievant by the employer herein. If that were not the case, there might be some merit to the argument of the grievant. However, such is not the case. Simply put, there is no evidence of any impropriety on the part of the employer in this particular matter.

The union argued in this particular matter that the employer should have insisted on the grievant involving herself in an Employee Assistance Program. It might be noted that the Employee Assistance Program is a voluntary program. I see nothing in the contract that mandates that an employer must direct the employee to participate. After review of all of the evidence in this case and after review of the material that the grievant testified to and to the facts that the employer testified to, there does not seem to be a reason to mitigate the resignation or vitiate it. For all of these reasons, the grievance is denied.

IV. AWARD

Grievance denied.

MARVIN J. FELDMAN, Arbitrator

Made and entered
this 15th day
of April, 1997.