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

|                             |   |                                    |
|-----------------------------|---|------------------------------------|
| In the Matter of:           | ) |                                    |
|                             | ) |                                    |
| Morris Yarborough,          | ) |                                    |
| Employee                    | ) | OEA Matter No. J-0022-19           |
|                             | ) |                                    |
| v.                          | ) |                                    |
|                             | ) | Date of Issuance: January 14, 2020 |
|                             | ) |                                    |
| Department of Public Works, | ) |                                    |
| Agency                      | ) |                                    |
|                             | ) |                                    |

OPINION AND ORDER  
ON  
PETITION FOR REVIEW

Morris Yarborough (“Employee”) worked as a Sanitation Supervisor with the Department of Public Works (“Agency”). On December 27, 2018, Agency received and accepted Employee’s resignation letter that was submitted on December 21, 2018. Subsequently, Employee rescinded his resignation. Agency declined Employee’s request to rescind his resignation on the basis of an administrative disruption to the operation of Solid Waste Management Administration and Agency. Employee was placed on administrative leave; the effective date of his resignation was January 4, 2019.<sup>1</sup>

Employee filed a Petition for Appeal with the Office of Employee Appeals (“OEA”) on December 28, 2018. He explained that he received a notice for a three-day suspension and

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<sup>1</sup> *Petition for Appeal*, p. 7 (December 28, 2018).

subsequently submitted his letter of resignation. Employee provided that he attempted to rescind his resignation, but Agency denied his rescission. Additionally, he asserted that he was promised a promotion which never occurred. Employee also claimed that he never received a complaint from Agency. Therefore, he requested that he be reinstated to his position.<sup>2</sup>

On February 15, 2019, the OEA Administrative Judge (“AJ”) requested that the parties submit legal briefs on the issue of jurisdiction.<sup>3</sup> Agency filed its Answer to Employee’s Petition for Appeal on March 13, 2019. It argued that pursuant to D.C. Official Code § 1-606.03(a), OEA does not have jurisdiction over this matter because Employee’s petition failed to provide any enumerated personnel actions listed in the rule. Furthermore, Agency asserted that it was not required to withdraw Employee’s rescission since it did not affect the personnel actions under the aforementioned D.C. Official Code. Therefore, Agency requested that Employee’s petition be denied.<sup>4</sup>

On May 7, 2019, the AJ issued an Order for Good Cause Statement. He explained that this was the second order issued to Employee to submit his written brief.<sup>5</sup> On May 10, 2019, Employee submitted his statement for good cause. He explained that after the first order was issued, he personally delivered his brief and handed it to OEA personnel. With regard to Employee’s brief, he posited that Agency violated its regulation when it declined his rescission. Furthermore, he provided that he worked for Agency for more than thirteen years and was not paid at the appropriate grade level pursuant to the agreement he had with Agency. Employee also claimed that his manager called him a monkey, and he felt disrespected by the derogatory term. Moreover,

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<sup>2</sup> *Id.* at 2.

<sup>3</sup> *Order* (February 15, 2019).

<sup>4</sup> *Agency Answer to Employee’s Petition for Appeal*, p. 3 (March 13, 2019).

<sup>5</sup> *Order* (May 7, 2019).

he asserted that he was wrongfully terminated, and he was not a disruption to Agency's operation.<sup>6</sup>

The AJ issued his Initial Decision on May 16, 2019. He held that in accordance with District Personnel Manual ("DPM") Instruction Nos. 8-53, 36-3, and 38-12, Agency provided a valid rationale for rejecting Employee's request to withdraw his resignation before its effective date. The AJ also found that Agency was within its rights to accept Employee's resignation. Accordingly, the AJ ruled that OEA lacked jurisdiction and dismissed Employee's appeal.<sup>7</sup>

On June 21, 2019, Employee filed a Petition for Review. Employee asserts that he was forced to resign. He also claims that management harassed, discriminated, and retaliated against him. Therefore, he requests that an amenable decision be rendered.<sup>8</sup>

#### Resignation

The DPM Instruction Nos. 8-53, 9-25, 36-3 and 38-12 provide that a voluntary separation, i.e., resignation or retirement, is an action initiated by the employee, not the employing agency or personnel authority. It goes on to note that a separation is voluntary if the employee is free to choose; understands the transaction; is given reasonable time to make their choice; and is allowed to set an effective date. Moreover, 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 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

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<sup>6</sup> *Order of Good Cause Statement*, p. 1-2 (May 10, 2019).

<sup>7</sup> *Initial Decision*, p. 3 (May 16, 2019).

<sup>8</sup> *Employee's Statement* (June 21, 2019).

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.”

The record shows that Employee initiated his resignation action by sending an email to supervisor. The December 21, 2018 email provides “please take this letter today on 12/21/18 [as] my two[-]week notice. I want to thank Department of [P]ublic Work[s] for the opportunity of letting me work for them.”<sup>9</sup> The resignation notice indicated that Employee understood and choose to take the action. Since Employee initiated the act, he took the time he needed to arrive at his decision, and he set the effective date as two weeks from the date of his email.

In his Petition for Review, Employee argues that he was forced to resign because he was harassed by his supervisor; belittled by his manager; and discriminated against by his managers.<sup>10</sup> However, the Court in *Stanley* 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.” Moreover, the record does not reflect, nor does Employee contend, that Agency applied duress, coercion, time pressure, misrepresented facts, or withheld information. Employee had freedom of choice. Therefore, in accordance with the DPM Instructions and the ruling in *Stanley*, Employee's separation was indeed voluntary.

### Rescinding Resignation

Employee requests in his Petition for Review that he be allowed to retract his resignation. The D.C. Court of Appeals has addressed this issue in numerous cases. The facts of the current

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<sup>9</sup> *Agency's Answer to Employee's Petition for Appeal*, Exhibit #9 (March 13, 2019).

<sup>10</sup> Employee provided that he was called a monkey by a manager. The record does contain an email exchange between Employee and a manager that provides “Monkey where are we with the 8 vehicles for QA/QC . . . .” However, in a subsequent email, the supervisor apologized and said that auto correct was the cause of the word “monkey” being inadvertently typed when he intended for the message to include Employee's name which is “Monk.” *Supplemental to Petition for Appeal*, p. 1-3 (February 22, 2019).

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. 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 function efficiently.”<sup>11</sup> Therefore, Agency was not required to accept Employee’s withdrawal of his resignation. As noted in *Wright*, Employee, in this matter, should have been sure of what he was doing before deciding to take such drastic action to resign from his position. Additionally, 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.”

DPM Instruction Nos. 8-53, 9-25, 36-3 and 38-12 provide that an agency may decline the

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<sup>11</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).

request to withdraw a resignation before its effective date only when the agency has a valid reason and explains that reason to the employee. A valid reason includes, but is not limited to, administrative disruption or the hiring or commitment to hire a replacement. The record clearly establishes that Agency adhered to this requirement. In a December 27, 2018 notice, Agency confirmed its acceptance of Employee's resignation that was submitted on December 21, 2018. The notice provided that Agency was "declining [Employee's] request to rescind [his] resignation due to the administrative disruption to the operations of the Solid Waste Management Administration and the Department of Public Works."

Agency followed DPM Instruction Nos. 8-53, 9-25, 36-3 and 38-12. Furthermore, it was well within its authority rely on Employee's resignation, as provided in the *Watson* and *Wright* cases. Accordingly, this Board must deny Employee's Petition for Review.

**ORDER**

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

**FOR THE BOARD:**

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Clarence Labor, Chair

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Patricia Hobson Wilson

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Jelani Freeman

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Peter Rosenstein

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Dionna M. Lewis

Either party may appeal this decision on Petition for Review to the Superior Court of the District of Columbia. To file a Petition for Review with the Superior Court, the petitioning party should consult Superior Court Civil Procedure Rules, XV. Agency Review, Rule 1.