# STATE OF CALIFORNIA
# BEFORE THE
# DEPARTMENT OF PERSONNEL ADMINISTRATION

In the Matter of the Appeal by

[redacted]

Disability Insurance Program Representative
To Set Aside Resignation

Case No. 99-P-0096

Represented by:

Without Representation

Respondent:

Employment Development Department
Human Resources Services Division – MIC-54
P.O. Box 826880
Sacramento, CA 94280-0001

Represented by:

Andrew Pollak
Staff Counsel
Employment Development Department
Legal Office, MIC-53
800 Capitol Mall
Sacramento, CA 95814

## DECISION

The attached Proposed Decision of the Administrative Law Judge is hereby adopted as the Department's Decision in the above matter.

**IT IS SO ORDERED:** October 29, 1999.

HOWARD SCHWARTZ
Chief Counsel
Department of Personnel Administration

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## PROPOSED DECISION

This matter was heard before Mary C. Bowman, Administrative Law Judge (ALJ), Department of Personnel Administration (DPA) at 9:00 a.m. on October 20, 1999, at Sacramento, California.

Appellant, [redacted] was present without representation.

Respondent, Employment Development Department (EDD), was represented by Andrew Pollak, Staff Counsel.

Evidence having been received and duly considered, the ALJ makes the following findings of fact and Proposed Decision.

I

## JURISDICTION

Appellant resigned from her position as Disability Insurance Program Representative (DIPR) with EDD effective close of business August 16, 1999. On September 15, 1999, she filed a petition (appeal) to set aside her resignation with DPA. The appeal complies with the procedural requirements of Government Code section 19996.1.

II

## WORK HISTORY

Appellant worked for EDD from March 15, 1999, through August 13, 1999, as a DIPR. During that time she was in formal and informal (on-the-job) training. She was assigned to the Northern Region Office in Sacramento, California.

Appellant has had no other State employment.

Appellant's duties as a DIPR were to perform a variety of professional disability claims examination work necessary to administer the Department's disability insurance. The class of DIPR is the recruiting, training and journey level class for persons to perform disability claims examination work. Under close supervision, incumbents receive classroom and on-the-job training in the fundamentals of disability claims examination and eligibility determinations.

III

## CAUSE FOR APPEAL

On September 15, 1999, appellant mailed an appeal to DPA claiming that her resignation was given or obtained by mistake and/or was not otherwise a free, voluntary and binding act.

IV

## CIRCUMSTANCES SURROUNDING RESIGNATION

Respondent served appellant with a first report of probationary performance on or about August 13, 1999. The report rated appellant overall as "needs improvement." One of the reasons for the poor report was that appellant was absent for three weeks out of the eight weeks of her initial DIPR training.

When the report was served on appellant, she met with Supervisor Pam Kent. Appellant testified the meeting "did not go well." Appellant disagreed with the report. She felt it did not reflect or highlight her positive attributes and performance.

Appellant was so upset she called in sick on Monday, August 16, 1999. On Tuesday, she called and left a voice mail message for Supervisor advising she was not coming to work because she had to attend to personal matters.

Appellant went to Kaiser Permanente that same day. When she returned home she had a voice mail message from [redacted] advising appellant she could not just call in sick without speaking with a supervisor. The message also stated something to the effect of "[redacted] must have told you that."

Appellant testified that the poor performance report, the meeting with [redacted] and the telephone message from [redacted] prompted her to write a resignation that evening. She also left a message on [redacted] voice mail that she was mailing in a resignation.

## V

## CIRCUMSTANCES FOLLOWING RESIGNATION

Shortly after appellant resigned, she spoke with [redacted] her union steward. She told [redacted] she made a mistake and thought the only thing she could do under the circumstances was resign.

On or about August 24, 1999, appellant also contacted [redacted] and requested to meet with her about rescinding her resignation because she believed she had made a mistake. A meeting was set up with [redacted] and management on or about August 30, 1999. On August 31, 1999, [redacted] called appellant and advised her that due to her attendance problems, respondent had decided not to voluntarily allow rescission of her resignation.

Appellant admitted she was absent three of the eight weeks of training. She stated her absences should not be grounds to deny her the right to reinstate since she only missed on-the-job training, not formal training.

Thereafter, appellant appealed to DPA.

* * * * *

**PURSUANT TO THE FOREGOING FINDINGS OF FACT THE ALJ MAKES THE FOLLOWING DETERMINATION OF ISSUES:**

Appellant seeks to set aside her resignation on the ground that she mistakenly resigned from her position as a DIPR with EDD. Appellant contends that the circumstances surrounding her resignation hindered her ability to make a free, voluntary and binding decision.

Government Code section 19996.1 provides in relevant part:

> "No resignation shall be set aside on the ground that it was given or obtained pursuant to or by reason of mistake, fraud, duress, undue influence or that for any other reason it was not the free, voluntary and binding act of the person resigning, unless a petition to set aside is filed with the department [Personnel Administration] within 30 days after the last date upon which services to the state are rendered or the date the resignation is tendered to the appointing power whichever is later."

The clear language of the statute requires the trier-of-fact to look to the actions of the appellant at the point of resignation to determine if that act was for any reason a mistake or not free, voluntary and binding.

Civil Code section 1567 provides that an apparent consent is not "free" when obtained through duress, menace, fraud, undue influence, or mistake. Duress or menace supposes some unlawful action by a party that causes the other party to consent by fear. *Odorizzi v. Bloomfield School District* (1966) 246 Cal.App.2d 123, 128. Undue influence involves the taking of an unfair advantage of another. *Id.* at 132, citing Civil Code section 1575.

Mistake is generally defined in *Black's Law Dictionary* (Abridged Sixth Edition, 1991) at page 693, as follows.

> "Some unintentional act, omission, or error arising from ignorance, surprise, imposition, or misplaced confidence. A state of mind not in accord with reality. A mistake exists when a person, under some erroneous conviction of law or fact, does, or omits to do, some act which, but for the erroneous conviction, he would not have done or omitted. It may arise either from unconsciousness, ignorance, forgetfulness, imposition, or misplaced confidence."

It is undisputed that appellant was upset by a poor performance report and what she perceived as an inappropriate response to her voice mail notice to her supervisor. However, appellant submitted no evidence that her resignation was anything other than a free, voluntary and binding act or that she misunderstood the consequences of her action of submitting a written resignation.

Respondent was not required to reinstate appellant after her resignation; and substantial absence during on-the-job training can be considered in determining not to permissively reinstate an employee.

Appellant had the burden of proof and the burden of going forward in this matter. Therefore, it is concluded appellant failed to prove she mistakenly resigned or that there was any other reason that her resignation was not free, voluntary and binding. Her appeal should be denied.

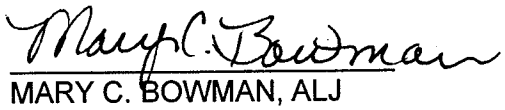
* * * * *

**WHEREFORE IT IS DETERMINED** that the petition of [redacted] to set aside her resignation from the position DIPR effective close of business August 16, 1999, is denied.

* * * * *

The above constitutes my Proposed Decision in the above-entitled matter. I recommend its adoption by DPA as its decision in the case.

**DATED:** October 27, 1999



MARY C. BOWMAN, ALJ
Statutory Appeals Unit
Department of Personnel Administration