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KATHLEEN LINDAS,  
 Appellant,  
 v.  
 Secretary, DEPARTMENT OF  
 HEALTH AND SOCIAL SERVICES,  
 Respondent.  
 Case No. 80-231-PC  
 \* \* \* \* \*

DECISION  
 AND  
 ORDER

NATURE OF THE CASE

This matter was filed as an appeal of a "constructive discharge" pursuant to §230.44(1)(c), Stats. At the prehearing conference, the respondent objected to subject-matter jurisdiction on the ground that there was no discharge but rather that the appellant resigned. A hearing on the sole question of jurisdiction was held before Commissioner Gordon H. Brehm on February 18, 1981, and the parties subsequently filed post-hearing briefs.

FINDINGS OF FACT

1. Appellant was appointed on a probationary basis as Superintendent of Education, Bureau of Program Resources, Division of Corrections, Department of Health and Social Services, on August 15, 1979. Her probationary period was to run for a period of one year (Appellant's Ex. 3).
2. Appellant's immediate supervisor was Robert Hable, Director of Career Services for the Bureau of Program Services.
3. Beginning in late 1979, Hable met with appellant a number of

times to discuss concerns he had with her performance in her probationary position. He was particularly concerned about negative relationships which had developed between Lindas and members of her staff and with some of the education directors of various correctional institutions.

4. On at least two occasions, on January 28, 1980, and February 5, 1980, Hable sent Lindas memorandums citing problems between appellant and her staff and institution education directors (Respondent's Ex. 1, 2).

5. On May 9, 1980, Hable told Lindas that he would no longer support her candidacy for the permanent position and that she would either have to resign or be terminated. He asked for her decision by May 19, 1980.

6. On May 14, 1980, appellant requested a voluntary demotion (Appellant's Ex. 4). This request was denied.

7. On May 20, 1980, appellant submitted a written letter of resignation effective August 1, 1980. Hable refused to accept the resignation because the effective date was too far off.

8. Hable met with appellant a number of times between May 20, 1980 and June 5, 1980 and requested her resignation with an earlier effective date than August 1, 1980.

9. Hable arranged a meeting with appellant, himself, and Elmer Cady, Administrator of the Division of Corrections which began about 1:30 p.m., Friday, June 6, 1980. Cady insisted that Lindas either submit her resignation immediately or she would be terminated. Cady and Hable agreed to accept a resignation effective July 4, 1980. Lindas

requested more time to consider but Cady insisted on an answer that afternoon. Lindas complained she was feeling ill and telephoned her husband to pick her up and take her home. While at home, she typed up another resignation letter with an effective date of August 1, 1980, and returned to the office and gave it to Hable. He refused to accept it until she changed the date to July 4, 1980. She then changed the date and left the resignation letter on Cady's desk since he had left the office (Appellant's Ex. 2).

10. By letter dated June 10, 1980, Cady accepted appellant's resignation effective July 4, 1980.

11. By letter dated June 19, 1980, appellant asked Cady to withdraw her letter of resignation because "the letter that was submitted was done so under duress, intimidation, and the prevailing atmosphere of sexism that permeates the Division of Corrections" (Appellant's Ex. 1).

12. By letter dated June 24, 1980, Cady refused appellant's request to rescind her resignation (Appellant's Ex. 12). Her last day of work for respondent was July 3, 1980.

13. Appellant filed an appeal with the Commission by letter dated July 6, 1980.

14. The appellant's resignation as aforesaid was not the result of coercion or duress and was a voluntary decision on her part.

CONCLUSIONS OF LAW

1. The appellant's resignation was not the result of coercion or duress as a matter of law and is legally effective.
2. The Commission does not have jurisdiction over appeals of voluntary resignations pursuant to §230.44(1)(c) or any other Wisconsin Statutes.

OPINION

Appellant argued that her acknowledged resignation was coerced so as to constitute a constructive discharge. Although no provision of Wisconsin Statutes gives the Commission jurisdiction over appeal of state employe resignations, the Commission, adopting a holding of its predecessor agency the Personnel Board, has held that it has jurisdiction over appeals of coerced resignations. Evrard v. DNR, 79-251-PC, 2/18/80. A resignation is coerced so as to constitute a constructive discharge if there is "an actual overruling of the judgment and will" of the employe. Biesel v. Commissioner of Securities, 77-115, 9/15/77; Evrard, supra.

There is no dispute here that appellant was informed by her immediate supervisor, Robert Hable, on May 9, 1980 that she would have to resign from her probationary position or be terminated. She was given 10 days to make a decision. She waited 11 days and then submitted her resignation.

This resignation was not acceptable to the respondent because of the proposed effective date. Respondent requested another letter of resignation with an earlier resignation date. When this was not forthcoming

after waiting more than two weeks, Hable arranged a meeting with appellant, himself and his supervisor, Elmer Cady.

At this meeting on June 6, 1980, there is no doubt that Cady and Hable demanded a letter of resignation with an agreed upon effective date from the appellant that afternoon in lieu of being terminated. Appellant testified she became ill and had to go home. However, she did type a letter of resignation at home and returned to the office and turned it in.

It is understandable that Cady and Hable were anxious to get a decision from Ms. Lindas on June 6 after waiting nearly a month for her to submit an acceptable letter of resignation.

This fact situation does not constitute any degree of coercion or duress. Appellant was given almost a month to voluntarily decide if she wished to resign or be terminated before respondent insisted on a decision from her on June 6, 1980. Appellant then waited nearly two weeks before attempting to withdraw her resignation.

It must be recognized that in Evrard, supra, the appellant was called into a meeting with his supervisors with no advance warning and told he must immediately decide to resign or be terminated without being given any time at all to make a decision. This is not the case here.

We must also keep in mind the language of the decision of the Commission:

"The Commission wishes to emphasize that in reaching this conclusion it is not deviating from the holding in the Biesel case that at the offer to an employe of an option of resignation in lieu of termination does not constitute coercion." (Evrard, supra, Pg. 5).

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ORDER

The respondent's objection to subject-matter jurisdiction on the ground that the appellant was not discharged but resigned is sustained and this appeal is dismissed.

Dated: October 2, 1981.

STATE PERSONNEL COMMISSION

Gordon H. Brehm  
Gordon H. Brehm  
Chairperson ICMS

Charlotte M. Higbee  
Charlotte M. Higbee  
Commissioner LH

Donald R. Murphy  
Donald R. Murphy  
Commissioner

GHB:jmg