

Quit or be Fired: When is Resignation Involuntary?

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Abstract

Whether an employee has voluntarily resigned or been involuntarily dismissed substantially affects the legal and economic interests of both the employee and employer. Courts considering wrongful discharge claims often must decide whether a resignation was truly voluntary or, rather, coerced through duress, undue influence, or some other wrongful conduct. This article examines several cases and the analytical framework applied by courts to determine whether resignation is voluntary or involuntary and the significance of the distinction.

Introduction

In lieu of discharge, employers often allow and, indeed, encourage negotiated resignations which ostensibly permit the employee to circumvent the stigma of having been fired. In addition to preserving the employment record, resignation may be an appealing alternative for an employee concerned with pension benefits, favorable recommendations, and similar matters associated with severance. Courts have recognized that resignation in lieu of discharge may in many instances reflect a mutually beneficial means for an employer and employee to part ways under otherwise disagreeable circumstances (*Molinar v. Western Electric*, 1976).

The distinction between voluntary resignation and involuntary dismissal is of utmost importance in determining the existence and scope of legal rights and responsibilities. Courts considering claims of wrongful discharge frequently must decide whether a resignation was truly voluntary or, rather, coerced through duress, undue influence, or some other wrongful conduct by the employer. While it is generally acknowledged that an employee who resigns voluntarily abandons any rights to later challenge the termination, a forced resignation may enable a terminated employee to enforce rights pursuant to an employment contract, a collective bargaining agreement, due process requirements, or unemployment compensation laws (Locke, 1975, 1988).

This article analyzes several representative cases from federal and state courts which provide a framework for determining: 1) What constitutes or characterizes involuntary resignation? and 2) What is the legal significance of involuntary rather than voluntary separation from employment?

This article analyzes essentially those situations where an employee is confronted with the choice of resigning or being fired. Beyond the scope of this article is the related but significantly different concept of constructive discharge, which generally involves an employer's unreasonably making working conditions so objectively intolerable that the employee resigns. (1)

Judicial Approaches

When an employee is confronted with the choice of resigning or being fired, the situation is usually emotionally charged. The legal issue, however, is whether, in light of all the surrounding circumstances, the employee made a voluntary, informed decision to resign (*City of Miami v. Kory*, 1981; *Covington v. Department of Health and Human Services*, 1984; *McLaughlin v. State*, 1988). Merely being limited to two unpleasant alternatives does not necessarily make a resignation under those circumstances involuntary (*Christie v. United States*, 1975).

A number of courts have applied a three-part test when examining the circumstances surrounding a resignation or retirement. According to several decisions (*Christie v. United States*, 1975; *Hearne v. United States*, 1985; *McLaughlin v. State*, (1988), in order to show the act was not voluntary, the employee must prove: (1) the employee involuntarily accepted the terms of the employer; (2) the circumstances permitted no other alternative; and; (3) said circumstances were the result of coercive acts by the employer.

As the cases in this article illustrate, courts are reasonably consistent in applying this or similar approaches. Notable differences in outcome primarily result from substantially different factual circumstances. In the cases cited herein where undue influence was found, the courts considered the oppressiveness of the surrounding circumstances in addition to threats of termination. Similarly, in those cases where reliance on false or misleading information was at issue, the courts considered facts beyond merely the threat of dismissal.

There is, however, some inconsistency in judicial treatment of the second part of the test - the availability of alternatives to resignation. As the cases illustrate, where the employee is not subjected to egregious employer misconduct or supplied materially misleading information, the option of challenging a discharge in court or through internal grievance procedures is generally regarded as a viable alternative to resignation. Where it is clear that the employer overreached or misled the employee, however, courts seem less impressed with the availability of such alternatives.

Voluntary Resignations

In *Christie v. United States* (1975), a civilian employee of the Navy Department was notified of the agency's decision to terminate her for striking a supervisor. Although not established by the court whether the employer or employee initiated a plan for extending the effective discharge date, the employee, some ten days after being notified of the impending dismissal, tendered an unconditional resignation and application for discontinued service retirement. The Court of Claims rejected the employee's allegation that her resignation was involuntary due to duress. The court, noting its usual practice of

upholding the voluntariness of resignations where they were submitted to avoid termination for cause, observed that there was no deception or other misconduct by the employer. The employee, moreover, had the alternative of challenging the proposed discharge through the Civil Service Commission but elected not to do so.

The Court of Claims in *Hearne v. United States* (1985), similarly upheld the resignation of an employee who, after working for the Veterans Administration for 31 years, was charged with theft of government property with a total approximate value of \$52.00. Several weeks after being notified on the agency's intent to remove him from his job, the employee, with advice of legal counsel, resigned in order to have criminal theft charges dropped. The court ruled that the employee failed to establish the agency initiated the suggestion to resign against his will, that the employee had the alternative of challenging the proposed termination through the VA's grievance procedures, and that the decision to terminate him was made with a good faith basis for substantiating the charges of theft.

Two federal court decisions involving Virginia police officers were rendered similarly. In *Morrell v. Stone* (1986), the federal district court ruled that the officer's resignation was voluntary where he was presented a choice of either resigning or being dismissed over charges of wrongfully failing to return another officer's gun. The officer resigned after having judgment entered against him in a civil proceeding on the matter and after consulting with his attorney. The court found no improper threat or duress, noting that the officer had the reasonable alternative of challenging the proposed disciplinary action through statutory grievance procedures. Furthermore, as in the previous cases, the employer had a good faith basis to substantiate the proposed dismissal.

In *Jurgensen v. Fairfax County, Va.* (1984), a police officer similarly had the option of taking a demotion or facing disciplinary action which could include dismissal as a result of violating a departmental regulation. The court ruled the threat of dismissal, even in the face of severe financial and domestic problems, did not rise to the level of duress where the employee had the reasonable alternative of contesting the employer's action.

In *Redmon v. McDaniel* (1976), also involving a police officer, the officer admitted his involvement in a serious disturbance at a tavern. The police chief, who had already decided to fire the officer, allowed him to resign so that he could remain in the field of police work. The Kentucky Supreme Court upheld the resignation, ruling that a mere threat to exercise a legal right made in good faith does not constitute duress or coercion. Again, in this case, the officer had the alternative of challenging an involuntary discharge.

The same rationale has been applied by courts in a number of cases involving other public employees such as teachers and municipal workers. The Fifth Circuit Court of Appeals upheld the resignation of a tenured professor, charged with sexual harassment, who resigned two days after being advised that dismissal proceedings would be brought otherwise (*Van Arsdell v. Texas A&M University*, 1980). The same court ruled against a community college instructor who, after consulting with two attorneys, resigned rather than contest his notice of termination for cause (*Stewart v. Bailey*, 1977). The Fifth Circuit Court of Appeals also found resignation to be voluntary in the case of a city utilities engineer who was given a week to either submit his resignation or be terminated pursuant to civil service procedures. Inasmuch as he consulted attorneys during that time and always had the viable alternative of submitting himself to grievance procedures, the court stated, his resignation was not coerced (*Bury v. McIntosh*, 1976). And, in a Florida appellate court case, a probationary city employee who suggested resignation rather than termination to preserve her chances for other employment with the city was deemed to have resigned voluntarily even though she subsequently discovered that her immediate supervisor lacked authority to carry out the proposed dismissal (*City of Miami v. Kory*, 1981). The court stated that the threatened action of dismissal cannot constitute duress when there are adequate legal remedies, in this case a civil lawsuit, with which to challenge it.

Finally, in *Voss v. City of Roseburg* (1975), a suspended police officer was given 48 hours in which to respond to an offer of reinstatement at a reduced rank. The court held that the officer's letter of resignation was voluntary and free of coercion or wrongdoing on the part of the em-

ployer.

Presumed Voluntary

Because resignations are presumed to be voluntary, the plaintiff/employee bears the burden of proving that he or she resigned as a result of duress, coercion, fraud, or some other wrongful conduct by the employer (*Christie v. United States*, 1975). Furthermore, because the test for duress is an objective one, the employee's subjective evaluation of the situation is not a sufficient legal measure of the employer's conduct (*Christie v. United States; Cosby v. United States*, 1969).

Although resignations are presumed to be voluntary, an act by which one party is compelled or induced by the other party to perform under circumstances which vitiate the exercise of free will cannot be considered voluntary (*City of Miami v. Kory*, 1981). Thus, where the employee is able to demonstrate that his or her resignation was coerced or obtained through undue influence, fraud, or mistake, courts have treated resignation as tantamount to discharge.

In a case often cited by employees seeking to have their resignations set aside, a government employee was told by the personnel officer that if he did not resign immediately, dismissal proceedings would be commenced (*Paroczay v. Hodges*, 1963). The federal district court ruled the resignation involuntary, thus void. The employer's demand for an immediate choice between resignation and dismissal, without opportunity for full and careful deliberation over a decision which would profoundly affect the employee's career and reputation, constituted duress in the court's view.

Undue Influence

California state courts have found resignations to be involuntary on the basis of undue influence. In *Odorizzi v. Bloomfield School District* (1966), a public school teacher submitted a written resignation one day after being arrested on criminal charges of homosexuality. In his effort to be reinstated after the criminal charges were dismissed, the teacher asserted that at the time of his resignation he was under severe emotional and physical strain from having been arrested and booked and going without sleep for forty

hours. He claimed that while incapable of rational thought or action, he was induced by school officials to resign without benefit of legal counsel in order to enhance his chances of getting employment elsewhere. Under the circumstances, the court found that the teacher's resignation was the result of overpersuasion and not the exercise of his free will. While undue influence cannot be used as a pretext to avoid a bad decision, the court listed several elements of overpersuasion sufficient to set aside a transaction on the grounds of undue influence:

- 1) discussion of the transaction at an unusual or inappropriate time;
- 2) consummation of the transaction in an unusual place;
- 3) insistent demand that the matter be completed immediately;
- 4) extreme emphasis on the adverse consequences of delay;
- 5) the use of multiple persuaders by the dominant side against the employee;
- 6) absence of third-party advisers to the employee;
- 7) statements that there is no time to consult financial advisers or attorneys.

The concurrence of several of these factors, the court stated, could lead, as in this case, to a finding of excessive persuasion.

In *Keithley v. Civil Service Board of City of Oakland* (1980), another California court used the same reasoning to set aside the coerced resignation of a police officer charged with rape. Inasmuch as the officer was not threatened with force or confinement and the police department had a legitimate interest in investigating the charges, the court found no duress. Because, however, the officer was kept waiting long periods of time, interrogated by a homicide investigator, repeatedly asked about what he intended to do even though his superior knew the rape charges had been dropped, given little or no time to consider his alternatives, and was emotionally and physically fatigued, the court found there was sufficient evidence for the civil service board to conclude that the resignation was involuntary.

Employer Deception or Misinformation

Some courts have concluded that a resignation

or retirement need not have been coerced to be involuntary. If the resignation or retirement is obtained by agency deception or misinformation, it is not voluntary. In *Covington v. Department of Health and Human Services* (1984), a government employee retired in reliance on his employer's erroneous statement that the agency for which he worked was going to be abolished and that he had no right of reassignment to another position. The court acknowledged that merely being faced with the unpleasant choice of retiring or being separated through a reduction in force policy is not duress. The court added, however, that the choice between the two alternatives must be understood. If, therefore, a reasonable person would have been misled by the employer's statements concerning reduction in force, even though there was no intention to deceive the employee about his options, the retirement must be considered involuntary.

In a recent Florida case, *McLaughlin v. State* (1988), the employer proposed that the employee submit a retirement date in exchange for reinstatement to a higher rank as he had been promised some two years earlier. Wishing to preserve the promotion and salary upgrade, the employee complied but later sought to rescind his proposed retirement. The court ruled in favor of the employee, finding that the retirement was involuntary. Key to the decision were the facts that the employer initiated the suggestion to retire, the entire matter was based on the employer's renegeing on the original promise of promotion, and the employee's lack of information as to alternatives. As the court stated, "A decision based on a lack of information cannot be binding as a matter of fundamental fairness and due process." (*McLaughlin*, p. 939).

Impact of Resignation

Voluntary resignation effectively extinguishes subsequent employee claims based on wrongful discharge arising from allegations of breach of contract, fraudulent misrepresentation, bad faith, and the like (*Molinar v. Western Electric*, 1976). Where procedural due process rights are involved, in particular with public employees who have a constitutionally protected property interest in their jobs (2), voluntary resignation operates as a waiver of whatever procedural safeguards might have been triggered by an involuntary dismissal (*Scherer v. Davis*, 1981; *Van Arsdell v.*

Texas A&M University, 1980).

Additionally, employees who are entitled to private grievance and arbitration procedures under a collective bargaining agreement in the event of involuntary discharge are deemed to have abandoned those rights as well as any similar rights contained in individual and separate contracts of employment (*Berry v. Michigan Bell Telephone Co.*, 1967).

State unemployment compensation laws typically disqualify from benefits employees who voluntarily discontinue their employment without good cause (*Kentucky Unemployment Insurance Commission v. Young*, 1967; Locke, 1975, 19-88). Where the prospect of being discharged is less than a certainty due to the employee's right to appeal through the employer's grievance channels, an employee who quits merely to avoid the chance of being fired has been ruled ineligible for unemployment compensation (*Hill v. Commonwealth*, 1978). On the other hand, an employee found to have been induced under excessive pressure to resign may be entitled to benefits as if she had been involuntarily discharged (*Anchor Motor Freight, Inc. v. Unemployment Insurance Appeal Board*, 1974).

Implications and Recommendations

Ascertaining with precision the frequency of coerced resignation claims is subject to the same limitations attendant to any other legal cause of action. Many such charges no doubt are resolved prior to suit being filed, other claims are settled before trial or disposed of through pre-trial motions or summary judgments which are not appealed. State trial court decisions, moreover, are infrequently published through the national reporter systems. Locke (1975, 1988) cited 16 appellate decisions, mostly from state courts. An additional 14 decisions from both state and federal courts are noted in this article.

Teel and Kukalis (1988) obtained data over a three-year period from the official personnel records of 886 salaried-exempt employees who had resigned from six participating employer organizations. Their study concluded that 8.2% of the voluntary terminees were rated unsatisfactory performers. Inasmuch as the researchers had previously concluded that roughly one-sixth of all employees perform much worse than aver-

age and that about half of those employees were terminated involuntarily, it follows that involuntary resignations would account for the balance, approximately the 8.2% result they reached. Previous studies cited by Teel and Kukalis had concluded that unsatisfactory employees, including hourly and commissioned as well as salaried, resigned at a much higher rate than 8.2%.

While this article has focused mainly on cases where employees were threatened with discharge for alleged misconduct if they did not resign, a growing concern for managers lies also in forced resignations and layoffs as components of downsizing the workforce for economic reasons. As Kuzmits and Sussman (1988) noted, terminations of this type inevitably result in increased litigation.

Clearly, therefore, employers are faced with substantial exposure to lawsuits if negotiated resignations do not pass scrutiny under the various judicial tests for voluntariness.

Dramatically different legal rights and responsibilities exist depending upon whether the act was of the employee's own volition rather than the result of duress, undue influence, fraud, or mistake. Consequently, because of the substantial economic and legal interests of both employer and employee, such transactions should be structured with great care and awareness of the surrounding circumstances. To minimize exposure to liability, in developing policies and procedures, managers should consider the following recommendations pursuant to the case law:

- 1 Provide a non-intimidating atmosphere in which to discuss the proposed separation. The time and place of the meeting should not be susceptible to subsequent charges that the employer took advantage of traumatic personal circumstances to exercise undue influence.

- 2 Do not try to coerce or intimidate the employee by out-numbering him or her during the meeting. While it could be very helpful in litigation to have a credible, relatively unbiased witness at the meeting, no unnecessary parties should be present.

- 3 Avoid the appearance of demanding the employee's resignation without providing him or her the opportunity to consult with outside advisers

such as attorneys, financial advisers, union representatives, and family members. Allow the employee a reasonable period of time to weigh the options. In a collective bargaining environment, consult legal counsel to determine whether the meeting is one in which the employee is entitled to have a union representative present. (3)

4 Provide clear, preferably written terms of separation which describe in detail matters such as monetary compensation, benefits, assistance and recommendations for other employment, and the time frame in which severance will be completed. Have the employee sign a concise, nonlegalese statement to the effect that he or she understands the terms and voluntarily accepts them.

5 Be cautious in attempting to explain to the employee the implications of resignation with respect to unemployment compensation benefits and subsequent legal claims for wrongful discharge. Indicate, instead, that the decision has important legal ramifications about which he or she may wish to seek outside counsel.

6 To the extent specialists within the employer's organization can provide information regarding accrued pension benefits, vacation and severance pay, etc., be certain the information is accurate and does not mislead the employee in the decision-making process.

7 Advise the employee of alternatives to accepting the resignation proposal, especially the availability of grievance and appeal procedures through which a discharge could be challenged.

8 Be able to substantiate, through documentation of the employee's job performance, that a good faith basis existed for the dismissal proposal.

ENDNOTES

- 1 The victim of such a tactic by an employer can pursue a claim for wrongful discharge. While the cause of action appears frequently in discrimination cases, also, it may be a viable claim where the employer has unreasonably demoted or reassigned employees, reduced their compensation, or compelled them to participate in objectively objectionable activities on the job (Sovereign, 1989).
- 2 The United States Supreme Court has ruled that public employees, as a result of contract, statute or some other source based in law, may have a constitutionally protected property right which cannot be abrogated without procedural due process, i.e., notice and hearing (*Board of Regents v. Roth*, 1972; *Arnett v. Kennedy*, 1974). As the court of appeals stated in *Christie v. United States* (1975, p. 589), "... a Governmentinitiated removal ... is analogous to a taking of a property interest; an employee-initiated separation is not."
- 3 Under the *NLRB v. Weingarten* (1975) decision, an employee who is represented by a labor union is entitled to have a union representative present during an investigatory interview which the employee reasonably believes will result in disciplinary action. Generally, in addition to the employee's reasonable belief as to the nature of the meeting the employee must request representation, the employ employer has no duty to bargain with the union representative although the representative may participate in the interview, and exercise of the right by the employee cannot interfere with management's prerogatives to conduct the investigation and control the interview. There has been disagreement between the National Labor Relations Board and the courts as to whether the *Weingarten* rule applies to nonunion as well as union employees, with the Board taking the position that only union employees are included. At least one legal authority has suggested that it is preferable to allow representation in either case under the *Weingarten* conditions or simply forgo the interview (Sovereign, 1989, p. 281).

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- 5 *Bury v. McIntosh*, 540 F.2d 835 (5th Cir. 1976).
- 6 *Christie v. United States*, 518 F.2d 584 (Ct. Cl. 1975).
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