

SUBCHAPTER 5. EMPLOYEE PROTECTION AGAINST REPRISALS OR POLITICAL COERCION

4A:2-5.1 General provisions

(a) An appointing authority shall not take or threaten to take any reprisal action against an employee in the career, senior executive or unclassified service in retaliation for an employee's lawful disclosure of information on the violation of any law or rule, governmental mismanagement or abuse of authority.

(b) An appointing authority shall not take or threaten to take any action against an employee in the career service or an employee in the senior executive service with career status based on the employee's permissible political activities or affiliations. This subchapter shall also apply to State service employees in the unclassified service who do not serve in policy-making or confidential positions.

Case Notes

Failure of municipal employee to exhaust administrative remedies warranted dismissal of his claim alleging violations of administrative code section prohibiting person from being appointed under title not appropriate to the duties to be performed and section prohibiting reprisal. *Ferraro v. City of Long Branch*, 314 N.J.Super. 268, 714 A.2d 945 (N.J.Super.A.D. 1998).

Job title elimination done in bad faith if politically motivated. *Kirshbaum v. Camden County*, 97 N.J.A.R.2d (CSV) 197.

Layoff; proof of political motivation. *Pikolycky v. Department of Military and Veterans' Affairs*, 94 N.J.A.R.2d (CSV) 685.

Layoff of supervisor; not based on retaliation or political retribution. 94 N.J.A.R.2d (CSV) 569.

"Whistleblower" medical director justifiably dismissed. *Mendoza v. Wagner Youth Correctional Facility*, 94 N.J.A.R.2d (CSV) 135.

Agency employee voluntarily resigned from his position. *Sandell v. Department of Law and Public Safety*, 93 N.J.A.R.2d (CSV) 705.

4A:2-5.2 Appeals

(a) An employee may appeal a reprisal or political coercion action to the Board within 20 days of the action or the date on which the employee should reasonably have known of its occurrence.

(b) The appeal must be in writing and specify the basis for appeal.

(c) The Commissioner shall review the appeal and request any additional information, or conduct any necessary investigation.

(d) The Board shall decide the appeal on a review of the written record or such other proceeding as it deems appropriate.

(e) Where improper reprisal or political coercion is established, the Board shall provide appropriate protections and remedies to the employee.

Case Notes

Acts of reprisal for public disclosure of information on abusive use of State cars. *Cryan v. Human Services Department*, 92 N.J.A.R.2d (CSV) 275.

SUBCHAPTER 6. RESIGNATIONS

4A:2-6.1 Resignation in good standing

(a) Any permanent employee in the career service may resign in good standing by giving the appointing authority at least 14 days' written or verbal notice, unless the appointing authority consents to a shorter notice.

(b) The resignation shall be considered accepted by the appointing authority upon receipt of the notice of resignation.

(c) A request to rescind the resignation prior to its effective date may be consented to by the appointing authority.

(d) Where it is alleged that a resignation was the result of duress or coercion, an appeal may be made to the Board under N.J.A.C. 4A:2-1.1.

Case Notes

Resignation may be rescinded prior to effective date upon appointing authority's approval (citing former N.J.A.C. 4:1-16.12). *Manusco v. No. Arlington Boro.*, 203 N.J.Super. 427, 497 A.2d 238 (App.Div.1985).

Refusal to accept rescission of resignation prior to its effective date constituted abuse of discretion. *Harmon v. Monmouth County Board of Social Services*, 97 N.J.A.R.2d (CSV) 541.

Police officer's resignation not in good standing for untimely resignation modified. *Polidoro v. City of New Jersey Police Department*, 97 N.J.A.R.2d (CSV) 239.

Employee suffering personal problems considered resigned in good standing. *DiMattia v. Department of Transportation*, 97 N.J.A.R.2d (CSV) 215.

Chronically absent employee granted resignation in good standing. *Caldwell v. Forensic Psychiatric Hospital*, 97 N.J.A.R.2d (CSV) 134.

Merit System Board approved removal of employee for unsatisfactory attendance, but modified her termination status from resignation not in good standing to resignation in good standing, where employee's absence followed denial of her request for indefinite leave of absence due to illness. *Bell v. Mid-State Correctional Facility*, 96 N.J.A.R.2d (CSV) 839.

Removal of clerk typist based upon five-day absence without approval of her supervisor was not warranted, and she would be treated as if she had resigned in good standing. *Neuschafer v. Vineland Developmental Center*, 96 N.J.A.R.2d (CSV) 766.

Resignation proposed by employee's union representative as alternative to discipline was not coerced. *Kwasniewski v. Probation Division*, 96 N.J.A.R.2d (CSV) 597.

Resignation in good standing was more appropriate than removal when injury was cause of training failure. *Gottlieb v. Monmouth County Sheriff*, 95 N.J.A.R.2d (CSV) 573.

Highway maintenance worker with bilateral carpal tunnel syndrome resigned in good standing by reason of an inability to perform job duties. *Kromenacker v. Department of Transportation*, 95 N.J.A.R.2d (CSV) 275.

Public employee who was convicted of offense involving theft from employer forfeited her position. *Gurenlian v. Ancora Psychiatric Hospital*, 94 N.J.A.R.2d (CSV) 599.

Failure to return to duty for five consecutive business days following leave of absence; resignation in good standing. *Apoldite v. Dept. of Treasury*, 93 N.J.A.R.2d (CSV) 459.

Unapproved absence was justified; resignation in good standing. *DeBlasio v. Division of Medical Assistance and Health Services*, 93 N.J.A.R.2d (CSV) 398.

Discharge would be classified as having resigned in good standing. *DeBlasio v. Division of Medical Assistance and Health Services*, 93 N.J.A.R.2d (CSV) 398.

Appeal of resignation not in good standing was moot. *Scott v. Department of Human Resources*, 93 N.J.A.R.2d (CSV) 339.

Removal modified to resignation in good standing. *Harwell v. Vineland Developmental Center*, 92 N.J.A.R.2d (CSV) 679.

Removal modified to resignation in good standing. *Ensslin v. Township of North Bergen*, 92 N.J.A.R.2d (CSV) 674.

Resignation considered as one in good standing. *Swinney v. Sheriff's Department, Camden County*, 92 N.J.A.R.2d (CSV) 614.

Settlement agreement; technician allowed to resign in good standing. *Di Lard v. Ancora Psychiatric Hospital*, 92 N.J.A.R.2d (CSV) 159.

Employee was not entitled to rescind his resignation. *Schaan v. Gloucester County Bd. of Social Services*, 92 N.J.A.R.2d (CSV) 152.

Sanitary inspector resigned under distress and refusal to allow him to rescind his resignation was unreasonable. *Manzo v. Jersey City Div. of Health*, 92 N.J.A.R.2d (CSV) 117.

Attempt to change resignation to a medical leave of absence; resignation would be changed from not-in-good standing to good standing. *Cheeseman v. Bayside State Prison*, 92 N.J.A.R.2d (CSV) 41.

Merit Service Board had no jurisdiction to hear an appeal from employee who voluntarily resigned her position. *Tatum v. John L. Montgomery Medical Home*, 91 N.J.A.R.2d (CSV) 45.

4A:2-6.2 Resignation not in good standing

(a) If an employee resigns without complying with the required notice in N.J.A.C. 4A:2-6.1, he or she shall be held as having resigned not in good standing.

(b) Any employee who is absent from duty for five or more consecutive business days without the approval of his or her superior shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. Approval of the absence shall not be unreasonably denied.

(c) An employee who has not returned to duty for five or more consecutive business days following an approved leave of absence shall be considered to have abandoned his or her position and shall be recorded as a resignation not in good standing. A request for extension of leave shall not be unreasonably denied.

(d) Where an employee is resigned not in good standing under (a), (b), or (c), the employee shall be provided with notice and an opportunity for a departmental hearing under N.J.A.C. 4A:2-2.5, and Final Notice and a right to appeal to the Board under N.J.A.C. 4A:2-2.8. An employee shall be in unpaid status pending the departmental decision. Should an employee seek to return to employment pending the departmental decision, a review under N.J.A.C. 4A:2-2.5(b) shall be conducted prior to continuation of the unpaid status.

(e) Where the resignation is reversed, the employee shall be entitled to remedies under N.J.A.C. 4A:2-2.10.

(f) The appointing authority or the Board may modify the resignation not in good standing to an appropriate penalty or to a resignation in good standing.

Public Notice on Resignation not in good standing.

See: 22 N.J.R. 3407(b).

Amended by R.1992 d.414, effective October 19, 1992.

See: 24 N.J.R. 2491(a), 24 N.J.R. 3716(a).

Revised (b)-(c).

Case Notes

Resignation pursuant to valid settlement agreement affirmed. *Fuller v. New Jersey Department of Environmental Protection*, 97 N.J.A.R.2d (CSV) 688.

Employee offering medical evidence for leave of absence defeats employer's resignation not in good standing action. *Wright v. Burlington County Juvenile Detention Center*, 97 N.J.A.R.2d (CSV) 555.

Storekeeper's abandonment of position justifies resignation not in good standing. *Aikens v. Riverfront State Prison*, 97 N.J.A.R.2d (CSV) 422.

Employee's unreliable work history and absence without approval justifies employer's resignation not in good standing. *Roberts v. Thomas Edison State College*, 97 N.J.A.R.2d (CSV) 382.

Progressive discipline supports suspension over resignation not in good standing when employee fails to report for duty. *Hargis v. Forensic Psychiatric Hospital*, 97 N.J.A.R.2d (CSV) 335.

Unreasonable denial of medical leave precludes employer's removal action for abandoning position. *Gilmore v. Veteran's Memorial Home*, 97 N.J.A.R.2d (CSV) 332.

Practical nurse's resignation not in good standing for job abandonment modified to resignation in good standing. *Miles v. Woodbridge Developmental Center*, 97 N.J.A.R.2d (CSV) 222.

Resignation not in good standing for absence from duty modified to resignation in good standing. *Bogar v. Department of Human Resources*, 97 N.J.A.R.2d (CSV) 189.

Removal of laborer for abandonment of position modified to resignation in good standing. *Niosi v. Department of Public Works*, 97 N.J.A.R.2d (CSV) 161.

Nurse's refusal to work due to unsubstantiated knee injury justified implied resignation not in good standing. *Gregg v. Woodbine Developmental Center*, 96 N.J.A.R.2d (CSV) 594.

Clerk who failed to provide timely medical documentation for extension of medical leave resigned not in good standing. *Littlejohn v. Division of Medical Assistance and Health Services*, 96 N.J.A.R.2d (CSV) 471.