

ARBITRATION DECISION NO.:

278

UNION:

OCSEA, Local 11, AFSCME, AFL-CIO

EMPLOYER:

Department of Rehabilitation
and Correction, Marion
Correctional Institution

DATE OF ARBITRATION:

July 11, 1990

DATE OF DECISION:

July 11, 1990

GRIEVANT:

John L. Eilerman

OCB GRIEVANCE NO.:

27-26-(89-06-29)-0109-01-06

ARBITRATOR:

Jonathan Dworkin

FOR THE UNION:

John C. Dempsey

FOR THE EMPLOYER:

Rachel Livengood

KEY WORDS:

Resignation
Arbitrability
Medical Condition

ARTICLES:

Article 25 - Grievance
Procedure

FACTS:

Grievant bid into the position of Inmate Supervisor I from his former position of Corrections Officer I in January 1987. From that day on there was almost daily conflict between the Grievant and his Supervisors. Shortly after assuming his new position, Grievant applied for a transfer either to his former position or another job. In fact, Grievant submitted no fewer than twenty-seven transfer requests within the next two years and none were granted. As a result of Grievant's frustration with his situation, on June 2, 1989 he tendered his resignation. Grievant stated he was in a state of severe anxiety-depression at the time. After signing the necessary papers and returning home, Grievant decided that he had made a terrible mistake. Approximately an hour after he left the Institution, he telephoned the Personnel Office to rescind his

resignation. He was told that the matter was in the hands of the Superintendent who was not then available for a conference.

A few days later, Grievant met with the Superintendent, asked to be reinstated, and was informed his resignation would be accepted. His employment was canceled retroactive to June 2.

UNION'S POSITION:

The Union argued that the time which elapsed between Grievant's resignation and his subsequent rescinding of it was not sufficient for management to have relied on the grievant's actions. The thrust of the Union's argument was the resignation was effectively rescinded and the Grievant's employment should never have been terminated. The fact that the Grievant was suffering from anxiety-depression at the time he tendered his resignation further supported the Union's position that the resignation was a mistake and Grievant was only acting out of frustration when he resigned.

EMPLOYER'S POSITION:

The Employer argued the resignation was effective at the time it was tendered because the Grievant had plenty of time to think about the consequences of his actions. The Employer maintained at all times the Grievant understood what he was doing and that no one coerced him into resigning his job. The Employer argued that the grievant's attempt to withdraw the resignation was ineffective.

ARBITRATOR'S OPINION:

This grievance ended in a stipulated award mediated **by** the Arbitrator. As a result of the discussions between the Union and the Employer the Grievant was awarded conditional reinstatement to the position of Corrections Officer II. The condition imposed was Grievant must first be psychiatrically or psychologically certified fit for the job. If the Grievant was found unfit for the job he had the right to secure his own psychological or psychiatric evaluation at his own expense. If the reports conflicted then a third impartial psychiatrist/psychologist would be chosen. If he was further found unfit, his termination would be effective. If the Grievant was found to be fit his reinstatement would be with full unbroken seniority at the wage step he held on the day his resignation was acted upon and accepted. He would be credited with all pay periods towards the next salary step, the same as if he had been granted a prolonged leave of absence without pay from June 2, 1989 to the date he was returned to pay status.

AWARD:

The Arbitrator stressed that an essential component of the award was the directive that the State would begin the process of obtaining the examination and report for Grievant's conditional reinstatement without unnecessary or unwarranted delay.

TEXT OF THE OPINION:

CONTRACTUAL GRIEVANCE PROCEEDINGS ARBITRATION OPINION AND AWARD

In The Matter of Arbitration
Between:

**THE STATE OF OHIO
Department of Rehabilitation
and Correction
Marion Correctional Institution**

-and-

**OHIO CIVIL SERVICE EMPLOYEES
ASSOCIATION OCSEA/AFSCME, AFL-CIO**

Local 11, State Unit 6**Case No.:**

27-26-(890629)-0109-01-06

Decision Issued:

July 11, 1990

APPEARANCES**FOR THE AGENCY**

Rachel Livengood, Office of Collective Bargaining
Tim Wagner, Office of Collective Bargaining
Norris McMackin, Warden, MCI
Dean Millhone, Labor Relations Officer, MCI
Luana Mathew, Personnel Officer, MCI

FOR OCSEA

John C. Dempsey, Attorney for OCSEA
Michael A. Hill, MCI Chapter President
Frances A. Reisinger, Chief Steward
Melissa Koon, Clerk
John L. Eilerman, Grievant

ISSUE:

Employee's attempt to rescind voluntary quit.

Jonathan Dworkin, Arbitrator

P.O. Box 236
9461 Vermilion Road
Amherst, Ohio 44001

BACKGROUND OF DISPUTE

Grievant was an Inmate Supervisor I assigned to the sheet metal shop of the Marion Correctional Institution in Marion, Ohio. He bid into that position from his former job, Corrections Officer I, in January 1987, and from that day on there was almost daily conflict between him and his Supervisors. Shortly after he entered the sheet metal shop, Grievant applied for transfer either to his former position or another job. He continued for more than two years, submitting no fewer than twenty-seven transfer requests. None were granted. Grievant became frustrated and, on June 2, 1989, tendered his resignation. According to his testimony, he was in a state of severe anxiety-depression at the time. After signing the papers necessary for him to quit, he went home, thought about what he had done, and decided he had made a terrible mistake. Approximately an hour after he left the Institution, he telephoned the Personnel Office to rescind his resignation. He was told that the matter was in the hands of the Superintendent who was not then available for a conference.

Grievant met with the Superintendent a few days later, asked to be reinstated, and was informed that his resignation would be accepted. His employment was canceled retroactive to June 2. The Superintendent's decision led to this grievance which demands reinstatement with back pay and full restoration of benefits.

THE HEARING AND THE "BENCH" DECISION

The grievance remained unresolved and the Union appealed to arbitration. A hearing convened in

Columbus, Ohio on July 11, 1990. After evidence and testimony had been presented, the Arbitrator informed the Representatives of the parties he had reached a decision. He communicated the decision verbally, and the parties asked that it be set forth in the form of a summary award without a full recitation of rationale.

The award that follows is intended to comply with the parties' direction. However, the Arbitrator finds it appropriate to briefly address some of the issue determinations which led to the decision.

* * *

The evidence confirms that Grievant's act was truly voluntary. His decision to quit may have been a thoughtless outburst, but it was nevertheless his decision. There is no evidence that he was psychologically impaired to the extent that he could not be held responsible for his act. Simply saying that he was in a state of anxiety and depression when he resigned is not enough to relieve him from the natural and probably consequences. As this Arbitrator stated in Cedar Coal Co., 79 LA 1028, 1035 (1982):

"[T]he Arbitrator agrees that Grievant quit his employment in a state of severe emotional anxiety. Nevertheless, the Company had the right to accept his resignation. If the grievance were to be sustained at all, such an award could only result from clear proof that when the Employee signed the quit slip, he wholly lacked capacity to understand what he was doing. Anxiety is a common disease in our society, and its presence does not, in and of itself, excuse sufferers from responsibility for their voluntary acts."

Despite all of the foregoing, the grievance was partially sustained on a very narrow ground. The Employee tried to withdraw his quit before it was acted upon or approved. Granted, the Superintendent had discretion to accept the resignation or allow it to be rescinded. But that discretion had to be exercised judiciously with careful consideration of all of the attending facts. Because the Agency's evidence did not confirm that due consideration was given Grievant's timely attempt to rescind, the demand for reinstatement was conditionally sustained. However, Grievant's request for monetary relief was denied. The Employee initiated his own resignation and must bear a large part of the blame for all that followed. It would be grossly unreasonable to reward him and punish the Employer by upholding his claim for lost wages.

AWARD

The grievance is sustained in part. Grievant is hereby awarded conditional reinstatement to the job of Corrections Officer II at the Marion Correctional Institution provided he is first psychiatrically or psychologically certified fit for the job.

The Agency is directed to act with all reasonable speed to schedule a psychological or psychiatric fitness-for-duty examination of Grievant. The Employee is directed to submit himself for the examination at the time and place specified by the Agency. The Agency shall pay the cost of the examination and report.

If the physician or psychologist selected by the Agency certifies Grievant's fitness for the job, the Employee shall be placed in the position of Corrections Officer II forthwith on any shift and in any part of the facility that best suits the Institution's needs.

In the event Grievant is found unfit for the job, he shall have the right to secure his own psychological or psychiatric evaluation and report at his expense. If the reports conflict, the Agency's psychiatrist/psychologist and Grievant's shall select a third, impartial expert to examine the Employee and report on his fitness for duty. The expense of the third examination and report shall be shared equally by Grievant and the Agency, and that report shall be final, binding, and conclusive on the question.

If the Employee is found to be fit to serve as Corrections Officer II, he shall be placed in that position as stated previously. If he is found unfit by the first examination and elects not to secure a second one; or is found unfit in both the first and second examinations; or is found unfit by the third impartial examination, his voluntary quit shall stand and this award shall be amended to state that the grievance is denied.

The Employee's reinstatement shall be with full unbroken seniority at the wage step he held on the day his resignation was acted upon and accepted. He shall be credited with all pay periods towards the next salary step, the same as if he had been granted a prolonged leave of absence without pay from June 2, 1989 to the date he is returned to pay status.

The reinstatement shall not include accruals of sick days or vacation, as the evidence confirms they were both exhausted when Grievant resigned. Those benefits shall begin accruing again with zero balances on the effective date of reinstatement.

An essential component of this award is the directive that the State shall begin the process of obtaining the examination and report for Grievant's conditional reinstatement without unnecessary or unwarranted delay. This means that the Agency shall make the necessary arrangements in good faith, as soon as possible. The Arbitrator hereby reserves jurisdiction on the issue of whether or not the Agency acted in accordance with this directive. The Union may invoke the reserved jurisdiction by notifying, in writing, the Agency, the Office of Collective Bargaining, and the Arbitrator of its intent to do so. Upon receiving such notice, the Arbitrator will schedule a hearing on the question.

Decision Issued Verbally, July 11, 1990;
Award Issued in Writing, July 13, 1990.

Jonathan Dworkin, Arbitrator