

Failure to Prove Constructive Discharge Claims Proves Costly for Retired Employee

By Peter J. Jeffrey, Esq., Member and Director of Litigation Mahoney & Jeffrey, PLLC, *The Federal Employee's Law Firm*®

Prior to relocating from Texas to Arizona, Randy C. Davidson signed a service agreement with the Drug Enforcement Administration (DEA) in which he agreed:

. . . that if I fail to fulfill the terms of this agreement by resigning, voluntarily retiring, vacating my position with authority ... before the twelve month period, I will repay the United States Government all costs the Drug Enforcement Administration has paid towards my relocation expenses including the withholding tax allowance (WTA) and the relocation income tax allowance (RITA).

The DEA paid Mr. Davidson's relocation expenses, totaling \$50,175. Prior to the completion of the twelve-month period, Mr. Davidson retired, alleging that the DEA forced him to retire by subjecting him to a hostile work environment. Thereafter, the U.S. Merit Systems Protection Board (MSPB) ruled against Mr. Davidson's constructive discharge appeal, finding that his retirement was voluntary. *Davidson v. Department of Justice*, MSPB DE-0752-11-0046-I-I (Feb. 18, 2011) (unpublished).

The DEA demanded that Mr. Davidson repay the \$50,175 he received in relocation expenses because Mr. Davidson failed to fulfill his service agreement. Mr. Davidson appealed to the Civilian Board of Contract Appeals. Based upon the MSPB's decision, the Civilian Board of Contract Appeals denied Mr. Davidson's claim that he is entitled to retain the relocation expenses paid to him, and found that the DEA did not abuse its discretion to require Mr. Davidson to repay the \$50,175 he received in relocation expenses. *In re: Randy C. Davidson*, 111 LRP 30623 (CBCA 04/25/11).

Beware that resignations and retirements are presumed to be voluntary, and that the resigning or retiring employee bears the burden of proving otherwise. To overcome the presumption that a resignation is voluntary, the employee must show that his resignation or retirement was the result of the agency's misinformation or deception or was coerced by the agency. *See Vitale v. Department of Veterans Affairs*, 107 MSPR 501 (MSPB 2007). The fact that an employee is faced with the unpleasant choice of either resigning or opposing a potential removal action does not rebut the presumed voluntariness of his ultimate choice of resignation. *See Schultz v. U.S. Navy*, 810 F.2d 1133 (Fed. Cir. 1987).

If you have any questions or concerns regarding constructive discharge claims or appeals to the Civilian Board of Contract Appeals, contact Mahoney & Jeffrey, PLLC, *The Federal Employee's Law Firm*® at 202-312- 7100 or www.MahoneyJeffrey.com.

The information contained in this article is of a general nature and is subject to change; it is not meant to serve as legal advice in any particular situation. For specific legal advice, consult a licensed attorney knowledgeable about the area of law in question.