IN THE SUPREME COURT OF GUAM

MARIANO J.C. MESNGON,
Petitioner-Appellee,

vs.

GOVERNMENT OF GUAM, CIVIL SERVICE COMMISSION,
Respondent,

and,

UNIVERSITY OF GUAM, through DR. DAVID L.G. SHIMIZU, CHAIRMAN, BOARD OF REGENTS,
Real Party in Interest-Appellant.

Supreme Court Case No.: CVA02-002
Superior Court Case No.: SP0080-00

OPINION

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Appeal from the Superior Court of Guam
Argued and submitted on June 18, 2002
Hagåtña, Guam

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BEFORE: PETER C. SIGUENZA, JR., Chief Justice[1]; FRANCES M. TYDINGCO-GATEWOOD, Associate Justice; RICHARD H. BENSON, Justice *Pro Tempore*.

SIGUENZA, C.J.:

[1] Respondent-Appellant University of Guam (hereinafter "University") appeals the trial court's decision, which held that the Government of Guam Civil Service Commission (hereinafter "CSC") had jurisdiction to hear the merits of Petitioner-Appellee Mariano J.C. Mesngon's (hereinafter "Mesngon") adverse action appeal. The trial court's decision stemmed from its finding that Mesngon's letter of intent to retire was not an effective resignation and, thus, did not divest the CSC of jurisdiction over Mesngon's appeal. We reverse the trial court's decision.

I.

[2] Mesngon worked as a Refrigeration Supervisor, a classified position, for the University for twenty-three years. On June 4, 1998, the Acting Facilities and Utilities Assistant Manager reported that Mesngon physically assaulted another employee. On June 18, 1998, Mesngon was served a Notice of Proposed Adverse Action (hereinafter "NPAA") and suspended for the June 4th incident. Appellee's Excerpts of Record, pp. 1, 3. The NPAA informed Mesngon of his right to respond to the charges within ten calendar days. However, Mesngon did not respond to the charges within the NPAA.

[3] On July 2, 1998, the President of the University met with Mesngon and Mesngon was offered the opportunity to retire or face adverse action proceedings. Mesngon apparently agreed to retire and, on that same day, signed a letter (hereinafter "July 2, 1998 letter") to the President, which

[1] The signatures in this opinion reflect the titles of the justices at the time this matter was considered and determined.

provided in pertinent part: "I have decided to retire effective Friday, July 17, 1998 (COB)". Appellee's Excerpts of Record, p. 5. Also on that date, Mesngon sent a letter to the Government of Guam Retirement Fund Director, which expressed: "I wish to retire from my employment with the Government of Guam effective, July 17, 1998 (COB). This is to request your office's assistance to determine my eligibility for retirement." Appellee's Excerpts of Record, p. 4. To assist Mesngon in his retirement and to help him obtain potentially more retirement benefits, on July 31, 1998, the University processed two salary increments for Mesngon that had been previously frozen. Appellant's Brief, pp. 7, 8. On July 30, 1998, the President sent Mesngon a letter reminding him of their "agree[ment] that Mesngon would be allowed to retire, in lieu of [the President] issuing the adverse action." Appellee's Excerpts of Record, p. 8 (Pres. Nededog's Ltr., July 30, 1998).

[4] On July 31, 1998, Mesngon met with a Retirement Fund official and was informed that he would receive about 30.57 percent of his annual salary. Appellee's Excerpts of Record, p. 11 (Mesngon Ltr, July 31, 1998). On August 10, 1998, a date surpassing the sixty-day limitations period when the University could issue Mesngon's adverse action, Mesngon informed the President that he chose not to retire for financial reasons. Appellee's Excerpts of Record, p. 12 (Mesngon Ltr., Aug. 10, 1998). On August 11, 1998, Mesngon was informed by letter from the Acting President that he did not have the option of returning to work and that he had until the following day to inform the Acting President of his retirement. Appellee's Excerpts of Record, p. 13 (Gutherz Ltr., Aug. 11, 1998).

[5] Mesngon did not reply to the Acting President's demand, and on August 14, 1998, was served another NPAA for dishonesty, absence without leave, disobedience and failure of good behavior. Appellee's Excerpts of Record, p.14 (Nededog Ltr., Aug. 14, 1998). On August 17, 1998, Mesngon responded in writing to the NPAA. Appellee's Excerpts of Record, p. 16 (Mesngon Ltr.,

Aug. 17, 1998). On August 25, 1998, the President issued a Notice of Adverse Action dismissing Mesngon from employment effective that date. Appellee's Excerpts of Record, p. 18 (Notice of Adverse Action, Aug. 25, 1998). On September 11, 1998, Mesngon appealed his dismissal to the CSC. Appellee's Excerpts of Record, p. 21 (Mesngon CSC Appeal, Sept. 11, 1998).

[6] On February 2, 1999, Mesngon filed a Motion to Void Adverse Action, arguing primarily that the University was time-barred from dismissing him because the infractions occurred on June 4, 1998. Appellee's Excerpts of Record, p. 25 (Motion to Void Adverse Action, Feb. 2, 1999). The CSC denied this motion. Appellee's Excerpts of Record, p. 50 (Decision and Order, April 27, 1999). On April 14, 1999, the University filed a Motion to Dismiss for Lack of Jurisdiction, arguing that Mesngon's retirement letter of July 2, 1998 was essentially a resignation from employment and that Mesngon had withdrawn himself from the jurisdiction of the CSC. Appellee's Excerpts of Record, p. 46 (Motion to Dismiss, April 14, 1999). Interestingly, Counsel for the University attempted to withdraw the motion to dismiss for lack of jurisdiction. Appellee's Excerpts of Record, p. 49 (Santos Ltr., April 27, 1999). Nonetheless, the CSC considered the University's motion and on February 3, 2000 dismissed Mesngon's appeal for lack of jurisdiction. Appellee's Excerpts of Record, p. 62 (Decision and Judgment, Feb. 3, 2000). The CSC held that Mesngon's retirement letter, under the totality of the circumstances, was a letter of resignation. Appellee's Excerpts of Record, p. 61 (Decision and Judgment, Feb. 3, 2000).

[7] On April 20, 2000, Mesngon filed a Verified Petition for Judicial Review in the Superior Court. Appellant's Excerpts of Record, tab 1 (Amended Verified Petition for Judicial Review, April 20, 2000). On November 16, 2001, the trial court issued its Decision and Order finding that Mesngon's letter of intent to retire was not a resignation, and that the CSC did have jurisdiction over Mesngon's appeal. The trial court remanded the case to the CSC for a hearing on the merits.

Appellant's Excerpts of Record, tab 2, p. 15 (Decision and Order, Nov. 16, 2001). The University appealed the trial court's decision.

II.

[8] We have jurisdiction over a final judgment of the Superior Court pursuant to Title 7 GCA § 3107 (1994). We review questions of statutory interpretation *de novo. See Ada v. Gutierrez*, 2000 Guam 22, ¶ 10. The issue of whether the CSC has jurisdiction is a matter of statutory interpretation, and, therefore, our review is *de novo. Univ. of Guam v. Civil Serv. Comm'n (Foley)*, 2002 Guam 4, ¶ 5.

III.

[9] The central issue in this appeal, whether the July 2, 1998 letter should be enforced against Mesngon, thereby divesting the CSC of jurisdiction over Mesngon's adverse action appeal, turns on our resolution of whether the July 2, 1998 letter was an illusory promise or if it was an effective resignation.

A. Illusory Promise

[10] The first issue we address is whether the trial court erred in determining that the July 2, 1998 letter was an illusory promise. An illusory promise is defined as "one that is so indefinite that it cannot be enforced, or by its terms makes performance optional or entirely discretionary on the part of the promisor." *Lane v. Wahl*, 6 P.3d 621, 624 (Wash. Ct. App. 2000). Moreover, an illusory promise "is insufficient consideration to support enforcement of a return promise." *Id.; Ridge Runner Forestry v. Veneman*, 287 F.3d 1058, 1061 (Fed. Cir. 2002) ("[I]llusory promise is . . . words in promissory form that promise nothing; they do not purport to put any limitation on the

freedom of the alleged promisor, but leave his future action subject to his own future will, just as it would have been had he said no words at all.") (citations omitted). The trial court held that the July 2, 1998 letter was an illusory promise because, "[Mesngon] could properly rescind this expressed intent to retire, as he did after exploring his retirement options." Appellant's Excerpts of Record, tab. 2, pp. 13-14 (Decision and Order, Nov. 16, 2001). The trial court found that no agreement between Mesngon and the University existed despite Mesngon's "undisputed" intent to retire. Appellant's Excerpts of Record, tab. 2, p. 14 (Decision and Order, Nov. 16, 2001). We disagree. Our examination of the record before us, particularly focusing on the transcripts and the July 2, 1998 letter, demonstrates that the trial court incorrectly held that the letter was a mere illusory promise that was so "indefinite" that it promised nothing.

[11] The record indicates that the July 2, 1998 letter arose during Mesngon's meeting with the President on July 2, 1998. This meeting was called by the President as a result of Mesngon's failure to answer the NPAA on June 18, 1998. The NPAA clearly provided that Mesngon had "ten (10) calendar days to answer the charges contained in the written notice of the proposed action." Appellant's Excerpts of Record, tab 1, exhibit 1-2. Upon Mesngon's failure to respond during the ten-day time frame, the University could have issued the Notice of Final Adverse Action, but chose instead to invite Mesngon to a meeting. Transcripts, pp. 30, 40 (Motion on Oral Arguments for Judicial Review, Nov. 6, 2001). During that meeting, in consideration of Mesngon's twenty-three years of service for the University, the President provided Mesngon with an option either to retire or have a Notice of Final Adverse Action issued against him.[2] Transcripts, pp. 40-41 (Motion on

[2] Moreover, aside from providing Mesngon with the option to retire, the University also processed Mesngon's previously frozen increments to increase Mesngon's overall salary. Appellant's Brief, pp. 15-16. The processing of the last increment even resulted in an oversight wherein Mesngon "was given an additional two (2) weeks of administrative leave in order to process the last increment." Appellant's Brief, p. 16.

Oral Arguments for Judicial Review, Nov. 6, 2001). Mesngon's signature on the two documents that the University prepared was indicative of Mesngon's decision to retire. The first document, dated July 2, 1998 and addressed to Mr. John E. Rios, provided:

> *I wish to retire from my employment with the Government of Guam effective, July 17, 1998 (COB).* This is to request your office's assistance to determine my eligibility for retirement. I understand I will fall under the optional retirement plan if I have less than 25 years of creditable service. For your information, I have accumulated a total of 1,088 hours of leave (390 annual; 698 sick) as of the pay period ending June 20, 1998 (copy of check stub enclosed).
>
> I have authorized the Human Resources Office at the University of Guam to handle the processing of my retirement documents. Please direct all information and inquiries to that office. Should you wish to discuss the matter further, you may contact Ms. Elizabeth Martinez at 735-2355.

Appellant's Excerpts of Record, tab 2, exhibit 3 (emphasis added). The second document, also dated July 2, 1998, was a memorandum addressed to the President of the University and provided:

> *I have decided to retire effective Friday, July 17, 1998* (COB). This will allow the Retirement Fund enough time to determine my creditable years of service and other issues pertaining to the retirement process. Because I will have less than 25 years of service (including my accumulated sick and annual leave), I will fall under the optional retirement plan.
>
> The Human Resources Office will handle the processing of my retirement documents and will be in contact with the Retirement Fund.
>
> *Thank you for giving me the opportunity to be a part of the University of Guam under your administration*.

Appellant's Excerpt's of Record, tab 2, exhibit 4 (emphasis added). Contrary to the trial court's holding, this July 2, 1998 letter addressed to the President of the University was not an illusory promise that only evidenced Mesngon's intent to retire. Rather the letter illustrates not only Mesngon's decision to retire but also sets forth a definite date of the retirement. The finality of the letter is reflected by the last sentence, "Thank you for giving me the opportunity to be a part of the University of Guam under your administration." Appellant's Excerpt's of Record, tab 2, exhibit 4.

[12] The record further reveals that there was "a real consideration for the relinquishment" of Mesngon's position. *See State ex rel. Kraft v. City of Massillon*, 102 N.E.2d 39, 41 (Ohio Ct. App. 1951) (holding that "the acts of the relator justified the municipal authorities in refusing to restore him to duty, and that reliance of authorities upon his resignation in filling the vacancy, estopped the relator from withdrawing his resignation."). The case of *City of Chicago ex rel. Martin-Trigona v. O'Malley*, 372 N.E.2d 671 (Ill. 1978), is persuasive in this respect. In *O'Malley*, the court found that a board member's announcement during a board meeting that, "We ought to all return to the Government that appointed us and tender to them our resignation. Thank you very much, it's been nice to be with you, and that's what I intend to do at this moment," only reflected the member's "announce[ment] [of] his intention to tender his resignation." *O'Malley* at 672, 674. In contrast, the court held that the member's letter to the mayor, which provided: "With sincere regret, but hopefully with understanding on your part, I today tender my resignation as a Director of the Regional Transportation Authority effective at your convenience" was a "clear tender of resignation effective . . . . at the mayor's convenience." *Id.* at 673, 674.

[13] We are also instructed by the case of *Davidson v. Hanging Rock*, 647 N.E.2d 527 (Ohio Ct. App. 1994), where the court was faced with the issue of "whether [a] . . . letter was a resignation letter or a mere application for retirement benefits." *Davidson* at 533. In *Davidson*, the court found that the appellant's letter, which contained the sentence, "I hereby make application for Retirement" was an "inten[t] to resign without regard to whether he would be eligible for retirement benefits." *Id.* at 528, 531. The court, therefore, denied appellant's claim for reinstatement to his former position as chief of police. *Id.* at 533. Similar to the *City of Chicago* and *Davidson* cases, Mesngon's July 2, 1998 letter was not an illusory promise to retire.

B. Resignation

[14] The next issue we address is whether the trial court erred in reversing the CSC's finding that the July 2, 1998 letter was an effective resignation. The trial court's decision was grounded on its findings that (1) resignation and retirement are not synonymous terms; and, (2) the President is not the proper appointing authority to accept resignations. As we explain below, we find that the trial court erred in finding that the July 2, 1998 letter was not an effective resignation.

1. Resignation v. Retirement

[15] The trial court held that resignation and retirement are not synonymous terms and that the "distinctions" between the two "are consequential and even decisive in the instant matter." Appellant's Excerpts of Record, tab 2, p. 11 (Decision and Order, Nov. 16, 2001). The trial court's holding was based on two provisions found in the Guam Code Annotated. The first provision is Title 4 GCA § 2103.6(a), which describes the components of resignation as:

> A resignation from any position shall be in *writing* ("Resignation Letter") and *directed to the appointing authority*, and shall, by its terms, be effective immediately or on a date certain. If no effective date is indicated, it shall be effective upon delivery to the appointing authority. Upon receipt by the appointing authority of any such Resignation Letter, the appointing authority may make the resignation effective immediately or sooner than the effective date in the Resignation Letter. Such resignation shall be effective according to its terms unless the appointing authority, at its discretion, makes the resignation effective immediately or at sometime sooner than the Resignation Letter. If the position involved requires the advice and consent of the Legislature, the appointing authority shall immediately after receipt of the Resignation Letter forward a copy of such Resignation Letter to the Speaker of the Legislature. Once such a Resignation Letter is delivered to the appointing authority, it may not be later withdrawn by the resigning person **without** the consent of the appointing authority. Acceptance of such resignation by the appointing authority is not required for the resignation to become effective.

Title 4 GCA § 2103.6(a) (1994) (emphasis added). The second provision is Title 4 G.C.A. 8201(j), which defines retirement as: "[A] member's withdrawal from the active employment of a participating employer and completion of all conditions precedent to such withdrawal. . . ." Title

4 GCA 8201(j) (1996). After examining the statutes that govern retirement and resignation in public employment, we are unpersuaded by the trial court's reliance on sections 2103.6(a) and 8201(j) in creating a distinction between resignation and retirement when determining if the CSC has jurisdiction to hear the merits of an employee's adverse action appeal.

[16] For the purpose of ascertaining whether the CSC has jurisdiction to hear a claimant's appeal, we find that retirement and resignation are not distinct terms. From a practical perspective, retirement and resignation achieve a similar result, which is the relinquishment or termination of one's position. This principle is reflected in the following definitions of resignation and retirement found in Black's Law Dictionary: Resignation is defined as "**1.** The act or an instance of surrendering or relinquishing an office, right, or claim. **2.** A formal notification of relinquishing an office or position." BLACK'S LAW DICTIONARY 1311 (7th ed. 1999); Retirement is defined as "**1.** Voluntary termination of one's own employment or career, esp. upon reaching a certain age." BLACK'S LAW DICTIONARY 1317 (7th ed. 1999).

[17] Other sources also support the proposition that the terms are interchangeable. *See Davidson*, 647 N.E.2d at 528, 530-31 (finding that the statement "I hereby make application for *Retirement* - Effective 4-16-90 [*sic*]" was an effective *resignation* that could no longer be withdrawn once accepted) (emphasis added); *see also* EMPLOYMENT COORDINATOR CURRENT THROUGH 5/10/2002 SUPPLEMENT ("Since mandatory retirement is allowed only in rare cases, retirements are really just voluntary resignations."); Marion K. MacDonald, Note, *Establishment Clause Challenge to Mandatory Religious Accommodation in the Workplace*, 36 HASTINGS L.J. 121, 124 n.31 (1984) ("The term 'termination' refers to any employment separation, whether voluntary or involuntary. A resignation or retirement is a voluntary termination of employment.") (citing to ASPA HANDBOOK OF PERSONNEL AND INDUSTRIAL RELATIONS 4-228 (D. Yoder, H. Heneman

eds. 1979)). From the dictionary definitions of both terms, it would be a fair implication that retirement is subsumed under the umbrella definition of resignation.

[18] Moreover, we disagree with the trial court's application of 4 GCA § 8201(j) as the proper definition of the word retirement in the present case. Section 8201(j) is applicable to Article 2 retirees or those who fall under the Defined Contribution Retirement Plan of Title 4. Mesngon, on the other hand, is an Article 1 retiree, who falls under the Defined Benefits Plan. The University correctly notes that section 8201 qualifies the applicability of the definitions found within its provision to Article 2 retirees, as reflected by the introductory sentence that the definitions are "*[a]s used in this article*, unless the context otherwise requires." Title 4 GCA § 8201 (1996) (emphasis added). Additionally, the distinction between Article 1 and Article 2 retirees is reflected by the existence under both Articles of two different procedures and qualifications of the retirees.

[19] For an Article 1 retiree like Mesngon, Title 4 GCA § 8119 describes the process of retirement as the following:

> Retirement. With respect to any member who joined the Fund prior to October 1, 1981:
>
> > (a) He or she may retire on a service retirement annuity, upon written application to and approval by the Board; provided that such member shall have attained at least sixty (60) years of age or fifty-five (55) years of age in the case of a member of the uniformed personnel and shall have completed at least ten (10) years of total service;
> >
> > . . . .
> >
> > (e) At his option, whether active or inactive, he or she may retire after twenty (20) years of service regardless of age. The retirement annuity for any employee or member described in this Paragraph shall be reduced one quarter (1/4) of one percent (1%) of each month such employee or member is under the age of sixty (60) years, from the amount determined for such employee or member as hereinafter provided.

Title 4 GCA §§ 8119(a), (e) (1996). In contrast, for an Article 2 retiree, Title 4 GCA § 8211(a) is

the applicable statute and describes a slightly distinct procedure:

> At any time after a member reaches the age of fifty-five (55) years and has completed five (5) years of employment service for vesting purposes or reaches the normal retirement age of sixty-five (65), that person may elect to receive retirement benefits by notifying the Board or its designee in writing of such intention not less than sixty (60) days prior to the effective date of retirement. Retirement payments shall commence as soon as practicable after retirement in accordance with the Defined Contribution Retirement System Plan and Trust Agreement.

Title 4 GCA § 8211(a) (1996). In sum, we hold that for the purpose of determining whether the CSC has jurisdiction to hear an employee's appeal, retirement and resignation are not distinct terms.

2. Proper Appointing Authority

[20] Having found that resignation and retirement are synonymous, we next address whether the President had the authority to receive the resignation in light of 4 GCA § 2103.6(a),[3] which mandates that the resignation be "directed to the appointing authority." Title 4 GCA § 2103.6(a) According to the trial court, in light of 17 GCA § 16108, even if the letter "is construed as a letter of resignation, it was procedurally defective because it was submitted to the [President of the University] and not the . . . Vice-President." Appellant's Excerpts of Record, tab. 2, pp. 13 (Decision and Order, Nov. 16, 2001). Section 16108 provides in pertinent part:

[3] We also note 4 GCA § 2103.6 (c), which provides:

> A Resignation Letter by any officer or employee of the government of Guam, its agencies and instrumentalities, which is directed to the Governor *or directed to any of the person's supervisors* shall be treated as a non-revocable resignation as if it had been directed to an appointing authority.

Title 4 GCA § 2103.6 (c) (1994) (emphasis added). Although neither of the parties cited this provision in their briefs, during oral arguments, the University noted the provision and argued that the July 2, 1998 letter is not defeated because it was not addressed to the Vice-President. The University asserted because the President is every University employee's supervisor, the July 2, 1998 letter was an effective resignation.

> **President, Academic Officers, and Faculty of the University.**
>
> The President, on the recommendations of appropriate administrators and guided by the recommendations of Search Committees, shall appoint faculty and administrators, such as may be necessary to fulfill the mission and purposes of the University. *The Vice Presidents, on the recommendation of the appropriate administrators, shall appoint non-academic staff in accordance with Civil Service procedures, such as may be necessary to fulfill the mission and purposes of the University.* While the authority of the Board to establish overall policy guiding the University shall not be diminished, the implementation of the expressed policy of the Board shall be vested in both the Administrative Officers and the Faculty through the collegial instrumentalities traditional in University affairs.

Title 17 GCA § 16108 (1996) (emphasis added). Although section 16108 appears to grant Vice-Presidents exclusive authority to appoint non-academic staff, Mesngon's July 2, 1998 letter was not procedurally defective because it was addressed to the President. The University's Board of Regents adopted Resolution No. 97-10 on March 20, 1997. Entitled "Relative to Authorizing the President to Approve all Hiring at the University of Guam," the Resolution provides in relevant part:

> WHEREAS, the Board of Regents has adopted the hiring procedures for classified and unclassified staff personnel; and
>
> WHEREAS, the Human Resources Office evaluates each application, administers the examination, determines the applicant's eligibility and score, and arranges a date and time of interview with the pertinent administrator; and
>
> WHEREAS, the head of the hiring unit recommends for appointment from the Eligibility List to the appropriate Vice President who currently has the authority to either approve or disapprove the recommendations; and
>
> WHEREAS, the President may not be made aware of the individual qualifications of candidates prior to the approval or disapproval by the appropriate Vice President; and
>
> WHEREAS, the hiring of personnel is a critical function that impacts on the President's authority for the administrative operations of the University of Guam; and
>
> WHEREAS, it is necessary that the President is made aware of individual qualifications being hired to perform functions in support of the total mission of the University of Guam.
>
> NOW, THEREFORE, BE IT RESOLVED, *that the President shall approve all hiring of classified and unclassified staff personnel for the University of Guam*.

Appellant's Excerpts of Record, tab 4 (Resolution) (emphasis added). From the above Resolution, the Board of Regents conferred to the President the power to approve "all hiring of classified and

unclassified staff personnel." Appellant's Excerpts of Record, tab 4 (Resolution). The conferral of such power to the President by the Board of Regents is supported by both statute and caselaw.

[21] Statutorily, Title 17 GCA § 16108 allows the Board of Regents to "establish personnel rules and regulations guiding selection, employment, salary and other compensations, promotion, performance evaluation, disciplinary action, and all other conditions of work." 17 GCA § 16108. Moreover, section 16104.1 provides in pertinent part:

> The Board [of Regents] shall set the policies governing the duties, conditions of employment, compensation, salary and emoluments, of *all employees* of the University as herein provided. . . . *The Board shall have the authority to delegate such of its powers as it may deem appropriate,* but shall retain the ultimate responsibility for the exercise of its powers.

Title 17 GCA § 16104.1 (1996) (emphasis added). Thus, the Board's resolution is not in contravention of 17 GCA § 16108.

[22] Moreover, caselaw also supports the proposition that the acceptance of a resignation can be delegated. In *American Federation of Teachers v. Board of Education*, 166 Cal. Rptr. 89, 107 Cal. App. 3d 829 (Ct. App. 1980), the court first noted that "[a]s a general rule, powers conferred upon public agencies and officers which involve the exercise of judgment or discretion are in the nature of public trusts and cannot be surrendered or delegated to subordinates in the absence of statutory authorization." *Am. Fed.* at 92, 107 Cal .App. 3d at 834 (quotations and citations omitted). However, the court also expressed that "public agencies may delegate the performance of ministerial tasks, ..." *Id.* (quotations and citations omitted). The court went on to hold that acceptance of a resignation was a ministerial act and could therefore be delegated. *Id.* at 94-95, 107 Cal. App. 3d at 838-39; *Sinkevich v. Sch. Comm. of Raynham*, 530 N.E.2d 173, 175 (Mass. 1988) ("In receiving such a resignation, the superintendent simply performs a ministerial act.").

[23] In essence, we find that the President was properly conferred with the authority to receive

the July 2, 1998 letter. Consequently, we hold that the July 2, 1998 letter represented a valid resignation.[4]

C. Enforceability of Resignation

[24] Because we construe the July 2, 1998 letter to be a valid letter of resignation, we must resolve the issue of whether the letter should be enforced against Mesngon based on the two challenges he avers against its enforceability: (1) his withdrawal of the resignation; and (2) the University's alleged coercive acts, which forced him to sign the letter.

1. Withdrawal of the Resignation

[25] The first challenge that Mesngon offers against the enforceability of the July 2, 1998 letter is that he effectively withdrew the resignation on August 10, 1998, prior to its acceptance by the University. The University disputes Mesngon's claim by asserting that Mesngon could not have withdrawn his resignation on August 10, 1998 because it was after the effective date of the letter of resignation and "after the President acted in reliance on the resignation." Appellant's Brief, p. 17. We agree with the University in this regard.

[26] We are guided by a case cited by both parties and relied upon by the CSC, *Armistead v. State Personnel Board*, 583 P.2d 744, 149 Cal. Rptr. 1 (Ct. App. 1978), where the court held that "unless valid enactments provide otherwise, an employee is entitled to withdraw a resignation if she or he does so (1) before its effective date, (2) before it has been accepted, and (3) before the appointing power acts in reliance on the resignation." *Armistead*, 583 P.2d at 748, 149 Cal. Rptr. at 5; *see also Davis v. Marion County Eng'r.*, 573 N.E.2d 51, 55-56 (Ohio 1991) ("withdrawal of resignation after . . . employment was actually relinquished would not be valid, and that the doctrine of estoppel

[4] Because we find that the July 2, 1998 letter was a valid letter of resignation, it is unnecessary for us to address the issue raised by the University of whether the doctrine of promissory estoppel applies.

could be invoked against the public employee, since the public employer relied upon the resignation . . . .") (citing to *State ex rel. Kraft*, 102 N.E.2d at 39). In the instant matter, the July 2, 1998 letter delineated July 17, 1998 as the effective date of the resignation. The University had until August 3, 1998 to issue an adverse action against Mesngon. The University not only provided Mesngon the opportunity to retire, but also further accommodated him through the application of two increments, which resulted in Mesngon being included on the payroll beyond the July 17, 1998 date. Mesngon did not notify the University of his desire not to retire until August 10, 1998. Under the tri-partite test outlined in *Armistead* above, Mesngon's August 10th notification was insufficient to act as an effective withdrawal. At that point, Mesngon was precluded from withdrawing his resignation because: (1) his alleged withdrawal occurred beyond the effective date of the resignation; (2) the University had already accepted the resignation; and (3) the President acted in reliance of the resignation, illustrated by a non-timely filing of an adverse action. *See Armistead*, 503 P.2d at 748, 149 Cal. Rptr. at 5; *see also Booth v. Argenbright*, 731 P.2d 1318, 1322 (Mont. 1987) (holding that "[t]he School Board did not need to formally accept the resignation because it had already decided to terminate [the employee] and made the offer to spare her formal termination proceedings."). Accordingly, we hold that the enforceability of the July 2, 1998 letter of resignation is not defeated by Mesngon's alleged withdrawal on August 10, 1998.

2. Coercion

[27] The second challenge that Mesngon raises to preclude the enforceability of the July 2, 1998 letter is Mesngon's allegations that the University violated due process and CSC rules by coercing him to retire. "Employee resignations are presumed to be voluntary. This presumption will prevail unless . . . [the employee] comes forward with sufficient evidence to establish that the resignation was involuntarily extracted." *Christie v. United States* 518 F.2d 584, 587 (Ct. Cl. 1975). In the

present case, neither the CSC nor the Superior Court made a finding on coercion. We exhaustively reviewed the record and fail to find sufficient evidence that would support a holding that Mesngon was coerced into resigning or that would warrant remanding the matter for a finding on the issue. *Staats v. United States Postal Service*, 99 F.3d 1120, 1124 (Fed. Cir. 1996) (noting the "demanding legal standard" that must be satisfied to overcome the presumption of voluntariness in a resignation). Therefore, we hold that the July 2, 1998 letter was an effective resignation.

IV.

[28] We find that the July 2, 1998 letter was not an illusory promise and that it was an effective resignation. Moreover, we find that the July 2, 1998 letter is enforceable against Mesngon. Accordingly, we hold that the CSC did not have jurisdiction to hear the merits of Mesngon's adverse action appeal. The decision of the trial court is **REVERSED** and the case is **REMANDED** for the trial court to enter judgment affirming the decision of the CSC.