

BEFORE THE STATE OF CONNECTICUT EMPLOYEES' REVIEW BOARD

In the Matter of:	:	
	:	
KONSTANTINOS DIAMANTIS	:	EMPLOYER'S
Grievant	:	MOTION TO DISMISS
	:	
- and -	:	ERB Case # 1086
	:	
STATE OF CONNECTICUT,	:	
DEPARTMENT OF ADMINISTRATIVE	:	
SERVICES/OFFICE OF POLICY AND	:	
MANAGEMENT	:	
	:	
Respondents.	:	
	:	
	:	
	:	

STATE OF CONNECTICUT'S MOTION TO DISMISS

The State of Connecticut, Department of Administrative Services/Office of Policy and Management ("State" or "DAS") hereby moves that the above-captioned complaint be dismissed. The State, in support of this Motion, provides the following:

Background

1. The Grievant, Konstantinos Diamantis, filed an appeal pursuant to C.G.S. § 5-202 with the Office of Labor Relations ("OLR") on or about November 28, 2021. The Grievant's twenty-four (24) page appeal ("Appeal") advances a plethora of wide-ranging and contradictory accusations against the State. However, the gravamen of Diamantis' instant appeal is that the Commissioner of the Department of Administrative Services, Joshua Geballe, denied Diamantis' request to rescind his resignation from the classified job title he held at DAS, *Director of Construction Management*.
2. In addition to the classified position of *Director of Construction Management*, the Grievant also held the appointed position of *Deputy Secretary of the Office of Policy and Management* from November 2019 through his removal on October 28, 2021. The Grievant does not seek relief from the ERB regarding his removal from the appointed position of *Deputy Secretary*, as no relief is available in this forum.
3. In his Appeal, Diamantis describes the meeting at which the then-Secretary of OPM, Melissa McCaw, informed him that his appointment as *Deputy Secretary* had been terminated, and that he was being placed on paid administrative leave from his classified position of *Director of Construction Management*. Diamantis asserts:

At the meeting [around 12:45 p.m. on October 28, 2021], Secretary McCaw provided the Complainant with notice that: (1) he was being immediately terminated from his appointed position as Deputy Secretary and (2) that he was immediately being placed on suspension or paid leave from his classified position as Director of the Office of School Construction Grants under DAS pending an investigation.¹

4. Diamantis admits he was explicitly told that he could retain his classified position after October 28, 2021, during the period of his paid administrative leave pending the investigation:

[A]t that same meeting, Secretary McCraw [sic] informed the Complainant that the Governor's Office indicated that the Complainant could retain his classified position as Director of Construction Support Services under OPM. However, he would immediately be placed on paid leave pending a 'misconduct investigation.'

5. Diamantis admits that he then "sought to understand his options" and asked "questions about retirement eligibility, estimated retirement, and impact on leave payouts."²
6. Diamantis admits that on October 28, 2021, he submitted his letter of resignation and resigned from his classified position of *Director of the Office of School Construction Grants and Review*.³
7. As further evidence of his resignation, Diamantis concedes that he "asked [OPM Chief Administrative Officer] Palmarozza if he could rescind his resignation."⁴ He states that he was informed he could request to rescind his resignation in accordance with General Letter No. 177.
8. Diamantis claims that he requested to rescind his resignation, but that DAS improperly denied his request. In a letter dated October 29, 2021, DAS Commissioner Joshua Geballe denied Diamantis' request to rescind his resignation from his classified position. Commissioner Geballe's denial cited C.G.S. 5-248(f), § 5-243-1 of the Regulations of Connecticut State Agencies and DAS General Letter 177. The cited authorities are attached hereto as Exhibit A.

The ERB lacks Jurisdiction to Hear Diamantis' Appeal

9. The Grievant Did Not Resign in Good Standing and Had No Right to Rescind his Resignation

¹ Grievant's Appeal, pp. 12-13, paragraph 45.

² *Id.* at pp. 14-15, paragraph 55.

³ *Id.* at p. 15, paragraph 61.

⁴ *Id.* at p. 16, paragraph 63.

10. C.G.S. § 5-248(f) provides, in part, “Any agency may reinstate, without examination, any employee who has resigned in good standing and has withdrawn his or her resignation within one year to positions in classes in which he or she has attained permanent status.” This provision couches reinstatement by a state agency as discretionary, not mandatory. Moreover, it only applies when an employee has resigned “in good standing.”
11. “Good Standing” is defined in C.G.S. § 5-196 as “the status of an employee whose employment in the state service has been terminated other than as a result of disciplinary action or during a period when disciplinary action was pending.”⁵
12. In addition, Regs. Conn. State Agencies § 5-243-1(a) provides that “an employee in the classified service who wishes to voluntarily resign from state service in good standing shall give the appointing authority at least two working weeks notice of his resignation. . .less than the required number of working weeks notice shall be reported as a resignation in good standing only if such notice is acceptable to the appointing authority.”
13. The Grievant concedes that he resigned the very same day that he was informed of an investigation into his potential misconduct.
14. Thus, the Grievant has admitted that he did not provide two (2) weeks’ notice of his resignation, and therefore his resignation was not in good standing pursuant to Regs. Conn. State Agencies § 5-243-1(a).
15. The Grievant further admits that he resigned during a period when disciplinary action was pending, and therefore his resignation was not in good standing pursuant to C.G.S. § 5-196.
16. Diamantis’ resignation became effective upon its submission. DAS General Letter 177 states, “A resignation shall be binding on an employee upon the submission of a resignation notice to the appointing authority.”
17. Furthermore, Diamantis’ appeal does not present a cognizable claim under C.G.S. § 5-202. That statute sets forth the jurisdictional basis of the ERB:

Any employee who is not included in any collective bargaining unit of state employees and who has achieved a permanent appointment as defined in section 5-196 may appeal to the Employees' Review Board if such employee receives an unsatisfactory performance evaluation or is demoted, suspended or dismissed, or is aggrieved as a result of (1) alleged unlawful discrimination, unless a complaint is or has been filed by such employee with the Commission on Human Rights and Opportunities or the Equal Employment Opportunity Commission, (2) unsafe or unhealthy working conditions, unless a complaint is or has been filed by such employee with the state or federal Occupational

⁵ C.G.S. § 5-196(13).

Safety and Health Administration, or (3) violations involving the interpretation and application of a specific state personnel statute, regulation or rule.

18. Diamantis did not receive an unsatisfactory performance evaluation. He was not demoted, suspended or dismissed from his classified position. Nor has he been aggrieved by unlawful discrimination, as he voluntarily resigned from state service with less than two (2) weeks' notice and in the face of a disciplinary investigation. The Grievant, like all State employees, has no cognizable right to rescind a tendered resignation.

For the foregoing reasons, the State respectfully requests that the Employees' Review Board rule upon this Motion to Dismiss in advance of a hearing on the merits and further grant this Motion for the reasons articulated herein. Specifically, the State requests that either the June 13th or 20th hearing dates be devoted to oral argument on this Motion to Dismiss, and that the parties be permitted to file briefs on such arguments prior to the ERB rendering a decision on the Motion to Dismiss.

June 6, 2022

Respectfully Submitted:

/Adam M. Garelick/
Adam M. Garelick
Principal Labor Relations Specialist
Office of Labor Relations
450 Capitol Avenue
Hartford, CT 06106

cc: Zachary Reiland, Esq.
Pattis & Smith, LLC
383 Orange St.
New Haven, CT 06511
zreiland@pattisandsmith.com

CERTIFICATION

I hereby certify that on June 6, 2022, a copy of the foregoing document was filed electronically with the Employees' Review Board and sent via email and regular mail to:

Zachary Reiland, Esq.
Pattis & Smith, LLC
383 Orange St.
New Haven, CT 06511
zreiland@pattisandsmith.com

/Adam M. Garelick/
Adam M. Garelick

EXHIBIT A

Connecticut General Statutes Annotated
Title 5. State Employees
Chapter 67. State Personnel Act (Refs & Annos)

C.G.S.A. § 5-248

§ 5-248. Leaves of absence. Reinstatement upon withdrawal of resignation

Effective: July 1, 2013

[Currentness](#)

(a) An appointing authority may, with the approval of the Commissioner of Administrative Services, grant a leave of absence with full pay, part pay or without pay, subject to the regulations issued by the Commissioner of Administrative Services, to any employee in the classified service for a period not exceeding one year. Such leave may be extended beyond one year by an appointing authority, provided such action shall be approved by the Commissioner of Administrative Services. In the granting of a leave of absence without pay, the appointing authority shall notify the employee and the Commissioner of Administrative Services whether the position will be held awaiting the employee's return or whether reinstatement will be dependent upon whether or not a suitable vacancy is available. A leave of absence with full or part pay may be granted only for educational purposes in order to enable an employee to study or receive technical training which will increase his proficiency in his position or for such other purpose as may be specified by the Commissioner of Administrative Services to be in the best interests of the state.

(b) Any employee who shall enter the armed forces as specified in [section 5-255](#) shall be entitled to a leave of absence without pay for the time served in such service, plus ninety additional days.

(c) Any full-time permanent employee in the state service who is a member of the armed forces of the state or of any reserve component of the armed forces of the United States and is required to undergo field training therein shall, for the period not exceeding three calendar weeks of such field training, be entitled to a leave of absence with pay in addition to his annual vacation. Nothing in this section shall be construed to prevent any such employee from attending ordered annual field training while on regularly scheduled vacation if he so desires.

(d) Any full-time permanent employee in the state service who qualifies to be a member of a team recognized by the United States Olympic Committee shall, upon written application and with the approval of his appointing authority, be entitled to a leave of absence with pay, and with his position held, for a period not exceeding ninety days after so qualifying in order to compete in Olympic games sponsored by the International Olympic Committee.

(e) When any employee has been on authorized leave of absence without his position being held and is ready to report for duty when a position is available, the Commissioner of Administrative Services shall refer the name of the employee to an appointing authority for possible reinstatement to a position in a class in which the employee has attained permanent status. The employee may be reinstated at the discretion of the appointing authority, provided no other employee has rights to the position pursuant to subsection (b) of [section 5-241](#).

(f) Any agency may reinstate, without examination, any employee who has resigned in good standing and has withdrawn his or her resignation within one year to positions in classes in which he or she has attained permanent status. A classified employee with at least five years of state service appointed to an unclassified position may be granted a leave of absence without pay from the classified service by the Commissioner of Administrative Services for such length of time as he or she shall hold such appointive position, except that no such leave of absence shall exceed two consecutive years unless such classified employee requests and is granted a renewal of such leave of absence by the commissioner.

Credits

(1967, P.A. 657, § 56, eff. June 30, 1967; 1969, P.A. 658, § 16, eff. June 27, 1969; 1972, P.A. 231, § 1, eff. May 18, 1972; 1976, P.A. 76-254, § 8, eff. June 4, 1976; 1977, P.A. 77-614, §§ 66, 67, eff. Oct. 1, 1977; 1979, P.A. 79-621, § 19, eff. July 1, 1979; 1992, P.A. 92-165, § 30, eff. June 5, 1992; 1993, P.A. 93-274, § 5, eff. June 30, 1993; 1996, P.A. 96-168, § 16, eff. July 1, 1996; 1996, P.A. 96-168, § 32, eff. June 4, 1996; 2013, P.A. 13-247, § 369, eff. July 1, 2013.)

Notes of Decisions (5)

C. G. S. A. § 5-248, CT ST § 5-248

The statutes and Constitution are current with all enactments of the 2022 Regular Session enrolled and approved by the Governor on or before May 24, 2022 and effective on or before May 24, 2022.

Regulations of Connecticut State Agencies
Title 5. State Employees
Department of Administrative Services (6)
Resignation from State Service (Refs & Annos)

Regs. Conn. State Agencies § 5-243-1

Sec. 5-243-1. Resignation from state service

Currentness

(a) Procedure to be followed:

(1) An employee in the classified service who wishes to voluntarily resign from state service in good standing shall give the appointing authority at least two working weeks notice of his resignation, except that the appointing authority may require as much as four weeks notice if the employee occupies a professional or supervisory position.

(2) Such notice is to state the last date of work.

(3) Less than the required number of working weeks notice shall be reported as a resignation in good standing only if such notice is acceptable to the appointing authority.

(4) All resignations other than as above shall be reported to the Commissioner of Administrative Services by the appointing authority as not in good standing.

(5) When a resignation is being reported as not in good standing, the appointing authority shall so notify the employee and shall also advise the employee of his right to file an appeal to the Commissioner of Administrative Services.

(b) An unauthorized absence of five or more working days may be deemed to be a resignation not in good standing.

(c) Resignations shall be reported immediately to the Commissioner of Administrative Services on a form prescribed by him. This report is to include the reason for the resignation as given by the employee.

(d) A former employee who has retired but who has not reached the mandatory retirement age and who signifies a desire to be employed may be treated as an employee who was laid off because of lack of work for purposes of rehire and be placed on the reemployment lists for all classes in which permanent status was attained.

Credits

(Added effective January 18, 1984.)

<Statutory Authority: [C.G.S.A. § 5-243](#)>

Current with material published on the CT eRegulations System through 5/24/2022. Some sections may be more current, see credits for details.

Regs. Conn. State Agencies § 5-243-1, CT ADC § 5-243-1

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DEPARTMENT OF ADMINISTRATIVE SERVICES

450 Columbus Boulevard, Suite 1501, Hartford, CT 06103

TO: Agency Heads and Agency HR Directors

DATE: November 1, 2019

RE: General Letter No. 177 - Withdrawal of Resignation or Voluntary Retirement
(Revised)

PURPOSE

The purpose of this General Letter is to delegate approval authority to the appointing authority in accordance with Sec. 5-200(a) (8) of the Connecticut General Statutes and to establish uniform procedures for rescinding a resignation and voluntary retirement. This General Letter supersedes the previous policy on this topic dated December 15, 2006.

POLICY

Effective October 1, 2018, the statutory authority to grant reemployment rights to individuals who retired voluntarily was repealed. As a result, reemployment rights are no longer provided for individuals who wish to rescind voluntary retirement. (Separation due to a voluntary retirement is herein included in a reference to "resignation".)

A resignation shall be binding on an employee upon the submission of a resignation notice to the appointing authority. It may be rescinded only in accordance with Sec. 5-248(f) of the Connecticut General Statutes. Appointing authorities may reinstate, without examination, any former employee who meets the requirements listed below. Note: Appointing authorities are under no obligation to reinstate any employee who resigned from state service. The decision to reinstate former employees rests solely with appointing authorities. When an eligible individual is rehired under a rescind of resignation, certain privileges are provided.

SCOPE

This General Letter applies to all former employees of agencies in the executive branch under the jurisdiction of the Department of Administrative Services, Statewide Human Resources Management Division (DAS SHRM).

REQUIREMENTS

To receive privileges under this General Letter, a former employee must have:

- Attained permanent status prior to resignation.
 - In the classified service (i.e., the employee successfully completed the working test period following appointment to a position in the classified service)
 - In the unclassified service in a bargaining unit (i.e., the employee successfully completed the requisite working test period under the specified labor union contract)
- Resigned from an eligible job class.
 - Training classes or other job classes in which permanent status cannot be attained due to the nature of the work are ineligible.
- Resigned from State service in good standing and with no stipulated agreement requiring the resignation to be processed as “in good standing”.
- Completed the Rescind Resignation request via the JobAps, Freenames Application, within one year from date of resignation.
- Received confirmation notice from DAS approving such request.
- Been rehired within two years from date of resignation.

RESPONSIBILITIES

Former employees shall:

- Be fully independent in and responsible for conducting their own search for reinstatement by requesting rescind privileges via the JobAps, Freenames Application.

Last employing agencies shall:

- In a timely manner, advise eligible employees who are separating state service of the rescind of resignation procedure
 - Provide instructions for completing the Rescind Resignation request via the JobAps, Freenames Application.

DAS SHRM shall:

- Review the request submitted by the former employee to ensure the former employee meets the current minimum experience and training requirements of the job class at time of review.
- Notify the employee via email through JobAps once a final determination has been made. DAS will include with this notice a completed Form CT-HR-6 if there are other classes in which the employee held permanent status.

Hiring agencies shall:

- Ensure the former employee meets the current minimum experience and training requirements of the job class prior to appointment.
- Onboard the former employees approved for reinstatement with correct salary and other terms and conditions of employment.

PROCEDURES FOR REINSTATEMENTS

Former employees who meet the above requirements submit a Rescind of Resignation request via JobAps, Freenames within one year from date of resignation.

Once former employees receive notification of approval from DAS, they may contact agencies to explore the possibility of reinstatement under this General Letter. However, in order to receive

privileges authorized under this policy, the former employee must have submitted a Rescind of Resignation request via JobAps, Freenames prior to appointment.

When an agency decides to reinstate a former employee under the rescind of resignation procedure, they onboard the employee to include indicating in the Core-CT Notepad that the appointment was made under the authority of Sec. 5-248(f) of the Connecticut General Statutes.

COMPENSATION AND OTHER BENEFITS UPON REINSTATEMENT

“Correct compensation and other benefits” for a reinstated employee means the following:

- A. If reemployed within two years following resignation (to a job class in which the employee has attained permanent status):
- 1) No examination required. Note: An individual is eligible for reinstatement without examination for two years from the date of resignation. However, the individual must meet the current minimum qualifications required of the job class at the time of his/her reinstatement.
 - 2) No working test period required.
 - 3) Established anniversary increase date is retained.
 - 4) Rate of Pay:
 - a) Appointments to the same class the employee was in prior to resignation are made at the same step in the salary group the individual was paid at the time of resignation provided permanent status had been achieved in that class. (If the employee had not attained permanent status in that class, appointment to that class cannot be made at the same step. Rather, appointment to this class requires that the employee pass an examination and be placed on Step 1 or minimum position rate.) Do not include any annual increases that occurred after his/her separation. Note: if the salary group for the employee’s classification has changed since the effective date of resignation, the employee is entitled to the same step in the new salary group (on the current pay plan). This includes when the class has been assigned to a lower salary group.
 - b) Appointments to a position in a lower salary group (in a class in which the employee previously attained permanent status) are made at the same step and salary group that the employee would have held had s/he been serving in the lower class at the time of resignation. (This calculation is similar to that of a voluntary demotion.) Do not include any annual increases that occurred after the employee’s separation.
 - c) Appointments made to positions in a higher salary group than the salary group the individual was paid in at the time of resignation (in a class in which the employee previously acquired permanent status) are made at the same step the employee was in at the time s/he left that (higher) classification. Do not include any annual increases that occurred after s/he left the (higher) classification.
 - d) Appointments made to managerial job classes in the same or higher classification in which an individual had previously acquired permanent status, are made at the same salary s/he received at the time of separation or the minimum salary amount for the particular class, whichever is greater.
 - e) Appointments to a lower managerial classification in which an individual had previously acquired permanent status are made at the salary that they would have received had they remained in the lower level position. (This calculation is similar to that of a voluntary

demotion.) Do not include any adjustments attributable to annual increases that were applied to the class after the employee's separation.

f) Appointments to a job class where an employee had not attained permanent status are made at Step 1 or the minimum rate of pay for the salary grade.

5) Vacation leave may be used as accrued because the six months of continuous requirement had previously been met. However, the rate of vacation accrual may be different if the employee is not reemployed within one year. Consult individual collective bargaining agreements for this information.

6) Credit for purposes of seniority and longevity. Consult individual collective bargaining agreements for this information.

B. If reinstated within one year following resignation:

- All of the privileges authorized above plus
- Sick leave credit will be restored in accordance with C.G.S. §5-247(b). (This is a benefit afforded all employees who leave and return to State service within one calendar year.)

C. If reinstated within the same calendar year following resignation:

- All of the privileges authorized under "A" and "B" above plus
- Unused personal leave (PL) time is credited to the employee's leave balance.
 - PL time cannot exceed three days in any calendar year. If the employee had exhausted all PL prior to resignation no PL time is to be granted until January 1.
 - For additional information regarding PL, consult individual collective bargaining contracts and General Letter No. 102.

D. If NOT reinstated within two years following resignation:

- There are no privileges provided to a former State employee who returns to State service after two years following resignation. Rather, the individual would be required to apply to job openings, serve an initial working test period, and be compensated as would an outside hire.

POST AUDIT

All transactions under this General Letter are subject to post-audit by DAS SHRM.

OTHER

Appointing authorities are responsible for the following regarding rescinding resignations and reinstatements:

- Responding to any administrative and/or legal challenges to rescinding resignations and reinstatements;
- Meeting all document retention requirements;
- Responding to all requests for information under the Freedom of Information Act (FOIA); and
- Maintaining the security and confidentiality of all rescind resignation and reinstatement materials.

Employees should direct questions concerning this policy to their agency Human Resources Office.