

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-056**

JESSICA BURTON

APPELLANT

**FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDED ORDER**

v.

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

* * * * *

This matter is before the Hearing Officer on appellee Cabinet for Health and Family Services' (the "Appellee or "CHFS") Motion to Dismiss.

The appeal last came before the Hearing Officer in a pre-hearing conference on August 8, 2024, which was held at 11:00 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Gordon A. Rowe. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The appellant herein, Jessica Burton (the "Appellant"), was present and not represented by legal counsel. The appellee herein, Cabinet for Health and Family Services ("Appellee" or "CHFS"), was present and represented by the Hon. Carmen M. Ross. Both parties appeared by telephone. (NOTE: The Hon. Blake Vogt now substitutes for the Hon. Carmen M. Ross as counsel for the Appellee.)

The Hearing Officer noted that the Appellant filed her appeal with the Personnel Board on April 30, 2024. She indicated on her appeal form that she was appealing the refusal of the Appellee to accept withdrawal of her resignation. The Appellee timely filed a Motion to Dismiss on June 18, 2024. No response was filed by the Appellant. For the reasons set forth herein, the Hearing Officer finds that the Appellee's dispositive motion is well-taken and recommends this appeal be dismissed as a matter of law.

FINDINGS OF UNDISPUTED FACTS and PROCEDURAL BACKGROUND

1. The Appellant, Jessica Burton, was a classified employee who was employed by the Appellee in its Department of Community Based Services ("DCBS").

2. The Appellant submitted her written, voluntary resignation on April 16, 2024. [See Motion to Dismiss at p.1.] The Appellant intended her resignation to be effective May 2, 2024. [See Motion to Dismiss at p.1; and see Appeal Form, attached email correspondence between J. Klein and the Appellant, dated April 30, 2024.] The resignation had no conditions for it to be final.

3. The Appellee accepted and processed the voluntary resignation on April 23, 2024, and subsequently paid the Appellant her accrued annual leave. [See Motion to Dismiss at p.2.]

4. By email dated April 30, 2024, the Appellant attempted to withdraw her resignation. [See Appeal Form, attached email correspondence between J. Klein and the Appellant, dated April 30, 2024.]

5. The Appellee refused to rescind the Appellant's resignation and informed her of the refusal by email correspondence on April 30, 2024 [See Appeal Form, attached email correspondence between J. Klein and the Appellant, dated April 30, 2024.]

6. The Appellant forwarded the email correspondence to the Personnel Board staff on April 30, 2024, and filed her appeal on that same date.

7. As described in her Appeal Form and its attachment, the Appellant stated that she was appealing the agency's refusal to accept withdrawal of her resignation.

8. During the initial pre-hearing conference on June 6, 2024, the Appellee requested a dispositive motion schedule and argued that the Board did not have authority to require the agency to rescind the letter of resignation. Following the pre-hearing conference, the Hearing Officer entered an Interim Order allowing either party to file a dispositive motion on or before June 27, 2024. The Hearing Officer also ordered that any party opposing a dispositive motion would have twenty-one (21) days after the motion was filed to submit a response.

9. Following the initial pre-hearing conference, on June 18, 2024, the Appellee timely filed a dispositive motion arguing that the Personnel Board lacked jurisdiction to hear appeals arising from a classified employee's attempt to rescind a voluntary resignation.

10. The Motion to Dismiss alleges that the Appellant was under investigation for misconduct when she tendered her voluntary resignation on April 16, 2024.

11. The Appellee's resignation was accepted with prejudice, meaning the Cabinet would not seek to reemploy her on any future registers. [See Motion to Dismiss at p.2.]

12. Despite the Interim Order allowing for the filing of a response to the Motion to Dismiss within twenty-one (21) days of June 18, 2024, no response was ever filed by the Appellant.

13. There are no material facts in dispute and this appeal can be decided as a matter of law based on the Appeal Form, the statements of the parties during the prehearing conferences, and the Appellee's Motion to Dismiss.

CONCLUSIONS OF LAW

1. A motion to dismiss should only be granted when it appears the complaining party would not be entitled to relief under any set of facts that could prove her claim. *Pari-Mutuel Clerk's Union, Local 541 v. Kentucky Jockey Club*, 551 S.W.2d 801 (Ky. 1977). In examining whether it is proper to grant such a motion, the facts must be liberally construed in favor of the complaining party and the facts alleged in the complaint document must be accepted as true. *Pike v. George*, 434 S.W.2d 626 (Ky. 1968).
2. In this appeal, there are no genuine issues of material fact. The only issue to be decided is a matter of law: whether the Appellant had the legal right to rescind her voluntary resignation.
3. It is clear the Appellant did not have the right to rescind her voluntary resignation because it had already been accepted by the Appellee and nothing in KRS Chapter 18A gives an employee the right to rescind or withdraw a resignation after it has been accepted.
4. On April 16, 2024, the Appellant voluntarily resigned from her position as a state employee. The resignation was unconditional.
5. Resignation is generally voluntary and is a choice that an employee may make after weighing each of the benefits and detriments of employment and the types of separation therefrom.
6. Once a written, voluntary resignation is submitted to an employer, the employer may accept or reject the resignation. *Searcy v. Justice and Public Safety Cabinet, Department of Corrections*, 2005 WL 6154610 at *12 (KY PB, Decided July 19, 2005).
7. If the resignation is accepted by the employer, the employee does not have the right to rescind the resignation, even if the attempted rescission occurs before the effective date of the resignation. *Redmon v McDaniel*, 540 S.W.2d 870, 872 (Ky. 1976).
8. KRS Chapter 18A neither expressly nor impliedly provides a state employee the right to rescind a resignation.
9. There is no regulation that would require the Appellee to allow the Appellant to withdraw her voluntary, unconditional resignation after its acceptance by Appellee. *See Searcy*, 2005 WL 6154610 at *12; and *see Cravens et al. v. Transportation Cabinet*, 2013 WL 3967313 at *6 (KY PB, Decided July 16, 2013). Once accepted, a voluntary resignation may not be unilaterally withdrawn by the employee. *Redmon*, 540 S.W.2d at 872.
10. The Appellee accepted and processed the Appellant's resignation on April 23, 2024.

11. The Appellant's attempt to rescind her resignation on April 30, 2024, after acceptance of the resignation on April 23, 2024, was rejected by the Appellee.

12. The Appellee was under no legal requirement to accept the attempted withdrawal of the Appellant's voluntary resignation, once the resignation had been accepted.

13. Voluntary resignation is a waiver of an employee's right to a due process hearing. *Redmon*, 540 S.W.2d at 872. Therefore, the due process hearing provided by KRS Chapter 18A to an employee dismissed for cause does not apply to Appellant.

14. Unless otherwise provided by KRS 18A, the Personnel Board does not have jurisdiction over any appeal except as authorized by KRS 18A.095. *See* KRS 18A.095(30).

15. The Personnel Board does not have jurisdiction under KRS Chapter 18A to hear an appeal of the refusal to accept withdrawal of an accepted resignation. *See* KRS 18A.095.

16. Pursuant to KRS 18A.095(16)(a), the Personnel Board "shall deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief."

17. Based on the foregoing, the Appellant has failed to state a claim upon which relief can be granted and this appeal should be dismissed as a matter of law.

RECOMMENDED ORDER

WHEREFORE, the Hearing Officer, after careful review and consideration of the Appellee's Motion to Dismiss, the Appeal Form (with attachments) and the evidence of record, recommends to the Kentucky Personnel Board that the appeal of **JESSICA BURTON V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2024-056)**, be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within fifteen (15) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. *See Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004)

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov.

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

Any document filed with the Personnel Board shall be served on the opposing party.

SO ORDERED at the direction of the Hearing Officer this 21st day of March, 2025.

KENTUCKY PERSONNEL BOARD



**GORDON A. ROWE, JR.
EXECUTIVE DIRECTOR**

A copy hereof was emailed and mailed to the following persons at their respective addresses as provided to the Personnel Board on this 21st day of March, 2025:

**Jessica Burton, Appellant
Hon. Blake Vogt, Counsel for Appellee
Hon. Rosemary Holbrook (Personnel Cabinet)**