

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2012-102**

**LINDA CARNES**

**APPELLANT**

**VS. FINAL ORDER  
SUSTAINING HEARING OFFICER'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

**TRANSPORTATION CABINET  
MIKE HANCOCK, APPOINTING AUTHORITY**

**APPELLEE**

**\*\* \*\* \***

The Board at its regular January 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated December 3, 2013, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

**SO ORDERED** this 14<sup>th</sup> day of January, 2014.

**KENTUCKY PERSONNEL BOARD**

  
\_\_\_\_\_  
**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. Edwin A. Logan  
Hon. Mary W. Sharp  
Kathy Marshall

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2012-102**

**LINDA CARNES**

**APPELLANT**

**VS.**

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

**KENTUCKY TRANSPORTATION CABINET,  
MIKE HANCOCK, APPOINTING AUTHORITY**

**APPELLEE**

\* \* \* \* \*

This matter came on for a pre-hearing conference on June 6, 2012, at 11:00 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Linda Carnes, was not present, however, she was represented by the Hon. Mary W. Sharp. The Appellee, Kentucky Transportation Cabinet, was present and represented by the Hon. Edwin A. Logan.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by Appellant, to determine the specific section of KRS 18A which authorizes this appeal, to determine the relief sought by Appellant, to define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

**BACKGROUND**

1. The Appellant, Linda Carnes, filed her appeal with the Personnel Board on April 30, 2012, alleging suspension, layoff and discrimination. Appellant specified her discrimination as being based on Sex, Disability and Age Over 40. On the appeal form, the Appellant stated she had been placed on unpaid sick leave, in spite of her treating physician's letter stating she was able to perform her full duties and that her medication did not interfere with her work. She attached a medical statement to her appeal. Also attached was a letter dated April 3, 2012, placing her on medical leave.

2. At the pre-hearing conference, counsel for the Appellant stated Appellant had been returned to work on May 3, 2012. She stated the issue for the evidentiary hearing would be the unpaid leave from April 4, 2012, through May 3, 2012. The Appellant is employed as a

Highway Equipment Operator. According to counsel for the Appellant, based on the original medical information, the Appellant was able to return to work.

3. Counsel for the Appellee stated the Appellant's physician changed her medication, which allowed her to return to work. Nonetheless, the parties agreed to review this issue and see if their clients were willing to discuss possible resolution or formal mediation. This matter was scheduled for evidentiary hearing to be conducted on September 26, 2012.

4. At the request of counsel for the Appellant, the evidentiary hearing scheduled for September 26, 2012, was cancelled, to be rescheduled at the convenience of the parties.

5. On May 17, 2013, the Appellee filed a Motion to Dismiss. The Appellee stated that the Appellant filed a charge with the Equal Employment Opportunity Commission (EEOC) based upon the same facts as set forth in her appeal to the Kentucky Personnel Board. A conciliation agreement was entered into by the parties on February 28, 2013, and approved by the EEOC Director on that date. As part of this agreement, the Appellee agreed to pay the Appellant \$3,608 in settlement of her claim, and to restore her leave in the following amounts: annual leave, 33.25 hours; sick leave, 68.50 hours; compensatory leave, 12 hours. The Appellee also agreed to post a notice to its employees and to provide ADA training for all Transportation Cabinet employees involved in the ADA accommodation process.

6. The Appellee moved for dismissal of the Personnel Board appeal for lack of subject matter jurisdiction as this matter was settled by the parties. The Appellee stated the EEOC complaint which was settled by conciliation agreement renders this Personnel Board appeal moot.

7. Although given ample time to file a response to the Motion to Dismiss, no response has been received.

### **FINDINGS OF FACT**

1. The Appellant, Linda Carnes, filed an appeal with the Personnel Board on April 30, 2012. Appellant alleged she had been placed on directed sick leave, even though she alleged that information from her physician established she could perform her job.

2. At the pre-hearing conference, the Appellant, who was alleging Sex, Disability and Age Discrimination and Agency-Directed Sick Leave, stated the issue for the evidentiary hearing would be the unpaid leave from April 4, 2012, through May 3, 2012.

3. According to the Motion to Dismiss, the Appellant filed an EEOC charge regarding the same matter. This matter was settled by a conciliation agreement, which resulted

in the Appellant receiving \$3,608. The Appellant was also restored leave balances of 33.25 hours of annual leave, 68.50 hours of sick leave, and 12 hours of compensatory leave.

4. In its Motion to Dismiss, the Appellee contended all issues alleged by the Appellant had been resolved through the conciliation agreement in the EEOC matter.

5. Although given an opportunity to respond to the Motion to Dismiss, no response has been received from the Appellant.

6. There are no material facts in dispute, and this matter can be decided as a matter of law based on the appeal form, the statements at the pre-hearing conference and the Motion to Dismiss.

### **CONCLUSIONS OF LAW**

1. KRS 13B.090(2) reads in pertinent part, "The Hearing Officer may make a recommended order in an administrative hearing submitted in written form if the Hearing Officer determines there are no genuine issues of material fact in dispute and judgment is appropriate as a matter of law."

2. KRS 18A.095(18)(a) reads in pertinent part, "The Board may deny an appeal after a preliminary hearing if it lacks jurisdiction to grant relief."

3. Based on the Findings of Fact, the matters in dispute have been resolved by the EEOC conciliation agreement, and this appeal is moot. Dismissal is appropriate under these circumstances.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **LINDA CARNES V. KENTUCKY TRANSPORTATION CABINET, (APPEAL NO. 2012-102)** 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 five (5) 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).

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

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).

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.

**ISSUED** at the direction of the **Hearing Officer** this 3<sup>rd</sup> day of December, 2013.

**KENTUCKY PERSONNEL BOARD**



**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Edwin Logan  
Hon. Mary Sharp  
Ms. Kathy Marshall