

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD

EMANUEL CRAVENS (APPEAL NO. 2012-248)

AND

MICHAEL GIBBS (APPEAL NO. 2012-249)

APPELLANTS

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

TRANSPORTATION CABINET  
MIKE HANCOCK, APPOINTING AUTHORITY

APPELLEE

\*\* \*\*

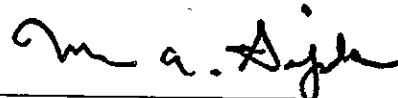
The Board at its regular July 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 30, 2013, and being duly advised,

**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 Appellants' appeals are 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 16<sup>th</sup> day of July, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Fogle  
Hon. Thomas E. Swicegood  
Kathy Marshall

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD

EMANUEL CRAVENS (Appeal No. 2012-248)

and

MICHAEL GIBBS (Appeal No. 2012-249)

APPELLANTS

VS.                    FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND RECOMMENDED ORDER

KENTUCKY TRANSPORTATION CABINET,  
MIKE HANCOCK, APPOINTING AUTHORITY

APPELLEE

\* \* \* \* \*

These consolidated matters came on for an evidentiary hearing on March 26, 2013, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellants, Emanuel Cravens and Michael Gibbs, were present at the evidentiary hearing and were represented by the Hon. Tom Swicegood. The Appellee, Kentucky Transportation Cabinet was present and represented by the Hon. William Fogle. Also appearing as agency representative was Ms. Jennifer Woods. Observing was Ms. Carol Beth Martin.

The Appellants filed their appeals with the Personnel Board on October 31, 2012. Both Appellants indicated the penalization which allegedly occurred was "refusal to rescind resignation." On or about September 25, 2012, the Appellants had both resigned their positions with the Transportation Cabinet, and on that same day had attempted to rescind their resignations, but were not allowed to do so. The Appellants contend this violates the Transportation Cabinet procedure which they identified in their appeals.

None of the parties had an objection to the consolidation of these appeals on all issues. As relief, the Appellants seek to be restored to their positions with back pay.

The issue for the evidentiary hearing in these consolidated appeals shall be whether the Appellants were penalized when the Transportation Cabinet refused to rescind their resignations, and whether such violated the Transportation Cabinet's internal GAP policy identified in the Appellants' appeal forms. The Appellants shall have the burden of proof, which is by a preponderance of the evidence, to demonstrate they were penalized when the Transportation Cabinet refused to rescind their resignations and to demonstrate that the appropriate relief would be restoration to their positions with back pay. As the parties having the burden of proof, the Appellants shall proceed first in the presentation of evidence.

The Hearing Officer notes counsel for the Appellants did not challenge having the burden of proof which was assigned at the pre-hearing conference.

#### **SUMMARY OF TESTIMONY**

1. As the party having the burden of proof, the first witness called for the Appellants was **Appellant Emanuel "Dennie" Cravens**. Mr. Cravens was sworn and gave the following summarized testimony.

2. Appellant Cravens stated he had resigned from his position with the Transportation Cabinet because he was upset with how an investigation was being conducted, and he believed he was being unfairly treated; the investigation apparently focusing on whether Appellant was performing the work he said he was. Appellant had requested an exit interview form on September 25, 2012, and filled it out. (Hearing Officer Note: The "exit interview form" referred to was admitted for Appellant Cravens as Appellee's Exhibit 1 and is actually titled "Exit Interview or Voluntary Separation Notification" and is a Transportation Cabinet form.) Appellant later wanted to rescind what he had done, stating that when he had read the heading on the form which said exit interview, he thought he would have an actual interview before the resignation was processed.

3. When Appellant attempted to rescind the resignation, he was told that it was too late, that it had already been processed.

4. Appellant Cravens stated that others had, in the past, had time to change their minds, but that he did not. Appellant Cravens stated he had turned his exit interview form in (the "Exit Interview or Voluntary Separation Notification" form) that morning, the Hearing Officer understanding, being September 25, 2012, the date reflected on the form. It went to Human Resources by 11:30 a.m., but when he tried to rescind it about three hours later, it had already been processed and was too late to rescind. Appellant Cravens stated he believed he was treated differently because the time from when he turned in his resignation form to it becoming final and irreversible was only three hours; that in his experience with the state, nothing was done in three hours.

5. On cross-examination, the Appellee introduced into evidence Appellee's Exhibit 1, which was Appellant Cravens' "Exit Interview or Voluntary Separation Notification" form. On questioning by counsel for the Appellee, Appellant Cravens stated that he was told when he attempted to rescind the resignation that it had already been accepted by the appointing authority.

6. On re-direct, Appellant Cravens stated that the form was actually turned in on the morning of September 26, 2012, through his supervisor to Human Resources.

7. The next witness to testify for the Appellants was **Appellant Michael "Tommy" Gibbs**. Appellant Gibbs was properly sworn and offered the following summarized testimony.

8. Appellant Gibbs had worked for the Transportation Cabinet for more than 13 years before he resigned in September 2012. Appellant Gibbs was aware there was an ongoing investigation into allegations against him, and was advised he might not get paid for his accumulated leave time or overtime, so he resigned. Appellant Gibbs stated he thought he had 10 days to stop the resignation, and in 13 years everyone else who had resigned had until the last day to change their mind, and he was never aware of a rescission being refused before 10 days had passed.

9. Appellant Gibbs agreed with his attorney on direct examination, that he thought he had 10 working days to rescind his resignation based on past custom and practice.

10. Appellant Gibbs stated he had never been written up while at the Transportation Cabinet, and his evaluations were all outstanding.

11. On cross-examination, counsel for the Appellee questioned Appellant Gibbs about Appellee's Exhibits 3 and 4, which were the "Exit Interview or Voluntary Separation Notification" form filled out by Appellant Gibbs and also the e-mail where he had attempted to rescind his resignation.

12. Upon conclusion of the Appellants' case, the Appellee made a motion for directed verdict, contending that the Appellants' case must fail as they had proven nothing other than that they resigned and that the attempted rescission of their resignations did not come in time to stop the actions. The motion was overruled.

13. The Appellee called as its first witness **Ms. Jennifer Woods**. Ms. Woods was sworn in and offered the following summarized testimony.

14. Ms. Woods stated she is District Administrative Coordinator for District 5 in Louisville, and as such oversees the payroll and administrative branch in that office. Ms. Woods stated she was aware of the OIG investigation into the Appellants and knew no more than that. Ms. Woods testified, viewing Appellee's Exhibit 1 relative to Appellant Cravens' resignation and Appellee's Exhibit 3 relative to Appellant Gibbs' resignation, that Sondra Seibert, an employee working under her supervision at District 5, had forwarded Appellant Cravens' form to Transportation Cabinet central office in Frankfort on September 25, 2012, at 3:36 p.m., and had forwarded Appellant Gibbs' form to Transportation Cabinet central office in Frankfort on September 25, 2012, at 10:48 a.m.

15. Ms. Woods reviewed Appellee's Exhibit 2 relative to Appellant Cravens and Appellee's Exhibit 4 relative to Appellant Gibbs, noting that Appellant Cravens had e-mailed her on September 26, 2012, at 2:18 p.m., requesting to rescind his "exit interview request," and that Appellant Gibbs had e-mailed her on September 26, 2012, at 2:19 p.m., requesting to rescind his "exit interview request."

16. Ms. Woods stated she forwarded these rescission requests to Beth Holbrook in the Transportation Cabinet central office in Frankfort and copied Matt Bullock, her supervisor. This occurred within minutes of her having received these

rescission requests. This document reflecting this e-mail was introduced as Appellee's Exhibit 5. Ms. Woods testified that Beth Holbrook is essentially their liaison for District 5 when dealing with personnel issues with the central office. Ms. Holbrook's response is part of Exhibit 5, and Ms. Woods testified it was her understanding from that response that the resignations could not be rescinded, as they had been finalized and processed in the KHRIS system.

17. Ms. Woods concluded by saying that the resignations of Appellant Cravens and Appellant Gibbs were handled no differently than any others in the district.

18. On cross-examination, counsel for the Appellant questioned the apparent difference between what GAP-205-6 states in numerical paragraph 4 under "Resignation Procedures" which states as follows:

Upon receipt of an employee's notice of resignation and subsequent request to have it rescinded, the supervisor is to make a concerted effort to determine whether the resignation has become official, and if possible, honor the employee's request to have the resignation rescinded. The supervisor can obtain this information from the Division of Personnel Services.

19. Counsel for the Appellants, in referring to Appellee's Exhibit 5, noted Ms. Holbrook's language, where she stated, "it is KYTC policy that once a retirement/resignation is submitted in good faith and received by this office, it is 'accepted' by the Cabinet and cannot be rescinded by the employee." Ms. Woods stated she handled the exit interview requests by the Appellants no differently than any others in the district, and she could not speak to Cabinet policy other than to note what it said.

20. The next witness for the Appellee was **Ms. Tresa Straw**, Deputy Executive Director of the Office of Human Resource Management within the Transportation Cabinet. Upon being properly sworn, Ms. Straw offered the following summarized testimony.

21. Ms. Straw stated she had worked in state government for 16 years and in personnel the whole time. Ms. Straw offered testimony as to how resignations are

handled in general and specifically how the resignations of Appellants Cravens and Gibbs proceeded through the KHRIS system. Appellee's Exhibits 6 and 7 were introduced through her testimony. The document reflected that the resignation or separation of Appellant Cravens was completed on September 26, 2012, at 10:41 a.m., and the resignation for Appellant Gibbs was completed on September 25, 2012, at 5:49 p.m. Upon conclusion of Ms. Straw's testimony, the Appellee rested.

22. **Appellant Emanuel Cravens** was recalled on rebuttal. Appellant Cravens reiterated on rebuttal that he turned in his "Exit Interview or Voluntary Separation Notification" form on the day after Appellant Gibbs had turned his in. Appellant Cravens had earlier testified this date was September 26, 2012, and it was uncontested that Appellant Gibbs had turned his form in on September 25, 2012. Appellant Cravens stated his supervisor, Ryan Gossom, had picked the form up after he had turned it in on the morning of September 26, 2012, and had taken it to the district office, so it would not have arrived at the district office until sometime before lunch on September 26, 2012.

23. Subsequent to the record being closed, but before the parties had left the offices of the Personnel Board, counsel for the Appellant advised the Hearing Officer he had been notified by **Appellant Michael Gibbs** of a matter which needed to be addressed. The Hearing Officer allowed Appellant Gibbs to be called as a rebuttal witness at that time over the objection of counsel for the Appellee.

24. Appellant Gibbs offered testimony regarding what was admitted as Appellant's Exhibit 2 over the objection of the Appellee. The Hearing Officer notes Appellant's Exhibit 2 appears to be a notification from the Personnel Cabinet of Appellant Gibb's separation from state government.

### **FINDINGS OF FACT**

1. During the relevant times, Appellants Emanuel "Dennie" Cravens and Michael "Tommy" Gibbs were classified employees with status. The Appellants had been under investigation by the Transportation Cabinet for allegations which were never fully made clear at this evidentiary hearing, but which Appellant Cravens intimated may have been related to whether or not he had performed the work for which he had claimed payment.

2. Both Appellants testified that it had been suggested or advised that they resign, with Appellant Gibbs stating the advice even concerned whether he might receive pay for overtime and other leave time he had accumulated. It was not stated who had provided this "advice." In any event, the Appellants both submitted resignations on forms which are entitled "Exit Interview or Voluntary Separation Notification." These are admitted as Appellee's Exhibits 1 and 3 for Appellant Cravens and Gibbs, respectively. Both forms bore a date a September 25, 2012, when they were signed by the Appellants, with an effective date of separation listed as "10-10-12." Both Appellants listed as reasons for filling out these forms and submitting them in the "Separation Reasons & Remarks" section were "Better Job, Private Industry."

3. The Hearing Officer finds that the Appellants did submit these forms and they were received by Ms. Jennifer Woods, the District 5 Administrative Coordinator, on September 25, 2012. This is reflected in that Ms. Woods forwarded Appellant Gibbs' exit interview form on September 25, 2012, at 10:48 a.m., and Appellant Cravens' exit interview form on September 25, 2012, at 3:36 p.m.

4. The Hearing Officer finds that Sondra Seibert, who works for Ms. Woods, had submitted these forms on September 25, 2012, at the times indicated above to the Transportation Cabinet's central office in Frankfort where they were processed by Beth Holbrook who, as Ms. Woods testified, is District 5's Personnel Liaison in the Transportation Cabinet.

5. The Hearing Officer finds that these forms, which were the resignations of the Appellants, were processed expeditiously with the processing being completed for Appellant Cravens on September 26, 2012, at 10:41 a.m. (as represented by Appellee's Exhibit 6), and for Appellant Gibbs on September 25, 2012, at 5:49 p.m. (as represented by Appellee's Exhibit 7).

6. The Hearing Officer thus finds that when the Appellants attempted to rescind their resignations on September 26, 2012, at 2:18 p.m. and 2:19 p.m. as represented by Appellee's Exhibits 2 and 4, and as further represented by Ms. Woods' forwarding those rescission requests as represented by Appellee's Exhibit 5, that such attempts were in vain as the resignations had already been accepted, completed and processed through the Personnel Cabinet.



7. The Hearing Officer is aware of counsel for the Appellants' argument that fundamental fairness, and strict adherence to Appellant's Exhibit 1 would require that some period of time be given for a rescission request to percolate, but such did not occur here.

8. While the Hearing Officer finds it very believable and not at all surprising that the Appellants might have had a change of mind and would have wanted to rescind their resignations, the speed with which they were accepted rendered such rescission requests moot. Even though, as Appellants' counsel argues, the policy reflected in Appellants' Exhibit 1, GAP-205-6, and reprinted above, appears to require the agency to make a "concerted effort" to determine if the resignation can be rescinded, such attempt made when the Appellants tried was fruitless because the resignations had been processed and were final. Thus the Hearing Officer finds that the Appellee did comply with GAP-205-6 when Ms. Jennifer Woods passed along the Appellants' rescission requests and was told that such was not doable as the actions had already been processed.

### **CONCLUSIONS OF LAW**

1. The Hearing Officer concludes as a matter of law that the Appellants submitted resignations using the "Exit Interview or Voluntary Separation Notification" form and that such submission complied with the requirements set forth in Appellant's Exhibit 1. The Hearing Officer concludes this knowing full well that the resignations were processed perhaps more quickly than normal; that such does not violate the GAP policy of the Transportation Cabinet or any other policy, regulation or statute of which the Hearing Officer is aware.

2. The Hearing Officer concludes that Appellants were not treated unfairly in this process, as it is undisputed the Appellants were under investigation and may have resigned voluntarily in order to avoid further investigation or possible disciplinary proceedings and received the benefit of such resignation. Obviously had the investigation concluded and disciplinary action been recommended, the Appellants may not have been able to retain their leave balances had they been dismissed.

3. The Hearing Officer concludes that though the Appellants attempted to rescind their resignations, such attempts were not timely enough as the testimony and Appellee's Exhibits were clear that the resignations had already been processed to finality. This is not to say that the agency could not have undone the resignations had it so desired, but that would have been at its discretion. Again, without knowing the specifics or many of the details, if any, of the investigation which had been undertaken against the Appellants, it may have well been the Appellee was somewhat reluctant to undo the resignations of the Appellants under such circumstances.

4. The Hearing Officer concludes the Appellants were not treated unfairly in this process and that the policy set forth at GAP-205-6 was complied with.

#### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the consolidated appeals of **EMANUEL CRAVENS V. KENTUCKY TRANSPORTATION CABINET (APPEAL NO. 2012-248)** and **MICHAEL GIBBS V. KENTUCKY TRANSPORTATION CABINET (APPEAL NO. 2012-249)** 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).

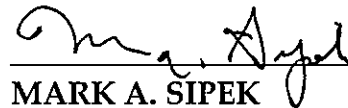
**Any document filed with the Personnel Board shall be served on the opposing party.**

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 **Hearing Officer Boyce A. Crocker** this 30<sup>th</sup> day of May, 2013.

**KENTUCKY PERSONNEL BOARD**



**MARK A. SIPEK  
EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. William Fogle  
Hon. Tom Swicegood  
Ms. Kathy Marshall