

BACKGROUND

1. During the relevant times, the Appellant was a classified employee with status.
2. In its Motion to Dismiss, the Appellee contends that the Appellant, having appealed being placed on special investigative leave, has no standing to pursue that appeal, having subsequently resigned her classified position.
3. The Appellee further contends that “Moreover, as set forth above, the Appointing Authority determined that there was reason to believe that Appellant Gallagher had engaged in misconduct justifying dismissal. Gallagher failed to request a pre-termination hearing, as was her right, instead choosing to resign.”
4. As noted, the Appellant did not file a response to the motion to dismiss.
5. KRS 18A.095(18)(a) states:

The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.

FINDINGS OF FACT

1. During the relevant times, the Appellant was a classified employee with status.
2. The Hearing Officer finds it uncontested that the Appellant executed a resignation on October 15, 2012.
3. The Hearing Officer finds that the Appellant had been served with an intent to dismiss letter by the Appointing Authority on or about October 5, 2012.
4. The Hearing Officer finds that the Appellant forfeited any right to an appeal, of having been placed on special investigative leave by subsequently resigning her position after having received the intent to dismiss letter.

5. The Hearing Officer finds that the Personnel Board lacks jurisdiction to grant relief, due to the Appellant having cut off any possible meaningful relief which could be afforded by having resigned.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that pursuant to KRS 18A.095(18)(a) the Personnel Board lacks jurisdiction to grant relief on Appellant's claim of having been placed on special investigative leave due to her subsequent resignation. The appeal must fail.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **TAMMY GALLAGHER V. TRANSPORTATION CABINET, (APPEAL NO. 2012-212)** 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 _____ day of
January, 2013.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day faxed and mailed to:

Hon. William Fogle
Ms. Tammy Gallagher