COMMONWEALTH OF KENTUCKY PERSONNEL BOARD APPEAL NO. 2012-212

TAMMY GALLAGHER

VS.

APPELLANT

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 March 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 31, 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 _____ day of March, 2013.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Fogle Tammy Gallagher Kathy Marshall

COMMONWEALTH OF KENTUCKY PERSONNEL BOARD APPEAL NO. 2012-212

TAMMY GALLAGHER

APPELLANT

VS.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER

TRANSPORTATION CABINET, MIKE HANCOCK, APPOINTING AUTHORITY

APPELLEE

* * * * * * * * * *

This matter came on for a pre-hearing conference on November 28, 2012, at 10:00 a.m. ET, at 28 Fountain Place, Frankfort, KY, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant Tammy Gallagher was present and not represented by legal counsel. Appellee Transportation Cabinet was present and represented by the Hon. William Fogle.

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

The Appellant filed her appeal on September 21, 2012, appealing the Appellee's decision to place her on special leave for investigatory purposes, by letter dated August 20, 2012. Since that time, the Appellant has been provided with an intent to dismiss letter. Upon receipt of the intent to dismiss letter, the Appellant resigned her position. The Appellant was instructed that if she wished to appeal any of the actions, she would need to file an additional appeal.

The Appellee requested time in which to file a Motion to Dismiss, and the Appellant was given time to file a response.

The Appellee filed a Motion to Dismiss on November 29, 2012. The Appellant, although given ample time in which to file a response, has not done so. The matter stands submitted to Hearing Officer Boyce A. Crocker for a ruling on Appellee's motion to dismiss.

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.

Tammy Gallagher Page 4

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.

Tammy Gallagher Page 5

Tammy Gallagher Page 6

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