

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-181

DEBORAH HARRIS

APPELLANT

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

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This matter came on for a pre-hearing conference on December 3, 2019, at 11:00 a.m. EDT, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Deborah Harris, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Brent Irvin.

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

BACKGROUND

1. The Hearing Officer notes this appeal was filed with the Personnel Board on August 26, 2019. On the appeal form and during the pre-hearing conference the Appellant, formerly a classified employee with status, indicated she was alleging a penalization in that her resignation from state service was accepted "with prejudice." The Appellant further explained her claims in the narrative portion of the appeal form wherein she states, in full:

I am writing to appeal my resignation being accepted "with prejudice."
I wish to have this removed from resignation. Please see the enclosed statement incorporated by reference.

2. The Appellee requested an opportunity to file a Motion to Dismiss. This matter is now submitted to Hearing Officer Mark A. Sipek for ruling on the Appellee's Motion to Dismiss.

FINDINGS OF FACT

1. The Appellant was issued an Intent to Dismiss Letter from her position as a Social Service Clinician I on February 12, 2019.
2. The Appellant submitted a resignation from her position on February 18, 2019, stating it was due to health reasons.
3. The Appellant's resignation was accepted with prejudice because she resigned after having been issued an Intent to Dismiss Letter. The Appellant was provided written notice that her resignation was accepted, with prejudice, on February 19, 2019.
4. The Appellee filed a Motion to Dismiss alleging that the Personnel Board does not have jurisdiction to hear this appeal because the Appellant was not an employee at the time she filed the appeal.
5. The Appellant stated she resigned due to stress. She will be able to seek future employment with the Agency if the "with prejudice" designation is removed from her resignation.

CONCLUSIONS OF LAW

1. The Appellant has failed to allege a penalization. She has not disputed any of the facts. She resigned when the Intent to Dismiss Letter was pending against her. Pursuant to 18A.032(1)(h), the Appellee was permitted to accept her resignation with prejudice.
2. The fact that the Appellant resigned due to health issues does not change the fact that an Intent to Dismiss Letter was pending against her.
3. There are no material facts in dispute. This matter may be decided as a matter of law based on the Appellee's Motion to Dismiss, the appeal form, and the statements of the parties at the pre-hearing conference. KRS 18A.095(18)(a) and KRS 13B.090(2).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **DEBORAH HARRIS V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2019-181)** 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 Mark A. Sipek**, this 8 day of September, 2021.

KENTUCKY PERSONNEL BOARD



**MARK A. SIPEK
EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Brent Irvin
Deborah Harris
Hon. Rosemary Holbrook (Personnel Board)