

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NOS. 2014-006 AND 2014-034

KRISTEN HOEHNER

APPELLANT

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

**CABINET FOR HEALTH AND FAMILY SERVICES
J.P. HAMM, APPOINTING AUTHORITY**

APPELLEE

** ** *

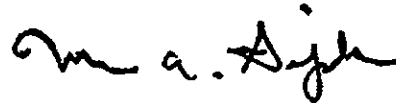
The Board at its regular September 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated July 25, 2014, and being duly advised,

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 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 17th day of September, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Rebecca Wooldridge
Kristen Hoehner
J. P. Hamm

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PERSONNEL BOARD
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VS.

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These matters came on for a pre-hearing conference on March 28, 2014, at 9:30 a.m., ET, 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 Appellant, Kristen Hoehner, was present by telephone and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Rebecca Wooldridge.

The Hearing Officer notes Appeal No. 2014-006 was filed with the Personnel Board on January 10, 2014. The Appellant stated she had lost her "flex Fridays" (a flexible working schedule with Fridays off, as the Hearing Officer understands it). Appellant questioned this, stating she had the same job responsibilities as investigators would, and that the only flex day she could have was Friday due to her responsibilities for frequent appearances in court on other work days. The Appellant closed that appeal by stating, "I feel I am being unfairly treated."

The Appellant also attached numerous documents, including e-mails, grievance, and responses to her grievance to the appeal.

The Appellant also filed Appeal No. 2014-034 on February 27, 2014. Appellant checked the box for Other Penalization, and in the appeal stated she believed she was being retaliated against for having filed a grievance, and was also appealing the decision to take away her flex Fridays. The Appellant stated she did not feel safe, and "My request for transfer to another team was denied."

The Appellant made clear she did not feel physically unsafe at work, that is, that she would be assaulted or suffer some other immediate physical harm, but rather felt the atmosphere and environment of the job site had changed, certainly since she had filed the grievance. The Appellant acknowledged she had typed a statement regarding specifics as to her claim of retaliation, and would share those with counsel for the Appellee.

The Hearing Officer broached the idea of mediation; the Appellant did not indicate an interest in mediation at this time, and counsel for the Appellee stated she did not have the authority to accept mediation. The Hearing Officer encouraged the parties to keep an open mind regarding mediation, and the many advantages it offers.

Appellant specifically asked on the record whether the Hearing Officer or the Board had the authority to enter what the Hearing Officer interprets would be emergency or injunctive relief which would transfer the Appellant away from the supervision of Christy Atkinson. The Hearing Officer informed the Appellant he did not believe either as a Hearing Officer, or the Board, had the authority to order such relief before an evidentiary hearing had been held. However, the Hearing Officer did make clear to counsel for the Appellee on the record (and wanted this message transmitted clearly) that it would be illegal to retaliate against the Appellant for having pursued her rights to file an appeal with the Personnel Board or to have filed a grievance.

Counsel for the Appellee noted she had prepared a Motion to Dismiss as to certain of the claims raised by the Appellant, and would be filing that forthwith, which was done subsequent to the pre-hearing conference. The Hearing Officer set a briefing schedule, with time for the Appellant to respond and for the Appellee to reply, if desired.

These appeals are now before Hearing Officer Boyce A. Crocker for a ruling on Appellee's two motions to dismiss. Though given ample time in which to file responses to both motions to dismiss, Appellant did not file any responses. [**Hearing Officer Note:** Although these appeals were not consolidated, due to the nature of the appeals, the Hearing Officer will resolve them with one order.]

BACKGROUND

1. During the relevant times, Appellant, Kristen Hoehner, was a classified employee with status.
2. In its first Motion to Dismiss, Appellee contends that Appellant's request for an appeal was untimely and did not state a claim for which relief could be granted pursuant to KRS 18A.095.

3. As to the claim by Appellee that Appellant has not made any allegations upon which relief could be granted, counsel notes that Appellant is essentially appealing her flex-time having been changed and that Fridays would no longer be an option for flex days.

4. In addition, Appellee contends that based on the language of the Grievance Form itself that Appellant would have sixty (60) days from when she would have been aware of the action and thus had filed her appeal late.

5. On the Second Motion to Dismiss filed by Appellee on May 22, 2014, counsel notes that Appellant had resigned from her employment with the Cabinet for Health and Family Services effective April 30, 2014, and, therefore, no remedy is available to address Appellant's complaints regarding either loss of Friday flex-days or Appellant's claims raised in Appeal No. 2014-034 and subsequent retaliation. As noted at the pre-hearing conference, Appellant had given voice to her feeling that the atmosphere and environment of the job had changed, especially since she had filed the grievance. Appellant stated she would type a statement regarding specifics of her claim of retaliation. To his knowledge, the Hearing Officer notes this was never done.

6. As noted, though given time in which to have done so, Appellant did not file a response to either Motion to Dismiss.

7. 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, Appellant, Kristen Hoehner, was a classified employee with status.

2. The Hearing Officer finds that Appellant had resigned her employment in April 2014. The Hearing Officer takes notice of Appellee's Exhibit A [attached hereto as **Recommended Order Attachment A**] of its Second Motion to Dismiss, which is an e-mail sent to various officials including the Executive Director of the Personnel Board in which Appellant made clear she was leaving her position due to lack of response to her claims of retaliation.

3. The Hearing Officer finds that Appellant, having resigned her position, leaves the Personnel Board with no ability or authority to grant relief as to any claims she had made, essentially mooted these appeals. The Personnel Board is powerless to review Appellant's request for a flex schedule now that she is no longer an employee. The Appellant never provided specifics regarding her retaliation claim.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that pursuant to KRS 18A.095(18)(a) there is no jurisdiction on the part of the Personnel Board to grant relief by Appellant having resigned, that this matter must be dismissed.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeals of **KRISTEN HOEHNER VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NOS. 2014-006 AND 2014-034)** 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).

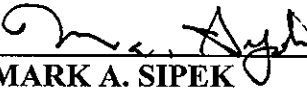
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

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

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 25th day of July, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Rebecca Wooldridge
Kristen Hoehner

Wooldridge, Rebecca (CHFS OLS)

From: Stamps, Jackie (CHFS DCBS JSR Jefferson)
Sent: Wednesday, April 02, 2014 10:02 AM
To: Wooldridge, Rebecca (CHFS OLS)
Subject: FW: resignation

Importance: High

From: Hoehner, Kristen (CHFS DCBS JSR Jefferson)
Sent: Wednesday, April 02, 2014 10:01 AM
To: Sullivan, Leigh (CHFS DCBS JSR Jefferson); Atkinson, Christie (CHFS DCBS JSR Jefferson); Stamps, Jackie (CHFS DCBS JSR Jefferson); Linder, Bruce (CHFS DCBS DSR)
Cc: Sipek, Mark (Personnel Board)
Subject: resignation
Importance: High

To Whom It May Concern:

This letter serves as official notice that I will be leaving my position with the state effective April 30, 2014. Giving 30 days is being done out of respect for the courts, who count on me to provide needed assessments. In my 13 years with the state, I have never encountered a more hostile environment than I have in the last 6 months. I have done everything in my power to seek resolution and assistance from management to no avail. My emails have been ignored, making it clear that I'm not a priority, and that regardless of the evidence provided to support my claims of retaliation, nothing will be done to protect me.

In all my years with the state, I have never had any disciplinary action, nor any complaints from clients, families, court personnel, or community partners. I have stayed despite loss of raises, flexing, and furloughs, and management and unit changes, for no other reason other than I love my job and my relationships with my coworkers and the courts. It is beyond devastating that I'm forced to give that up because management turns a blind eye to the ongoing situation. Asking me to wait for a personnel board hearing in August is preposterous. I can't be asked to continue to work in a hostile environment until then, knowing the physically and mental anguish it has caused me up to this point.

Kristen Hoehner

Recommended Order Attachment A

