

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-185

STACY JOHNSON

APPELLANT

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 January 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated November 25, 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 14th day of January, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Fogle
Stacy Johnson
Kathy Marshall

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-185**

STACY L. JOHNSON

APPELLANT

**V. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**KENTUCKY TRANSPORTATION CABINET,
MIKE HANCOCK, APPOINTING AUTHORITY**

APPELLEE

** ** *

This matter came on for an evidentiary hearing on November 5, 2013, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Stacy L. Johnson, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Kentucky Transportation Cabinet, was present and represented by the Hon. William Fogle. Also appearing as agency representative was J. R. Dobner.

This matter involves Appellant's claim that he was constructively discharged, following a failed drug test, after which he was forced to make an immediate decision whether to resign or be fired.

The burden of proof was upon the Appellant by a preponderance of the evidence, to show he was penalized through a constructive discharge by the Appellee.

BACKGROUND

1. Appellant, Stacy L. Johnson, called himself as his first and only witness. He testified he works for the Appellee in the District 8 office in Somerset, Kentucky, and has done so for the past seven years. He stated he has been employed by the Commonwealth in excess of 24 years.

2. Appellant explained that on Friday, June 28, 2013, he was given notice he had failed a random drug test. Upon returning to work on the morning of Monday,

July 1, 2013, he was told he would either have to resign or termination proceedings would begin. He stated he talked with an employee of the Kentucky Employee Assistance Program (KEAP) on Friday after he received the notice, but received no satisfactory answers.

3. When Appellant returned to work on Monday, July 1, 2013, Supervisor Dan Engle accompanied him to the District 8 office where he spoke with Kenny Isaacs. Mr. Isaacs presented the resignation paper to him and told Appellant he could sign this or termination would begin.

4. On cross-examination, the Appellant admitted he failed the drug test. He also admitted he had the time period from Friday, June 28, 2013, through Monday, July 1, 2013, in which to decide what to do. Appellant also stated no one forced him to sign the resignation documents (Appellee's Exhibit 1.)

5. On re-direct, the Appellant not only admitted he made a mistake in failing the test, but insisted that as a 24-year employee of the Commonwealth, he had no prior disciplinary action and was a good employee. No corroboration as to these claims was submitted. The Appellant stated he understood he had been resigned with prejudice and could not be re-employed by the Transportation Cabinet. However, he stressed he would like to have a chance to be employed somewhere else in state government.

6. At the conclusion of the testimony, the Appellee moved for a directed verdict, arguing that none of the circumstances outlined herein constitute grounds for a constructive discharge. Appellee additionally argued that the foundation of such a charge is generally where the workplace environment is so intolerable that a reasonable person has no choice but to resign, rather than stay on the job.

Applicable Laws and Regulations:

7. KRS 13B.090(2) states, in pertinent part:

...The hearing officer may make a recommended order in an administrative hearing submitted in written form if the hearing officer determines there are no genuine issues of material fact in dispute and judgment is appropriate as a matter of law.

FINDINGS OF FACT

1. The Appellant, Stacy L. Johnson, admittedly failed a random drug test and was notified such failure on Friday, June 28, 2013.

2. Upon return to work on Monday, July 1, 2013, the Appellant was advised that he had the choice of resigning with prejudice or face termination proceedings for cause.

3. After a period of approximately three days in which to consider his options, the Appellant signed the resignation paper on Monday, July 1, 2013, citing as the reason, "personal."

4. There is no genuine issue of material fact in dispute.

CONCLUSIONS OF LAW

1. The Appellant has failed to carry his burden by a preponderance of the evidence to show that being presented with a choice to resign or face termination proceedings for cause constituted a constructive discharge.

2. The Appellee's Motion for a Directed Verdict should be **GRANTED**.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **STACY L. JOHNSON V. KENTUCKY TRANSPORTATION CABINET, (APPEAL NO. 2013-185)** 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).

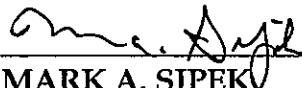
Any document filed with the Personnel Board shall be served on the opposing party.

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 R. Hanson Williams** this 25th day of November, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. William Fogle
Mr. Stacy Johnson
Ms. Kathy Marshall