

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-042**

**JAMES KINNAIRD**

**APPELLANT**

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

**FINANCE AND ADMINISTRATION CABINET  
LORI H. FLANERY, APPOINTING AUTHORITY**

**APPELLEE**

**\*\* \*\* \***

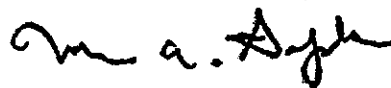
The Board at its regular September 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 20, 2014, and being duly advised,

**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 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 17<sup>th</sup> day of September, 2014.

**KENTUCKY PERSONNEL BOARD**



**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. Cary Bishop  
James Kinnaird  
Honor Barker

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-042**

**JAMES E. KINNAIRD**

**APPELLANT**

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

**FINANCE AND ADMINISTRATION CABINET,  
LORI H. FLANERY, APPOINTING AUTHORITY**

**APPELLEE**

\*\* \*\* \*

This matter came on for an evidentiary hearing on July 8, 2014, 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, James E. Kinnaird, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Finance and Administration Cabinet, was present and represented by the Hon. Cary B. Bishop.

This matter involves the Appellant having been terminated from employment by virtue of being officially "resigned" from his position as a Network Analyst III in the Finance and Administration Cabinet. A copy of the "resignation" letter is attached as **Recommended Order Attachment A**.

The burden of proof was placed upon the Appellee to show that the action taken was appropriate under all surrounding circumstances and was neither excessive nor erroneous.

**BACKGROUND**

1. The Appellee's first witness was **Honor Barker**. She has been the Director of the Human Resources Division within the Finance and Administration Cabinet since May 2013. She introduced Appellee's Exhibit 1, a letter dated December 26, 2013, advising the Appellant that he was "resigned" pursuant to 101 KAR 2:102, Section 10(3), by virtue of having been absent without leave or notice to the supervisor for a period of ten working days. Barker testified this letter was sent to the Appellant on December 26, 2013, by both regular and certified mail. To her knowledge, there had been no notice given by the Appellant to his supervisor, Gerald Hedrick, between December 10 and December 26, 2013.

2. Barker explained that the Appellant contacted her by telephone on January 14, 2014. In this conversation, the Appellant told her that he had epilepsy, which had caused seizures. However, no medical documentation of this condition was ever provided to her. In fact, Barker explained that the Appellant informed her that he was not going to see a physician, as he would almost certainly lose his driver's license. Also, the Appellant gave no explanation to Barker as to why he had failed to give notice to his supervisor.

3. The Appellee's next witness was **Gerald Hedrick**. He has been employed at the Finance and Administration Cabinet as a colleague of the Appellant the previous seven years. The immediate past three years, Hedrick was the first-line supervisor of the Appellant.

4. Hedrick testified that although he worked approximately 25 feet away from the Appellant, he never saw him between December 10 and December 26, 2013. In addition, he received no notice from the Appellant explaining his absence. He stated he received a text on December 19, 2013, from the Appellant stating, "Call me." Hedrick tried to call the Appellant, but was unable to reach him.

5. Following the testimony of these two witnesses, the Appellant then announced that he conceded and wished to have this concession treated as a withdrawal of his appeal by the Hearing Officer. The Hearing Officer then **GRANTED** the Appellant's request for withdrawal.

### **FINDINGS OF FACT**

1. The Appellant, James E. Kinnaird, was absent from work without notice between December 10 and December 26, 2013. He offered no explanation to anyone as to the reason for his absence.

2. 101 KAR 2:102, Section 10(3) states:

An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be deemed resigned.

3. At the conclusion of the hearing, the Appellant announced he was withdrawing his appeal.

### **CONCLUSION OF LAW**

The Hearing Officer concludes as a matter of law that the Appellee properly officially resigned the Appellant from his position pursuant to 101 KAR 2:102, Section 10(3).

**RECOMMENDED ORDER**

Based upon the Appellant's withdrawal of his appeal, the Hearing Officer recommends to the Personnel Board that the appeal of **JAMES E. KINNAIRD V. FINANCE AND ADMINISTRATION CABINET, (APPEAL NO. 2014-042)** 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 20<sup>th</sup> day of August, 2014.

**KENTUCKY PERSONNEL BOARD**



**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Cary Bishop  
Mr. James E. Kinnaird



Commonwealth of Kentucky  
FINANCE AND ADMINISTRATION CABINET  
OFFICE OF ADMINISTRATIVE SERVICES

STEVEN L. BESHEAR  
Governor

DIVISION OF HUMAN RESOURCES  
Room 388, New Capitol Annex  
Frankfort, Kentucky 40601  
(502) 564-7233  
(502) 564-2613 Facsimile

Received  
MAR 13 2014  
Personnel Board

LORI H. FLANERY  
Secretary

HONOR F. BARKER  
Director

December 26, 2013

**CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

James E. Kinnaird  
389 McCann Lane  
Frankfort, KY 40601

Dear Mr. Kinnaird:

The Commonwealth Office of Technology has advised me that you have been absent without approved leave or notice since December 10, 2013. According to 101.KAR 2:102, Section 10(3); an employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be deemed resigned.

Therefore, you are hereby notified that you are officially resigned from your position as a Network Analyst III within the Frankfort Support - CHFS, Field Services Division, Field Services Southern Branch, Commonwealth Office of Technology, Finance and Administration Cabinet effective close of business December 26, 2013. Please contact your supervisor to make arrangements to pick up your personal belongings and turn in your ID badge and keys.

A copy of this notice is being furnished to the Personnel Cabinet. As an employee with status, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the day of receipt. Appeals must be made by completing the attached form and directing it to the address indicated on the form.

Sincerely,

  
Honor Barker, Appointing Authority  
Finance and Administration

Attachment: Appeal Form

cc: Timothy Longmeyer, Secretary, Personnel Cabinet  
James Barnhart, Deputy Commissioner, Commonwealth Office of Technology  
Terry Stephens, Executive Director, Office of Infrastructure Services  
Eugene Raines, Director, Division of Field Services  
Jo Woods, Branch Manager, Southern Field Services Branch  
Gerald Hedrick, Information Systems Supervisor, Southern Field Services  
Personnel File

— RECOMMENDED ORDER ATTACHMENT A —