

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-005

BERNARDO LACOSTA

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

*** *** *** *** ***

The Board, at its regular May 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated April 11, 2025, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer 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 15th day of May, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Bernardo Lacosta
Hon. Kristin Wehking
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney E. Moore

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-005

BERNARDO LACOSTA

APPELLANT

v.

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

* * * * *

This matter is before the Hearing Officer on appellee Justice and Public Safety Cabinet, Department of Corrections' (the "Appellee or "DOC") Motion for Summary Judgment.

The appeal last came before the Hearing Officer in a pre-hearing conference on April 2, 2024, which was held at 11:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The appellant herein, Bernardo Lacosta (the "Appellant"), was present and not represented by legal counsel. The Appellee herein was present and represented by the Hon. Kristin Wehking. Both parties appeared by telephone.

The Hearing Officer noted that the Appellant filed his appeal with the Personnel Board on January 11, 2024. He indicated on his appeal form that he was appealing his dismissal.

PROCEDURAL BACKGROUND and FINDINGS OF UNDISPUTED FACT

1. The Appellant was a classified employee, employed by the Appellee at its Western Kentucky Correctional Complex as a Correctional Officer.

2. The Appellant was placed on administrative leave and given an Intent to Dismiss Letter on January 5, 2024. [See Appeal Form attachments.]

3. During the prehearing conference held on April 2, 2024, and in response to the Appellees' position that the Personnel Board lacked jurisdiction to hear or rule on this matter, the Appellant filed a statement with the Personnel Board alleging that, on January 12, 2024, he received a call from Tim East, the head of the Human Resources Department at the Western Kentucky Correctional Complex, who told him that if he did not resign, he would be fired. [See Interim Order dated April 3, 2024; and see Appellant's statement dated Thursday April 30, 2024, and marked "Received" by the Personnel Board on May 16, 2024.]

4. On January 12, 2024, the Appellant resigned effective January 13, 2024. [See Motion to Dismiss Exhibit C.] The Appellant stated that his resignation was accepted with prejudice. [See Interim Order dated April 3, 2024 at p.2.]

5. During the pre-hearing conference held on April 2, 2024, counsel for the Appellee requested a dispositive motion schedule, arguing that the Board did not have authority to hear or rule upon an appeal challenging an employee's own resignation. Following the pre-hearing conference, the Hearing Officer entered an Interim Order allowing the Appellee to file a motion for summary judgment on or before May 17, 2024. The Hearing Officer also ordered that the Appellant would have up to and including July 5, 2024, to submit a response to the dispositive motion. Thereafter, the Appellee had up to and including July 26, 2024, to file its reply to the response to the motion for summary judgment.

6. On May 17, 2024, the Appellee timely filed a dispositive motion arguing that the Personnel Board lacked jurisdiction to hear appeals arising from a classified employee's voluntary resignation.

7. The Appellant filed a response to allegations made during the last prehearing conference that the Board lacked jurisdiction to hear the appeal. [See Appellant's statement dated Thursday April 30, 2024, and marked "Received" by the Personnel Board on May 16, 2024.]

8. Despite the Interim Order allowing the Appellant to file a response to the Motion for Summary Judgment up to and including July 5, 2024, no further response was filed by the Appellant.

9. There are no material facts in dispute and this appeal can be decided as a matter of law based on the appeal form, the statements of the parties made during the prehearing conferences or otherwise filed with the Personnel Board, and the Appellee's Motion for Summary Judgment and its attachments.

CONCLUSIONS OF LAW

1. Summary judgment should be entered when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 482 (Ky. 1991). The movant should only be granted summary judgment when the right to judgment as a matter of law is "shown with such clarity that there is no room left for controversy." *Id.* at 482.

1. In this appeal, there are no genuine issues of material fact. The only issue to be decided is a matter of law: whether the Appellant had the legal right to rescind or appeal his voluntary resignation. The Appellant had no such right.

2. On January 12, 2024, the Appellant voluntarily resigned from his position as a state employee. The resignation was unconditional.

3. To the extent the Appellant is alleging duress in the “resign or be fired” call he alleged he received from Tim East on January 12, 2024, that claim is unavailing. It is not duress to threaten to do what one has a legal right to do nor is it duress to threaten to take any measure authorized by law and the circumstances of the case. *Redmon v. McDaniel*, 540 S.W.2d 870 (Ky. 1976).

4. Resignation is generally voluntary and is a choice that an employee may make after weighing each of the benefits and detriments of employment and the types of separation therefrom.

5. Once a written, voluntary resignation is submitted to an employer, the employer may accept or reject the resignation. *Searcy v. Justice and Public Safety Cabinet, Department of Corrections*, 2005 WL 6154610 at *12 (KY PB, Decided July 19, 2005).

6. If the resignation is accepted by the employer, the employee does not have the right to rescind the resignation, even if the attempted rescission occurs before the effective date of the resignation. *Redmon v McDaniel*, 540 S.W.2d 870, 872 (Ky. 1976).

7. The Appellee accepted and processed the Appellant’s resignation.

8. The Appellant has no legal right to otherwise appeal a voluntary resignation. Voluntary resignation is a waiver of an employee’s right to a due process hearing. *Redmon*, 540 S.W.2d at 872. Therefore, the due process hearing provided by KRS Chapter 18A to an employee dismissed for cause does not apply to the Appellant.

9. Unless otherwise provided by KRS Chapter 18A, the Personnel Board does not have jurisdiction over any appeal except as authorized by KRS 18A.095. See KRS 18A.095(30).

10. Nothing in KRS 18A.095 or any other part of KRS Chapter 18A gives the Personnel Board jurisdiction to hear an appeal of a voluntary resignation.

11. Pursuant to KRS 18A.095(16)(a), the Personnel Board “shall deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief.”

12. Based on the foregoing, the Board must dismiss the appeal based on lack of jurisdiction.

RECOMMENDED ORDER

WHEREFORE, the Hearing Officer, after careful review and consideration of the Appellee’s Motion for Summary Judgment, the Appeal Form (with attachments) and the evidence of record, recommends to the Kentucky Personnel Board that the appeal of **BERNARDO LACOSTA V. JUSTICE AND PUBLIC SAFETY CABINET DEPARTMENT OF CORRECTIONS (APPEAL NO. 2024-005)**, 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 fifteen (15) 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).

The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov

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.

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

SO ORDERED at the direction of the Hearing Officer this 11th day of April, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR.

EXECUTIVE DIRECTOR

A copy hereof was emailed and mailed to the following persons at their respective addresses as provided to the Personnel Board on this 11th day of April, 2025:

Bernardo Lacosta, Appellant
Hon. Kristin Wehking, Counsel for Appellee