

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-071**

BRANDI L. PEAVYHOUSE (NOW MARTIN)

APPELLANT

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

**PERSONNEL CABINET,
TIM LONGMEYER, SECRETARY,**

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

AND

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS,
J. MICHAEL BROWN, APPOINTING AUTHORITY**

APPELLEES

**** ** ***

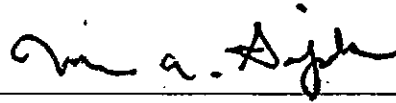
The Board at its regular January 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated December 16, 2014, and being duly advised,

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 13th day of January, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Whitney Meagher
Hon. Mary Tansey
Hon. Edward Baylous
Brandi Peavyhouse Martin
J. P. Hamm
Bobbie Underwood

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**** ** ***

This matter previously came on for pre-hearing conferences on May 29, 2014, at 10:30 a.m., ET, and on October 16, 2014, at 11:30 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, Brandi L. Peavyhouse (now Martin), was present by telephone and was not represented by legal counsel. The Appellee, Personnel Cabinet, was present and represented by the Hon. Whitney Meagher. The Appellee, Cabinet for Health and Family Services (CHFS), was present and represented by the Hon. Mary S. Tansey. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Edward Baylous.

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

The Hearing Officer noted this appeal was filed with the Personnel Board on April 8, 2014. The Appellant checked the boxes on the appeal form for Applicant Rejection and Other

Penalization, specifically "Incorrect/misleading information in personnel file." The gist of the appeal is that the Appellant had preliminarily accepted a position with CHFS in March 2014, and had given notice to her employer that she would be assuming new duties on or about April 1, 2014. This preliminary job offer was rescinded by CHFS when it discovered negative information in Appellant's personnel file.

Appellant found out this negative information was a letter dated May 21, 2012, signed by Warden Steve Haney, then-Warden at the Northpoint Training Center, that her letter of resignation was accepted with prejudice because of an on-going investigation.

Appellant stated she was not aware she was being investigated when she resigned. Appellant stated she also did not know this letter was actually in her personnel file. As relief, Appellant seeks to have the matter resolved, and to be allowed to compete for positions once again (apparently especially within CHFS), and to have this May 21, 2012 letter removed from her personnel files.

The Appellee, Dept. of Corrections, tendered a Motion to Dismiss prior to the pre-hearing conference.

The Appellee, Personnel Cabinet, stated that upon review of the Appellant's file, "no exceptions" (that is, exceptions which would lead to Appellant's exclusion from a register with any certain agency) were noted. Counsel for the Personnel Cabinet stated that in order to invoke KRS 18A.032 to bar an applicant from a register, such applicant, in previous employment with the state, must have been dismissed, or submitted a resignation while an intent to dismiss was pending. Counsel stated that Appellant had no exceptions in her file, because she had not been dismissed and the Personnel Cabinet could not determine that she had ever been issued or had knowledge of any letter of intent to dismiss. However, counsel for the Personnel Cabinet requested time in which to file a motion to dismiss, stating there was no regulatory mechanism by which such letter could be removed from Appellant's file, save order of the Personnel Board.

The Appellee, CHFS, gave some detail as to the sequence of events. Counsel noted Appellant had been given a preliminary offer of employment, which was rescinded once CHFS was able to have access to her personnel files and saw the negative information, that is, the May 21, 2012 letter, which was deemed a letter of resignation "with prejudice." Counsel stated that prior to extending the preliminary offer of employment, they did not have access to these personnel files to be able to view any such negative information. Counsel for CHFS then stated she would also be filing a motion to dismiss.

BACKGROUND

1. During the relevant times, the Appellant, Brandi Martin, had been a classified employee with status. For analysis, on the various motions to dismiss which have been filed, the Hearing Officer considers that Appellant was a former classified employee.

2. As was discussed at some detail at the pre-hearing conference held on May 29, 2014, and the subsequent pre-hearing conference held on October 16, 2014, the crux of this appeal has to do with Appellant seeking to gain employment with state government in the classified service. The hindrance is that Appellant had previously resigned from a position with the Department of Corrections which was accepted "with prejudice." A letter dated May 21, 2012, attached hereto and incorporated by reference herein as **Recommended Order Exhibit A**, is the letter signed by Warden Steve Haney of the Northpoint Training Center advising Appellant that her resignation request was being accepted with prejudice, and the effective date was May 21, 2012.

3. The events in question in this appeal have to do with the Appellee, Cabinet for Health and Family Services (CHFS), having initially offered Appellant employment as a Social Worker, and then rescinding that offer of employment upon discovering Appellant had negative information in her personnel file, specifically, that she had resigned in 2012 from the Department of Corrections with prejudice.

4. Upon the Appellee CHFS rescinding that offer of employment on or about April 2014, Appellant filed this appeal.

5. Various motions to dismiss were filed subsequent to the first pre-hearing conference and the Hearing Officer entered an Interim Order denying those motions to dismiss on August 26, 2014. That Interim Order is attached by reference hereto and incorporated by reference herein as **Recommended Order Exhibit B**. In that Interim Order, which speaks for itself, the Hearing Officer denied the motions to dismiss by Appellees, primarily based on the Hearing Officer's understanding of Appellee Personnel Cabinet's statements regarding the letter of resignation being accepted "with prejudice."

6. To be blunt, the Hearing Officer was hoping some settlement could be reached in this matter.

7. Subsequent to that Interim Order various motions were filed to alter, amend or vacate. The Hearing Officer took special note of the Appellee Personnel Cabinet's motion, which offered what the Hearing Officer understood to be a clarification of its position with regards to acceptance of resignations as being "with prejudice."

8. In any event, this led to the Appellee, Personnel Cabinet, filing a renewed motion to dismiss. In its renewed motion, the Personnel Cabinet states that it in no way penalized Appellant by merely processing the resignation, and then also certifying Appellant to any registers for which she has applied, specifically, with the Appellee CHFS.

9. The Appellee CHFS had also responded, indicating it would not be willing to waive its consideration of the letter of resignation with prejudice.

10. Though the Appellee Department of Corrections did not file a renewed motion to dismiss, the Hearing Officer understands in reviewing its previous motion, that the main argument it was making was a lack of timeliness in filing the appeal.

11. The Appellant filed a timely response to the various motions. All along, the Appellant has been clear that she is attempting to undo the negative effects of this resignation "with prejudice" being reflected in her record. In her response, Appellant acknowledges that she received the letter accepting her resignation with prejudice, but she was unaware this letter was in her personnel file, and would hinder her from future state employment. Appellant indicated her understanding that she would not be barred from being on a register with CHFS. Appellant cites KRS 18A.095(14)(a), which states as follows:

Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board.

12. Appellant also cites KRS 18A.095(1) and KRS 18A.135(1) as supporting her position. Appellant makes the following statement also, "It is unfortunate that I am being penalized and discriminated against for someone's poor judgment or discretion."

13. 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, the Appellant, Brandi Martin, had been a classified employee with status. For analysis, on the various motions to dismiss which have been filed, the Hearing Officer considers that Appellant was a former classified employee.

2. The Hearing Officer finds that Appellant, at the time of the filing of this appeal, was not a classified state employee, having resigned her employment with Appellee Department of Corrections.

3. The Hearing Officer finds that, not being a classified state employee, the Appellant is not able to claim penalization as defined at KRS 18A.005(24) in this matter.

4. The Hearing Officer finds that Appellant could, pursuant to the statutes she cited at KRS 18A.095(14), allege discrimination.

5. The Hearing Officer finds Appellant has not claimed any sort of discrimination based on protected class during the course of this appeal, though Appellant did mention discrimination in her response to the motions to dismiss. The Hearing Officer finds this does not

qualify as a claim of discrimination, as no specifics were given, nor had Appellant raised any such discrimination claim previously.

CONCLUSIONS OF LAW

1. The analysis in this case must rest with the jurisdiction of the Personnel Board. As noted by the Appellee Personnel Cabinet, the Personnel Board is a body of limited jurisdiction and ultimately can only render decisions on matters within its purview.

2. The Hearing Officer concludes that a non-state employee, even a former employee such as Appellant, has very limited rights of appeal to the Personnel Board under very narrow circumstances. In this case, the Hearing Officer concludes that Appellant has not stated a claim of discrimination over which the Personnel Board would have authority.

3. Ultimately, the Hearing Officer concludes the Personnel Board does not have jurisdiction to consider this appeal, though in the Hearing Officer's estimation, the Appellant has raised valid questions as to the letter of resignation being accepted with prejudice and being placed in her file and what amounts to (essentially) a permanent "black mark" against her for future state employment. However, the Hearing Officer concludes the Personnel Board does not have jurisdiction to consider this appeal, as Appellant has not claimed any recognized form of discrimination, and is not afforded the right as a former state employee to generally challenge, at least at the Personnel Board, matters that may be in her personnel file. Appellant would have to seek relief in another forum to gain the relief she seeks. Thus, the Hearing Officer concludes the appeal should be dismissed.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **BRANDI L. PEAVYHOUSE (NOW MARTIN) V. PERSONNEL CABINET, CABINET FOR HEALTH AND FAMILY SERVICES AND JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2014-071)** 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 Boyce A. Crocker** this 16th day of December, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Whitney Meagher
Hon. Mary S. Tansey
Hon. Edward Baylous
Ms. Brandi Martin