

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-200

CHRISTINE C. THOMPSON

APPELLANT

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

DEPARTMENT OF VETERANS AFFAIRS
HEATHER FRENCH HENRY, APPOINTING AUTHORITY

APPELLEE

** **

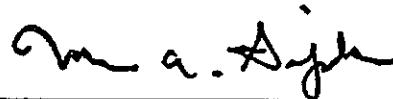
The Board at its regular December 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated November 14, 2014, and being duly advised,

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 17th day of December, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Dennis Shepherd
Christine C. Thompson

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-200

CHRISTINE C. THOMPSON

APPELLANT

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

DEPARTMENT OF VETERANS' AFFAIRS,
GILDA HILL, APPOINTING AUTHORITY

APPELLEE

** ** *

This matter came on for a pre-hearing conference on October 21, 2014, at 10:30 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, Christine C. Thompson, was present by telephone and was not represented by legal counsel. The Appellee, Department of Veterans' Affairs, was present and represented by the Hon. Dennis Shepherd.

The purposes of the pre-hearing conference 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 notes this appeal was filed with the Personnel Board on September 11, 2014. The Appellant checked the box for dismissal, but really, as the Hearing Officer understands, the appeal is challenging the decision of the agency to not rescind her voluntary resignation dated August 29, 2014. Appellant stated she had submitted a resignation letter on August 29, 2014, with the effective date to be September 13, 2014, but over the Labor Day weekend had changed her mind, but was told that the Thompson-Hood Veterans' Center had sent her letter of resignation to Frankfort regardless of her change of heart.

The Appellee filed a Motion to Dismiss in accordance with the briefing schedule. Though given time in which to file a response, Appellant has not done so. The matter

stands submitted to the Hearing Officer for a ruling on the Appellee's Motion to Dismiss.

BACKGROUND

1. During the relevant times, the Appellant, Christine C. Thompson, was a classified employee who had not completed the initial probationary period.

2. Appellant resigned from her position as a Nurse Aide State Registered (NASR) at the Thompson-Hood Veterans' Center on August 29, 2014. The effective date of this resignation was to be two weeks after the date submitted, September 13, 2014.

3. As noted at the pre-hearing conference, Appellant, over the intervening Labor Day weekend, had a change of heart and wished to rescind her resignation, but was not allowed.

4. The Hearing Officer is aware that at the time of the pre-hearing conference Appellant believed she was a classified employee who had attained status by completing the initial probationary period. This was part of a discussion as to what, if any, reinstatement privileges Appellant might have.

5. In its Motion to Dismiss, the Appellee, Department of Veterans' Affairs, stated Appellant was actually a classified employee who had not completed initial probationary period at the time she submitted her resignation, and that such period was not due to expire until October 31, 2014. Counsel contends that in view of Appellant's status as a probationary employee, her rights of appeal to the Personnel Board are severely limited, and would not extend to an ability to challenge her resignation.

6. As noted, Appellant did not respond to the Appellee's Motion to Dismiss, although she was given time in accord with a briefing schedule entered at the pre-hearing conference.

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, the Appellant, Christine C. Thompson, was a classified employee who had not completed the initial probationary period.
2. The Hearing Officer finds that Appellant, as a classified employee who had not yet completed her initial probationary period, has limited rights of appeal to the Personnel Board.
3. Normally dispositive motion practice is not the time to make a finding of fact that might appear to be in dispute. However, the Hearing Officer believes no real dispute exists as to whether Appellant was on probation or not; Appellant mistakenly believed she had finished her initial probationary period, when, in fact, she had not.
4. The Hearing Officer finds that the limited rights of appeal to the Personnel Board would not extend to being able to challenge the decision that her resignation request be rescinded.
5. The Hearing Officer finds Appellant has not made any other claim which would give the Personnel Board jurisdiction pursuant to KRS 18A.095.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that pursuant to KRS 18A.095(18)(a), the Personnel Board lacks jurisdiction to further consider this appeal, and as such, it must be dismissed.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **CHRISTINE C. THOMPSON V. DEPARTMENT OF VETERANS' AFFAIRS, (APPEAL NO. 2014-200)** 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).

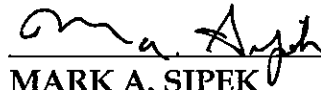
Any document filed with the Personnel Board shall be served on the opposing party.

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 14th day of November, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Dennis Shepherd
Ms. Christine C. Thompson