

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NOS. 2009-177 and 2009-252**

PEGGY WASHINGTON

APPELLANT

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

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET,
KENTUCKY DEPARTMENT OF EDUCATION,
JOE MEYER, APPOINTING AUTHORITY**

APPELLEE

** ** * * **

This matter came on for a pre-hearing conference on February 15, 2012, at 9:30 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Peggy Washington, was present at the pre-hearing conference and was not represented by legal counsel. The Appellee Kentucky Department of Education was present and represented by the Hon. Lisa Lang. Both the Appellant and the Appellee were present by telephone.

BACKGROUND

1. The Appellant, Peggy Washington, filed Appeal No. 2009-177 with the Personnel Board on July 28, 2009, alleging discrimination and a failure to comply with the Personnel Board's Order approving a settlement agreement in Appeal Nos. 2006-193 and 2007-042, which were approved by the Board on April 21, 2009. The Appellant alleged that the Kentucky Department of Education has failed to comply with the settlement agreement and the Board Order approving the settlement agreement. She also alleged a pattern of disrespect, discrimination and retaliation.

2. On October 2, 2009, the Appellant filed Appeal No. 2009-252. The Appellant alleged that the Kentucky Department of Education continued to fail to comply with the settlement order and continued to engage in acts constituting discrimination and retaliation.

3. These appeals were the subject of a number of pre-hearing conferences. At the pre-hearing conference on February 15, 2012, the parties agreed to submit the issues to the Hearing Officer based upon written briefs.

4. On May 25, 2012, the Appellee filed a Motion to Dismiss the Appellant's appeals for a lack of jurisdiction. The Appellee argued that it did not fail to comply with the earlier Board Order and settlement agreement. The Appellee contended there was no requirement that the Appellant's leave time be credited within sixty (60) days of the approval of the settlement agreement. For this reason, the Appellee argued it did not fail to comply with the settlement agreement and Board Order, and the Appellant had not alleged a penalization as the term is defined at KRS 18A.005(24).

5. On June 11, 2012, the Appellant filed a document stating that she had no objection to the Appellee's Motion to Dismiss for a Lack of Jurisdiction.

6. On June 11, 2012, in a telephone conference with the Appellant and counsel for the Appellee, the Appellant stated to the Hearing Officer she did not oppose the Motion to Dismiss for a Lack of Jurisdiction and wanted the case to end.

FINDINGS OF FACT

1. The Appellant, Peggy Washington, filed Appeal Nos. 2009-177 and 2009-252 alleging that the Appellee, Kentucky Department of Education, did not comply with an earlier settlement agreement approved by Personnel Board Order resolving Appeal Nos. 2006-193 and 2007-042. The settlement agreement was approved by the Personnel Board in a Final Order dated April 21, 2009.

2. The Appellee contended it did comply with the settlement orders, and stated that it took more than sixty (60) days to credit the Appellant with the appropriate leave time, however, they were dealing with a complicated and lengthy administrative record in order to determine the correct leave amounts.

3. Following several pre-hearing conferences and scheduled dates for an evidentiary hearing, both parties waived the right to an evidentiary hearing, and agreed to submit this matter to the Hearing Officer on written briefs.

4. The Appellee filed a Motion to Dismiss for a Lack of Jurisdiction on May 25, 2012.

5. On June 11, 2012, the Appellant, in writing and verbally in a telephonic pre-hearing conference with the Hearing Officer and counsel for the Appellee, stated she had no objection to the Appellee's Motion to Dismiss for a Lack of Jurisdiction and, in the telephone conference, stated, "she wanted the case to end."

CONCLUSIONS OF LAW

1. The Appellee, having filed a Motion to Dismiss for a Lack of Jurisdiction, and the Appellant having stated she has no opposition to this motion and wishes the case to end, it is appropriate for the Personnel Board to dismiss this appeal.

2. Pursuant to KRS 18A.095(18)(a), "The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief." With the Appellant having stated she does not oppose the Appellee's motion to dismiss and she wants these cases to end, these appeals should be dismissed by the Personnel Board as moot.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeals of **PEGGY WASHINGTON V. EDUCATION AND WORKFORCE DEVELOPMENT CABINET, KENTUCKY DEPARTMENT OF EDUCATION, (APPEAL NOS. 2009-177 AND 2009-252)** 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 Mark A. Sipek** this _____ day of January, 2013.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Lisa Lang
Ms. Peggy Washington