BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

GARY MORSE, Appellant, v. DEPARTMENT OF SOCIAL AND HEALTH SERVICES, Respondent.	)	Case No. SUSP-05-0020 ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

I. INTRODUCTION

1.1 **Consideration of Respondent's Motion to Dismiss.** This matter came before the Personnel Appeals Board, WALTER T. HUBBARD, Chair; BUSSE NUTLEY, Vice Chair; and GERALD L. MORGEN, Member, for consideration of Respondent's Motion to Dismiss. This matter was considered on written documents without oral argument.

1.2 **Representation.** Assistant Attorney General Janetta Sheehan represents Respondent Department of Social and Health Services. Michael Davis, Attorney at Law, represents Appellant Gary Morse.

1.3 **Documents Considered.** The Board considered the files and documents in this matter, including Respondent's Motion to Dismiss, with attachments, filed March 14, 2006.

II. BACKGROUND

2.1 By letter dated April 23, 2005, Appellant was suspended from his position as a Mental Health Technician 1 effective April 25, 2005 through May 8, 2005. Appellant filed an appeal of this discipline on May 5, 2005.

2.2 On August 31, 2005, the Board scheduled the appeal for a March 21, 2006 hearing.

2.3 By letter dated March 14, 2006, Respondent notified Appellant that the suspension had been rescinded.

2.4 Subsequently, Respondent notified Appellant's counsel and told him of the agency's decision to rescind the action.

2.5 On March 14, 2006, Respondent filed a Motion to Dismiss. Respondent argues that pursuant to WAC 356-34-070, an appointing authority may withdraw an action prior to the hearing on the appeal. Respondent asserts that because the suspension no longer exists, there is no action from which the Board can hear an appeal. Respondent asks that the appeal be dismissed.

2.6 Appellant did not file a response to the motion.

III. DISCUSSION

3.1 The Board may decide an appeal by motion if the documents on file, depositions and affidavits show there is no genuine issue as to any material fact and the appeal should be dismissed as a matter of law. WAC 358-30-060(1).

3.2 The Board has jurisdiction to hear appeals of "[a]ny employee who is reduced, dismissed, suspended, or demoted, after completing his or her probationary period of service as provided by the rules of the board, or any employee adversely affected by a violation of the state civil service law, chapter 41.06 RCW, or the rules adopted under it. . . ." RCW 41.06.170(2).

3.3 WAC 356-34-070 applies to suspensions taken per WAC 356-34-030. WAC 356-34-070 states that "[a]ppointing authorities may, within limitations and in accordance with the provisions of these rules, withdraw or modify any of the above actions prior to an appeal hearing."

3.4 The question here is whether an action exists over which the Board can exercise jurisdiction.

3.5 By letter dated March 14, 2006, the appointing authority withdrew Appellant's 14-day suspension and the rescission was taken prior to the March 21, 2006 hearing date. Therefore, an action no longer exists over which we can exercise jurisdiction, and the appeal of Gary Morse should be dismissed.

Having reviewed the files and records in this matter and being fully advised in the premises, the Board enters the following:

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED that Respondent's Motion to Dismiss is granted, and the appeal of Gary Morse is dismissed.

DATED this _____ day of _____, 2006.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Busse Nutley, Vice Chair

_____
Gerald L. Morgen, Member

Personnel Appeals Board
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Olympia, Washington 98504