BEFORE THE PERSONNEL APPEALS BOARD

STATE OF WASHINGTON

MICHAEL MILLER, Appellant, v. DEPARTMENT OF TRANSPORTATION, Respondent.	))))))))))	Case No. RED-05-0003 ORDER GRANTING RESPONDENT'S MOTION TO SHORTEN TIME AND DISMISS APPEAL

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, on October 17, 2005, for consideration of Respondent's Motion to Short Time and to Dismiss Appeal. This matter was considered on written documents without oral argument.

1.2 **Representation.** Appellant Michael Miller, *pro se*, did not file a response to the motion. Patricia A. Thompson, Assistant Attorney General, represented Respondent Department of Transportation.

1.3 **Documents Considered.** The Board considered the files and documents in this matter, including: Respondent's Motion to Dismiss and Shorten Time, with attachments, filed October 10, 2005, and Affidavit of Patricia A. Thompson, with attachments, filed October 14, 2005.

II. BACKGROUND

2.1 By letter dated December 27, 2004, Ed McCallister, Administrative officer of DOT, Eastern Region, notified Appellant that he was being disciplined and would be reduced in salary as an Information Technology Systems Specialist 3 for a period of three months, effective January 16, 2005. Respondent charged Appellant with neglect of duty, insubordination and willful violation of agency policy. Appellant filed a timely appeal February 14, 2005.

2.2 Effective August 18, 2005, Appellant resigned and is no longer employed with DOT.

2.3 By letter dated October 5, 2005, Mr. McCallister rescinded the reduction in salary which is the subject of this appeal. Respondent notified Appellant that the discipline had been rescinded, and that Appellant would be reimbursed for the loss of pay. Respondent requested that Appellant withdraw his appeal; however, Appellant did not withdraw his appeal.

2.4 On October 10, 2005, Respondent filed a Motion to Dismiss and to Shorten Time. Respondent argued that because of the short time frame between the date of the hearing, October 25, 2005, and the date of the rescission letter, October 5, there was insufficient time to confirm whether Appellant would withdraw his appeal or to timely set this motion. Respondent requested that the Board consider the Motion to Dismiss on shortened time. Respondent further argued that pursuant to WAC 356-34-070, the agency withdrew the disciplinary action prior to the hearing on the appeal. Respondent asserts that because the reduction in salary no longer exists, there is no action from which the Board can hear on appeal. Respondent asks that the appeal be dismissed.

2.5 On October 14, 2005, Respondent filed the Affidavit of Patricia A. Thompson in which she confirms that DOT issued Appellant a check for back payment of the reduction in salary sanction. Attached to Ms. Thompson's affidavit were copies of the letter and reimbursement check sent to Appellant by the appointing authority, Ed McCallister.

2.6 Appellant did not file a response and did not oppose 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 Appellant has not objected to either Respondent's motion to shorten time or to Respondent's motion to dismiss his appeal. Therefore, the question here is whether an action exists over which the Board can exercise jurisdiction.

3.4 In this case, the reduction in salary imposed against Appellant has been rescinded and Appellant has now been reimbursed for the lost pay. Therefore, the disciplinary action no longer exists and the appeal 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 Michael Miller is dismissed.

DATED this _____ day of _____, 2005.

WASHINGTON STATE PERSONNEL APPEALS BOARD

_____
Walter T. Hubbard, Chair

_____
Busse Nutley, Vice Chair

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Gerald L. Morgen, Member