BEFORE THE PERSONNEL RESOURCES BOARD

STATE OF WASHINGTON

BOBBY FREE, Appellant, v. DEPARTMENT OF GENERAL ADMINISTRATION, Respondent.	)	Case No. R-DEMO-10-006 ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

I. INTRODUCTION

1.1 **Consideration of Motion.** This matter came before the Personnel Resources Board, LAURA ANDERSON, Chair; DJ MARK, Vice Chair; and JOSEPH PINZONE, Member, for consideration of written argument.

1.2 **Representation.** Appellant Bobby Free appeared *pro se*. Respondent Department of General Administration (GA) was represented by Michael Rothman, Assistant Attorney General.

1.3 **Documents Considered.** The Board considered the files and documents in this matter, including Respondent's Motion to Dismiss, with attachments, filed January 7, 2011. Appellant did not file a response to the motion.

II. FACTS

2.1 Appellant was employed at GA as a Custodian 4. On September 20, 2010, he received notice of his demotion to a Custodian 3 position. Appellant's demotion was to be effective October 16, 2010.

2.2 On September 20, 2010, Appellant submitted a letter of resignation to GA. In his written resignation, Appellant indicated that he was resigning effective October 1, 2010. Appellant's resignation occurred before the disciplinary action would have taken effect.

III. ARGUMENTS OF THE PARTIES

3.1 Respondent argues that Appellant voluntarily resigned from his Custodian position at GA prior to his demotion taking effect. Therefore, Respondent asserts that no disciplinary action was implemented and Appellant's appeal is moot. Respondent contends that it is undisputed that Appellant's resignation was effective prior to the effective date of the demotion and as a result, the appeal should be dismissed. Respondent further argues that the appeal is moot because Appellant has not been adversely impacted, and that the Board cannot grant him any available remedies.

3.2 Appellant did not file a response to the motion.

IV. DISCUSSION

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

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

4.3 Appellant tendered his resignation prior to the effective date of his demotion. The disciplinary action did not take effect.

4.4 This Board and its predecessor, the Personnel Appeals Board (PAB), have ruled on this issue in past cases. For example, in Wheelock v. Dep't of Corrections, PAB Case No. D91-056 (1993), the appellant was given notice that she would be demoted effective June 3, 1991. But, on May 29 she

resigned effective May 31, 1991. The Board found that because the demotion never took effect, there was no disciplinary action from which the appellant could appeal. The Board dismissed the appeal.

4.5 Most recently, this Board dismissed the appeal of Rodeen v. Washington State University, PRB Case No. R-DISM-07-006 (2007). In Rodeen, the appellant filed a resignation letter on the same day that he received notice of his dismissal. In Rodeen, the appellant's dismissal would have been effective July 16, 2007. But, appellant resigned from his position effective June 29, 2007. The Board dismissed the appeal, concluding, in part that "[t]he disciplinary action did not take effect. Therefore, no action exists over which we can exercise jurisdiction or grant a remedy. . . ."

4.6 Here, as in Wheelock and Rodeen, Appellant resigned from his position before the effective date of the disciplinary action. Therefore, no action exists over which we can exercise jurisdiction or grant a remedy, and the appeal of Bobby Free should be dismissed.

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

V. ORDER

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

DATED this _____ day of _____, 2011.

WASHINGTON PERSONNEL RESOURCES BOARD

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LAURA ANDERSON, Chair

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DJ MARK, Vice Chair

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JOSEPH PINZONE, Member