

**KENTUCKY PERSONNEL BOARD
MINUTES OF AUGUST 10, 2007**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on August 10, 2007, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman
Tina Goodmann, Vice-Chairman
Betty Gibson, Member
Lisa T. Hendricks, Member
Rosemary F. Center, Member
Jackson M. Andrews, Member
Robert B. Frazer, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

2. **READING OF THE MINUTES OF REGULAR MEETING HELD JULY 13, 2007**

The minutes of the last Board meeting had been circulated among the members previously. Chairman Higgins asked for additions or corrections. Ms. Hendricks moved to approve the minutes as submitted, Mr. Andrews seconded, and the motion carried 6-0. (Chairman Higgins does not vote unless noted.) The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek informed the Board Members regarding the following:

A) Request for Investigation from Ann Auckerman regarding the Cabinet for Health & Family Services, Powell County.

Mr. Sipek informed the Board members that he should be able to report on this at the next Board meeting.

B) Letter from John Rees, Commissioner, Justice and Public Safety Cabinet

The Board members were invited to tour institutions in the LaGrange area. Mr. Sipek stated that this can be discussed in open session.

C) Mr. Sipek informed the Board that in 2005 the Board members at that time had proposed changes to KRS Chapter 18A. However, it was decided that it was not the right time to make changes to the merit system. A copy has been provided to the current Board members for possible action. Mr. Crocker advised that a copy would also be provided to Secretary Crall and the Hon. Tom Stephens.

D) *Finance v. McDonald, et al.*, 06-CI-992. The Franklin Circuit Court affirmed the decision of the Board. A copy of the Court's decision was provided to the Board Members.

In addition, Mr. Andrews highly praised both the Executive Director and the General Counsel for providing their research into KRS 18A, and he found the history to be very useful. Mr. Crocker stated that the Board Members could review it at their leisure. Chairman Higgins asked the Board Members to consider a convenient time in the future to discuss the proposed changes.

4. **PERSONNEL CABINET'S REPORT**

Secretary Brian Crall, Personnel Cabinet, advised the Board concerning the following:

A) 2008 Employee Insurance – Secretary Crall stated that the Cabinet is making a final decision on premiums, the latest date being August 27. Since the Commonwealth has become the carrier, more information has been made available. For instance the Premier level is at a 110% loss ratio. The Enhanced, Essential and Select are less, collectively 76%. These three levels are underwriting the premier loss ratio. The Personnel Cabinet is trying to get the best product at the lowest price to employees. Secretary Crall said that the Summary Plan Description (SPD) will be provided to the Board as soon as possible.

B) Secretary Crall asked about the status of the *Perkins* appeal. Mr. Sipek stated that the appeal is not final. Secretary Crall advised the Board that he had a request to remove a written reprimand, and although no formal process is in place, it was removed from the employee's personnel file.

C) Secretary Crall wanted to clarify information he provided the Board at the July Board Meeting as it pertained to the Public Advocacy office in Lexington that was closing. Secretary Crall turned to the Hon. Tom Stephens to explain. Mr. Stephens advised that the State DPA was absorbing the Lexington office (which is not a state agency) under the provisions of KRS 18A.120 for bringing an entity into state government. He advised that this process will be completed in September or October.

D) Secretary Crall advised that the EEO Conference was set for September 4, 5 and 6, 2007, in Louisville, and invited the Board members to attend.

E) KHRIS Project - Secretary Crall advised the Board that he has asked Commissioner Hawkins to meet with the Personnel Council regarding whether or not it was the right time to implement (and to make sure implementation is correct) placing applicants on the register for positions where there are job openings, as opposed to placing applicants on any register, whether there was an opening or not. If the Board has any questions they are encouraged to call Secretary Crall or Commissioner Hawkins.

F) Secretary Crall stated that he cautioned appointing authorities about employees “burrowing” at the end of an administration’s term. Specifically, non-merit employees migrating into merit employee positions. Secretary Crall advised that he is watching this very carefully and wants to make sure that positions are filled in compliance with KRS Chapter 18A and the Administrative Regulations.

G) Secretary Crall wanted to explain his request for investigation on the hiring of Mike Duncan, specifically concerns raised by the Attorney General’s office involving Mr. David Ray. Secretary Crall emphatically stated that the Personnel Cabinet has no interest in taking action against Mr. Ray. If the appointment of Mr. Duncan is found to be improper, that action is covered under the Governor’s pardon. Further, Secretary Crall has not found any history when an appointment has been found to be improper that any action was taken against the selector. The interest that Secretary Crall has is the Cabinet’s statutory obligation under KRS 18A, due to new information the Cabinet received concerning the propriety of the selection of Mr. Duncan.

At the conclusion of the Personnel Cabinet’s report, Mr. Stephens introduced their new staff attorney, Dinah Bevington, to the Board members.

5. **PETITIONED POSITIONS** - None

6. **ORAL ARGUMENTS** - None

7. **MOTIONS**

- A. Douglas Gregory v. Finance and Administration Cabinet
 - Appellee’s Request to modify final order
 - Appellant’s Response to request to modify final order

Chairman Higgins asked the parties if they wanted to be heard on the motion. The Hon. Celia Dunlap, counsel for Appellee Finance and Administration Cabinet, advised she would answer any questions from the Board. There were no questions from the Board members.

8. CLOSED SESSION

Mr. Frazer moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. Gibson seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (10:00 a.m.)

Ms. Gibson moved to return to open session, Mr. Andrews seconded, and the motion carried 6-0. (10:40 a.m.)

9. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

A. Tonya Coleman v. Justice and Public Safety Cabinet

Mr. Frazer moved to note Appellant's Exceptions and Appellee's Response and to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 6-0.

B. Doris Stewart v. Cabinet for Health and Family Services and Melvin Bynes

Ms. Goodmann moved to note Appellant's Exceptions, Appellee's Response and Appellant's Motion to Strike Appellee's Response, to deny Appellant's Motion to Strike and to accept the recommended order, with clerical corrections, dismissing the appeal. Ms. Gibson seconded and the motion carried 6-0.

C. John Kramer v. Department of Veterans Affairs **(Deferred from July)**

Ms. Goodmann moved to accept the Final Order as altered and attached to these minutes sustaining the appeal. Ms. Center seconded and the motion carried 3-2, with Ms. Hendricks and Mr. Frazer opposing and with Mr. Andrews abstaining.

D. Kimberly Ouedraogo v. Justice and Public Safety Cabinet (2 appeals)

Ms. Gibson moved to accept the recommended order dismissing the appeals. Mr. Andrews seconded and the motion carried 6-0.

E. Rick Quarles v. Transportation Cabinet (2007-124)

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 5-0, with Ms. Goodmann abstaining.

F. David Ramey v. Justice and Public Safety Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 6-0.

G. Deborah Turner v. Cabinet for Health and Family Services

Ms. Center moved to accept the recommended order, with clerical corrections, dismissing the appeal. Ms. Gibson seconded and the motion carried 6-0.

Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had show cause orders entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellants to the show cause orders.

H. Judith Adams v. Justice and Public Safety Cabinet (2 appeals)

I. Tonya Blackburn v. Cabinet for Health and Family Services

J. Patrick Hoskins v. Justice and Public Safety Cabinet

Ms. Hendricks moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Mr. Andrews seconded and the motion carried 6-0.

10. **WITHDRAWALS**

Mr. Frazer moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Gibson seconded and the motion carried 6-0.

A. David Brown v. Personnel Cabinet

B. Lisa Dedden v. Transportation Cabinet (2 appeals)

C. Deborah Garrison v. Cabinet for Health and Family Services

- D. George Irvin v. Justice and Public Safety Cabinet (2007-182)
- E. James Maggard v. Transportation Cabinet
- F. Tia Manning v. Personnel Cabinet
- G. DeVondra Shoulders v. Personnel Cabinet
- H. Christopher Ward v. Transportation Cabinet
- I. Dusty Banks v. Personnel Cabinet
- J. Katherine Bingham v. Personnel Cabinet
- K. Martha Lewis v. Personnel Cabinet
- L. Betty Runner v. Cabinet for Health and Family Services (2 appeals)
- M. Kevin Swift v. Personnel Cabinet

11. SETTLEMENTS

Ms. Hendricks moved to consider the following settlements [A, B, C, D, F & G] *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Mr. Frazer seconded and the motion carried 6-0.

- A. Deborah Case v. Justice and Public Safety Cabinet
- B. Ronald Easter v. Transportation Cabinet
- C. Faye Harris v. Cabinet for Health and Family Services
- D. Faith Conley v. Justice and Public Safety Cabinet (2 appeals)
- F. Pamela Helton v. Environmental and Public Protection Cabinet
- G. Kathy Caudill v. Environmental and Public Protection Cabinet

Ms. Hendricks moved to accept settlement offer E as submitted. Ms. Gibson seconded and the motion carried 5-0, with Ms. Goodmann abstaining.

- E. Sharon Gilbert v. Personnel Cabinet

12. MOTION

- A. Douglas Gregory v. Finance and Administration Cabinet
 - Appellee's Request to modify final order
 - Appellant's Response to request to modify final order

Mr. Andrews moved to deny Appellee's Motion to Modify Final Order, but acknowledged that the Appellee was in compliance. Ms. Gibson seconded and the motion carried 6-0.

13. OTHER

A. Commissioner Rees Letter – After some discussion, the Board Members agreed to visit correctional facilities in LaGrange on Thursday, September 13, 2007.

B. Proposed Legislation – The Board Members discussed the possibility of reviewing proposed legislation on Thursday, October 11, 2007.

There being no further business, Ms. Hendricks moved to adjourn, Ms. Gibson seconded, and the motion carried 6-0. (10:56 a.m.)

Greg Higgins, Chairman

Tina Goodmann, Vice-Chairman

Betty Gibson, Member

Lisa Hendricks, Member

Rosemary F. Center, Member

Jackson M. Andrews, Member

Robert B. Frazer, Member