

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2012-142**

**BRYON MITCHELL**

**APPELLANT**

**VS. FINAL ORDER  
SUSTAINING HEARING OFFICER'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

**TRANSPORTATION CABINET  
MIKE HANCOCK, APPOINTING AUTHORITY**

**APPELLEE**

**\*\* \*\* \* \* \***

The Board at its regular January 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated December 12, 2012, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

**SO ORDERED** this \_\_\_\_\_ day of January, 2013.

**KENTUCKY PERSONNEL BOARD**

\_\_\_\_\_  
**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. William Fogle  
Bryon Mitchell  
Kathy Marshall



The Hearing Officer has reviewed the Motion to Dismiss. While that motion makes clear the Personnel Board does not have the authority to litigate Workers' Compensation claims, it does not address the factual issues raised by Appellant—Appellant believes that he is entitled to the 26 hours of leave time he “had to use” while he was on Workers' Comp leave. Appellant stated at the pre-hearing conference he believed this all should have been covered by Workers' Claims benefits.

The Appellee filed a Supplemental Motion to Dismiss in compliance with second Interim Order entered on October 15, 2012.

### **BACKGROUND**

1. During the relevant times Appellant was a classified employee with status.
2. The Appellant had been injured at work, and was off work for a time. The Appellant seeks to have approximately 26 hours of leave either restored to him or money paid to him for leave he had to use during the period he was off work. The Appellant believed he should have been covered by worker's compensation instead of having to use leave for those 26 hours.
3. In its Motion to Dismiss, the Appellee contends the Personnel Board is without jurisdiction to consider any claims raised by the Appellant as regards to any work-related injury. Counsel contends that such is the sole providence of a worker's compensation claim administered pursuant to KRS 342.
4. The Appellant did not reply to the Motion to Dismiss. Subsequent receipt of that Motion to Dismiss, the Hearing Officer requested the Appellee address a question he had which was explained in the Interim Order entered October 15, 2012. The Appellant was also given time in which to respond to any supplemental motion to dismiss.
5. The Appellee did timely file a Supplemental Motion to Dismiss. In it, counsel contends that the Appellant had elected to use accumulated sick leave and to have worker's compensation benefits assigned back to the state so that he could receive full pay for time he was off work in accordance with 101 KAR 2:140, Section 4(2). Counsel reiterates that the Personnel Board is without jurisdiction to adjudicate worker's compensation issues.
6. As noted, the Appellant did not file a response to the Supplemental Motion to Dismiss.
7. KRS 18A.095(18)(a) states:  
  
The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.

### **FINDINGS OF FACT**

1. During the relevant times Appellant was a classified employee with status.
2. The Hearing Officer finds that the Appellant seeks relief in the form of having leave either restored to him or monies paid to him due to the election he made to have sick leave in order that he would receive full pay. The Hearing Officer finds this is covered under 101 KAR 2:140, Section 4(2).
3. The Hearing Officer finds such election, when made, to assign worker's compensation benefits to the agency and for the employee then to elect to utilize sick leave in order to receive full pay and benefits for the time missed due to a work-related injury does not state a penalization. The Hearing Officer finds this is outside the jurisdiction of the Personnel Board.

### **CONCLUSION OF LAW**

The Hearing Officer concludes, based upon the Findings of Fact above, that the Personnel Board is without jurisdiction to grant relief or to further consider this appeal, in that Appellant made an election of benefits pursuant to a worker's compensation scheme and could not find relief at the Personnel Board as he seeks.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **BRYON J. MITCHELL V. TRANSPORTATION CABINET, (APPEAL NO. 2012-142)** 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 Boyce A. Crocker** this \_\_\_\_\_ day of December, 2012.

**KENTUCKY PERSONNEL BOARD**

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**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. William Fogle  
Mr. Bryon J. Mitchell