

**KENTUCKY PERSONNEL BOARD  
MINUTES OF JUNE 12, 2009**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Tina Goodmann on June 12, 2009, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Swearing in of reappointed member, John T. Dunaway

Mr. John T. Dunaway was reappointed to the Board by Governor Beshear and was to be sworn in today. However, the Personnel Board received Mr. Dunaway's resignation (citing medical reasons) on June 10, 2009. Mr. Sipek stated that he would prepare a resolution for the next Board Meeting to honor Mr. Dunaway for his service with the Personnel Board.

Board personnel present:

Christine J. Goodmann, Chair  
Robert B. Frazer, Vice-Chair  
Betty Gibson, Member  
M. Suzanne Cassidy, Member  
Larry Gillis, 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 MAY 11, 2009**

The minutes of the last Board meeting had been previously circulated among the members. Chair Goodmann asked for additions or corrections. Ms. Gibson moved to approve the minutes, as submitted. Ms. Cassidy seconded, and the motion carried 4-0. [Chair Goodmann does not vote unless noted.] The Board members signed the minutes.

**3. EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek informed the Board that counsel for Appellants, Jeffrey McDonald, et. al. [*Finance and Administration Cabinet v. Jeffrey McDonald, et al.*, 2007-CA-1626-MR], filed a Motion for Rehearing in the Court of Appeals, which has since been denied. Mr. Sipek and Mr. Crocker, after reviewing the file, will determine whether the Board will seek discretionary review from the Kentucky Supreme Court or wait to see if the Appellants pursue it.

**4. PERSONNEL CABINET'S REPORT - NONE**

Ms. Dinah Bevington was not available to provide the Personnel Cabinet's report; therefore, Chair Goodmann called for the parties to come forward for the petitioned position.

**5. PETITIONED POSITION(S)**

- A. Personnel Cabinet – Office of Legal Services  
Special Assistant

Present were Mr. Jim Lambert, Manager of the Classification and Compensation Branch at the Personnel Cabinet, and Ms. Suzette Gash, Personnel Administrator.

Mr. Lambert stated that this position will be filled by an employee currently performing this function. This employee will be laterally moved, with no increase in salary, from Personnel Administration to the Office of Legal Services (OLS). OLS does not currently have an unclassified position available; hence the request to establish one. Since this is a policymaking position it cannot be filled by a merit employee.

Ms. Cassidy moved to approve the petitioned position. Ms. Gibson seconded and the motion carried 3-0, with Mr. Frazer abstaining.

## 6. ORAL ARGUMENTS

### A. Fredericka Caldwell v. Cabinet for Health and Family Services

Present were the Appellant, Ms. Fredericka Caldwell, and counsel for the Appellee, the Hon. Amber Arnett, for oral argument. The parties answered questions from the Board.

### B. Chetallen Gentry v. Public Protection Cabinet

Present were counsel for Appellant, the Hon. Mike Moulton, and counsel for the Appellee, the Hon. Gordon Slone, for oral argument. The parties answered questions from the Board.

### C. Calvin Shaak v. Cabinet for Health and Family Services

Present were counsel for Appellant, the Hon. George Riggs, and counsel for the Appellee, the Hon. Amber Arnett, for oral argument. The parties answered questions from the Board.

## 7. INVESTIGATIONS

### A. Rebecca Smith – Department of Veterans Affairs and Transportation Cabinet

--Executive Director's Report and Recommendation

Chair Goodmann asked if the members had any questions or concerns regarding Mr. Sipek's report. Ms. Cassidy stated she was not on the Board when Ms. Smith won her appeal and was ordered to be reinstated. However, upon reading the report, it appeared to Ms. Cassidy that there were steps not completed by Ms. Smith or the agencies to ensure Ms. Smith a position. Mr. Sipek stated that although Ms. Smith is currently employed in a non-merit position, she is still interested in obtaining a merit position. It was Mr. Gillis' understanding that Ms. Smith did not want to return to work at VA. Mr. Sipek stated that was true until Ms. Smith was faced with a choice between either a job with VA or no job at all, and that is when the initial investigation began. Mr. Sipek stated that Ms. Smith appealed to the Franklin Circuit Court and while the case was pending the attorneys tried to work it out. Mr. Sipek stated that in the meantime Ms. Smith put off reinstatement with VA while she tried to secure a

position with the Transportation Cabinet; however, the final result was that the whole thing fell through. Transportation could not hire her as she had already been reinstated with VA. Ultimately, VA did all they could do to get Ms. Smith to return to work. Mr. Sipek stated that when Ms. Smith was first reinstated with VA (November 1, 2007), she could have secured her position and then transferred to another position in state government as a lateral transfer. Finally, after several communications between VA and Ms. Smith, she resigned her employment with VA effective December 15, 2007. Mr. Crocker informed the Board members that reinstatement is a privilege not a right.

After further discussion, Mr. Sipek stated that it boils down to the following questions: (1) Did VA do what they were ordered to do by the Board? And, (2) Did the Transportation Cabinet comply with KRS Chapter 18A in the way they looked at Ms. Smith as a possible reinstatement? Mr. Sipek stated that the answer to both questions is "yes." Although it was a series of unfortunate events, Ms. Smith was responsible for the outcome. Mr. Sipek further stated that neither agency nor Ms. Smith responded to the Executive Director's Report and Recommendation. Chair Goodmann asked the Board members if they needed more information or had any more questions, whereupon Mr. Frazer made a motion. After the motion was made, Ms. Cassidy asked if Ms. Smith still had reinstatement rights, to which Mr. Gillis agreed she did.

Mr. Frazer moved to adopt the Executive Director's Report and Recommendation. Mr. Gillis seconded and the motion carried 4-0.

## 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. Chair Goodmann 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 4-0. (11:39 a.m.)

Mr. Frazer moved to return to open session. Ms. Cassidy seconded and the motion carried 4-0. (1:38 p.m.)

## 9. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including 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. Fredericka Caldwell v. Cabinet for Health and Family Services – 4 appeals

Mr. Frazer moved to note Appellant's exceptions, Appellee's response and oral arguments and to accept the recommended order dismissing the appeals. Ms. Cassidy seconded and the motion carried 3-0, with Ms. Gibson abstaining and Chair Goodmann recusing.

### B. Chetallen Gentry v. Public Protection Cabinet

Ms. Cassidy moved to note Appellant's exceptions, Appellee's response and oral arguments and to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 3-1, with Mr. Frazer opposing.

### C. Calvin Shaak v. Cabinet for Health and Family Services

Ms. Gibson moved to note Appellant's exceptions, Appellee's response and oral arguments and to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 4-0.

### D. Cecil Colliver v. Education and Workforce Development Cabinet

Mr. Gillis moved to note Appellee's exceptions and Appellant's response and to defer this matter for Board ordered oral argument at the August 2009 Board Meeting. Ms. Cassidy seconded and the motion carried 4-0.

### E. Shirley Robbins v. Department of Veterans Affairs

Mr. Frazer moved to note Appellant's exceptions, Appellee's response and to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 4-0.

F. Douglas Bartley v. Energy and Environment Cabinet – 2 appeals

Ms. Cassidy moved to accept the recommended order sustaining Appeal No. 2008-237 and rescinding the ten-day suspension and dismissing Appeal No. 2007-353 as moot. Ms. Gibson seconded and the motion carried 4-0.

G. Georgana Dowell v. Finance and Administration Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 4-0.

H. Monica Fryman v. Transportation Cabinet

Ms. Gibson moved to accept the recommended order dismissing the appeal. Mr. Frazer seconded and the motion carried 4-0.

I. Paul Huffman v. Finance and Administration Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 4-0.

J. Phillip Wayne Long v. Energy and Environment Cabinet and Personnel Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 4-0.

K. Trena Slone v. Justice and Public Safety Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 4-0.

L. Jerry Williams v. Justice and Public Safety Cabinet

Ms. Cassidy moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 4-0.

## **Show Cause Order(s) – Appeal(s) Dismissed - No Response(s) Filed**

The following case(s) had a show cause order entered by the hearing officer recommending that the appeal(s) be dismissed for failure to timely prosecute unless a statement was filed by the Appellant(s) stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses submitted by the Appellant(s) to the show cause order(s).

M. James Perkins v. Justice and Public Safety Cabinet

Mr. Frazer moved to find that the Appellant(s) had not responded to the show cause order(s) and that the recommended order be accepted dismissing the appeal(s) for failure to timely prosecute the appeal(s). Mr. Gillis seconded and the motion carried 4-0.

### **10. WITHDRAWALS**

Ms. Gibson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Frazer seconded and the motion carried 4-0.

- A. Marcia Brawner v. Cabinet for Health and Family Services
- B. Lisa M. Brown v. Personnel Cabinet
- C. Ronald Coffey v. Personnel Cabinet
- D. Robin Fletcher v. Cabinet for Health and Family Services
- E. Sandy Jackson v. Transportation Cabinet
- F. Cynthia Mason v. Justice and Public Safety Cabinet
- G. Terri Shaw v. Personnel Cabinet
- H. Juanita Stivers v. Personnel Cabinet
- I. Thomas Payne v. Cabinet for Health and Family Services

### **11. SETTLEMENTS**

Ms. Gibson moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeal to the extent set forth in the settlement. Ms. Cassidy seconded and the motion carried 4-0.

- A. Jeffery Stahr v. Transportation Cabinet

- B. David Dryden v. Energy and Environment Cabinet
- C. Janice Jones v. Transportation Cabinet (3 appeals)

12. **OTHER**

- A. Annual increments for Executive Director and General Counsel

Ms. Cassidy moved to give both the Executive Director and the General Counsel a one percent (1%) increment beginning July 1, 2009. Ms. Gibson seconded and the motion carried 4-0.

There being no further business, Mr. Frazer moved to adjourn. Mr. Gillis seconded and the motion carried 4-0. (1:43 p.m.)

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Christine J. Goodmann, Chair

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Robert B. Frazer, Vice-Chair

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Betty Gibson, Member

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Suzanne Cassidy, Member

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Larry Gillis, Member