

**KENTUCKY PERSONNEL BOARD
MINUTES OF APRIL 11, 2011**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Suzanne Cassidy on April 11, 2011, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

M. Suzanne Cassidy, Chair
Larry B. Gillis, Vice Chair
David F. Hutcheson, Jr., Member
David B. Stevens, Member
Wayne "Doug" Sapp, Member
Susan Gardner, 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 MARCH 11, 2011**

The minutes of the last Board meeting had been previously circulated among the members. Chair Cassidy asked for additions or corrections. Ms. Gardner moved to approve the minutes, as submitted. Mr. Gillis seconded, and the motion carried 6-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek stated that all issues have been addressed concerning the Board's regulation on Probationary Periods [101 KAR 1:325]; specifically, the Board members agreed to the language added in Section 2, (4) "The promotional probationary period shall be the same length as the initial probationary period for each job classification." The regulation is now ready to begin the process with the Legislative Research Commission, after approval from the Board members.

101 KAR 1:325, Probationary Periods

Mr. Sapp moved to approve 101 KAR 1:325 as amended. Mr. Hutcheson seconded and the motion carried 6-0.

At the conclusion of Mr. Sipek's report, Chair Cassidy called for the Personnel Cabinet's report.

4. PERSONNEL CABINET'S REPORT

The Hon. Dinah Bevington, General Counsel for the Personnel Cabinet, came forward to present the Cabinet's report.

Ms. Bevington stated that the emergency regulation for Kentucky Human Resource Information System (KHRIS) was filed with the Legislative Research Commission and was effective immediately. Further, the transition to KHRIS went smoothly and staff is prepared to assist callers with any questions.

Ms. Bevington stated that the Governor's Employee Advisory Council (GEAC) quarterly meeting was held last month. Ms. Bevington stated that she and Bob Smith, Chair of GEAC, had proposed some changes to the grievance regulation, 101 KAR 1:375, consistent with the Master Agreement at the February 2011 Board meeting. GEAC is interested in any changes the Board would like to make. Ms. Bevington said she would pass along any changes.

April 2011 was the last non-designated furlough month. A state-wide furlough day is scheduled for May 27, 2011, in conjunction with the Memorial Day holiday.

5. ORAL ARGUMENTS

A. Angela Griffin and Susan Gardner v. Public Protection Cabinet

Prior to oral arguments commencing, Ms. Gardner recused herself from the case and advised that she would leave the room during closed session while the case was being discussed. Pursuant to KRS 13B.040 [Qualifications of Hearing Officers], Chair Cassidy polled each Board member to determine if there would be any problems deciding this case based upon the evidence, as Appellant Susan Gardner is a Board member. Each member acknowledged that they had no problem deciding the case. After this questioning, counsel for both parties stated they had no issue with the Board deciding this appeal filed by a Board member.

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

~~B. — Tinuke Madu v. Cabinet for Health and Family Services (Moved to May)~~

C. Muhammad Rahman v. Personnel Cabinet [Appeal No. 10-214]

Present for oral argument were Appellant, Muhammad Rahman, and counsel for Appellee, the Hon. Whitney Wellman. The parties answered questions from the Board.

D. Beverly Reliford v. Cabinet for Health and Family Services

Present for oral argument were counsel for Appellant, C. David Emerson, and counsel for Appellee, the Hon. Muriel Varhely. The parties answered questions from the Board.

6. INVESTIGATIONS

A. Julie Johnson (Request for Investigation of Dept. of Juvenile Justice)

Mr. Sipek stated that Ms. Johnson is an employee of the Department of Juvenile Justice. She filed two appeals with the Board last year, one concerning a suspension and one concerning several grievances she had filed with the Agency and the way they were handled. Ms. Johnson summarized in nine statements what outcome she wanted in her request for investigation dated March 11, 2011. Mr. Sipek stated that the issues would have been better handled through the appeals process; however, Ms. Johnson withdrew her appeals. Mr. Sipek stated that these matters would be difficult to investigate and may not be the best use of the Board's resources.

Dr. Stevens asked if Ms. Johnson had given a reason for withdrawing her appeals. Mr. Sipek stated that to the best of his knowledge she did not.

Mr. Sipek advised the Board members they could defer the request if they want more information or Ms. Johnson's presence at the next Board meeting.

Mr. Sapp stated that the request for investigation appeared to be circumventing the appeal process.

Dr. Stevens asked if the statute of limitations would prevent Johnson from appealing, if the investigation was denied. Mr. Sipek said that was correct. Ms. Gardner stated that the incident of August 9, 2010, would still be appealable.

Dr. Stevens moved to deny Ms. Johnson's request for investigation. Mr. Hutcheson seconded and the motion carried 6-0.

B. Doerting Investigation (Transportation Cabinet)
--Recommended Findings

In December 2009 the Board voted to end the investigation. Mr. Doerting agreed, but asked that the statement, "merit laws were violated" be included in the final recommendation. Mr. Sipek stated that the report includes what took place in the investigation, summarizing that merit laws were violated and providing some support for that finding, giving recommendations for the future and lastly including a summary of the appeals connected to the investigation.

Mr. Sipek asked the Board for their review and/or any further recommendations or changes. However, if the Board members find the report satisfactory, it is ready for their approval.

Mr. Sapp asked when the Personnel Board realized it needed resources to conduct the investigation. Mr. Sipek responded that it was at the beginning, as there were at least 450 employment decisions that were identified. As the Attorney General's investigation commenced, some of their information was shared with the Personnel Board.

Mr. Crocker stated that the Board interviewed several people, but it quickly became clear, with the criminal investigation going on by the Attorney General's office and the Special Grand Jury, that the Board was "locked out."

Ms. Gardner asked if there was a definition for "appropriate consideration" as discussed in KRS 18A.0751(4)(f). Mr. Sipek stated an agency should be able to prove it gave appropriate consideration to an "applicant's qualifications, record of performance, conduct, and seniority" and not because an applicant has the prettiest resumé, which he stated has happened. Mr. Sapp stated that with his experience with the Board, it is a case-by-case basis, to determine what steps the agency took and then decide if it gave appropriate consideration.

Mr. Sapp moved to accept the Recommended Findings. Dr. Stevens seconded and the motion carried 6-0.

7. CLOSED SESSION

Ms. Gardner moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Mr. Hutcheson seconded. Chair Cassidy 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. (11:15 a.m.)

Mr. Hutcheson moved to return to open session. Ms. Gardner seconded and the motion carried 6-0. (12:50 p.m.)

8. 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. Angela Griffin and Susan Gardner v. Public Protection Cabinet

Mr. Gillis moved to note Appellants' exceptions and oral argument and to remand this matter to the hearing officer specifically to hear evidence regarding three months which had been excluded and to supplement the record. Dr. Stevens seconded and the motion carried 5-0, with Ms. Gardner recusing.

B. ~~Tinuke Madu v. Cabinet for Health and Family Services~~ (Moved to May)

C. Muhammad Rahman v. Personnel Cabinet [Appeal No. 10-214]

Mr. Hutcheson moved to note Appellant's exceptions and oral argument and to accept the recommended order dismissing the appeal. Mr. Sapp seconded and the motion carried 6-0.

D. Beverly Reliford v. Cabinet for Health and Family Services

Mr. Hutcheson moved to note Appellee's exceptions, Appellant's response and oral argument and to defer this matter to the next meeting of the Board. Mr. Gillis seconded and the motion carried 6-0.

E. Charles Clement v. Cabinet for Health and Family Services
(Deferred From March)

Ms. Gardner moved to note Appellant's exceptions and oral argument and to alter the recommended order in accordance with the Final Order attached to these minutes, sustaining the appeal to the extent that the five-day suspension be reduced to a one-day suspension. Mr. Hutcheson seconded and the motion carried 6-0.

F. Elsworth Turner v. Transportation Cabinet
(Deferred From March)

Mr. Hutcheson moved to note Appellant's exceptions, Appellee's exceptions, Appellee's response and oral argument and to alter the recommended order in accordance with the Final Order attached to these minutes, sustaining the appeal to the extent that Appellant's 2008 evaluation be stricken from his personnel file. Ms. Gardner seconded and the motion carried 6-0.

G. Sharon McCown v. Justice and Public Safety Cabinet

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

H. Swann Mitchell v. Justice and Public Safety Cabinet

Mr. Sapp moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0.

I. Kerry Russell v. Transportation Cabinet

Mr. Gillis moved to accept the recommended order sustaining the appeal. Mr. Hutcheson seconded and the motion carried 6-0.

Show Cause Orders – Appeal Dismissed - No Response Filed

The following cases had a show cause order 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 were no responses submitted by the Appellants to the show cause orders.

- J. Ashley Hamlet v. Cabinet for Health and Family Services
- K. David Langford v. Justice and Public Safety Cabinet
- L. Kimberly Ouedraogo v. Justice and Public Safety Cabinet, Dept. of State Police
- M. Bryan Wade v. Transportation Cabinet

Mr. Hutcheson 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 appeal. Mr. Sapp seconded and the motion carried 6-0.

9. **WITHDRAWALS**

Mr. Sapp moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Dr. Stevens seconded and the motion carried 6-0.

- A. Duane Christian v. Justice and Public Safety Cabinet
- B. Randall Duncan v. Public Protection Cabinet (3 appeals)
- C. Ashley Evans v. Personnel Cabinet
- D. Deanna Lindenmayer v. Justice and Public Protection Cabinet
- E. Mattie McGowan v. Cabinet for Health and Family Services
- F. Lorrie Moore v. Cabinet for Health and Family Services
- G. Paula McDonald v. Personnel Cabinet
- H. Branden C. Olmsted v. Personnel Cabinet

10. SETTLEMENTS

Ms. Gardner moved to defer the following settlement to the next Board meeting. Mr. Gillis seconded and the motion carried 6-0.

- A. Adanne Bagby v. Cabinet for Health and Family Services
(Passed from March meeting)

Mr. Sapp moved to accept the following settlements as submitted by the parties sustaining the appeal to the extent set forth in the settlement. Dr. Stevens seconded and the motion carried 5-0, with Mr. Gillis recusing.

- B. Deborah Cottle v. Justice and Public Safety Cabinet
- C. Denise Gore v Tourism, Arts and Heritage Cabinet (mediated)
- D. Suzanne Frisbee v. Education and Workforce Development Cabinet
- E. Ruth Sigler v. Education and Workforce Development Cabinet
- F. Rebecca Stopher v. Transportation Cabinet

11. OTHER

Mr. Sipek reminded the Board members that the next Board meeting was set for Monday, May 16, 2011.

Chair Cassidy asked if there were any other matters to discuss.

There being no further business, Mr. Gillis moved to adjourn. Mr. Hutcheson seconded and the motion carried 6-0. (1:00 p.m.)

M. Suzanne Cassidy, Chair

Larry B. Gillis, Vice Chair

David F. Hutcheson, Jr., Member

David B. Stevens, Member

Wayne D. Sapp, Member

Susan Gardner, Member