

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-055

MONIQUE ANTHONY

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET  
DEPARTMENT OF CORRECTIONS  
J. MICHAEL BROWN, APPOINTING AUTHORITY

APPELLEE

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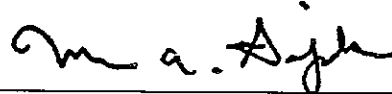
The Board at its regular August 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated June 20, 2013, and being duly advised,

**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 14<sup>th</sup> day of August, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Amber Arnett  
Monique Anthony  
Stephanie Appel

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-055**

**MONIQUE D. ANTHONY**

**APPELLANT**

**V. FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF CORRECTIONS,  
J. MICHAEL BROWN, APPOINTING AUTHORITY**

**APPELLEE**

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This matter is before the Hearing Officer for a ruling on the Appellee's Motion to Dismiss. The Appellee had filed a motion to dismiss prior to the pre-hearing conference being held on April 29, 2013. Shortly thereafter, the Appellant filed a response and the Appellee has not filed a reply.

This matter was the subject of a pre-hearing conference held on April 29, 2013. Appellant, Monique Anthony, was present by telephone and was not represented by legal counsel. Appellee, Department of Corrections, was present and represented by the Hon. Amber Arnett.

This appeal was filed with the Personnel Board on March 6, 2013. Appellant is appealing an employee evaluation. It was clarified at the pre-hearing conference that Appellant was appealing her calendar year 2012 evaluation stating, "I really don't actually think my evaluator even read the sheet, I think he just went down the list and checked all 3's especially considering that he has never worked with me as a supervisor." Appellant indicated this appeal is only about the evaluation.

As noted above, the motion and response have been filed with no reply. The matter is now ready for a ruling.

**BACKGROUND**

1. During the relevant times, Appellant was a classified employee with status.
2. In its motion to dismiss, the Appellee contends that the Personnel Board lacks jurisdiction to consider this appeal because the Appellant has no right, pursuant to KRS 18A.110(7)(j)(4), to appeal an evaluation for which she has received an overall rating in the

“Good” category. Attached to the Appellee’s motion is a copy of the Appellant’s calendar year 2012 evaluation for which she did receive an overall score of 295, placing her squarely within the “Good” category.

3. The Appellant filed a timely response, as noted. The Appellant contends that she had never previously received just a “Good” score in any of her evaluations, having worked for the Department of Corrections for almost eight years. The Appellant alleged her supervisor, Captain Mark Rice, had incorrectly tallied her scores, and also did not perform the evaluation correctly.

4. 101 KAR 2:180, Section 7(7) states:

Within sixty (60) calendar days after an employee has received the written decision from the next line supervisor, the employee who has complied with this administrative regulation may appeal a final evaluation which has an overall rating in either of the two (2) lowest overall ratings to the Personnel Board.

#### **FINDINGS OF FACT**

1. During the relevant times, Appellant was a classified employee with status.
2. The Hearing Officer finds the Appellant received a score of 295 on the calendar year 2012 employee evaluation, placing her squarely within the “Good” category.
3. The Hearing Officer finds that based on the plain language of the regulation at 101 KAR 2:180, Section 7(7), only an evaluation which results in an employee receiving one of the two lowest overall ratings may be appealed to the Personnel Board.
4. The Hearing Officer finds, as such, that the Personnel Board lacks jurisdiction to consider this appeal.

#### **CONCLUSION OF LAW**

The Hearing Officer concludes as a matter of law that pursuant to 101 KAR 2:180, Section 7(7), the Personnel Board lacks jurisdiction to consider this appeal as the Appellant received an overall rating of “Good” for her calendar year 2012 employee evaluation and such is not a score which can be appealed to the Personnel Board.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **MONIQUE D. ANTHONY V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2013-055)** 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).

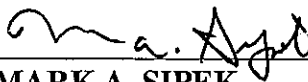
**Any document filed with the Personnel Board shall be served on the opposing party.**

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 20<sup>th</sup> day of June, 2013.

**KENTUCKY PERSONNEL BOARD**



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

A copy hereof this day mailed to:

Hon. Amber Arnett  
Ms. Monique Anthony