

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-078

JACKIE ARNOLD

APPELLANT

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

APPELLEE

*** **

The Board, at its regular October 2021 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated September 2, 2021, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer 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 14th day of October, 2021.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Linda Keeton
Jackie Arnold
Hon. Rosemary Holbrook (Personnel Cabinet)

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-078**

JACKIE ARNOLD

APPELLANT

V.

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

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET,
DEPARTMENT OF LIBRARIES AND ARCHIVES**

APPELLEE

*** **

This matter came on for a pre-hearing conference on June 5, 2019, at 10:30 a.m. EDT, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Jackie Arnold, was present and was not represented by legal counsel. The Agency/Appellee, Education and Workforce Development Cabinet, Department of Libraries and Archives, was present and represented by the Hon. Linda Keeton.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by the Appellant, the specific section of KRS Chapter 18A which authorizes this appeal, to determine the relief sought by the Appellant, to define the issues, to address any other matters relating to this appeal, and to discuss the option of mediation.

BACKGROUND

1. The Hearing Officer notes this appeal was filed with the Personnel Board on April 10, 2019. On the appeal form, the Appellant, a classified employee without status, indicated he was appealing the issuance of a written reprimand and a directive not to discuss the reprimand with anybody outside of his chain-of-command. The Appellant further explained his claims in the narrative portion of the appeal form, wherein he states, in pertinent part:

I received a written reprimand on March 11, 2019 which includes the threat of dismissal if I discuss this reprimand with any other persons outside my "chain of command." This directive has no legal or policy authority and in fact it violates both KRS 18A.020 "Records of Personnel Cabinet subject to open records law" and the employee handbook which literally

states the same. Furthermore, it violates my right of free speech, prohibits me from seeking legal counsel, prohibits me from acquiring statements from witnesses, which would contradict the accusations against me found in the reprimand, and violates the Open Records Act.

2. The parties explored informal settlement discussions. The Appellant objected to two (2) sentences contained in his written reprimand issued March 11, 2019. These sentences read as follows:

Further, you are instructed to maintain confidentiality regarding this matter and to not discuss this matter with anyone other than your supervisor or others within your chain of command. Your failure to adhere to this instruction may lead to disciplinary action up and including, dismissal.

3. Appellee filed a status report stating that it had amended the written reprimand in November 2019, and removed the offending language. The Appellee stated the appeal should be dismissed.

4. Thereafter the Appellee filed a formal Motion to Dismiss. The Appellee argued that the matter appeared to be settled and asked for the dismissal of this appeal.

5. An additional pre-hearing conference was held on March 10, 2020. The Appellee noted that they had removed the challenged language from the written reprimand underlying this appeal and thus believed the appeal was moot. The Appellant agreed that the language had been removed and then requested an opportunity to directly challenge the written reprimand. As the prohibition on discussing the written reprimand was removed, a schedule was set for the filing of an additional Motion to Dismiss from the Appellee, along with time for a response from the Appellant.

6. Although given an opportunity to file a response to the Appellee's Motion to Dismiss, the Appellant has failed to do so. This matter has now been assigned to Hearing Officer Mark A. Sipek for a ruling on the Appellee's Motion to Dismiss.

FINDINGS OF FACT

1. The Appellant was employed with the Education and Workforce Development Cabinet, Department for Libraries and Archives, as an Archives and Records Regional Administrator. He was issued a written reprimand on March 11, 2019.

2. On April 10, 2019, the Appellant filed an appeal with the Personnel Board alleging he was penalized by language contained in the written reprimand that told him he could not discuss the reprimand outside his chain-of-command, and that he was subject to additional disciplinary action if he violated this provision.

3. Following informal settlement discussions, the Appellee agreed to remove the

offending language from the written reprimand. Once the language was removed, the Appellant stated he wished to challenge the reprimand itself.

4. The Appellee filed a Motion to Dismiss stating that the Personnel Board does not have jurisdiction to hear a direct challenge to a written reprimand. Although given the opportunity to respond to the Appellee's Motion to Dismiss, the Appellant has failed to do so.

CONCLUSIONS OF LAW

1. Written reprimands are not appealable to the Personnel Board. The Board does not have jurisdiction to hear an appeal which challenges the propriety of a written reprimand. *Pamela Perkins v. Cabinet for Health and Family Services*, Appeal No. 2005-CA-2287-MR (Ky.App., June 29, 2007), 2007 WL 1893374, *Opinion not to be published*, (April 16, 2008).

2. Based on the Findings of Fact, because the only remaining issue is a direct challenge to the written reprimand itself, the Personnel Board is without jurisdiction to hear this appeal.

3. The Appellant has remedies available to him pursuant to KRS 18A.020(2)(c) and 101 KAR 1:335.

4. There are no material facts in dispute and this matter can be decided as a matter of law based on the Appellee's Motion to Dismiss, the statements of the parties at the pre-hearing conferences, and the appeal form.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the Appeal of **JACKIE ARNOLD V. EDUCATION AND WORKFORCE DEVELOPMENT CABINET, DEPARTMENT OF LIBRARIES AND ARCHIVES, (APPEAL NO. 2019-078)** 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 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 Mark A. Sipek** this 2 day of September, 2021.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Linda Keeton
Jackie Arnold
Hon. Rosemary Holbrook (Personnel Cabinet)