

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2021-027

LORI BACHMAN

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

*** **

The Board, at its regular March 2022 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 14, 2022, Appellant's Exception, 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 16th day of March, 2022.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Lori Bachman
Hon. Carmen Ross
Hon. Rosemary Holbrook (Personnel Cabinet)
Jay Klein

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2021-027**

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

** ** * * *

This matter last came on for a pre-hearing conference on September 27, 2021, at 10:00 a.m., ET, 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, Lori Bachman, was present by telephone and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Carmen Ross.

This matter is now before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss, filed with the Personnel Board on April 20, 2021, arguing that the Appellant failed to properly submit her appeal in a timely fashion in response to the demoting the Appellant from her former position as a Family Services Office Supervisor (Grade 16) to a Social Services Worker II (Grade 14), issued by the Agency on January 13, 2021. The Appellant has had an opportunity to file a response, but has not done so. Instead, the Appellant relied upon her statements made during the September 27, 2021 pre-hearing conference asserting that the discipline imposed was too harsh. After giving the Appellant additional time to submit a written response to the Agency's procedural argument, this matter now stands submitted to the Hearing Officer for a ruling on the Agency's Motion to Dismiss.

BACKGROUND

1. Prior to January 13, 2021, the Appellant, Lori Bachman, a classified employee with status, was employed by the Appellee, Cabinet for Health and Family Services, as a Family Services Office Supervisor (Grade 16), within the Department for Community Based Services (DCBS), Northern Bluegrass Service Unit, Kenton County Unit.

2. On January 13, 2021, the Appellant was issued a letter demoting her from her previous Family Services Office Supervisor position to a Social Services Worker II (Grade 14), within the Department for Community Based Services (DCBS), Northern Bluegrass Service Unit, Campbell County Unit, effective January 16, 2021.

3. As noted above, the Agency filed a Motion to Dismiss with the Personnel Board on April 20, 2021, and the Appellant was given an opportunity to respond. In its motion, the Agency argued that: 1) the demotion letter, dated January 13, 2021, was issued to the Appellant by email on that date, 2) the Appellant acknowledged receiving the demotion letter on January 13, 2021, 3) the Appellant had sixty (60) days from the date of notice of the demotion in which to file an appeal with the Personnel Board, 4) the Appellant's sixty (60) days expired no later than March 15, 2021, 5) the Appellant's appeal was filed with the Board on March 16, 2021, and 6) the Appellant's appeal is untimely and must be dismissed.

4. The Hearing Officer notes that, during the September 27, 2021 pre-hearing conference, the Appellant acknowledged she received the emailed letter imposing the appealed demotion on January 13, 2021.

5. As established by the date stamp on the appeal, the Appellant's appeal was received via letter by the Personnel Board on March 16, 2021.

6. KRS 18A.095(8) provides:

(8) A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:

- (a) The demotion, suspension, or other penalization;
- (b) The effective date of the demotion, suspension, or other penalization;
- (c) The specific reason for the action including:
 - 1. The statutory or regulatory violation;
 - 2. The specific action or activity on which the demotion, suspension, or other penalization is based;
 - 3. The date, time, and place of the action or activity; and
 - 4. The name of the parties involved; and

(d) That he or she has the right to appeal to the board within sixty (60) days, excluding the day that he or she received notification of the personnel action.

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. The Appellant, Lori Bachman, a classified employee with status, was employed by the Appellee, Cabinet for Health and Family Services, as a Family Services Office Supervisor (Grade 16), within the Department for Community Based Services (DCBS), Northern Bluegrass Service Unit, Kenton County Unit and was demoted, by letter issued on January 13, 2021, to a Social Services Worker II (Grade 14), within the Department for Community Based Services (DCBS), Northern Bluegrass Service Unit, Campbell County Unit, effective January 16, 2021.

1. The Hearing Officer finds that, in accordance with a review of the demotion letter, the appeal form, and the Appellant's acknowledgement during the pre-hearing conference, the Appellant received notice of her demotion via email on January 13, 2021.

2. The Hearing Officer finds the demotion letter correctly notifies the Appellant that she had sixty (60) days in which to file an appeal with the Personnel Board.

3. The Hearing Officer finds that Appellant filed her appeal with the Personnel Board on March 16, 2021.

4. The Hearing Officer finds, as the Appellant received her demotion letter on January 13, 2021, that she would have had up to and including March 15, 2021, in which to file her appeal. This is calculated by counting sixty (60) calendar days from January 13, 2021 excluding the day the Appellant received notice of her demotion, which results in March 15, 2021, being the due date for her Personnel Board appeal.

5. The Hearing Officer finds that, because the appeal was not received by the Personnel Board until March 16, 2021, the appeal was untimely filed and did not comply with KRS 18A.095(7)(c). Therefore, the Personnel Board did not properly acquire jurisdiction over this appeal and this matter must be dismissed.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that, having found the Appellant did not file her appeal within the sixty (60) - day time limit imposed by KRS Chapter 18A, and pursuant to KRS 18A.095(8)(d), the Personnel Board lacks jurisdiction to consider this appeal as it was untimely filed.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **LORI BACHMAN V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2021-027)** 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 Stafford Easterling** this 14th day of February, 2022.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Lori Bachman
Hon. Carmen Ross
Hon. Rosemary Holbrook (Personnel Cabinet)