

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2018-167

TAMI BAUER

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**

**APPELLEE**

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The Board, at its regular April 2021 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 18, 2021, Appellant's exceptions, Appellee's response, 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 14<sup>th</sup> day of April, 2021.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. Edward Baylous  
Tami Bauer  
Rodney Moore

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2018-167**

**TAMI BAUER**

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**VS.**

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

**JUSTICE AND PUBLIC SAFETY CABINET,  
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**APPELLEE**

\*\* \*\* \* \* \*

These matters came on for a pre-hearing conference on January 10, 2019, at 10:00 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Tami Bauer, was present by telephone and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Julie Foster.

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

**BACKGROUND**

1. In Appeal No. 2018-167, which was filed with the Personnel Board on August 2, 2018, by the Appellant, she indicated she was appealing from an employee evaluation. At the pre-hearing conference, however, she clarified that she was appealing various actions taken by the Department of Corrections in response to events of January 2018.

2. The Appellant stated that on January 12, 2018, due to inclement weather, she, along with a number of other employees, called in. She stated that this counted as a "call-in" against her. As a result, she received no pay and she received a written reprimand two months later. The Appellant thought that it was unfair to receive three punishments for the same event.

In addition, she thought the reprimand referenced the Time and Attendance Policy when it should have referenced inclement weather. She stated that, for relief, she would like to have the written reprimand removed. She did not believe that all employees at the Kentucky State Penitentiary were treated the same with respect to these issues. She specifically mentioned lockdowns and emergencies that have been handled differently.

3. The Appellee filed a Motion to Dismiss alleging that the Appellant was appealing her written reprimand, which was not appealable to the Personnel Board. The Appellee further argued that the Appellant was permitted to file a response to the written reprimand pursuant to KRS 18A.020(2)(c). The Appellee stated that the written reprimand did not constitute an appealable penalization under the provisions of KRS Chapter 18A.005(24).

4. In her response to the Motion to Dismiss, the Appellant states that reprimands are used against staff during the interview and hiring process. She also stated that receiving a written reprimand can impact evaluation scores resulting in whether or not employees receive one or two days off annual leave for getting a certain level on their evaluation.

5. The Appellant also stated that, according to the Department of Corrections policy, essential staff for inclement weather includes security, food service, maintenance, medical, the Warden and the Deputy Warden. The Appellant noted that no medical staff or food service workers were reprimanded even though they missed the same date she did due to inclement weather. Thus, the Appellant believed it was unfair to penalize her as a security staff member.

6. The Appellant also argued that she was punished three times for the same conduct. She stated that, (1) the call-in counted against her for not showing up, (2) she did not receive any pay, and (3) she received the written reprimand.

### **FINDINGS OF FACT**

1. Due to inclement weather, the Appellant, who was employed as a Correctional Officer at the Kentucky State Penitentiary, did not appear for work on January 12, 2018. As a result, she was issued a written reprimand.

2. The Appellant was also charged with a call-in because she had not scheduled the absence in advance and was given leave without pay for January 12, 2018.

3. The Appellant filed a written response to her written reprimand.

4. The Appellee has filed a Motion to Dismiss alleging that a written reprimand does not constitute an appealable penalization.

5. There are no material facts in dispute and this matter can be decided based on the Appellee's motion, the Appellant's response, and the statements of the parties at the pre-hearing conference.

### CONCLUSIONS OF LAW

1. Penalization is defined at KRS Chapter 18A.005(24) as follows:

"Penalization" means demotion, dismissal, suspension, fines, and other disciplinary actions; involuntary transfers; salary adjustments; any action that increases or diminishes the level, rank, discretion, or responsibility of an employee without proper cause or authority, including a reclassification or reallocation to a lower grade or rate of pay; and the abridgment or denial of other rights granted to state employees;

Specifically a written reprimand does not constitute an action that increases or diminishes the level, rank, discretion, or responsibility of an employee.

2. KRS 18A.020(2)(c) reads as follows:

Whenever an employee is reprimanded for misconduct, other infraction, or failure to perform his duties in a proper or adequate manner, the supervising employee taking such action shall document such action in detail, and shall provide the employee with a copy of such documentation. The supervising employee shall inform the employee that he has the right to prepare a written response to the action taken after he has reviewed the written documentation prepared by the supervising employee. Such response shall be attached to the documentation prepared by the supervising employee. The supervising employee shall place a copy of the documentation and response provided for herein in the employee's personnel file and shall transmit a copy to the cabinet to be placed in the official personnel file of the employee. The supervising employee shall notify the employee that copies of the documentation and the response provided for herein have been placed in his personnel files.

The Appellant has a remedy provided by statute upon receiving a written reprimand. That remedy is to file a response to the reprimand.

The Appellee is required to place this response along with the reprimand in the Appellant's personnel file.

3. The Appellant argues that reprimands can be used against employees to deny them promotions. This is correct, however, this does not make the written reprimand appealable in and of itself. To the extent that a written reprimand is utilized in denying an employee a future promotion, it is within the Hearing Officer's discretion to hear limited testimony regarding the reprimand on the appeal involving a denial of promotion. The same is true if a written reprimand is used to enhance a penalty of a future suspension, demotion, or dismissal.

4. The Appellant also argues that it was unfair that she received this written reprimand because medical, food service, and maintenance staff were not penalized for not showing up for work during inclement weather like security staff were. The Personnel Board does not have jurisdiction to hear appeals based on different treatment for security staff versus medical, food service, or maintenance employees.

5. The written reprimand does not become appealable based on the Appellant not having received pay for this date and also for having a call-in counted against her for January 12, 2018.

6. There are no factual issues in dispute and this appeal can be decided as a matter of law based on the motion, response, and statements at the pre-hearing conference.

### **RECOMMENDED ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **TAMI BAUER VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2018-167)** 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).

**[Hearing Officer Note: Any document filed with the Personnel Board shall also 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 18<sup>th</sup> day of March, 2021.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day mailed to:

Hon. Edward Baylous  
Tami Bauer  
Hon. Rosemary Holbrook