



**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2015-259**

**CHRISTOPHER LEE BISHOP**

**APPELLANT**

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

**KENTUCKY TRANSPORTATION CABINET**

**APPELLEE**

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This matter came on for a pre-hearing conference on December 14, 2015, at approximately 10:15 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Christopher Lee Bishop, was present and was not represented by legal counsel. The Appellee, Transportation Cabinet, was present and represented by the Hon. Will Fogle.

The purposes of the pre-hearing conference were to define the issues, address any other matters relating to this appeal and to discuss the option of mediation.

The Hearing Officer notes this appeal was filed with the Personnel Board on October 6, 2015. The Appellant was appealing from a three-day suspension without pay issued by letter dated August 5, 2015, for allegations of lack of good behavior and poor work performance. Appellant disputes the allegations, and as relief, seeks to have the matter expunged from his personnel record and to receive the three days' back pay.

The Appellee, Transportation Cabinet, indicated it would be filing a Motion to Dismiss, and did so on the date of the initial pre-hearing conference, December 14, 2015. A copy of the motion was provided to the Appellant. A briefing schedule was entered, and this matter was set for evidentiary hearing should it survive the dispositive motion. The Appellant, though given time in which to file a response, has not done so. The matter is now submitted for a ruling.

### BACKGROUND

1. During the relevant times, the Appellant, Christopher L. Bishop, was a classified employee with status.

2. In its Motion to Dismiss, the Appellee, Kentucky Transportation Cabinet, contends this appeal is untimely and, therefore, the Personnel Board must dismiss it.

3. In support of this argument, the Appellee notes that Appellant was personally served and acknowledged receipt of the three-day suspension without pay on August 5, 2015, and the Appellant did not file his appeal with the Personnel Board until October 6, 2015.

4. Though given ample time in which to file a response, Appellant has not done so.

5. KRS 18A.095(8)(d) states:

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

(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.

6. 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. During the relevant times, the Appellant, Christopher L. Bishop, was a classified employee with status.

2. The Hearing Officer finds it undisputed that Appellant received the notice of the three-day suspension without pay on August 5, 2015.

3. The Hearing Officer finds it to be undisputed that Appellant's appeal with the Personnel Board was not filed until October 6, 2015.

4. The Hearing Officer finds that KRS 18A.095(8)(d) requires an appeal of a suspension such as Appellant received, to be filed with the Personnel Board within 60 days of receipt, excluding the day the appeal is received.

5. The Hearing Officer has calculated the timeframes involved. Excluding August 5, 2015, the date Appellant received the notice of the three-day suspension without pay, more than 60 days passed until the Appellant filed his appeal with the Personnel Board on October 6, 2015.

6. The calculations reveal that, counting August 6, 2015 (the day after Appellant received his notice of suspension), through August 31, 2015, is 26 days; the month of September comprises 30 days, and the appeal was not received and filed with the Personnel Board until October 6, 2015. This, the Hearing Officer finds, constitutes a total of 62 days, making the appeal untimely filed pursuant to KRS 18A.095(8)(d).

#### CONCLUSIONS OF LAW

1. The Hearing Officer concludes as a matter of law that pursuant to KRS 18A.095(8)(d), Appellant exceeded the time limit in which to have filed the appeal of his suspension with the Personnel Board.

2. The Hearing Officer concludes this appeal should be dismissed.

#### RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **CHRISTOPHER L. BISHOP V. KENTUCKY TRANSPORTATION CABINET, (APPEAL NO. 2015-259)** 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 14<sup>th</sup> day of January, 2016.

KENTUCKY PERSONNEL BOARD

  
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MARK A. SIPEK  
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. William Fogle  
Mr. Christopher L. Bishop  
Mr. J. R. Dobner