

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-196

JEFFREY BRADY

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

APPELEE

** ** ** ** **

The Board at its regular March 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated December 27, 2012, 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 _____ day of March, 2013.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Wesley Duke
Jeffrey Brady
Stephanie Appel

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-196**

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AND RECOMMENDED ORDER**

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DEPARTMENT OF CORRECTIONS
J. MICHAEL BROWN, APPOINTING AUTHORITY**

APPELLEE

* * * * *

This matter came on for pre-hearing conference on October 22, 2012, at 10:00 a.m. ET, at 28 Fountain Place, Frankfort, KY, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment pursuant to the authority found at KRS Chapter 18A.

Appellant Jeffrey Brady was present and not represented by legal counsel. Appellee Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Wesley Duke.

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

The Hearing Officer noted the appeal was filed on August 31, 2012, wherein the Appellant claimed other penalization and stated, “[R]easonable accommodation; undue hardship.”

The Hearing Officer understood the essence of the appeal is the Appellant’s claim he is not allowed to carry personal weapons in his private vehicle, and park his vehicle at the Kentucky State Reformatory (KSR). The Appellant questioned why employees who have live-in state housing on state property are allowed to possess guns in their homes, but employees are not allowed to bring their own private weapons. Appellant had filed a grievance on this—which was denied—for the stated reason that, “[T]here is a difference between state housing, which is not defined as being on institutional grounds, and employees carry weapons in cars, which apparently has been determined to be on institutional grounds.”

Prior to the pre-hearing conference, the Appellee filed a Motion to Dismiss, challenging whether or not the Personnel Board had jurisdiction to consider this appeal. Subsequent to the Interim Order entered October 24, 2012, the Appellant filed a response. The matter now stands submitted to the Hearing Officer for a ruling on the Appellee's motion.

BACKGROUND

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

2. In its motion, counsel for the Appellee contends no penalization occurred because the Appellant is attempting to appeal the denial of a grievance for not being allowed to carry a personal firearm on the grounds of KSR. Counsel states this is not a penalization over which the Personnel Board would have jurisdiction and, in fact, is not a penalization at all.

3. Appellant responds that he believes it is discriminatory for the DOC to not allow personal firearms on the grounds of KSR, but to allow employees who live in state housing to possess and maintain personal firearms in their state housing.

4. The Hearing Officer notes that the grievance response, which is part of this file, denied Appellant's grievance essentially due to the fact that institutional housing was determined as not being located on institutional grounds.

5. The Appellee did not file any reply to Appellant's response.

6. KRS 18A.095(18)(a) states, as follows:

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.

7. KRS 527.020(6)(b) states, as follows:

The provisions of this subsection shall not authorize a person specified in this subsection to carry a concealed deadly weapon in a detention facility as defined in KRS

520.010 or on the premises of a detention facility without the permission of the warden, jailer, or other person in charge of the facility, or the permission of a person authorized by the warden, jailer, or other person in charge of the detention facility to give such permission. As used in this section, "detention facility" does not include courtrooms, facilities, or other premises used by the Court of Justice or administered by the Administrative Office of the Courts.

8. KRS 18A.005(24) states, as follows:

Penalization shall include, but not be limited to, demotion, dismissal, suspension, fines, and all other disciplinary actions, involuntary transfers; salary adjustments; any action that diminishes the level, rank, discretion, or responsibility of an employee without proper cause, including a reclassification or reallocation to a lower grade or rate of pay; and the abridgement or denial of other rights granted to state employees.

9. KRS 196.180(1) states, as follows:

The warden shall have the general management of the institution and the inmates thereof, subject to the administrative regulations of the Department of Corrections, and he or she shall devote his or her entire time to the duties of his or her office.

FINDINGS OF FACT

1. During the relevant times, Appellant was a classified employee with status.
2. The Hearing Officer finds that pursuant to 196.180(1) the warden has general management of any correctional institution, which includes (pursuant to KRS 527.020) whether to allow persons to carry concealed firearms at the institution they manage.
3. The Hearing Officer finds that KRS 527.020 grants exceptions to restrictions on carrying concealed deadly weapons (firearms) to certain persons listed at KRS 527.020(5)(a), KRS 527.020(6), and KRS 527.020(7). The Hearing Officer finds that if a warden of an institution such as the Kentucky State Reformatory can prevent persons, e.g. commonwealth attorneys and sheriffs, from carrying firearms onto institutional grounds, they can certainly lawfully not allow employees to carry deadly weapons on institutional grounds.

4. The Hearing Officer finds that the response to the grievance made by Sr. Capt. Scott Jordan, which details DOC policy and procedures that do not allow firearms to be brought on institutional grounds are expressions of the warden's will regarding persons carrying those firearms as it relates to those claims brought about in this appeal.

5. The Hearing Officer, having found that the warden has the right to limit—or restrict altogether—introduction of firearms on institutional grounds, and the warden having chosen to do so through exercise of administrative regulation, the Hearing Officer finds the Appellant has not stated a penalization.

6. The Hearing Officer finds that KRS 237.115(2) allows “the statute or ordinance shall exempt any building used for public housing by private persons,…” the Hearing Officer finds this would allow state employees who live in state housing to possess firearms in that house, even if they are located on institutional grounds.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that the Personnel Board lacks jurisdiction to grant relief in this matter pursuant to KRS 18A.095(18)(a).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **Jeffrey Brady v. Justice and Public Safety Cabinet, Department of Corrections** (Appeal No. 2012-196) 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 _____ day of December, 2012.

KENTUCKY PERSONNEL BOARD

Mark A. Sipek
Executive Director

A copy hereof this day mailed to:

Hon. Wesley Duke
Mr. Jeffrey S. Brady