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**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-204**

ERIC J. BRINEGAR

APPELLANT

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

**CABINET FOR HEALTH AND FAMILY SERVICES,
J. P. HAMM, APPOINTING AUTHORITY**

APPELLEE

** ** *

This matter previously came on for a pre-hearing conference on October 31, 2014, at 11:30 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Eric J. Brinegar, 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. Jennifer Wolsing.

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, and to discuss the option of mediation.

The Hearing Officer noted this appeal was filed with the Personnel Board on September 15, 2014. Appellant alleged he received an unfair written reprimand when he presented a doctor's statement which did not cover all the days he utilized sick leave. Appellant denied he was alleging any type of protected class discrimination, although he stated he felt he was being treated differently than some other employees.

The Appellant indicated an interest in mediation. Counsel for the Appellee stated she would check with her client and see if there was any interest in mediation. On behalf of the Appellee, counsel stated she would request time to file a Motion to Dismiss, alleging the Personnel Board lacks jurisdiction to hear an appeal from a written reprimand, and that the appeal was untimely.

The Appellee filed a Motion to Dismiss on November 3, 2014. The Appellant then filed by e-mail a Response to the Motion to Dismiss. The Appellee indicated it would not be filing a reply. Thus, this matter stands ready for a ruling on the Appellee's Motion to Dismiss.

BACKGROUND

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

2. In its Motion to Dismiss, Appellee contends a written reprimand is not appealable, and at the pre-hearing conference held on October 31, 2014, Appellant explicitly stated he was not making any claim of discrimination based on a protected class. Appellee also contends the matter was untimely filed.

3. As noted, Appellant responded to the Motion to Dismiss. Appellant contends a written reprimand should be appealable, as it would affect whether he could receive fewer vacation days on his year-end evaluation, and thus, it would involve money and would be a penalization. Appellant also contends he was being discriminated against because others have received no punishment in similar situations.

4. KRS 18A.095(12) states:

Any classified employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age forty (40) and above. Nothing in this section shall be construed to preclude any classified or unclassified employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.

5. 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.

6. KRS 18A.020(c) states:

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.

FINDINGS OF FACT

1. During the relevant times, the Appellant, Eric J. Brinegar, was a classified employee with status.
2. The Hearing Officer finds that the Appellant claiming he was treated differently from others does not state a claim of discrimination per KRS 18A.095(12). The Hearing Officer finds, pursuant to KRS 18A.020, the proper remedy for a written reprimand is not to appeal to the Personnel Board, but would rather be to submit a statement to be placed in the file.
3. The Hearing Officer finds that the Personnel Board does not have jurisdiction to consider this appeal.

CONCLUSION OF LAW

1. The Hearing Officer concludes as a matter of law that a written reprimand is not appealable to the Personnel Board, and Appellant has not stated a claim of discrimination over which the Personnel Board would otherwise have jurisdiction.
2. Therefore, the Hearing Officer concludes, pursuant to KRS 18A.095(18)(a), this matter should be dismissed.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **ERIC J. BRINEGAR V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2014-204)** 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 15th day of December, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Jennifer Wolsing
Mr. Eric J. Brinegar