

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2012-081

VICKIE BROCKMAN

APPELLANT

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

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

APPELLEE

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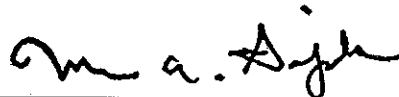
The Board at its regular April 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 21, 2013, and being duly advised,

**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 17<sup>th</sup> day of April, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Mary Tansey  
Hon. Robert L. Bertram  
Hon. Anna Whites  
J.P. Hamm

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**V. FINDINGS OF FACT, CONCLUSIONS OF LAW  
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**APPELLEE**

\* \* \* \* \*

These appeals came on for pre-hearing conference on August 16, 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 Vickie Brockman was present and represented by the Hon. Elmer George. Appellee Cabinet for Health and Family Services was present and represented by the Hon. Ben Fiechter.

The purposes of the pre-hearing conference were to determine the status of these appeals and schedule a date for the evidentiary hearing, if appropriate.

This matter is before the Hearing Officer for a ruling the Appellee's Motion to Dismiss. The Appellee had filed a motion to dismiss on May 21, 2012. Subsequent to that, current counsel for Appellant filed a response to the motion to dismiss on February 20, 2013.

**BACKGROUND**

1. During the relevant times, Appellant was a classified employee with status.
2. The Appellant filed this appeal on March 30, 2012, indicating "Other Penalization," specifically "violation of 2.4/Verbal Warning."
3. Apparently, Appellant received a verbal warning for using state resources, presumably a fax machine, to send documents in regarding her flex spending account to Humana.

4. Counsel for the Appellee, in its motion to dismiss, argues that a verbal warning or verbal reprimand is not a penalization within the meaning of the statute at KRS 18A.005(24) and that KRS 18A.095 does not allow such an appeal. Counsel also cites Personnel Board orders disallowing similar appeals and also the case of *Perkins v. Cabinet for Health and Family Services*, Appeal No. 2005-CA-000287 (Ky. App., June 29, 2007).

5. Appellant's response, through counsel, is that a verbal reprimand or verbal warning, such as in this case, does amount to a punitive measure, does amount to a penalization, and a loss of discretion in the performance of her job duties, and that an appeal from such disciplinary action should be allowed.

6. KRS 18A.005(24) states:

"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.

### **FINDINGS OF FACT**

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

2. The Hearing Officer finds that a verbal warning or verbal reprimand, is not an appealable action to the Personnel Board as it is not a penalization within the meaning of KRS 18A.005(24). Likewise the Hearing Officer finds that there is no right of appeal under KRS 18A.095 or in the undersection of KRS 18A.005 to KRS 18A.200, which would allow such an appeal.

3. The Hearing Officer finds that the precedent set by the Board in the earlier rulings cited by counsel for the Appellee and also the *Perkins* case are controlling.

### **CONCLUSION OF LAW**

The Hearing Officer concludes, as a matter of law, that having found the verbal warning or verbal reprimand is not a penalization from which an appeal can be taken, the Personnel Board lacks jurisdiction to further consider this appeal, and as such, it should be dismissed.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **VICKIE BROCKMAN V. CABINET FOR HEALTH AND FAMILY SERVICES** (Appeal No. 2012-081) 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 21<sup>st</sup> day of March, 2013.

**KENTUCKY PERSONNEL BOARD**

  
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**Mark A. Sipek**  
**Executive Director**

A copy hereof this day mailed to:

Hon. Robert L. Bertram  
Hon. Anna S. Whites  
Hon. Mary Tansey