

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-126

KEVIN BRODIE

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

APPELLEE

** **

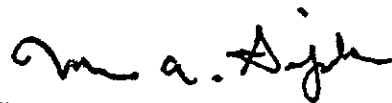
The Board at its regular December 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated November 19, 2014, and being duly advised,

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 17th day of December, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Edward Baylous
Kevin Brodie
Bobbie Underwood

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-126**

KEVIN M. BRODIE

APPELLANT

VS.

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

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS,
J. MICHAEL BROWN, APPOINTING AUTHORITY**

APPELLEE

* * * * *

This matter came on for a pre-hearing conference on September 29, 2014, at 11:30 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before 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, Kevin M. Brodie, was present and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Edward Baylous.

This matter is before the Hearing Officer for a ruling on the Appellee Justice and Public Safety Cabinet, Department of Corrections' Motion to Dismiss filed with the Personnel Board on June 24, 2014.

A pre-hearing conference was held July 14, 2014, at which the Appellant was not present. A Show Cause Order was issued. The Appellant responded to the Show Cause Order, indicating he believed the Motion to Dismiss meant the case was over. Upon reviewing that, the Personnel Board remanded the case to the active docket.

A second pre-hearing conference was held September 29, 2014. At that time, the Hearing Officer inquired of Appellant whether he needed time in which to file a response to the Appellee's Motion to Dismiss. Appellant indicated he wanted his response to the Show Cause Order to also be his response to the Appellee's Motion to Dismiss. This matter now stands submitted to the Hearing Officer for a ruling on the Appellee's Motion to Dismiss.

BACKGROUND

1. During the relevant times, Appellant, Kevin M. Brodie, was a classified employee with status, as a Correctional Officer at the Luther Lockett Correctional Complex within the Department of Corrections.

2. As noted, the Appellee Justice and Public Safety Cabinet, Department of Corrections filed a Motion to Dismiss with the Personnel Board on June 24, 2014. The Appellee contended that the dismissal letter to Appellant dated December 11, 2013, was delivered to the Appellant on or about that date, and Appellant's appeal to the Personnel Board until filed on June 9, 2014. The Appellee contends the Appellant had 60 days from the date of notice of the dismissal in which to have filed an appeal with the Personnel Board, and his appeal is untimely and must be dismissed.

3. In the Response to the Show Cause Order (which Appellant also wished to be considered as his Response to Appellee's Motion to Dismiss), Appellant stated "I thought the letter said I had six months in which to file my appeal. If I misread, then I again apologize, but still claim my right to appeal my dismissal."

4. Appellant continued, "I received the letter of notice dated December 11, 2013, on December 15, 2013, and as you can see, June 9, 2014, is within the time period I thought I had."

5. KRS 18A.095(7) states:

If the cabinet or agency head or his designee determines that the employee shall be dismissed or otherwise penalized, the employee shall be notified in writing of:

(a) The effective date of his dismissal or other penalization;

(b) The specific reason for this action, including:

1. The statutory or regulatory violation;

2. The specific action or activity on which the dismissal or other penalization is based;

3. The date, time, and place of the action or activity; and

4. The name of the parties involved; and

(c) That he may appeal the dismissal or other penalization to the board within sixty (60) days after receipt of this notification, excluding the day he receives notice.

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, Appellant, Kevin M. Brodie, was a classified employee with status, as a Correctional Officer at the Luther Lockett Correctional Complex within the Department of Corrections.

2. The Hearing Officer finds that in accord with Appellant's statement and a review of the dismissal letter, Appellant received his dismissal notice on or about December 15, 2013. The Hearing Officer further finds that the dismissal letter was dated December 11, 2013.

3. The Hearing Officer finds that the dismissal letter correctly notifies Appellant that he had 60 days in which to file an appeal with the Personnel Board.

4. The Hearing Officer finds that Appellant filed his appeal with the Personnel Board on June 9, 2014.

5. The Hearing Officer finds, assuming Appellant received his dismissal letter as he states on December 15, 2013, that he would have had up to and including February 13, 2014, in which to file his appeal. This is calculated by counting 60 calendar days from December 16, 2013 (the day after Appellant received his dismissal letter), which results in February 13, 2014, being the due date.

6. The Hearing Officer finds that regardless of Appellant's mistaken belief as to the time limit to file an appeal, the appeal was untimely filed and did not comply with KRS 18A.095(7)(c).

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that having found Appellant did not file his appeal within the 60-day time limit, that pursuant to KRS 18A.095(18)(a), the Personnel Board lacks jurisdiction to consider this appeal as it was untimely filed. The mistaken belief of an Appellant is not a defense to the statutory requirement to adhere to the 60-day time limitation expressed at KRS 18A.095(7)(c).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **KEVIN M. BRODIE V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2014-126)** 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 19th day of November, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Edward Baylous
Mr. Kevin M. Brodie