

CERTIFICATION OF PERSONNEL BOARD RECORDS

I certify that attached hereto is a true and correct copy of the Findings of Fact, Conclusions of Law and Recommended Order and Final Order in the case of **DONNA COX VS. DEPARTMENT OF VETERANS AFFAIRS (APPEAL NO. 2018-224)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 7th day of May, 2019.



MARK A. SIPEK, SECRETARY
KENTUCKY PERSONNEL BOARD

Copy to Secretary, Personnel Cabinet

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2018-224**

DONNA COX

APPELLANT

V.

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

DEPARTMENT OF VETERANS AFFAIRS

APPELLEE

** ** *

This matter came on for a pre-hearing conference on December 13, 2018, at 10:00 a.m. EST, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Donna Cox, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Department of Veterans Affairs, was present and represented by the Hon. Dennis Shepherd.

At issue in this appeal is the Appellant's claim that she has been penalized because she was issued two written reprimands, one dated May 31, 2018, and one dated September 20, 2018. This matter is before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss filed with the Personnel Board on January 17, 2019, arguing that the Personnel Board lacks jurisdiction over this appeal, pursuant to KRS 18A.020(2). The Agency also notes that the Appellant's challenge to the May 31, 2018 written reprimand is time-barred as the instant appeal was filed five (5) months after the written reprimand was issued. The Appellant has had an opportunity to file a response and has done so on February 4, 2019. This matter now stands submitted to the Hearing Officer for a ruling on the Agency's Motion to Dismiss.

BACKGROUND/ FINDINGS OF FACT

1. At the time of the submission of this appeal, the Appellant, Donna Cox, was a classified employee with status with the Kentucky Department of Veterans Affairs.
2. The Appellant was employed by the Department of Veterans Affairs as a nurse at the Radcliff Veterans Center in Radcliff, Kentucky.
3. On May 31, 2018, the Agency issued the Appellant a written reprimand, advising her:

You were a no call/no show for the dates of 5/22 and 5/23. Due to previous occurrences, you have been instructed on the proper call in procedures by the director of nursing. If you could not reach someone in nursing you have been given instructions on calling the front desk or calling the nurse on duty.

4. The May 31, 2018 written reprimand letter informed the Appellant that, pursuant to KRS 18A.020, she could respond to the written reprimand in writing. The Appellant failed to do so. The written reprimand letter also advised the Appellant that “a written reprimand, in and of itself, is not an appealable penalization.”

5. On September 20, 2018, the Agency issued the Appellant another written reprimand. This time, the Agency advised the Appellant that:

You have failed to perform the required functions of your position by failing to report to work on multiple occasions. You have been absent sixteen (16) full working days and three (3) partial days since being placed on verification of personal or family illness on May 31, 2018. Ms. Cox, your behavior creates a hardship for your co-workers and may compromise the care of residents.

6. The September 20, 2018 written reprimand letter informed the Appellant that, pursuant to KRS 18A.095, she may “appeal this action to the Personnel Board within sixty (60) days after receipt of this notice.” However, it is clear that written reprimands are governed by the provisions of KRS 18A.020 instead of KRS 18A.095.

7. On October 31, 2018, the Appellant filed the instant appeal, alleging:

I received a lumbar sprain, non-work related. I was put on light duty by my doctor. The D.O.N Stacy Collinswood would not let me come back to work until I was released, no restrictions, so 15 of the 16 days I am being reprimanded for were because they wouldn't allow me to come to work. I understand why I wasn't allowed back but I don't think I should get reprimanded because of it. Also, on 5/31/18, reprimand is unfounded. I have proven that. I was not a no-call/no-show but Stacy Collinswood states she will not remove it from my personal [sic] file. All my days off were under a doctor's care with work release.

8. As noted above, the Agency filed its Motion to Dismiss with the Personnel Board on November 16, 2018, arguing the Personnel Board lacks jurisdiction over the May 31, 2018 written reprimand, pursuant to KRS 18A.020(2)(c). The Agency concedes, however, that they did not comply with the requirements of KRS 18A.020(2)(c) when it issued the Appellant a written reprimand on September 20, 2018.

9. KRS 18A.020(2)(c) provides, in full:

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.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes, as a matter of law, that the Appellant's direct challenge to the written reprimand issued May 31, 2018, must fail. That is because, as Personnel Board precedent provides, "KRS 18A.020(2)(c) provides for the sole means of handling an employee's claim that a written reprimand is not warranted and as long as the procedures outlined in KRS 18A.020(2)(c) are followed, no further appeal rights regarding a reprimand are given to employees." Ramey v. Cabinet for Health Services, 2003 WL 25749476 at *2 (KY PB). The Appellant does not argue that the Agency failed to follow the procedures mandated by KRS 18A.020(2)(c). Accordingly, the Appellant's challenge to the May 31, 2018 written reprimand must fail even if it were timely filed, which it was not. KRS 18A.095.

2. It is clear, as a matter of law, that written reprimands are governed by the provisions of KRS 18A.020 instead of KRS 18A.095. Accordingly, the Hearing Officer also concludes, as the Agency concedes, that the Agency failed to comply with the procedures outlined in KRS 18A.020(2)(c) when it issued the Appellant a written reprimand on September 20, 2018. This is because the Agency failed to "inform the employee that [s]he has the right to prepare a written response to the action taken after [s]he has reviewed the written documentation prepared by the supervising employee." KRS 18A.020(2)(c). The Agency acknowledges they failed to comply with KRS 18A.020(2)(c) and requests the opportunity to remove the September 20, 2018 written reprimand from the Appellant's personnel file. As the September 20, 2018 written reprimand was not properly issued, removal of the written reprimand from the Appellant's personnel file is required.

3. Lastly, the Appellant challenges the May 31, 2018, and September 20, 2018 written reprimands by attempting to dispute the factual basis for those reprimands. However, without additional claims, the Personnel Board does not have jurisdiction to examine the factual basis for the issuance of a written reprimand. As stated above, this is because “KRS 18A.020(2)(c) provides for the sole means of handling an employee’s claim that a written reprimand is not warranted and as long as the procedures outlined in KRS 18A.020(2)(c) are followed, no further appeal rights regarding a reprimand are given to employees.” Ramey v. Cabinet for Health Services, 2003 WL 25749476 at *2 (KY PB). Accordingly, the Appellant’s attempts to challenge the facts underlying the written reprimands must fail as a matter of law.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **DONNA COX V. DEPARTMENT OF VETERANS AFFAIRS, (APPEAL NO. 2018-224)** be **SUSTAINED** to the extent that the September 20, 2018 written reprimand be rescinded and removed from the Appellant’s personnel files for failure to comply with KRS 18A.020(2)(c). The remainder of the Appellant’s claims including the challenge to the May 31, 2018 written reprimand should be **DISMISSED**. The Appellee/Agency shall reimburse the Appellant for any leave time she used attending any pre-hearing conferences at the Board. 18A.095(25).

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 Stafford Easterling** this 9th day of April, 2019.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Dennis Shepherd
Donna Cox