

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-072**

**SHARON CARTER**

**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**

**\*\* \*\* \***

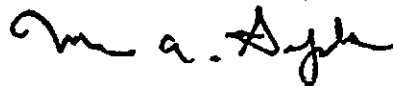
The Board at its regular September 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated July 23, 2014, and being duly advised,

**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 17<sup>th</sup> day of September, 2014.

**KENTUCKY PERSONNEL BOARD**



**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. Tim Salansky  
Sharon Carter  
J. P. Hamm

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-072

SHARON S. CARTER

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V. FINDINGS OF FACT, CONCLUSIONS OF LAW  
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CABINET FOR HEALTH AND FAMILY SERVICES,  
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This matter came on for a pre-hearing conference on May 29, 2014, at 10:00 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the 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, Sharon Carter, 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. Tim Salansky.

The purposes of the pre-hearing conference were to define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

The Hearing Officer notes this appeal was filed with the Personnel Board on April 9, 2014. The Appellant was appealing a suspension. The Hearing Officer notes in the file there is a letter of suspension dated November 18, 2013, whereby Appellant was suspended for two days without pay for an allegation of Lack of Good Behavior.

In her statements and documents filed with the Board, Appellant took issue with the suspension, claiming it was based on information which was incorrect and misleading, and the action was taken prematurely, before matters had been resolved in court. Appellant also explained the timing of her filing the appeal with the Personnel Board, both in documents filed with the Board, and also during her oral statement made during the pre-hearing conference.

Counsel for the Appellee indicated it may be requesting time in which to file a motion to dismiss, believing the matter was untimely filed.

The Appellee did timely file a Motion to Dismiss.

As noted in the Interim Order, Appellant stated she did not wish to file any further written response on this appeal as to any Motion to Dismiss, and asked that her oral statement made during the course of the pre-hearing conference be considered as her response to any Motion to Dismiss.

The matter stands submitted to the Hearing Officer for a ruling on the Appellee's Motion to Dismiss.

### **BACKGROUND**

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

2. In its Motion to Dismiss, counsel for Appellee contends that the appeal is untimely pursuant to KRS 18A.095(8)(d), and the appeal was filed more than 60 days after the Appellant received written notice of the disciplinary action. Counsel contends that the disciplinary action was dated November 18, 2013, and that the appeal was not filed until April 9, 2014.

3. Counsel further contends that it is immaterial that Appellant's DUI charge had been dismissed on February 6, 2014, as such would not have any impact whatsoever on the requirements of filing an appeal within 60 days of receiving written notice of the action. The Appellee argues that it was not the DUI itself that was the reason for the disciplinary action, but rather Appellant's failure to have reported being charged with a DUI according to policy.

4. In her oral response made at the pre-hearing conference, Appellant stated she had been disappointed with the way the Cabinet handled things, and doubted anything would change. Appellant also stated the reason for the delay in filing the appeal was to wait to see what the Court had done. Appellant didn't believe she could do anything until the Court proceeding was completed. Appellant stated she wanted to submit the outcome of what had happened in Court regarding the charge of DUI. The Hearing Officer notes that Appellant did so - submitting a document indicating the matter (the DUI charge) had been dismissed. This letter was dated February 6, 2014, and was a letter from Appellant's criminal attorney to the Appellant.

5. During the course of her statement, Appellant stated that she had to wait as long as she did because of the court system, that is, to make sure she could give the outcome of what had happened with the criminal charges for the Board to consider.

6. KRS 18A.095(8) states as follows:

A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:

- (a) The demotion, suspension, or other penalization;
- (b) The effective date of the demotion, suspension, or other penalization;
- (c) The specific reason for the action including:
  - 1. The statutory or regulatory violation;
  - 2. The specific action or activity on which the demotion, suspension, 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
- (d) That he or she has the right to appeal to the board within sixty (60) days, excluding the day that he or she received notification of the personnel action.

#### **FINDINGS OF FACT**

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

2. The Hearing Officer finds that the Notice of Disciplinary Action (the letter of suspension) dated November 18, 2013, was received by the Appellant shortly after that date.

3. The Hearing Officer finds that Appellant filed this appeal from that disciplinary action with the Board on April 9, 2014. Hearing Officer finds that this was more than sixty days after the Appellant would have received the Notice of Disciplinary Action.

4. The Hearing Officer finds that Appellant stated she had delayed filing the appeal until she could report the outcome of the criminal charge (the DUI charge) to the Board.

5. The Hearing Officer finds that this became final on or about February 6, 2014, based on Appellant's attorney's communication to Appellant.

6. The Hearing Officer finds that while Appellant was ultimately cleared of any DUI charge, with her record to be expunged of same, there is no provision in the clear language of KRS 18A.095(8)(d) for delaying the filing of an appeal of a disciplinary action. Perhaps Appellant's unfamiliarity with Personnel Board rules (based on Appellant's sterling record with the Cabinet for Health and Family Services) may have led Appellant to believe she should not file the appeal until she had all the pertinent information.

7. However, the filing timelines are exactly that - timelines for filing an appeal. If the appeal is not filed within the the sixty-day timeline of receipt of the disciplinary action; then the appeal is untimely filed.

8. The Hearing Officer finds the appeal was untimely filed. This is unfortunate, as the Hearing Officer was impressed by the Appellant's oral statement on her behalf made at the pre-hearing conference.

#### CONCLUSION OF LAW

Based on the Findings of Fact, the Hearing Officer concludes that as a matter of law, the Appellant did not file her appeal timely with the Personnel Board. As such, the Hearing Officer concludes that the Personnel Board is without jurisdiction to consider this appeal further and thus the matter must be dismissed.

#### RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **SHARON S. CARTER V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2014-072)** 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).

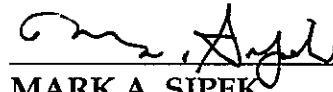
**Any document filed with the Personnel Board shall be served on the opposing party.**

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 23<sup>rd</sup> day of July, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK  
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Tim Salansky  
Ms. Sharon S. Carter