

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-199

EBONY T. CLAYTOR

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 came on for a pre-hearing conference on September 19, 2013, at 10:30 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, Ebony Claytor, was present by telephone and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was also present and represented by the Hon. Carrie Cotton.

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 notes this appeal was filed with the Personnel Board on August 12, 2013. Appellant was appealing a suspension she received by letter dated June 10, 2013, for allegations of Unsatisfactory Performance of Duties, and also an allegation of Lack of Good Behavior.

At the pre-hearing conference, Appellant stated she was challenging the allegations and the punishment imposed. As relief, Appellant seeks to have the matter expunged from her record, and to receive any back pay to which she would be due.

Counsel for the Appellee stated it would be interested in filing a motion to dismiss. The Hearing Officer discussed this briefly with the parties, and set a briefing schedule. A hearing date was also set.

The Appellee filed a timely Motion to Dismiss. Though given ample time in which to file a response, the Appellant did not do so. The matter is submitted to the Hearing Officer for a ruling on Appellee's Motion to Dismiss.

BACKGROUND

1. During the relevant time, the Appellant, Ebony T. Claytor, was a classified employee with status.

2. In its Motion to Dismiss, the Appellee contends the Appellant filed her Appeal outside of the sixty (60) day timeframe as allowed by KRS 18A.095(8)(d). Appellant notes that the letter of suspension was received by Ms. Claytor on June 10, 2013, and the Appeal was not filed with the Personnel Board until August 12, 2013.

3. As noted, the Appellant, though given ample time in which to file her response, did not do so.

4. KRS 18A.095(8)(d) states:

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

(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 time, the Appellant, Ebony T. Claytor, was a classified employee with status.

2. The Hearing Officer finds that the Appellant was served with her five-day suspension on June 10, 2013. The Hearing Officer finds that the Appellant did not file her Appeal with the Personnel Board until August 12, 2013.

3. The Hearing Officer finds that KRS 18A.095(8)(d) is controlling in this situation. This statute provides that an Appellant has sixty (60) days from the date she received notice of the action to file an appeal with the Personnel Board. As found above, the suspension was served on Appellant on June 10, 2013, not counting the date of service, and counting sixty (60) days from that date, the Appeal was due to the Personnel Board on August 9, 2013.

4. Appellant's Appeal was not filed with the Personnel Board until August 12, 2013. The Hearing Officer finds the Appellant mailed the Appeal on August 9, 2013, the same day she signed it, but it was not received and actually filed until August 12, 2013. The Hearing Officer finds this was filed outside the sixty-day time limit.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that as the Appeal was filed outside the time limitations set forth at KRS 18A.095(8)(d), that this matter is untimely, and must fail.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **EBONY T. CLAYTOR V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2013-199)** 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 16th day of March, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Carrie Cotton
Ms. Ebony T. Claytor