

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2016-038**

**SARAH COOLEY**

**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**

**APPELLEE**

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The Board, at its regular November 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated October 3, 2016, 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 22<sup>nd</sup> day of November, 2016.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. Angela Cordery  
Ms. Sarah Cooley  
Mr. Rodney E. Moore

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2016-038**

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**VS.**

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

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This matter came on for an evidentiary hearing on August 9, 2016, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Stephen T. McMurtry, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Sarah Cooley, 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. Angela Cordery.

**BACKGROUND**

1. This is an appeal by Sarah L. Cooley from a decision of Warden Don Bottoms of the Department of Corrections, Northpoint Training Center, not to approve her request for an hour and a half leave to be charged to annual leave because of "adverse weather" conditions. Cooley, an Accountant III at Northpoint, called her employer on February 17, 2016, at 7:30 a.m. to leave a telephone message and a text message that she would be late that morning due to "adverse weather" conditions. **Sue Edwards**, testified she returned the call at 7:58 a.m. that morning to offer to pick her up, but Cooley refused because, as she stated, her route was blocked by a "stuck car" that would require her to "walk down the street" to meet Edwards. Cooley informed Edwards she would be at work in an hour or so and would use the excuse of "adverse weather" which would enable her to deduct any immediate pay loss from annual leave, or so she thought.

2. Much of the testimony described the weather conditions of February 17, 2016. Cooley offered testimony that during the three days preceding February 17, 2016, 5.2 inches of snow had fallen in the Danville area of Boyle County. Northpoint, in the village of Burgin, is a

few miles from Danville. Cooley also testified the county schools were on a two-hour delay because of the weather.

3. **Pam Coffman**, the Human Resources Administrator at Northpoint, testified that the county schools were on a delay, but the city schools in Danville were in session. She said that Cooley was the only employee who was late for work that day because of the weather conditions.

4. **Kimberly Huddleston**, Fiscal Manager at Northpoint, testified the roads were clear when she drove to work that morning, then to Lexington, without trouble. She said Cooley was repetitively tardy, not just that one day.

5. **Warden Donald Bottoms** testified the roads were mostly clear after the snowfall of the previous three days. He confirmed the staff offered to pick Cooley up, a round trip of only 10 to 12 miles.

6. Cooley was adamant she was entitled to have her absence charged to annual leave because of "adverse weather" conditions. The Cabinet disagreed. Both parties relied on 101 KAR 2:102, Section 11 (1)(a) which reads in part:

(1) an employee, who is not designated for mandatory operations and chooses not to report to work or chooses to leave early if there are adverse weather conditions, such as tornado, flood, blizzard, or ice storm, shall have the time of the absence reported as:

(a) charged to annual or compensatory leave: ...

### **FINDINGS OF FACT**

The Hearing Officer makes the following findings by a preponderance of the evidence:

1. There is little or no dispute about the facts of this case. Every employee at the Northpoint Training Center made it to work the morning of February 17, 2016, except Sarah Cooley. Cooley, like the county schools, was delayed getting to work.

2. Cooley declined Sue Edward's offer to pick her up, which would have been approximately five to six miles away. There had been 5.2 inches of snowfall the previous three days, but that morning the roads were clearing up.

### **CONCLUSION OF LAW**

“Adverse Weather”, as used in 101 KAR 2:102, Section 11, means weather of the kind experienced in “tornados’, floods’, blizzards or ice storm.” The weather described by Cooley and the other witnesses does not fit into the category of blizzard or ice storm.

In interpreting a statute or regulation or other writing, if the writing uses specific terms, general terms that follow are to be confined to the same kind of things that preceded them. The roads in Boyle County that morning had patchy snow, but were generally clearing. The roads did not present the kind of adverse weather condition that one would confront in a tornado, flood, blizzard or ice storm, for example a tsunami, hurricane or earthquake would. [*Lexington vs Edgerton*, 159 S.W.2d 1015 (Ky. 1941); the doctrine of *ejusdem generis* Ballentine’s Law Dictionary, 3<sup>rd</sup> edition.]

### **RECOMMENDED ORDER**

Based on the foregoing Findings of Fact and Conclusion of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **SARAH COOLEY VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2016-038)** be **DISMISSED**.

### **NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13.B.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).

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 Stephen T. McMurtry** this 3<sup>rd</sup> day of  
October, 2016.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Angela Cordery  
Ms. Sarah Cooley