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FEB 15 2019

Personnel Board

**COMMONWEALTH OF KENTUCKY  
FRANKLIN CIRCUIT COURT  
DIVISION I  
CIVIL ACTION NO. 19-CI-0076**

**FINANCE AND ADMINISTRATION CABINET,  
DEPARTMENT OF REVENUE**

**PETITIONER**

v.

**ORDER GRANTING RESPONDENT'S  
MOTION TO DISMISS**

**AMELIA DAVENPORT and  
KENTUCKY PERSONNEL BOARD**

**RESPONDENTS**

This action is before the Court on Respondent Amelia Davenport's Motion to Dismiss the Petition for failure to file the Petition within thirty (30) days of the Final Order's issuance as required by KRS 13B.140(1). The parties appeared during Motion Hour on February 13, 2019, at which Paul Fauri appeared on behalf of Amelia Davenport and Katherine Fitzpatrick appeared on behalf of Finance and Administration Cabinet ("FAC"). On review of the arguments and being otherwise sufficiently advised, the Court **GRANTS** Davenport's Motion to Dismiss for the reasons described below.

**BACKGROUND**

Amelia Davenport was previously employed by FAC in the Division of Collections in Frankfort. In September 2017, a Child Support Specialist with the Shelby County Attorney's Office notified FAC's Disclosure and Security Officer, Rebecca Rogers-Johnson, that Davenport had committed a confidentiality breach. On investigation, FAC found that Davenport had improperly accessed or disclosed taxpayer information relating to the father of her children with whom she had a child support agreement. FAC alleges that during its investigation, Davenport initially claimed to have

never accessed the Father's taxpayer records; she later claimed that she had only done so once. CACS-G records show that Davenport accessed the Father's information at least twenty-nine (29) times, although whether these were unique visits or simple page refreshes is disputed.

On December 7, 2017, FAC sent Davenport a Dismissal Letter which stated that she was being terminated for violating FAC procedure #6.1.2, Confidentiality of State and Federal Information. Davenport appealed the termination to the Kentucky Personnel Board ("KPB"); in its Final Order, KPB contradicted several conclusions reached by FAC, determined that termination was an excessive punishment for Davenport's conduct, and found that a 30-day suspension was warranted instead. The Final Order was served on FAC on December 21, 2018 by state government messenger mail. During Motion Hour on February 13, FAC stated that messenger mail sent via the courier service is not dated but FAC claims that it did not receive the Order until December 26, 2018.

On January 23, 2019, FAC brought this action for judicial review of the Final Order pursuant to KRS 13B.140 and KRS 18A.100. KPB filed a Motion to Dismiss, claiming that this Court lacks jurisdiction over the action because it was not filed within thirty (30) days of December 21, 2018 when the Final Order was mailed as provided by KRS 13B.140(1). FAC claims in response that the tolling date should instead be set at December 26, 2018, the day it received the Final Order.

#### DISCUSSION

Because FAC's ability to judicially appeal KPB's determination is granted by KRS 13B.140 and KRS 18A.100, strict compliance with the terms of these statutes is required. *Board of Adjustments of City of Richmond v. Flood*, 581 S.W.2d 1, 2 (Ky.

1978). Where the conditions for the exercise of power by a court are not met, the judicial power is not lawfully invoked, and the court lacks jurisdiction and has no power to decide the controversy. *Id.* KRS 13B.140(1) requires the party seeking review to institute an appeal “within thirty (30) days after the final order of the agency is mailed or delivered by personal service.” Personal service was not rendered in this case. The parties disagree on whether the phrase “is mailed” identifies the date on which the mail is sent or the date it is actually received. The statute uses the term “mailed” but does not specify U.S. Mail or any other form of mailing, including the state government internal messenger mail service.

Statutes must be given their literal interpretation unless they are ambiguous and if the words are not ambiguous, no statutory construction is required. *Stephenson v. Woodward*, 182 S.W.3d 162, 170 (Ky. 2005) (internal citations and quotation marks omitted) (quoting *Commonwealth v. Plowman*, 86 S.W.3d 47, 49 (Ky. 2002)). The Court finds that KRS 13B.140(1) is ambiguous because it does not specify whether the thirty (30) day deadline is tolled by the act of service of the Final Order in the mail or whether it is tolled on actual receipt of the mail. Accordingly, the Court must interpret the statutes and liberally construe their language with a view to promote their objects and to carry out the intent of the legislature. KRS 446.080.

The general purpose of KRS 18A.005 to 18A.200 is to establish for the state a system of personnel administration based on merit principles and scientific methods governing the recruitment, examination, appointment, promotion, transfer, lay-off, removal, discipline, and welfare of its classified employees and other incidents of state employment. KRS 18A.010(1). As viewed in this light, KRS 18A.100 is a remedial

statute with the dominant purpose of protecting government employees against arbitrary disciplinary actions. Conversely, in bringing this action, FAC seeks to maintain its termination of former-employee Davenport, seeking to reverse the determination of Personnel Board that termination was an excessive penalty. As the primary purpose of KRS 18A.100 and KRS 13B.140 is the protection of employees, the ambiguous mailing provision of KRS 13B.140 must be construed in favor of Petitioner's argument that the thirty (30) day deadline was triggered by service of the final order in the messenger mail that was sent on December 21, 2018. Consequently, the Court cannot exercise jurisdiction over this case because FAC's Petition was not filed within the statutory deadline. KRS 13B.140(1); *Flood*, 581 S.W.2d at 2.

This conclusion is bolstered by the requirement that statutes be construed to conform to "common and everyday meanings" of the words used. KRS 446.015. Here, the legislature has stipulated that the thirty (30) day appeal period runs from the date the Final Order was mailed or personally served. There is no question that the Personnel Board served the Final Order by messenger mail, not personal delivery. If the time period is computed by the date of receipt of messenger mail, there will never be any certainty as to the deadline for filing an appeal under KRS 13B.140 because there is no reliable way of ascertaining when such documents are received. Yet we have reliable public records that demonstrate the date of mailing and that date should control under a plain reading of the statute. The Court of Appeals has repeatedly required strict compliance with the statutory prerequisites to invoke judicial review in similar circumstances. *See Transportation Cabinet v. Caudill*, 278 S.W.3d 643 (Ky. App. 2009). Here, the FAC

failed to initiate its action for judicial review within the thirty (30) day time limit set forth in KRS 13B.140.

For the reasons specified above, Petitioner's Motion to Dismiss is **GRANTED**.

This is a final and appealable Order and there is no just cause for delay.

**SO ORDERED** this the 13<sup>th</sup> day of February, 2019.



**PHILLIP J. SHEPHERD, JUDGE**  
Franklin Circuit Court, Division I

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