

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-301

KARA DOTSON

APPELLANT

VS.

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

** ** ** ** **

This matter came on for an evidentiary hearing on July 13, 2017, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Kara Dotson, was present and represented by the Hon. James W. Dunn. Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Angela Cordery. Also present was Warden Janet Conover as Agency representative.

This matter involves the probationary dismissal of the Appellant by letter dated November 12, 2015, from a Correctional Officer position at the Kentucky Correctional Institution for Women (KCIW). (A copy of the dismissal letter is attached as **Recommended Order Attachment A.**)

The issue at the hearing was whether the Appellant was dismissed due to discrimination for pursuing a Workers' Compensation claim. The Appellant was assigned the burden of proof by a preponderance of the evidence.

BACKGROUND

1. The Appellant, **Kara Dotson** (now **Stone**), was the first witness. Appellant testified that she began employment as a Correctional Officer on July 5, 2015, and was injured on the job during training on July 22, 2015. Apparently, this injury affected her right shoulder and arm. (Appellee's Exhibit 4.) The Appellant was initially taken to the Baptist Health Medical facility on July 22, 2015, and was allowed to return to work with certain restrictions which included no use of the right hand or arm. This continued weekly until August 19, 2015, with the same restrictions. During this time, she continued to receive her Workers' Compensation medical payments and a portion of the lost wages. Although allowed to return to work with restrictions, no reasonable accommodations could apparently be made by the Agency.

2. On August 28, 2015, the Appellant was seen at the Louisville Orthopaedic Clinic, by Dr. Ty Richardson. Dr. Richardson advised that she be released from work from August 28, 2015, through September 11, 2015. Dr. Richardson saw the Appellant again on September 11, 2015, and advised that she remain on restrictions, to include light duty and no lifting with her right arm. The Appellant was again seen on October 6, 2015, and the same restrictions were placed upon her. Her next scheduled appointment date with Dr. Richardson was October 27, 2015.

3. At least two Independent Medical Examinations (IME) were conducted. The Appellant insists that for the initial several appointments, the updated medical statements had been faxed by Dr. Richardson to Steve Lyons, the Personnel Liaison at KCIW.

4. One of the IMEs, Dr. Andrew DeGruccio examined her on November 3, 2015, and advised he felt she had reached her Maximum Medical Improvement. This was sent to KCIW and the insurance carrier. Approximately two days later, the Appellant testified she received notice that her Workers' Compensation benefits had been terminated. The Appellant denied having a conversation with Kathryn Benson, of the KCIW Personnel Office, on November 2, 2015, advising her she needed to forward updated medical statements from the October 27, 2015 appointment with Dr. Richardson. Although Appellant at first denied this conversation, she also testified that, at some point, she had told Benson she was going to have surgery and that Dr. Richardson would be faxing the statements to the office.

5. Ten days later, the Appellant received a letter, dated November 12, 2015, from the facility advising her that her probationary position had been terminated. Although no reason was given in the letter, subsequent testimony from the Agency stated it was because of the

Appellant's failure to cooperate by forwarding the updated medical statements from October 27, 2015. The Appellant replied that she had never been told by anyone that "we don't have any paperwork from you."

6. On cross-examination, the Appellant further explained that on November 8, 2015, she appeared at the Jewish Hospital for a supposed pre-surgery examination. She understood that she was to undergo surgery sometime later. Upon arriving, she was told the Workers' Compensation carrier had denied coverage for the procedure, and she was told to leave the hospital. She then received her letter terminating her Workers' Compensation benefits on or about November 10, 2015, from the Workers' Compensation carrier.

7. On re-direct, the Appellant insisted that she was never told by anyone that her dismissal was due to her failure to cooperate and furnish the updated medical statements.

8. The Appellant closed.

9. Appellee's first witness was **Steve Lyons**. He is employed as the Human Resources Administrator at KCIW. As such, he oversees the administrative paperwork and Workers' Compensation issues. He testified that the aforementioned Kathryn Benson formerly worked at the facility, but has now moved out-of-state.

10. The witness explained that, in processing a Workers' Compensation claim, there must first be a signed First Report of Injury or Illness, which the Agency then sends to the Personnel Cabinet. If the employee is then placed on leave, their responsibility is to supply paperwork to the Agency which, in turn, is then forwarded on to the Workers' Compensation carrier.

11. The witness further explained that the Agency must rely upon the employee to send them the necessary paperwork, as they do not always get it from the insurance carrier. The witness then testified that after the First Report of Injury was filed, it was then forwarded to the Personnel Cabinet. Afterwards, all the medical statements were received from Baptist Health showing the treatment and follow-up appointments scheduled. He stated that the last information received by the Agency was an October 6, 2015 medical statement, which showed the Appellant was scheduled for an October 27, 2015 appointment date. The witness then said this was the appointment for which the Agency never received any medical documentation.

12. Lyons related that he was in the office with Kathryn Benson on November 2, 2015, when she placed a call to the Appellant. He stated that he heard Benson tell the Appellant to get in the paperwork concerning the October 27, 2015 appointment.

13. The witness next introduced Appellee's Exhibit 10, a November 12, 2015 email from Rodney Moore, Branch Manager with the Department of Corrections, inquiring if the Appellant had returned to work. This was because the Agency had been informed that the Appellant had been released to return to work as of November 3, 2015. The witness then testified that since no information had been received from the Appellant over a period of ten days from November 2, 2015, the Agency decided to follow the guidelines of 101 KAR 2:102, Section 10(3). This regulation deals with absences without leave and is generally used only for employees with status. However, to be consistent, the witness testified that the Agency followed the same procedure with this probationary employee.

14. The witness then testified that because the Appellant was serving a probationary period, he advised Warden Conover of the facts and recommended the Appellant's probationary dismissal for failure to furnish the required information. Lyons insisted that his recommendation was not based upon the fact that the Appellant was pursuing a Workers' Compensation claim.

15. On cross-examination, Lyons insisted that he had no knowledge of any surgery planned, as that was all handled by the third party insurance carrier. The witness also confirmed that, in the past, there had been no problem receiving follow-up medical statements from the Appellant and the October 27, 2015, statement was the first one she failed to send in. He again confirmed that from November 2 through November 12, 2015, no notice or documents of any kind were received from the Appellant.

16. The witness also stated on November 3, 2015, he had received the medical statement from Dr. DeGruccio releasing the Appellant to return to work. However, he was not aware of whether the Appellant knew of this statement.

17. Appellee's next witness was **Janet Conover**. She has been the Warden at KCIW since January 2010. She is also the Appointing Authority and made the final decision in this matter to terminate Appellant.

18. She testified that, relying upon the information provided by Mr. Lyons, no documents had been received from the Appellant, and since she was on unauthorized leave, Warden Conover decided to invoke the probationary dismissal. The witness also confirmed that

the Agency has been instructed by the Personnel Cabinet to not cite reasons for a probationary employee termination.

19. She confirmed her decision to terminate the Appellant was based solely on the Appellant's failure to provide the necessary documents, after having been told to by Kathryn Benson.

20. The Appellant, **Kara Dotson**, was then recalled as a witness. When referred back to the conversation with Kathryn Benson, the witness insisted that she had never been told that the failure to provide the requested medical documentation could result in her termination.

21. On cross-examination, Dotson testified that she had kept the October 27, 2015 medical appointment with Dr. Richardson. She stated that during her November 2, 2015 conversation with Benson, she had in her possession doctors' notes from the October 27, 2015 appointment. She advised that she had told Benson that she thought Dr. Richardson had already faxed the report from October 27, 2015. She stated that she never heard back one way or the other from the Agency.

22. The Appellee closed.

APPLICABLE REGULATIONS AND STATUTES

23. KRS 18A.111(1) states as follows:

(1) Except when appointed to a job classification with an initial probationary period in excess of six (6) months, and except as provided in KRS 18A.005 and this section, an employee shall serve a six (6) months probationary period when he is initially appointed to the classified service. An employee may be separated from his position, reduced in class or rank, or replaced on the eligible list during this initial probationary period and shall not have a right to appeal, except as provided by KRS 18A.095...

24. 101 KAR 2:102, Section 10(3) states as follows:

...

(3) An employee who has been absent without leave or notice to the supervisor for a period of ten (10) working days shall be deemed resigned.

FINDINGS OF FACT

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

1. An employee without status who has failed to serve his or her probationary period has no right to an appeal, except as provided in KRS 18A.095. The Appellant herein was an employee without status.

2. The Appellant's claim herein is based upon discrimination for pursuing a Workers' Compensation claim.

3. The Appellant introduced no documentation or medical records to support any of her testimony. The Hearing Officer relied solely upon the exhibits introduced by the Appellee.

4. It was clear and convincing testimony from Warden Conover and Steve Lyons that the reason for the probationary termination of Appellant was her failure to furnish any updated medical information following an October 27, 2017 doctor's appointment.

5. The Hearing Officer finds the Appellant's dismissal was not because she pursued a Workers' Compensation claim. Indeed, the Agency followed the correct procedures in ensuring that the Appellant's medical records and partial wages were paid. Only after receiving the note from Dr. DeGruccio declaring that the Appellant had reached Maximum Medical Improvement and could return to work did the Agency take its action.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that the Appellee carried its burden of proof by a preponderance of the evidence.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **KARA DOTSON VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2015-301)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

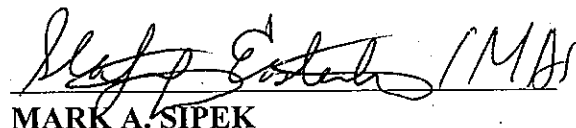
Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are 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).

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 R. Hanson Williams** this 25th day of August, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Angela Cordery
Hon. James W. Dunn