

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2018-113

RICKY EASTHAM

APPELLANT

VS. FINAL ORDER
SUSTAINING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

PUBLIC PROTECTION CABINET

APPELLEE

*** **

The Board, at its regular October 2019 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated September 20, 2019, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer 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 16th day of October, 2019.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Leah Spears
Mr. Ricky Eastham
Ms. Anya Carnes

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2018-113**

RICKY EASTHAM

APPELLANT

**V. FINDING OF FACT, CONCLUSION OF LAW
AND RECOMMENDED ORDER**

PUBLIC PROTECTION CABINET

APPELLEE

This matter came on for pre-hearing conferences on July 24, 2019, at 10:00 a.m. EDT, and on September 5, 2019, at 10:30 a.m. EDT, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Ricky Eastham, was present for the July 24, 2019 pre-hearing conference and was not represented by legal counsel. The Appellant did not attend the September 5, 2019 pre-hearing conference and did not request that it be rescheduled. The Agency/Appellee, Public Protection Cabinet, was present for both pre-hearing conferences and was represented by the Hon. Leah Spears.

This matter is before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss Appeal with Prejudice, filed with the Personnel Board on August 30, 2019. In their Motion, the Agency argues that the Appellant has abandoned the instant appeal. The Appellant has had an opportunity to file a response but has failed to do so. This matter now stands submitted to the Hearing Officer for a ruling on the Agency's Motion to Dismiss.

BACKGROUND

1. The Appellant, Ricky Eastham, was formerly a classified employee with status within the Public Protection Cabinet.

2. This appeal was subject to a previous round of dispositive motions, resulting in the issuance of the March 29, 2019 Interim Order containing Findings of Facts and Conclusions of Law. The March 29, 2019 Interim Order is hereby incorporated in this document as if it were fully set out herein, (attached hereto as **Recommended Order Attachment A**).

3. As found in the March 29, 2019 Interim Order, on July 12, 2017, the Agency placed the Appellant on special leave with pay to investigate allegations the Appellant improperly effectuated an arrest on his neighbor, whom the Appellant claimed trespassed on his property and drove his vehicle in a reckless manner.

4. On October 4, 2017, the Agency removed the Appellant from special leave status and, in the same letter, issued the Appellant a thirty (30) day suspension for several alleged policy violations stemming from his arrest of his neighbor.

5. The Appellant filed a previous appeal, Appeal No. 2017-151, with the Personnel Board on July 17, 2017. In that appeal, the Appellant maintained that his actions arresting his neighbor were lawful and proper and asserted that the Agency treated him unfairly by acting on a "late, fabricated complaint."

6. The Appellant obtained legal counsel, the Hon. Mary Sharp, and began the process of challenging his placement on investigative leave. It is worth noting that, although the Appellant checked the box indicating he was appealing a suspension, a review of Appeal No. 2017-151 makes clear that the Appellant was solely appealing his July 12, 2017 placement on investigative leave.

7. Thereafter, on October 23, 2017, the Appellant's counsel notified the Board and the Agency that the Appellant intended to withdraw his Board appeal. At its regular December 2017 meeting, the Personnel Board considered the Appellant's request to withdraw his appeal and, on December 13, 2017, ordered that the Appellant's appeal be dismissed.

8. Several months later, on June 13, 2018, the Appellant filed the instant appeal, challenging the thirty- (30) day suspension issued on October 4, 2017, in addition to advancing claims of age discrimination and the denial, abridgment, or impediment of his right to inspect or copy records. The Appellant argued that the suspension imposed by the Agency was illegal and requested that "[b]ased on the extenuating circumstances surrounding the illegal suspension and bad acts by the Public Protection Cabinet" the Personnel Board waive any applicable statute of limitations. As the basis for his request for a waiver, the Appellant asserted that "the Public Protection Cabinet acted against me illegally and with malice to such a high degree that the Personnel Board must take action by granting me relief." Lastly, he also claimed that, in his prior appeal, "my previous counsel was ineffective and did not have my best interests at heart when she acted on my behalf."

9. The March 29, 2019 Interim Order dismissed the Appellant's claim relating to the thirty-day suspension as being untimely filed. The same Order permitted the remainder of the Appellant's claims to proceed as neither party addressed the remainder of the Appellant's claims and because there was no evidentiary record upon which to analyze the Appellant's claims regarding discrimination and the Agency's alleged denial, abridgment, or impediment of the Appellant's right to inspect or copy records, so the Hearing Officer could not determine whether the Appellant's claims were timely filed.

10. The parties then conducted a follow-up pre-hearing conference on July 24, 2019, at 10:00 a.m. EDT. The Appellant was present, but indicated that he no longer intended to participate in the Personnel Board process. The Appellant stated that he did not believe he would be treated fairly by the Agency or by the Personnel Board and planned on filing a federal lawsuit on the

subjects underlying the instant appeal. The Appellant refused to withdraw his appeal, however. Instead, while discussing the potential deadlines applicable to the Agency's already submitted dispositive motion(s), the Appellant left the pre-hearing conference without agreeing to any plan to move this appeal forward.

11. The Board then entered an Interim Order dated July 30, 2019. That Interim Order established various deadlines designed to move this appeal forward including a deadline for the Appellant to respond to the submitted dispositive motions and setting this matter for a pre-hearing conference on September 5, 2019. The Interim Order also explicitly warned the Appellant that **“failure to respond to the submitted motions will be deemed to be evidence that he has abandoned the instant appeal. If the Appellant is deemed to have abandoned this appeal, an order will issue dismissing this appeal for failure to prosecute.”** The Appellant was also warned that **“failure to participate in the scheduled pre-hearing conference will be deemed to be evidence that he has abandoned the instant appeal. If the Appellant is deemed to have abandoned this appeal, an order will issue dismissing this appeal for failure to prosecute.”**

12. The Appellant failed to respond to the submitted motions and failed to participate in the scheduled pre-hearing conference. Additionally, the Agency filed a Motion to Dismiss arguing that the Appellant has abandoned this appeal. The Appellant failed to respond to the Agency's Motion to Dismiss.

13. KRS 18A.095(18)(a) states:

The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.

FINDING OF FACT

The Hearing Officer finds, in accordance with Appellant's statements during the July 24, 2019 pre-hearing conference, his failure to respond to the submitted dispositive motion, his failure to attend the September 5, 2019 pre-hearing conference, and his failure to respond to the Agency's August 30, 2019 Motion to Dismiss, that the Appellant has no intention to continue participating in prosecuting his claims herein and has, in fact, abandoned the instant appeal.

CONCLUSION OF LAW

The Hearing Officer concludes, having found that the Appellant has no intention to prosecute his claims after conducting preliminary hearings, that the Personnel Board lacks jurisdiction to further consider this appeal as the Board cannot grant relief because the Appellant has abandoned the instant appeal.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **RICKY EASTHAM V. PUBLIC PROTECTION CABINET (APPEAL NO. 2018-113)** 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 Stafford Easterling** this 20th day of September, 2019.

KENTUCKY PERSONNEL BOARD



Mark A. Sipek
Executive Director

A copy hereof this day mailed to:

Hon. Leah Spears
Ricky Eastham

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2018-113**

RICKY EASTHAM

APPELLANT

V.

**INTERIM ORDER CONTAINING FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

PUBLIC PROTECTION CABINET

APPELLEE

**** ** * ** ***

This matter last came on for a pre-hearing conference on August 23, 2018, at 10:00 a.m. EST, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Ricky Eastham, was present and not represented by legal counsel. The Appellee/Agency, Public Protection Cabinet, was present and represented by the Hon. Kate Bennett.

This matter is before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss, filed with the Personnel Board on September 4, 2018. At issue is a thirty (30) day suspension issued to the Appellant on October 4, 2017. The Appellant filed this appeal on June 13, 2018, attempting to re-explore the circumstances underlying his 2017 suspension. The Agency's Motion to Dismiss argues that the Personnel Board lacks jurisdiction over this appeal because the Appellant filed his appeal untimely. The Appellant was given an opportunity to file a response to the Agency's Motion to Dismiss and has done so, requesting that the Board waive the applicable statute of limitations due to various allegations of misconduct advanced against the Agency in addition to a claim of ineffective assistance of counsel. This matter now stands submitted to the Hearing Officer for a ruling on the Agency's Motion to Dismiss.

BACKGROUND/ FINDINGS OF FACT

1. On July 12, 2017, the Agency placed the Appellant on special leave with pay to investigate allegations the Appellant improperly effectuated an arrest on his neighbor, whom the Appellant claimed trespassed on his property and drove his vehicle in a reckless manner.

2. On October 4, 2017, the Agency removed the Appellant from special leave status and, in the same letter, issued the Appellant a thirty (30) day suspension for several alleged policy violations stemming from his arrest of his neighbor.

3. The Appellant filed a previous appeal, Appeal No. 2017-151, with the Personnel Board on July 17, 2017. In that appeal, the Appellant maintained that his actions arresting his neighbor were lawful and proper and asserted that the Agency treated him unfairly by acting on a "late, fabricated complaint."

4. The Appellant obtained legal counsel, the Hon. Mary Sharp, and began the process of challenging his placement on investigative leave. It is worth noting that, although the Appellant checked the box indicating he was appealing a suspension, a review of Appeal No. 2017-151 makes clear that the Appellant was solely appealing his July 12, 2017 placement on investigative leave.

5. Thereafter, on October 23, 2017, the Appellant's counsel notified the Board and the Agency that the Appellant intended to withdraw his Board appeal. At its regular December 2017 meeting, the Personnel Board considered the Appellant's request to withdraw his appeal and, on December 13, 2017, ordered that the Appellant's appeal be dismissed.

6. Several months later, on June 13, 2018, the Appellant filed the instant appeal, challenging the thirty (30) day suspension issued on October 4, 2017, in addition to advancing claims of age discrimination and the denial, abridgment, or impediment of his right to inspect or copy records.

7. As noted above, on September 4, 2018, the Agency filed a Motion to Dismiss this appeal. The Agency argues that the Personnel Board lacks jurisdiction over this appeal because the Appellant untimely filed his appeal.

8. The Appellant filed a response to the Agency's motion, arguing that the suspension imposed by the Agency was illegal and requests "[b]ased on the extenuating circumstances surrounding the illegal suspension and bad acts by the Public Protection Cabinet" that the Personnel Board waive any applicable statute of limitations. As the basis for his request for a waiver, the Appellant asserts that "the Public Protection Cabinet acted against me illegally and with malice to such a high degree that the Personnel Board must take action by granting me relief." Lastly, he also claims that, in his prior appeal, "my previous counsel was ineffective and did not have my best interests at heart when she acted on my behalf."

9. KRS 18A.095(14)(a) provides:

Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board.

10. KRS 18A.095(8) provides, in full:

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.

11. KRS 18A.095(18)(a) provides, in pertinent part:

The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.

12. Here, the Appellant did not file the instant appeal until June 13, 2018. The Hearing Officer finds, assuming Appellant received his suspension letter on October 4, 2017, that he would have had until approximately December 4, 2017, in which to file his appeal. This is calculated by counting 60 calendar days from October 5, 2017 (the day after Appellant received his suspension letter), which results in December 4, 2017, being the due date.

13. The Hearing Officer finds that because the appeal was not received by the Personnel Board until June 13, 2018, the appeal was untimely filed and did not comply with KRS 18A.095(8). Further, none of the grounds advanced by the Appellant serve to extend the applicable statute of limitations.

14. Lastly, the Hearing Officer finds that the Motion to Dismiss and the response thereto solely focus on the suspension and its timeliness. The Appellant's other claims regarding age discrimination and the alleged denial, abridgment, or impediment of his right to inspect or copy records were wholly unaddressed by either party.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes, as a matter of law, that the Appellant did not file his appeal from his suspension within the 60-day statute of limitations established in KRS 18A.095(8) and that, pursuant to KRS 18A.095(18)(a), dismissal of this matter is appropriate because the Personnel Board lacks jurisdiction to consider this appeal as it was untimely filed.

2. However, because neither party addressed the remainder of the Appellant's claims, dismissal of the entirety of this appeal appears premature. Further, because there is no evidentiary record upon which to analyze the Appellant's claims regarding discrimination and the Agency's alleged denial, abridgment, or impediment of his right to inspect or copy records, the Hearing Officer cannot determine whether such claims were timely filed. As a result, this appeal must be allowed to proceed.

WHEREFORE, the Hearing Officer having listened to the statement of the parties, having reviewed the file and being duly advised, **HEREBY ORDERS** as follows:

1. The parties are instructed to contact the Board to facilitate scheduling a follow-up pre-hearing conference. The Appellant may appear by telephone by providing a telephone number where he can be reached.

2. The purpose of the pre-hearing conference will be to discuss the status of the appeal, to determine whether the parties need to conduct additional discovery on the discrimination claims, and to schedule an evidentiary hearing, if appropriate.

3. Any exceptions to this order may be filed when a Recommended Order is presented to the Personnel Board.

SO ORDERED at the direction of Hearing Officer Stafford Easterling this 29th day of March, 2019.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Leah Spears
Ricky Eastham