

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2020-148

CODY EDMONDS

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 April 2021 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 18, 2021, 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 14<sup>th</sup> day of April, 2021.

KENTUCKY PERSONNEL BOARD

  
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MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Jesse Robbins  
Cody Edmonds  
Rodney Moore

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2020-148**

**CODY EDMONDS**

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**VS.**

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

**JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF CORRECTIONS**

**APPELLEE**

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This matter came on for a pre-hearing conference on January 15, 2021, at 10:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Cody Edmonds, 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. Jesse Robbins. Both parties participated by telephone.

The purposes of the pre-hearing conference were to define the issues, to address any other matters relating to this appeal, and to discuss the option of mediation.

**BACKGROUND**

1. The Appellant filed his appeal with the Personnel Board on June 22, 2020, appealing from a three-day suspension. The three-day suspension was outlined in a letter dated January 17, 2020. The Appellant stated he did not file the appeal until June because he was off on extended leave due to emergency circumstances.

2. At the pre-hearing conference, counsel for the Appellee stated that the Appellant was off work for some of the time but not the entire time. He believed the appeal was untimely filed and offered to file a written motion to dismiss. A schedule was set for a motion to dismiss, response, and reply.

3. In its Motion to Dismiss, the Appellee argued that the Appellant had not complied with the time provisions contained in KRS 18A.095(8)(d) when he filed his appeal more than 60

days after he received his notice of suspension. In its motion, the Appellee stated that the Appellant received his suspension on January 17, 2020. His appeal was not filed with the Personnel Board until June 22, 2020.

4. The Appellee addressed the Appellant's statement at the pre-hearing conference that the appeal was filed late because of medical reasons. The Appellee argued that the Appellant was working much of the time during his 60 days to file the appeal.

5. Lastly, the Appellee argued that it was prejudiced by the Appellant's delay in that a key witness to the Appellant's misconduct no longer works for the Appellee. The Appellee argued that it would be a hardship to track down this witness if a hearing were held despite the late appeal.

6. The Appellant responded to the Motion to Dismiss, stating that his medical circumstances left him unable to work from March 17, 2020, until his return to work on April 20, 2020. He also alleged that the impact from the global pandemic resulted in this late appeal. He stated he has had to work extra hours due to staff shortages as well as take over the education and teaching of his two children. The Appellant appeared to acknowledge that his appeal was filed late but stated that special consideration should be given due to his personal circumstances and the impact of Covid-19.

7. The Appellee filed a reply stating the Appellant's medical leave began after his 60 days time period to file his appeal had passed.

### **FINDINGS OF FACT**

1. The Appellant, Cody Edmonds, received notice of his suspension on January 17, 2020. The Appellant was suspended from his position as a Correctional Officer at the Kentucky State Penitentiary. The Appellant is a classified employee with status.

2. The Appellant acknowledged receipt of the notice of suspension with his signature on January 17, 2020. The notice informed him that he had 60 days to file an appeal with the Personnel Board.

3. The Appellant filed his appeal with the Personnel Board on June 22, 2020.

4. The Appellant alleges that he was off work from March 17, 2020, until his return to work on April 20, 2020.

5. The Appellant's appeal was filed more than 60 days after he received notice of his suspension.
6. There are no material issues of fact.

### CONCLUSIONS OF LAW

1. Because this appeal was filed more than 60 days after the Appellant received notice of his suspension, the Personnel Board lacks jurisdiction to hear this appeal. KRS18A.095(8) and (18)(a)
2. The Appellants allegations that he was off from work due to medical leave do not extend the time for filing his appeal. This is a statutory deadline and the Personnel Board has no discretion to not apply this limitation to this appeal. See *Commonwealth Department of Revenue Finance and Administration Cabinet v. McDonald* 304 S.W. 3d 62 (Ky. App 2009).
3. Likewise, there is no exceptions to this statute of limitations based on the conditions caused by Covid-19. This is especially true in a case such as this where the Appellant filed his appeal more than three months beyond the statutory deadline.

### 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 **CODY EDMONDS VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2020-148)** 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).

**[Hearing Officer Note: Any document filed with the Personnel Board shall also 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 Mark A. Sipek** this 18<sup>th</sup> day of March, 2021.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day mailed to:

Hon. Jesse Robbins  
Hon. Rosemary Holbrook (Pers. Cab.)  
Cody Edmonds