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Personnel Board

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION I
CIVIL ACTION NO. 18-CI-747

BETHANY FOLEY

PETITIONER

v.

FINAL ORDER

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS
and
JOHN TILLEY, SECRETARY
and
KENTUCKY PERSONNEL BOARD**

RESPONDENTS

This matter is before the Court on Respondent Kentucky Personnel Board's Motion to Sustain Appeal. The parties appeared during motion hour on September 12, 2018, at which the Department of Corrections was represented by Angela Cordery, the Kentucky Personnel Board was represented by Stafford Easterling, and Bethany Foley was represented by Richard Guarnieri.

On review of this Motion and the record, and being otherwise sufficiently advised, the Court hereby **ORDERS** the following:

1. The parties agree that Kentucky Personnel Board adopted the Recommended Order and intended to sustain Petitioner's appeal, and that the Board only dismissed the appeal due to a drafting error in the Board's Final Order. However, the Board's error resulted in a Final Order that denied, rather than sustained, the Petitioner's claims. The Petitioner was required to appeal the Board's Final Order to this Court pursuant to KRS 18A.100 in order to correct the error, because the Board lost jurisdiction with the entry of the Final Order. Neither KRS Chapter 18A, nor KRS Chapter 13B, contains any mechanism, similar to a motion under CR 59 or CR 60, to correct an error of this kind in an administrative proceeding.

2. Accordingly, the Court the Court finds that the Board's Final Order is arbitrary and capricious, in that it dismisses an appeal that the Hearing Officer found should be sustained, after the Board voted to uphold the Hearing Officer's recommendation. Therefore, the Court **GRANTS** Respondent Kentucky Personnel Board's Motion to Sustain the Appeal, and the Court finds that the Hearing Officer's findings were supported by substantial evidence, that the Petitioner is entitled to relief on the merits of her claims, and that the Board's Final Order was clearly erroneous.
3. The only remaining question is whether the Petitioner, who was forced to file this action to obtain relief to correct the Board's error, is entitled to attorney's fees under KRS 18A.095(23). That statute provides that "[i]f a final order of the board is appealed, a court shall award reasonable attorney's fees to an employee who prevails by a final adjudication on the merits, as provided in KRS 453.260." Here, the Court finds that Petitioner was required to bring this action to correct the Order. Petitioner has prevailed on the merits of this action for judicial review, and on her underlying claims in the Personnel Board, by doing so. It would be grossly unfair, and contrary to the statute, for the Petitioner to be forced to shoulder the financial burden of this action for judicial review that was necessitated by the Board's error. She is entitled to reasonable attorney's fees and costs under the statute. *Revenue Cabinet v. Barbour*, 836 S.W.2d 418 (Ky. App. 1992). Accordingly, the Court **ORDERS** Respondent Kentucky Personnel Board to pay Petitioner's costs and attorney's fees (\$258.31 and \$2,275.00 respectively) pursuant to KRS 18A.095(23). The Court finds the foregoing attorney's fees to be reasonable. Here, the Court assess the attorney's fees and costs against the

Personnel Board because it was the error of the Board, not the underlying action of the appointing authority, that necessitated the appeal.

4. This is a final and appealable order, and there is no just cause for delay.

SO ORDERED this the 24th day of September, 2018.



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

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