

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-067**

LORENA D. FYFFE

APPELLANT

VS.

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

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS
J. MICHAEL BROWN, APPOINTING AUTHORITY**

APPELLEE

** ** *

This matter came on for a pre-hearing conference on May 13, 2014, at 10:00 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Lorena D. Fyffe, was present by telephone and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Edward Baylous.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by the Appellant, to determine the specific section of KRS 18A which authorizes this appeal, to determine the relief sought by the Appellant, to define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

BACKGROUND

1. The Hearing Officer notes this appeal was filed with the Personnel Board on April 1, 2014. She checked the box for "Dismissal." She stated she was employed by the Blackburn Correctional Complex, and she became pregnant and later became very sick. She had a doctor's note which kept her off work. She was told she could not return to work until the doctor released her. She stated she reported a new telephone number to the institution; however, it was not recorded. She stated she was contacted within two weeks and told to return her equipment. She stated she has doctor's statements covering the time she was off, stating she had gallstones.

2. The Appellant stated she was an unclassified employee on her appeal form, however, it was determined she was a classified employee. She was a Correctional Officer at Blackburn, and was off her initial probation. The file contained a letter dated February 15, 2013, where Ms. Fyffe was notified she had been absent without leave or notice to her supervisor for a period of ten working days (since January 29, 2013). The Appellant was told if she did not believe this action was justified, she could request to appear personally and show cause why she should not be resigned within five working days of the letter. Otherwise, she was told she would be separated by resignation effective February 15, 2013. The letter also informed the Appellant that she had the right to appeal to the Personnel Board within 60 days.

3. The Appellant stated she received this letter the same day that her mother and sister received telephone calls.

4. The Appellant stated she filed for unemployment, and was denied on her claim. The Appellant stated she felt she was treated unfairly by the facility. She thought she had done everything she was supposed to do in notifying the facility of her condition, and she does not understand why she was resigned.

5. The Appellee filed a Motion to Dismiss prior to the evidentiary hearing. In its motion, the Appellee stated the Appellant was notified by letter dated February 15, 2013, that she would be separated from her employment by resignation, and she had 60 days to file her appeal. She did not file her appeal until more than 13 months later, on April 1, 2014.

6. Following the pre-hearing conference the Appellant was given to and including June 13, 2014, to file a response. Appellant has not filed a response to Appellee's Motion to Dismiss and this matter stands ready for a decision.

FINDINGS OF FACT

1. The Appellant was employed as a Correctional Officer at the Blackburn Correctional Complex (BCC). She stated she had completed her initial probationary period and thus had attained status.

2. The Appellant was provided a letter which was mailed on February 15, 2013, informing her that she had been separated from state employment by resignation effective close of business February 15, 2013. The Appellant was informed that she had been absent from employment since January 29, 2013, and had not obtained leave or provided notice to her supervisor. The Appellee relied on 101 KAR 2:102, Section 10(3) in taking this action.

3. The Appellant was informed that she could request to appear before the Warden to show why this action was not justified or to show cause. The Appellant was also informed that she had the right to appeal to the Kentucky Personnel Board within sixty (60) days of the receipt of this notice. The Appellant stated she received this notice sometime in February 2013.

4. Despite this notice, the Appellant did not file an appeal with the Personnel Board until April 1, 2014.

5. The Appellant alleges that she became pregnant while working at the Blackburn Correctional Complex and later became very sick. She stated she had a doctor's note which excused her from work. She also stated that she reported a new telephone number to the institution; however, it was not recorded. Appellant stated she was contacted and told she had to return her equipment. The Appellant stated at the pre-hearing conference she thought she had done everything she needed to do to notify the facility of her condition.

6. The Appellant did not file a response to the Motion to Dismiss.

7. There are no material facts in dispute, and this matter can be decided as a matter of law.

CONCLUSIONS OF LAW

1. When the Appellant's employment as a Correctional Officer was terminated by resignation pursuant to 101 KAR 2:102, Section 10(3), on February 15, 2013, this action constituted a "penalization" as the term is defined at KRS 18A.005(24).

2. As such, the Appellant had sixty (60) days to file an appeal with the Personnel Board from receipt of the notice. KRS 18A.095(7).

3. The Appellee informed the Appellant that she had a right to appeal to the Personnel Board within sixty (60) days as is required by KRS 18A.095(7).

4. The Appellant filed her appeal well beyond the sixty-day time period, and thus her appeal is untimely and the Board lacks jurisdiction to grant her any relief.

5. A recommended order can be issued in this case as a matter of law based on the undisputed facts contained in the record through the Appeal Form, the Motion to Dismiss, and the statements made at the pre-hearing conference.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **LORENA D. FYFFE VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2014-067)** 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.

SO ORDERED at the direction of **Hearing Officer Mark A. Sipek** this 28th day of July, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Edward Baylous
Ms. Lorena D. Fyffe