

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-276**

AARON E. HARPER

APPELLANT

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

**TOURISM, ARTS AND HERITAGE CABINET,
DEPARTMENT OF PARKS,
MARCHETA SPARROW, APPOINTING AUTHORITY**

APPELLEE

** ** ** ** **

This matter came on for a pre-hearing conference on February 26, 2013, at 9:45 a.m. 28 Fountain Place, Frankfort, KY, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment pursuant to the authority found at KRS Chapter 18A.

Appellant, Aaron Harper, was present by telephone and was not represented by legal counsel. Appellee, Department of Parks, was present and represented by the Hon. Misty Judy. Also present as Agency representative was Ms. Laurie Googe.

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

This matter is before the Hearing Officer on Appellee's Motion to Dismiss Appeal filed with the Personnel Board on January 25, 2013. Though given time to respond to the motion to dismiss, Appellant did not file a response. This matter stands submitted to the Hearing Officer for a ruling on the Appellee's motion to dismiss.

BACKGROUND

1. Appellant Aaron E. Harper was employed as a Cook II, a classified position with status, at Natural Bridge State Resort Park.

2. In its motion to dismiss, Appellee contends that Appellant, by letter dated December 20, 2012, was advised that his incarceration was not an approved absence, and to report to work or show legal cause why he should not be resigned from his employment pursuant to 101 KAR 2:102, Section 9(3), effective the close of business on December 30, 2012.

3. Appellant filed this appeal with the Personnel Board on December 26, 2012, in which he claimed he had been dismissed and also discriminated against, and stated, "I have worked as a cook for 19 years. I had called in and the supervisor was notified. I have not resigned from my employment. I feel I am being discriminated against and have been for a time by my resort park manager."

4. Counsel for the Appellee states that on January 8, 2013, Ms. Laurie Googe, Human Resources Director and designated Appointing Authority for the Department of Parks, again wrote to Appellant, advising him the agency intended to terminate him due to excessive absenteeism, since he had not reported to work from December 16, 2012, through January 8, 2013, and had not provided any certain return to work date. She noted he had provided notice of his incarceration and his desire to return to work at some point in the future.

5. On or about January 10, 2013, the Appellant contacted Ms. Googe and requested a pre-termination hearing, advising he had been released on bond pending trial. That pre-termination hearing was held on January 15, 2013.

6. Counsel contends that prior to any final action being taken, Appellant filed a notice of resignation on January 17, 2013.

7. As noted, Appellant did not file a response to the motion to dismiss, although given ample time to do so, nor did he request any continuance or extension of time to do so.

FINDINGS OF FACT

1. Appellant Aaron Harper was employed as a Cook II, a classified position with status, at Natural Bridge State Resort Park.

2. As noted, Appellant did not file a response to the motion to dismiss, although given ample time to do so, nor did he request any continuance or extension of time to do so.

3. The Hearing Officer finds that Appellant, having resigned his employment with the Commonwealth, and not having responded to the motion to

dismiss, nor having raised any claim of constructive discharge, cannot further pursue this appeal. The Hearing Officer finds the Personnel Board lacks jurisdiction to consider this matter further pursuant to KRS 18A.095(18)(a).

CONCLUSION OF LAW

1. The Hearing Officer concludes as a matter of law that the Personnel Board lacks jurisdiction to consider this appeal further and cites KRS 18A.095(18)(a), which 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.

2. Likewise, the Hearing Officer concludes as a matter of law that this matter must be dismissed.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **AARON E. HARPER V. TOURISM, ARTS AND HERITAGE CABINET, DEPARTMENT OF PARKS**, (APPEAL NO. 2012-276) 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).

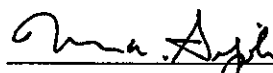
Any document filed with the Personnel Board shall be served on the opposing party.

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 Boyce A. Crocker this 10th day of May, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Misty Judy
Mr. Aaron E. Harper