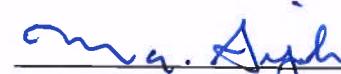


CERTIFICATION OF PERSONNEL BOARD RECORDS

I certify that attached hereto is a true and correct copy of the Findings of Fact, Conclusions of Law and Recommended Order and Final Order in the case of **TRACI HEDRICK V. OFFICE OF THE STATE BUDGET DIRECTOR (APPEAL NO. 2019-014)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 18th day of January, 2024.


**MARK A. SIPEK, SECRETARY
KENTUCKY PERSONNEL BOARD**

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-014

TRACI HEDRICK

APPELLANT

VS.

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

OFFICE OF THE STATE BUDGET DIRECTOR

APPELLEE

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

The Board, at its regular January 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated December 6, 2023, 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 **SUSTAINED to the extent** therein.

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 18th day of January, 2024.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day emailed and mailed to:

Traci Hedrick
Hon. Cary Bishop
Hon. Rosemary Holbrook (Personnel Cabinet)
Laura Sharp

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-014

TRACI HEDRICK

APPELLANT

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

FINANCE AND ADMINISTRATION CABINET

APPELLEE

** * * * *

These matters came on for a pre-hearing conference on December 1, 2023, at 10:45 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, Traci Hedrick, was not present and was not represented by legal counsel. The Appellee, Finance and Administration Cabinet, was present and represented by the Hon. Cary Bishop, who appeared in person.

The purposes of the pre-hearing conference were to discuss the status of the appeal, including the Appellee's Motion for Recommended Order.

BACKGROUND AND FINDINGS OF FACT

1. The Hearing Officer notes this appeal was filed with the Personnel Board on January 17, 2019. On the appeal form, the Appellant, a classified employee with status, indicated she was appealing her annual evaluation. The Appellant further explained her claims in the narrative portion of the appeal form wherein she states, in full:

I have been employed with OSBD since 2001 (17 years). They have never given performance evaluations. My first one was the 2017 eval, given in September 2018 (19 months late). The scoring was abominable. It was bases soley on my refusal to pick up a retiree's job duties without compensation this refusal was on 12/14/17. A more detailed account is on the front of my grievance form attached. (sic)

2. This appeal progressed for a period of years with an attempt at mediation, discovery, a dispositive motion (which was denied), and a series of pre-hearing conferences.

3. On May 2, 2023, the Appellee filed a Motion for Judgment on the Pleadings and Conditional Stipulation. In its Memorandum in Support, the Appellee defined the "Background and General Issue" as follows:

As noted in Finance's 2020 Dismissal Motion, Appellant's appeal form indicated that the sole issue Appellant appealed to the Board was her 2017 Annual Evaluation. The underlying Annual Evaluation being appealed is a "good" evaluation, with a score of 258. The Personnel Board denied the 2020 Motion to Dismiss via an Interim Order issued September 3, 2021. The Board's Interim Order acknowledged that a "good" evaluation is not appealable to the Board but denied Finance's previously filed Motion to Dismiss solely on the basis that procedural errors have been previously recognized as penalizations appealable to the Board. No additional issues or cause of action have been added to this appeal since the Board's September 3, 2021, Interim Order and, as Appellant's employment ended July 3, 2020, she is beyond the one year deadline to appeal any new issues to the Board under KRS 18A.095(29). Accordingly, the sole appealable item remaining at issue in this appeal is Appellant's allegations that serious procedural errors existed regarding her 2017 Annual Employee Performance Evaluation, including allegations that her mid-year interim evaluation was performed nine (9) months after the end of the evaluation year.

For purposes of this Motion only, Appellee Finance stipulates that there were serious procedural errors regarding Appellant's 2017 Annual Employee Performance Evaluation, and that her mid-year interim evaluation was performed nine (9) months after the end of the evaluation year.

4. In the Argument Section of its Motion, the Appellee stated as follows:

The Board should issue a Recommended Order in accordance with the remedy it issued in *Turner v. Kentucky Transportation Cabinet*, the appeal cited by the Personnel Board as the basis for denial of Appellee's Motion to Dismiss. In *Turner*, the Board concluded that an agency did not complete an employee's 2008 annual evaluation in compliance with 101 KAR 2:180, the regulation which enumerates procedural requirements regarding employee evaluations. The Board determined that this failure constituted a penalization and upheld employee's appeal, but only to the extent of ordering that the employee's 2008 evaluation be stricken from the employee's personnel file.

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Findings of Fact Conclusions of Law,
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Appellant's filed appeal only appealed her employee evaluation, a good evaluation, albeit with alleged procedural defects. Appellant has not filed an appeal of any other issue and her appeal survived dismissal in the Board's September 2, 2021, Interim Order based solely on the basis of alleged procedural defects regarding Appellant's 2017 evaluation.

In accordance with *Turner v. Kentucky Transportation Cabinet*, the Board should issue an Order finding in Appellant's favor and sustaining her appeal, to the extent that her 2017 annual evaluation be removed from her Personnel File. Removal of the evaluation at issue was the primary remedy accorded to the employee in *Turner*, and the appropriate remedy in this instance. Ordering modification or amendment of an evaluation over five years old would be inappropriate and difficult. As ordered in *Turner*, removal of the evaluation is the only appropriate remedy.

Regarding the Board's Order in *Turner* that Appellant be reimbursed for leave time used for the evidentiary hearing or prehearing, only time for Appellant's initial hearing is justified. No evidentiary hearing has been held in this case and, if the Board finds in Appellant's favor as proposed by this Motion, no evidentiary hearing will be held. Appellee would not object to reimbursement of Appellant's leave time for the initial prehearing held in this Appeal, but additional prehearings were held primarily due to Appellant's failure to cooperate with mediation scheduling requests, failure to comply with discovery orders, and other failures to advance her appeal. Accordingly, combined with the fact that Appellant's employment ended on July 3, 2020, the Board should consider ordering reimbursement for only the May 23, 2019 pre-hearing conference.

5. The Appellee took the position that the Appellant was entitled to have her 2017 Annual Employee Performance Evaluation removed from her file and that she should be reimbursed for the first pre-hearing conference that was held in this case.

6. The Appellee stipulated that there were serious procedural errors regarding the Appellant's 2017 Annual Employee Performance Evaluation and that her Mid-Year Interim Employee Performance Evaluation was performed nine (9) months after the end of the evaluation year.

7. The Appellee stipulated that the Appellant should be reimbursed for her time spent at the May 23, 2019 pre-hearing conference.

8. A pre-hearing conference was held on May 30, 2023. The Appellant requested an opportunity to respond to the Appellee's motion and was given until September 1, 2023, to respond.

9. Although given an opportunity to respond to the Appellee's motion, the Appellant did not file a response.

10. On September 7, 2023, the Appellee filed a Motion for a Recommended Order.

11. A pre-hearing conference was held on December 1, 2023, and the Appellant did not attend. She also did not ask for a continuance, she did not file a response to the Appellee's Motion for Judgment on the Pleadings and Conditional Stipulations, or the Appellee's Motion for a Recommended Order. Three (3) days before the December 1, 2023 pre-hearing conference, the Appellant relayed to the Personnel Board staff that she would appear by telephone for the pre-hearing conference. The Appellant did not respond to four (4) separate phone calls by the Hearing Officer, nor to a text message to the number she provided. Although the pre-hearing conference was scheduled to start at 10:00 a.m., it did not start until 10:45 a.m., as a result of efforts to contact the Appellant.

12. There are no material facts in dispute and this appeal can be decided based on the Appeal Form, the Appellee's Motion for Judgment on the Pleadings and Conditional Stipulations, and the statements of the parties at the pre-hearing conferences.

CONCLUSIONS OF LAW

1. KRS 18A.005(24) defines penalization as follows:

"Penalization" means demotion, dismissal, suspension, fines, and other disciplinary actions; involuntary transfers; salary adjustments; any action that increases or diminishes the level, rank, discretion, or responsibility of an employee without proper cause or authority, including a reclassification or reallocation to a lower grade or rate of pay; or the abridgement or denial of other rights granted to state employees.

2. Based on the Appellee's stipulation, the Appellant's 2017 Annual Employee Evaluation was not done substantially in compliance with 101 KAR 2:180.

3. The Appellant suffered a penalization in that her 2017 Annual Employee Performance Evaluation was not performed according to regulation and statute, thus constituted a penalization as defined at KRS 18A.005(24). The Hearing Officer concludes that the Appellee's failure to comply with 101 KAR 2:180 constitutes a penalization as the "denial of other rights granted to state employees."

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**Findings of Fact Conclusions of Law,
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4. The appropriate remedy is that the Appellant's 2017 Annual Employee Performance Evaluation be stricken from her personnel file. *Ellsworth Turner v. Transportation Cabinet* 2011 WL 1689724 (KY PB). The Hearing Officer finds this as the appropriate remedy pursuant to KRS 18A. 095(22)(d). The Appellee shall place a statement in the Appellant's file that her 2017 Annual Employee Performance Evaluation has been removed by order of the Personnel Board for the Office of the State Budget Director's failure to comply with 101 KAR 2:180.

5. Because all of the events associated with this appeal occurred before the passage of Senate bill 153, this case has been decided based on the provisions of KRS Chapter 18A in effect at that time.

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 **TRACI HEDRICK V. OFFICE OF THE STATE BUDGET DIRECTOR (APPEAL NUMBER 2019- 014)** be SUSTAINED to the extent that the appellant's 2017 annual employee evaluation be removed from her personnel file and that she be reimbursed for leave time in attending the pre-hearing conference held on May 23, 2019. KRS 18A. 095(25).

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 fifteen (15) 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).

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).

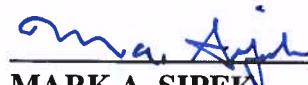
Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

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

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SO ORDERED at the direction of the Hearing Officer this 6 day of December, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Traci Hedrick
Hon. Cary Bishop
Hon. Rosemary Holbrook (Personnel Cabinet)