

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 **KATHY HILLMAN V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2021-068)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 6th day of November, 2023.



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

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2021-068

KATHY HILLMAN

APPELLANT

VS.

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

* * * * *

The Board, at its regular November 2023 meeting, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order dated September 21, 2023, Appellee's Exceptions, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** the Recommended Order and substitute the following:

It is hereby ordered that the appeal of **KATHY HILLMAN V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2021-068)** be **SUSTAINED** by agreement of the parties. The Appellee is directed to rescind the Appellant's dismissal letter, restore the Appellant to her previous position or a position of like status and pay, to restore to the Appellant all back pay for the period of dismissal and any lost benefits as a result of the dismissal, and to otherwise make the Appellant whole pursuant to KRS 18A.105, 200 KAR 12:030, and KRS 18A.095(25).

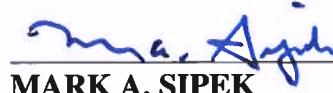
IT IS FURTHER ORDERED that the Recommended Order of the Hearing Officer, as Altered, be approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **SUSTAINED to the extent herein**.

**Kathy Hillman
Final Order
Page 2**

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 6th day of November, 2023.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK
SECRETARY

A copy hereof this day mailed to:

Hon. Bernard R. Mazaheri
Hon. Jesse L. Robbins
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney Moore

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2021-068

KATHY HILLMAN

APPELLANT

V.

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

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

This matter came on for a pre-hearing conference on September 13, 2023, at 2:00 p.m. at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Kathy Hillman, was not present, however, she was represented by the Hon. Bernard Mazaheri. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and was represented by the Hon. Jesse Robbins.

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

BACKGROUND AND FINDINGS OF FACT

1. The Hearing Officer notes this appeal was filed with the Personnel Board on June 11, 2021. On the appeal form and during the pre-hearing conference, the Appellant, a classified employee with status, indicated she was appealing her dismissal by the Agency. The Appellant further explained her claims in the narrative portion of the appeal form wherein she states, in pertinent part:

Hillman was notified that she was being terminated for an alleged use of an intoxicant on April 1, 2021. Hillman was notified that she would be terminated effective April 17, 2021 for two alleged violations. Hillman disputes that she violated either CPP 3.1 or CPP 3.11 (the only violations alleged) or committed any act that would be grounds for her termination.

2. The Appellant, who was dismissed as a result of a failed drug test, filed a Motion for Summary Judgment on March 3, 2023. In her motion, the Appellant alleged that the lab who performed the drug test, which was the sole reason for her termination, was not certified by the

Kathy Hillman
Findings of Fact, Conclusions of Law
And Recommended Order
Page 2

U.S. Department of Health and Human Services Substance Abuse and Mental Health Services Administration (SAMHSA). The Appellant alleged that drug testing by the Appellee must be conducted by a SAMHSA certified laboratory pursuant to Corrections Policy and Procedure Number 3.11 (II)(H)(6)(c).

3. The Appellee chose not to respond to the Motion for Summary Judgment and instead attempted to settle this appeal with the Appellant. Although the parties have not been able to reach a settlement agreement of all issues associated with the appeal, the parties have stated they are in agreement that the Hearing Officer should recommend the following:

That the appeal of Kathy Hillman v. Justice and Public Safety Cabinet, Department of Corrections, (Appeal No. 2021-068), be sustained per agreement of the parties. The Appellee is directed to otherwise rescind the dismissal letter, restore her to her position or a position of like status and pay, to restore the Appellant all back pay for the period of dismissal and any lost benefits as a result of the dismissal and to otherwise make the Appellant whole pursuant to KRS 18A.105, 200 KAR 12:030, and KRS 18A.095(25).

4. At the pre-hearing conference on September 13, 2023, the parties confirmed their agreement to enter the Appellee's Proposed Recommended Order. Neither party was interested in filing any additional proposed Findings of Fact or Conclusions of Law.

CONCLUSIONS OF LAW

1. The parties do not contest that the dismissal of the Appellant should be set aside as a result of the fact that Premiere Biotech Laboratories is not SAMHSA certified as required by CPP 3.11(II)(H)(6)(c), which reads as follows:

A positive result shall be confirmed by gas chromatography-mass spectroscopy (CG-MS) and conducted by an independent laboratory that is Substance Abuse and Mental Health Services Administration (SAMHSA) certified.

2. Kentucky Corrections Policy and Procedure Number 3.11 has been incorporated by reference in Administrative Regulation 501 KAR 6:020, Section 1(1).

3. Because the Appellee has not contested the Appellant's Motion for Summary Judgment, has agreed that the Appellant's dismissal should be rescinded, and that she should be reinstated with back pay and all benefits, the Hearing Officer recommends that this appeal be sustained. KRS 13B.090(7).

4. Because all of the events associated with this appeal occurred prior to the passage of Senate Bill 153, all references to KRS 18A are to the sections in effect at the time of the events associated with this Appeal.

Kathy Hillman
Findings of Fact, Conclusions of Law
And Recommended Order
Page 3

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **KATHY HILLMAN V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2021-068)** be **SUSTAINED**. The Appellee is directed to rescind the Appellant's dismissal letter, restore her to her previous position or a position of like status and pay, to restore to the Appellant all back pay for the period of dismissal and any lost benefits as a result of the dismissal, and to otherwise make the Appellant whole pursuant to KRS 18A.105, 200 KAR 12:030, and 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.

SO ORDERED at the direction of the Hearing Officer this 21 day of September, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Bernard Mazaheri
Hon. Jessie Robbins
Hon. Rosemary Holbrook (Personnel Cabinet)