

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2016-304**

**ANTHONY HOLDER**

**APPELLANT**

**FINAL ORDER  
REJECTING HEARING OFFICER'S INTERIM ORDER  
VS. CONTAINING FINDINGS OF FACT AND CONCLUSIONS OF LAW**

**TOURISM, ARTS AND HERITAGE CABINET,  
DEPARTMENT OF PARKS**

**AND**

**PERSONNEL CABINET**

**APPELLEES**

\*\* \*\* \*\* \*\* \*\*

The Board at its regular December 2017 meeting having considered the Interim Order Containing Findings of Fact and Conclusions of Law of the Hearing Officer dated September 22, 2017, having considered Appellees' responses, Appellant's reply, oral arguments and being duly advised,

**IT IS HEREBY ORDERED** that the Interim Order Containing Findings of Fact, Conclusions of Law of the Hearing Officer be rejected and the Board issues its own Findings of Fact, Conclusions of Law and Recommended Order as follows:

**INTRODUCTION**

This matter came on for a pre-hearing conference on January 19, 2017, at 11:00 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, Anthony Holder, was present and was represented by the Hon. Daniel Rudloff, both appearing by telephone. The Appellee, Tourism, Arts and Heritage Cabinet, Department of Parks, was present and represented by the Hon. Jean Bird. Also present for the Appellee was Becky Cottongim.

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.

Before the first pre-hearing conference, the Appellee, Tourism, Arts and Heritage Cabinet, filed a Motion to Dismiss. The Appellant, through counsel, filed a response. The Hearing Officer **DENIED** the motion on March 22, 2017.

Thereafter, the Personnel Cabinet filed a Petition for Intervention and a Motion for Reconsideration of the ruling on the Motion to Dismiss. The Tourism, Arts and Heritage Cabinet also filed a Motion to Reconsider or, in the Alternative, to Alter, Amend or Vacate and to Postpone Hearing. Following a response from the Appellant and a reply from the Personnel Cabinet, this matter was submitted to Hearing Officer Stafford Easterling for a ruling on the pending motions.

The Hearing Officer issued an Interim Order Containing Findings of Fact and Conclusions of Law on September 22, 2017, denying the Motion for Reconsideration. The Hearing Officer also designated the Order to be reviewed by the Personnel Board pursuant to 101 KAR 1:365, Section 6.

The Appellees Tourism, Arts and Heritage Cabinet and the Personnel Cabinet each filed responses to Hearing Officer's Interim Order. The Appellant replied. The Board held oral argument and now issues this Order.

#### **FINDINGS OF FACT**

1. The Board finds that there are no material facts in dispute and this matter can be decided as a matter of law based on the administrative record.

2. The Board finds that the Appellant, Anthony Holder, was employed as a State Park Ranger I with the Tourism, Arts and Heritage Cabinet, Department of Parks. The Appellant was a classified employee without status when he was terminated from his position on October 7, 2016. He received notice of this action by hand delivery on October 5, 2016. The dismissal letter (attached hereto and incorporated herein as **Final Order Attachment A**) informed the Appellant as follows:

In accordance with KRS 18A.095, any claim of discrimination must be filed within thirty (30) days, excluding the date notification is sent. Such appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

3. Counsel for the Appellant alleged that on October 13, 2016, the Appellant appealed his dismissal by faxing a completed appeal form to the Department of Parks.

4. The Board finds that the Appellant filed his appeal with the Personnel Board on December 2, 2016, fifty-eight (58) days after receiving notification of his termination from his

probationary position as a State Park Ranger I. Appellant alleged his dismissal was the result of race and political discrimination.

### CONCLUSIONS OF LAW

1. The Appellant, Anthony Holder, was a classified employee without status serving his initial probationary period. His right to appeal is contained in KRS 18A.111(1), which reads in part:

An employee may be separated from his position, reduced in class or rank, or placed on the eligible list during this initial probationary period and shall not have a right to appeal, except as provided by KRS 18A.095.

2. The Appellant, as a classified employee without status, had the right to appeal his dismissal to the Kentucky Personnel Board if he believed the action was based on discrimination. KRS 18A.095(12) and (14)(a).

3. KRS 18A.095(12) does not contain a statute of limitations.

4. KRS 18A.095(14) limits appeals based on discrimination to thirty (30) days. KRS 18A.095(14)(d) reads as follows:

An appeal to the board by applicants or eligibles under subsections 11 and 13 of this section and under this subsection, shall be filed in writing with the Executive Director not later than thirty (30) calendar days after the notification of the action in question was mailed.

5. The Board concludes that the thirty (30) day limitation listed in KRS 18A.095(14)(d) applies in this case. The Board rejects the Hearing Officer's position that KRS 18A.095(14)(d) does not apply to discrimination claims outlined in KRS 18A.095(14)(a). This conclusion is consistent with the Kentucky Personnel Board's decision in *Lewis v. Workforce Development Cabinet*, 1996 WL 34442869 (KY PB 1996).

6. The Board concludes that the Appellant did not file his appeal when he faxed his appeal form to the Department of Parks. KRS 18A.095(14)(a) states that an appeal shall be filed in writing with the Executive Director of the Personnel Board. This statute does not allow filing an appeal with the Department of Parks. The Board's own regulation specifies that all appeals shall be filed with the Personnel Board through the office of the Executive Director. 101 KAR 1:365, Section 3(1) reads as follows:

An appeal or document relating to an appeal shall be filed with the Personnel Board through the office of the Executive Director within the time

period set forth in KRS 18A.095 after receiving written notification of the penalization or after becoming aware of the penalization through the exercise of due diligence.

7. The Personnel Board appeal form, including the one utilized in this case, includes language that this form is to be mailed or delivered to (the address of) the Kentucky Personnel Board. Thus, the Appellant did not file his appeal when he faxed it to the Department of Parks on October 13, 2016.

8. The Board concludes that the saving statute, KRS 413.270, does not apply in this case. The Appellant has not raised this issue, however, the Board also concludes that the Department of Parks does not constitute a court, commission, board, or quasi-judicial tribunal as specified in KRS 413.270(2).

**ORDER**

**IT IS HEREBY ORDERED** that the appeal of **ANTHONY HOLDER VS. TOURISM, ARTS AND HERITAGE CABINET, DEPARTMENT OF PARKS, AND PERSONNEL CABINET (APPEAL NO. 2016-304)** is **DISMISSED**.

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 13<sup>th</sup> day of December, 2017.

**KENTUCKY PERSONNEL BOARD**



**MARK A. SIPER, SECRETARY**

A copy hereof this day sent to:

Hon. William Adams  
Hon. Lesley Bilby  
Hon. Daniel Rudloff  
Misty Judy



# TOURISM, ARTS AND HERITAGE CABINET

2400 CAPITAL PLAZA TOWER  
500 MERO STREET  
FRANKFORT, KENTUCKY 40601  
502-564-4270 - OFFICE  
502-564-1512 - FAX

*COPY*

Received

DEC 02 2016

Personnel Board  
DON PARKINSON  
SECRETARY

REGINA STIVERS  
DEPUTY SECRETARY

MATTHEW G. BEVIN  
GOVERNOR

October 5, 2016

Hand Delivered

Anthony Holder Perm# 327972  
640 Clay Starks Road  
Woodburn, KY 42170

Pursuant to KRS 18A.111, you are advised you will be terminated from the position of State Park Ranger I, effective October 7, 2016. You shall not be certified on future registers for employment within the Department of Parks unless the Department of Parks so requests.

As an employee serving an initial probationary period as provided by KRS 18A.111, you do not have the right to appeal this action to the Kentucky Personnel Board. However, KRS 18A.095 provides that you may file a claim of discrimination with the Kentucky Personnel Board if you believe the action was based on unlawful discrimination. In accordance with KRS 18A.095, any claim of discrimination must be filed within thirty (30) days, excluding the date notification is sent. Such appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

Sincerely,

Laurie Googe  
Executive Director, Human Resources TAHC

Attachments: Appeal Form

- cc: Thomas B Stephens, Secretary, Personnel Cabinet
- Colonel Luttrell, Division Director, Rangers
- Captain Buckner, Division of Rangers
- John Kington, Deputy Commissioner of Parks
- Office of Legal Services, TAHC
- Personnel File (2)

Final Order  
Attachment A

*Shay Buckner 10.06-16*

**APPELLEE'S EXHIBIT**

A

