

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NOS. 2013-084 AND 2013-151

STANLEY W. HOLLINGSWORTH

APPELLANT

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

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

APPELLEE

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The Board at its regular September 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated July 22, 2013, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeals are therefore **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 17<sup>th</sup> day of September, 2013.

KENTUCKY PERSONNEL BOARD

  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Amber Arnett  
Stanley W. Hollingsworth  
Stephanie Appel

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NOS. 2013-084 and 2013-151**

**STANLEY W. HOLLINGSWORTH**

**APPELLANT**

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

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DEPARTMENT OF CORRECTIONS,  
J. MICHAEL BROWN, APPOINTING AUTHORITY**

**APPELLEE**

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

These matters are before the Hearing Officer for a ruling on the Appellee's motion to dismiss. The Hearing Officer will note this matter includes Appeal No. 2013-084, the substantive appeal, and Appeal No. 2013-151, which, though given an appeal number and having a file opened, is not a substantive appeal, but is in actuality a response filed by the Appellant to the Appellee's motion to dismiss.

This matter came on for a pre-hearing conference on May 28, 2013, at 10:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Stanley Hollingsworth, was present by telephone and not represented by legal counsel. The Appellee, Department of Corrections, was also present and represented by the Hon. Wesley Duke.

The purposes of the pre-hearing conference were to define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

The Hearing Officer notes this appeal was filed with the Personnel Board on April 10, 2013. Appellant indicated he was appealing from a three-day suspension without pay that was imposed by a letter dated February 7, 2013, for an allegation of poor work performance, i.e., refusal of mandatory overtime.

The Appellant took issue with a statement in the letter of suspension which indicated he had received a written reprimand on July 3, 2012, for the same issue; the Appellant stated he had reviewed his personnel file on August 22, 2012, and saw no written reprimand for July 3, 2012.

The Appellant also took issue with the written reprimand he had received on August 29, 2012, for refusal to work mandatory overtime. The Appellant stated he had been scheduled for another overtime shift that day anyway, but apparently could not work the overtime shift being requested and/or required due to having to take his sister to a medical appointment.

The Appellant did not dispute the facts regarding the January 18, 2013, incident in which he did refuse to work mandatory overtime. The Appellant stated he would accept a "write up" for that, and as the Hearing Officer understands it, would essentially be willing to settle this matter for a written reprimand instead of the 3-day suspension, which he does not feel is justified.

The Hearing Officer noted the Appellee had previously filed a motion to dismiss based upon whether the appeal had been timely filed. The Hearing Officer discussed this briefly with the Appellant, giving him time to file a response to the motion to dismiss.

The Appellant complied with the Interim Order dated June 6, 2013, and filed a response to the Appellee's motion to dismiss, albeit on an appeal form. This matter now stands ready for a ruling on the Appellee's motion to dismiss.

### **BACKGROUND**

1. During the relevant times, the Appellant, Stanley Hollingsworth, was a classified employee with status.

2. In its motion to dismiss filed prior to the pre-hearing conference held on May 28, 2013, the Appellee contended this appeal was untimely. The Appellee contends the letter of suspension was issued to and served upon the Appellant on February 7, 2013. Counsel for the Appellee contends that based on a clear reading of KRS 18A.095(8)(d), such an appeal of a disciplinary action should be filed within 60 days of the date the Appellant received notice of the disciplinary action taken. Counsel contends that the time to have filed the appeal with the Personnel Board would have begun to run on February 8, 2013, and the sixtieth day, and the last day for which the appeal could have been timely filed and received by the Personnel Board would have been April 8, 2013. Counsel noted the Appellant filed the appeal (Appeal No. 2013-084) on April 10, 2013.

3. In his response to the Appellee's motion to dismiss, the Appellant contends the 60 days set forth in KRS 18A.095(8)(d) should actually be business days as the Personnel Board office is not open on weekends. The Appellant states that if it were business days, then he would have had until May 2, 2013, to file his appeal. The Appellant also states that the post mark on the envelope was April 5, 2013. The Hearing Officer observes the Appellant signed the appeal form with the date of April 6, 2013.

4. KRS 18A.095(8)(d) states, as follows:

A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:

...

(d) That he or she has the right to appeal to the board within sixty (60) days, excluding the day that he or she received notification of the personnel action.

5. KRS 446.030(1)(a) states, as follows:

In computing any period of time prescribed or allowed by order of court, or by any applicable statute or regulation, the day of the act, event or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, a legal holiday, or a day on which the public office in which a document is required to be filed is actually and legally closed, in which event the period runs until the end of the next day which is not one (1) of the days just mentioned. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation.

### **FINDINGS OF FACT**

1. During the relevant times, the Appellant, Stanley Hollingsworth, was a classified employee with status.

2. The Hearing Officer finds the Appellant was suspended by letter issued on February 7, 2013, and received by the Appellant on that same day.

3. The Hearing Officer finds the Appellant filed an appeal (Appeal No. 2013-084) on April 10, 2013.

4. The Hearing Officer finds that the language at KRS 18A.095(8)(d) applies in this situation, which gives a classified employee such as the Appellant 60 days from the date the Appellant received notification of the penalization to file an appeal with the Personnel Board.

5. The Hearing Officer finds that the Appellant's appeal, filed April 10, 2013, was untimely, according to the correct interpretation of the KRS 18A.095(8)(d), and also of KRS 446.030(1)(a).

6. The Hearing Officer finds that calculating per the statutory directive at KRS 18A.095(8)(d), the Appellant's time began to run February 8, 2013, (the day after he received notice of the penalization) and each day is counted until day 60 is reached. Day 60 for the Appellant to have filed his appeal with the Personnel Board is properly calculated as follows:

February 8 to February 28, inclusive (21 days)  
March 1 to March 31, inclusive (31 days)  
April 1 to April 8, inclusive (8 days)

7. The Hearing Officer finds that the last day the appeal could have been received and filed in the offices of the Personnel Board is April 8, 2013, which day the Personnel board was open for business. The Hearing Officer having found the Appellant filed his appeal on April 10, 2013, finds that pursuant to KRS 18A.095(8)(d) and KRS 446.030(1)(a), that the Appellant's appeal was untimely.

8. The Hearing Officer finds the Appellant's argument that only business days should be counted does not comply with KRS 446.030(1)(a), which is a general statute of limitations. Saturdays, Sundays and legal holidays are included in the running of time for calculating a statute of limitations except when the time period prescribed would be less than seven days. As the time period for a classified employee with status to file an appeal regarding a penalization such as a suspension is 60 days, then the intervening holidays and weekends do count for the calculation of the time limitation.

9. The Hearing Officer finds that having so calculated, the Appellant's appeal was untimely filed with the Personnel Board.

#### CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that the Appellant's appeal was untimely for the reasons stated in the Findings of Fact. The Appellant's arguments that only weekdays (business days) should be counted and/or that the post mark of the date he mailed the appeal to the Personnel Board should count as filing, is not supported by statute. The Hearing Officer concludes the appeal must actually be filed in the office of the Personnel Board, not merely being dropped in the mail, by no later than the sixtieth day following receipt of the notice of penalization (excluding the date the notice was received). This appeal is untimely and must be dismissed.

#### RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeals of **STANLEY W. HOLLINGSWORTH V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NOS. 2013-084 and 2013-151)**, both dealing with the Appellant's suspension of February 7, 2013, are untimely filed and as such should 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.

**[Hearing Officer Note: Any document filed with the Personnel Board shall also be served on the opposing party.]**

**ISSUED** at the direction of **Hearing Officer Boyce A. Crocker** this 22<sup>nd</sup> day of July, 2013.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Amber Arnett  
Mr. Stanley W. Hollingsworth