

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-069

PATRICK HOSKINS

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

** **

The Board at its regular October 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 23, 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 appeal is 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 16th day of October, 2013.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Angela Cordery
Patrick Hoskins
Stephanie Appel

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-069**

PATRICK S. HOSKINS

APPELLANT

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

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS**

APPELLEE

** ** ** ** **

This matter is before the Hearing Officer for a ruling on the Appellee's Motion to Dismiss, filed in accordance with a briefing schedule entered by Interim Order dated May 10, 2013. Though given ample time in which to respond, the Appellant has not done so.

This matter came on for a pre-hearing conference on May 6, 2013, at 10:00 a.m., ET, 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, Patrick Hoskins, was present by telephone at the pre-hearing conference; and was not represented by legal counsel. The Appellee, Department of Corrections, was present and represented by the Hon. Angela Cordery.

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 appeal was filed with the Personnel Board on March 21, 2013. Appellant stated he was appealing a decision on a grievance. Appellant had filed a grievance in January 2013 with the Eastern Kentucky Correctional Complex (EKCC) regarding a shift change. Appellant stated at the pre-hearing conference that the Senior Captain had called him into his office sometime either in late December 2012 or early January 2013 to discuss Appellant's use of sick leave. Appellant stated that he had to use it because of various ailments that had occurred in the last few years. Appellant stated that the Senior Captain told him he did not believe that and they would be moving shifts for Appellant so that he would no longer have to use sick leave. Appellant stated his shift was in fact moved from the first shift (8 a.m. to 4:00 p.m.) to the third shift (midnight to 8 a.m.) in early January 2013. Appellant stated his days off (Saturday and Sunday)

remained the same. As relief, Appellant seeks to be moved back to the first shift and retain the days off he has now.

The Hearing Officer noted that the grievance decision from Deputy Commissioner Jim Erwin concurred with the Warden at EKCC and denied the request.

Counsel for the Appellee noted that on the grievance narrative attached to the appeal that Appellant had declined to reveal the nature of the physical ailments which necessitated the use of sick leave. The Appellee questioned Appellant whether he had in fact requested FMLA or requested any workplace accommodations and Appellant stated, "No."

An evidentiary hearing date was set. Counsel for the Appellee also stated it would be filing a motion to dismiss. The Hearing Officer explained this process to the Appellant, and a briefing schedule was set.

BACKGROUND

1. During the relevant times, the Appellant, Patrick Hoskins, was a classified employee with status, employed as a Correctional Officer at the Eastern Kentucky Correctional Complex (EKCC).

2. The Appellant had filed this appeal, as noted in the preamble above, challenging a decision on a grievance the Appellant filed regarding a change in his work hours or shift. The Appellant's shift was moved from the first shift (approximately 8 a.m. to 4 p.m. every work day, Monday through Friday) to third shift (midnight to 8 a.m. Monday through Friday). Appellant's regular days off, Saturday and Sunday, remain the same.

3. Appellant's grievance was denied at every level.

4. As noted, the Appellee filed a timely motion to dismiss. In its motion, counsel recounted the various levels of grievance review, and in which the Appellant's grievance regarding the shift change was denied at every level. Counsel also noted the regulation at 101 KAR 2:095, Section 2(4) which states, "An employee who works for an agency which requires more than one (1) shift or seven (7) days a week operation, may be reassigned from one shift to another or from post to another or alternate days off by the agency to meet staffing requirements or to maintain security or provide essential services of the agency."

5. Counsel also cites that part of 101 KAR 1:375, Section 2, which states, "a grievance having been filed does not prohibit an employee from appealing a matter to the Personnel Board if it would be an action directly appealable to the Personnel Board under KRS 18A.095.

6. Counsel further argues that a shift change is not an issue appealable directly to the Personnel Board, because a shift change is not a penalization, because it is specifically allowed

for in regulation. In arguing that the shift change is not a penalization and not a matter appealable to the Personnel Board, counsel notes that the Appellant had his shift change due to use of sick leave, and also use of sick leave in conjunction with off days which posed a burden on other staff.

7. The Appellant did not file a response, though given ample time in which to do so.

FINDINGS OF FACT

1. During the relevant times, the Appellant, Patrick Hoskins, was a classified employee with status, employed as a Correctional Officer at the Eastern Kentucky Correctional Complex (EKCC).

2. The Hearing Officer finds that a shift change such as described herein is not a penalization pursuant to KRS 18A.005(24), as a shift change is specifically allowed for in the regulation cited above, 101 KAR 2:095, Section 2(4).

3. The Hearing Officer finds that the Appellant has not made any claim of protected class discrimination or alleged any claim regarding the ADA, FMLA or claimed any retaliation.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that pursuant to KRS 18A.095(18)(a), the Appellant has not stated a claim over which the Personnel Board would have jurisdiction to grant relief. The Hearing Officer concludes this because a shift change, as the Hearing Officer has found, is not a penalization, and the absence of any other claim is not a matter over which the Personnel Board would have jurisdiction.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **PATRICK HOSKINS V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2013-069)** 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 23rd day of August, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Angela Cordery
Mr. Patrick Hoskins