

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-275

DAVID HUFF

APPELLANT

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

TOURISM, ARTS AND HERITAGE CABINET
DEPARTMENT OF PARKS
BOB STEWART, APPOINTING AUTHORITY

APPELLEE

** **

The Board at its regular June 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 10, 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 19th day of June, 2013.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Misty Judy
David Huff

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-275**

DAVID HUFF

APPELLANT

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

**TOURISM, ARTS AND HERITAGE CABINET,
DEPARTMENT OF PARKS,
MARCHETA SPARROW, APPOINTING AUTHORITY**

APPELLEE

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

This matter came on for a pre-hearing conference at approximately 11:00 a.m., ET, on February 13, 2013, 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, David Huff, was present by telephone and not represented by legal counsel. The Appellee, Department of Parks, was also present and represented by the Hon. Misty Judy. Also present on behalf of the Department of Parks as agency representative was Ms. Laurie Googe.

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 matter is now before the Hearing Officer on Appellee's Motion to Dismiss Appeal. This appeal had been filed with the Personnel Board on December 21, 2012, with a pre-hearing conference held on February 13, 2013. At that time, a briefing schedule was established. The Appellee filed a timely motion to dismiss. Though given ample time, Appellant did not file a response. This matter stands submitted to the Hearing Officer for a ruling on the Appellee's motion to dismiss.

BACKGROUND

1. During the relevant times, Appellant David P. Huff was a classified employee with status.

2. In Appellant's appeal, he claimed Other Penalizations, specifically, "Work hours reduction." Appellant complained there was no blanket reduction, and only selected areas of the Parks Department were being targeted for work reduction in hours.

3. In its motion to dismiss, Appellee notes that while Parks' facilities are used heavily during the summer months, such is not true year round, and that each year the agency must determine whether the reduction in tourism requires a cut back in hours for full-time employees. As counsel notes, "These reductions from a 37.5 work week to no lower than a 25 hour work week for full-time Parks' employees are made pursuant to KRS 18A.005(18)(a)." The Appellee notes that recreational parks and historic sites employees were reduced to 32 hours per week and all resort park employees and park rangers reduced to 35 hours per week.

4. Counsel for the Appellee notes Appellant David Huff is employed as a Maintenance Supervisor at Kingdom Come State Park, which is classified as a recreational park and that his work hours were reduced to 32 hours per week.

5. Counsel continues to describe in some detail the amenities at the Kingdom Come State Park, and also notes there is less tourism and park usage during the cold winter months, and as such, Appellant's hours were reduced from 37.5 hours to 32 hours from November 1, 2012, through March 3, 2013, pursuant to KRS 18A.005(18)(a).

6. Counsel contends Appellant was in no way singled out, as all positions at state parks were reduced to between 32 and 35 hours during the off season. Counsel notes that such is not discriminatory, as it was spread equally to all recreational parks, and notes that recreational parks have less usage in the winter compared to resort parks, which have a lodge, restaurant, and conference facilities which may be used.

7. As noted, Appellant did not file a response, although given ample time to do so.

FINDINGS OF FACT

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

2. The Hearing Officer finds that KRS 18A.005(18)(a) is controlling, and that such allows the Department of Parks to make a business decision as to whether reductions in hours are needed for its full-time employees during the off season (the winter).

3. The Hearing Officer finds Appellant has not stated a claim of discrimination. It is not discrimination because Park Rangers or park employees at other parks received more work hours in the winter season.

4. The Hearing Officer finds that the Appellant has not stated a claim over which the Personnel Board would have jurisdiction, as he has not stated a penalization. Pursuant to KRS 18A.095(18)(a), the Personnel Board does not have jurisdiction to consider this appeal further.

CONCLUSION OF LAW

1. The Hearing Officer concludes as a matter of law that pursuant to KRS 18A.005(18)(a), the Appellee did not penalize Appellant by placing him on a reduced work hour schedule due to the authority expressed in that statute, and Appellant was not discriminated against in any way by being placed on such work schedule, as Appellee contends all recreational park full-time employees were placed on such schedule.

2. Likewise, the Hearing Officer concludes as a matter of law that pursuant to KRS 18A.095(18)(a), the Personnel Board lacks jurisdiction to consider this matter further as Appellant has failed to state a claim.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **DAVID P. HUFF V. TOURISM, ARTS AND HERITAGE CABINET, DEPARTMENT OF PARKS, (APPEAL NO. 2012-275)** 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.

ISSUED at the direction of **Hearing Officer Boyce A. Crocker** this 10th day of May, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Misty Judy
Mr. David Huff