

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-035

STANLEY KINNIS

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 July 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated June 2, 2014, 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 July, 2014.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Edward Baylous
Stanley Kinnis
Stephanie Appel

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-035**

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

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

APPELLEE

** ** *

This matter is before the Hearing Officer upon the Appellee's Motion to Dismiss.

This appeal previously came on for a pre-hearing conference on April 14, 2014, at 11:00 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, Stanley F. Kinnis, was present by telephone and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Edward Baylous.

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.

The Appellant filed Appeal No. 2014-035 with the Personnel Board on February 27, 2014. The Appellant indicated this was an appeal from a three-day suspension without pay by letter issued January 14, 2013.

Prior to the pre-hearing conference, counsel for the Appellee Dept. of Corrections filed a Motion to Dismiss, claiming the appeal was untimely filed.

The Appellant was given time to respond to the motion. The Hearing Officer is also aware that Appellant has another appeal regarding his demotion with the Appellee which is scheduled for evidentiary hearing on **July 25, 2014**.

The parties complied with the briefing schedule. This matter now stands ready for a ruling by the Hearing Officer.

BACKGROUND

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

2. The Appellee filed its Motion to Dismiss and argues therein that this matter must be dismissed due to Appellant not complying with the time limitations set forth at KRS 18A.095. The Hearing Officer is aware of those time limitations which apply to disciplinary actions such as suspensions.

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

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

(a) The demotion, suspension, or other penalization;

(b) The effective date of the demotion, suspension, or other penalization;

(c) The specific reason for the action including:

1. The statutory or regulatory violation;

2. The specific action or activity on which the demotion, suspension, or other penalization is based;

3. The date, time, and place of the action or activity; and

4. The name of the parties involved; and

(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.

4. Counsel for the Appellee argues that as this appeal was not filed with the Personnel Board until February 27, 2014, and the disciplinary letter was dated January 8, 2013, that the appeal is untimely.

5. The Appellant filed a timely response, stating that the original appeal was sent in on February 6, 2013, but he never heard anything back from the Personnel Board, "...but due to the Board receiving several appeals, I was not concerned." Appellant further states, "I received further disciplinary action in January 2014, and this action, the three-day suspension was

mentioned. I appealed this action, and when talking to the Board via phone, the Board denied receiving the appeal for the three-day suspension.”

6. Appellant states that since the appeal was sent in a timely manner, and that the three-day suspension was mentioned in the demotion letter, he believes it should be reviewed by the Personnel Board.

7. The Appellee filed a reply in which it reiterates the arguments made in its Motion to Dismiss.

FINDINGS OF FACT

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

2. The Hearing Officer finds that this appeal was filed with the Personnel Board on February 27, 2014.

3. The Hearing Officer finds that the disciplinary letter was dated January 14, 2013, and the Appellant received that disciplinary letter on that date or shortly thereafter. The Hearing Officer so finds because the Appellant, in his response to the Motion to Dismiss, states he did send the “original appeal” of this suspension to the Personnel Board by regular mail on February 6, 2013. The Hearing Officer has no reason to disbelieve this statement of the Appellant, and so finds.

4. The Hearing Officer finds the Appellee correctly cites 101 KAR 1:365, the regulations of the Personnel Board at Section 3(1). That provision states “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 periods set forth at KRS 18A.095 after receiving written notification of the penalization, or after becoming aware of the penalization through the exercise of due diligence.”

5. The Hearing Officer finds that the Appellant filed his appeal over one year after receiving written notification of the penalization, and thus the appeal was untimely filed.

CONCLUSION OF LAW

1. The Hearing Officer concludes as a matter of law that this appeal was untimely filed, as stated in the Findings above, regardless of the fact Appellant had put an appeal form in the mail on February 6, 2013. That appeal form was never received or file-stamped by the clerk of the Board, and thus, was not filed.

2. The Hearing Officer concludes as a matter of law that the Appellant cannot directly challenge the suspension due to the matter being untimely filed. However, to the extent the suspension is mentioned in the later demotion letter, and to the extent that the Department of Corrections relies on the suspension to justify the demotion, then the Appellant may certainly present evidence, argument and even challenge assertions made by the Appellee as to the suspension, though the suspension itself cannot be appealed.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **STANLEY F. KINNIS V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2014-035)** 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 2nd day of June, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPER
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:
Hon. Edward Baylous
Mr. Stanley Kinnis