

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-110**

MICHAEL MASSEY

APPELLANT

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

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

APPELLEE

* * * * *

The Board, at its regular May 2021 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 29, 2021, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** Background paragraph 3 and substitute the following:

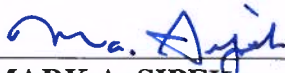
3. In its Motion to Dismiss, the Appellee stated that the Appellant received a ten-day suspension letter on January 29, 2020. He signed a copy of this letter acknowledging receipt on that date. He filed his appeal with the Personnel Board on April 3, 2020, beyond the 60 days statute of limitations. The Appellee contended the Personnel Board lacks jurisdiction to hear this appeal.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as Altered, be and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal 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 12th day of May, 2021.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
SECRETARY

A copy hereof this day mailed to:

Hon. Amy Barker
Michael Massey
Rodney Moore

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-110**

MICHAEL MASSEY

APPELLANT

VS.

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

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

APPELLEE

** ** *

This matter came on for a pre-hearing conference on June 1, 2020, at 10:00 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Michael Massey, was present and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Angela Cordery. Both parties appeared by telephone.

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.

BACKGROUND

1. The Hearing Officer notes the Appellant filed his appeal with the Personnel Board on April 3, 2020, appealing from a ten-day suspension. The Appellant stated that he had everything he needed to proceed in this matter. While there is a video from a walk camera, he did not believe it would be very helpful.

2. Counsel for the Appellee stated that she believed the appeal was untimely filed and requested time to file a Motion to Dismiss. A schedule was set.

3. In its Motion to Dismiss, the Appellee stated that the Appellant received a ten-day suspension letter on January 29, 2020. He signed a copy of this letter acknowledging receipt on that date. He filed his appeal with the Personnel Board on April 3, 2020, beyond the 90 days statute of limitations. The Appellee contended the Personnel Board lacks jurisdiction to hear this appeal.

4. In his response, the Appellant did not dispute any of the dates, but simply argued that he did submit his appeal to the Personnel Board within the 60. He stated that the statute does not require that an appeal must be received within 60 days, only submitted.

5. In its reply, the Appellee disputed the Appellant's assertion and stated that he did not explain what he meant by submit.

FINDINGS OF FACT

1. The Appellant, a classified employee with status, received notice of a ten-day suspension on January 29, 2020.

2. The Appellant signed his appeal form on March 27, 2020.

3. The Appellant's appeal was received at the Personnel Board on April 3, 2020.

4. There are no material issues of fact in dispute and this matter can be decided as a matter of law based on the Appellant's appeal form, the statements of the parties at the pre-hearing conference, the Motion to Dismiss, the response to the Motion to Dismiss, the reply to the Motion to Dismiss, and attachments.

CONCLUSIONS OF LAW

The Personnel Board lacks jurisdiction to hear the Appellant's appeal as it was filed beyond the sixty-day statute of limitations. KRS 18A.095(8)(d).

101 KAR 1:365 Section 3 is entitled Filing. Subsection 1 reads as follows;

“An appeal or a 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 notification of the penalization or after becoming aware of the penalization through the exercise of due diligence.”

Thus, regardless of when the Appellant mailed his appeal form, it is only considered “filed” when it arrives at the office of the Executive Director. In this case, the Appellant’s appeal was filed beyond the sixty-day time limit and the Personnel Board lacks jurisdiction to hear this appeal.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **MICHAEL MASSEY VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2020-110)** 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).

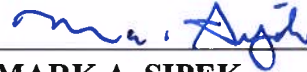
[Hearing Officer Note: Any document filed with the Personnel Board shall also be served on the opposing party.]

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 Mark A. Sipek** this 29th day of March, 2021.

KENTUCKY PERSONNEL BOARD



**MARK A. SIPEK
EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Amy Barker

Michael Massey

Hon. Rosemary Holbrook (Per. Cab.)