



**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2015-195**

**SHARON A. McCOWN**

**APPELLANT**

**V. 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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This matter came on for a pre-hearing conference on October 27, 2015, at 10:30 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, Sharon A. McCown, 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 define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

The Appellant filed her appeal with the Personnel Board on August 24, 2015. Appellant is appealing her dismissal, which was issued by letter dated June 20, 2015, for allegations of poor work performance. As relief, Appellant seeks to be reinstated to her job.

The Hearing Officer discussed with the parties the possibility of resignation instead of dismissal. The Appellee indicated he would relay that, so long as it was clear that it would only be accepted "with prejudice." If the resignation was accepted "with prejudice," it would have the effect that Appellant would not be able to get on Department of Corrections' employment registers in the future.

The Appellee filed a Motion to Dismiss. The Appellant was given time in which to respond, and she did so in a timely fashion. The matter is submitted to the Hearing Officer for a ruling on the Appellee's Motion to Dismiss.

**BACKGROUND**

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

2. In its Motion to Dismiss, the Appellee, Justice and Public Safety Cabinet, Department of Corrections, contends that Appellant's appeal is untimely in that she had received the letter of dismissal on June 21, 2015, and her appeal was not filed with the Personnel Board until August 24, 2015. Counsel calculates that in order for Appellant's appeal to have been filed timely (that is, within 60 days of Appellant's receiving the letter of dismissal), the appeal would have had to been filed with the Personnel Board by no later than August 20, 2015.

3. As noted, Appellant filed a timely response. Appellant stated, "I did not realize that receiving my dismissal letter would not be processed/filed until a later time I was not familiar with that part of the process." (sic)

4. KRS 18A.095(7) states:

If the cabinet or agency head or his designee determines that the employee shall be dismissed or otherwise penalized, the employee shall be notified in writing of:

(a) The effective date of his dismissal or other penalization;

(b) The specific reason for this action, including:

1. The statutory or regulatory violation;

2. The specific action or activity on which the dismissal 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

(c) That he may appeal the dismissal or other penalization to the board within sixty (60) days after receipt of this notification, excluding the day he receives notice.

5. KRS 18A.095(18)(a) states:

The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a

preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.

### **FINDINGS OF FACT**

1. During the relevant times, Appellant, Sharon A. McCown, was a classified employee with status.
2. The Hearing Officer finds that Appellant was dismissed by letter dated June 20, 2015, signed by the Warden of the Kentucky Correctional Institution for Women.
3. The Hearing Officer finds it to be undisputed that Appellant received the letter of dismissal on June 21, 2015.
4. The Hearing Officer finds that Appellant filed her appeal with the Personnel Board on August 24, 2015. The Hearing Officer further finds that a review of the envelope which contained Appellant's appeal to the Personnel Board was postmarked August 21, 2015.

### **CONCLUSIONS OF LAW**

1. The Hearing Officer concludes as a matter of law that Appellant's appeal was not filed timely with the Personnel Board, as such is required to be filed within 60 days from the time Appellant received notice of her dismissal, pursuant to KRS 18A.095(7), reprinted above.
2. The Hearing Officer concludes that Appellant's failure to file the appeal until after 60 calendar days had elapsed makes her appeal untimely.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **SHARON A. McCOWN V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2015-195)** 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 3<sup>rd</sup> day of December, 2015.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day mailed to:

Hon. Edward Baylous  
Ms. Sharon A. McCown