

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-113

DESIREE PEYTON

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF JUVENILE JUSTICE
J. MICHAEL BROWN, APPOINTING AUTHORITY

APPELLEE

** **

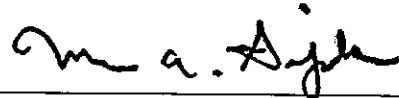
The Board at its regular October 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated September 11, 2013, and being duly advised,

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. Adam Adkins
Desiree Peyton
Joslyn Olinger Glover

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-113**

DESIREE C. PEYTON

APPELLANT

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

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF JUVENILE JUSTICE,
J. MICHAEL BROWN, APPOINTING AUTHORITY**

APPELLEE

** ** *

This matter came on for pre-hearing conference on July 9, 2013, at 9:30 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Desiree Peyton, was present by telephone and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was also present and represented by the Hon. Adam Adkins.

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 the Appellant, 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 May 9, 2013, from her dismissal from the Department of Juvenile Justice. She challenged her dismissal as being unfair and also mentioned that she felt she was retaliated against, that she had been slandered, and her character had been defamed.

At the pre-hearing conference, the Appellant stated she would love to get her job back and would like to clear her name.

The Appellant acknowledged she received dismissal letter on February 5, 2013, and filed her appeal on May 9, 2013. She stated she was aware she had signed the appeal form on April 3, 2013, but it took some time for her to mail it in because of issues going on in her personal life.

Counsel for the Appellee stated he would like to file a motion to dismiss and a schedule was set for the parties.

In accordance with the Interim Order, the Appellee filed a motion to dismiss and the Appellant responded. The matter is now submitted to Hearing Officer Boyce A. Crocker for a ruling on the Appellee's Motion to Dismiss.

BACKGROUND

1. During the relevant times, the Appellant, Desiree Payton, was a classified employee with status, employed as a Youth Worker II at the Campbell Regional Juvenile Detention Center (CRJDC).

2. In its Motion to Dismiss, the Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, states it is undisputed that Appellant received and signed the letter of dismissal on February 5, 2013, and is further undisputed that Appellant filed her appeal with the Personnel Board on May 9, 2013.

3. Appellee argues that according to KRS 18A.095(7)(c), the Appellant exceeded the sixty (60) days time limit in which she had to file her appeal of her dismissal with the Personnel Board.

4. KRS 18A.095(7)(c) states, as follows:

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:

...

(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. As noted, the Appellant filed a timely response. In her response, the Appellant stated she did not feel the Appeal should be dismissed, then spoke at some length about the conditions at CRJDC, the fact she believes she was lied about, and that the letter of dismissal contained untruths. Appellant appeared to admit she had poor time and attendance, which was mentioned in the letter of dismissal.

6. As noted in the pre-hearing conference Interim Order, the Appellant admitted she signed the appeal form on April 3, 2013, but the appeal was not filed until May 9, 2013, because it took Appellant extra time to mail the appeal into the offices of the Personnel Board.

7. On her appeal form, Appellant checked the box for Other Penalization, and specified "Retaliation, Defamation of Character, Slander."

FINDINGS OF FACT

1. During the relevant times, the Appellant, Desiree Payton, was a classified employee with status, employed as a Youth Worker II at the Campbell Regional Juvenile Detention Center (CRJDC).
2. The Hearing Officer finds Appellant received the letter of dismissal on February 5, 2013, and this fact is not in dispute.
3. The Hearing Officer finds that Appellant did not file her appeal of the dismissal with the Personnel Board until May 9, 2013, and this fact is not in dispute.
4. The Hearing Officer finds that to the extent Appellant was appealing "being retaliated against, slandered, and defamation of character," Appellant was referring to the text of the allegations contained in the letter of dismissal, and thus, those allegations do not amount to allegations independent of the letter of dismissal.
5. The Hearing Officer finds the Appellant exceeded the sixty (60) day time limit for having her filed her appeal from the time she received the letter of dismissal; that such facts are not in dispute; and as a result of a plain reading of KRS 18A.095(7)(c), that Appellant's appeal is time-barred.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that Appellant's appeal is time-barred based on the date when Appellant received the letter of dismissal and when the Appellant filed the appeal with the Personnel Board that Appellant's appeal must be dismissed for failure to timely file the appeal.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **DESIREE C. PEYTON V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE, (APPEAL NO. 2013-113)** 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 11th day of September, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Adam Adkins
Ms. Desiree Peyton