

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-126**

JOHN QUARLES

APPELLANT

VS.

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

** ** ** ** **

This matter came on for a pre-hearing conference on August 22, 2016, at 10:30 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, John Quarles, was present by telephone and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Kathleen Hines, appearing by telephone.

The purposes of the pre-hearing conference were to determine whether this appeal was filed within the time limitations set forth in KRS 18A.095, to define the issues, address any other matters relating to this appeal and to discuss the option of mediation.

BACKGROUND

1. The Appellant, John Quarles, filed his appeal with the Personnel Board on June 30, 2016. The Appellant had been suspended for five days by the Appellee in a letter dated April 15, 2016. The Appellant signed an Appeal Form on April 25, 2016, however, it did not arrive at the Personnel Board until June 30, 2016.

2. The Appellant stated that when he first received the suspension he was ready to file an appeal. He talked with some coworkers who talked him out of it. Eventually he spoke with Terry Brogan, a Human Resource Representative, who told him he would not face any negative repercussions if he filed an appeal.

3. Following the pre-hearing conference the Appellee filed a Motion to Dismiss alleging that the appeal was untimely.

4. The Appellant was given time to file a response to the Motion to Dismiss, however, he did not file one. At the pre-hearing conference, he stated that he knew he was close to the deadline, but he thought he had sent his appeal to the Personnel Board so that it would be timely.

FINDINGS OF FACT

The Hearing Officer makes the following findings by preponderance of the evidence:

1. There are no material facts in dispute and this matter can be decided as a matter of law based on the Appeal Form, the suspension letter, statements made at the pre-hearing conference, and the Motion to Dismiss.
2. The Appellant was notified of the five-day suspension in a letter dated April 15, 2016, signed by Appointing Authority, Tresa S. Straw. The actual dates of the suspension were April 18, 2016, through April 22, 2016.
3. The Appellant filed his appeal from the five-day suspension with the Personnel Board on June 30, 2016. The appeal was filed well beyond the 60-day time limit, which would have been June 14, 2016.

CONCLUSIONS OF LAW

1. Pursuant to KRS 18A.095 (8)(d), the Appellant had 60 days following receipt of the notice of his suspension to file an appeal with the Personnel Board. Based on the Findings of Fact, the Appellant's appeal was due on June 14, 2016, and was not filed until June 30, 2016. As a result, his appeal to the Personnel Board is untimely and the Personnel Board lacks jurisdiction to grant him any relief with respect to this appeal.
2. Pursuant to KRS 18A.095 (18)(a), the Personnel Board may deny the appeal if it lacks jurisdiction. Because this appeal was not filed within the time limitations set forth in KRS 18A.095 the Personnel Board lacks jurisdiction to grant any relief and this appeal should be **DISMISSED**.

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 **JOHN QUARLES VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2016-126)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13.B.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).

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 22nd day of December, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Kathleen Hines
Mr. John Quarles