

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-048**

CAPRESHA ROBINSON

APPELLANT

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

VS.

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

APPELLEE

*** **

The Board, at its regular December 2023 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated November 8, 2023, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer 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 14th day of December, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

Copies hereof this day emailed and mailed to:

Capresha Robinson
Hon. William Codell
Hon. Rosemary Holbrook (Personnel Cabinet)
Cynthia Watson

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-048**

CAPRESHA ROBINSON

APPELLANT

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

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

APPELLEE

** ** ** ** ** ** ** **

This matter came on for a pre-hearing conference on July 13, 2023, at 11:30 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, Capresha Robinson, was present and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and represented by the Hon. William Codell.

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

BACKGROUND AND FINDINGS OF FACT

1. The Hearing Officer noted the Appellant filed her appeal with the Personnel Board on April 4, 2023, appealing from a three (3) -day suspension. The Appellant stated that she received her suspension on December 9, 2022, by email.

2. After discussion of the appeal during the pre-hearing conference, counsel for the Appellee stated he would like to file a Motion to Dismiss on the timeliness of the Appeal. A schedule was set for motion practice. In addition, an evidentiary hearing date was also set in the event that the Motion to Dismiss was denied.

3. The Appellant acknowledged that she had received written notice of her suspension on December 9, 2022, by email.

4. The emailed notice included the following language:

A copy of this notice is being furnished to the Personnel Cabinet in accordance with personnel rules. In accordance with KRS 18A.095, you may appeal this action to the Personnel Board within sixty (60)

days after receipt of this notice, excluding the date notification is received. Such appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

5. The Appellant did not file her appeal with the Personnel Board until April 4, 2023.
6. The Appellee filed a Motion to Dismiss alleging that the Appellant's appeal was untimely and the Personnel Board lacked jurisdiction.
7. Although given time to respond to the Appellee's Motion to Dismiss, the Appellant has failed to do so.
8. There are no genuine issues of material fact and this matter can be decided as a matter of law based on the appeal form, the statements of the parties at the pre-hearing conference, and the Appellee's Motion to Dismiss.

CONCLUSIONS OF LAW

1. As a classified employee with status, the Appellant had sixty (60) days to file an appeal from her suspension with the Personnel Board pursuant to KRS 18A.095(8).
2. The Appellant failed to file her appeal with the Personnel Board within sixty (60) days and, thus, the Personnel Board lacks jurisdiction to hear this appeal.
3. Because there are no issues of material fact and the Board lacks jurisdiction to hear this matter, this appeal can be dismissed as a matter of law based on the appeal form, the statements of the parties at the pre-hearing conference, and the Appellee's Motion to Dismiss. KRS 18A.095(8)(a) and KRS 13B.090(2).
4. Because all the events underlying this appeal occurred before the effective date of Senate Bill 153, all reference to KRS Chapter 18A are to the sections in effect at the time of the events associated with 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 **CAPRESHA ROBINSON V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2023-048)** 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

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response to any exceptions that are filed by the other party within fifteen (15) 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.

SO ORDERED at the direction of the Hearing Officer this 8 day of November, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. William Codell
Capresha Robinson
Hon. Rosemary Holbrook (Personnel Cabinet)