

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-270

JULIA SANDLIN

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES
J.P. HAMM, APPOINTING AUTHORITY

APPELLEE

** **

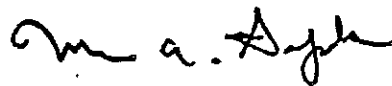
The Board at its regular August 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated June 20, 2013, and being duly advised,

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 14th day of August, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Carrie Cotton
Julia Sandlin
J.P. Hamm

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PERSONNEL BOARD
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**V. FINDINGS OF FACT, CONCLUSIONS OF LAW
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APPELLEE

** ** *

This matter is before the Hearing Officer for a ruling on the Appellee's Motion to Dismiss which was timely filed on March 5, 2013.

This matter came on for a pre-hearing conference on February 13, 2013, at approximately 11:30 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, Julia Sandlin, was present by telephone and not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was also present and represented by the Hon. Carrie Cotton.

At the pre-hearing conference, the Hearing Officer gave the Appellant more than ample time in which to file a response. That time has come and gone and the Appellant has filed no response.

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 Appellant, to define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

The Hearing Officer noted this appeal was filed with the Personnel Board on December 17, 2012. Appellant indicated she was appealing from discrimination based on disability and age, and also Other Penalization, to wit: "I filed an EEO complaint, however the EEO officer stated the alleged perp would have to admit (no one would do that)."

As to the claims of discrimination based on age and disability, Appellant indicated she was 48 years of age and listed medical problems she had. During the course of the pre-hearing

conference, Appellant stated she had not worked for the Cabinet since November 2011, and had resigned her position on August 15, 2012.

As relief, Appellant sought to be paid for approximately 200 hours of overtime she alleged she worked but was not paid for while working. Appellant also sought to have personal effects returned to her which she claims were taken out of her office. It is possible these personal effects were destroyed, according to Appellant. The Hearing Officer explained to Appellant that the Personnel Board did not have the authority to award her compensation for her personal effects if they were destroyed or lost.

As noted above, the matter stands submitted for a ruling.

BACKGROUND

1. During the times relevant to the decision on the Appellee's dispositive motion, the Appellant was a former employee of the Commonwealth.

2. In its motion to dismiss, the Appellee notes the Appellant resigned from her position as a Family Services Office Supervisor with the Appellee on August 15, 2012. As the Appellee outlines in its motion, the Appellant had been on sick leave for many months prior to her resignation from the Cabinet for Health and Family Services. The Appellant's supervisor ultimately requested accommodations, and it was determined the physical limitations expressed could be met, but perhaps not any claimed mental limitations.

3. The Appellant had also filed a report of age and disability discrimination with the agency which was investigated, and apparently no discrimination was found.

4. The Appellee contends that as the Appellant is no longer an employee, she has no right of appeal to claim discrimination.

5. Counsel argues that there is no evidence adduced in her appeal, such as her age or alleged disability.

6. Counsel also contends the appeal is not timely, and cites the matter of *Vivian Mack v. Natural Resources and Environmental Protection Cabinet, et al.*, Personnel Board -891, (Dec. 17, 1991), in which an appeal was dismissed, stating Mack had only 30 days to appeal alleged discrimination.

7. As noted, the Appellant, although given ample time in which to do so, did not file a response.

8. 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.

9. KRS 18A.095(29) states:

Notwithstanding any other prescribed limitation of action, an employee that has been penalized, but has not received a written notice of his or her right to appeal as provided in this section, shall file his or her appeal with the Personnel Board within one (1) year from the date of the penalization or from the date that the employee reasonably should have known of the penalization.

FINDINGS OF FACT

1. During the times relevant to the decision on the Appellee's dispositive motion, the Appellant was a former employee of the Commonwealth.

2. The Hearing Officer finds that the Appellant filed this appeal with the Personnel Board on December 17, 2012. The Appellant checked the boxes for Discrimination based on disability and age, and noted she had filed an EEO complaint, alleging the futility of that complaint.

3. The Hearing Officer finds the Appellant did state her age (48 years of age) at the pre-hearing conference, and also certain medical issues she claimed. The Hearing Officer notes the Appellee, in exhibits attached to its motion to dismiss, also referenced various medical conditions.

4. The Hearing Officer finds that the Appellant resigned her employment in August 2012 after being on sick leave (voluntary) for an extended period of time.

5. The Hearing Officer finds Appellant, as relief, seeks to have certain personal items returned to her or to be compensated for same, and also for overtime hours she claimed she worked but for which she was never compensated.

6. The Hearing Officer finds, pursuant to KRS 18A.095(29), reprinted above, that Appellant, having not worked since November 2011 did not timely file this appeal regarding her claim of penalization on unpaid overtime. Such appeal, being filed more than one year subsequent to her last having worked, is untimely.

7. The Hearing Officer finds that the Board is without jurisdiction regarding Appellant's claim seeking as relief that personal items be returned to her.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that pursuant to KRS 18A.095(18)(a) or KRS 18A.095(29), the Personnel Board lacks jurisdiction to further consider this matter as it does not have any basis upon which it could grant relief based on the claims stated, due to untimeliness and lack of jurisdiction.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **JULIA SANDLIN V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2012-270)** 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 20th day of June, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:
Hon. Carrie Cotton
Ms. Julia Sandlin