

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-050**

MARK SCHNEIDER

APPELLANT

VS.

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

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

APPELLEE

** ** ** ** **

This matter came on for a pre-hearing conference at 10:30 a.m., on April 19, 2013, 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, Mark Schneider, was present by telephone and not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Marian Hogan.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by the Appellant, to determine the specific section of KRS 18A which authorizes this appeal, to determine whether the appeal was filed within the time limitations set forth in KRS 18A.095, 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.

BACKGROUND

1. The Appellant, Mark Schneider, filed his appeal with the Personnel Board on February 28, 2013. He checked the box for "Other Penalization" stating, "MDA's on my record."

2. On the back of the Appeal Form, the Appellant wrote as follows:

I am requesting both MDAs to be dropped off of my record because I was explained to that I could not appeal my MDA's after I resigned my merit from my Human Resources Manager Ronald Cooper. On these grounds I am requesting these MDA's be removed from my record. And my pay for suspensions.

3. At the pre-hearing conference the Appellant alleged he had been suspended twice while he was a merit employee. He appealed the first one, but did not appear at a scheduled hearing resulting in its dismissal. He did not appeal the second suspension because he was told that once he gave up his merit employee status he could no longer file an appeal.

4. Prior to the pre-hearing conference, counsel for the Appellee filed a motion to dismiss alleging the appeal of his first suspension had been resolved by Final Order after the Appellant failed to appear, and the appeal from the second suspension was untimely.

5. At the pre-hearing conference, the Appellant responded by stating he did not pursue his first appeal, and did not file an appeal from the second suspension, because he was told by Ronald Cooper that he could not pursue these matters since he was no longer a merit employee.

6. An Affidavit attached to the Appellee's Motion to Dismiss from Ronald Cooper states the Appellant resigned on July 1, 2012.

7. The Appellant was given time to file a response to the Motion to Dismiss in writing, but did not.

FINDINGS OF FACT

1. The Appellant, Mark Schneider, filed his appeal with the Personnel Board on February 28, 2013. He stated he was appealing two MDAs or Major Disciplinary Actions. He stated he was filing the appeal at that time because he had previously been instructed by his Human Resources Manager, Ronald Cooper, that he could not file an appeal or pursue an appeal after he had resigned his merit position.

2. The Appellant had previously filed Appeal No. 2012-065. The Appellant failed to appear at a scheduled hearing on August 17, 2012, resulting in a "show cause" order. The Appellant did not respond to the show cause order and the Personnel Board issued an Order Dismissing the Appeal on September 19, 2012.

3. In an affidavit attached to the Appellee's Motion to Dismiss, Ronald Cooper stated that the Appellant resigned his position on July 1, 2012. He stated that Appeal No. 2012-065 concerned his first MDA. Mr. Cooper stated that Schneider's second MDA was a suspension dated July 9, 2012, and was not appealed within sixty days. Cooper denied that he ever advised the Appellant not to appeal any major disciplinary action.

4. For purposes of ruling on the Motion to Dismiss only, the Hearing Officer will assume that the Appellant was instructed that he could not pursue an appeal after he resigned his merit position.

5. There are no material facts in dispute and the Hearing Officer can recommend dismissal in this case based on the Appeal Form, the Motion to Dismiss and the statements of the parties at the pre-hearing conference.

CONCLUSIONS OF LAW

1. The Appellant's appeal of his first MDA has already been adjudicated by the Personnel Board when it issued a Final Order on September 19, 2012, in Appeal No. 2012-065. Appellant did not file exceptions pursuant to KRS 13B.110(4) and did not file an appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100. There is no mechanism for the Personnel Board to review this adjudication even if the Appellant was improperly advised regarding his rights as a merit employee.

2. The Appellant did not timely appeal his July 9, 2012 suspension when he filed this appeal on February 28, 2013. Because he did not file the appeal within sixty days, the Personnel Board lacks jurisdiction to hear this appeal. KRS 18A.095(8).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **MARK SCHNEIDER VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2013-050)** 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.

SO ORDERED at the direction of **Hearing Officer Mark A. Sipek** this 9th day of
October, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Marian Hogan
Mark Schneider