



**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2012-206**

**PAUL J. SCOTT**

**APPELLANT**

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

**CABINET FOR HEALTH AND FAMILY SERVICES**

**APPELLEE**

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This matter came on for a pre-hearing conference at 11:00 a.m., ET, on October 15, 2012, at 28 Fountain Place, Frankfort, Kentucky, before 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, Paul Scott, 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. Ben Feichter.

The purposes of the pre-hearing conference were to determine the specific penalizations alleged by Appellant, the specific section of KRS 18A which authorizes this appeal, to determine the relief sought by the Appellant, to define the issues, address any other matters relating to this appeal and to discuss the option of mediation.

The Hearing Officer notes this appeal was filed with the Personnel Board on September 10, 2012. Appellant checked the box on his appeal form indicating this was an appeal about harassment. In the narrative portion of his appeal, Appellant stated,

On May 30<sup>th</sup> 2012 Mr. Ben McGirt meet with me to discuss my 2012 1<sup>st</sup> Interim. Mr. McGirt documented an incident that took place because of my windows being open. I refused to sign the Interim so on June 1<sup>st</sup> 2012 we met again in regards to my 1<sup>st</sup> Interim and this time the incident about the window was removed. Even though the statement was removed about my windows being open was removed from my 1<sup>st</sup> Interim I feel this was nothing by harassment and a personal attack upon myself. Why should someone be documented in an official document when there was clear evidence that there wasn't any wrong doing? This is why I strongly

feel this is harassment and a personal attack on me and why Mr. McGirt should be dismissed for his actions. (sic)

The Hearing Officer notes Appellant had filed a grievance on this matter as well, which was given a final response on August 10, 2012 by Appointing Authority Jay Klein. The Appellant was not satisfied with the resolution or with the final response to his grievance.

As Appellant noted on his appeal form, he seeks the dismissal of his supervisor. The Hearing Officer explained to Appellant that the Personnel Board cannot impose discipline on an employee of another agency, though the Personnel Board certainly can hear appeals regarding disciplinary actions which have been imposed on a state employee subject to KRS 18A.

After some discussion, the Appellant agreed he would provide more specifics which would back up his claims of harassment and/or retaliation. The Appellee also indicated it might file a motion to dismiss.

The Appellee filed a Motion to Dismiss on December 14, 2012. A subsequent Order Giving Response Time gave the Appellant ample time in which to file a response. The Appellant did not do so, other than to express in an e-mail, that he wished the matter to proceed to the Personnel Board.

This matter stands submitted to the Hearing Officer for a ruling on the Appellee's Motion to Dismiss.

### **BACKGROUND**

1. During the relevant times, the Appellant, Paul J. Scott, was a classified employee with status.

2. In the Appellee's Motion to Dismiss, counsel argues three grounds for dismissal: (1) that the Appellant's allegations do not rise to the level of a penalization; (2) that the Appellant's failure to serve his November 26, 2012 e-mail on the Cabinet is grounds for entry of a default judgment (the Hearing Officer will note the e-mail in question is one where the Appellant stated no further grounds as to any claims of retaliation or harassment, and is enclosed as an exhibit to the Appellee's motion to dismiss); and (3) that the Personnel Board does not have the power to grant the relief the Appellant seeks.

3. The Appellant had received an interim evaluation the first quarter of 2012 which contained a statement he disagreed with. The Appellant requested reconsideration and the statement was removed from the interim evaluation.

4. Counsel notes that the Appellant nevertheless filed a Grievance over this matter, which did not resolve to his satisfaction.

5. In its Motion to Dismiss, counsel contends that “even when the facts are viewed in a light most favorable to Mr. Scott, it is clear the allegations set forth in his notice of appeal do not constitute a penalization.” Counsel notes that when the Appellant complained about the comment in his evaluation he did not agree with, it was removed and that overall the tone of the interim review was “positive.”

6. Counsel argues that the Appellant’s failure to serve the November 26, 2012, e-mail upon the Appellee is grounds for a default judgment. Counsel for the Appellee points out that the October 19, 2012 Interim Order arising out of the October 15, 2012 pre-hearing conference specifically ordered the Appellant to serve copies of any correspondence upon the opposing party as well as the Board.

7. Finally, counsel argues that the Personnel Board cannot grant the relief that the Appellant seeks, that is to fire Appellant’s supervisor with whom Appellant had the disagreement over the interim evaluation.

8. As noted, the Appellant did not file a substantive response to the motion to dismiss.

9. KRS 18A.095(18)(a) states, as follows:

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.

#### **FINDINGS OF FACT**

1. During the relevant times, the Appellant, Paul J. Scott, was a classified employee with status.

2. The Hearing Officer finds that the comment made in the Appellant's first quarter 2012 interim evaluation with which the Appellant disagreed has been removed from the evaluation.

3. The Hearing Officer finds that the relief Appellant seeks at the Personnel Board, namely the dismissal of his supervisor (Mr. McGirt), amounts to relief that the Personnel Board cannot grant in any circumstance.

### CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law pursuant to KRS 18A.095(18)(a) that the Personnel Board is without jurisdiction to grant relief in this matter, as the only relief sought by the Appellant falls outside the parameters of what the Personnel Board could grant. In any event, as plead, this appeal states no penalization, as that term is defined in KRS 18A.005(24).

### RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **PAUL J. SCOTT V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2012-206)** 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.

**[Hearing Officer Note: Any document filed with the Personnel Board shall also be served on the opposing party.]**

**ISSUED** at the direction of **Hearing Officer Boyce A. Crocker** this \_\_\_\_\_ day of February, 2013.

**KENTUCKY PERSONNEL BOARD**

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**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Mary S. Tansey  
Mr. Paul J. Scott