

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-035**

SHERRE SMITH JONES

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 an evidentiary hearing on July 14, 2015, at 9:30 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Roland P. Merkel, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Sherre Smith Jones, was present and represented by the Hon. Dean H. Sutton. The Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and represented by the Hon. Edward Baylous. Also present was Ms. Ann Smith, Paralegal, and Mr. Robert Hayter, agency representative.

There are two issues in this appeal: (1) The Appellant's claim that KRS 18A.130, KRS 18A.135 and KRS 18A.115(4) were not followed, and Appellant was not allowed to revert to a position in the classified service; (2) Appellant's claim that she was discriminated against based on her age. Appellant has the burden to prove each issue by a preponderance of the evidence.

Mr. Sutton requested that one of his witnesses, who was a two-hour drive away from the hearing location, be allowed to testify by telephone. Mr. Baylous objected to such telephonic testimony. Pursuant to KRS 13B.080(7):

A hearing officer may conduct all or part of an administrative hearing, or a pre-hearing conference by telephone, television or other electronic means, if each party to the hearing has an opportunity to hear, and, if technically feasible, to see the entire proceeding as it occurs, and if each party agrees.

As the Appellee objected to telephonic testimony, the Hearing Officer was unable to conduct that part of the administrative hearing in that manner. Appellant's motion was denied.

The rule separating witnesses was invoked and employed throughout the course of the proceedings. Both parties presented their respective opening statements.

Prior to the presentation of testimony, Mr. Sutton moved that the Department of Juvenile Justice's Answers to Interrogatories, marked for identification as Appellant's Exhibit 1, be admitted into the record. Appellee had no objection. Such motion was sustained, and Appellant's Exhibit 1 was admitted.

Throughout the course of the hearing, the parties entered into a number of stipulations of fact. Those stipulations are:

1. Sherre Smith Jones has been employed by Kentucky state government since 1988. Up until the time she was told her services as Deputy Commissioner were no longer required, she had no disciplinary actions against her through the entirety of her state employment.

2. Appellant was a career employee with status in the state service. Status can be obtained by an employee through a combination of state service in classified and unclassified positions.

3. Appellant began employment as Deputy Commissioner effective July 16, 2008.

4. Appellant's Exhibit 15 is a true and accurate depiction of the Kentucky Department of Juvenile Justice organizational chart, as of February 1, 2015, which appears on the Department's website.

BACKGROUND

1. The first witness for the Appellant was the **Appellant, Sherre L. Smith Jones**. She began her employment at the Justice and Public Safety Cabinet in 1996. She is currently 59 years of age. Her first position of employment with state government was in July 1988 as a Social Worker.

2. She identified Appellant's Exhibit 2 as her own résumé, chronologically detailing the history of her employment. She applied the handwritten notations of salaries on that document. The last merit position she held was from April 1997 to August 2002 as a Juvenile Services Regional Manager for the Justice Cabinet. The first non-merit position of employment she held was from August 1, 2002, to July 31, 2003, as Division Director II, Division of Program Development, in the Justice Cabinet. Her last position in state government was the non-merit position she held from July 2008 to August 1, 2014, as Deputy Commissioner for Community Services and Mental Health Services, in the Justice Cabinet.

3. She identified Appellant's Exhibit 3 as a May 9, 1988 letter from the Cabinet for Human Resources, which notified her of the conversion of her Social Worker I position under the auspices of Jefferson County to employment as a Family Services Worker under the newly established Cabinet for Human Resources. This was effective July 1, 1988.

4. She identified Appellant's Exhibit 4 as the April 27, 1999 memorandum recommending her for a Distinguished Service Award. She identified Appellant's Exhibit 5 as a May 17, 1999 memorandum passing the recommendation on to the Cabinet Secretary. She identified Appellant's Exhibit 6 as a document containing three separate position action forms, the latest of which shows her salary of \$4,071.98 per month in the position of Juvenile Service Regional Manager.

5. As a status employee, Appellant knew she had reversion rights. She believed that if she left a non-merit position, she could transition back to her last merit position, if such position were vacant, or if not vacant, then to a comparable position.

6. She identified Appellant's Exhibit 7 as a certificate showing her appointment as Division Director II effective August 16, 2002. She identified Appellant's Exhibit 8 as a March 1, 2005 letter recommending that she receive a commendation in the form of a Leadership Award at the African-American Leadership Recognition Breakfast.

7. She identified Appellant's Exhibit 9 as Form #20, Voluntary Transfer/Demotion/Salary Retention Agreement Form. This document showed her voluntary transfer effective August 1, 2003, from Division of Program Services to Central Region Division Director.

8. She identified Appellant's Exhibit 10 as the July 1, 2008 letter from Secretary J. Michael Brown to Governor Steven L. Beshear, requesting approval of her promotion to the position of Deputy Commissioner, Department of Juvenile Justice, effective July 16, 2008. The Exhibit shows the request had been approved by the Governor.

9. She identified Appellant's Exhibit 11 as the Kentucky Personnel Cabinet Position Description Inquiry showing the duties of her position as Deputy Commissioner. She identified Appellant's Exhibit 12 as the Information Sheet To Accompany, showing a requested salary for her appointment as Deputy Commissioner as \$79,479.12. This was Appellant's starting salary in that position.

10. On May 8, 2014, Appellant was personally told by Interim Commissioner Robert Hayter that her services as Deputy Commissioner "were no longer needed," and that the Secretary did not trust her. Mr. Hayter did not go into any detail. He said he was sorry. Appellant questioned why this was being done. The Commissioner had no answer.

11. Later that day, Appellant spoke directly to the Secretary. Having been told her services were no longer required she believed she had been fired. She previously told the Commissioner "I guess I'm going to have to retire." Secretary Brown told her he wanted to make some changes. They discussed her going to another position. A discussion of reversion rights did not come up in this conversation.

12. Appellant believed she was being terminated. She began to think about her options. She testified she was led to believe she could transition to another position as stated by Secretary Brown. It was mentioned there was a vacant position at one of the facilities in

Jefferson County. When told about that position, Appellant told the Commissioner that position would be a challenge. She never received written notification ending her position as Deputy Commissioner.

13. The position in Jefferson County was Juvenile Facility Superintendent III at the Audubon Youth Development Center. From May 8 to July 2014, she received no follow-up from her employer about that position. She decided then to tell Commissioner Hayter of her intention to retire. She identified Appellant's Exhibit 13 as a May 12, 2014 letter she wrote to Commissioner Hayter. By that date, nothing had been done regarding any new position. She had to be clear about her options. She was single, with a son to take care of. She had to go ahead and deal with an option she knew would occur. She had no other option but to retire.

14. She identified Appellant's Exhibit 14 as the May 27, 2014 letter she wrote to Commissioner Hayter. This was a follow-up to the May 12, 2014 letter, correcting the prior date indicated for retirement. She was unable to meet with personnel at the Retirement Board until June 30, so this letter gave notice that her last work day would be July 31, 2014, and her retirement effective August 1, 2014.

15. In July 2014, Commissioner Hayter had advised Appellant the Superintendent position would likely result in a cut in her pay. Appellant responded she couldn't take a pay cut.

16. Appellant identified Appellant's Exhibit 15 as the organizational chart, effective February 1, 2015, for the Kentucky Department of Juvenile Justice. She had previously held the Deputy Commissioner position for Community and Mental Health Services, shown on the chart as being held that date by Miranda Denney. She identified the Juvenile Facility Superintendent III position at Audubon YDC, as being held at that time by John Ellington.

17. Appellant had planned to retire at the conclusion of the current administration at the end of 2015. However, she came back from a conference very excited about implementing new transitions and programs. She announced to the executive staff "I guess I'm not retiring now." In attendance at the executive staff meeting were other Division Directors, the Commissioner, and other Deputy Commissioners.

18. She identified Appellant's Exhibit 16 as a July 15, 2014 letter she received from the Executive Branch Ethics Commission. This letter stated in part: "Based on the facts developed during the investigation, probable cause does not exist to establish that a violation of KRS Chapter 11A has occurred."

19. Appellant requests among her remedies that: (1) she be given an explanation why she was separated; (2) and receive financial recourse of one year's salary that she would have been earning had she received the new position and retained her current salary. She identified Appellant's Exhibit 17 as a chart she drafted showing her calculation of total salary, accrued annual leave, and accrued sick leave, had she remained employed through six, 12, 13 and 17 months to the date she would have retired at the end of 2015.

20. She identified Appellant's Exhibit 18 as the Job Specification Document for the Juvenile Facility Superintendent III position. She identified Appellant's Exhibit 19 as the Personnel Action Request, Separation/Retirement, indicating approval of her retirement with effective date of August 1, 2014, Pay Grade 20, from the position of Deputy Commissioner. She identified Appellant's Exhibit 20 as the Personnel Action Notification confirming Appellant's retirement.

21. She was told she would not be able to keep her Deputy Commissioner's salary in the Superintendent III position. She had never previously held a Superintendent III position. The last position she held in the classified service was that of a Juvenile Services Regional Manager.

22. The next witness was **Diana McGuire**. Ms. McGuire had been employed by the Department of Juvenile Justice for 41 years and served her last three years as Deputy Commissioner of Operations. She has been retired since August 31, 2014.

23. She knows the Appellant, having worked closely with her over 30 years.

24. In late April or early May 2014, just prior to Ms. McGuire leaving for her May 8 vacation, Commissioner Hayter told her he had been called to the Secretary's office and was going to have to ask the Appellant to leave. He indicated he was sad about that, but it was out of his control. Ms. McGuire told the Commissioner that surely Appellant could be placed in another position.

25. After McGuire returned from her vacation, she discussed with Hayter a vacant Superintendent position at the Audubon facility. The Commissioner indicated the Secretary would not approve Appellant retaining her current salary in that position.

26. From on-going conversations with the Appellant, Ms. McGuire believed Appellant had intentions to retire at the end of the then current administration.

27. Appellant rested her case. The Appellee renewed its Motion to Dismiss and requested a Directed Verdict. Appellant responded to the motion. After hearing the arguments of counsel, the Hearing Officer **SUSTAINED, IN PART**, the motion, and **DISMISSED** Appellant's claim of discrimination based on age, stating he had heard no evidence pertaining to that claim. However, the Hearing Officer **DENIED** Appellee's motion with respect to Appellant's claims pertaining to violation of KRS Chapter 18A.

28. The sole witness for the Appellee was **Commissioner Robert Hayter**. For the past 18 months, Hayter has served as Commissioner for the Department of Juvenile Justice. The early part of his service had been as Interim Commissioner.

29. On May 8, 2014, he told Appellant her services were no longer needed as Deputy Commissioner. This notification was never put in writing. Commissioner Hayter told her he understood she had reversion rights. Also, there was a Juvenile Facility Superintendent III

position open in Louisville that he thought Appellant would be good at. He told Appellant he did not know for sure why she was no longer needed, but that the Secretary had lost trust in her.

30. In order to obtain the Superintendent position, Appellant would have to get on the register and interview through the competitive process. This job was two grades higher than Appellant's last merit position. The Commissioner was always looking for the best person for a particular job. He did not offer her this job, but did think she would be the best person for the position. Appellant told him she wasn't sure if she wanted the position. This is the reason the department delayed proceeding further on separating her from the Deputy Commissioner position. They were waiting for her decision. It was on May 8, 2014, that the Commissioner told her he did not think she was going to be able to retain her Deputy Commissioner's salary in that new position. Appellant responded, "I may just retire." She left the meeting undecided.

31. Subsequently, the Commissioner requested a response from Appellant. Once Appellant decided to retire, she went on leave. She thereafter contacted the Commissioner and said she had not yet met with the Retirement Board. She contacted the Commissioner later to provide the date of her retirement. Once she elected to retire, there was no further discussion about the new position or her leaving the Deputy Commissioner position. The matter was not a termination because the Commissioner and Appellee knew Appellant had reversion rights. He stated he does not recall having had a conversation with the Appellant in July 2014, particularly since such a conversation would have been "after the fact."

32. Commissioner Hayter testified that had they given Appellant a letter telling her her services as Deputy Commissioner were no longer required, this would have triggered a series of events. They did not provide her a letter, as they were waiting to hear from her what direction she wanted to pursue.

33. The Appellee rested its case.

34. The Appellant called **Sherre L. Smith Jones** to testify in rebuttal. She stated she did have a conversation with Commissioner Hayter in July 2014, and it was during that conversation she was told if she took the Superintendent III position she would have to take a demotion; that she could not retain her Deputy Commissioner's salary.

35. At the May 8 meeting, there were no discussions about reversion.

36. She did not find out about the Facility Superintendent vacancy until she met with the Secretary later on May 8. At no time did she tell Commissioner Hayter she had to think about the position.

37. Neither Appellant nor the Appellee called any further witnesses. The Appellant moved for partial summary judgment on her KRS Chapter 18A claims. The Hearing Officer stated he would take that motion under advisement, subject to submission of briefs by the parties. A briefing schedule was then set by separate Interim Order.

FINDINGS OF FACT

1. Sherre Smith-Jones, the Appellant, has been employed by Kentucky state government since 1988. Up until the time she was advised her services as Deputy Commissioner were no longer required, she had no disciplinary actions against her throughout the entirety of such employment.

2. Appellant was a career employee with status in the state service. Status can be obtained by an employee through a combination of state service in classified and unclassified positions.

3. The last merit position Appellant held was as a Juvenile Services Regional Manager for the Justice Cabinet during the period of April 1997 to August 2002.

4. Her last position in state government was as Deputy Commissioner for Community Services and Mental Health Services for the Justice and Public Safety Cabinet from July 16, 2008, to August 1, 2014 (Appellant's Exhibit 10). Her starting salary in that position was \$79,479.12 per year.

5. On May 8, 2014, Interim Commissioner Robert Hayter told Appellant her services as Deputy Commissioner "were no longer needed" as the Secretary did not trust her. This statement was never placed in writing and Appellee never provided any written documentation indicating a date for the end of such employment.

6. Later that day when Appellant spoke to Secretary J. Michael Brown, they discussed Appellant going to another position, specifically, a vacant position at a facility in Jefferson County. That position was Juvenile Facility Superintendent III at the Audubon Youth Development Center, which was two pay grades higher than Appellant's last merit position.

7. Appellant received no communication from her employer between May 8, 2014, and July 2014. On May 12, 2014, she sent a letter to Commissioner Hayter with the subject "retirement," which stated:

As a follow up to our meeting on Thursday, May 8th, and a meeting with Secretary Brown on the same date, I will make arrangements to retire on C.O.B. June 30, 2014 unless I am afforded an opportunity to retain my salary and continue to work in the Department in a different capacity. In the meantime, until June 30, 2014, I will work to transition out of the role as Deputy Commissioner and complete all tasks and meetings pertaining to the Community/Mental Health Services and the Department.

Thank you for the opportunity to have worked over the many years for the Department. (Appellant's Exhibit 13.)

8. On May 27, 2014, Appellant sent a letter to Commissioner Hayter advising she would retire effective August 1, 2014. (Appellant's Exhibit 14.)

9. In July 2014, Commissioner Hayter advised Appellant the Superintendent III position would likely result in a cut in her pay. Appellant responded that she could not take a pay cut.

10. Appellant's retirement was approved effective August 1, 2014. (Appellant's Exhibits 19 and 20.)

11. As a career employee within the classified service, Appellant had reversion rights pursuant to KRS 18A.115(4), upon termination of employment in the exempted service.

12. Appellant timely filed her appeal with the Kentucky Personnel Board.

CONCLUSIONS OF LAW

1. Appellant, Sherre Smith-Jones, failed to meet, by a preponderance of the evidence, her burden of proving that she was discriminated against based on her age. None of the evidence presented pertained to discrimination, particularly on that basis. The Hearing Officer previously granted the Appellee's Motion to Dismiss that part of Appellant's claim, and would so recommend to the Personnel Board.

2. Appellant was a career employee within the classified service. She was appointed to the position of Deputy Commissioner for Community Services and Mental Health Services for the Justice and Public Safety Cabinet effective July 16, 2008. This position was exempted from classified service.

3. On May 8, 2014, Appellant was advised by Interim Commissioner Robert Hayter that Secretary J. Michael Brown no longer needed Appellant's services as Deputy Commissioner. Appellant was never provided such information in writing, nor had she ever been advised when her services in that position would end. If the Appointing Authority elects to terminate an employee without cause, such decision shall be stated in a written notice to the employee. 101 KAR 3:050, Section 7. Separations. (2)(b). There was no evidence of any formal steps having been taken by the Appellee to end Appellant's employment as Deputy Commissioner. Without any further action on behalf of the Appellee towards initiation of termination, Appellant was merely provided an intent to dismiss, and nothing more. Although Appellant was notified orally in advance that her position was coming to an end, it appears the Appellee withheld providing written notice of any action pending Appellant's decision to consider other positions within the department, specifically the Juvenile Facility Superintendent III position at the Audubon Youth Development Center.

4. As stated in KRS 18A.115:

Career employees within the classified service promoted to positions exempted from classified service shall, upon termination of their employment in the exempted service, revert to a position in that class in the agency from which they were terminated if a vacancy in that class

exists. If no such vacancy exists, they shall be considered for employment in any vacant position for which they were qualified pursuant to KRS 18A.130 and KRS 18A.135.

5. KRS 18A.130(2) states:

If the career employee has previously attained status in a position in the classified service, he shall revert to a position in that class in the agency from which he was terminated if a vacancy in that class exists. If no such vacancy exists, he shall be considered for employment in any vacant position for which he is qualified pursuant to the reemployment procedures.

6. KRS 18A.130(3) states, in part:

...[I]f he has attained status but no vacancy exists in a position to which (2) of this section applies, the employee shall be placed on reemployment lists for any positions for which he is qualified.

7. In the matter of *Faust v. Commonwealth of Kentucky, Tourism Development Cabinet, Department of Parks, et al.*, 142 S.W. 3d 89 (Ky. 2004), the Kentucky Supreme Court in its conclusion very clearly set out the three-step process for analyzing a career employee's reversion rights following dismissal from a non-merit employee position:

(1) Upon termination of a career employee from the unclassified service, the Appointing Authority shall determine whether a vacancy exists in a position in the last class that the career employee has previously attained status within the classified service;

(2) If a vacancy exists in the last class, the agency shall revert the employee to a position in that class; but

(3) If a vacancy does not exist, the Appointing Authority need only consider the terminated employee for reemployment, as specified by KRS 18A.130 and KRS 18A.135.

The Supreme Court also stated "...Reversion permits uninterrupted state employment at a salary commensurate with that last received in the classified service. In contrast, the reemployment procedure admits the specter of unemployment, the possibility of lower wages, and no guarantee of rehire." *Faust*, at page 93.

8. There is no doubt Appellant was given oral notice that her employment as Deputy Commissioner would be coming to an end. However, there was no finite date fixed for the end of that position, nor was she notified formally, in writing. Without anything more from the agency, such act did not constitute termination of Appellant from her employment.

9. Appellant contends that she was “constructively discharged” from her employment position, and in support has cited two cases pertaining to the voluntariness of one’s termination from employment. However, as each case is distinguishable from the facts of the current situation, they are not persuasive.

In *Couch v. Kentucky Unemployment Insurance Commission*, 2004-CA-002141-MR (Ky. App. 2006), James Couch had been employed as a Security Guard, with his employment contingent on passing a general services administration test. Couch failed the two attempts to pass the test. He was then terminated from employment and thereafter denied unemployment insurance benefits after a finding that he had been “discharged for misconduct.” The appellate court held:

While in the context of employment law, the employer was well within its rights to terminate Couch’s employment, under Kentucky unemployment compensation law that rightful termination of employment in this case does not also result in sufficient grounds to deny unemployment benefits. Couch did not voluntarily quit his job and his discharge was not for misconduct.

The *Couch* case was applicable to a denial of unemployment insurance benefits. Furthermore, Mr. Couch had been terminated by his employer. In the instant case, Ms. Smith-Jones was given a notice of intent to dismiss, and instead of waiting for formal notification of the dismissal and a definite end date, she decided voluntarily to take other action.

The second case cited by Appellant is *Western Kentucky University v. Elizabeth Esters*, 2013-CA-000261-MR (Ky. App. 2014). In that matter, Ms. Esters had filed a breach of contract suit against her employer, Western Kentucky University, after she was forced to retire against her will. She claimed “constructive discharge” after the university president told her she needed to “go on and retire;” that she would be terminated if she did not retire. The issue in the case was whether Ester’s decision to resign was voluntary. The Court of Appeals concluded, as did the Franklin Circuit Court, that the employer had given Esters an “ultimatum that she would be fired if she did not resign,” thereby intending to induce Esters to resign.

Esters had also been working under a written contract for the 2008-2009 fiscal year. There was no evidence of a contract for the Appellant, Ms. Smith-Jones. Also, the issue of constructive discharge had not been properly reserved by the parties in *Esters* for appellate review, and therefore, that issue was not discussed in that appeal.

There was no evidence in the instant case of any similar “ultimatum” given to Appellant, or any intent to induce or force Ms. Smith-Jones to resign. In fact, testimony of Commissioner Hayter showed Appellee held off giving formal written notice to the Appellant in order to allow her time to consult and decide on her course of action. It was suggested to her she consider applying for the vacant Juvenile Facility Superintendent III position (although she was advised she would not retain her Deputy Commissioner’s salary in that position).

10. Appellant did have viable choices once she was notified her services as Deputy Commissioner were coming to an end. She could have (1) done nothing and be terminated with

a definite end date; (2) retire from her Deputy Commissioner position, or (3) upon receipt of formal notice of termination, invoke her reversion rights. Until the employee is given a written notice of termination with a specific end date, the Appointing Authority has no obligation under statute to determine whether a vacancy exists in the position in the last class the Appellant had previously obtained status within the classified service. Reversion rights did not attach in this matter as she was not provided with a definitive termination notice. She elected to voluntarily retire.

11. Nevertheless, had Appellant been entitled to exercise reversion rights, the last merit position held by her was Juvenile Services Regional Manager for the Justice and Public Safety Cabinet. There was no evidence presented to indicate that such a position was vacant at the time Appellant was told her services as Deputy Commissioner were no longer needed, nor was any evidence presented to show there were any other positions vacant in the class in the agency from which she had been terminated. In Appellee's Answers to Interrogatories, Answer 13 reads, in part, "There are only four (4) Juvenile Services Regional Manager positions in the Department of Juvenile Justice, and none were vacant as of May 8, 2014." Appellant was not denied reversion rights.

12. Had Appellant been terminated, and as a vacancy did not exist in the last class held by the Appellant, the Appointing Authority, Appellee, would have been required only to consider Appellant for reemployment as specified by KRS 18A.130 and KRS 18A.135. Although Appellant and Interim Commissioner Hayter had a general discussion about the vacancy in the Juvenile Facility Superintendent III position in Jefferson County, and Appellant was told she could not retain her current salary if she were assigned to that position, no assurances were given that she would obtain that position should she have made application for same.

13. The situation became more complicated when Appellant tendered her notice of retirement. While it is understandable she was concerned about the financial condition that was soon to befall her at the conclusion of her position as Deputy Commissioner, she was not forced into retirement or prevented from seeking other employment positions within the state service.

14. Even if Appellant had been entitled to seek reemployment rights, she failed to take any affirmative steps to be placed on reemployment lists for any positions for which she was qualified. Instead, she decided to retire and so informed the Appellee.

15. Appellant's retirement was approved and became effective August 1, 2014. From that point forward, there was no obligation on the part of the Appellee to consider Appellant for reemployment, nor was the Appointing Authority required to make a determination of the viability of reversion.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **SHERRE L. SMITH JONES V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE, (APPEAL NO. 2015-035)** 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 Roland Merkel** this 16th day of December, 2015.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Edward Baylous
 Hon. Dean H. Sutton