

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2019-237**

**THOMAS SPARKMAN**

**APPELLANT**

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

**AUDITOR OF PUBLIC ACCOUNTS**

**and**

**PERSONNEL CABINET**

**APPELLEES**

\*\*\* \*\*

The Board, at its regular July 2023 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated June 9, 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 18<sup>th</sup> day of July, 2023.

**KENTUCKY PERSONNEL BOARD**

  
\_\_\_\_\_  
**MARK A. SIPEK, SECRETARY**

Copies hereof this day sent to:

Thomas Sparkman  
Hon. Graham Gray  
Hon. Zach Mowen  
Hon. Rosemary Holbrook (Personnel Cabinet)

**COMMONWEALTH OF KENTUCKY  
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**\*\* \*\* \* \* \***

This matter last came on for pre-hearing conference on April 18, 2023, at 10:00 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, Thomas Sparkman, was present by telephone and was not represented by legal counsel. The Appellee Auditor of Public Accounts (APA) was present and represented by the Hon. Graham Gray, who appeared in person. Also appearing in person was APA Agency representative Jonathan Grate. The Appellee Personnel Cabinet was present and represented by the Hon. Zach Mowen, appearing by telephone.

**FINDINGS OF FACT**

1. The Hearing Officer notes this appeal was filed with the Personnel Board on November 1, 2019. On the appeal form and during the pre-hearing conference, the Appellant, an unclassified employee, indicated he was appealing a layoff. The Appellant further explained his claims in the narrative portion of the appeal form wherein he states, in full:

I was informed by Sara Beth Gregory back on April 8, 2019[,] that my services were no longer needed, and to prevent a dismissal from being

placed on my work record[,] I was given the option of resigning. I resigned at the close of business on April 15, 2019. I applied for unemployment benefits and had to appeal the denial of benefits due to APA stating I walked away when additional work was available. I was available but the APA revoked my access to the office and I wasn't able to perform any additional work. The Unemployment hearing officer determined that I was eligible due to being let go prior to signing resignation letter and I would not have had my job had I not turned in resignation letter. I wouldn't have been employed had I turned in resignation letter or not. I was let go because they no longer needed my services. I should have been given the opportunity to exercise my reversion rights. The APA still had my former position available.

2. Following discussion, the Appellant clarified that he, a career employee as defined by KRS Chapter 18A, was appealing the denial of the reversion and/or reemployment rights afforded career employees by KRS Chapter 18A, including KRS 18A.130. APA argued that the Personnel Board does not have jurisdiction over this matter and requested an opportunity to file a dispositive motion.

3. A Motion to Dismiss was filed by the APA in this appeal on the merits. This motion was denied by Interim Order dated July 22, 2021. A Corrected Interim Order was issued on January 29, 2021.

4. APA then filed a second Motion to Dismiss, which was denied by Interim Order dated July 13, 2022. As grounds, the Hearing Officer set out paragraph three (3) of that order, which reads as follows:

3. The Appellee has established, at this time, that the Appellant did not request reversion or reemployment at the time of his resignation. Nonetheless, genuine issues of material fact exist which prevent granting the Appellee's motion. Those issues include the Appellant's status as an unclassified management employee as referenced in KR[S] 18A.135. An additional issue is whether or not the Appellant resigned in lieu of dismissal for cause. It is clear the Appellant resigned in lieu of dismissal however, it has not been established that he would have been dismissed for cause. If the

Appellant was an unclassified management employee who resigned and his resignation was not in lieu of dismissal for cause pursuant to KRS 18A.135, he “shall automatically be placed on the reemployment list for the class from which he was terminated.” KRS 18A.130 states that the same employee, upon his written request, be reemployed or placed on reemployment lists. KRS 18A.130 is silent as to whether an eligible employee must request reversion. It is not clear that the Appellant does not meet those circumstances.

5. After denial of the second Motion to Dismiss, a prehearing conference was held on February 9, 2023. During that conference, counsel for APA stated he had submitted a discovery request to the Appellant, and he had not responded. The Appellant stated he was in an automobile accident, was working, and had difficulty answering the discovery. He stated that, in order to have computer access, he has to visit the library. The Hearing Officer informed him that he could answer the discovery request in written form.

6. The Hearing Officer informed the Appellant that he needed to respond to the discovery request and the matter would be scheduled for an additional pre-hearing conference. The Hearing Officer also warned the Appellant that the Board would entertain a motion to dismiss if the Appellant did not answer the discovery.

7. Thereafter, the Appellant failed to answer the discovery and APA filed a motion to dismiss. Within its motion, APA stated they were requesting dismissal of the appeal for the following reasons:

1. By Interim Order dated May 11, 2022, Hearing Officer Sipek set June 6, 2022 as the deadline for the response of Sparkman to APA’s Motion to Dismiss. However, Sparkman never filed a response.
2. By Interim Order dated October 19, 2022, Hearing Officer Easterling ordered that “the parties shall have up to and including **November 18, 2022**, to issue discovery requests to each other.” The Interim Order further provided that the “parties shall then have up to and including **December 22, 2022**, to submit responses to the submitted discovery requests.”

3. On November 18, 2022, APA served upon Sparkman interrogatories and requests for production of documents.
4. Having received no response to its interrogatories and requests for production of documents, on January 23, 2023, APA filed a Motion to Compel, seeking an Order compelling Sparkman to answer the interrogatories and requests for production propounded by APA. The motion included a request that the motion be addressed at the prehearing conference held in this matter on February 9, 2023.
5. By Interim Order dated February 14, 2023, Hearing Officer Sipek ordered in pertinent part that:
  - A. “The Appellant shall have up to and including **March 15, 2023**, to respond to the Appellee’s discovery requests.”
  - B. “If the Appellant fails to timely respond to the discovery, the Hearing Office will entertain a Motion to Dismiss this appeal.”
6. As of the date of this motion, APA has not received a response to its discovery.
7. By Interim Order dated March 30, 2023, the prehearing conference set for April 10, 2023 was rescheduled for April 18, 2023, at 10:00 a.m. ET.
8. In its motion, APA pointed out that the Appellant had failed to comply with three (3) separate deadlines sent by the Hearing Officer. APA requested entry of an order dismissing the case as abandoned or for failure to prosecute.
9. At the pre-hearing conference on April 18, 2023, the Appellant was given an opportunity to respond to the Motion to Dismiss and encouraged to respond to the previous discovery requests as soon as possible. The Appellant was also informed that, if he does not have

access to a computer, he should send in a response using some other means such as a handwritten response.

10. Although given until May 15, 2023, to file a response to the motion to dismiss, the Appellant failed to do so.

11. The Hearing Officer finds that the Appellant has failed to prosecute his appeal and has abandoned his claims associated with Appeal No. 2019-237.

### **CONCLUSIONS OF LAW**

1. As evidenced by the Findings of Fact, the Appellant has failed to comply with several Orders of the Hearing Officer. He has not responded to motions and has not responded to discovery requests from the Appellee, despite having been given sufficient time to respond.

2. Pursuant to KRS 13B.080(6), the Hearing Officer may enter a default order if a party fails to comply with Orders of the Hearing Officer.

3. Like the Appellant in *Eastham v. Public Protection Cabinet* (KY PB 2018-113), the Hearing Officer concludes that the Appellant's lack of substantive participation in this matter evidences abandonment of, or a failure to, prosecute this appeal. As a result, pursuant to KRS 13B.080(6), the Hearing Officer recommends dismissal of 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 **THOMAS SPARKMAN VS. AUDITOR OF PUBLIC ACCOUNTS AND PERSONNEL CABINET (APPEAL NO. 2019-237)** 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 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).

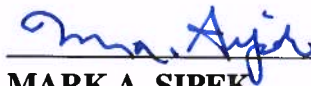
**[Hearing Officer Note: Any document filed with the Personnel Board shall also be served on the opposing party.]**

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.

ISSUED at the direction of **Hearing Officer Mark A. Sipek** this 9<sup>th</sup> day of June, 2023.

**KENTUCKY PERSONNEL BOARD**



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

A copy hereof this day emailed and mailed to:  
Hon. Graham Gray  
Hon. Zach Mowen  
Thomas Sparkman  
Hon. Rosemary Holbrook (Personnel Cabinet)