

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-194

CHRISTOPHER SPEARS

APPELLANT

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

KENTUCKY DEPARTMENT OF EDUCATION

APPELLEE

** ** * * **

This matter last came on for a pre-hearing conference on December 12, 2017, at 10:00 a.m. EST, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Christopher Spears, was present and not represented by legal counsel. The Appellee/Agency, Kentucky Department of Education, was present and represented by the Hon. Ashley Lant.

This matter is before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss, filed with the Personnel Board on January 18, 2018. The Appellant had an opportunity to respond and did so, filing his response on February 14, 2018. The Agency filed a reply to the Appellant's response on March 2, 2018. Then the Appellant filed an unauthorized response to the Agency's reply on March 14, 2018.

At issue is the Agency's prior decision not to award him with previous service credit for time spent as a teacher in various local school districts from February 2002 until August 2009 and the Appellant's new claim that the Agency's decision was based on gender discrimination. The Hearing Officer would note that this matter has already been fully litigated before the Personnel Board in Christopher Spears v. Kentucky Department of Education, Appeal No. 2016-292. The Appellant filed another appeal on October 2, 2017, attempting to re-explore the circumstances underlying the Agency's 2016 decision not to award him prior service credit. The Agency's Motion to Dismiss argues that the Board does not have jurisdiction over the service credit issue, that the Appellant's appeal is barred by the doctrine of *res judicata* and, moreover, that the Appellant's appeal is untimely. The Appellant responds that the present appeal is different than the prior appeal because this appeal deals with allegations of gender discrimination. Specifically, in his prior appeal, the Appellant referenced two other employees, who wished to remain anonymous, who were awarded prior service credit after a break in service while he was not awarded such credit; the Appellant now identifies those employees by name and categorizes them as female. The Appellant argues that clarifying that the other employees

were female mandates a re-examination of the previous service credit award and gives rise to a new claim of gender discrimination. This matter now stands submitted to the Hearing Officer for a ruling on the Agency's Motion to Dismiss.

BACKGROUND¹

1. During the pendency of this appeal, Appellant, Christopher Spears, was a classified employee with status within the Kentucky Department of Education (KDE).

2. The Appellant was appointed to the position of Child Nutrition Program Consultant with KDE on April 16, 2013.

3. Prior to employment with KDE, the Appellant was employed as a teacher for various local school districts from February 2002 until August 2009.

4. After August 2009, but before his employment with KDE in 2013, the Appellant served as 1) a Firefighter for the Lexington Fayette Urban County Government from August 2009 until March 31, 2012 and 2) a Teacher for the Capital Day School, a private school not controlled by any local board of education, from October 1, 2012 until January 2, 2013.

5. The Appellant claims that he was not made aware that he did not receive service credit for his prior 2002 -2009 employment with local school districts until October 13, 2016, at which time the Appellant filed a grievance.

6. The Appellant claims the Agency's failure to award him service credit for his prior employment for local school districts violated KRS 156.026.

7. KDE determined that KRS 156.026 did not apply to the Appellant and denied his request for service credit.

8. The Appellant filed a previous appeal, Appeal No. 2016-292, with the Personnel Board on November 14, 2016. In that appeal, the Appellant alleged that the Agency improperly denied him service credit for the time he served as a teacher prior to his break in service.

9. The Appellant specifically argued in the prior appeal that the Agency awarded two (2) unnamed employees service credit: 1) "when there was a 'break in service' and the employee did not transfer from a local school district" and 2) "when there was a 'break in service' and the employee transferred from a local school district."²

¹ Background paragraphs 1 – 7 are taken from the Final Order entered in Appeal No. 2016-292.

² Appellant's Response to Motion to Dismiss, filed February 14, 2018, pg. 2.

10. The Appellant now identifies those unnamed employees as Elaine Jett and Ashlie Cox, two females, and alleges the Agency failed to award him service credit because he is a male.

11. In the prior appeal, by agreement, the parties agreed upon the facts underlying the appeal and agreed that the matter could be decided on the briefs, without the benefit of an evidentiary hearing.

12. Following the submission of briefs, on June 23, 2017, the Hearing Officer recommended that the Appellant's appeal be dismissed. On July 17, 2017, the Personnel Board approved and adopted the Hearing Officer's Recommended Order and ordered that the Appellant's appeal be dismissed.

13. The Appellant appealed the Personnel Board's Final Order to the Franklin Circuit Court on July 28, 2017, and, on September 14, 2017, that Court dismissed the Appellant's appeal for his failure to name the Department of Education as a party to the appeal and failure to properly serve the Respondents. As a result of the Appellant's procedural failures, the Franklin Circuit Court ruled that the Appellant did not comply with the mandatory requirements of KRS 13B.140 and, thus, failed to perfect his appeal, depriving that Court of jurisdiction.

14. Thereafter, the Appellant attempted to correct his procedural mistakes and moved the Franklin Circuit Court for an opportunity to amend and correct his errors. The Franklin Circuit Court overruled the Appellant's motion as moot and maintained the dismissal of his appeal. The Appellant did not appeal any further and his prior appeal ended on or about September 13, 2017.

15. Since the end of the Appellant's prior appeal, the Appellant now argues that he deserves, essentially, "another bite at the apple." He correctly states that, in his prior appeal, he did not advance a claim of gender discrimination and did not advance his claim that "two female staff were awarded a benefit and when requested the male Appellant was denied the same benefit."³ Lastly, he claims that the doctrine of *res judicata* does not apply because "the gender discrimination was not addressed in the previous appeal and therefore the cited doctrine is *nihil ad rem*."⁴

16. KRS 18A.095(18)(a) provides, in pertinent part:

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.

³ Appellant's Response to Motion to Dismiss, filed February 14, 2018, pg. 1.

⁴ Appellant's Response to Motion to Dismiss, filed February 14, 2018, pg. 2.

FINDINGS OF FACT

1. The facts underlying the Appellant's prior appeal, Appeal No. 2016-292, were agreed to by the parties and were fully examined. The Appellant had ample opportunity to present evidence that would tend to support his claims of penalization, including his claim of unlawful gender discrimination.

2. The Hearing Officer finds that none of the additional evidence relied upon by the Appellant in this appeal, specifically, the identities of unnamed employees in the prior appeal, constitutes fraud or mistake on the part of the Appellee.

3. Following the submission of facts stipulated by the parties and briefs setting out their respective legal positions, on June 23, 2017, the Hearing Officer recommended that the Appellant's appeal be dismissed. On July 17, 2017, the Personnel Board approved and adopted the Hearing Officer's Recommended Order and ordered that the Appellant's appeal be dismissed.

4. The Hearing Officer finds that the claims underlying the instant appeal are substantially similar to the claims advanced by the Appellant in his previous appeal, Appeal No. 2016-292.

5. The Hearing Officer finds that the Appellant knew or should have known about all of the claims underlying the current appeal prior to the conclusion of his previous appeal in July of 2017.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes, as a matter of law, that, pursuant to KRS 18A.095(18)(a), the Personnel Board lacks jurisdiction to further consider this appeal as the Board lacks the ability to grant relief based on the claim stated by the Appellant.

2. Specifically, the Hearing Officer finds that the Appellant's claim is barred by a legal doctrine closely related to *res judicata*: the rule against splitting causes of action.

3. The rule against splitting causes of action, in the Personnel Board context, essentially requires a party bringing a legal action to assert all of the possible claims arising out of the same penalization at the same time, bringing forward their whole case instead of litigating it in a piecemeal manner. See Arnold v. K-Mart Corp., 747 S.W.2d 130, 132 (Ky.App.1988) (quoting Hays v. Sturgill, 302 Ky. 31, 193 S.W.2d 648, 650 (1946)).

4. Here, all of the Appellant's alleged penalizations arise out of the same action – the Agency's 2016 denial of previous service credit to the Appellant. To the extent that the

Appellant raises new claims stemming from that termination, the Hearing Officer finds that the rule against splitting claims dictates that such claims must be dismissed because they should have been raised in the previous appeal. Further, the Hearing Officer finds that all of the claims the Appellant advances had accrued when he filed his previous appeal; that is to say, that no evidence developed after the completion of the prior appeal operates to grant the Appellant a “second bite at the apple.”

5. The Hearing Officer finds that the Appellant’s claims are also barred by the legal doctrine of issue preclusion. Issue preclusion requires four elements: 1) “the issue in the second case must be the same as the issue in the first case,” plus the issue must have been 2) actually litigated, 3) actually decided, and 4) necessary to the court’s judgment. Yeoman, 983 S.W.2d at 465 (citing Restatement (Second) of Judgments § 27 (1982)).

6. Here, the Appellant’s claim in this appeal is substantially similar to the claim he advanced in his previous appeal (he is entitled to prior service credit and the Agency mistreated him by not awarding such credit) and those claims were actually litigated, were actually decided, and were necessary to the Board’s previous judgment. Thus, issue preclusion also operates to bar the Appellant’s claims.

7. Finally, the Hearing Officer finds that the Appellant’s appeal is time-barred as a result of the statute of limitations set out in KRS 18A.095. The Board determined in the prior appeal that the Appellant’s claims were not filed in a timely manner. While the Appellant now claims he learned of his alleged penalization at the conclusion of his prior Personnel Board appeal on June 23, 2017, the Hearing Officer finds the Appellant knew or should have known about his claim of disparate treatment, at the latest, in late 2015, some reasonable period of time after Ashlie Cox began working for the Department of Education. Thus, the statute of limitations on the Appellant’s claim would run sometime in mid- to late 2016. Instead, the Appellant filed this appeal in October of 2017. Accordingly, the Appellant’s claims were filed significantly after the applicable statute of limitations and must be dismissed.

8. For the reasons stated above, the Hearing Officer concludes this appeal must fail as a matter of law.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **CHRISTOPHER SPEARS V. KENTUCKY DEPARTMENT OF EDUCATION, (APPEAL NO. 2017-194)** 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 Stafford Easterling** this 25th day of May, 2018.

KENTUCKY PERSONNEL BOARD



MARK A. SIPER
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Ashley Lant
Christopher Spears