

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-188

STEVIE SPEARS

APPELLANT

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

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

APPELLEE

** ** * * *

The Board at its regular March 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated December 27, 2012, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby 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 _____ day of March, 2013.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Sean Cutshall
Stevie Spears
J.P. Hamm

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-188**

STEVIE SPEARS

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

** ** * * *

This matter came on for pre-hearing conference on October 1, 2012, at approximately 10:00 a.m. ET, at 28 Fountain Place, Frankfort, KY, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment pursuant to the authority found at KRS Chapter 18A.

Appellant Stevie Spears was not present and not represented by legal counsel. Appellee Cabinet for Health and Family Services was present and represented by the Hon. Sean Cutshall.

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, 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 on August 13, 2012. Appellant appears to be appealing a written reprimand.

Prior to the pre-hearing conference, counsel for the Appellee tendered a Motion to Dismiss. The Hearing Officer was unable to contact the Appellant by telephone (at either her home or office). The Hearing Officer was unsure whether the Appellant may believe the matter has been dismissed due to the motion. In view of that, the Hearing Officer gave Appellant time to respond to Appellee's motion in lieu of requiring her to show cause why the matter should not be dismissed for her failure to appear in accordance with pre-hearing order.

Appellant never responded to the Interim Order and did not file a response to the Appellee's previously tendered Motion to Dismiss. The matter now stands submitted to the Hearing Officer for a ruling.

BACKGROUND

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

2. Appellee Cabinet for Health and Family Services filed a motion to dismiss contending that Appellant does not have the right to appeal having received a written reprimand. Appellant had been issued a written reprimand on August 8, 2012, for Poor Work Performance. Appellant appealed same.

3. Appellee further contends that the case of Pamela Perkins vs. CHFS, 2005-CA-002287-MR, Ky. Appl., June 29, 2007 (Enclosed opinion cited.) In that case, the Court of Appeals held that an employee did not have the right to appeal to the Personnel Board or to challenge a written reprimand, but rather had the right pursuant to KRS 18A.020(2)(c) to respond to the written reprimand and have that placed alongside the written reprimand in the employee's record.

4. As noted, Appellant, though given more than ample time in which to do so, and in addition to not having participated in the pre-hearing conference, did not respond to Appellee's Motion to Dismiss as of the time of this Order.

5. KRS 18A.020(2)(c) states:

Whenever an employee is reprimanded for misconduct, other infraction, or failure to perform his duties in a proper or adequate manner, the supervising employee taking such action shall document such action in detail, and shall provide the employee with a copy of such documentation. The supervising employee shall inform the employee that he has the right to prepare a written response to the action taken after he has reviewed the written documentation prepared by the supervising employee. Such response shall be attached to the documentation prepared by the supervising employee. The supervising employee shall place a copy of the documentation and response provided for herein in the employee's personnel file and shall transmit a copy to the cabinet to be placed in the official personnel file of the employee. The supervising employee shall notify the employee that copies of the documentation and the response provided for herein have been placed in his personnel files.

6. KRS 18A.095(18)(a) states:

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, Appellant was a classified employee with status.
2. The Hearing Officer finds that Appellant was issued a written reprimand on or about August 8, 2012, for an allegation of Poor Work Performance. Having reviewed Appellant's appeal and the written reprimand, the Hearing Officer does not believe the Appellant to be making a claim of any protected class discrimination.
3. The Hearing Officer finds that the Appellee is correct in that a written reprimand may not be appealed to the Personnel Board, but the proper remedy would be to follow the mandates set forth at KRS 18A.020(2)(c) and file a statement to be placed alongside the written reprimand in the employee's record.
4. The Hearing Officer finds that, as there is no appeal right to the Personnel Board, the Personnel Board does not have the jurisdiction to further consider this claim or to grant relief.

CONCLUSION OF LAW

The Hearing Officer concludes as Appellant does not have the right to challenge a written reprimand, but rather has a right, pursuant to KRS 18A.020(2)(c) to file a statement for inclusion in her employee file alongside the written reprimand, that the Personnel Board lacks jurisdiction to grant relief.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **STEVIE SPEARS V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2012-188)** 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 Boyce A. Crocker** this _____ day of December, 2012.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Sean Cutshall
Ms. Stevie Spears