

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2022-115

BARRY SPENCER

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF CORRECTIONS

APPELLEE

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The Board, at its regular June 2023 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated May 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 13<sup>th</sup> day of June, 2023.

KENTUCKY PERSONNEL BOARD

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

Copies hereof this day sent to:

Barry Spencer  
Hon. Kristin Wehking  
Hon. Rosemary Holbrook (Personnel Cabinet)  
Rodney Moore

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**V. FINDINGS OF FACT, CONCLUSIONS OF LAW  
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**APPELLEE**

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This matter last came on for a pre-hearing conference on November 4, 2022, at 10:30 a.m. EST, at 1025 Capital Center Drive, Suite 105, 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, Barry Spencer, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Justice and Public Cabinet, Department of Corrections, was present and represented by the Hon. Kristin Wehking, who also appeared by telephone.

This matter is before Hearing Officer Stafford Easterling for a ruling on the Agency's Motions to Dismiss filed with the Personnel Board on September 14, 2022, prior to the initial pre-hearing conference, arguing that the Personnel Board does not have jurisdiction over written reprimand appeals. Pursuant to the briefing schedule entered after the initial pre-hearing conference, the Appellant was given an opportunity to file a response to the Agency's Motion and submitted his response in an email sent on September 16, 2022. This matter now stands submitted to the Hearing Officer for a ruling on the Agency's Motion to Dismiss.

**BACKGROUND/ FINDINGS OF FACT**

The Hearing Officer notes that the facts underlying this Personnel Board decision were largely agreed to by the parties at the initial pre-hearing conference. As a result, the Hearing Officer will borrow pieces of the Agency's Motion to Dismiss and incorporate those findings herein:

1. The Appellant was and is a classified employee with status with the Justice and Public Safety Cabinet, Department of Corrections, Division of Probation and Parole.

2. On August 12, 2022, Probation and Parole issued the Appellant a written reprimand based on poor work performance.

3. The Appellant disputed the allegations against him and filed the instant Personnel Board appeal on August 19, 2022.

4. Upon receipt of the Appellant's appeal, Board staff determined that mediation would potentially be beneficial to the parties in resolving this matter more quickly than other methods of resolving this dispute. Thereafter, on August 26, 2022, the Board directed the parties to mediation.

5. The Board was contacted by the Kentucky Employees Mediation Program (KEMP) on October 13, 2022. One of the parties was uninterested in attempting mediation and this matter was returned to the Board for further proceedings.

6. The Personnel Board conducted an initial pre-hearing conference on November 4, 2022. During the pre-hearing conference, the Appellant stated that he disagreed with the allegations contained in the written reprimand and wanted it removed from his record.

7. In his September 16, 2022 email to Personnel Board Executive Director Mark Sipek, sent by the Appellant after receiving the Agency's Motion to Dismiss prior to the initial pre-hearing conference, the Appellant asserts that, in its September 14, 2022 Motion, the Agency "admits that 'Penalization' includes 'any other disciplinary actions' which I will argue that a 'Written Reprimand' from my District Supervisor should be considered as 'any other disciplinary actions.'"

8. KRS 18A.020(2)(c) provides, in full:

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.

9. 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.

10. KRS 18A.005(24) provides:

‘Penalization’ means demotion, dismissal, suspension, fines, and other disciplinary actions; involuntary transfers; salary adjustments; any action that increases or diminishes the level, rank, discretion, or responsibility of an employee without proper cause or authority, including a reclassification or reallocation to a lower grade or rate of pay; and the abridgment or denial of other rights granted to state employees.

### CONCLUSIONS OF LAW

1. In this appeal, the Appellant seeks to challenge the facts underlying the Agency’s issuance of a written reprimand to the Appellant and requests that the written reprimand be removed from his record. However, the Appellant’s arguments relate to the facts asserted by the Agency that underlie the written reprimand, not how the process by which the Agency issued the Appellant the written reprimand.

2. The Board has previously concluded that KRS 18A.020(2)(c) “provides the sole means of handling an employee’s claim that a written reprimand is not warranted and as long as the procedures outlined in KRS 18A.020(2)(c) are followed, no further appeal rights regarding a reprimand are given to employees.” Ramey v. Cabinet for Health and Family Services, 2003 WL 25749476 at \*2 (KY PB). Here, the Appellant does not argue the Agency failed to follow the procedures outlined in KRS 18A.020(2)(c); instead, he merely argues that he did not deserve a written reprimand. Accordingly, pursuant to KRS 18A.005(24), the Appellant has failed to state a penalization that would entitle him to any further consideration of the written reprimand.

3. Because the Appellant has failed to establish any type of penalization, the Hearing Officer concludes 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 claims stated by the Appellant. Accordingly, the instant appeal must fail as a matter of law.

### RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **BARRY SPENCER V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2022-115)** 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).

**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 9<sup>th</sup> day of May, 2023.

**KENTUCKY PERSONNEL BOARD**



**MARK A. SIPEK  
EXECUTIVE DIRECTOR**

A copy hereof this day emailed and mailed to:

Barry Spencer  
Hon. Kristin Wehking  
Hon. Rosemary Holbrook (Personnel Cabinet)