



**COMMONWEALTH OF KENTUCKY  
KENTUCKY PERSONNEL BOARD  
APPEAL NO. 2016-114**

**DAVID TATE**

**APPELLANT**

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

**JUSTICE AND PUBLIC SAFETY CABINET  
DEPARTMENT OF CORRECTIONS**

**APPELLEE**

\* \* \* \* \*

This matter came before the Hearing Officer upon Appellee's Motion to Dismiss. The Hearing Officer reviewed the entire administrative record.

**BACKGROUND**

1. The Appellant, David Tate, filed the instant appeal on June 16, 2016, indicating on the Appeal Form that he was a classified employee appealing his employee evaluation. Through the attached narrative he wrote that he was appealing his 2015 year evaluation for which he received a rating of "Meets Expectations."

2. Pre-hearing conferences were held on August 16, 2016, and September 14, 2016, and the performance evaluation at issue was provided for the record. The parties stipulated that it was a true and accurate copy of Appellant's 2015 evaluation. Also provided were documents relative to the Appellant's request for reconsideration that was provided for the administrative record.

3. The Appellee raised the issue of whether the Personnel Board has jurisdiction to entertain the appeal. The parties were provided a briefing schedule for the Appellee to file a Motion to Dismiss and for a response and reply. The Appellee's Motion to Dismiss was filed timely, with nothing being filed in response by the Appellant.

**FINDINGS OF FACT**

1. At all times relevant herein, the Appellant was employed as a Correctional Officer within the Justice and Public Safety Cabinet, Department of Corrections.

2. In his capacity as a Correctional Officer, the Appellant is a classified employee subject to the classified employee evaluation system delineated in KRS 18A.110(7)(j)(4) and 101 KAR 2:180.

3. The Appellant received his 2015 evaluation on January 21, 2016, upon which he received an overall rating of "Good," a rating higher than the lowest two categories of "Needs Improvement" and "Unacceptable."

4. The Appellant requested reconsideration of his first and second-line supervisors, the final of which occurred on January 26, 2016.

5. On June 16, 2016, one hundred and forty-three days after final consideration of his evaluation, the Appellant appealed this evaluation to the Personnel Board.

### CONCLUSIONS OF LAW

1. KRS 18A.110(7)(j)(4) requires that the Personnel Cabinet Secretary promulgate administrative regulations for a classified employee performance evaluation system. Specifically, it provides that the regulations shall:

*Permit a classified employee, with status, who receives either of the two (2) lowest possible evaluation ratings to appeal to the Personnel Board*

See KRS 18A.110(7)(j)(4)

2. The regulation promulgated in response to the above, 101 KAR 2:180, outlines the process of reconsideration of an evaluation and method of appeal to the Kentucky Personnel Board. It provides:

*Within sixty (60) calendar days after an employee has received the written decision from the next line supervisor, the employee who has complied with this administrative regulation may appeal a final evaluation which has an overall rating in either of the two (2) lowest overall ratings to the Personnel Board.*

See 101 KAR 2:180 Section 7(7).

3. The Appellant did not receive a performance evaluation rating in either of the two lowest categories, nor did he file the appeal within the 60 days provided for by the regulation. Accordingly, the Personnel Board lacks jurisdiction over this case under the provisions of KRS 18A.110(7)(j)(4) and 101 KAR 1:280 Section 7(7).

### RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the case of **DAVID TATE V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2016-114)** be **DISMISSED**.

**NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4), each party shall have fifteen 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 exception 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 the 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).

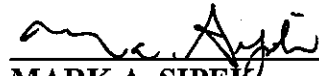
**Any document filed with the Personnel Board shall be served on the opposing party.**

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 Brenda D. Allen** this 6<sup>th</sup> day of December, 2016.

**KENTUCKY PERSONNEL BOARD**



**MARK A. SIPER**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

David Tate  
Hon. Angela E. Cordery