

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-236**

MATT TRUE

APPELLANT

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

TRANSPORTATION CABINET

APPELLEE

*** *** *** *** ***

The Board at its regular March 2016 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 11, 2016, 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 16th day of March, 2016.

KENTUCKY PERSONNEL BOARD

Mark A. Sipek
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Fogle
Matt True
J. R. Dobner

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-236

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VS.

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

TRANSPORTATION CABINET

APPELLEE

** ** ** ** **

These matters came on for a pre-hearing conference on December 14, 2015, at 9:30 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Matt T. True, was present by telephone and was not represented by legal counsel. The Appellee, Transportation Cabinet, was present and represented by the Hon. Will Fogle.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by Appellant, to determine the specific section of KRS 18A which authorizes this appeal, to determine the relief sought by Appellant, to define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

The Hearing Officer noted Appeal No. 2015-236 was filed with the Personnel Board on September 18, 2015. The Appellant was appealing a 10-day suspension by letter dated February 6, 2015, for allegations of lack of good behavior.

The Appellee filed a Motion to Dismiss, contending the Personnel Board does not have jurisdiction to consider Appellant's appeal of his 10-day suspension, because it was not filed timely.

The Hearing Officer discussed this briefly with Appellant True. The Hearing Officer enclosed a copy of the Appellee's Motion to Dismiss, so that Mr. True would have the opportunity to respond to the motion in writing.

As noted, Appellee, Transportation Cabinet, filed a Motion to Dismiss prior to the pre-hearing conference held December 14, 2015. Appellant was given time in which to file a written response to that Motion to Dismiss, but has not done so. The matter now stands submitted for a ruling.

BACKGROUND

1. During the relevant times, Appellant was a classified employee with status of the Kentucky Transportation Cabinet.

2. In its Motion to Dismiss, the Appellee, Transportation Cabinet, contends the appeal filed with the Personnel Board on September 14, 2015, was late.

3. The Appellee, Transportation Cabinet, notes that the letter of suspension was issued on or about February 6, 2015, for 10 days without pay. Counsel also notes that KRS 18A.095(8)(d) requires an appeal of a disciplinary action to be filed within 60 days of that notice of disciplinary action being provided to an employee.

4. As noted, the Appellant was given ample time in which to have filed a response to the Motion to Dismiss. That time has since come and gone with no written response being received by the Personnel Board. [KRS 18A.095(8)(d) and KRS Chapter 18A]

FINDINGS OF FACTS

The Hearing Officer makes the following findings by a preponderance of the evidence:

1. During the relevant times, Appellant was a classified employee with status of the Kentucky Transportation Cabinet.

2. The Hearing Officer finds that Appellant was notified by letter dated February 6, 2015, of this disciplinary action.

3. The Hearing Officer finds that the Appellant did not file Appeal No. 2015-236 until September 18, 2015.

4. The Hearing Officer finds that Appellant filed this appeal outside of the 60-day timeframe which would have made the appeal due on or about April 8, 2015.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes as a matter of law that this appeal should be dismissed due to Appellant having filed the appeal well outside the 60 day timeframe stated at KRS 18A.095(8)(d).

2. The Hearing Officer also notes that this Appeal No. 2015-236 was set for evidentiary hearing to be heard with Appellant's Appeal No. 2015-175, for a 15-day suspension without pay.

3. The Hearing Officer notes that Appeal No. 2015-175 remains set for evidentiary hearing to commence on February 24, 2016, at 9:30 a.m., E.T., at the offices of the Personnel Board.

4. Due to the findings of fact and conclusions of law herein, the Hearing Officer concludes that Appeal No. 2015-236, the Appellant's appeal of the 10-day suspension without pay, be dismissed.

RECOMMENDED ORDER

The Hearing Officer thus recommends to the Kentucky Personnel Board that the appeal of **MATT TRUE VS. TRANSPORTATION CABINET (APPEAL NO. 2015-236)** (Appellant's appeal of his 10-day suspension without pay by letter issued February 6, 2015) be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13.B.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).

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 11th day of February, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. William Fogle
Mr. Matt True
J. R. Dobner