



COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2022-031

ANNA VILLARREAL

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

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This matter came on for a pre-hearing conference on July 11, 2022, at 10:00 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Anna Villarreal, was present and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Joan Grefer. Both parties appeared by telephone.

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 that 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.

FINDINGS OF FACT

1. The Hearing Officer notes the Appellant filed her appeal with the Personnel Board on March 10, 2022, from a three (3) – day suspension. The three (3) – day suspension letter was dated January 6, 2022. At the pre-hearing conference, the Appellant stated that she received the suspension letter by hand delivery from Kim Butler, however, she was not sure of the date. She stated she refused to sign for the document, and a supervisor signed that it was delivered to her that day. Neither party had information at the pre-hearing conference regarding this date.

2. The Hearing Officer informed the parties that this date would be crucial to determining whether or not the appeal was timely. The Appellant stated that she attempted to file her appeal with Kim Butler but was told she would have to mail her appeal in to the Personnel Board.

3. The Appellee filed a Motion to Dismiss. The Appellee's Motion contained the following statement of facts:

Following an internal investigation, the Cabinet elected to suspend Ms. Villarreal for three (3) days from her position as a Social Service Worker I with the Department for Community Based Services for Unsatisfactory Performance of Duties and Lack of Good Behavior as detailed in the Three (3) Day Suspension, dated January 6, 2022. (the "Suspension"). The Suspension was hand-delivered to Ms. Villarreal on January 6, 2022, by Kim Butler, Service Region Administrator Associate. (sic)

4. Attached to the Appellee's Motion to Dismiss was an Affidavit from Kim Butler, Service Region Administrator Associate. Butler stated that she hand-delivered the three (3) - day suspension letter to the Appellant on January 6, 2022.

5. The Appellee argued that, because the Appellant did not file her appeal until March 10, 2022, her appeal was untimely and should be dismissed.

6. The Appellant filed a Response to the Motion to Dismiss. She did not dispute that she received notice of her suspension on January 6, 2022. She relied on the fact that KRS 18A.095(18)(a) "stated the Personnel Board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section." The Appellant alleged that the Personnel Board had the discretion to dismiss an appeal, or hear an appeal, based on this language. The Appellant stated she was alleging discrimination pursuant to KRS 18A.095(12). The Appellant stated that she was challenging her suspension due to the high turnover rate of Case Managers and uncontrollable events caused by high caseloads. The Appellant also stated that Kim Butler told her, in an email dated March 5, 2022, that she would have to mail her appeal to the Personnel Board. She states that Butler did not mention that she could email her appeal to the Personnel Board.

7. The Appellee replied to the Appellant's Response stating that the Appellant did not challenge the essential facts and the appeal should be dismissed.

8. The Hearing Officer finds it is undisputed that the Appellant received notice of her suspension on January 6, 2022. She did not file her appeal with the Personnel Board until March 10, 2022, which was more than sixty (60) days after she received notice of her suspension.

9. There are no material issues of fact, and this matter may be decided as a matter of law based on the appeal form, the statements of the parties at the pre-hearing conferences, the Motion to Dismiss, the Appellant's Response, and the Appellee's Reply (with attachments).

CONCLUSIONS OF LAW

1. Pursuant to KRS 18A.095(8), the Appellant had sixty (60) days to file an appeal with the Personnel Board after she received notice of her suspension, excluding the date she received the notice.
2. Because the Appellant filed her appeal with the Personnel Board more than sixty (60) days after she received notice of her suspension, the appeal is untimely and the Personnel Board lacks jurisdiction to hear her appeal. *Lori Bachman v. Cabinet for Health and Family Services*, 2022 WL 1080747 (KY PB 2021-027).
3. The Personnel Board has no discretion and must enforce statutory deadlines. *Commonwealth, Department of Revenue, Finance and Administration Cabinet v. McDonald, et. al.*, 304 S.W.3d 62, No. 2007-CA-001626-MR., April 10, 2009, IER Cases 157,731.
4. Because no genuine issues of material fact remain outstanding, this appeal may be dismissed as a matter of law. KRS 13B.090(2) and KRS 18A.095(18)(a).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of ANNA VILLARREAL VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2022-031) 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).

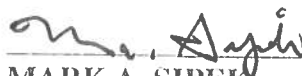
**Any document filed with the Personnel Board shall be served on the opposing party.**

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 Mark A. Sipek** this 28 day of October, 2022.

**KENTUCKY PERSONNEL BOARD**



MARK A. SIPEK,  
EXECUTIVE DIRECTOR

A copy hereof this day e-mailed and mailed to:

Hon. Christopher N. Ballantine  
Anna Villarreal  
Hon. Rosemary Holbrook (Personnel Cabinet)