



**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2012-200**

**CLAUDE R. WAYMAN**

**APPELLANT**

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

**FINANCE AND ADMINISTRATION CABINET,  
DEPARTMENT OF REVENUE  
LORI H. FLANERY, APPOINTING AUTHORITY**

**APPELLEE**

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This matter came on for pre-hearing conference on August 16, 2012, at approximately 11:30 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 Rick Wayman was present and not represented by legal counsel. Appellee Finance and Administration Cabinet was present and represented by the Hon. Melany Crawford.

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 September 5, 2012. Appellant indicated he was appealing a demotion. The Appellant stated the actual events in question (where he believes he was coerced to accept this demotion) occurred on March 7, 2011. As relief, Appellant seeks to be reinstated to his previous position of Revenue Section Supervisor, with back pay made retroactive to the date where the demotion officially occurred (May 1, 2011).

Counsel for the Appellee asked for time in which to file a Motion to Dismiss stating she believed this appeal would fail on various grounds. A briefing schedule was set.

In accord with the Interim Order entered on October 17, 2012, the parties adhered to a briefing schedule. The matter stands submitted to the Hearing Officer Boyce A. Crocker for a ruling on Appellee's Motion to Dismiss.

### **BACKGROUND**

1. During the relevant times, Appellant was a classified employee with status.
2. In its Motion to Dismiss, Appellee Finance and Administration Cabinet contends the Personnel Board does not have jurisdiction to consider a voluntary demotion, which Appellant executed on March 8, 2011. Appellant signed a voluntary transfer/demotion/salary retention agreement form which included a waiver of right of appeal from same.
3. In addition, counsel for the Appellee contends that Appellant's appeal would be untimely filed. Counsel cites KRS 18A.095(29), noting that Appellant had executed the voluntary demotion form on March 8, 2011, but the appeal was not filed until September 5, 2012.
4. Appellant filed a timely response to the Motion to Dismiss. Appellant claims that the voluntary transfer/demotion/salary retention agreement "was made under duress and was not voluntary." Appellant contends he was presented with two options: either sign the form or retire early. Appellant stated that his employer knew Appellant's home circumstances would not permit early retirement, thus the demotion.
5. Appellant also contends that pursuant to 780 KAR 3:100(4), the demotion form was not properly executed. Appellant states that "in summary, as the form was signed under duress, as the form is questionable in its validity, and as the action taken was disciplinary and not voluntary, the Appellant respectfully requests that the motion to dismiss be denied."(sic)
6. KRS 18A.095(29) states:

Notwithstanding any other prescribed limitation of action, an employee that has been penalized, but has not received a written notice of his or her right to appeal as provided in this section, shall file his or her appeal with the Personnel Board within one (1) year from the date of the penalization or from the date that the employee reasonably should have known of the penalization.

### **FINDINGS OF FACT**

1. During the relevant times, Appellant was a classified employee with status.
2. The Hearing Officer finds Appellant executed the voluntary demotion agreement form on March 8, 2011, as evidenced by Exhibit A to the Appellee's Motion to Dismiss. The effective date of that demotion action was May 1, 2011.
3. The Hearing Officer finds the appeal was not filed with the Personnel Board until September 5, 2012. The Hearing Officer further finds that pursuant to the language stated in

KRS 18A.095(29), if Appellant believed there had been a penalization, he knew or reasonably should have known of commencement of same at the time he executed the demotion form on March 8, 2011. Thus Appellant's appeal is untimely, as it was filed more than one year past the date he knew or reasonably should have known of the penalization.

4. The Hearing Officer finds that 780 KAR 3:100(4) is an administrative regulation which does not apply, as it applies to KRS 151(B) employees and not those employed under KRS 18A.

5. The Hearing Officer does not need to reach a determination as to whether the claim of executing the voluntary demotion form under duress amounts to a claim of penalization, as even if it did, the Appellant made such a claim later than the statute allows.

### **CONCLUSION OF LAW**

The Hearing Officer concludes as a matter of law that as Appellant has filed this appeal untimely, the appeal must fail. These findings are supported by the plain language of the administrative regulation in question, KRS 18A.095(29).

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **CLAUDE R. WAYMAN V. FINANCE AND ADMINISTRATION CABINET, DEPARTMENT OF REVENUE (APPEAL NO. 2012-200)** 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 February, 2013.

**KENTUCKY PERSONNEL BOARD**

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**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Melany Crawford  
Mr. Claude R. Wayman