

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-211

JUSTIN WEATHERS

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES,
J. P. HAMM, APPOINTING AUTHORITY

APPELLEE

** ** * * **

This matter came on for a pre-hearing conference at approximately 10:00 a.m., ET, on October 29, 2012, 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, Justin Weathers, was present by telephone and not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was also present and represented by the Hon. Jennifer Wolsing.

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 notes this appeal was filed with the Personnel Board on September 24, 2012. Appellant checked the boxes for Demotion and Other Penalization, "specifically, wasn't paid for two days." The Hearing Officer notes that Appellant had apparently been reverted during promotional probation from the position of Patient Aide II to the position of Patient Aide I with a 5% (five percent) loss in pay effective on October 1, 2012. **(Hearing Officer Note: The reversion letter was dated September 20, 2012.)**

During the course of the pre-hearing conference, the Appellant made clear he had not ever been aware he had been promoted from Patient Aide I to Patient Aide II, and also was not aware of the requirements regarding call-in procedures. The Appellant had called in and was assigned sick leave but could not produce a doctor's note, but did produce a note from his landlord. The Appellant stated he was not very concerned about the pay, for which he was given leave without pay, but he was concerned with, and wanted to be put back into, the position of Patient Aide II.

Counsel for the Appellee questioned whether the Personnel Board had jurisdiction to consider this matter, but stated it might be open to informal negotiations.

The Appellee filed a Motion to Dismiss. Appellant, although given time in which to respond, has not responded. The matter is submitted to the Hearing Officer for a ruling on the Appellee's Motion to Dismiss.

BACKGROUND

1. During the relevant times, the Appellant was a classified employee serving a period of promotional probation. The Appellant was a Patient Aide II at the time he was reverted from promotional probation.

2. In its Motion to Dismiss, the Appellee contends that the Appellant does not have the standing to challenge his reversion from promotional probation as he has not alleged discrimination, and thus the Personnel Board would not have jurisdiction to consider his appeal further.

3. The Appellant had been given ample time in which to respond to the Appellee's Motion to Dismiss, but has not done so.

4. KRS 18A.095(18)(a) states, as follows:

The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. 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.

FINDINGS OF FACT

1. During the relevant times, the Appellant was a classified employee serving a period of promotional probation. The Appellant was a Patient Aide II at the time he was reverted from promotional probation.

2. The Hearing Officer finds that the Appellant has limited appeal rights if challenging a reversion from promotional probation, as set forth at KRS 18A.111 and at KRS 18A.095.

3. The Hearing Officer finds that the Appellant has not satisfied the conditions necessary to file a justiciable claim at the Personnel Board for reversion from promotional probation.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that the Personnel Board does not have jurisdiction to further consider this appeal as it is without the ability to grant relief pursuant to KRS 18A.095(18)(a) due to the Appellant having failed to state a claim. The appeal should be dismissed.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **JUSTIN WEATHERS V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2012-211)** 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 December, 2012.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Jennifer Wolsing
Mr. Justin Weathers