

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-174

STEVEN WHITELEY

APPELLANT

VS.

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

*** **

The Board, at its regular February 2020 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 9, 2020, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer 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 12th day of February, 2020.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Julie Foster
Mr. Steven Whiteley
Mr. Rodney Moore

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-174**

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V.

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

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

APPELLEE

** ** * * *

This matter last came on for a pre-hearing conference on October 29, 2019, at 10:30 a.m. EST, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Steven Whiteley, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Julie Foster.

At issue in this appeal is the Appellant's claim that he has been penalized because he was issued a written reprimand by the Agency on July 16, 2019. This matter is before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss filed with the Personnel Board on November 20, 2019, arguing that the Personnel Board lacks jurisdiction over this appeal, pursuant to KRS 18A.020(2). The Appellant has had an opportunity to file a response, but has failed to do so. This matter now stands submitted to the Hearing Officer for a ruling on the Agency's Motion to Dismiss.

BACKGROUND/ FINDINGS OF FACT

1. At the time of the submission of this appeal, the Appellant, Steven Whiteley, was a classified employee with status with the Kentucky Department of Corrections.
2. The Appellant was employed by the Department of Corrections as an Assistant Supervisor with the Division of Probation and Parole.
3. On July 16, 2019, the Agency issued the Appellant a written reprimand, advising him, in pertinent part:

Assistant Director Kirk Gausepohl received notification that you were potentially discussing confidential information with front line staff regarding Officer Ron Tyler and an Internal Affairs Investigation.

* * *

On May 24, 2019, during an interview with Assistant Director Kirk Gausepohl you admitted to both conversations with Officer McHargue and Officer Wilson. When these incidents were discussed a second time on June 4, 2019[,] between you and Mr. Gausepohl[,] you again admitted to disclosing confidential information during both conversations.

4. On August 19, 2019, the Appellant filed the instant appeal, alleging:

I received a written reprimand alleging I disclosed a confidential investigation to two staff members. Both staff members were aware of an investigation and/or arrest and criminal charges being brought against a former Probation and Parole officer in Bullitt County, KY. I have attached a written response as to why I believe that "facts" included in the reprimand are inaccurate and do not detail what was said or that any confidential information was revealed.

5. As noted above, the Agency filed its Motion to Dismiss with the Personnel Board on November 20, 2019, arguing the Personnel Board lacks jurisdiction over the July 16, 2019 written reprimand, pursuant to KRS 18A.020(2)(c).

6. KRS 18A.020(2)(c) provides, in full:

Whenever an employee is reprimanded for misconduct, other infraction, or failure to perform his duties in a proper or adequate manner, the supervising employee taking such action shall document such action in detail, and shall provide the employee with a copy of such documentation. The supervising employee shall inform the employee that he has the right to prepare a written response to the action taken after he has reviewed the written documentation prepared by the supervising employee. Such response shall be attached to the documentation prepared by the supervising employee. The supervising employee shall place a copy of the documentation and response provided for herein in the employee's personnel file and shall transmit a copy to the cabinet to be placed in the official personnel file of the employee. The

supervising employee shall notify the employee that copies of the documentation and the response provided for herein have been placed in his personnel files.

CONCLUSION OF LAW

The Hearing Officer concludes, as a matter of law, that the Appellant's direct challenge to the written reprimand issued July 16, 2019, must fail. That is because, as Personnel Board precedent provides: "KRS 18A.020(2)(c) provides for the sole means of handling an employee's claim that a written reprimand is not warranted and as long as the procedures outlined in KRS 18A.020(2)(c) are followed, no further appeal rights regarding a reprimand are given to employees." Ramey v. Cabinet for Health Services, 2003 WL 25749476 at *2 (KY PB). The Appellant does not argue that the Agency failed to follow the procedures mandated by KRS 18A.020(2)(c). Accordingly, the Appellant's challenge to the July 16, 2019 written reprimand must fail.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **STEVEN WHITELEY V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2019-174)** 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 Stafford Easterling** this 9th day of January, 2020.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Julie Foster
Steven Whiteley