

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-248**

KENDRAH SANDERS

APPELLANT

VS.

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

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

APPELLEE

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

This matter came on for a pre-hearing conference on December 13, 2016, at 10:00 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Kendrah Sanders, was present by telephone and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Catherine Stevens.

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.

BACKGROUND

1. The Appellant, Kendrah Sanders, filed her appeal with the Personnel Board on September 6, 2016. She alleged she was constructively discharged from her position as a Social Service Clinician I with the Department of Corrections. She stated that she was treated unfairly and was forced to resign because of the conditions under which she worked. She specifically mentioned being given unfair evaluations, being denied promotions, being subjected to racial and

gender discrimination and favoritism on the part of management within the Division of Substance Abuse.

2. In her written notice of resignation, the Appellant stated, "For at least the past two years I have experienced and endured racial discrimination within my division that has gone unaddressed." In her notice, she also stated, "The Kentucky Department of Corrections has allowed this type of biased and ineffective leadership to become the norm and as a result advancement for minorities in the Division of Substance Abuse highly unlikely if, at all." (sic)

3. Counsel for the Appellee felt that the appeal was untimely filed and addressed this in a written Motion to Dismiss. The Appellant has filed a response to the motion.

4. The Appellant requested to be reinstated to her position, to be treated fairly and not subjected to further discrimination.

FINDINGS OF FACT

1. There are no material facts in dispute and this matter can be decided as a matter of law based on the appeal form, the attachments, statements made at the pre-hearing conference, the motion to dismiss and response.

2. The Appellant resigned from her position as a Social Service Clinician I with the Kentucky Department of Corrections, Division of Substance Abuse, on August 28, 2015.

3. The Appellant filed her appeal with the Personnel Board on September 6, 2016, alleging constructively discharged and discrimination. The Appellant alleged that her resignation was not voluntary and was in effect a termination.

4. The Appellant knew of her alleged penalization on August 28, 2015.

CONCLUSIONS OF LAW

1. Pursuant to KRS 18A.095(29), the Appellant had one year from the date of the penalization or from the date the employee reasonably should have known of the penalization to file her appeal. Based on the findings of fact, the Appellant knew of her alleged penalization on

August 28, 2015, and, thus, when she filed her appeal on September 6, 2016, her appeal was beyond the one-year statute of limitations.

2. Pursuant to KRS 18A.095(18)(a), the Personnel Board may deny the appeal if the appeal has not been filed within the time prescribed by this section or if the Board lacks jurisdiction. In this instance, the Appellant did not file her appeal within the time limitations set forth at KRS 18A.095 and the Personnel Board lacks jurisdiction to grant any relief and this appeal should be dismissed.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **KENDRAH SANDERS VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2016-248)** 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).

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 24th day of March, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Catherine Stevens
Ms. Kendrah Sanders