

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-084**

DOTTIE STONE

APPELLANT

VS.

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

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

APPELLEE

** ** ** ** **

This matter came on for a pre-hearing conference on May 19, 2016, at 10:00 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Dottie Stone, was present and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and represented by the Hon. Adam Adkins.

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 April 13, 2016. The Appellant indicated she was appealing employee evaluation and stated as follows:

I am appealing an evaluation for year ending 2015, 55 points were removed from my evaluation without justification or notification, work was taken from me and given to a co-worker that co-worker was reclassified and given a pay raise. (sic)

Appellant also attached several documents to her appeal.

As the Hearing Officer understands it, based on the appeal, the documents attached, and Ms. Stone's statement at the pre-hearing conference, Appellant is seeking to have her calendar year 2015 evaluation score raised from 345 to 400, which had been the previous year's evaluation. Ms. Stone said she has never received less than a "Highly Effective" rating before.

Counsel for the Appellee tendered a Motion to Dismiss, which was filed on the date of the pre-hearing conference, May 19, 2016. After discussion, a schedule was set for Appellant to file a response and for the Appellee to file a reply. The Hearing Officer emphasized for Ms. Stone that she should focus on why the Personnel Board has jurisdiction to consider her appeal. Normally the Board does not have jurisdiction to consider an appeal of an evaluation in which the overall score was not in the "Unacceptable" or "Needs Improvement" range.

Though given time in which to have filed a response to the Department of Juvenile Justice's Motion to Dismiss, the Appellant has not done so. This matter is ready for a ruling.

BACKGROUND

1. During the relevant times, the Appellant, Dottie Stone, was a classified employee with status.

2. In its Motion to Dismiss, the Appellee, Department of Juvenile Justice, contends the Personnel Board lacks jurisdiction pursuant to the statute found at KRS 18A.110(7)(j)(4). Counsel notes Appellant is appealing the year-end evaluation for calendar year 2015, and stated as follows: "In 2014 my evaluation accumulative points was 400, in 2015 evaluation my accumulative points was 345. I went from highly effective to good standing." (sic) Counsel notes Appellant did not receive one of the two lowest possible evaluation ratings and, according to the statute and regulation at 101 KAR 2:180 Section 7(7), the Board lacks jurisdiction to consider this appeal.

3. As noted, Appellant did not file a response to the Appellee's Motion to Dismiss.

4. KRS 18A.110(7)(j)(4) states:

(7) The administrative regulations shall provide:

(j) For a uniform system of annual employee evaluation for classified employees, with status, that shall be considered in determining eligibility for discretionary salary advancements, promotions, and disciplinary actions. The administrative regulations shall:

(4) Permit a classified employee, with status, who receives either of the two (2) lowest possible evaluation ratings to appeal to the Personnel Board for review after exhausting the internal dispute resolution procedure. The final evaluation shall not include supervisor comments on ratings other than the lowest two (2) ratings;

5. 101 KAR 2:180, Section 7(7) states:

Within sixty (60) calendar days after an employee has received the written decision from the next line supervisor, the employee who has complied with this administrative regulation may appeal a final evaluation which has an overall rating in either of the two (2) lowest overall ratings to the Personnel Board.

FINDINGS OF FACTS

The Hearing Officer makes the following findings by preponderance of the evidence:

1. During the relevant times, the Appellant, Dottie Stone, was a classified employee with status.
2. The Hearing Officer finds and it is undisputed that Appellant received an overall score for the calendar year 2015 evaluation of 345, placing her squarely in the "Good" category.
3. The Hearing Officer finds that based on a clear reading of both the statute and regulation cited above, there is no right of appeal to the Personnel Board to challenge a year-end performance evaluation that does not fall into one of the two lowest overall ratings. As noted, the Hearing Officer has found that this evaluation for Appellant did not fall into one of those categories.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that based on the Findings of Fact above the Personnel Board lacks jurisdiction to consider this appeal, as Appellant's calendar year 2015 evaluation was not in one of the two lowest categories.

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 **DOTTIE STONE VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2016-084)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13.B.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 Boyce A. Crocker** this 23rd day of June, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Adam Adkins
Ms. Dottie Stone