

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-035

GINA THOMPSON

APPELLANT

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

**FINANCE AND ADMINISTRATION CABINET,
DEPARTMENT OF REVENUE**

AND

PERSONNEL CABINET

APPELLEES

*** **

The Board, at its regular April 2017 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 1, 2017, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby 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 19th day of April, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Katherine Fitzpatrick
Hon. Rosemary Holbrook
Ms. Gina Thompson
Ms. Stacy Perry

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
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**FINDINGS OF FACT, CONCLUSIONS OF LAW
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APPELLEE

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

This matter came on for a pre-hearing conference on April 13, 2016, at 1:00 p.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, Gina Thompson, was present by telephone and was not represented by legal counsel. She was accompanied by Annette Gabriel. Facilitating the conference call was Mr. Dave Jenkins of the Jefferson County PVA office.

Appellee Finance and Administration Cabinet, Department of Revenue, was present and represented by the Hon. Katherine Fitzpatrick. Appellee Personnel Cabinet was present and represented by the Hon. Rosemary Holbrook.

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, Gina Thompson, filed her appeal with the Personnel Board on February 18, 2016. She checked the box for "Other Penalization" on her appeal form and referenced "2006 months of services." In support of her appeal the Appellant stated:

In 2006 I was off of work due to a car accident. Thanks to the generosity of other state workers, I was able to have the time to be off due to donated time. The issue is personal lists me as LWOP for March thru September. I received paychecks during this time period because of donated time. During my entire time off, I was never without a paycheck. (sic)

2. The Appellant, Gina Thompson, is a Deputy with the Jefferson County Property Valuation Administrator (PVA) office. She believes she should receive credit for the time period from March through September 2006 for state service. The Appellant stated that she became aware that she did not receive credit for these months when she did not receive her ten-day sick leave bonus upon completing 20 years of state employment. The Appellant undertook to determine what had occurred and discovered that she had not been given credit for the months of March through September of 2006. The Appellant contends she never had a pay period where her hours were not covered either by her own leave or by donated sick leave.

3. Ms. Annette Gabriel confirmed that she had spoken with Donna Seeberger, of PVA Administration in the Department of Revenue, regarding sick leave she had donated to Appellant. Appellant states that there were times when apparently the leave was not properly entered and she would receive paper checks to make up the short fall. The Appellant stated she collected whatever information that she could and sent that in with her appeal.

4. Counsel for both the Department of Revenue and the Personnel Cabinet stated the record shows there were months Appellant did not have hours totaling over 100 which is required to qualify for consideration as a month of state service. The parties agreed to meet and see if they could resolve this matter.

5. Following the pre-hearing conference the parties were not able to resolve this matter. The Appellees have filed a Joint Motion to Dismiss. Although the Appellant was given time to file a response, no such response has been filed.

6. This appeal has now been assigned to Hearing Officer Mark A. Sipek for a ruling on the Motion to Dismiss.

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 and attachments, the statements made at the pre-hearing conference and the Motion to Dismiss.

2. The Appellant, Gina Thompson, is an employee of the Jefferson County Property Valuation Office. She alleged she was penalized when she was not given credit for months of service for the months of March through September 2006.

3. The Appellant alleges she was utilizing her own leave time, as well as donated sick leave, time during these months following injuries she sustained in an automobile accident.

4. The Appellant alleged that she became aware that she was not given credit for these months when she did not receive a ten-day sick leave bonus upon completing 20 years of state employment.

5. She filed this appeal on February 18, 2016, alleging she was penalized when she was not given appropriate credit for months of service from March through September of 2006.

6. The Appellees, Finance and Administration Cabinet and Personnel Cabinet, filed a Joint Motion to Dismiss alleging that as a PVA employee the Appellant is not subject to the protections of KRS Chapter 18A and the Personnel Board lacks jurisdiction to hear this appeal.

7. The Hearing Officer finds that employment with the Jefferson County Property Valuation Administrator office does not constitute employment under KRS Chapter 18A over which the Personnel Board has jurisdiction.

CONCLUSIONS OF LAW

1. KRS 132.370(1) and (3) provides:

(1) There shall be a property valuation administrator in each county in lieu of a county assessor. Property valuation administrators shall be state officials and all deputies and assistants of their offices shall be unclassified state employees.

...

(3) The Property Evaluation Administrators and all deputies and assistants of their offices who qualify as fulltime employees shall be eligible for participation in the provisions of KRS 18A.05, 18A.230-18A.355, and 61.510-61.705.

2. The Hearing Officer concludes that in order to determine the status of Appellant's time spent as a Deputy PVA it is important to read the two subsections of KRS 132.370 together. The Board concludes that PVA's deputies and assistants are unclassified state employees for specific purposes as outlined in these provisions. These purposes include participation in life insurance (KRS 18A.205), deferred compensation (KRS 18A.230-18A.275), annual increments (KRS 18A.355) and state retirement (KRS 61.510-61.705). The Board interprets the language in KRS 132.370(1) as designating Deputy PVAs as unclassified state employees for specific purposes and not for all purposes. As a result, the Board lacks jurisdiction to hear the Appellant's appeal that she was penalized by calculating her months of service for sick leave determinations. (see *Kellie Lang vs. Finance and Administration Cabinet and Personnel Cabinet*, Appeal No. 2016-039)

3. This position is supported by the fact that all of these statutes cited in KRS 132.370(3) include broad definitions of state employees that go beyond employees covered under the provisions of KRS Chapter 18A, either in the classified or unclassified service. [KRS 18A.205(2), KRS 18A.230(1), KRS 18A350 and KRS 61.522(6)(a).]

4. This interpretation is supported by KRS 18A.115(1) which does not list property valuation administrators or deputies as employees exempted from the classified service. If the intention of KRS 132.370(1) is to designate Deputy PVAs as unclassified state employees for all purposes, they should be listed under one of the subsections of KRS 18A.1105(1).

5. The Legislature has demonstrated that when it wishes to convey that employees of an organization are unclassified for all purposes under KRS Chapter 18A, it knows how to make this clear and unambiguous. The Legislature did just that with respect to employees of the Kentucky Peace Corps under KRS 154.1-730(2). Employees of the Kentucky Peace Corps are also exempted from the classified service in KRS 18A.115(1)(y).

6. KRS 18A.030(2)(j) demonstrates the Legislature's acknowledgement that there are unclassified employees who are not subject to the provisions of KRS Chapter 18A.

7. The Appellant's service as a Deputy PVA did not constitute unclassified service as that term is used in KRS Chapter 18A and thus the Personnel Board lacks jurisdiction to hear her appeal.

8. The Hearing Officer concludes there are no material facts in dispute and this matter can be decided as a matter of law based on the Appeal Form, the statements made at the pre-hearing conference, and the Motion to Dismiss.

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 **GINA THOMPSON VS. FINANCE AND ADMINISTRATION CABINET, DEPARTMENT OF REVENUE, AND PERSONNEL CABINET (APPEAL NO. 2016-035)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

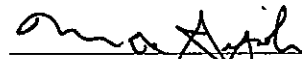
Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are 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 1st day of March, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Katherine Fitzpatrick
Hon. Rosemary Holbrook
Ms. Gina Thompson