

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2016-250

JAMAAL B. WHITEHURST

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

\*\*\* \*\*

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 16, 2017, Appellant's Exceptions and Request for Oral Argument, oral arguments 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 19<sup>th</sup> day of April, 2017.

KENTUCKY PERSONNEL BOARD

  
\_\_\_\_\_  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Brent D. Irvin  
Mr. Jamaal B. Whitehurst  
Mr. Jay Klein

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2016-250**

**JAMAAL B. WHITEHURST**

**APPELLANT**

**V.**

**RECOMMENDED ORDER**

**CABINET FOR HEALTH AND FAMILY SERVICES**

**APPELLEE**

This matter came on for a pre-hearing conference on November 21, 2016, at 11:00 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, Jamaal B. Whitehurst, was present and not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Brent Irvin.

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 23, 2016, arguing that the Appellant failed to properly submit his appeal in a timely fashion in response to the letter imposing a five (5) day suspension, issued by the Agency on July 7, 2016. The Appellant has had an opportunity to file a response but has not done so. This matter now stands submitted to the Hearing Officer for a ruling on the Appellee's Motion to Dismiss.

**BACKGROUND**

1. During the relevant times, Appellant, Jamaal Whitehurst, was a classified employee with status, as a Family Support Specialist I, Department of Community Based Services (DCBS) within the Cabinet for Health and Family Services (CHFS).

2. As noted above, the Agency filed a Motion to Dismiss with the Personnel Board on November 23, 2016. The Agency contended that the suspension letter to Appellant, dated July 7, 2016, was hand-delivered to the Appellant on that date, that the Appellant had 60 days from the date of notice of the suspension in which to have filed an appeal with the Personnel Board, and his appeal is untimely and must be dismissed.

3. During a pre-hearing conference (PHC), held on November 21, 2016, the Appellant admitted that his supervisor hand-delivered the letter imposing the appealed five-day suspension on July 7, 2016.

4. As established by the date stamp on the appeal, the Appellant's appeal was received by the Personnel Board on September 8, 2016.

5. Also during the November 21, 2016 PHC, the Agency and the Appellant were shown a copy of the envelope the Board received, which was postmarked as having been mailed on September 3, 2016.

6. KRS 18A.095(7) states:

If the cabinet or agency head or his designee determines that the employee shall be dismissed or otherwise penalized, the employee shall be notified in writing of:

- (a) The effective date of his dismissal or other penalization;
- (b) The specific reason for this action, including:
  1. The statutory or regulatory violation;
  2. The specific action or activity on which the dismissal or other penalization is based;
  3. The date, time, and place of the action or activity; and
  4. The name of the parties involved; and
- (c) That he may appeal the dismissal or other penalization to the board within sixty (60) days after receipt of this notification, excluding the day he receives notice.

7. KRS 18A.095(18)(a) states:

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 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, Appellant, Jamaal Whitehurst, was a classified employee with status, as a Family Support Specialist I, Department of Community Based Services (DCBS) within the Cabinet for Health and Family Services (CHFS).
2. The Hearing Officer finds that, in accord with Appellant's admission during the November 21, 2016 PHC and a review of the suspension letter, Appellant received his suspension notice on July 7, 2016. The Hearing Officer further finds that the suspension letter was dated July 7, 2016.
3. The Hearing Officer finds that the suspension letter correctly notifies Appellant that he had 60 days in which to file an appeal with the Personnel Board.
4. The Hearing Officer finds that Appellant filed his appeal with the Personnel Board on September 8, 2016.
5. The Hearing Officer finds, assuming Appellant received his suspension letter as he concedes on July 7, 2016, that he would have had up to and including September 6, 2016, in which to file his appeal. This is calculated by counting 60 calendar days from July 8, 2016 (the day after Appellant received his suspension letter), which results in September 6, 2016, being the due date.
6. The Hearing Officer finds that regardless of a postmark showing the Appellant mailed his appeal on September 3, 2016, because the appeal was not actually received by the Personnel Board until September 8, 2016, the appeal was untimely filed and did not comply with KRS 18A.095(7)(c).

## CONCLUSION OF LAW

The Hearing Officer concludes, as a matter of law, that having found Appellant did not file his appeal within the 60-day time limit and that, pursuant to KRS 18A.095(7)(c), the Personnel Board lacks jurisdiction to consider this appeal as it was untimely filed. Merely mailing an appeal before the jurisdictional deadline does not satisfy the statutory 60-day time limitation expressed in KRS 18A.095.

## RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **JAMAAL WHITEHURST V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2016-250)** 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 16<sup>th</sup> day of March, 2017.

**KENTUCKY PERSONNEL BOARD**

  
\_\_\_\_\_  
**Mark A. Sipek**  
**Executive Director**

A copy hereof this day mailed to:

Hon. Brent Irvin  
Mr. Jamaal Whitehurst