

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-125

CHRIS WIGGINS

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 April 2017 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 24, 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. Angela Cordery
Mr. Chris Wiggins
Mr. Rodney E. Moore

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VS.

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

**JUSTICE AND PUBLIC SAFETY CABINET,
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APPELLEE

** ** *

This matter came on for a pre-hearing conference on October 4, 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, Chris Wiggins, 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. Angela Cordery.

The purposes of the pre-hearing conference were to define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

BACKGROUND

1. The notification letter the Appellant received informed him that he had 60 days in which to file an appeal with the Personnel Board. The Appellant, Chris Wiggins, filed his appeal with the Personnel Board on June 28, 2016. The Appellant was appealing an involuntary transfer and a 15-day suspension. The Appellant stated he was suspended for failing a breathalyzer test, although he did not believe his readings violated Corrections policy. He stated that he agreed with the Warden to accept the 15-day suspension, however, an involuntary transfer was later added to the disciplinary action. The Appellant filed this appeal asking that the matter be stricken from his record. He has since resigned his employment and has returned to school.

2. The Appellee filed a Motion to Dismiss, alleging that the appeal was untimely filed. Although given time to file a response, the Appellant did not file a response.

FINDINGS OF FACT

1. The Appellant was suspended for 15 days in a letter dated April 21, 2016. The Appellant received a copy of the notice on that date.

2. The Appellant filed his appeal with the Personnel Board on June 28, 2016. June 28, 2016, is more than 60 days after April 21, 2016, when the Appellant received notice of his suspension.

3. The Appellant also alleged he was appealing from an “involuntary transfer.” At the pre-hearing conference, it was determined that the involuntary transfer was a change from a post of Program Coordinator for the THRIVE Program to performing services for the general population at the Corrections Psychiatric Treatment Unit. The Appellant did not change positions and was simply given a new work assignment.

4. The Appellant has resigned his position and is no longer employed with the Department of Corrections.

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

CONCLUSIONS OF LAW

1. Pursuant to KRS 18A.095(8)(d), the Appellant had 60 days following receipt of the notice of his suspension to file an appeal with the Personnel Board. Based on the Findings of Fact, the Appellants appeal was filed beyond the 60-day limit. As a result, his appeal to the Personnel Board is untimely and the Personnel Board lacks jurisdiction to grant him any relief with respect to this appeal.

2. On his appeal form and at the pre-hearing conference, the Appellant alleged an

“involuntary transfer.” The Appellant alleges he was moved from an assignment as the Program Coordinator for the THRIVE Program to performing services for the general population at the Corrections Psychiatric Treatment Unit. The Appellant did not move from one position to another, and thus, was not transferred as that term is defined at KRS 18A.005(38). Changing an employees workstation or post to meet the needs of the agency is permitted, pursuant to 101 KAR 2:095, and is not appealable to the Personnel Board. In addition, the Appellant’s claim of transfer is moot because he has now resigned his position.

3. Pursuant to KRS 18A.095(18)(a), the Personnel Board may deny an appeal if it is untimely and lacks jurisdiction. The Appellant’s 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 **CHRIS WIGGINS VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2016-125)** 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. Angela Cordery
Mr. Chris Wiggins