

**KENTUCKY PERSONNEL BOARD
MINUTES OF SEPTEMBER 13, 2013**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on September 13, 2013, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board Personnel Present:

Wayne "Doug" Sapp, Chairman
Larry B. Gillis, Vice Chairman
David B. Stevens, Member
David F. Hutcheson, Jr., Member
Donald W. "Don" Blevins, Member
Ramona Herndon, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board Personnel Absent:

Tommy W. Chandler, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD AUGUST 9, 2013**

The minutes of the last Board meeting had been previously circulated among the members. Chairman Sapp asked for additions or corrections. Dr. Stevens moved to approve the minutes, as submitted. Mr. Hutcheson seconded and the motion carried 6-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek presented a draft of the Personnel Board's Annual Report for Fiscal Year 2013. Mr. Sipek hoped that the Board would approve it.

Mr. Blevins stated that the Annual Report was well-done; however, there should be additional language to include that the Board has about the same amount of appeals even though the employee population has been reduced, extra workload, and reduced funds.

Chairman Sapp stated that appeals have been backlogged and he does not want to see them linger. Mr. Blevins remarked that the staff prioritized appeals and made employee terminations the main concern and utilized Mr. Sipek and Mr. Crocker as hearing officers; that was the best the Board could do under the circumstances.

Chairman Sapp recommended that a statement be incorporated in the Annual Report that explains why extra duties and burdens were placed on the Executive Director and General Counsel due to limited fiscal resources for the Board to continue to operate as it normally would. This could be accomplished via e-mail so that the members can review the additional language and come to an agreement so as not to hold the Annual Report to next month.

Mr. Blevins moved to approve the Board's 2013 Annual Report, with added language before distribution. Dr. Stevens seconded and the motion carried 6-0.

Mr. Sipek mentioned that the Board has been provided with copies of various court orders and opinions over the last few weeks. Mr. Blevins stated he noticed one of the appeals was remanded to the Board and wanted to know what action was needed. Mr. Sipek responded that there were actually two appeals remanded, but different circumstances. *Charles Garland* was remanded back to Franklin Circuit Court by the Court of Appeals to include the Personnel Board as a party, but was not a review of the Board's decision yet. On *Charles Cofer*, the Franklin Circuit Court remanded the Kentucky Personnel Board's Final Order which does not require additional action from the Board at this time. Mr. Crocker stated that counsel for the Transportation Cabinet has filed a Motion to Alter, Amend or Vacate which will require further action by the Court.

At the conclusion of Mr. Sipek's report, Chairman Sapp called for the Personnel Cabinet's report.

4. **PERSONNEL CABINET'S REPORT**

The Hon. Dinah Bevington and Commissioner Joe Cowles came forward to present the Personnel Cabinet's report.

Ms. Bevington advised that at the August Board meeting she was asked to report what percentage of employees required special assistance to access their electronic paychecks, since not every employee has access to a computer. She stated that feedback is still coming in, but as of today, there were 800 requests to have paychecks printed out.

Mr. Cowles handed out a summary of the employees' health plan for 2014 to the Board members and staff. Mr. Cowles stated that the health plan for 2014 will lose its "grandfather" status and had to be redesigned, using the states of Tennessee and Georgia as models. The new plan is concerned with accountability for health through "wellness and consumerism." One benefit of the new plan is the ability to shop for medical services, giving the member a cash incentive to save money.

There is a mandatory active open enrollment beginning October 1 and ending October 31, 2013. There will be benefit fairs set up in 17 locations from October 1 through October 18, 2013. The Personnel Cabinet is going out in the field to assist employees with signing up.

There are four plan options: Two Preferred Provider Organization (PPO) plan options and two Consumer Driven Health Plan (CDHP) options. Two plans will require the “Living Well Promise,” LivingWell CDHP and LivingWell PPO, which means the employee (planholder) will promise or agree to complete an on-line Humana Vitality health assessment between January 1 and May 1, 2014. The LivingWell plans have the best benefits. Mr. Cowles stated that premiums will increase for some plans and decrease with others.

As to personal information given during the health assessment, Mr. Cowles stated that the information provided to Humana is not given to employers, but is used to manage the plans. The only information disclosed to Mr. Cowles is whether the planholder actually took the assessment as promised and their vitality age (which reveals whether the planholder is younger or older than their actual age.) If the planholder fails to take the health assessment as promised, the planholder will only be eligible for the Standard plan in 2015.

In response to Dr. Stevens’ question concerning smokers, Mr. Cowles stated that 14 percent of planholders admit to smoking. Non-smoking includes all tobacco products. Mr. Hutcheson asked how the non-smoking incentive will be enforced. Mr. Cowles stated that they will not resort to “tobacco police” and believes employees will be honest, for the most part. If misrepresented, there is a fraud statement in the Tobacco Use Declaration. The employer has no way of knowing what the employee elected. However, there is a blood test that costs about \$75 that could determine whether a planholder is a smoker.

Mr. Cowles stated that employees have a choice of plans; however, any employee who fails to select coverage by October 31, 2013, will be automatically enrolled in the Standard CDHP plan.

Mr. Gillis said that two main concerns he gets from employees are the health assessment and the cross-reference rate for the LivingWell PPO. Mr. Cowles stated that there is a demo for employees to view that shows screenshots of the questions that are asked on the health assessment. As far as the rate, Mr. Cowles stated that he had to make difficult choices and that employees are not going to have the same plan for the same rate, since the program is no longer under grandfather status.

At the conclusion of the Personnel Cabinet’s report, Chairman Sapp called the parties forward for oral argument.

5. ORAL ARGUMENTS

A. Boyd Clemons v. Justice and Public Safety Cabinet [Dept. of Juvenile Justice] (2012-113) (Passed from August meeting)

Present for oral argument was Counsel for Appellee, Hon. Adam Adkins. The Appellant’s counsel, Hon. Gary S. Logsdon, was not present, but instead requested to have Appellant’s exceptions considered in lieu of oral argument. After presenting oral argument, counsel for Appellee answered questions from the Board.

B. Leslie Eldridge v. Justice and Public Safety Cabinet [Dept. of Corrections]

Present for oral arguments were counsel for the Appellant, Hon. Michael Boylan, and counsel for Appellee, the Hon. Stafford Easterling. After presenting oral arguments, the parties answered questions from the Board.

C. Emery Richardson v. Justice and Public Safety Cabinet [Dept. of Corrections]

Present for oral arguments were the Appellant, Emery Richardson, and counsel for Appellee, the Hon. Amber Arnett. After presenting oral arguments, the parties answered questions from the Board.

D. Barry Wilding v. Justice and Public Safety Cabinet [Dept. of Corrections], and Kevin Mazza and Jason Criswell – Moved from August

Appellant, Barry Wilding, withdrew his request for oral argument.

6. **INVESTIGATIONS**

Update on Department of Agriculture Investigation

Mr. Sipek advised that he has almost completed the report. There are thirteen (13) major findings; one finding includes eleven ACE awards. Mr. Sipek stated that his goal is to have the report mailed out within the next week, which will give the parties a chance to respond. Chairman Sapp stated that the report will be acted on at the next meeting and the Board will hear from the Department of Agriculture, if requested. Mr. Gillis had concerns of the impact of Farmer's plea today in court. Mr. Sipek stated that there is no direct impact since Mr. Farmer's settlement resolves all pending and potential criminal charges. Mr. Sipek stated that this would not prevent Mr. Farmer from giving testimony. Mr. Sipek would like to contact Mr. Farmer one more time to see if he would agree to an interview. Mr. Crocker stated that forcing Mr. Farmer to be interviewed could delay the investigative report. Chairman Sapp stated that he wants to get this investigation done and move on to other things, unless there is a specific reason for interviewing Mr. Farmer.

7. **CLOSED SESSION**

Mr. Hutcheson moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Mr. Blevins seconded. Chairman Sapp stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are

as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 6-0. (11:30 a.m.)

Mr. Gillis moved to return to open session. Ms. Herndon seconded and the motion carried 6-0. (12:30 p.m.)

8. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.

- A. Boyd Clemons v. Justice and Public Safety Cabinet [Dept. of Juvenile Justice]
(2012-113) - (Passed from August meeting)

Mr. Blevins moved to note Appellant's exceptions, Appellee's response and oral arguments and to accept the recommended order dismissing the appeal. Mr. Hutcheson seconded and the motion carried 6-0.

- B. Leslie Eldridge v. Justice and Public Safety Cabinet [Dept. of Corrections] (2012-243)

Mr. Hutcheson moved to note Appellee's exceptions, Appellant's response and oral arguments and to defer this matter to the next Board meeting. Dr. Stevens seconded and the motion carried 6-0.

- C. Emery Richardson v. Justice and Public Safety Cabinet [Dept. of Corrections]
(2013-008)

Mr. Hutcheson moved to note Appellee's exceptions, Appellant's response, and oral arguments and to accept the recommended order sustaining the appeal to the extent of awarding back pay. Mr. Blevins seconded and the motion carried 6-0.

- D. Barry Wilding v. Justice and Public Safety Cabinet [Dept. of Corrections] and Kevin Mazza and Jason Criswell

Mr. Blevins moved to note Appellant's exceptions and Appellee's response and to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0.

- E. Thomas Bemiss, Nicole Creech and Allen Houchin v. Public Protection Cabinet
(2013-019, 2013-017 and 2013-022)

Mr. Gillis moved to accept the recommended order dismissing the appeals. Mr. Hutcheson seconded and the motion carried 6-0.

- F. Stanley Hollingsworth v. Justice and Public Safety Cabinet [Dept. of Corrections]
(2013-084 and 2013-151)

Dr. Stevens moved to accept the recommended order dismissing the appeals. Ms. Herndon seconded and the motion carried 6-0.

- G. Sandra Jackson v. Cabinet for Health and Family Services (2013-053)

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 6-0.

- H. Vickie Larabee v. Cabinet for Health and Family Services (2012-209)

Mr. Blevins moved to accept the recommended order dismissing the appeal. Ms. Herndon seconded and the motion carried 6-0.

- I. Randall Smith v. Cabinet for Health and Family Services (2010-213)

Mr. Hutcheson moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 6-0.

- J. Leslie Thorn v. Cabinet for Health and Family Services (2012-052 and 2012-144)

Mr. Gillis moved to accept the recommended order dismissing the appeals. Dr. Stevens seconded and the motion carried 6-0.

Show Cause Orders - Appeals Dismissed – No Response Filed

The following cases had a show cause order entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses submitted by the Appellants to the show cause orders.

- K. Ashley Bland v. Labor Cabinet
L. Robert Jones v. Justice and Public Safety Cabinet (Corrections)

Mr. Blevins moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted *en bloc* dismissing the appeals for failure to timely prosecute the appeals. Dr. Stevens seconded and the motion carried 6-0.

9. WITHDRAWALS

Dr. Stevens moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Herndon seconded and the motion carried 6-0.

- A. Anetria Connell v. Public Protection Cabinet
- B. Marianna Durr v. Cabinet for Health and Family Services
- C. James Hobbs v. Justice and Public Safety Cabinet (Juvenile Justice)
- D. Derek Jones v. Justice and Public Safety Cabinet (Juvenile Justice)
- E. Brandon Smith v. Personnel Cabinet
- F. Christina Taylor v. Justice and Public Safety Cabinet (Juvenile Justice)
- G. Lisa Watt v. Cabinet for Health and Family Services
- H. Anita Wilson v. Cabinet for Health and Family Services and Melanie Whalen
- I. Charles Clay Clement v. Cabinet for Health and Family Services (3 appeals)
- J. Robin Newsome v. Justice and Public Safety Cabinet
- K. Mary B. Wade v. Transportation Cabinet (6 appeals)

10. SETTLEMENTS

Mr. Hutcheson moved to accept the settlements *en bloc* as submitted by the parties, and to sustain the appeals to the extent set forth in the settlements. Dr. Stevens seconded and the motion carried 6-0.

- A. Lorita Snowden v. Cabinet for Health and Family Services
- B. Nigil Wells v. Justice and Public Safety Cabinet (Corrections)

11. OTHER

Mr. Hutcheson asked when the Board members would receive the investigative report. Mr. Sipek responded that he hopes to have the report mailed by the following Friday or soon thereafter. Mr. Hutcheson asked if it would have an impact on current employees at Agriculture. Chairman Sapp and Mr. Sipek agreed that it could.

Mr. Crocker advised the Board members that they will be electing new officers at the October Board meeting.

Chairman Sapp asked if there were any other matters to be discussed. There being no further business, Mr. Gillis moved to adjourn. Dr. Stevens seconded and the motion carried 6-0. (12:37 p.m.)

Wayne D. Sapp, Chairman

Larry B. Gillis, Vice Chairman

David B. Stevens, Member

David F. Hutcheson, Jr., Member

Donald W. Blevins, Member

Ramona Herndon, Member