

**KENTUCKY PERSONNEL BOARD
MINUTES OF JANUARY 12, 2024**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Gillis on January 12, 2024, at approximately 9:30 a.m., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky.

Board Personnel Present:

Larry Gillis, Chair
Marc Farris, Vice Chair
Yvette Gentry, Member
Morgan Ward, Member
Rick Reeves, Member
Michael Eaves, Member

Mark A. Sipek, Executive Director and Secretary
Stafford Easterling, General Counsel
Gwen McDonald, Administrative Section Supervisor
Mickey Goff, Administrative Specialist

Board Personnel Absent: Mitchel Denham, Member

2. **READING OF THE MINUTES OF THE REGULAR MEETING HELD DECEMBER 8, 2023.**

The minutes of the last Board meeting had been previously circulated among the members. Chair Gillis asked for any additions or corrections. Mr. Reeves moved to approve the minutes as submitted. Mr. Farris seconded, and the motion carried 5-0. The Board members signed the minutes.

(NOTE: Chair Gillis did not vote unless specifically noted.)

3. **EXECUTIVE DIRECTOR AND SECRETARY'S REPORT**

Mr. Sipek began by reporting that a draft Final Order in the Michelle Mitchell (McCloskey) matter had not yet been completed due to illness and Mr. Sipek requested the Board defer this matter to the next meeting, if acceptable. Mr. Sipek next noted that, upon the parties' request and with good cause being shown, the Andrea Yearego oral arguments and discussion were moved to the February Board meeting.

Mr. Sipek then reviewed the 2023 statistical calendar year report: one hundred sixty-eight (168) new Personnel Board appeals were filed in calendar year 2023, with two hundred nine (209) Board appeals pending on December 31, 2023. Mr. Sipek noted that 209 total pending appeals has been the lowest number of appeals pending at the Board for quite some time. In comparison with previous years, Mr. Sipek said, on January 1, 2023, two hundred seventy-one (271) Board appeals were pending, and, on January 1, 2022, two hundred ninety-nine (299) Board appeals were pending. The numbers show a steady decrease in pending Board appeals over the past two (2) years.

Mr. Sipek then mentioned that the Board would be asked to review and approve regulation changes to 101 KAR 1:325. Notably, these changes were position name changes and the abolishment of certain unfilled positions. Mr. Sipek said, with the Board's approval, the Personnel Cabinet could move forward with adoption of these changes.

4. REPORT OF THE PERSONNEL CABINET

The Hon. Robert Long, Deputy Secretary for the Personnel Cabinet, presented for the Cabinet. He was accompanied by Jamie Caldwell, Commissioner of the Cabinet's Department of Human Resources Administration.

Mr. Long addressed the proposed changes to 101 KAR 1:325, which were brought about by the thorough review of all positions as mandated by the legislature in 2022. Mr. Long stated that no employee lost their job or was displaced as a result of these changes. Commissioner Caldwell reviewed and discussed the changes with the Board and answered Board questions.

A. Proposed Regulation Amendment (101 KAR 1:325) Title Changes/Position
Rename:

Title Code	Job Classification	Change Date	Changes Made
20000856	Industrial Hygienist Consultant I	5/16/23	OSH Industrial Hygiene Consultant I
20001139	Juvenile Facility Superintendent II	6/16/23	Juvenile Facility Manager I
20001136	Juvenile Facility Superintendent III	6/16/23	Juvenile Facility Manager II
20001038	Medical Investigator II	10/16/23	Medical Investigator
20000834	OSH Compliance Officer I	5/16/23	OSH Safety Compliance Officer I
20000821	OSH Industrial Hygienist I	5/16/23	OSH Industrial Hygiene Compliance Officer I
20000570	Park Business Manager I	7/16/23	Park Business Manager
20000573	Park Manager II	7/16/23	Park Manager I
20000574	Park Manager III	7/16/23	Park Manager II
20000562	Resort Park Manager I	7/16/23	Resort Park Assistant Manager
20000563	Resort Park Manager II	7/16/23	Resort Park Manager I
20000564	Resort Park Manager III	7/16/23	Resort Park Manager II
20000677	State Park Ranger	12/16/23	RENAME – State Park Ranger I

B. Proposed Regulation Amendment (101 KAR 1:325) Abolishments:

Title Code	Job Classification	Change Date	Changes Made
20001904	Investigator I	10/16/23	Abolished
20001135	Juvenile Facility Superintendent I	6/16/23	Abolished
20000722	Law Enforcement Training Instructor I – Telecommunications	12/16/23	Abolished
20001037	Medical Investigator I	10/16/23	Abolished
20000571	Park Business Manager II	7/16/23	Abolished
20000572	Park Manager I/Historic Site Manager	7/16/23	Abolished
20000676	State Park Ranger Recruit	12/16/23	Abolished

Mr. Eaves made a motion to approve the Proposed Regulation Amendments (101 KAR 1:325) described in items A. and B. above. Ms. Gentry seconded, and the motion passed 5-0.

Mr. Long reported that the Cabinet is now accepting nominations for the Governor’s Ambassadors Awards. These awards seek to highlight stories of state employees who have positively impacted their coworkers or customers within the community.

Also, the Cabinet’s KHRIS system would be unavailable during the weekend of January 13-14 for the processing of W-2s for state employees. The W-2s will then be available on Monday,

January 15, for employees who elected to receive those electronically through the KHRIS system and will be mailed to those who did not elect to receive them online.

Lastly, the Cabinet continues to monitor General Assembly proceedings to see if there are any changes that will affect state employees or Cabinet processes and procedures.

5. ORAL ARGUMENTS

- A. **Yearego, Andrea v. Cabinet for Health and Family Services (2021-002)**
(Appellant's Request)
Moved to February Board

6. CLOSED SESSION/RETURN TO OPEN SESSION

Mr. Farris moved that the Board go into Executive Session for the purposes of discussions and deliberations regarding individual adjudications. Mr. Eaves seconded. Chair Gillis stated that a 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) and (j), the Kentucky Open Meetings Act, the Board retired into closed Executive Session and the attendees were required to leave the video conference, pursuant to KRS 61.826. Specific justification under the Kentucky Open Meetings Act for this action were as follows, because there were deliberations regarding individual adjudications as listed on the Board's Agenda for the January 12, 2024 meeting and discussions of proposed or pending litigation against the Board, specifically: Kentucky Personnel Board v. Kentucky Infrastructure Authority and Donna McNeil, Ky. Ct. App. 2023-CA-0770-MR, and Andrea Yearego v. Cabinet for Health and Family Services and Personnel Board, Franklin Circuit Court 23-CI-0937.](9:56 a.m.)

Mr. Farris moved to return to open session. Mr. Eaves seconded, and the motion carried 5-0. (10:31 a.m.)

7. 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. Hedrick, Traci v. Office of the State Budget Director (2023-060)

Ms. Gentry, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, moved to accept the recommended order dismissing the appeal. Mr. Reeves seconded, and the motion carried 5-0.

B. Hedrick, Traci v. Office of the State Budget Director (2019-014)

Mr. Eaves, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, moved to accept the recommended order sustaining the appeal to the extent therein. Ms. Gentry seconded, and the motion carried 5-0.

**C. Mitchell McClosky, Michelle v. Energy and Environment Cabinet and Personnel Cabinet (2019-236)
Deferred from December Board**

Mr. Farris, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, and Appellee's exceptions and request for oral argument, Appellant's response to exceptions and request for oral argument, and oral arguments, moved to defer this matter. Mr. Eaves seconded, and the motion carried 5-0.

D. Richardson, Brian v. Justice and Public Safety Cabinet, Department of Corrections (2022-120)

Mr. Eaves, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, moved to accept the recommended order dismissing the appeal. Mr. Ward seconded, and the motion carried 4-0, with Mr. Reeves abstaining.

E. Trevino, Michelle v. Tourism, Arts and Heritage Cabinet, Department of Fish and Wildlife Resources (2023-078)

Ms. Gentry, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, moved to accept the recommended order dismissing the appeal. Mr. Reeves seconded, and the motion carried 5-0.

F. Turpin, Courtney v. Justice and Public Safety Cabinet, Department of Corrections (2023-062)

Mr. Farris, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, moved to accept the recommended order dismissing the appeal. Ms. Gentry seconded, and the motion carried 5-0.

- G **Yearego, Andrea v. Cabinet for Health and Family Services (2021-002)
Moved to February Board**

Show Cause Order – No Response Filed – Appeal Dismissed

- H. Hall, Lisa v. Justice and Public Safety Cabinet, Department of Juvenile Justice
(2023-110)

Mr. Farris moved to find that the Appellant has not responded to the show cause order and that the recommended order be accepted dismissing the appeal for failure to timely prosecute the appeal. Mr. Eaves seconded, and the motion carried 5-0.

Show Cause Order – No Response Filed – Dismissed as Withdrawn

- I. Curtsinger, Brandon v. Transportation Cabinet (2023-051)

Mr. Eaves moved to accept the recommended orders and to dismiss the appeal as withdrawn. Mr. Farris seconded, and the motion carried 5-0.

8. WITHDRAWALS

Ms. Gentry moved to accept the following withdrawals and to dismiss the appeals. Mr. Eaves seconded, and the motion carried 5-0.

- A. Deer, Danyelle v. Cabinet for Health and Family Services (2023-144)
B. Reed, Billy v. Justice and Public Safety Cabinet, Kentucky State Police (2023-123)

9. SETTLEMENTS

Mr. Eaves moved to issue settlement orders and to sustain the appeals to the extent set forth in the settlements as submitted by the parties. Mr. Farris seconded, and the motion carried 5-0.

- A. Caskey, Crayton v. Justice and Public Safety Cabinet, Department of Corrections
(2022-163)
B. Childers, Sandra v. Department of Education (2022-102)
C. Nelson, Teresa v. Justice and Public Safety Cabinet, Department of Juvenile Justice
(2019-242, 2020-015, & 2020-119)(3 appeals)

10. **OTHER**

A. **Case Load Reduction**

1. **Backlog, status of appeals, plan of action**

Mr. Sipek stated he felt that the numbers were better. During 2023, pending appeals reduced from 271 down to 209. Mr. Denham made excellent suggestions during the December Board meeting, including suggesting Board staff review National Center for State Court's "Twelve Essential Steps to Tackle Backlog and Prepare for a Surge in New Civil Cases." Board staff reviewed the material and then circulated to the Board their responses to NCSC's suggestions, some of which the Board was already doing. Mr. Sipek stated that there may be a more formal plan of action in the coming months as staff deals with the backlog of undecided appeals. The day-to-day handling of routine appeals does not appear to be problematic, due to staff procedures that allow appeals without jurisdiction to be caught either before or immediately following the initial pre-hearing conference. Mr. Sipek further opined that the Board primarily faced two (2) issues: (1) the backlog of appeals on the Overdue Personnel Board Decisions Report, and (2) the number of evidentiary hearings already scheduled in the coming months. Reviewing the 2024 calendar year, Mr. Sipek noted that evidentiary hearings are already scheduled through August; a total of thirty-five (35) appeals are scheduled for hearing over fifty-five (55) days. This could be problematic if Mr. Sipek and Mr. Easterling continue to remain as the Board's only available Hearing Officers. However, after a review of our current budget and discussion with our Budget Analyst, there appears to be approximately thirty thousand dollars (\$30,000) that is available to hire contract Hearing Officers this fiscal year. Ms. McDonald has started the contract hearing officer process, but that process takes a couple of months.

Mr. Easterling thought of contacting the Attorney General's office to see if their Hearing Officers could assist. This would allow a more efficient use of the \$30,000 in available Hearing Officer monies and could allow the Board to get some assistance more quickly, because AG Hearing Officers are already 13B trained. Mr. Easterling noted that there might also be other agencies who have Hearing Officers with excess capacity that may be available to assist hearing appeals and writing recommended orders.

Mr. Sipek answered questions from the Board regarding the process to use Attorney General Hearing Officers. The Board decided to continue to review and discuss this matter further before deciding on next steps.

Mr. Ward stated the Board was looking for more of a written plan to handle the backlog and requested further information be added to the status report. A written plan would not only deal with the backlog but would hopefully keep this from happening again. The Board wanted to make certain that, even if there was little to no money in the budget for hearing officers, that

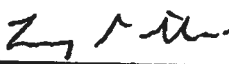
contract Hearing Officers were always available if needed. Ms. McDonald would check on this to see if or how that contract process would be possible.

B. AG Hearing Officers

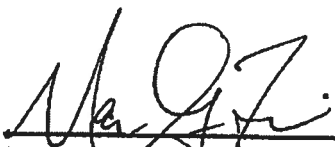
Discussed above.

C. Next Board Meeting: February 9, 2024

There being no further business, Mr. Farris moved to adjourn the meeting. Mr. Ward seconded, and the motion carried 5-0. (1:12 p.m.)




Larry Gillis, Chair



Marc Farris, Vice Chair




Yvette Gentry, Member



Morgan Ward, Member



Rick Reeves, Member



Michael Eaves, Member