

**KENTUCKY PERSONNEL BOARD
MINUTES OF SEPTEMBER 13, 2024**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Eaves on September 13, 2024, at approximately 9:30 a.m., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky.

Board Personnel Present:

Michael Eaves, Chair
Mitchel Denham, Vice Chair
Morgan Ward, Member
Larry Gillis, Member
Rick Reeves, Member
Lisa Haydon, Member*

Gordon A. Rowe, Jr., Executive Director and Secretary
Gwen McDonald, Administrative Section Supervisor
Kathy Hayes, Administrative Specialist Senior

2. **READING OF THE MINUTES OF THE REGULAR MEETING HELD AUGUST 9, 2024.**

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

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

Mr. Rowe began his remarks by updating the Board about his appearance before the Administrative Regulation Review Subcommittee legislators to testify regarding the Board's proposed changes to the Kentucky Administrative Regulations: 101 KAR 1:335, Employee Actions; 101 KAR 1:345, Disciplinary Actions; 101 KAR 1:375, Employee Grievances and Complaints; and repealing 101 KAR 1:395, Restoration from Military Duty, which changes the Board had approved during the April 2024 Board meeting. These changes were made to the regulations so they would be compliant with the passage of Senate Bill 153. The proposed changes were accepted and approved, and they will go into effect.

Mr. Rowe introduced the new Administrative Specialist Senior, Kathy Hayes, to the Board. Ms. Hayes joined Board staff on September 16, and we are glad to have her join us.

- A. Introduction of contract Hearing Officers Brenda Perry and Roland Merkel

Mr. Rowe introduced two (2) Hearing Officers to the Board. The third contract Hearing Officer, Kim Hunt Price, was unavailable to appear due to a family matter. Mr. Rowe reported that the Hearing Officers were already beginning to help address the cases the Board has pending and are a welcome addition.

Mr. Merkel stated he was glad to return to the Board as a Hearing Officer. He briefly mentioned his past history with the Board as a contract Hearing Officer and is looking forward to hearing cases again.

Ms. Perry stated she is passionate about the work she handles for the Board and appreciates the opportunity to be a Hearing Officer.

Chair Eaves welcomed the Hearing Officers to the Board.

Mr. Gillis questioned Mr. Rowe regarding the number of new appeals being filed. Mr. Rowe stated that many of the new appeals deal with salary compression issues. Briefing schedules have been set in most of these cases, and some Appellants have counsel. These Appellant are from several different cabinets but have essentially the same type of issues. In response to Mr. Gillis' inquiry, Mr. Rowe stated that motions to dismiss have been filed in many of these by cabinet counsel either just prior to or immediately following the initial pre-hearing conference.

4. REPORT OF THE PERSONNEL CABINET

The Hon. Rosemary Holbrook, General Counsel and Executive Director of the Office of Personnel Cabinet's Legal Services, presented for the Cabinet.

Ms. Holbrook updated the Board on the Governor's Leadership, Equality, Accessibility, and Diversity (LEAD) Conference being held September 18 and 19. The Cabinet expects approximately eight hundred (800) virtual participants to attend. A lot of great speakers will be presenting. The keynote speaker is New York Times bestselling author and leadership expert Brian P. Moran, who is the president and founder of "The 12 Week Year." He will be speaking on "Breaking Barriers: You and the Life You are Capable of Living. The Cabinet is also welcoming back Alessandra Rosa of the Indianapolis District Office of the U.S. Equal Employment Opportunity Commission, who will be presenting on "AI: What is it and How do you identify it?".

Ms. Holbrook noted that the Cabinet had also kicked off its annual Kentucky Employees Charitable Campaign (KECC) on August 28, 2024. This year's theme is "The Spirit of Team Kentucky". Several events are upcoming to give employees a chance to support their favorite charities.

As a continued effort to provide counseling following a critical incident, the Kentucky Employees Assistance Program (KEAP) has created a crisis response page to help supervisors following a critical incident in the workplace. It is a resource on the Personnel Cabinet's Resource Page, and the page provides guidance and steps for supervisors and additional resources to support employees.

The Department of Employee Insurance (DEI) just finished their procurement process and Anthem was again selected as the third-party health insurance administrator for the 2025 Kentucky Employees Health Insurance. Since Anthem was the state's previous administrator, they are already known by state employees who have health insurance coverage through the state's medical plan. The same level of customer service will be maintained or even improved, based on some enhancements made by Anthem. Other great news is there will be no change to medical, dental, vision, or life insurance premiums for 2025.

There will be a Benefits Fair for Open Enrollment at the State Office Building in Frankfort on October 2, 2024. Representatives from the Department of Employee Insurance, Kentucky Deferred Compensation Authority, and Kentucky Saves 529, and great vendors from Anthem, Health Equity, Lark, Hinge Health, CVS, Castlight, Metlife and several others will be present. Four (4) other benefit fairs will be held around the state for the convenience of state employees in those areas. Benefit Selection Guides will be sent out soon. Open Enrollment begins October 7 and ends October 28.

(*Ms. Haydon arrived.)

Ms. Holbrook introduced the representatives who would be discussing the petitioned positions sought by their agency/cabinet.

A. Petitioned Position – Department of Fish and Wildlife Resources
-- General Counsel

Troy Robinson, Assistant Director with the Department of Fish and Wildlife Resources, appeared to discuss why the position had been changed from an Executive Assistant to General Counsel and why this position was needed. Board members questioned why a candidate for the position would require a Masters of Law degree, as that requirement would significantly narrow the applicant field for the position. Mr. Robinson stated that no one had been pre-selected for the position, and the request for the Masters of Law degree was a way to obtain a better candidate for the high position. Mr. Robinson answered questions from the Board and stated the requirement for a Masters of Law degree would be reviewed prior to posting the position if the Board approved the petitioned position.

- B. **Petitioned Position** – Justice and Public Safety Cabinet, Department of Juvenile Justice
--Executive Advisor

Rodney Moore, Executive Director of the Office of Human Resource Management, appeared to discuss why this position was needed. This is a non-traditional role and a policy-making position. He answered questions from the Board.

Ms. Haydon moved to approve the Petitioned Position for the Department of Fish and Wildlife Resources and the Petitioned Position for the Justice and Public Safety Cabinet, Department of Juvenile Justice, as stated above. Chair Eaves seconded, and the motion carried 6-0.

5. **CLOSED SESSION/RETURN TO OPEN SESSION**

Mr. Reeves moved that the Board go into Executive Session for the purposes of discussions and deliberations regarding individual adjudications. Mr. Denham seconded. Chair Eaves 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)(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 September 13, 2024 meeting.](10:00 a.m.)

Mr. Gillis moved to return to open session. Mr. Reeves seconded, and the motion carried 6-0. (10:42 a.m.)

6. **CASES TO BE DECIDED**

- A. **Caudill, Nicholas v. Transportation Cabinet (2021-083)**

Mr. Denham, 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 6-0.

Show Cause Order – No Response Filed – Appeal Dismissed

- B. McQuilling, Kelly v. Justice and Public Safety Cabinet, Department of Corrections (2023-128)

Mr. Gillis 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. Reeves seconded, and the motion carried 5-0, with Mr. Denham abstaining.

Show Cause Orders – No Response Filed – Dismissed as Withdrawn

- C. Cloyd, Russell v. Transportation Cabinet (2023-077)
- D. Egbert, Keith v. Transportation Cabinet (2023-017)
- E. Lawson, Clarence v. Transportation Cabinet (2022-169 & 2023-024)(2 appeals)

Chair Eaves moved to accept the recommended orders and to dismiss the appeals as withdrawn. Ms. Haydon seconded, and the motion carried 6-0.

7. WITHDRAWALS

Chair Eaves moved to accept the following withdrawals *en bloc* and to dismiss the appeals. Ms. Haydon seconded, and the motion carried 6-0 on Item A, and the motion carried 5-0 on Item B, with Mr. Denham abstaining on Item B.

- A. Dixon, Chris v. Kentucky Board of Nursing (2021-086)
- B. Soto, Jose v. Justice and Public Safety Cabinet, Department of Juvenile Justice (2022-178 & 2023-005)(2 appeals)

8. SETTLEMENTS

Mr. Reeves moved to issue settlement orders and to sustain the appeals to the extent set forth in the settlements as submitted by the parties. Ms. Haydon seconded, and the motion carried 6-0.

- A. Ellis, Kristen v. Education and Labor Cabinet (2022-064)
- B. Reynolds, Tara v. KY Department of Education (2023-151)

9. **OTHER**

A. **Case Load Reduction**

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

Mr. Rowe discussed the status report and monthly summary report provided to the Board prior to the meeting. The total backlog had not gone down as much as he had hoped. There are several reasons for this; one point raised earlier in the meeting by Mr. Gillis was the amplified number of new appeals received. While these appeals are against different cabinets, they are essentially claiming the same compression salary issues previous discussed. These appeals have been received in big groups, which increased our incoming cases considerably. Mr. Rowe senses, and the Personnel Cabinet also, that there seem to be more employees making appeals right now.

The backlog is basically the combination of two factors, (1) the number of cases being filed, and (2) the way the cases have historically been addressed, which needs to change. The strategy for combatting the backlog is primarily changing how we address cases. These changes should allow the Board to see improvement in the coming months. The results will come from earlier decisions on jurisdictional issues and more capacity to decide cases. We are in the process of transitioning from the Hearing Officer being solely Mr. Rowe to three (3) contract Hearing Officers who will be able to hear cases. The Hearing Officers have begun to conduct a few of the hearings during September, but will be given most, if not all, of the cases in October and the coming months. Making this transition is one of the reasons the decision-making process has slowed down and fewer cases have been on the Board's docket.

However, Board staff are not allowing ourselves to be stagnant; we are addressing cases that are up for summary disposition that should be ruled upon soon either recommending dismissal or to go forward to evidentiary hearing.

Another component is something the Board has addressed previously and that is required by statute is to get our opinions out faster. In the past, the Board staff who conducted hearings sometimes heard a case and did not render a decision promptly. Having contract Hearing Officers will help because they can focus on these things. Mr. Rowe is considering helpful guidelines and parameters that might help them decide cases more quickly. The Board owes a duty to agencies and employees to render these decisions quickly.

Ms. Haydon questioned how long a Hearing Officer has to render their decision. Mr. Rowe stated that the law allows sixty (60) days, with an extension of thirty (30) days being given if requested, especially in multiple day hearings or hearings with complex issues to be decided. Hearing Officers might also order a briefing schedule at the conclusion of the evidentiary hearing and then the recommended order would not be due until sixty (60) days after the final briefing period has ended. This may help the Hearing Officer to keep from micro-analyzing the entire

transcript of an evidentiary hearing, which may have lasted up to three days or longer. Instead, the Hearing Officer receives briefing from the parties that summarizes the facts of the case and any applicable law. Those briefs help the Hearing Officer to focus and to narrow that decision-making process.

In the past, a lot of case milestones and decision making were getting extended, and it prolonged the entire process. Board staff want to address this so it does not continue. To do this, we will conduct good tracking of cases, knowing where the cases are, what is happening in those cases, and keeping the cases on course.

Board staff has had some technology difficulties with tracking cases in the past. When Ms. McDonald prepares the Board Status Report, it is manually intensive and requires a lot of work to produce. We have a database system that was supposed to help us acquire the information we need for reporting, but that system appears to be more suited to a small law office as opposed to an administrative hearing agency. The system is more suited to tracking time spent on cases instead of case status. Staff does not currently have a good tool to assess case status. We are working on our own solution for the short term, and the state is also looking for a solution for all law offices to make them more efficient. Also, since the Board now has a better budget, we are looking for a solution that better serves the Board's needs.

Another part of the solution is to make sure that we conduct our pre-hearing conferences to discuss not only the status of the case, but to set deadlines to keep the case moving forward, and to decide motions for summary disposition and deal with them appropriately.

Ms. Haydon questioned how much Hearing Officers are used and if they are full-time staff. Mr. Rowe stated that having the Hearing Officers on a full-time basis would be too expensive for the Board, so the Executive Director and the General Counsel conduct the pre-hearings and then assign the hearings to the Hearing Officers, providing them with a copy of the entire case and exhibits and giving them enough time to prepare for the hearing. Mr. Rowe stated that, early next year, the Board should see a significant difference in caseload compared to where we are now.

Mr. Rowe stated that having a General Counsel will also help with the backlog of cases, since that person will be able to assist in deciding cases and conducting pre-hearing conferences.

B. Gordon A. Rowe, Jr. – Probation Period End

Chair Eaves noted that Mr. Rowe would be completing his probationary period on October 10, 2024. Ms. Haydon moved that, upon successful completion of Gordon A. Rowe, Jr.'s probationary period, Mr. Rowe would receive a five percent (5%) increase in pay. Mr. Denham seconded, and the motion carried 6-0.

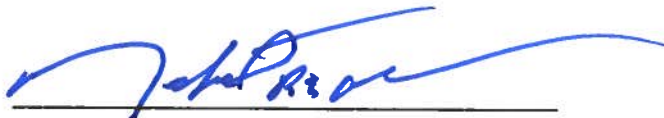
C. General Counsel update

Mr. Rowe noted that the General Counsel interviews were continuing and the interview team expected to make its recommendation soon. Chair Eaves noted that only the top recommended candidate should be presented to the Board for approval. Mr. Rowe expected the candidate to be ready to meet with the Board during the October Board meeting.

D. Next Board Meeting: **October 11, 2024**

1. **Noted:** Board Chair and Vice-Chair Elections and Board Scheduling for 2025 will be conducted during the November Board meeting.



After Chair Eaves confirmed there were no more issues to be addressed, Mr. Denham made a motion for the Board to adjourn. Mr. Gillis seconded, and the motion carried 6-0. (10:58 a.m.)



Michael Eaves, Chair

Mitchel Denham, Vice Chair

Morgan Ward, Member


Larry Gillis, Member
Rick Reeves, Member
Lisa Haydon, Member

C. General Counsel update

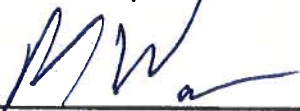
Mr. Rowe noted that the General Counsel interviews were continuing and the interview team expected to make its recommendation soon. Chair Eaves noted that only the top recommended candidate should be presented to the Board for approval. Mr. Rowe expected the candidate to be ready to meet with the Board during the October Board meeting.

D. Next Board Meeting: October 11, 2024

1. **Noted:** Board Chair and Vice-Chair Elections and Board Scheduling for 2025 will be conducted during the November Board meeting.

After Chair Eaves confirmed there were no more issues to be addressed, Mr. Denham made a motion for the Board to adjourn. Mr. Gillis seconded, and the motion carried 6-0. (10:58 a.m.)

Michael Eaves, Chair



Morgan Ward, Member

Mitchel Denham, Vice Chair

Larry Gillis, Member

Rick Reeves, Member

Lisa Haydon, Member