

**KENTUCKY PERSONNEL BOARD**  
**MINUTES OF MAY 7, 2010**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Tina Goodmann on May 7, 2010, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Christine J. Goodmann, Chair  
M. Suzanne Cassidy, Vice Chair  
Betty Gibson, Member  
Larry B. Gillis, Member  
David B. Stevens, Member  
Wayne "Doug" Sapp, Member  
David Hutcheson, Member  
Mark A. Sipek, Executive Director and Secretary  
Boyce A. Crocker, General Counsel  
Linda R. Morris, Administrative Section Supervisor  
Cynthia Perkins, Administrative Specialist

2. **READING OF THE MINUTES OF REGULAR MEETING HELD APRIL 9, 2010**

The minutes of the last Board meeting had been previously circulated among the members. Chair Goodmann asked for additions or corrections. Dr. Stevens moved to approve the minutes, as submitted. Ms. Gibson seconded, and the motion carried 6-0. [Chair Goodmann does not vote unless noted.] The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek informed the Board that he and Mr. Crocker will be attending Kentucky Association of Administrative Adjudicators [KAAA] CLE training on Friday, May 14, 2010. Mr. Sipek stated that Mr. Crocker is President.

Mr. Sipek advised that included in the Board packet today is a notice from Tourism, Arts and Heritage Cabinet that they were informed by the Transportation Cabinet that Appellant, Edward Davis [Appeal No. 2009-148], has a valid CDL. However, Appellant Davis cannot be allowed to drive until he completes the return to duty process outlined in 49 C.F.R. Part 40, Subpart O), Section 40.305, as ordered by the Board.

At the conclusion of Mr. Sipek's report, Chair Goodmann called for the Personnel Cabinet's report.

#### **4. PERSONNEL CABINET'S REPORT**

The Hon. Dinah Bevington, General Counsel for the Personnel Cabinet, came forward to present the Cabinet's report.

The Personnel Cabinet is busy with implementing the legislative changes during the last session, specifically HB 149. There have been many changes to KRS Chapter 18A for the first time in a number of years, which has resulted in programming changes. Once HB 149 became effective, after the Emergency Declaration was signed by the Governor, a grace period was begun for programming changes to be effected. Two main programming changes:

When an employee is given a notice of intent to dismiss letter, the agency can put the employee on paid administrative leave pending resolution of the dismissal action. This action needed a code to enter into the system and the Personnel Cabinet is presently working with Commonwealth Office of Technology (COT).

Another programming change is to probationary employees who are going from non-merit to merit and giving them a longer probationary period. COT is also working on a code for this action. Once the programming changes are available, the Personnel Cabinet will advise all agencies when functions are ready to use.

Under HB 164, KCTCS instructors will have the option to come under KRS Chapter 18A. Two counseling sessions are set for May 17 and 18 in order to educate the employees so they can make an informed decision. Ms. Cassidy asked if it is a group or individual decision. Ms. Bevington stated that it is an individual decision and that seventy-two employees are impacted. New hires will come under KRS Chapter 18A.

Ms. Bevington stated that HB 149 also changed the Personnel Board's Election process. She advised that information concerning the election will be printed on employees' pay stubs. Ms. Bevington stated that the Cabinet was happy to help out and if the Board needed any further assistance as it pertains to the election to let her know.

Ms. Bevington stated that the amendments to regulations [101 KAR 2:034, 101 KAR 2:076, 101 KAR 2:095, 101 KAR 2:102, 101 KAR 3:015, 101 KAR 3:045, 101 KAR 3:050] previously submitted have been withdrawn and will be held to make sure they are in line with new legislation, as well as with the Governor's Employee Advisory Council (GEAC). These amendments will be resubmitted at a later date.

## 5. ORAL ARGUMENTS

### A. Johnny Crider v. Justice and Public Safety Cabinet

Present were Appellant, Johnny Crider, and counsel for Appellee, the Hon. Angela Cordery, for oral argument. The parties answered questions from the Board.

### B. Martina Gregory v. Justice and Public Safety Cabinet

Present were Appellant, Martina Gregory, and counsel for Appellee, the Hon. Angela Cordery, for oral argument. The parties answered questions from the Board.

### C. ~~Thaddeous Price v. Department of Agriculture~~ **Moved to July**

[Prior to the last oral argument, the Board Members took a five-minute break—10:40 to 10:45.]

### D. Perry Puckett v. Cabinet for Health and Family Services

Present were counsel for Appellant, the Hon. David Leightty, and counsel for Appellee, the Hon. Amber Arnett, for oral argument. The parties answered questions from the Board.

6. MOTIONS

Druscella Mullins v. Department of Veterans' Affairs

--Appellant's Motion to Enforce Settlement Agreement

--Appellee's Response to Motion to Enforce Settlement Agreement

Mr. Sipek advised that counsel for Appellant has asked for time to file a Reply.

Dr. Stevens moved to postpone this matter to the June Board meeting to await Appellant's reply. Ms. Cassidy seconded and the motion carried 6-0.

7. INVESTIGATIONS

A. ~~Request for Investigation into hiring practices at Eastern Kentucky Correctional~~

**Complex by Brenda Lewis (Moved to June Meeting)**

8. CLOSED SESSION

Ms. Gibson moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Mr. Hutcheson seconded. Chair Goodmann 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. (11:14 a.m.)

Ms. Gibson moved to return to open session. Ms. Cassidy seconded and the motion carried 6-0. (12:45 p.m.)

## 9. 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. Johnny Crider v. Justice and Public Safety Cabinet

Ms. Cassidy 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.

B. Martina Gregory v. Justice and Public Safety Cabinet

Mr. Sapp moved to note Appellee's exceptions and oral argument and to accept the recommended order sustaining the appeal. Ms. Gibson seconded and the motion carried 6-0.

C. Thaddeous Price v. Department of Agriculture (Moved to July)

D. Perry Puckett v. Cabinet for Health and Family Services

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

E. William Madden v. Transportation Cabinet

Ms. Cassidy moved to note Appellant's exceptions and to remand this matter for a hearing to address the issue regarding Appellant's job duties. Ms. Gibson seconded and the motion carried 6-0.

F. Bonnie Poore v. Transportation Cabinet and Clarrisa Rains

Mr. Sapp moved to note Appellant's exceptions and to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 6-0.

G. Victor Morris v. Justice and Public Safety Cabinet (2 appeals)  
**(Deferred from March)**

Ms. Cassidy moved to note Appellant's exceptions, Appellee's response and oral arguments, and to alter the recommended order in accordance with the Final Order attached to these minutes dismissing the appeals. Mr. Sapp seconded and the motion carried 6-0.

H. Mary Dearing v. Public Protection Cabinet

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

I. John Smith v. Justice and Public Safety Cabinet

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

J. Loni Suiter v. Cabinet for Health and Family Services

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

K. Robert Walker v. Justice and Public Safety Cabinet

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

**Show Cause Order(s) – Appeal(s) Dismissed - No Response(s) Filed**

The following case(s) had a show cause order entered by the hearing officer recommending that the appeal(s) be dismissed for failure to timely prosecute unless a statement was filed by the Appellant(s) stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses submitted by the Appellant(s) to the show cause order(s).

L. Jerry Irvin v. Tourism, Arts and Heritage Cabinet

Mr. Hutcheson moved to find that the Appellant(s) had not responded to the show cause order(s) and that the recommended order be accepted dismissing the

appeal(s) for failure to timely prosecute the appeal(s). Mr. Gillis seconded and the motion carried 6-0.

- M. Prince Kolubah v. Justice and Public Safety Cabinet  
(response received untimely)

Mr. Gillis moved to remand this matter to the active docket. Mr. Sapp seconded and the motion carried 6-0.

## 10. WITHDRAWALS

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

- A. Robin Cooper v. Personnel Cabinet
- B. Nakia Dunn v. Education and Workforce Development Cabinet
- C. Eileen Lacer v. Department of Treasury
- D. Jackie Lamb v. Transportation Cabinet
- E. James Dowling v. Transportation Cabinet
- F. Sam Ezelle v. Cabinet for Health and Family Services
- G. Gary Gardner v. Personnel Cabinet
- H. Sandra Silvestri v. Justice and Public Safety Cabinet

## 11. SETTLEMENTS

Mr. Sapp moved to consider the following settlements *en bloc* and to accept the settlements as submitted by the parties sustaining the appeal to the extent set forth in the settlement. Mr. Hutcheson seconded and the motion carried 6-0.

- A. Susan Gardner v. Public Protection Cabinet (mediated)
- B. Adam Kleinman v. Tourism, Arts and Heritage Cabinet (mediated)
- C. Robert Russell v. Tourism, Arts and Heritage Cabinet

12. OTHER

Chair Goodmann inquired whether the Board needed a regulation for the election changes. Mr. Crocker stated that the Board did not need to since it was Representative Cherry's statute, which is specific enough to run the election. Ms. Cassidy asked if the election was underway. Mr. Crocker said it was and that the Board has received eleven applicants. He further advised that the end date for the election is June 15, 2010.

There being no further business, Ms. Gibson moved to adjourn. Dr. Stevens seconded and the motion carried 6-0. (12:50 p.m.)

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Christine J. Goodmann, Chair

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M. Suzanne Cassidy, Vice Chair

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Betty Gibson, Member

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Larry B. Gillis, Member

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David B. Stevens, Member

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Wayne D. Sapp, Member

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David Hutcheson, Member