

**KENTUCKY PERSONNEL BOARD
MINUTES OF SEPTEMBER 11, 2009**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Tina Goodmann on September 11, 2009, at approximately 9:30 a.m., 28 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Christine J. Goodmann, Chair
Betty Gibson, Member
M. Suzanne Cassidy, Member
Larry B. Gillis, Member
Mark A. Sipek, Executive Director and Secretary
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board personnel absent:

Robert B. Frazer, Vice-Chair
David B. Stevens, Member
Boyce A. Crocker, General Counsel

2. **READING OF THE MINUTES OF REGULAR MEETING HELD AUGUST 14, 2009**

The minutes of the last Board meeting had been previously circulated among the members. Chair Goodmann asked for additions or corrections. Ms. Gibson moved to approve the minutes, as submitted. Ms. Cassidy seconded, and the motion carried 3-0. [Chair Goodmann does not vote unless noted.] The Board members signed the minutes.

3. EXECUTIVE DIRECTOR'S REPORT

Mr. Sipek advised that the Board members received a copy of the Annual Report for fiscal year 2009, which after approval from the Board will be distributed to the Governor's office and various agencies. Mr. Sipek stated that statistically the pending appeals are down from previous years; however, the workload remains constant due to the complexity of the appeals.

Mr. Sipek noted that the appeal on Thaddeous Price, which was remanded by the Board at the August Board meeting, had been set for a pre-hearing conference with the Appellant's other appeal for discussion which went smoothly. However, it is possible the Appellant will be filing an additional appeal, which will most likely be consolidated with his other appeals.

Mr. Sipek advised that he will be meeting with Ms. Kimberly Rulo from the Governmental Services Center (GSC) to assist her in designing a course for managers and supervisors in state government and how we can share Personnel Board experience.

Since the last Board meeting, Mr. Sipek advised that Chair Goodmann, Mr. Gillis, Mr. Hagy and himself met to discuss the Personnel Board's newsletter. They came up with some good ideas which he hopes to share in the near future with the Board members to get feedback and suggestions, before it is finalized.

Mr. Sipek advised that the Supreme Court entered an order denying discretionary review in the appeals of *William Wolejsa v. Governor's Office for Local Development* and *Steve Alvey v. Department of Agriculture*.

In the appeal of *Justice and Public Safety Cabinet v. Anita Stotts*, the Court of Appeals affirmed the opinion of the Franklin Circuit Court. Of significance is that the Court of Appeals stated that the Board is the ultimate trier of fact, not the Hearing Officer, thus the Board has the authority to deviate from the findings, conclusions of law and recommended order of the Hearing Officer and make its own separate findings and conclusions. Mr. Sipek advised that the Appellee will be requesting discretionary review from the Supreme Court.

In the appeal of *Ernest Campbell, et. al. v. Energy and Environment Cabinet* the Franklin Circuit Court affirmed the Final Order of the Personnel 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 came forward to present the Personnel Cabinet's report.

Ms. Bevington advised that Wes Swarner is now Acting Director at the Governmental Services Center, replacing Dr. Sissy Meredith who is now the Commissioner at the Personnel Cabinet.

Ms. Bevington stated that she reviewed the minutes of past Board meetings to get caught up. She noted that the proposed amendments to 101 KAR 2:120 pertaining to Chapter 16 employees and the proposed amendments to 101 KAR 2:102 and 101 KAR 3:015, from "pre-pay" to "current pay" are still in the review process.

The Governor's Employee Advisory Council (GEAC) unit negotiations are still progressing.

The Kentucky Employee Health open enrollment for 2010 will begin the middle of October. The benefits calculator will also be available.

Ms. Bevington stated that beginning October 1, 2009, the Nurses Clinic Station, formerly under the Cabinet for Health and Family Services (CHFS), will be run by the Personnel Cabinet and will be revamped. The nurses will have prescription authority and there will be four stations located in Frankfort: one station at the Capital Annex, one station at the Transportation Cabinet, one station at Capital Plaza Tower and one station at the CHFS. The stations will be open from 8:00 a.m. to 4:00 p.m. for all state employees.

Ms. Bevington advised that a Personnel memo went out last Friday concerning H1N1 (Swine Flu), to give state employees up-to-date information, best practices, guidance, etc. There was a teleconference Q&A session with Human Resource Leaders throughout the state and Dr. Humball, state epidemiologist. Ms. Bevington stated that the best guidance is, "If you are sick, stay home."

In the coming months, the Personnel Cabinet will be reaching out to agencies to see if there are any changes to the initial probationary periods regulation [101 KAR 1:325]. Ms. Bevington advised that she should have a report for the next Board meeting.

6. ORAL ARGUMENTS

A. Randall Arvin v. Transportation Cabinet

Present were the Appellant, Randall Arvin, and counsel for Appellee, the Hon. Will Fogle, for oral argument. The parties answered questions from the Board.

B. Terry Farmer v. Transportation Cabinet

Present were counsel for Appellant, the Hon. Paul Fauri, and counsel for Appellee, the Hon. Will Fogle, for oral argument. The parties answered questions from the Board.

C. Cecil Colliver v. Education and Workforce Development Cabinet (Moved from August meeting)

Present were counsel for Appellant, the Hon. Jeff Moore, and counsel for Appellee, the Hon. James Maxson, for oral argument. The parties answered questions from the Board.

Prior to the final oral argument, Chair Goodmann called for a brief break. (11:15 a.m.)

D. William Madden v. Transportation and Corbett Caudill

Present were the Appellant, William Madden; counsel for Appellee, the Hon. Ed Logan; and Intervenor, Corbett Caudill (by phone), for oral argument. The parties answered questions from the Board.

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; Ms. Cassidy 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 3-0. (11:53 a.m.)

Ms. Gibson moved to return to open session. Ms. Cassidy seconded and the motion carried 3-0. (1:57 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. Randall Arvin v. Transportation Cabinet

Ms. Gibson moved to note Appellee's exceptions and oral argument and to accept the hearing officer's order sustaining the appeal to the extent that the penalty was reduced from a ten-day suspension to a one-day suspension. Mr. Gillis seconded and the motion carried 2-1, with Ms. Cassidy opposing.

B. Terry Farmer v. Transportation Cabinet

Mr. Gillis moved to defer this matter to the next Board meeting. Ms. Gibson seconded and the motion carried 3-0.

C. Cecil Colliver v. Education and Workforce Development Cabinet

Ms. Cassidy moved to defer this matter to the next Board meeting. Mr. Gillis seconded and the motion carried 3-0.

D. William Madden v. Transportation and Corbett Caudill

Ms. Gibson moved to note Appellant's exceptions and oral argument and to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 3-0.

E. Christopher Newton v. Transportation Cabinet
Deferred from August meeting

Ms. Cassidy moved to note Appellant's exceptions, Appellee's exceptions, Appellant's response and oral arguments and to accept the Final Order as altered and attached to these minutes, sustaining the appeal to the extent Appellant be reimbursed \$800 for medical expenses and dismissing all other claims. Ms. Gibson seconded and the motion carried 3-0.

F. David Draggs v. Justice and Public Safety Cabinet
Deferred from August meeting

Mr. Gillis moved to note Appellant's exceptions, Appellee's exceptions, and oral arguments and to accept the Final Order as altered and attached to these minutes sustaining the appeal to the extent a three-day suspension was reduced to a one-day suspension. Ms. Cassidy seconded and the motion carried 3-0.

G. Delvin Hickerson v. Cabinet for Health and Family Services

Ms. Gibson moved to note Appellant's exceptions and accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 3-0.

H. Frankie Eden v. Finance and Administration Cabinet

Ms. Cassidy moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 3-0.

I. Faye Harris v. Cabinet for Health and Family Services

Mr. Gillis moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 3-0.

J. Isaiah James IV v. Cabinet for Health and Family Services

Ms. Gibson moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 3-0.

K. Terry Popplewell v. Tourism, Arts and Tourism Cabinet

Ms. Cassidy moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 3-0.

L. Chad Shake v. Justice and Public Safety Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal. Ms. Cassidy seconded and the motion carried 3-0.

M. Harold Shines v. Public Protection Cabinet

Ms. Cassidy moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 3-0.

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).

N. Russell Cox v. Justice and Public Safety Cabinet

O. Alvin Semones v. Transportation Cabinet

P. Barry West v. Justice and Public Safety Cabinet

Ms. Gibson 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 3-0.

Show Cause Orders –Response 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. The Appellant(s) filed a response stating sufficient cause to excuse their failure to appear at the scheduled hearing.

- Q. Bobbie Peters v. Justice and Public Safety Cabinet and Personnel Cabinet
(2 appeals)

Ms. Cassidy moved to note Appellant's untimely response, and moved to accept the show cause order dismissing the appeal. Ms. Gibson seconded and the motion carried 3-0.

- R. Hondo West v. Tourism, Arts and Heritage Cabinet

Mr. Gillis moved to note Appellant's response, and finding the Appellant has shown sufficient cause for failure to appear at the hearing, rejects the Hearing Officer's recommended order dismissing the appeal and to remand the appeal back to the active docket. Ms. Cassidy seconded and the motion carried 3-0.

10. WITHDRAWALS

Ms. Gibson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Ms. Cassidy seconded and the motion carried 3-0.

- A. Kimberly Bickers v. Personnel Cabinet
- B. Michelle Fitzpatrick v. Finance and Administration Cabinet (4 appeals)
- C. Karen Francis v. Public Protection Cabinet
- D. Michael Hale v. Finance and Administration Cabinet
- E. Nicole McGee v. Personnel Cabinet
- F. Betty Sue Martin v. Finance and Administration Cabinet
- G. Orbin Samples v. Justice and Public Safety Cabinet
- H. Charles Allen v. Transportation Cabinet
- I. Mary Maeser v. Cabinet for Health and Family Services

11. SETTLEMENTS

Ms. Cassidy 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. Ms. Gibson seconded and the motion carried 3-0.

- A. Barbara Smith v. Justice and Public Safety Cabinet

- B. Sarah Wendell v. Public Protection Cabinet (2 appeals)
- C. Jeffrey Shaw v. Justice and Public Safety Cabinet (2 appeals)
- D. James Douglas Thomas v. Tourism, Arts and Heritage Cabinet

12. **OTHER**

Annual Report

Ms. Gibson moved to accept the Annual Report for Fiscal Year 2009. Ms. Cassidy seconded and the motion carried 3-0.

There being no further business, Ms. Cassidy moved to adjourn. Mr. Gillis seconded and the motion carried 3-0. (2:00 p.m.)

Christine J. Goodmann, Chair

Betty Gibson, Member

M. Suzanne Cassidy, Member

Larry B. Gillis, Member