

**KENTUCKY PERSONNEL BOARD  
MINUTES OF OCTOBER 12, 2015**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Doug Sapp on October 12, 2015, 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  
Tommy W. Chandler, Member  
Amanda Cloyd, Member  
Mark A. Sipek, Executive Director and Secretary  
Boyce A. Crocker, General Counsel  
Cynthia Perkins, Administrative Section Supervisor

Board Personnel Absent:

David F. Hutcheson, Jr., Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD SEPTEMBER 11, 2015**

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. Ms. Cloyd seconded and the motion carried 5-0. The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek reported that the problem of missing portions of recorded hearings was addressed with the Hearing Officers. To prevent the loss of recordings, the Hearing Officers are using a backup audio recorder. Mr. Sipek stated that the Hearing Officers take the recording of hearings seriously and will see that this problem does not occur again.

Mr. Sipek stated that the Board received thirty-five new appeals in August 2015. Many of the appeals are from employees of the Transportation Cabinet concerning salary issues.

The vacant Administrative Specialist III position will hopefully be filled in a week or so. In the meantime, Mr. Sipek stated that Ms. Gwen McDonald and Ms. Cindy Perkins are doing a lot of work lately and need to be commended on the work they are doing.

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

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

The Hon. Rosemary Holbrook, Staff Attorney for the Office of Legal Services, came forward to present the Personnel Cabinet's report.

##### **101 KAR 1:325 Probationary periods** --Request from Department of Corrections

Ms. Holbrook stated that the Cabinet received one request from the Department of Corrections to reduce the probationary period for Correctional Officers from eight months to six months. The Cabinet for Health and Family Services is the only other agency to use Correctional Officers and approves the Department of Corrections' request.

Chairman Sapp stated that the agencies can tell rather quickly whether someone will fit that job.

Judge Chandler moved to approve the amended regulation. Mr. Gillis seconded and the motion carried 5-0.

Ms. Holbrook announced that the Dave Thomas Foundation for Adoption ranked the Kentucky employee adoption benefit program first in the country; along with Indiana, on the 2015 best adoption friendly workplace list.

Ms. Holbrook advised that open enrollment for the Kentucky Employees' Health Plan (KEHP) is from October 12 – 26, 2015. There is no change in premiums. Further, diabetic supplies will be provided at no cost.

Lastly, the Kentucky Employees Charitable Campaign 5K walk is October 31, 2015, at the E. P. "Tom" Sawyer State Park in Louisville, Kentucky. Ms. Holbrook stated that employees can find information on the Personnel Cabinet's website.

#### 5. **MOTIONS**

- A. Sandra McKinney v. Justice and Public Safety Cabinet/Corrections  
--Appellant's Motion to Reconsider  
--Appellee's Response to Motion to Reconsider

Present were counsel for Appellant, the Hon. Devon Oser, and counsel for Appellee, the Hon. Ed. Baylous. The parties answered questions by the Board.

Dr. Stevens moved to discuss this motion in closed session. Ms. Cloyd seconded and the motion carried 5-0.

Chairman Sapp then asked the parties to come forward for the first oral argument.

6. **ORAL ARGUMENTS**

A. **Michael Blasi v. Tourism, Arts & Heritage Cabinet/Parks**

Present for oral arguments were counsel for Appellant, the Hon. Kirk Hoskins, and counsel for Appellee, the Hon. Leigh Powers. After presenting oral arguments, the parties answered questions from the Board.

B. **Laurie Jones v. Cabinet for Health and Family Services**

Present for oral arguments were counsel for Appellant, the Hon. Jonathan Breitenstein (for the Hon. Fox Demoisey), and counsel for Appellee, the Hon. Kathleen Hines. After presenting oral arguments, the parties answered questions from the Board.

C. **James Patrick Stipes v. Tourism, Arts and Heritage Cabinet**

Present for oral arguments were counsel for Appellant, the Hon. Paul Fauri, and counsel for Appellee, the Hon. Misty Dugger Judy. After presenting oral arguments, the parties answered questions from the Board.

7. **INVESTIGATIONS**

Anonymous Request for Investigation  
--GAPS response

Judge Chandler moved to defer this matter to the November meeting. Dr. Stevens seconded and the motion carried 4-0, with Mr. Gillis recusing.

8. **CLOSED SESSION**

Dr. Stevens moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications. Mr. Gillis 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 5-0. (11:20 a.m.)

Mr. Gillis moved to return to open session. Judge Chandler seconded and the motion carried 5-0. (12:20 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. **Michael Blasi v. Tourism, Arts & Heritage Cabinet/Parks (2014-306)**

Judge Chandler, having noted Appellee's exceptions, Appellant's response and oral arguments, moved to accept the recommended order sustaining the appeal. Dr. Stevens seconded and the motion carried 4-1, with Ms. Cloyd opposing.

B. **Laurie Jones v. Cabinet for Health and Family Services (2015-121)**

Mr. Gillis, having noted Appellant's exceptions, Appellee's response and oral arguments, moved to accept the recommended order dismissing the appeal. Ms. Cloyd seconded and the motion carried 5-0.

C. **James Patrick Stipes v. Tourism, Arts and Heritage Cabinet (2014-134)**

Ms. Cloyd having noted Appellee's exceptions, Appellant's response and oral arguments, moved to defer this matter to the next Board meeting. Dr. Stevens seconded and the motion carried 5-0.

D. **Sandra McKinney v. Justice and Public Safety Cabinet/Corrections (2014-313)**

Mr. Gillis moved to deny Appellant's motion to reconsider. Ms. Cloyd seconded and the motion carried 5-0.

Ms. Cloyd having considered Appellant's exceptions, Appellee's response to exceptions (request for oral argument untimely), moved to accept the recommended order dismissing the appeal. Judge Chandler seconded and the motion carried 5-0.

E. **Donald Arvin and Michael Grubbs v. Transportation Cabinet, Personnel Cabinet and Clarence Lawson (2014-109 and 2014-095) (2 appeals) (on remand from Board) [Deferred from September]**

Mr. Gillis having noted Intervenor's exceptions, Appellee Transportation Cabinet's exceptions, Appellant Grubbs' response, and oral arguments, moved to accept the Final Order, as attached to the minutes, dismissing the appeals. Ms. Cloyd seconded and the motion carried 5-0.

**F. Johnny Ware v. Cabinet for Health and Family Services (2014-316)**  
**[Deferred from September]**

Judge Chandler, having noted Appellee's exceptions and oral arguments, moved to remand this matter to the active docket specifically for the Hearing Officer to take the Appellant's testimony due to failure to record audio testimony pursuant to KRS 13B.090(6). Additional testimony or exhibits shall only be admitted upon a showing of good cause. Once completed, the Hearing Officer shall submit new Findings of Fact, Conclusions of Law, and Recommended Order and the process (exceptions and request for oral argument) begin again. Dr. Stevens seconded and the motion carried 5-0.

**G. Rita J. Ewashko v. KHEAA (2015-057)**

Ms. Cloyd moved to accept the recommended order dismissing the appeals. Mr. Gillis seconded and the motion carried 5-0.

**H. Teresa Hall v. Finance and Administration Cabinet (2014-217)**

Mr. Gillis moved to accept the recommended order dismissing the appeal. Dr. Stevens seconded and the motion carried 5-0.

**I. Bobby Lang v. Justice and Public Safety Cabinet/Juvenile Justice (2015-071)**

Mr. Gillis moved to accept the recommended order dismissing the appeal. Judge Chandler seconded and the motion carried 5-0.

**J. Boualone Niravong v. Cabinet for Health and Family Services (2015-036 and 2015-123) (2 appeals)**

Judge Chandler moved to accept the recommended order dismissing the appeals. Dr. Stevens seconded and the motion carried 5-0.

**K. Ray Sandy v. Justice and Public Safety Cabinet/Corrections & Hobart Huddleston (2014-079 & 2014-107) (2 appeals)**

Mr. Gillis moved to accept the recommended order dismissing the appeals. Dr. Stevens seconded and the motion carried 5-0.

**L. Karen L. Southard v. Cabinet for Health and Family Services (2015-105)**

Ms. Cloyd moved to accept the recommended order dismissing the appeal. Mr. Gillis seconded and the motion carried 5-0.

M. **Richard Spears v. Cabinet for Health and Family Services & James Bray  
(2015-021)**

Mr. Gillis moved to accept the recommended order dismissing the appeal. Judge Chandler seconded and the motion carried 5-0.

**Show Cause Orders – No Response Filed – Appeals Dismissed**

Dr. Stevens moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Mr. Gillis seconded and the motion carried 5-0.

- A. Bianca Shoulders v. Justice and Public Safety Cabinet/Juvenile Justice
- B. Charles Willhite v. Justice and Public Safety Cabinet/Corrections

8. **WITHDRAWALS**

Judge Chandler moved to accept the following withdrawal of appeals *en bloc* and to dismiss the appeals. Ms. Cloyd seconded and the motion carried 5-0.

- A. Fred Bogar v. Transportation Cabinet
- B. Richey Cline v. Transportation Cabinet
- C. Laura Conway v. Cabinet for Health and Family Services
- D. Timothy Keel v. Justice and Public Safety Cabinet/Corrections
- E. Charles Walters v. Cabinet for Health and Family Services
- F. William Wright v. Energy and Environment Cabinet

9. **SETTLEMENTS**

Dr. Stevens moved to issue settlement orders and to sustain the appeals to the extent set forth in the settlements as submitted by the parties. Ms. Cloyd seconded and the motion carried 5-0.

- A. Carla Brinley v. Cabinet for Health and Family Services
- B. Robert C. Stephens v. Finance and Administration Cabinet
- C. Brad Trivette v. Energy and Environment Cabinet
- D. Yunia Rodriguez-Pavon v. Cabinet for Health and Family Services
- E. Nathan Aseltine v. Justice and Public Safety Cabinet/Corrections

10. **OTHER**

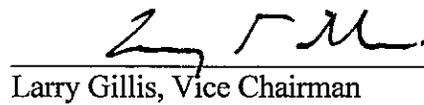
**Election of Officers**

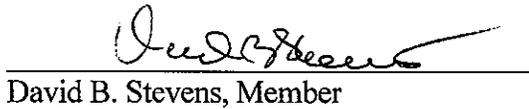
Judge Chandler moved to re-elect Mr. Sapp as Chairman. Dr. Stevens seconded and the motion carried 4-0, with Mr. Sapp abstaining.

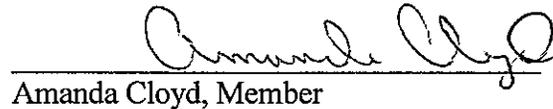
Judge Chandler moved to re-elect Mr. Gillis as Vice Chairman. Ms. Cloyd seconded and the motion carried 4-0, with Mr. Gillis abstaining.

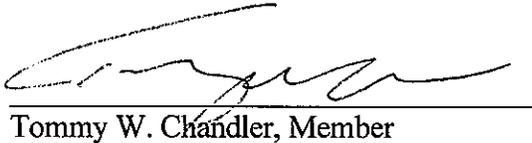
There being no further business, Dr. Stevens moved to adjourn. Ms. Cloyd seconded and the motion carried 5-0. (12:35 p.m.)

  
Wayne D. Sapp, Chairman

  
Larry Gillis, Vice Chairman

  
David B. Stevens, Member

  
Amanda Cloyd, Member

  
Tommy W. Chandler, Member

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD

DONALD E. ARVIN (Appeal No. 2014-109)  
MICHAEL GRUBBS (Appeal No. 2014-095)

APPELLANTS

FINAL ORDER

VS.

ALTERING HEARING OFFICER'S  
FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER ON REMAND

TRANSPORTATION CABINET  
MIKE HANCOCK, APPOINTING AUTHORITY; AND

PERSONNEL CABINET  
DINAH BEVINGTON, ACTING SECRETARY

APPELLEES

AND

CLARENCE LAWSON

INTERVENOR

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The Board at its regular October 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order on Remand of the Hearing Officer dated July 28, 2015; having noted Intervenor's exceptions, Appellee Transportation Cabinet's exceptions, Appellant Grubb's response to exceptions, oral arguments, and being duly advised.

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer on Remand be altered as follows:

A. **Delete** Findings of Fact numbers 12, 13, 14, and 15 and substitute the following:

12. The Board finds that the Commercial Driver's License Section of the Division of Driver Licensing within the Transportation Cabinet failed to identify the Intervenor, Clarence Lawson, as a CDL holder who had not submitted a valid and "in force" medical certificate. Thus, Intervenor Lawson was never notified that his medical certificate had expired.

13. A review by the Commonwealth Office of Technology failed to identify Intervenor Lawson as an individual who was not in compliance with 49 C.F.R. 383.73.

14. The Board finds that the official database maintained by the Transportation Cabinet showed that Intervenor Lawson's CDL was active at the time he applied for the position and when he was promoted to the position. The Personnel Cabinet relied upon this official database to determine that Intervenor Lawson met the minimum qualifications for Highway Superintendent I.

15. The Board finds that Intervenor Lawson complied with federal mandates by submitting his medical certificate within a short timeframe after he was notified that his medical certificate had expired.

16. The Board finds that Intervenor Lawson met the minimum qualifications for Highway Superintendent I because the official database maintained by the Transportation Cabinet demonstrated that his CDL was valid and in force and no problem with his medical certificate was noted. The Board finds from the totality of the testimony that it would be unfair to Intervenor Lawson to determine that he did not meet the minimum qualifications when the official databased showed that his CDL was in force and that he was not provided notice by the Transportation Cabinet in accordance with their own procedures.

B. **Delete** Conclusions of Law numbers 2 and 3 and substitute the following:

2. The Board concludes that the Appellee Transportation Cabinet complied with KRS 18A.0751(4)(f) and 101 KAR 1:400 in appropriately considering the factors at the time of the promotion. Specifically, the Board concludes that the Transportation Cabinet gave appropriate consideration to Intervenor Lawson's qualifications which met the minimum requirements for Highway Superintendent I.

3. The Board rejects the argument by the Appellee Transportation Cabinet that the Hearing Officer acted inappropriately in calling and questioning witnesses regarding the validity of Intervenor Lawson's CDL and medical certificate. The Board finds that the Hearing Officer acted appropriately in inquiring regarding legitimate issues raised by the Appellants concerning whether or not Intervenor Lawson met the minimum qualifications for Highway Superintendent I. [KRS 18A.010(1), KRS 18A.075, KRS 13B.080(1) and (3)].

C. Delete the Recommended Order and substitute the following:

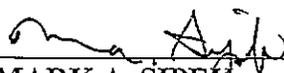
**IT IS HEREBY ORDERED** that the appeals of **DONALD ARVIN (APPEAL NO. 2014-109) AND MICHAEL GRUBBS (APPEAL NO. 2014-095) VS. TRANSPORTATION CABINET, PERSONNEL CABINET, AND CLARENCE LAWSON** are **DISMISSED**.

**IT IS FURTHER ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer on Remand as Altered be, and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order and the Appellants' appeals are **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

**SO ORDERED** this 14<sup>th</sup> day of October, 2015.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPER**  
**EXECUTIVE DIRECTOR**

A copy hereof mailed this date to:

Hon. William Fogle  
Hon. Dinah Bevington  
Mr. Donald Arvin  
Mr. Michael Grubbs  
Mr. Clarence Lawson