

**KENTUCKY PERSONNEL BOARD
MINUTES OF APRIL 17, 2009**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Tina Goodmann on April 17, 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 Gillis, Member
Mark A. Sipek, Executive Director and Secretary
Boyce A. Crocker, General Counsel
Linda R. Morris, Administrative Section Supervisor
Cynthia Perkins, Administrative Specialist

Board personnel absent:

John Dunaway, Member
Robert B. Frazer, Vice-Chair

2. **READING OF THE MINUTES OF REGULAR MEETING HELD MARCH 13, 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 stated that since the last Board meeting the Legislature had adjourned. He advised that neither HB 304 nor HB 325 passed. With there being no significant changes to KRS Chapter 18A; the Board will be required to use the present method for the 2010 Board election. However, there is one more legislative session before the next election to possibly get some changes through.

Mr. Sipek stated that the Court of Appeals issued an Opinion Reversing the Franklin Circuit Court and the Personnel Board in *Finance and Administration Cabinet v. Jeffrey McDonald, et al.*, 2007-CA-1626-MR, rendered April 10, 2009, to be published. The Court of Appeals held there is no exception to the one year statute of limitations for a continuing violation.

Mr. Sipek announced that the Personnel Board's opinions are now available on Westlaw from 1980 to the present. Mr. Sipek stated staff worked diligently to ensure that personal information was removed before publication. Mr. Sipek reported that there are a few gaps, as some of the books were not copied by IKON; however, the Board is working with Westlaw to get that corrected.

Lastly, Mr. Sipek presented Ms. Julie True with a plaque commemorating her tenure on the Board and thanked her for her service. [Ms. True was appointed by Governor Beshear to the Board on September 18, 2008, to replace former Board Member Jackson M. Andrews, and served until March 26, 2009.]

At the conclusion of Mr. Sipek's report, Chair Goodmann called the parties to come forward for oral argument.

4. ORAL ARGUMENTS:

Bradley Pike v. Transportation Cabinet

Present were the Appellant, Mr. Bradley Pike, with counsel, the Hon. Fred Short, and counsel for the Appellee, the Hon. Ed Logan, for oral argument. The parties answered questions from the Board.

At the conclusion of oral argument, Chair Goodmann called for the Personnel Cabinet's Report.

5. PERSONNEL CABINET'S REPORT:

Hon. Dinah Bevington, Acting Executive Director for the Office of Legal Services, was present for the Personnel Cabinet and reported the following:

Ms. Bevington stated that the Kentucky Human Resources Information System (KHRIS) has been delayed and there is no set date to go "live." However, she encourages the Board to see a demonstration of the new system.

The Personnel Cabinet is hosting a Diversity Symposium at the Transportation Cabinet today, should anyone want to stop by. Further, Ms. Bevington stated that the Personnel Cabinet, in partnership with other state agencies, launched a Money Works web site to help all employees in this difficult time and encouraged the Board to take a look at it.

In conclusion, Ms. Bevington informed the Board that Secretary Nikki Jackson has been named as one of the ten most influential women in Louisville. There will be a reception in her honor on April 23, 2009, at the Muhammad Ali Center and everyone is invited.

6. 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. (9:58 a.m.)

Ms. Gibson moved to return to open session. Ms. Cassidy seconded and the motion carried 3-0. (11:18 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. Bradley Pike v. Transportation Cabinet

Mr. Gillis moved to note Appellee's exceptions, Appellant's response and oral arguments and to accept the Final Order as altered and attached to these minutes dismissing the appeal. Ms. Cassidy seconded and the motion carried 4-0, with Chair Goodmann voting.

B. Arthur Hayden v. Cabinet for Health and Family Services

Ms. Gibson moved to note Appellant's exceptions and to accept the recommended order sustaining the appeal to the extent that Appellant's 2007 first interim review was not done properly; however, this did not affect the outcome of Appellant's final evaluation. Ms. Cassidy seconded and the motion carried 3-0.

C. Kim Travis v. Cabinet for Health and Family Services (2 appeals)

Ms. Gibson moved to note Appellant's exceptions and to accept the Final Order as altered and attached to these minutes sustaining the appeal to the extent that the Appellee did not comply with 101 KAR 2:180 in dealing with Appellant's calendar year 2007 evaluation. Ms. Cassidy seconded and the motion carried 3-0.

D. Gearldine Blanton v. Justice and Public Safety Cabinet

Mr. Gillis moved to accept the recommended order dismissing the appeal for lack of jurisdiction. Ms. Gibson seconded and the motion carried 3-0.

E. Sonia Diaz v. Transportation Cabinet and Mary Gatewood

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

F. Rupert Furgerson II v. Transportation Cabinet

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

G. Jason Perkins v. Justice and Public Safety Cabinet

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

H. Kenneth Smith 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.

I. Stewart Sparks v. Transportation Cabinet

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

J. Earl Wright v. Justice and Public Safety Cabinet

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

Show Cause Orders – Appeals Dismissed - No Response Filed

The following cases had show cause orders entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There were no responses submitted by the Appellants to the show cause orders.

- K. Jimmy Cagle v. Corrections
- L. Larry Curl v. Cabinet for Health and Family Services
- M. Angelia Hall v. Cabinet for Health and Family Services
- N. Beverly Smallwood v. Personnel Cabinet
- O. Andre Smith v. Labor Cabinet

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

8. **WITHDRAWALS:**

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

- A. Jeffery Hope v. Justice and Public Safety Cabinet
- B. Robert Hutcherson v. Personnel Cabinet
- C. Christopher Jones v. Transportation Cabinet
- D. Anthony Knipp v. Transportation Cabinet
- E. John McCann v. Transportation Cabinet
- F. Brandon May v. Personnel Cabinet
- G. Samuel D. Partin, Jr. v. Justice and Public Safety Cabinet
- H. Sharon Bryant v. Justice and Public Safety Cabinet
- I. Ruth Estep v. Transportation Cabinet
- J. Rodney Simpson v. Personnel Cabinet

9. **SETTLEMENTS:**

Mr. Gillis 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. Phillip Abell v. Cabinet for Health and Family Services
- B. Brenn Combs v. Justice and Public Safety Cabinet and Personnel Cabinet
(2 appeals)
- C. Melissa Francis v. Cabinet for Health and Family Services (mediated)

- D. Bonnie Harris v. Cabinet for Health and Family Services (mediated)
- E. Pamela Pettry v. Cabinet for Health and Family Services
- F. Charlotte Robinson v. Education and Workforce Development Cabinet
- G. Bryan Sharp v. Transportation Cabinet
- H. Brenda Stephens v. Tourism, Arts and Heritage Cabinet
- I. Peggy Washington v. Education and Workforce Development Cabinet (2 appeals)

10. **OTHER:**

Investigations:

1. Rebecca Smith:

Mr. Sipek stated that two individuals need to be interviewed and that he anticipates having a report at the May 2009 Board meeting.

2. Hiring of Returning Retirees:

Mr. Sipek stated that he received numerous responses from agencies; however, he will follow-up to see if there are any changes. Mr. Sipek stated that he anticipates having a report at the June 2009 Board meeting.

3. Starting Pay (New Hires v. Salary of Incumbents):

Mr. Sipek stated that a report would be forthcoming at the July 2009 Board meeting.

4. Doug Doerting and Patton Database:

Mr. Sipek advised that he and Mr. Crocker spoke with Chair Goodmann concerning these investigations. Mr. Sipek advised that instead of assigning a hearing officer, he and Mr. Crocker will look at it as more of a learning and a teaching perspective. The goal is to finalize these investigations by the December 2009 Board meeting.

Ms. Cassidy requested that the Board members be provided with background information. She remembers the publicity, but not the details. Mr. Sipek stated that he would provide a copy to any member wanting one, or he could provide a summary, considering the Doerting petition was over 200 pages. Nevertheless, when the report is completed it will include a summary.

5. Transportation Cabinet Reorganization – Request by Randall Arvin, et al.

Mr. Sipek advised that the appeals are still pending. No evidentiary hearings have been held as of this date. Mr. Crocker added that one appeal was dismissed based on the agency's motion, one appeal was withdrawn, and a show cause was entered on one appeal.

There being no further business, Ms. Gibson moved to adjourn. Ms. Cassidy seconded and the motion carried 3-0. (11:32 a.m.)

Christine J. Goodmann, Chair

Robert B. Frazer, Vice-Chair

Betty Gibson, Member

Suzanne Cassidy, Member

Larry Gillis, Member