

KENTUCKY PERSONNEL BOARD
MINUTES OF MAY 11, 2009

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

Board personnel present:

Christine J. Goodmann, Chair
Robert B. Frazer, Vice-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

2. **READING OF THE MINUTES OF REGULAR MEETING HELD APRIL 17, 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 4-0. [Chair Goodmann does not vote unless noted.] The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT:**

Mr. Sipek informed the Board that counsel for Appellants, Jeffrey McDonald, et. al. [*Finance and Administration Cabinet v. Jeffrey McDonald, et al., 2007-CA-1626-MR*], filed a Motion for Rehearing in the Court of Appeals. The Personnel Board will file a response and copies of both the motion and response will be provided at the June Board meeting.

Mr. Sipek announced that the Kentucky Association of Administrative Adjudicators [KAAA] CLE training was held on May 8, 2009, and concerned improving writing opinions and a two-hour session on ethics from the Hearing Officer's standpoint. Three former Board Members were present: Patrick Moores, Jack Andrews and Greg Higgins. Mr. Sipek stated that Mr. Crocker is President of KAAA.

At the conclusion of his report, Chair Goodmann called for the Personnel Cabinet's Report.

4. PERSONNEL CABINET'S REPORT:

The Hon. Dinah Bevington, Acting Executive Director for the Office of Legal Services, was not present for the Personnel Cabinet. However, Mr. Sipek presented the report on behalf of Ms. Bevington by means of an e-mail she sent to the Board as follows:

As far as things to report, we have had over 95,000 applicants so far in 2009. This has led to some hiring delays, due to the fact that registers are not being certified out as quickly as previously. It typically takes 20-30 days to get a register out to an agency, which previously was 3-5 days. This is an incredible increase and the Cabinet is doing a superb job in ensuring quality reviews of candidates before sending out the register. Thank goodness for our electronic system! Otherwise, we would have had all of these individuals physically come to the Cabinet which would, in all likelihood, have been unmanageable.

Further, she reported there is still no set date for the Kentucky Human Resources Information System (KHRIS) to go live; however, Mr. Gillis could answer any of the Board members' questions.

5. INVESTIGATIONS

A. Rebecca Smith v. Transportation and Veterans Affairs – Recommendation

Mr. Sipek advised that he was completing the Smith investigation and would provide his recommendation to the Board members and the parties prior to the next meeting, which will allow the parties time to respond or speak to the Board.

B. Doug Doerting Investigation:

Mr. Sipek provided the Board members with an overview of the Doerting investigation. Each member received a copy of the petition, the Minutes from May and June of 2005, and a chart (last updated October 1, 2008) showing the status of twenty appeals that were related to the investigation. Mr. Sipek stated that all the information in the chart is up-to-date, except the status of James Caudill's appeal. The Agency appealed to the Court of Appeals and the matter has now been dismissed.

Mr. Sipek advised that the Board's goal is to conclude pending investigations by year's end.

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 4-0. (9:48 a.m.)

Mr. Frazer moved to return to open session. Ms. Gibson seconded and the motion carried 4-0. (9:57 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. Eva Stevens v. Justice and Public Safety Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Gibson seconded and the motion carried 4-0.

Show Cause Order – Appeal Dismissed - No Response Filed

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

B. William Rogers v. Justice and Public Safety Cabinet

Ms. Cassidy moved to find that the Appellant had 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. Gillis seconded and the motion carried 4-0.

8. **WITHDRAWALS:**

Ms. Gibson moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Gillis seconded and the motion carried 4-0.

- A. Matthew Finley v. Department of Public Advocacy
- B. Mary Thompson v. Transportation Cabinet
- C. Crystal Mapel v. Transportation Cabinet

9. **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. Mr. Frazer seconded and the motion carried 4-0.

- A. Fredericka Caldwell v. Department of Public Advocacy (mediated)
- B. Paul Holbrook v. Justice and Public Safety Cabinet
- C. Erica Greene v. Justice and Public Safety Cabinet (mediated)
- D. Rita West v. Justice and Safety Cabinet (2 appeals)

10. **OTHER:**

Mr. Gillis asked about the Doerting investigation and what the report will be comprised of. Mr. Sipek stated that rather than specific findings, what occurred or what did not occur, of hundreds of employment decisions, the report would be more of suggestions to improve practices and how certain situations may be avoided in the future. Mr. Frazer asked who would be writing the report. Mr. Sipek advised that he and Mr. Crocker will be writing the report.

Chair Goodmann stated that there should be additional staff to handle investigations. Mr. Crocker stated that the Board tried to do that a few years ago, but was unable to do so due to budget constraints.

Ms. Cassidy stated, with no criticism of Mr. Sipek or Mr. Crocker, that if the Board had someone to specifically handle investigations, they could be resolved more quickly. Mr. Sipek stated the Board, pursuant to statute, is responsible for handling investigations and there should be a plan to resolve investigations in a meaningful timeframe.

There being no further business, Mr. Gillis moved to adjourn. Ms. Cassidy seconded and the motion carried 4-0. (10:20 a.m.)

Christine J. Goodmann, Chair

Robert B. Frazer, Vice-Chair

Betty Gibson, Member

Suzanne Cassidy, Member

Larry Gillis, Member