

GENERAL GOVERNMENT CABINET
Personnel Cabinet
(Amendment)

101 KAR 1:365. Appeal and hearing procedures.

RELATES TO: KRS Chapter 13B, 18A.075, 18A.0751, 18A.095, 344.030

STATUTORY AUTHORITY: KRS 13B.170, 18A.075, 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 13B.170 authorizes an agency to promulgate administrative regulations to carry out the provisions of KRS Chapter 13B and enact administrative hearing procedures. KRS 18A.075 provides that the Personnel Board shall promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 provides that the Personnel Board shall promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings. This administrative regulation establishes Personnel Board hearing procedures.

Section 1. Definitions.

- (1) "Because of sex" or "on the basis of sex" is defined by KRS 344.030(8).
- (2) "Qualified individual with a disability" is defined by KRS 344.030(1).
- (3) "Reasonable accommodation" is defined by KRS 344.030(6).
- (4) "Religion" is defined by KRS 344.030(7).
- (5) "Undue hardship" is defined by KRS 344.030(9).

Section 2. An appeal of an action alleged to be based on discrimination shall be governed by the terms defined in Section 1 of this administrative regulation.

Section 3. Filing.

- (1) An appeal or a document relating to an appeal shall be filed with the Personnel Board through the office of the executive director within the time period set forth in KRS 18A.095.
- (2)
 - (a) An appeal, motion, request, objection, exception, response, witness list or other document may be filed by a party with the board by means of facsimile transmission or other electronic means including email.
 - (b) If a party transmits a document to the board by facsimile transmission or other electronic means, they shall attempt to transmit the document to all parties by the same method.
- (3) To be timely filed, a document transmitted by facsimile or other electronic means shall be received by the board within the statutory or regulatory times specified for filing and be received by the board no later than midnight on the last day for filing.
- (4) The submission of an original copy of a facsimile transmission or email shall not be required, unless upon request.
- (5) A state employee shall not use state time, equipment, materials, or personnel in pursuing an appeal without the advance written permission of an appointing authority in their employing agency.
- (6) An appeal shall be heard in Franklin County, Kentucky.

Section 4. Designation of Hearing Officer.

- (1) Unless otherwise directed by the board, the executive director shall assign a hearing officer or officers to an appeal.
- (2) If more than one (1) hearing officer is assigned, one (1) shall be designated as chief hearing officer.

(3) If an appeal will be heard by the full board, the board shall designate a chief hearing officer.

Section 5. Continuances.

(1) A continuance of a scheduled hearing may be granted by a hearing officer for good cause.

(2) The hearing officer has the discretion to require that a request for continuance must:

- (a) Be written;
- (b) State the reason for the request;
- (c) Include proposed dates for rescheduling the hearing; and
- (d) Be filed with the board.

(3) The hearing officer has the discretion to require that any objection to a request for continuance must:

- (a) Be written;
- (b) State the reason for the objection to the request for continuance; and
- (c) Be filed with the board.

(4)

(a) At the direction of the hearing officer, the executive director may execute and transmit to all parties an interim order either granting or denying the request for continuance.

(b) If the request for continuance is granted, the interim order shall state the date on which the hearing has been rescheduled or that the hearing has been continued generally.

Section 6. Prehearing Procedures.

(1) A motion, request, or filing shall be in writing, filed with the board through the office of the executive director, and served on all parties.

(2) Unless an interim order provides for review by the board prior to the conclusion of a hearing, which shall only be granted at the sole discretion of the hearing officer, the board shall review an interim order when it considers the recommended order, record, and exceptions.

(3) If an employee retains counsel subsequent to filing an appeal, their attorney may be required to file a written entry of appearance.

(4) An employee shall notify all parties and the board in writing of a change of address.

(5)

(a) A Kentucky Personnel Board subpoena form shall be available in the office of the executive director and shall be issued by the executive director.

(b) Preparation and service of the subpoena and compliance with the subpoena shall be the responsibility of the party requesting the subpoena.

(6) A deposition may be taken in an extraordinary circumstance and upon authorization by the hearing officer. A request to take a deposition shall be filed at least fifteen (15) calendar days prior to the scheduled hearing. An objection to the request shall be filed prior to the scheduled hearing.

(7) At the discretion of the hearing officer, two (2) or more appeals that involve the same or similar facts may be consolidated. Upon motion of a party, or upon their own motion, the hearing officer may join other parties as necessary to appropriately consider the matter.

(8) An agreed settlement shall be submitted in writing for review by the Personnel Cabinet Secretary and final action by the board.

Section 7. Conduct of Hearing.

(1) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal.

(2) A party shall provide at least four (4) copies of an exhibit that is to be introduced as evidence. The parties may exchange documents through appropriate electronic means, including email. The hearing officer shall have the discretion to appropriately fashion the evidentiary record at all times.

Section 8. Board Review and Action.

(1) A response to a written exception to a recommended order may be filed by a party within fifteen (15) calendar days after the date the written exception is filed with the board. A response shall be:

- (a) In writing; and
- (b) Served on all parties.

(2) At the request of a party or on its own motion, the board may permit oral arguments before the full board. A request for oral argument shall be:

- (a) In writing; and
- (b) Filed with the board within fifteen (15) days of issuance of a recommended order.

(3) A final order shall be prepared, executed, and entered at the direction of the board by the secretary to the board.

Section 9. Incorporation by Reference.

(1) The following forms are incorporated by reference:

- (a) "Kentucky Personnel Board Appeal Form", 1-2018; and
- (b) "Kentucky Personnel Board Subpoena Form", 2-90.

(2) These forms may be inspected, copied, or obtained at the office of the Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

MARK A. SIPEK, Executive Director

APPROVED BY AGENCY: August 25, 2021

FILED WITH LRC: August 25, 2021 at 9:19 a.m.

PUBLIC HEARING AND COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 22, 2021, at 9:30 a.m. Eastern Time at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through November 30, 2021. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Stafford Easterling General Counsel, Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky 40601, phone (502) 564-7830, fax (502) 695-5799, email stafford.easterling@ky.gov.