

GENERAL GOVERNMENT CABINET
Personnel Cabinet
(Amended at ARRS Committee)

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 ~~requires/provides that~~ the Personnel Board ~~to/shall~~ promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 ~~through/to~~ 18A.200. KRS 18A.0751 ~~requires/provides that~~ the Personnel Board ~~to/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 ~~established/set forth~~ in KRS 18A.095 ~~[after receiving notification of the penalization or after becoming aware of the penalization through the exercise of due diligence].~~

(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, the party/they/he shall attempt to transmit the document to all parties by the same method ~~[facsimile transmission].~~

(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 ~~established/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 requested/upon request.

~~(5) [be received by the Personnel Board no later than three (3) business days after transmission or the document transmitted shall be voided unless good cause is shown.]~~

~~[(5)] [The date of filing of a document filed by facsimile transmission shall be the date the original of the document was received by the board, if the board fails to receive the facsimile transmission.]~~

~~[(6)]~~ 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) ~~((7))~~ An appeal shall be heard in Franklin County~~[Frankfort]~~, 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 chairman of]~~ the board shall designate a~~[serve as the]~~ 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 shall have ~~has~~ the discretion to require that a request for continuance shall ~~must~~ ~~[A request for a continuance shall]:~~

(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. ~~[; and]~~

~~[(e)] [Be mailed to all parties at least ten (10) days prior to the scheduled hearing.]~~

(3) The hearing officer shall have ~~has~~ the discretion to require that any objection to a request for continuance shall ~~must~~ ~~[An objection to a request for a continuance shall]:~~

(a) Be written;

(b) State the reason for the objection to the request for continuance; and

(c) Be filed with the board. ~~[; and]~~

~~[(d)] [Be mailed to all parties at least five (5) days prior to the scheduled hearing.]~~

(4)

(a) At the direction of the hearing officer, the executive director may~~[shall]~~ 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~~[his]~~ appeal, ~~that~~~~[their]~~~~[his]~~ attorney may be required to~~[shall]~~ 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 ~~[Upon agreement of all parties and approval by the]~~ hearing officer, two (2) or more appeals ~~that~~^[which] involve the same or similar facts may be consolidated. Upon motion of a party, or upon the hearing officer's~~[their]~~^[his] 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.~~[Copies shall be prepared prior to the hearing.]~~

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)~~[five (5)]~~ 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-~~[1]~~2018; and
- (b) "Kentucky Personnel Board Subpoena Form", 2-~~[1]~~190.

(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.

(15 Ky.R. 1719; eff. 3-8-1989; 16 Ky.R. 2250; eff. 6-10-1990; 17 Ky.R. 2756; 4-10-1991; 19 Ky.R. 80; 866; eff. 10-8-1992; 21 Ky.R. 460; eff. 9-14-1994; 23 Ky.R. 2193; 2711; eff. 1-13-1997; 24 Ky.R. 387; 852; eff. 10-13-1997; TAm eff. 1-22-2018; 48 Ky.R. 1224, 2192; eff. 5-3-2022.)

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