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I. HISTORICAL DEVELOPMENT

- A. 1960 - KRS 18 passed, establishing the Merit System
 - 1. Personnel Board operated by the Commissioner of Personnel
 - 2. Personnel Commissioner a merit employee
- B. 1972 - Personnel Commissioner appointed by Governor
- C. 1982 - KRS 18A, Personnel Board made independent of Department of Personnel
 - 1. Two elected merit employee members added
 - 2. Board given own staff and budget
 - 3. Board given oversight of Department of Personnel whose job is to administer Merit System
- D. 1986 - SB 340
 - 1. Broadened scope of appealable offenses to include fines, layoffs, suspensions, termination, discrimination and employee evaluations
 - 2. Perceived penalizations - grievances and reclassifications
 - 3. Restriction of *ex parte* communication

4. Stipulates use of required appeal form and instructs that employees must be given form by agency
5. Enacts employee evaluation form
6. Prohibits employee elected Board members from hearing cases

II. ORGANIZATION OF THE BOARD

A. Seven members – KRS 18A.045

1. Five appointed to staggered terms by Governor – KRS 18A.050
 - a. New Governor appoints two during first year in office and one each year thereafter
 - b. Names of current appointees:
 - Brian J. Crall, Chair
 - Mark O. Haines, Vice Chair
 - Beverly H. Griffith
 - William J. Byrley
 - Catherine J. Monteiro
 2. Two members elected by merit employees – KRS 18A.0551
 - a. Elected in third year of Governor's term
 - b. Must be full-time merit employee
 - c. Names of current elected members:
 - Heather C. Wagers
 - Richard M. Waite II
 - d. Elections administered by Personnel Board (first time 2006)

B. Board staff

1. Executive Director
2. Administrative Section Supervisor
3. General Counsel

4. Two Administrative Specialist IIIs
5. Ten contract attorneys (hearing officers)
6. Board office and hearing rooms located at 1025 Capital Center Drive, Suite 105

C. Appeal processing steps

1. What is appealable to Board:
 - a. Classified Employees
 1. Dismissals – KRS 18A.095(1) – (7)
 2. Demotions, suspensions, and penalization – KRS 18A.095(1) and (8)
 - b. Unclassified Employees – KRS 18A.095(9)
Martin v. Corrections Cabinet of Com., 822 SW2d 858 (Ky. 1991)
 - c. Right to inspect or copy records – KRS 18A.095(11)
 - d. Discrimination – KRS 18A.095(12) [Classified Employee]; KRS 18A.095(14) [Any Employee Applicant or Eligible]; and KRS 18A.140(1) ["No Person"]
 - e. Evaluations – KRS 18A.095(15) and 101 KAR 2:180
 - f. Penalization Defined at KRS 18A.005(24)

Penalization shall include, but not be limited to, demotion, dismissal, suspension, fines and other disciplinary actions, involuntary transfers; salary adjustments; any action that diminishes the level, rank, discretion, or responsibility of an employee without proper cause, including a reclassification or reallocation; and the abridgement or denial of other rights granted to state employees.

Other Examples: Failure to reclassify - *Com. Personnel Board v. Gregory*, 864 SW2d 919 (Ky. App. 1993) and Failure to promote – *Bowling v. Natural Resources and Environmental Protection Cabinet*, 891 SW2d 406 (Ky. App. 1994)

2. What is not appealable? Written reprimands
Pamela Perkins v. Cabinet for Health and Family Services
3. Distinguish from grievances – 101 KAR 1:375, Section 1, Definition; Grievance. A grievance is a complaint filed by an employee which concerns some aspect of his conditions of employment over which his cabinet or agency has control and which has occurred or of which the employee has become aware, through the exercise of due diligence, within thirty (30) days prior to filing.

Two distinct processes - (1) **Appeal** to the **Personnel Board** and (2) **Grievance** to the **immediate supervisor**, ultimately to the **Appointing Authority**

4. Outline mechanics – audio/video recordings
 5. Discuss pre-hearing conferences
- D. Executive Director and General Counsel functions (KRS 18A.090)
- E. Hearing Officers
1. Manner and method staff deals with hearing officers
 2. Altering or amending recommended orders – when Board should consider going against precedent
 3. Pitfalls – changing findings of fact, doing equity in disregard of law allowing personal knowledge in general to affect decisions.
- F. Everyday matters
1. Open records requests
 2. Budget
 3. Speak before groups and conferences
 4. Deal with hearing officers and attorneys
 5. Scheduling
 6. Legislative business
 7. Answer questions of employees, attorneys and agency personnel

- G. Records Maintained
 - 1. Archives
 - 2. Final orders
 - 3. Reference file

- H. Manner and method staff deals with Board – presenting information, pointing out issues for consideration

III. RESPONSIBILITIES OF THE BOARD

- A. Promulgate regulations – KRS 18A.075(1) and 18A.0751
- B. Conduct investigations on behalf of agencies, employees, public, etc. – KRS 18A.075(2)
- C. Schedule, hear and decide appeals
 - 1. Primary responsibility is to hear cases and conduct investigations
 - 2. Board is quasi-judicial body
 - 3. Highest level of review in Merit System
- D. Oversees Merit System
- E. Jurisdiction provided in KRS 18A.095
 - 1. Covers what can be appealed
 - 2. States what relief Board may grant – KRS 18A.095(22)

IV. APPEAL AND HEARING PROCEDURES (101 KAR 1:365 & KRS 13B)

- A. Some appeals must be filed within 60 days [KRS 18A.095(7) and (8)]
- B. New statute of limitations (KRS 18A.095)(29) (1 year)
- C. Hearing must be held as soon as practical after filing appeal and decision rendered within 60 days of closing of case
- D. Both sides may have an attorney
- E. Board has subpoena power
- F. Pre-hearing conference may be held
- G. Hearing officer assigned to preside
- H. Hearings are open to the public
- I. Quasi-judicial body, informal rules of evidence and procedures apply
- J. Burden of proof decided by hearing officer
- K. Hearing officer writes recommended order which includes:
 - 1. Findings of Fact
 - 2. Conclusions of Law
 - 3. Recommendations
- L. Parties have 15 days to file exceptions, 5 days for response
- M. Board reviews case and recommended order at its meeting (second Friday of each month) and issues a final order
- N. All parties must comply or appeal to Franklin Circuit Court

V. APPEALS FROM CLASSIFIED EMPLOYEES

- A. Full time
- B. Part time without status, temporary
- C. Interim
- D. No class action or test case appeals [18A.095(19)]

VI. APPEALS FROM UNCLASSIFIED EMPLOYEES [18A.095(9)]

- A. Can appeal if dismissed, suspended, etc., for cause (30 days)

VII. CONDUCTING APPEALS

- A. No *ex parte* communications or public comments
 - 1. Criminal sanctions dealing with potential appeal inquiries
- B. Who may hear appeals [18A.095(21)]
 - 1. Executive Director
 - 2. General Counsel
 - 3. Contract Hearing Officers
 - 4. Any non-elected Member of Board
- C. Any appeal heard by less than full Board shall be reviewed by full Board
- D. Statutory timeframes (60 and 90 days) – problems Meeting
- E. Need for pre-hearing conferences

VIII. TOPICS IN PERSONNEL BOARD CASES

- A. Internal mobility register
- B. Detail to special duty (101 KAR 2:036 and 101 KAR 2:076)
- C. Reclassification v. reallocation
- D. Failure to receive promotion
 - 1. KRS 18A.0751(4)(f)
 - 2. 101 KAR 1:400
 - 3. Use of additional factors
- E. "Acting" positions
- F. Desk audits
- G. Performance evaluations [KRS 18A.110(1)(i) and (7)(j) and 101 KAR 2:180]
 - 1. Initial requirements for filing
 - 2. Board's authority to change
- H. Layoff rules
- I. Re-employment and reversion rights
- J. Prohibition against discrimination and political activities (KRS 18A.140)
- K. Resignation
- L. Special Investigative Leave
- M. Transfer
- N. Removal of discretion or responsibility