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**ORDERED NOT PUBLISHED BY KENTUCKY SUPREME COURT:
APRIL 16, 2008
(FILE NO. 2007-SC-0518-D)**

Commonwealth of Kentucky

Court of Appeals

NO. 2005-CA-002287-MR

PAMELA PERKINS

APPELLANT

v.

APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER L. CRITTENDEN, JUDGE
ACTION NO. 04-CI-01672

CABINET FOR HEALTH AND FAMILY
SERVICES; HOWARD J. KLEIN,
APPOINTING AUTHORITY; AND
KENTUCKY PERSONNEL BOARD

APPELLEES

OPINION AFFIRMING

** ** * ** ** *

BEFORE: COMBS, CHIEF JUDGE; MOORE AND NICKELL, JUDGES.

NICKELL, JUDGE: Pamela Perkins has appealed the Franklin Circuit Court's
affirmance of the Kentucky Personnel Board's (Board) dismissal of her appeal of a
disciplinary action. For the reasons set forth herein, we affirm.

Perkins is an employee of the Cabinet for Health and Family Services (Cabinet). In March 2004 she received a written reprimand for failure to follow proper procedures in obtaining approval to leave her work station prior to the end of her shift.¹ She filed an appeal to the Board challenging the reprimand on the basis that it constituted penalization from the Cabinet without just cause. The Cabinet filed a motion to dismiss the appeal based upon lack of jurisdiction. The hearing officer for the Board agreed, recommending the appeal be dismissed for lack of jurisdiction citing the sole remedy available for employees receiving written reprimands was set forth in Kentucky Revised Statutes (KRS) 18A.020(2)(c). The full Board remanded the matter to the hearing officer with instructions to conduct a full evidentiary hearing regarding the jurisdictional issue. After each party presented its respective arguments concerning the jurisdictional issue, the hearing officer again recommended the Board dismiss the appeal for want of jurisdiction. The Board agreed with the hearing officer's findings and entered an order on November 16, 2004, dismissing the appeal for lack of jurisdiction.

Perkins thereupon appealed the Board's decision² to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100. After a detailed review of the parties' arguments and the applicable law, the Circuit Court found that written reprimands

¹ A review of the record reveals Perkins left her work station at approximately 10:05 a.m. on February 27, 2004, for unspecified medical reasons and did not return for the remainder of the day. Her request for leave for that date was later granted upon a showing of proof. However, she apparently failed to obtain prior approval before exiting her work station, in violation of 101 Kentucky Administrative Regulation (KAR) 2:095 Section 2(5).

² We note that Perkins raised other issues in her appeal to the Franklin Circuit Court. However, these issues concerned the dismissal of a different appeal to the Board, unrelated to the written reprimand at issue in the present proceeding.

were not to be included in KRS 18A.005(24) through the term “other disciplinary actions” and such matters are not subject to appeal to the Board under KRS 18A.095(9). For these reasons, the circuit court denied Perkins' appeal. This appeal followed.

The sole issue to be addressed in this appeal concerns whether a written reprimand is a “disciplinary action” rising to the level of “penalization” as those terms are used in the statutes. Actions deemed to be penalizations may be appealed to the Board, whose decisions may then be appealed to the Franklin Circuit Court, all pursuant to the statutory scheme set forth in KRS 13B.140 and 18A.100. Actions which do not rise to the level of penalizations may not be appealed under these statutes, but are generally afforded other administrative remedies. Thus, whether written reprimands are to be classified as “penalizations” as identified under KRS 13B.140 and 18A.100 will have far reaching impact on the Board and state government employees because resolution of this issue will determine available remedies for those allegedly harmed by issuance of a written reprimand. Resolution of this matter is a question involving the proper interpretation of statutory authority, and is a question of law to be reviewed de novo. *Revenue Cabinet v. Comcast Cablevision of the South*, 147 S.W.3d 743 (Ky.App. 2003).

The term “penalization” is defined in KRS 18A.005(24) as follows:

“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 abridgment or denial of other rights granted to state employees.

The phrase “other disciplinary actions” as set forth in KRS 18A.005(24) is undefined within the statutes. Written reprimands are discussed, although not specifically defined, in KRS 18A.020. Thus, the proper interpretation of “other disciplinary actions” is also a matter of law. If ambiguity exists on the face of a statute, the rules of statutory construction must be applied to give proper effect to the statute as written. However, if “the words of the statute are clear and unambiguous and express the legislative intent, there is no room for construction or interpretation and the statute must be given its effect as written” (internal quotation marks and citations omitted). *McCracken County Fiscal Court v. Graves*, 885 S.W.2d 307, 309 (Ky. 1994).

The basic rule of statutory interpretation is “to ascertain and give effect to the intention of the Legislature and that intention must be determined from the language of the statute itself if possible.” *Comcast*, 147 S.W.3d at 748 (quoting *Moore v. Alsmiller*, 289 Ky. 682, 160 S.W.2d 10, 12 (1942)). Further, in the case of undefined terms, *Kentucky Unemployment Insurance Commission v. Jones*, 809 S.W.2d 715, 716 (Ky.App. 1991), requires such terms to be construed “according to their common and approved usage.” See also *Claude N. Fannin Wholesale Co. v. Thacker*, 661 S.W.2d 477 (Ky.App 1983); and KRS 446.080(4).

Thus, we must first consider the common usage of the terms “reprimand” and “disciplinary action.” A reprimand, as the term is commonly used, is a severe, formal, or public correction of an unapproved action. *Merriam-Webster's Collegiate Dictionary* 991 (10th ed. 2002). Pursuant to KRS 18A.020(2)(c), governmental

employee reprimands are issued “for misconduct, other infraction, or failure to perform [the employee's] duties in a proper or adequate manner.” Such reprimands are to be in writing and must follow a set protocol for content intended to inform the affected employee of such action, to advise of his or her corresponding rights, and to provide notice to him or her that such writing will be filed in the employee's personnel records. Clearly, such reprimands equate to a “disciplinary action” for purposes of KRS Chapter 18A, and neither of the parties argues to the contrary.

Second, we must consider whether a disciplinary action such as a written reprimand can properly be characterized as a “penalization” as that term is defined under KRS 18A.005(24). The Board argues the use of a written reprimand, though technically a disciplinary action, does not rise to the level of a “penalization” as contemplated in KRS 18A.005(24) because there is no quantifiable impact upon the employee with respect to pay, status, or responsibility. Furthermore, the Board argues the sole remedy for one allegedly aggrieved by a written reprimand is the filing of a written response, which rebuttal is to be placed in the affected employee's personnel file along with the written reprimand, pursuant to KRS 18A.020(2)(c). The Board argues this interpretation has been the long-standing and traditional view of the Board, the Cabinet, the courts, the Office of the Attorney General, and many other state agencies. Finally, the Board urges us to adopt the view that a written reprimand is the first formal step in a multi-layered disciplinary process whereby employees are provided reasonable formal notice of a needed corrective action prior to imposition of a tangible penalty.

In contrast, Perkins argues the language of KRS 18A.005(24) and 18A.095(9), when read together, is sufficient to include written reprimands in the definition of “penalizations.” Further, she argues that KRS 18A.020(2)(c) does not expressly indicate that the filing of a written response is the sole remedy for an employee who has received a written reprimand.

After carefully considering the well-stated arguments of each party, we must agree with the Board. The statutes in question are written in plain, simple language, with few terms of art included. KRS 18A.005(24) lists several specific actions which are to be categorized as penalizations. While this listing also references “other disciplinary actions,” we find no ambiguity on the face of the statute. A review of the specified disciplinary actions clearly shows the legislative intent was to include only those actions which had a direct and immediate impact on the affected employee, such as loss of rank, responsibility, pay, or discretion. Written reprimands do not result in such penalizing impact. While Perkins argues that the placement of a reprimand in an employee's personnel file could impact the employee in the future with respect to raises, promotions, or similar actions, this possibility is far too speculative to induce us to classify reprimands along with the specific penalizations enumerated by the Legislature in KRS 18A.005(24). Such judicial extension of a clear and unambiguous legislatively enacted statute would be contrary to our proper judicial role of interpreting and applying the law.

The definition of “penalization” was amended during the same legislative session that produced KRS 18A.020(2)(c).³ The Legislature is presumed to know the state of the law when it acts. *St. Clair v. Commonwealth*, 140 S.W.3d 510, 570 (Ky. 2004); *Shewmaker v. Commonwealth*, 30 S.W.3d 807, 809 (Ky.App. 2000). The Legislature saw fit to specifically address written reprimands under KRS 18A.020(2)(c), thereby creating a separate administrative remedy short of appeal to the Board. Thus, reason dictates that the Legislature intentionally removed written reprimands from the ambit of “penalizations” enumerated under KRS 18A.005(24).

We find the obvious exclusion of written reprimands from KRS 18A.005(24) and the specific creation of an administrative remedy for such disciplinary actions in KRS 18A.020(2)(c) to be determinative of the legislative intent to foreclose appeal to the Board for those allegedly aggrieved by receipt of a written reprimand. The law, as it applies to the issues presented herein, did not grant the Board jurisdiction to hear Perkins' appeal, and therefore the Circuit Court committed no error in its decision. We therefore affirm the Circuit Court's dismissal of Perkins' appeal for want of jurisdiction.

ALL CONCUR.

³ Both provisions were implemented after a complete revision of the personnel laws governing classified employees in 1986. KRS 18A.020(2) has not been modified since that time.

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No brief filed.