

Commonwealth of Kentucky
Kentucky Board of Physical Therapy
Agency Case No. C2017-06
Administrative Action No. 17-KBPT-0367



Commonwealth of Kentucky,
Board of Physical Therapy

Complainant

Final Order

Amber Rigsby, PTA
(Certificate No. A02496)

Respondent

* * * * *

THIS MATTER is before the Board on the January 17, 2019 Findings of Fact, Conclusions of Law, and Recommended Order of Default of the Hearing Officer, James L. Dickinson. Having considered said Report and Recommendation, and there being no exceptions filed thereto, and being sufficiently advised, the Board hereby ORDERS AND ADJUDGES as follows:

1. The Hearing Officer's November 26, 2018 Findings of Fact, Conclusions of Law, and Recommended Order of Default is HEREBY ADOPTED AND INCORPORATED HEREIN BY REFERENCE, as if set forth verbatim.

2. Physical Therapy Assistant Certificate No. A02496 issued to Amber Rigsby, PTA, is hereby REVOKED.

It is so ordered.

Dates this 17th date of January, 2019

Kentucky Board of Physical Therapy

By:

Dan Martin, PT
Board Chair

Right to Appeal

Pursuant to KRS 13B.120, you are being informed that all final orders of an agency shall be subject to judicial review in accordance with the provisions of this Chapter. Under KRS 327.075(4) any person aggrieved by a final order of the board denying, suspending, or revoking his/her credential may appeal to the Franklin Circuit Court within thirty (30) days after the final order of the agency is mailed or delivered by personal service. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

Certificate of Service

I hereby certify that a true and accurate copy of the foregoing Final Order was mailed via certified mail, return receipt requested and first-class postage prepaid this 18th day of January, 2019 to:

Amber Rigsby
3733 Carol Road
Louisville, KY 40218
Respondent

Keith Poynter
450 South Third Street
Louisville, KY 40202
Counsel for the Board



Scott D. Majors, Executive Director

COMMONWEALTH OF KENTUCKY
KENTUCKY BOARD OF PHYSICAL THERAPY
AGENCY CASE NO. C2017-06
ADMINISTRATIVE ACTION NO. 17-KBPT-0367



KENTUCKY BOARD OF PHYSICAL THERAPY

COMPLAINANT

v. HEARING OFFICER'S FINDINGS OF FACT;
CONCLUSIONS OF LAW
AND
RECOMMENDED ORDER

NOTICE OF EXCEPTION AND APPEAL RIGHTS

AMBER RIGSBY, PTA
(Certificate No. A02496)

RESPONDENT

* * * * *

I. INTRODUCTION

THIS MATTER pertains to a telephonic prehearing conference, held on November 2, 2018, to which the Respondent, Amber Rigsby, PTA, (Certificate No. A02496) was ordered to appear and show cause as to why she should not be held in default, pursuant to KRS 13B.080(6), for failing to comply with the Orders of this Hearing Officer after being properly noticed and summoned with a copy of a Motion for Summary Judgment / Default Judgment as filed by the Complainant, Kentucky Board of Physical Therapy (the Board) on October 16, 2018, after the Respondent failed to appear for a Prehearing Conference as ordered on October 1, 2018.

The Hon. Louis D Kelly appeared on the behalf of the Board. Ms. Rigsby failed to be available by phone and thus, did not appear at the show cause proceeding. Presently pending before the Hearing Officer at that time is the Board's Motion for Summary Judgment, filed on October 16, 2018, which the Hearing Officer will treat as a Motion for Entry of a Recommended Order of Default. In its Motion, the counsel for the Board attached the following documents:

1. Judgment of Guilty Plea – Diversion, *Commonwealth of Ky. v. Amber R. Rigsby*, Boyd Circuit Ct. File No. 17-CR-00113, entered August 21, 2017
2. Uniform Citation, filed April 3, 2017
3. Order and Notice of Immediate Temporary Suspension, dated April 17, 2017
4. Affidavit of Scott D. Majors, dated October 15, 2018

On October 18, 2018, the Hearing Officer, entered an Order requiring Ms. Rigsby to file a Response to the Motion for Summary Judgment by October 29, 2018 and to be available for a show cause conference on November 2, 2018. As noted, Ms. Rigsby failed to file a response and failed to contact the Hearing Officer's staff by November 2, 2018.

For the reasons to be set forth below, the Hearing Officer GRANTS the Board's Motion for Summary Judgment / Default and RECOMMENDS to the Board that it take disciplinary action adverse to Ms. Rigsby Certificate.

II. FINDINGS OF FACT

After reviewing the entire record and based on a preponderance of the evidence thereof, the Hearing Officer makes the following Findings of Fact and Conclusions of Law:

1. Rebecca A. Rigsby (Rigsby) is the holder of Certificate No. A02296 as issued by the Board, pursuant to KRS Chapter 327.

2. Pursuant to KRS 327.070(1) and 201 KAR 22:052, § 3(6), the Executive Director of the Board compiled and issued a Notice of Administrative Hearing (the Notice) on December 18, 2017, in which Rigsby was ordered to appear and defend her license to practice physical therapy against the allegations set forth in the Notice. Rigsby was further directed to file a written response within 20 days of service of the Notice. In its administrative complaint the Board alleged that Ms. Rigsby had been charged on March 31, 2017, with a violation of Operating a Motor Vehicle Under the Influence of Drugs or Alcohol (1st Offense) (Count 1); Possession of a Controlled Substance, 1st Offense (Count II); and Possession of Drug

Paraphernalia (Count III). Based on the charges set forth above, the Board alleged in its complaint that there was probable cause to believe Ms. Rigsby had violated the provisions of KRS 327.070(2)(a) by indulging in an excessive use of alcoholic beverages or controlled substances. The Notice of Administrative Hearing and Complaint were served on Ms. Rigsby at her last known address of 440 37th St, Catlettsburg, KY, 41129 in conformity with the requirements of KRS 13B.050.

3. On December 20, 2017, the Administrative Hearings Branch issued a Notice Assigning Case and Order Setting Filing Requirements and Scheduling Prehearing Conference in which Rigsby was informed a telephonic prehearing conference would be held on January 26, 2018, which was rescheduled to February 2, 2018 at 10:30 a.m., ET. Although a telephone number had been provided by the Board's record custodian, Rigsby nevertheless was instructed to provide the Administrative Hearings Branch with a telephone number by which she could be reached. The Notice Assigning Case was sent by regular mail to the address supplied by the Board. This document was sent to Rigsby in conformity with the requirements of KRS 13B.050.

4. Rigsby failed to available by telephone on February 2, 2018, at 10:30 a.m. ET. Rigsby also did not provide the Administrative Hearings Branch with a telephone number as ordered. Additionally, Rigsby did not file a written response as required under 201 KAR 22:052, Section 3(6)(a)(2). At the request of the counsel for the Board, the Hearing Officer thereafter issued on February 5, 2018, an Order for Rigsby to Appear and Show Cause, which was sent to Rigsby's last known address. The Notice instructed Rigsby to be available by telephone on March 5, 2018, at 3:30 p.m. ET., and show cause as to why a default order should not be entered against her in favor of the Board. The Notice further instructed informed Rigsby that she would be contacted at the telephone number provided by the Board.

5. On March 5, 2018, at 3:30 p.m. ET., the Hearing Officer convened the show cause conference, Louis D. Kelly appeared on the behalf of the Board. Ms Rigsby was not available by phone for the show cause conference. At that time, counsel for the Board informed the Hearing Officer he had been contacted by Ms. Rigsby and she had agreed to sign a settlement agreement. As part of the settlement agreement, Ms Rigsby also agreed to appear at the next Board meeting. Assuming that the Board approved the settlement agreement, the Board would move to dismiss the Complaint.

6. On March 27, 2018, after being informed that Ms. Rigsby had not yet signed the Agreed Order, the Hearing Officer issued an order scheduling a prehearing conference for May 25, 2018. The Order instructed Ms. Rigsby to be available by telephone.

7. Thereafter the Hearing Officer conducted prehearing conferences on May 25, 2018, August 6, 2018, and August 17, 2018. At the August 17, 2018, prehearing conference, the Hearing Officer was able to talk to Ms. Rigsby who stated that she would attend the Board meeting scheduled for September 20, 2018, in Somerset, Kentucky. Accordingly, the Hearing Officer issued on August 20, 2018, an Order scheduling a prehearing conference for September 28, 2018, at 3:30 p.m. ET.

8. On September 28, 2018, at 3:30 p.m. the Hearing Officer convened the prehearing conference. The Hon. Lewis Kelly appeared for the Board. Ms. Rigsby was not available and did not answer her phone. At that time, the Board attorney informed the Hearing Officer that Ms. Rigsby failed to appear at the Board meeting in Somerset, Ky.

9. At the request of counsel for the Board, the Hearing Officer issued on October 1, 2018, an Order directing Ms. Rigsby to be available and show cause as to why a recommended order adverse to her interests should not be entered. The Notice instructed Rigsby to be available

by telephone on November 2, 2018. The Notice further instructed informed Rigsby that she would be contacted at the telephone number provided by the Board. The Hearing Officer also instructed counsel for the Board to file a Motion for Summary Judgment, which was filed on October 16, 2018. Thereafter, the Hearing Officer issued an Order instructing Ms. Rigsby to file and serve a response to the Motion for Summary Judgment on or before October 29, 2018

10. On November 2, 2018, the Hearing Officer convened the show cause conference, Louis D. Kelly appeared on the behalf of the Board. Rigsby was not available by phone for the show cause conference. As of the date of the prehearing conference, Ms. Rigsby had not filed a response to the Motion for Summary Judgment.

III CONCLUSIONS OF LAW

11. KRS 13B.080(6) provides that a party, who is properly served under KRS 13B.050, may be held in default if she fails to appear or participate in a prehearing conference or otherwise fails to comply with an Order of the Hearing Officer. In this case, Rigsby, despite being properly served at her last known address, failed to properly respond to the allegations set out in the Notice, failed to appear at a prehearing conferences, scheduled for September 28, 2018, and failed to comply with the Hearing Officer's Order to Appear and Show Cause as issued on October 1, 2018, by not being available by phone on November 2, 2018. Ms. Rigsby also failed to respond to the Boards Motion for Summary Judgment as Ordered. Since Rigsby failed to comply with the Orders of the Hearing Officer she is in default pursuant to KRS 13B.080(6).

12. In light of the foregoing, the Hearing Officer concludes as a matter of law that Amber Rigsby, PTA Certificate No. A02496 is considered to be in DEFAULT, and the allegations set out in the Notice of Administrative Hearing and Complaint are DEEMED

admitted. Simply put Ms. Rigsby has not offered any defense to the Board's allegations that she had violated the provisions of KRS327.070(2)(a) by excessing using alcoholic beverages or controlled substances which led to her arrest and ultimate criminal conviction. The Hearing Officer further finds that the Board had probable cause to issue the complaint based on the fact that she had plead guilty to the following misdemeanor offenses: Operating a Motor Vehicle Under the Influence of Drugs or Alcohol (1st Offense) (Count 1); Possession of a Controlled Substance, 1st Offense (Count II); and Possession of Drug Paraphernalia (Count III). The Board is therefore entitled to impose a discipline on Ms. Rigsby certificate pursuant to KRS 327.070(2) as proposed in its Motion.

IV. RECOMMENDATION

Based on the foregoing, the Hearing Officer respectfully recommends that the Board enter a Final Order REVOKING Amber Rigsby's certificate, Certificate No. A02496, to practice physical therapy in the Commonwealth of Kentucky; and PERMITTING Rigsby to apply for a reinstatement of her license pursuant to KRS 327.075 (3) under the following conditions precedent:

1. That Ms. Rigsby OBTAIN at her own expense a favorable fitness to practice evaluation from Dr. Lon Hays, M.D. Lexington, Ky. and
2. That Ms. Rigsby ENROLL in a five year contract with the Boards Impaired Physical Therapy Practitioner's Committee (IPTPC) and follow all of its recommendations and guidelines.

V. NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4) a party has the right to file exceptions to this recommended decision:

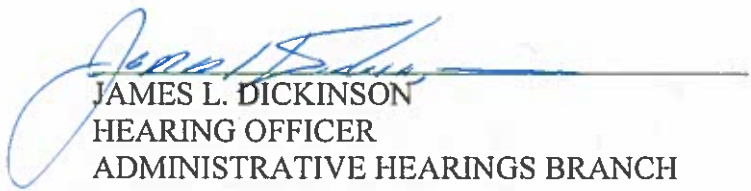
A copy of the Hearing Officer's Recommended Order of Default shall also be sent to each party in the hearing and each party shall have fifteen (15) days from the date the Recommended Order of Default is mailed within which to file exceptions to the recommendations with the agency head.

A party also has a right to appeal the Final Order of the agency pursuant to KRS 13B.140(1) which states:

All final orders of an agency shall be subject to judicial review in accordance with the provisions of this chapter. A party shall institute an appeal by filing a petition in the Circuit Court of venue, as provided in the agency's enabling statutes, within thirty (30) days after the final order of the agency is mailed or delivered by personal service. If venue for appeal is not stated in the enabling statutes, a party may appeal to Franklin Circuit Court or the Circuit Court of the county in which the appealing party resides or operates a place of business. Copies of the petition shall be served by the petitioner upon the agency and all parties of record. The petition shall include the names and addresses of all parties to the proceeding and the agency involved, and a statement of the grounds on which the review is requested. The petition shall be accompanied by a copy of the final order.

Pursuant to KRS 23A.010(4), "Such review [by the circuit court] shall not constitute an appeal but an original action." Some courts have interpreted this language to mean that summons must be served upon filing an appeal in circuit court.

SO RECOMMENDED this 26th day of November, 2018.



JAMES L. DICKINSON
HEARING OFFICER
ADMINISTRATIVE HEARINGS BRANCH
OFFICE OF THE ATTORNEY GENERAL
1024 CAPITAL CENTER DRIVE, SUITE 200
FRANKFORT, KENTUCKY 40601-8204
(502) 696-5442

CERTIFICATE OF SERVICE

I hereby certify that the original of this ORDER was served this 26th day of November, 2018, by first class mail, postage prepaid, to:

SCOTT D MAJORS
EXECUTIVE DIRECTOR
KY BOARD OF PHYSICAL THERAPY
312 WHITTINGTON PKWY STE 102
LOUISVILLE KY 40222-4925

for filing; and a true copy was served first class mail, postage prepaid, and EMAIL to:

AMBER RIGSBY
8473 CEMETERY RD
CATLETTSBURG KY 41129
606/ 585 - 4947

Rigsbo1124@gmail.com

LOUIS D KELLY
ADAMS STEPNER WOLTERMANN & DUSING
40 W PIKE ST
P O BOX 861
COVINGTON KY 41012

Theresa Hargan
DOCKET COORDINATOR
170367 fcdefault.jld