COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-185

WILLIAM C. LAWSON **APPELLANT**

VS.

FINAL ORDER
SUSTAINING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

FINANCE AND ADMINISTRATION CABINET **APPELLEE**

*** *** *** *** ***

The Board at its regular April 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 8, 2016, and having considered Appellant's exceptions, Appellee's response, oral arguments, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 20th day of April, 2016.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Cary B. Bishop
Hon. Paul F. Fauri
Ms. Honor Barker

COMMONWEALTH OF KENTUCKY
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This matter came on for an evidentiary hearing on October 20 and 21, 2015, at the offices of the Kentucky Personnel Board, Frankfort, Kentucky, before Hearing Officer E. Patrick Moores. The proceedings were recorded by audio-video equipment pursuant to the authority found at KRS Chapter 18A.

The Appellant, William C. Lawson, was present and was represented by the Honorable Paul Fauri of Frankfort. The Appellee, Finance and Administration Cabinet, was also present and was represented by the Honorable Cary B. Bishop of the Cabinet's Office of General Counsel.

I. STATEMENT OF THE CASE

1. William C. Lawson appeals the Cabinet's decision of July 28, 2014, that he was being reverted to his former position as a Revenue Section Supervisor from the promotion to a Branch Manager he had been awarded on February 1, 2014, due to his failure to satisfactorily complete the promotional probationary period associated with the promotion.

2. Mr. Lawson had been employed with the Cabinet since 1997 in the Cabinet's Office of Property Valuation of Personal Property and worked his way up to the position of a Section Supervisor. In November 2013 the Department underwent a reorganization in which Lawson was moved to the Personal Property Omitted Branch, where he remained a Section Supervisor. In December 2013 the Department created three new Branch Manager positions and eliminated the Section Supervisor positions. Lawson applied for one of the positions and was promoted to the Branch Manager position of the Property Valuation/State Valuation Division of Personal Property Compliance Branch. On July 28, 2014, Lawson received a letter giving him notice that he failed to complete his probationary period and that pursuant to KRS 18A.111 and 101 KAR 1:325, Section 2, he was being reverted to his former position.

3. Mr. Lawson timely filed an appeal with the Kentucky Personnel Board on August 25, 2014, in which he alleged that he had been discriminated against in the determination by the Cabinet because of his age, and in retaliation for a grievance he filed challenging the filling of positions under the reorganization process.

4. A pre-hearing conference was held before the Kentucky Personnel Board on October 20, 2014, and both parties were represented by counsel. The Hearing Officer explained the procedures of the Personnel Board for an evidentiary hearing, and advised the Appellant concerning the burden of proof, the procedure to introduce documents as exhibits, obtaining witness testimony and giving notice of any witnesses and exhibits. The matter was scheduled for an evidentiary hearing to be held before the Board on February 3 and 4, 2015. The issue presented was whether Lawson's reversion was due to his age or in retaliation to his grievance.

5. The hearing was postponed due to discovery issues and the matter was brought back before the Board for another pre-hearing conference on March 11, 2015, and both parties were represented by counsel. The appeal was scheduled for an evidentiary hearing on May 20, 2015. The hearing was again postponed and rescheduled for July 8, 2015. Again the hearing was rescheduled, and set to take place on July 29 and 30, 2015. Another continuance was granted and the matter was set for hearing on August 10 and 12, 2015. Again a continuance was requested and an Order was entered on August 4, 2015, rescheduling the hearing for October 20 and 21, 2015.

6. The Evidentiary Hearing was conducted on October 20 and 21, 2015. The Appellee had the burden of proof, which is by a preponderance of the evidence. Following the conclusion of the presentation of the evidence, counsel for the parties agreed that they desired to brief the issues, and a briefing schedule was agreed upon. As the briefing deadline approached, the attorneys agreed to an extension of time to submit their legal briefs, following which the matter was submitted on the record for a findings of fact and conclusions of law.

II. SUMMARY OF WITNESS TESTIMONY

1. **William Lawson** testified that he was initially hired by the Cabinet in 1997 because he had a strong background as an auditor from working for an accounting firm and employment in the automotive manufacturing business. As the years passed, he obtained promotions as his knowledge of the tax issues increased. He testified since he was reverted from his position as a Branch Manager he is currently serving as a Policy Analyst III. He added, however, that he was never a policy analyst, and that there was no position to revert him to, so his current position was created for him.

2. Lawson primarily spent his early years with the Department in handling protests and auditing and resolving undisclosed and untaxed tangible property tax on inventory and inventory in-transit. He eventually audited personal aircraft and boats and provided databases for evaluating the vessels that were sent to the County Property Valuation Administrators for assessment and taxing purposes.

3. In 2009, Lawson became Section Supervisor of the Personal Property Section, with the responsibility for everything dealing with personal property taxes. He generally had up to 13 employees to perform the audits, who were required to have a strong accounting background. He was responsible for the evaluation of all the employees operating in his section.

4. Lawson produced his performance evaluations for calendar years 2011, 2012, 2013 and 2014, which reviewed his duties, upon which he received a score of "outstanding" for each of the evaluation periods from his supervisor. He testified that the departmental reorganization took effect on November 1, 2013, but did not involve his organization until February 2014. He became Branch Manager on February 1, 2014, and he testified that he was doing the same duties he was given back in 2009, and he started doing the duties for an Internal Policy Analyst III while also doing the Branch Manager duties.

5. Lawson testified that the reorganization basically penalized the Personal Property Tax Section, stating he still has no idea why they did what they did with the reorganization. On January 9, 2014, Lawson filed a grievance complaining about the reorganization and removal of certain employees from his section supervision. The grievance was also filed because of his belief that the Division of Field Operations had been trying to remove him from the Personal Property Section for over a year. Lawson reported in an email, forwarding the grievance to his supervisor, that the reorganization was impacting the personnel needed for the audits of personal property tax, resulting in an unpaid tangible property tax assessment of more than $160 million.

6. Lawson testified that he sent the email as he was angry and wanted to explain his grievance to all involved in the reorganization. He said that he believed the reversion action taken against him was in retaliation for his push in the grievance seeking to maintain the continuity of the tax system, and that management wanted to change the system. He also testified that he was being discriminated against because he was 73 years of age, and that the Cabinet wanted to replace him with someone younger.

7. **Susan Bailey** has been retired from the Cabinet since August 1, 2014. She had worked for the Department of Motor Vehicle Evaluation of the Personal Property Branch and the Personal Property Omitted Branch. She stated that she was the direct supervisor or Lawson since the reorganization. She stated David Gordon was his second line supervisor. She testified that she sometimes disagreed with Lawson about policy matters, but that Lawson was always doing his job and that she had no problem with the performance of his duties. She acknowledged signing his performance evaluations which gave the outstanding score.

8. **Andy Boblitt** was employed with the Cabinet in the Omitted Tangible Property Department, and following the reorganization he was promoted to a Branch Manager on October 1, 2014. Lawson was his supervisor prior to his management appointment under the reorganization. Boblitt stepped down from his position as Branch Manager around February 15, 2015, for personal and health reasons, and is now back in the Omitted Tangible Property Department. Boblitt testified that he never heard any statements by anyone in management concerning Lawson's age or about retaliation against him.

9. **Christie Cruce** has been an elected PVA for Lyon County since 2006. She knew Lawson through the Department of Revenue as a source of information for collecting tangible property taxes. She said her county has three lakes with over 200 boats docked year-round, yet only 20% are listed with the county PVA. She said that Lawson would get the information on the boats from the Coast Guard, and that he would come to her county and they would walk the docks to identify the boats that should be assessed.

10. Cruce said that as a result of their making the tax assessments, she began to receive threats, including from government officials and the Revenue Commissioner, telling her to back off and leave the boats alone. She said that Mr. Lawson was trying to help her collect taxes in accordance with his duties with the Revenue Cabinet.

11. **Jeff Feese** has been the elected Adair County PVA since May 2014. He previously worked with the Kentucky Department of Revenue as a Branch Manager with a local evaluations section. He testified that he has known Bill Lawson for approximately 15 years. He worked on obtaining documentation of watercraft. He said he worked on the westernmost 40 counties in the state inspecting watercraft on site, and taking pictures of the boats. He said that he would give the pictures and data concerning the measurements of the boats to Lawson and that he and his staff would handle the matters from there. Feese testified that boats that did not pay the tangible property tax would receive assessments and eventually go into a collection process.

12. **Kellie Lang** was Manager of the Omitted Property Tax section after the reorganization in February 2014, and has served as Director of State Valuation for the Department of Revenue since March 2015. She testified that she started in tax work with the Campbell County PVA, and that she has known Lawson since 2003. She said she had no problems with his work, and served as his supervisor from 2013 to 2015 and did performance evaluations on him in which she rated him with a score of "Outstanding."

13. Lang testified that she became aware of Lawson's reversion when he showed her the letter giving him notice of the action. She said that before the reorganization she was Lawson's Branch Manager and he served as a Section Supervisor, and that she had a very good relationship with Lawson. She testified that the reorganization separated the entire Tangible Property Branch. She said that Lawson became very frustrated with the change being created and that several employees became upset with his reaction and complained to her that he was threatening to take the problems and issues with the reorganization to the newspaper.

14. Lang testified that she was never aware of any disciplinary issues concerning Lawson. She testified that she never overheard anyone discuss anything about Lawson's age, nor was she aware of any discriminatory conduct towards him. She further testified that she was not aware of anyone being treated differently in their being hired as a branch manager.

15. Lang testified that when Lawson was frustrated, it would create problems with his coworkers, who would come to her complaining of his verbal behavior and comments made about issues in dispute. She said that his work performance was outstanding but his management skills were a concern. She discussed these problems with Lawson but said she never wrote him up. She said she did not know why he was reverted from the Branch Manager position, as she had no involvement in the decision.

16. **William Lawson** was brought back to testify in response to Lang's allegation that she had been told that he was going to take the issues created by the reorganization to the newspaper, and the other issues raised by the witnesses. Lawson testified that when he got the letter from David Gordon giving him notice of his reversion, the next morning he met with the ten people on his staff who worked with him to explain to them that he would no longer be their Branch Manager. He stated that some of the workers became very emotional and asked him what he would do. Lawson acknowledged that he told them he may take the issue to the newspaper.

17. Lawson testified that he sent Gordon a list of his duties as Branch Manager to give to Lang and that he began to work together with the coworkers. He said he had to continue to forward information reports concerning revenue enhancement on a monthly basis to Gordon. He said he continued to also approve the account revenue maintenances and to be involved in omitted personal property tax accounts. Lawson testified that he still makes adjustments to accounts that are assigned to him by Manny Gonzalez, the current Branch Manager who replaced him. Lawson continued to have some supervisory responsibilities over some employees.

18. Lawson testified that he filed the grievance because the department he was running was performing as well as could be expected and that the reorganization disrupted the department and the staff employees' responsibilities concerning personal property tax revenue. Each of the employees in his department were assigned certain counties to work with the local PVA on the tax assessments, and the reorganization sent several of those employees to other departments impacting the work of his employees and their coordination with the local tax authorities.

19. Lawson said that since 2010 his disagreement with senior management concerned the issue that the bulk of the money recovered in the property tax assessments should go back to the local communities, as their focus was generally on local property tax matters. He said the system is designed to bill the rates of all the jurisdictions in each county, at the city or county rate, which are set by the local taxing authorities. Some jurisdictions involve multiple tax rates, such as Jefferson County, which has 17 tax jurisdictions and the rates of each one is entered into

the system. He added that with the changing of personnel and the lack of working with the locals, a lot of the documentation was not getting done.

20. Lawson also testified concerning the various disagreements he had with senior management concerning appropriate designation of property and processing under which the tax rate was to be applied. He said the reversion had nothing to do with his knowledge or competence, but that there was on ongoing conflict between senior management and himself and the field auditors that assessed the property, and the disagreements he expressed concerning any modifications of the tax on the property. He said that when he was in the management chain he always had issues with senior management as to when inventory was taxable and that senior management did not want him interfering in the approval process or how any exoneration of the tax on the property was to be performed. He said that he had been described by management as "rude, obnoxious, overbearing, and abrasive."

21. Lawson testified that the notice of reversion was issued to him three days before his probationary period expired and that he was not provided any reason from anyone in management as to why he was being reverted. He said the only thing he was told was that he had no appeal of the decision, except if he believed discrimination was involved. He stated that he had no facts provided to him as to the reason he was reverted and he was not provided with any evaluation of his job performance.

22. **Paula Dawn Williams** is a Performance Consultant III for the Governmental Services Center. She testified that she has no relationship with Lawson, but described a situation in which Lawson was very disruptive in a required training class of state employees on statutes and regulations she was conducting at Kentucky State University. She said the class had 30 participants, and that Lawson was extremely disruptive, causing the participants to focus on him, and making her feel like she failed in the training. She introduced at the hearing three survey feedbacks from the class that commented on his disruptiveness. She stated that his constant interruptions were sarcastic and critical of his agency and did not contribute to the training. She said that she tried to ignore him, as she did not know if she had the authority to ask him to leave the class.

23. **Greg Jennings,** who works in a separate division of the Revenue Department as a Division Director II in the Minerals Taxation Section, testified as to his recollection of Lawson's interruptions of the training incident. He described Lawson as sitting with his feet propped on the tabletop during most of the training, leaning back in his chair and making remarks that were very argumentative and laced with cursing. Jennings said he was sitting at the same table with Lawson and that he was very embarrassed by Lawson's conduct, saying that he made Ms. Williams' attempt to conduct the training very difficult. He described Lawson as constantly interrupting the instructor, telling her that her comments "were not how things were done in the real world."

24. **Lori Detwiler** is a Branch Manager of the Property Valuation Section, but does not work with Lawson. She also testified as to Lawson's disruption of the training conducted by Ms. Williams, which was about employee discipline documentation. She described Lawson's demeanor as "quite unprofessional." She said she sat across the table from Lawson and described him as sitting back in his chair with his feet propped on the table and that he was talking loudly over the trainer's efforts to speak to the class. She characterized his actions as disruptive to most of the people in the room and that she thought his behavior reflected badly on the Department of Revenue.

25. **Honor Barker** is the Director of Human Resources and Appointing Authority for the Finance Administration Cabinet. She testified that the purpose of the "probationary period" for promotions is to provide a period of time to consider the ability of the person to perform the functions of the position. She testified that because of the reorganization, Lawson's position no longer existed, and that they had to revert him to a position at his former pay grade. She said that reverting someone to a position that no longer existed was not very common. The notice of the reversion was given on July 28, 2014, and that his probationary period ended on August 1, 2014.

26. Barker testified that everyone agreed that Lawson had the technical knowledge and skills for the management position, but that questions were raised about his ability to serve as a manager. She said there were complaints that he was pushy and explosive in his dealing with others. She said his lack of communication skills made it difficult to deal with him in any matter of disagreement. She said there was never any discussion about his age or about the grievance he had filed. She said the trepidation about Lawson was his style of communication and the way he displayed his disagreements with others, and that he was described as pushy and spoke in a threatening and loud voice. Barker testified that she was aware that he had conversations with persons in management concerning his communications skills, but she had no documentation to that effect. She said that as a result of the reorganization there was no Section Supervisor position that he could go back to.

27. **David Lawrence Gordon** is the Executive Director of the Office of Property Valuation in the Department of Revenue. He came to the Revenue Department in 2008. Lawson was made a Section Supervisor in 2009 under his supervision. Following the recent reorganization, in which Gordon had no involvement, Lawson was promoted to the position as a Branch Manager effective February 1, 2014. Gordon testified that on July 14, 2014, he sent an email concerning Lawson to Elyse Weigel, the Deputy Commissioner of the Department of Revenue, which was copied to Susan Bailey which evolved into Gordon making a recommendation that Lawson be reverted.

28. Gordon said the problem was not with Lawson's knowledge and skills, but was a result of his behavior and his manner of communication with others. He testified as to an incident on July 8 and 9 when Lawson came to him saying that he was concerned about a promotion being given Kelly Lang as Director of the State Valuation Division, which would remove her from his group, stating that would force him to "take action" but never said what that meant. Gordon said that he felt Lawson was reopening matters that had been closed and settled.

Gordon said that he subsequently was discussing another matter with Lawson at his cubicle, and that Lawson brought up their previous discussion and warned Gordon to "Don't push me . . . you're talking to someone who has nothing to lose and everything to gain." Gordon said he did not consider that Lawson's tone and threats to him were appropriate.

29. Gordon testified that when several people told him about Lawson's conduct in the training class, whereupon he made the decision that Lawson would have to be removed from his management position. He inquired as to whether Lawson could be reverted and be able to keep his salary, and was told that could not happen, as a reversion would cause him to lose the salary increase.

30. Gordon testified that age never had anything to do with Lawson's reversion, as the department had numerous people in management as supervisors and on staff who were over 40 years of age, and another employee over 70 years of age. He further testified that Lawson's grievance was never an issue and that there was no retaliation against him. Gordon said his decision was basically because of the threats made against him and the conduct of Lawson in the training session, which he considered very inappropriate for someone in a management position.

31. In rebuttal to the Cabinet's witnesses, **Lawson** denied that he was an interruptive source during the training session, nor that he had his feet on the table. He said he only asked two questions. He said that Jennings and Tackett, who were sitting at his table, were the ones who were constantly conversing back and forth between each other. He further denied that anyone from management had any conference with him concerning his management skills. He said that when he learned that Kelly Lang was being considered for the position of Assistant Director, which he had also applied for, he told Gordon that she did not have the accounting skills to be qualified for the position. He stated that his comment about "taking action" was in reference to her being considered for the position.

III. FINDINGS OF FACT

1. The Appellant, William Lawson, is a classified employee having been hired by the Cabinet in 1997 and has been promoted to various supervisory positions throughout his career. The evidence presented clearly demonstrates that Lawson is very knowledgeable about tax law and regulations, and is very proficient in being able to evaluate personal property and classify it for purposes of assessing a tax value. He is highly respected by local tax officials, who rely on his advice, opinions and documentation for aiding their abilities to assess property taxes. He is widely known to even join the local authorities in personally going to examine the property to be taxed, and would often "walk the docks" to examine boat vessels.

2. In 2013 the Department of Property Valuation of Personal Property that he worked in underwent a reorganization. The reorganization eliminated Section Supervisors, merging their duties under Branch Managers. Eventually, on February 1, 2014, Lawson was promoted to a Branch Manager position with a concurrent increase in pay.

3. The evidence demonstrates Lawson became very upset by the reorganization, to the extent he filed a grievance, explaining the division and the dispersal of the staff of the section he was working in was having a serious disruptive impact on the department's ability to perform the work needing to be done, which he believed was resulting in a significant loss of income to the state and local treasuries. Lawson believes that because of his arguments with senior management over his disagreements about the reorganization, and about issues over assessing various personal property items, that senior management was looking for some way to get rid of him. He also argued that because he was 73 years of age that senior management wanted to replace him with a younger person.

4. There was significant evidence presented that Lawson's frustrations with the changes made in his department and the differences he was having with senior management over tax issues, was beginning to seriously impact his ability to communicate and work with people. Lawson even acknowledged that management considered him to be "rude, obnoxious, overbearing, and abrasive," and his demeanor in testifying about his disputes with senior management revealed that he was proud of his reputation. Lawson's behavior with his supervisor, David Gordon, threatening him with the remarks "don't push me . . . you're talking to someone who has nothing to lose and everything to gain" showed a clear act of insubordination. Then there is the evidence of his disruptive behavior during a required training class. Although Lawson denied those allegations, the weight of the evidence from the various witnesses that participated in the training class establishes that his conduct was in keeping with the growing negative attitude that Lawson was demonstrating. The testimony from David Gordon, Honor Barker, Paula Dawn Williams, Greg Jennings and Lori Detwiler revealed an appropriate concern on their part that the Appellant was not performing at the level they considered appropriate for someone in a management position. Of particular concern was the manner in which Lawson communicated his disagreements with coworkers and with management.

IV. CONCLUSIONS OF LAW

1. A reorganization of the department in which Lawson was employed occurred in 2013, and as a result Lawson was promoted to the position of a Branch Manager effective February 1, 2014, with a six-month probationary period. The evidence clearly supports the finding that Appellant Lawson was an employee in a six-month probationary position of promotion at the time he was reverted from his position as Branch Manager with the Finance Administration Cabinet.

2. Pursuant to KRS 18A.111, a probationary employee appointed to the classified service may be separated from his position to which he was promoted, without a right to appeal, except as provided at KRS 18A.095.

3. A probationary employee that has been suspended, dismissed or reverted from a position of employment is without due process protections normally provided to the classified employee. It is only prior to the employee having met the requisite probationary period that an employee can be disciplined and terminated without cause. In the case of *Bunch v. Personnel Board, Commonwealth of Kentucky*, 719 S.W.2d 8, 10 (Ky App 1986), the court stated that:

> The purpose of the probationary period is to determine whether or not an employee can satisfactorily perform the task required of a certain position . . . The Personnel Board then has applied a technical requirement of its policies to relieve the appellant of his statutorily created rights.

However, the court went on to hold that the Kentucky Constitution forbids the exercise of absolute and arbitrary power even by the Commonwealth. *Kentucky Const. § 2.* An administrative agency is prohibited from acting in an arbitrary manner by this constitutional section. *Bunch v. Personnel Board, supra.* See also: *Frederick v. Air Pollution Control Dist. of Jefferson Cnty*, 783 S.W.2d 391 (Ky. 1990), *concurring opinion; Kaelin v. City of Louisville,* 643 S.W.2d 590 (Ky. 1982). While the agency is not required to show cause, there is the issue of whether the decision to dismiss the employee was for arbitrary reasons.

4. Under the statutory provisions that allows for probationary periods of employment without protections, the agency does not have to show cause for reversion or dismissal of the employee. Further, the evidence does not provide a basis to support an allegation that a reversion or dismissal was an arbitrary act. The weight of the evidence clearly demonstrates that Lawson is highly knowledgeable and skilled in tax laws and regulations and is very technically proficient in matters dealing with personal property. However, the preponderance of the weight of the evidence presented points toward a person that has developed a significant negative attitude that impacts his ability to function with others. The responsibilities Lawson was given with his promotion to a management position in the Department of Revenue includes the vital ability to communicate with others and demonstrate an image that is professionally appropriate. The preponderance of the evidence clearly signified that Lawson woefully demonstrated these problems during his probationary period in the management position, and that the reversion was justified. There is no showing in the evidence that the decision to revert Lawson from his position as branch manager was arbitrary or an abuse of discretion.

5. Appellant Lawson had asserted his appeal was based on age discrimination, due to the fact that he was 73 years of age. He also claimed that the reversion was in retaliation to the grievance he filed. At the conclusion of all the evidence at the hearing, there was no direct evidence of discrimination aside from the conjecture of the Appellant. With respect to the age discrimination claim, KRS 344.040(1) provides that it is unlawful for an employer to discharge or otherwise discriminate against an individual because that individual is forty years of age or older. In the absence of direct evidence of discriminatory motivation, a plaintiff claiming age discrimination with respect to an employment decision must satisfy the burden-shifting test set forth by the United States Supreme Court in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). *Williams v. Wal-Mart Stores, Inc.*, 184 S.W.3d 492, 495

(Ky.2005). The plaintiff must first establish a *prima facie* case of age discrimination by showing that he: (1) was a member of a protected class; (2) was discharged; (3) was qualified for the position from which he was discharged; and (4) received disparate treatment from a similarly situated younger person or was replaced by a significantly younger person. *Id.* at 496. Under the *McDonnell Douglas* framework, a plaintiff is not required to introduce direct evidence of discrimination. *Flock v. Brown-Forman Corp.*, 344 S.W.3d 111 (Ky. App. 2010). Although the Appellant is a member of the protected class, the proof presented at the hearing failed to provide even a scintilla of evidence to meet any of these elements, other than a speculative allegation, and did not provide any evidence to establish a *prima facie* case that the Appellant had been discriminated against.

6. It is the conclusion of the Hearing Officer, after weighing all the testimony of the witnesses and the documentation introduced as exhibits, that the evidence on the record establishes that Appellant Lawson was in a probationary promotion status at the time of his reversion from the Branch Manager position, and that the Appellant failed to provide any evidence that the decision was arbitrary or a result of age discrimination directed against the Appellant, nor was he subjected to any retaliation as a result of the grievance he filed.

7. The Hearing Officer concludes that the decision of the Cabinet is to be affirmed and that the appeal of Mr. Lawson is to be dismissed.

V. RECOMMENDED ORDER

Having considered and weighed all the evidence and the laws of the Commonwealth of Kentucky, and based upon the foregoing Findings of Fact And Conclusions of Law, the Hearing Officer recommends to the Personnel Board that the appeal of **WILLIAM C. LAWSON VS. FINANCE AND ADMINISTRATION CABINET (APPEAL NO. 2014-185)** be **DISMISSED.**

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Any document filed with the Personnel Board shall be served on the opposing party.

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer E. Patrick Moores** this 8th day of March, 2016.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Paul Fauri
Hon. Cary Bishop