

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-191**

JAMES LOGAN ANDERSON, JR.

APPELLANT

**V. FINAL ORDER SUSTAINING THE HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER AS ALTERED**

**COMMONWEALTH OF KENTUCKY,
KENTUCKY DEPARTMENT OF EDUCATION**

APPELLEE

** ** * * *

The Board, at its regular July 2018 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 30, 2018, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete Background** paragraphs 5 and 6 and substitute the following:

5. The Personnel Board conducted an initial pre-hearing conference on December 12, 2017. During the pre-hearing conference, the Agency stated the Personnel Board does not have jurisdiction over this matter and requested an opportunity to file a dispositive motion. The Appellant stated he really just wanted to understand why he was terminated and requested an opportunity to respond to any dispositive motion. Accordingly, a briefing schedule was established at the request of the parties.

6. Thereafter, on January 12, 2018, the Agency filed a Motion to Dismiss arguing that, because the Appellant is a probationary dismissal who specifically denied making any allegations of discrimination, the Board does not have jurisdiction over this appeal as a matter of law.

B. **Delete Findings of Fact** paragraphs 2 through 4 and substitute the following:

2. Importantly, as the Appellant conceded during his December 12, 2017 pre-hearing conference, he is not alleging his termination was the result of discrimination of any kind.

3. Because the Appellant filed this appeal as a probationary employee, not advancing a claim of discrimination, from a review of the appeal form underlying this appeal, the admissions made during the pre-hearing conference, as well as review of the relevant statutes, the Hearing Officer finds that the Appellant has not alleged a penalization governed by KRS Chapter 18A.

4. The Hearing Officer finds that the Personnel Board lacks jurisdiction to consider this appeal, pursuant to the language set forth in KRS 18A.095(18)(a), and that there is no relief that can be afforded the Appellant.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as altered, 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 18th day of July, 2018.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
SECRETARY

A copy hereof this day mailed to:

Hon. Ashley Lant
James Anderson

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-191**

JAMES LOGAN ANDERSON, JR.

APPELLANT

**V. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

**COMMONWEALTH OF KENTUCKY,
KENTUCKY DEPARTMENT OF EDUCATION**

APPELLEE

** ** * * *

This matter came on for a pre-hearing conference on December 12, 2017, at 10:30 a.m. EST, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, James Anderson, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Department of Education, was present and represented by the Hon. Ashley Lant.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by the Appellant, the specific section of KRS 18A which authorizes the appeal, to determine the relief sought by the Appellant, to define the issues, address any other matters relating to this appeal, and to discuss the option of mediation.

This matter is before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss, filed with the Personnel Board on January 12, 2018. At issue is the Appellant's September 25, 2017 probationary termination, without cause given, from the Kentucky School for the Deaf (KSD). The Agency's Motion to Dismiss argues that as a probationary dismissal, the Appellant may only appeal allegations of discrimination to the Board, pursuant to KRS 18A.095(12). The Agency further notes that, during the December 12, 2017 pre-hearing conference, the Appellant specifically denied raising discrimination claims of any kind. The Appellant was given the opportunity to file a response to the Agency's Motion to Dismiss, but failed to do so. This matter now stands submitted to the Hearing Officer for a ruling on the Agency's Motion to Dismiss.

BACKGROUND

1. The Appellant was previously employed by the Kentucky Department of Education (KDE) as a Houseparent I, stationed at the Kentucky School for the Deaf (KSD).

2. The Appellant began his employment as a KSD Houseparent on September 1, 2017.

3. On September 25, 2017, the Appellant was separated from his position with the Kentucky School for the Deaf.

4. The Appellant complained, on his appeal form, that after being informed of his termination, he asked for an explanation and was not provided one. Specifically, the Appellant states, "I asked for a reason at that time, and was told that they do not have to give me specific reason." The Appellant then timely filed the instant Personnel Board appeal on September 29, 2017.

5. The Personnel Board conducted an initial pre-hearing conference on December 12, 2017. During the pre-hearing conference, the Agency stated the Personnel Board does not have jurisdiction over this matter and requested an opportunity to file a dispositive motion. The Appellant stated really just wanted to understand why he was terminated and requested an opportunity to respond to any dispositive motion. Accordingly, a briefing schedule was established at the request of the parties.

6. Thereafter, on January 12, 2018, the Agency filed a Motion to Dismiss arguing that, because the Appellant is probationary dismissal who specifically denied making any allegations of discrimination, the Board does not have jurisdiction over this appeal as a matter of law.

7. The Appellant was given until February 16, 2018, to file a response to the Agency's Motion to Dismiss but has failed to do so.

8. The Agency was given until March 2, 2018 to file a reply to the Appellant's response. Because the Appellant did not file a response, the Agency filed a "Reply in Support of Motion to Dismiss," requesting that the position it laid out in its Motion to Dismiss be adopted and this appeal be dismissed.

9. KRS 18A.095(12) provides, in full:

(12) Any classified employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age forty (40) and above. Nothing in this section shall be construed to preclude any classified or unclassified employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.

10. KRS 18A.095(14) provides, in full:

(14) (a) Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board.

(b) Any applicant whose application for admission to an open-competitive examination has been rejected shall be notified of this rejection and the reasons therefor and may appeal to the board for reconsideration of his qualifications and for admission to the examination. Applicants may be conditionally admitted to an examination by the secretary pending reconsideration by the board.

(c) Any applicant who has taken an examination may appeal to the board for a review of his rating in any part of the examination to assure that uniform rating procedures have been applied equally and fairly.

(d) An appeal to the board by applicants or eligibles under subsections (11) and (13) of this section and under this subsection shall be filed in writing with the executive director not later than thirty (30) calendar days after the notification of the action in question was mailed.

FINDINGS OF FACT

1. The Appellant, James Anderson, was a classified employee without status, who was separated from state service with the Kentucky Department of Education during his probationary period without cause.

2. Importantly, as the Appellant conceded during his December 12, 2017 pre-hearing conference, he is not alleging his termination was on the basis of discrimination of any kind.

3. Because the Appellant filed this appeal as probationary employee, not advancing a claim of discrimination, from a review of the appeal form underlying this appeal, the admissions made during the pre-hearing conference, as well as review of the relevant statutes, the Hearing Officer finds that the Appellant has not alleged a penalization governed by KRS Chapter 18A.

4. The Hearing Officer finds that the Personnel Board lacks jurisdiction to consider this appeal pursuant to the language set forth in KRS 18A.095(18)(a) and that there is no relief that can be afforded the Appellant.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes as a matter of law that, pursuant to KRS 18A.095(18)(a), the Personnel Board lacks jurisdiction to further consider this appeal as the Board lacks the ability to grant relief based on the claim stated by the Appellant.

2. Because the Appellant is a probationary employee who is not advancing a claim of discrimination, the Hearing Officer concludes as a matter of law that the Appellant has failed to state a penalization that would entitle him to any further consideration by the Personnel Board of the matters raised in his appeal. Stated simply, KRS 18A.095 declares that employees subject to probationary dismissal may only appeal to the Personnel Board if they allege their termination was the result of illegal discrimination. The Appellant does not allege that his termination was the result of illegal discrimination.

3. Thus, the Hearing Officer concludes this appeal must fail as a matter of law.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **JAMES ANDERSON V. DEPARTMENT OF EDUCATION (2017-191)** 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).

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

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).

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 Stafford Easterling** this 30th day of May, 2018.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Ashley Lant
James Anderson