

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-001**

SHANNON ASKEW

APPELLANT

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

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS**

APPELLEE

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

The Board, at its regular May 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated April 11, 2025, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer 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 15th day of May, 2025.

KENTUCKY PERSONNEL BOARD

Dr. R. J.

GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Shannon Askew
Hon. Peter Dooley
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney Moore

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-001

SHANNON ASKEW

APPELLANT

v.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDED ORDER

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

* * * * *

This matter last came on for a pre-hearing conference on November 13, 2024, at 11:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Gordon A. Rowe, Jr., Executive Director/Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The appellant herein, Shannon Askew (the “Appellant”), **was not present and was not represented by legal counsel**. The appellee herein, Justice and Public Safety Cabinet, Department of Corrections (the “Appellee” or “DOC”), was present by telephone and was represented by the Hon. Peter Dooley.

The Hearing Officer opened the pre-hearing conference by introducing the issues to be discussed in the conference, including: a) the status of the appeal; b) the status of dispositive motions and responsive pleadings thereto; and c) next steps in the case.

The Hearing Officer first noted that he attempted to contact the Appellant at least three (3) times before the pre-hearing conference and left messages each time but received no response. The Hearing Officer also noted that the Appellee timely filed its motion for summary judgment on September 11, 2024. There was no response from the Appellant and the deadline for filing a response to the motion for summary judgment has expired.

During the pre-hearing conference, counsel for the Appellee argued that the interview process was conducted according to state law and customary procedures. Most importantly, all of the five (5) factors required for consideration of applicants under 101 KAR 1:400 were duly considered. After the pre-hearing conference, the Appellee supplemented the record with the interviewers’ notes and a copy of the notice sent to the Appellant informing her of the non-selection for promotion. After reviewing the Appellee’s motion for summary judgment and listening to counsel for the Appellee’s arguments related thereto, and after reviewing the record in the appeal thus far, the Hearing Officer recommends the Personnel Board sustain the motion for summary judgment and dismiss this appeal. As explained more fully below, the appeal

should be dismissed because: it was filed too late and the Appellant has failed to show that the agency violated any statutory or regularly requirements regarding her non-selection.

FINDINGS OF FACT and PROCEDURAL BACKGROUND

1. The Appellant is a classified employee with status employed by the Appellee as a Corrections Officer at its Northpoint Training Center.

2. The Appellant interviewed for the position of Classification and Treatment Officer (“CTO”) on October 5, 2023. Cierra Owens was also granted an interview for the CTO position (along with another candidate) and Ms. Owens was eventually chosen by a three (3) person interview panel as the successful candidate.

3. The Appellant has appealed her non-selection for the promotion to CTO with the Personnel Board. Her appeal was filed on January 3, 2024 (although the date listed next to the Appellant’s signature is December 27, 2023, the Appeal Form was received and time-stamped by the Personnel Board on January 3, 2024, which constitutes the date of filing). [See Appeal Form.]

4. In her appeal, the Appellant stated that she received notice of her non-selection for the promotion on October 27, 2023.¹

5. Prior to filing her appeal with the Personnel Board, the Appellant submitted an internal grievance to her supervisor indicating she was complaining about her non-selection for the CTO position, for which she stated she was “passed up.” She signed and dated the grievance on October 23, 2023. [See the Appellee’s Response to the Appellant’s Request for Discovery, which includes a copy of Appellant’s grievance form(s).] The grievance form filled out by the Appellant clearly indicated that filing an internal grievance does not extend the time to appeal the personnel action, which is the subject of the grievance.

6. The filing date of the appeal was more than sixty (60) days after mailing of the notice of non-selection. In fact, the Appellant conceded the tardy filing, writing on her Appeal Form “[S]orry it’s been after 60 days.” She went on to explain that she waited until after she went through the grievance procedure to file her appeal. Unfortunately for the Appellant, the grievance process does not toll the time to file an appeal with the Personnel Board. *See* 101 KAR 1:375, Section 2.

7. KRS 18A.095 required the Appellant to file her appeal “not later than thirty (30) calendar days after the notice of non-selection was mailed or sent electronically.” *See* KRS 18A.095(12)(b).

¹ The Appellee has produced evidence from the KHRIS/MyPurpose database that a letter of notification of non-selection was mailed to the Appellant on October 16, 2023.

8. An employee can only challenge an agency's promotion decision where the employee can show that the agency violated any of the promotion provisions in KRS Chapter 18A or any of the administrative regulations governing promotion requirements.

9. The Appellee filed a Motion for Summary Judgment in this appeal on September 11, 2024. In its motion, the Appellee argued that it fully complied with all interview and selection requirements for the selection of the successful candidate, particularly the five (5) factors employers are required to assess under 101 KAR 1:400, Section 1(1).

10. When considering candidates for promotion, state agencies are required to look at five (5) factors (the "Five Factors") in selecting the successful applicant. Agencies must consider the applicants' "qualifications, record of performance, conduct, seniority, and performance evaluations in the selection of an employee for a promotion." 101 KAR 1:400, Section 1(1).

11. The Appellee attached to its motion for summary judgment the selection panel's scoring sheet, which showed that the interviewers rated the three candidates for the position, including the Appellant, based on the each of the Five Factors and eventually selected Cierra Owens for the position. [See Exhibit A to Motion for Summary Judgment ("MSJ").]

12. In addition, the Appellee later supplemented its Motion for Summary Judgment with the scoring sheets from each interviewer on the selection panel for the promotion. [See Supplemental Exhibits to MSJ, filed with Personnel Board under seal on November 25, 2024.] Each of the panelists rated Ms. Owens higher than the Appellant after conducting interviews and reviewing the Five Factors.

13. Finally, the Appellee supplemented its motion for summary judgment with signed Conflict of Interest Statements from each interviewer on the selection panel, in which the interviewers committed to assessing the candidates based on the "criteria established by statute and regulation," which includes the Five Factors. [See November 25, 2024 Supplemental Exhibits to MSJ.] In those statements, the interviewers also agreed to assess the candidates without regard to any discriminatory characteristics. [See November 25, 2024 Supplemental Exhibits to MSJ.]

14. The Appellant did not respond to the Motion for Summary Judgment. The Appellant also failed to appear at the last pre-hearing conference on November 13, 2024, and, since that time, has shown no good cause for missing the scheduled pre-hearing conference.

CONCLUSIONS OF LAW

1. The Kentucky Personnel Board was created by KRS Chapter 18A and its jurisdiction is defined thereby. KRS Chapter 18A limits the Personnel Board's jurisdiction to hear matters brought by state employees which are authorized under KRS Chapter 18A. The Board's authority is also limited by the timeliness of the appeal; the Board may not hear a matter brought beyond the time limits set forth in KRS 18A.095. *See Public Service Commission of*

Kentucky v. Attorney General of the Commonwealth, 860 S.W.2d 296, 298 (Ky. App. 1993) (holding that an agency may not act outside the time limitations imposed by statute and is not empowered to add or subtract from the requirements of the statute. *Public Service Commission of Kentucky v. Attorney General of the Commonwealth*, 860 S.W.2d 296, 298 (Ky. App. 1993)).

2. Although the Appellee did not raise the issue of timeliness as a jurisdictional bar for the appeal, the Personnel Board has a duty to consider timeliness in determining whether it has jurisdiction to hear the appeal. A reviewing body has “an affirmative obligation to ensure that it is acting within its subject matter jurisdiction” and shall dismiss a case “at any point in the litigation” if that body “determines that it lacks subject-matter jurisdiction, even if the issue is not raised by the parties.” *Basin Energy Co. v. Howard*, 447 S.W.3d 179, 187 (Ky. App. 2014).

3. KRS 18A.095 unambiguously requires the Board to deny an appeal of an “employee who has failed to file an appeal within the time prescribed by this section.” KRS 18A.095(16)(a).

4. Pursuant to the version of KRS Chapter 18A in effect at the time the appeal was filed,² the Appellant had thirty (30) days after October 27, 2023³ to appeal her non-selection to the Personnel Board. *See* KRS 18A.095(12)(b).

5. Summary judgment should be entered when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (“CR”) 56.03; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 482 (Ky. 1991). The movant should only be granted summary judgment when the right to judgment as a matter of law is “shown with such clarity that there is no room left for controversy.” *Id.* at 482. A party opposing a motion for summary judgment must present “at least some affirmative evidence showing that there is a genuine issue of material fact for trial.” *Id.* at 482.

6. There is no genuine issue of material fact as to the timing of the appeal filing and the application of KRS 18A.095(12)(b) in this case. The only question before the Personnel Board at this juncture is whether the Board has jurisdiction to hear the appeal based on the filing date, which is entirely a question of law.

7. The Appellant’s appeal filing occurred sixty-nine (69) days after she was first notified of her non-selection. Since KRS 18A.059(12)(b) unequivocally requires such a filing to occur within thirty (30) days after notification of non-selection, the appeal was untimely as a matter of law. The Appellant’s time to appeal her non-selection was not tolled by the filing of her internal grievance. Thus, there is no genuine issue of material fact on the issue of timeliness of the appeal and the appeal should be dismissed.

² The Appellant’s notice of non-selection notice occurred between October 16, 2023, and October 27, 2023. After June 29, 2023, the changes made to KRS Chapter 18A as a result of Senate Bill 153 in the 2023 legislative session had taken effect and the time limits imposed under that legislative action are applicable to this appeal.

³ As stated above, the Appellee has produced evidence from the KHRIS/MyPurpose database showing that a letter of notification of non-selection was mailed to the Appellant on October 16, 2023 but even taking into account the later date on which Appellant acknowledges receipt of the notice, her appeal was filed beyond the time limitations of KRS 18A.095(12)(b).

8. This appeal should also be dismissed on other grounds. The Appellant has produced no factual evidence to show that the Appellee violated any of the promotion provisions in KRS Chapter 18A or 101 KAR 1:400. The Appellee presented uncontested evidence in the record that all interview and selection requirements for the promotion were followed, including assessment of the Five Factors required by 101 KAR 1:400 Section 1(1) (qualifications, record of performance, conduct, seniority, and performance evaluations).

9. The appeal should also be dismissed based upon the Appellant's failure to appear for the pre-hearing conference on November 13, 2024, and subsequent failure to show cause for her absence. Pursuant to KRS 13B.080(6), a Hearing Officer may recommend dismissal of an appeal by default if a party fails to attend a pre-hearing conference.

10. Consequently, this appeal should be dismissed because: a) it was filed untimely, b) the Appellant has failed to produce any genuine issue of material fact to show that the Appellee failed to follow any interview and selection requirements for the promotion at issue, and, c) the Appellant failed to attend the last pre-hearing conference.

RECOMMENDED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Personnel Board that the appeal of **SHANNON ASKEW V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2024-001)**, 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 fifteen (15) 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 parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov.

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.

Shannon Askew
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[Hearing Officer Note: Any document filed with the Personnel Board shall also be served on the opposing party.]

SO ORDERED at the direction of the Hearing Officer this 11th day of April, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR.

EXECUTIVE DIRECTOR

A copy hereof was emailed and mailed to the following persons at their respective addresses as provided to the Personnel Board on this 11th day of April, 2025:

Shannon Askew, Appellant
Hon. Peter Dooley, Counsel for Appellee
Hon. Rosemary Holbrook, Personnel Cabinet