

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-009

TERRY ATWELL

APPELLANT

VS.

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

BOARD OF NURSING

APPELLEE

*** **

The Board, at its regular October 2021 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated September 3, 2021, 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 14th day of October, 2021.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Morgan Ransdell
Terry Atwell
Hon. Rosemary Holbrook (Personnel Cabinet)

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
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**FINDINGS OF FACT, CONCLUSIONS OF LAW
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** ** * * *

This matter came on for an evidentiary hearing on March 23, 2020, at 11:00 a.m. EDT, at 1025 Capital Center Drive, Suite 105, 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, Terry Atwell, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Board of Nursing, was present and represented by the Hon. Morgan Ransdell, who appeared by telephone.

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 this appeal, to determine the relief sought by the Appellant, to define the issues, to address any other matters relating to this appeal, and to discuss the option of mediation.

BACKGROUND

1. The Hearing Officer notes this appeal was filed with the Personnel Board on January 8, 2020. On the appeal form and during the pre-hearing conference, the Appellant, a classified employee without status, indicated he was appealing his probationary dismissal in addition to advancing a claim of harassment not based on protected class status. The Appellant further explained his claims in the narrative portion of the appeal form wherein he states, in full:

Performed a fantastic job. Many fellow employees would testify to that. No reason why I was let go? On time. Worked hard every day often not taking breaks. It was a total surprise as to being let go.

Supervisor was verbally abusive in dealing with me on a daily basis. Bossy, very loud – embarrassed me in a public area for no reason – accused me of many things that never happened.

2. Following discussion, the Agency argued that the Personnel Board does not have jurisdiction over this matter and requested an opportunity to file a dispositive motion.

3. The Appellee filed a Motion to Dismiss. The Appellant was given an opportunity to file a response; however, no response has been filed. This appeal has now been assigned to Hearing Officer Mark A. Sipek for a ruling on the Appellee's Motion to Dismiss.

FINDINGS OF FACT

1. The Appellant was a classified employee serving his initial probationary period as an Administrative Specialist III with the Kentucky Board of Nursing.

2. On December 2, 2019, the Appellant was dismissed from his position without cause.

3. The dismissal letter informed the Appellant that he could file an appeal with the Personnel Board by making a claim of discrimination within 30 days.

4. The Appellant filed an appeal with the Personnel Board on January 8, 2020, appealing from his dismissal. The Appellant stated that his boss was verbally abusive and embarrassed him in public for no reason. The Appellant was making a claim of harassment not based on protected class status.

5. The Appellant did not check the box for discrimination on his appeal form. He did not make any allegation of discrimination during his pre-hearing conference.

CONCLUSIONS OF LAW

1. As a classified employee serving his initial probationary period, the Appellant could be dismissed without cause. His only right of appeal would be based on a claim of discrimination pursuant to KRS 18A.095(12) and (14)(a).

2. Based on the Findings of Fact, the Appellant has not made a claim of discrimination, and the Personnel Board lacks jurisdiction to hear his appeal.

3. There are no material issues of fact, and this appeal may be decided as a matter of law based on the appeal form, the statements of the parties at the pre-hearing conference, and the Appellee's Motion to Dismiss. KRS 18A.095(18)(a) and KRS 13B.090(2)

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **TERRY ATWELL VS. KENTUCKY BOARD OF NURSING (APPEAL NO. 2020-009)** 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).

[Hearing Officer Note: Any document filed with the Personnel Board shall also 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 Mark A. Sipek** this 3rd day of September, 2021.

KENTUCKY PERSONNEL BOARD

Handwritten signature of Mark A. Sipek in black ink, with a blue diagonal line and the initials 'CS' to the right.

**MARK A. SIPEK
EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Morgan Ransdell

Mr. Terry Atwell

Hon. Rosemary Holbrook (Personnel Cabinet)