

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-131

NANCY BALDWIN

APPELLANT

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

**TOURISM, ARTS & HERITAGE CABINET
BOB STEWART, APPOINTING AUTHORITY**

APPELLEE

** **

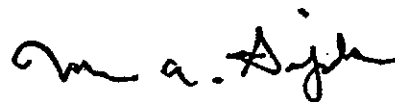
The Board at its regular December 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated October 31, 2014, and being duly advised,

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 17th day of December, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Misty Judy
Nancy Baldwin

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
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** ** *

This matter came on for a pre-hearing conference on August 12, 2014, at 10:00 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Nancy Baldwin, was present and was not represented by legal counsel. The Appellee, Tourism, Arts and Heritage Cabinet, was present and represented by the Hon. Misty Judy. Also present for the Appellee was Tiffany Yeast.

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

The Hearing Officer notes this appeal was filed with the Personnel Board on June 19, 2014. The Appellant was appealing her termination by letter dated May 23, 2014, as an Administrative Specialist III with the Kentucky Department of Travel and Tourism, effective May 23, 2014.

During the course of the pre-hearing conference, Appellant outlined issues she faced during her employment with the Cabinet, and also asked for an investigation into the behavior of a former supervisor.

Counsel for the Appellee stated that, based on the information heard at the pre-hearing conference, she would be filing a Motion to Dismiss, challenging whether the Personnel Board had jurisdiction to consider Appellant's appeal. The Hearing Officer set a briefing schedule, and explained the process to the Appellant.

Appellee filed a Motion to Dismiss in accordance with the briefing schedule. Appellant was given ample time in which to file a response, but did not do so. This matter is now ready for a ruling on Appellee's Motion to Dismiss.

BACKGROUND

1. During the relevant times the Appellant, Nancy Baldwin, was a classified employee who was dismissed prior to completing her initial probationary period.

2. In its Motion to Dismiss, the Appellee contends the Personnel Board is without jurisdiction to consider Appellant's appeal as she was separated from an initial probationary period before completion of same. Appellee contends that pursuant to KRS 18A.095 the Appellant has not made a claim of discrimination based on a membership in a protected class or any other claim for which the Board would have jurisdiction, as Appellant had not yet attained status in her position.

3. The Hearing Officer notes that Appellant had alleged intimidating conditions at work from her supervisor. Appellant contended she was not given adequate training to deal with the workload.

4. At the pre-hearing conference, Appellant had made statements about being anxious at work under the supervision of Hank Phillips.

5. Appellant also stated that she believes she was harassed and even read a definition of harassment. However, the Hearing Officer did not hear Appellant make any claim that this was harassment based on any membership in a protected class. Appellant also discussed another employee who had been under the supervision of Mr. Phillips, and was later moved to be under the direct supervision of the Commissioner. Appellant stated that she wondered whether other employees had been harassed in the past.

6. Appellant also stated at the pre-hearing conference she believed she wanted an investigation because she believed employees were afraid of the supervisor, Mr. Phillips, and would not testify in front of him.

7. However, it is noted Appellant was given ample time in which to respond to Appellee's Motion to Dismiss, and did not do so.

8. KRS 18A.111(1) states as follows:

Except when appointed to a job classification with an initial probationary period in excess of six (6) months, and except as provided in KRS 18A.005 and this section, an employee shall serve a six (6) months probationary period when he is initially appointed to the classified service. An employee may be separated from his position, reduced in class or rank, or replaced on the eligible list during this

initial probationary period and shall not have a right to appeal, except as provided by KRS 18A.095. The employee may be placed on an eligible list but shall not be certified to the agency from which he was separated unless that agency so requests. Unless the appointing authority notifies the employee prior to the end of the initial probationary period that he is separated, the employee shall be deemed to have served satisfactorily and shall acquire status in the classified service.

9. KRS 18A.095(18)(a) states as follows:

The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.

FINDINGS OF FACT

1. During the relevant times the Appellant, Nancy Baldwin, was a classified employee who was dismissed prior to completing her initial probationary period.

2. The Hearing Officer finds that Appellant was separated from her position prior to completing an initial probationary period.

3. The Hearing Officer finds that while Appellant, at the pre-hearing conference, discussed issues of medication and having difficulty in controlling her emotions, that she did not explicitly make any claim of discrimination based on a disability. The Hearing Officer also finds the Appellant did not explicitly make any claim of discrimination based on membership in a protected class.

4. Though the Appellant did discuss a lack of training during the pre-hearing conference and that the work environment was hostile, this was not tied to any specific claim of discrimination.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that Appellant has not made any claim of discrimination based on a protected class, and she was terminated from her position prior to completion of her initial probationary period, the Personnel Board pursuant to KRS 18A.095(18)(a) lacks jurisdiction to further consider this appeal as it lacks the ability to grant relief based on the claims stated by the Appellant.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **NANCY BALDWIN VS. TOURISM, ARTS & HERITAGE CABINET (APPEAL NO. 2014-131)** 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.

SO ORDERED at the direction of Hearing Officer Boyce A. Crocker this 31st day of October, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Misty Judy
Nancy Baldwin