

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-233

MICHAEL BRAMBLETT

APPELLANT

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

DEPARTMENT OF MILITARY AFFAIRS

APPELLEE

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

The Board, at its regular October 2023 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated August 25, 2023, 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 17th day of October, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Michael Bramblett
Hon. Charla Sands
Hon. Rosemary Holbrook (Personnel Cabinet)

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V.

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

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** * * * *

This matter last came on for a pre-hearing conference on March 13, 2023, at 11:30 a.m. ET, 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, Michael Bramblett, was present in person and was not represented by legal counsel. The Appellee, Department of Military Affairs, was present and represented by the Hon. Charla Sands, who appeared by telephone.

The purposes of the pre-hearing conference were to discuss the status of the appeal and to schedule an evidentiary hearing, if appropriate.

This matter is now before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss, filed with the Personnel Board on April 5, 2023. In its Motion, the Agency argues that the Appellant, a classified employee without status, has failed to articulate a claim over which the Personnel Board has jurisdiction as the Appellant was separated from state service during his initial probationary period, pursuant to the provisions of KRS 18A.111, and the Appellant has failed to properly invoke that statute because the Appellant is not advancing an actionable claim of discrimination. The Agency also argues that this appeal was untimely filed. The Appellant was given an opportunity to respond to the Agency's motion but has failed to do so.

BACKGROUND/ FINDINGS OF FACT

1. The Hearing Officer notes the facts underlying the instant appeal were largely agreed to by the parties during the March 13, 2023 pre-hearing conference. Accordingly, the Hearing Officer adopts the facts as articulated by the parties in their respective submissions and as established by the documents submitted with the underlying appeal.

2. The Appellant, Michael Bramblett, formerly a classified employee without status, was previously employed by the Appellee, Department of Military Affairs, as a Mechanical Maintenance and Operations Technician III within the Facilities Division. Bramblett was terminated while serving his initial probationary period on October 29, 2020.

3. On December 2, 2020, the Appellant filed the instant appeal, alleging, in pertinent part:

I wasn't given any just cause for my dismissal. I was dismissed one day before my 6 mth probationary period ended. I was never coached, trained or offered any assistance if there was an issue with my job performance. I did everything asked of me and showed self-motivation by washing vans and cleaning when all work was complete. I was unaware of any wrongdoings on my part. I had near perfect attendance. Two days were requested off during my 6 mth. One due to a death & the other was my wedding.

4. The Agency previously filed a substantially similar Motion to Dismiss on June 18, 2021, pursuant to a previous dispositive motion schedule. The Appellant was given an opportunity to respond but did not do so. Counsel for the Appellee was deployed for military service, however, so this appeal was put in abeyance by agreement of the parties.

5. Upon her return from deployment, a pre-hearing conference was set for July 13, 2022. Thereafter, on June 18, 2022, the Appellant contacted Board staff and indicated he wanted to withdraw his appeal. The pre-hearing was canceled and a withdrawal form was sent to the Appellant. The Appellant did not return a signed withdrawal form, however, so Board staff followed up with a reminder letter and another withdrawal form on September 8, 2022. The Appellant then sent an email indicating that he was still interested in pursuing his appeal, so a follow-up pre-hearing conference was held on March 13, 2023. After the Appellant verified that he was challenging his probationary dismissal and that he was alleging that his dismissal was the result of size discrimination, the Agency requested an opportunity to file a dispositive motion explaining why this appeal should be dismissed as a matter of law. The Agency filed a Motion to Dismiss that was substantially similar to the one filed on June 18, 2021, arguing: 1) the Board does not have jurisdiction over this appeal because the Appellant has failed to allege his termination was based on actionable protected class discrimination as size is not recognized as a protected class, and 2) that the Appellant untimely filed this appeal. The Appellant was given an opportunity to respond and again failed to do so.

6. KRS 18A.111(1) provides, in full:

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.

7. The version of KRS 18A.095(12) applicable when this appeal was filed provides, in full:

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.

8. The version of KRS 18A.095 (14)(a) applicable when this appeal was filed provides, in full:

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

9. The version of KRS 18A.005(24) applicable when this appeal was filed provides, in full:

‘Penalization’ means demotion, dismissal, suspension, fines, and other disciplinary actions; involuntary transfers; salary adjustments; any action that increases or diminishes the level, rank, discretion, or responsibility of an employee without proper cause or authority, including a reclassification or reallocation to a lower grade or rate of pay; and the abridgment or denial of other rights granted to state employees.

10. The version of KRS 18A.095(18)(a) applicable when this appeal was filed provides, in pertinent part:

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.

CONCLUSIONS OF LAW

1. Generally speaking, under KRS Chapter 18A, a classified employee without status may, unlike an unclassified employee, be fired for a good reason, a bad reason, or no reason, just not a discriminatory reason. See Martin v. Commonwealth, 822 S.W.2d 858, 860 (Ky. 1991). The version of KRS 18A.095(14)(a) applicable when this appeal was filed provides, in pertinent part, that any employee “who believes that he has been discriminated against, may appeal to the board.”

2. Here, the Hearing Officer finds the Appellant has failed to articulate a claim of discrimination. Similar to the Board’s ruling in Mike Ginter v KET (KY PB 2018-240), while Board appellants are not required to establish a *prima facie* case of discrimination on an appeal form and the procedural bar for articulating a claim of actionable discrimination is rather low, the Hearing Officer finds that the Appellant has not ever asserted that his termination was the result of any type of protected class discrimination, despite being given multiple opportunities to do so. The Hearing Officer specifically finds that size is not a protected class under Kentucky law. It is well-established that the Board does not have jurisdiction over probationary dismissals absent an actionable allegation of discrimination. Therefore, pursuant to the version of KRS 18A.095(18)(a) applicable when this appeal was filed, dismissal of this claim is appropriate because the Appellant is a classified KRS Chapter 18A employee without status seeking to invoke the Board’s jurisdiction without advancing a recognizable claim of discrimination. Thus, the Appellant’s appeal must be dismissed as it is not authorized by any provision of KRS Chapter 18A. Accordingly, the instant appeal must fail as a matter of law.

3. The Hearing Officer also finds that this appeal was untimely filed. The Appellant was notified of his probationary termination on October 29, 2020. The Appellant was also notified that he had thirty (30) days to file any appeal to the Personnel Board, pursuant to KRS 18A.095. The Appellant did not file this appeal until December 2, 2020. The Hearing Officer finds that because the appeal was not received by the Personnel Board until December 2, 2020, this appeal was untimely filed and did not comply with KRS 18A.095. Therefore, the Hearing Officer concludes the Personnel Board did not properly acquire jurisdiction over this appeal and this matter must be dismissed appeal as a matter of law.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **MICHAEL BRAMBLETT V. DEPARTMENT OF MILITARY AFFAIRS (APPEAL NO. 2020-233)** 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).

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 25 day of August, 2023.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Michael Bramblett
Hon. Charla Sands
Hon. Rosemary Holbrook (Personnel Cabinet)