

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
CONSOLIDATED APPEAL NOS. 2024-059 AND 2024-116

BRIAN BROWN

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET,
KENTUCKY STATE POLICE

APPELLEE

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

The Board, at its regular October 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated August 28, 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 appeals are 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 24th day of October, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Hon. Theodore H. Lavit, counsel for Appellant
Hon. Matthew Bowling, counsel for Appellee
Hon. Rosemary Holbrook (Personnel Cabinet)
Hon. Shawna Kincer

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

**JUSTICE AND PUBLIC SAFETY CABINET,
KENTUCKY STATE POLICE**

APPELLEE

* * * * *

This matter came on for a pre-hearing conference on May 19, 2025, at 11:00 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 equipment and were authorized by virtue of KRS Chapter 18A.

The appellant herein, Brian Brown (the “Appellant”), was not present but was represented by his legal counsel, the Hon. Theodore Lavit, who appeared by telephone. The appellee herein, Justice and Public Safety Cabinet, Kentucky State Police (the “Appellee”), was represented by the Hon. Matthew Bowling, who appeared by telephone.

The Hearing Officer opened the pre-hearing conference by stating the purposes for the pre-hearing conference: 1) to discuss the Appellee’s motion to dismiss the appeal and subsequent responsive pleadings; and 2) to discuss next steps in the appeal.

Prior to the pre-hearing conference, the Appellee filed a motion to dismiss the appeal based on the argument that the Appellant failed to state a claim upon which relief can be granted. In its motion to dismiss, the Appellee argued that the Appellant was a probationary employee when he was terminated, pursuant to KRS 18A.111, and the Appellant had failed to produce sufficient evidence of discrimination to preclude his probationary dismissal. The Appellant filed a response to the motion to dismiss and argued that he was terminated due to sex discrimination, including sexual harassment. During the pre-hearing conference, the parties discussed the points raised by both parties regarding the motion to dismiss and the responses that followed. The Hearing Officer asked the Appellant’s counsel several questions about the nature and content of the sexual harassment alleged by the Appellant and about the evidence that might support those allegations. Since the pre-hearing conference, the Hearing Officer has reviewed the pleadings and the discovery exchanged between the parties, and the rest of the record in this case. For the reasons set forth in more detail below, the Hearing Officer finds that the Appellee is entitled to judgment as a matter of law and that the Appellant’s consolidated appeal(s) should be dismissed.

FINDINGS OF FACT and PROCEDURAL BACKGROUND

1. On April 23, 2024, the Appellant was informed by the Appellee in a written letter that he was being dismissed from his position as a Driver's Test Administrator. [See April 23, 2024, letter from Kentucky State Police to the Appellant, attached to the Appeal Form (the "Dismissal Letter").] The Appellant was still in his probationary employment period when his employment was terminated by the Appellee. As stated by the Appellant in his Appeal Form, the Dismissal Letter did not list a reason for the termination, but it did indicate that the Appellant was being dismissed pursuant to KRS 18A.111. The Appellant was also informed that, as a probationary employee and pursuant to KRS 18A.111, he did not have the right to appeal to the Personnel Board unless he was claiming discrimination. [See Dismissal Letter.]

2. The Appellant timely filed an appeal with the Personnel Board on May 9, 2024, challenging his termination on the basis that he was dismissed "with no reason or cause." [See Appeal Form at p. 2.] The Appellant did not check the box for "Discrimination" on his Appeal Form nor did he describe in the Appeal Form any incidents of sex discrimination or sexual harassment. This appeal was docketed as Appeal No. 2024-059.

3. The Appellant's initial pre-hearing conference was conducted on August 2, 2024. During that pre-hearing conference, the Appellant stated that he was dismissed based on sex discrimination. Specifically, the Appellant's counsel alleged that female employees who worked in the office told him they "were not happy working with a male" and that they "had contacts in the Commissioner's Office" and would use those contacts to have the Appellant "transferred or taken away from the worksite." [See Interim Order of September 13, 2024.]

4. The Hearing Officer instructed the Appellant to amend his appeal to include sex discrimination since it was not included in the initial Appeal Form. On August 2, 2024, the Appellant attempted to amend his appeal by filing essentially the same Appeal Form he previously filed with the addition of checking the box(es) on the form for sex discrimination and adding the August 2, 2024 date. Due to an administrative error, the amended appeal was docketed as a new appeal and was designated Appeal No. 2024-116.

5. The Appellant's counsel filed a Corrected Amended Appeal on September 18, 2024, in which the Appellant stated he was adding a claim of sex discrimination to Appeal No. 2024-059. He reiterated in the Corrected Amended Appeal the alleged basis for the Appellant's sex discrimination claim, namely that female employees who worked in the office told him they "were not happy working with a male" and that they would use their "contacts in the Commissioner's Office" to have "the Appellant transferred or taken away from the worksite." [See Corrected Amended Appeal at ¶ 2.]

6. Due to the fact that the operative facts in Appeal No. 2024-059 and 2024-116 are virtually identical, and upon motion of the Appellant, the Hearing Officer consolidated the appeals by Interim Order dated February 5, 2025.

7. The Appellee propounded discovery requests on the Appellant, which the Appellant responded to on November 15, 2024. In those discovery requests, the Appellant was asked to summarize the basis of his claims and identify any incidents and witnesses who might support those claims, and to produce any documents that might support his claims. In response, the Appellant named four (4) persons who could support his claims and summarized what he thought they would testify to in an evidentiary hearing:

- a) **Daniel Melcher**, who the Appellant stated would testify that the Appellant's female co-employees called him derogatory names and bullied him. The Appellant's response to the interrogatory provided no specifics about the names he was allegedly called, or the frequency, nature or circumstances of the alleged bullying. The only specific references to name-calling or bullying of the Appellant called came from Collins Polk, the Appellant's cousin, whose "support" of the Appellant's claims is summarized below. Those names, "Hector Lector" and "vampire," do not provide sufficient evidence of intimidation or bullying on the basis of sex nor do they provide evidence of sex stereotyping, sexual harassment or any other form of sex/gender discrimination.
- b) **Collins Polk**, the Appellant's cousin, who the Appellant stated would testify about the manner in which the Appellant told him he was treated by female employees in the office. The Appellant also attached to his discovery responses copies of February 25, 2024, email correspondence from Mr. Polk to a Kentucky State Police employee, Rufus Shearer. In the email, Mr. Polk recounts what he had apparently been told by his cousin, the Appellant, about the environment and particular incidents "in the Lexington office." [See Exhibit 2 to Employee/Appellant's Responses to Agency/Appellee's First Set of Interrogatories and Requests for Production of Documents.] Mr. Polk is apparently a Facilities Security employee and there is no evidence he witnessed any of the incidents complained of by the Appellant so any testimony he might give would be unsupported hearsay. Even if accepted as true, the names he alleges the female co-employees called the Appellant, "Hector Lector" and "vampire," do not provide sufficient evidence of intimidation or bullying on the basis of sex nor do they provide evidence of sex stereotyping, sexual harassment or any other form of sex/gender discrimination.
- c) **James Sisler**, who was identified as a male co-worker, and who the Appellant stated would testify that the Appellant's supervisor, Sabrina Pierce, "required Mr. Sisler and the Appellant to sign a paper claiming that each of them received operational computer training for road and written tests." Nothing in this statement, even assuming it is true, indicates any type of sex discrimination, sexual harassment, or anything else that affected the terms and

conditions of the Appellant's employment based on his sex nor is there any evidence that this act was related to an adverse employment decision.

d) **Robert Caney**, whose position and/or relationship to the Appellant is not specified, and who the Appellant stated would testify that Sabrina Pierce came from Lexington to Frankfort "to give the Appellant a photograph of the Appellant's graduation class." According to the response, Mr. Caney would also state that Ms. Pierce "told the Appellant not to speak to other employees" and was apparently somehow "mean" to the Appellant on this occasion. However, based on the description provided by the Appellant, Mr. Caney did not witness this incident but was told about it by the Appellant "immediately after," so this statement is merely hearsay with no other corroborating information. More importantly, as with the alleged statements of Mr. Sisler above, nothing in this statement indicates any type of sexual harassment or sex discrimination and it is not related to an adverse employment decision. It also occurred on a single occasion.

[See Employee/Appellant's Responses to Agency/Appellee's First Set of Interrogatories and Requests for Production of Documents at p. 2.]

8. The Appellant also produced a digital audio file which appears to be a recording of a conversation between the Appellant and his supervisor, Sabrina Pierce, regarding files from another female employee's computer that the Appellant had somehow been able to access and view. During the conversation, the Appellant is trying to explain how he viewed the files and states that it was unintentional. Ms. Pierce does not use any derogatory language toward the Appellant, does not have a "mean" demeanor (never even raises her voice), and even offers to provide more training to the Appellant. The conversation is generally cordial and non-confrontational. Although submitted by the Appellant to support his claims of sex discrimination (and/or sexual harassment), the conversation provides absolutely no support for the Appellant's claim that he was treated differently because of his sex. The conversation does not indicate any discriminatory animus, sexual harassment, or any ill intent on the part of Ms. Pierce regarding the Appellant's employment, nor does it have any connection to an adverse employment action regarding the Appellant.

9. In addition to the allegations above, the Appellant's counsel repeated in the May 19, 2025, pre-hearing conference the allegations of Mr. Collins Polk, the Appellant's cousin, that one female examiner called the Appellant "Hector Lector" and possibly another female employee called him a "vampire." As shown above, these allegations were also made in the February 5, 2024, email from the Appellant's cousin, Collins Polk, to Rufus Shearer, an employee of KSP whose position was not identified by the Appellant. [See Exhibit 2 to Employee/Appellant's Responses to Agency/Appellee's First Set of Interrogatories and Requests for Production of Documents.] However, even if taken as true, these statements were not made by a supervisor or anyone else with decision-making authority regarding the Appellant's probationary employment, did not indicate any type of discriminatory animus related to the Appellant's sex/gender, were not severe or pervasive, did not imply any type of sex stereotyping

or sexual harassment, and did not bear any connection to an adverse employment decision, including the ultimate decision to terminate the Appellant's employment.

10. On March 17, 2025, the Appellee filed a Motion to Dismiss the appeal (the "Motion to Dismiss") on the grounds that the Appellant failed to put forward a *prima facie* case of sex or gender discrimination. Specifically, the Appellee pointed out that the Appellant failed to show that any similarly situated female employees were treated more favorably than he was. [See Motion to Dismiss at p.3.]

11. The Appellant filed a response to the Motion to Dismiss (the "Appellant's Response") on April 15, 2025. In his short response, the Appellant's counsel argued that the Appellant was subjected to sex discrimination and sexual harassment in the workplace. The Appellant also alleged that he would bring witnesses to an evidentiary hearing to testify about the hostile environment he endured. [See Appellant's Response at p.1.] When asked to identify these witnesses in discovery, the Appellant identified the four (4) individuals listed in paragraph 4 above.

12. On May 2, 2025, the Appellee timely filed Appellee Kentucky State Police's Reply to the Appellant's Response to the Motion to Dismiss (the "Reply Brief"). In its reply brief, the Appellee reiterated its argument that the Appellant failed to make out a *prima facie* case of gender discrimination but also addressed the claim of sexual harassment. The Appellee argued that the Appellant had not provided sufficient evidence of a workplace that was severe and pervasive with discriminatory insult, ridicule or other conduct which would constitute sexual harassment. [See Reply Brief at pp.1-2.]

CONCLUSIONS OF LAW

1. The Personnel Board does not have jurisdiction to hear an appeal of a probationary employee, unless the employee makes a claim of protected class discrimination. KRS 18A.111(1). As a probationary employee, the Appellant could be dismissed at any time for a good reason, a bad reason, or no reason at all, as long as the dismissal was not based on a discriminatory reason. *Martin v. Commonwealth*, 822 S.W.2d 858, 860 (Ky. 1991).

2. KRS 18A.111 provides that "[A]n employee may be separated from his position...during his initial probationary period and shall not have a right to appeal, except as provided by KRS 18A.095." See KRS 18A.111(1).

3. Pursuant to KRS 18A.095, state employees are protected from discrimination as set forth in various state and federal anti-discrimination statutes. Specifically, any state employee "may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, age forty (40) and above, or any other category protected under state or federal civil rights laws." KRS 18A.095(11)(a).

4. The Appellant is not entitled to the exception under KRS 18A.111 because he has failed to show that he can make out a *prima facie* case of discrimination on the basis of sex, as alleged in his appeal.

5. The Appellant's recitations of incidents he believed led to his firing do not provide any affirmative evidence to support the contention that the Appellant was discriminated against based on his sex, either in the form of his dismissal or in the form of sexual harassment.

6. In terms of sex discrimination in the decision to dismiss the Appellant, he could prove his claims by direct or circumstantial evidence. Unfortunately for the Appellant, he has failed to produce sufficient direct or circumstantial evidence of sex discrimination.

7. There is no direct evidence in this appeal of discriminatory animus based on sex. None of the statements or incidents described by the Appellant involve his gender, other than the alleged, single incident in which some unidentified female employees commented they did not want the Appellant to work in the office because he was a male. However, as described by the Appellee in its Motion to Dismiss, this constituted one, isolated episode and there has been no evidence produced that any female employee who may have made such a comment has the capacity or influence to have the Appellant's probationary employment terminated. *See Ammerman v Board of Education of Nicholas County*, 30 S.W.3d 793, 799 (Ky. 2000)(offhand comments and isolated episodes do not amount to sex discrimination). The Appellant has not cited one single instance where his supervisor, Sabrina Pierce, or any other person in a management capacity, made any comments to him or engaged in any acts toward him showing discriminatory animus based on sex.

8. The Appellant has also failed to make out a *prima facie* case of sex discrimination based on circumstantial evidence. In order to do so, the Appellant would be required to show that:

- a) he is a member of a protected class;
- b) he was subject to an adverse employment action;
- c) he was qualified for the job; and
- d) he was replaced by a person outside the protected class or he was treated differently than similarly situated individuals outside the protected class.

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973); *Board of Trustees of Northern Kentucky v. Weickgenannt*, 485 S.W.3d 299, 306 (Ky. 2016).

9. As pointed out by the Appellee in its Motion to Dismiss, the Appellant has not made out a *prima facie* case of sex discrimination under the *McDonnell Douglas* analysis because he has never provided any evidence that any female employees who were similarly situated to him were treated more favorably than he was. *See Weickgenannt*, 485 S.W.3d at 307-308. Specifically, the Appellant has not pointed out any female employees in probationary status who were treated more favorably than he was.

10. Regarding his sexual harassment claims, even taking the Appellant's allegations as true, he has failed to show that the statements directed toward him by female employees constituted sexual harassment because they were not connected to his sex/gender. *See Clements v. North American Stainless*, 277 F.Supp.2d 705, 711 (E.D. Ky. 2001) (anti-discrimination laws barring sexual harassment do not bar all verbal harassment, only harassment tied to sex).

11. Calling the Appellant "Hector Lector" or a "vampire" has nothing to do with his sex/gender. In fact, even the Appellant's counsel stated in the pre-hearing conference that the comment may have been made because the Appellant is tall. The allegations purportedly made by co-worker Robert Caney, that Sabrina Pierce gave the Appellant a photograph of the Appellant's graduation class, told him not to speak to other employees and was apparently somehow "mean" to the Appellant on a single occasion also does not amount to sexual harassment nor does it in any way implicate discriminatory animus based on sex.

12. The single incident in which some unidentified female employees allegedly commented they did not want the Appellant to work in the office because he was a male was a single, isolated episode. Clearly, even assuming the Appellant's allegations are true, the events he has described are not severe or pervasive enough to amount to sexual harassment.

13. Consequently, the Appellee is entitled to judgment as a matter of law because the Appellant has failed to produce sufficient, affirmative evidence of sex discrimination or sexual harassment. Without such evidence, KRS 18A.111 makes it clear that the Personnel Board does not have jurisdiction to review the Appellee's decision to terminate the Appellant during his probationary employment and the consolidated appeal(s) should be dismissed.

RECOMMENDED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Personnel Board that the consolidated appeals of **BRIAN BROWN V. JUSTICE AND PUBLIC SAFETY CABINET, KENTUCKY STATE POLICE (APPEAL NOS. 2024-059 AND 2024-116)**, 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).

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

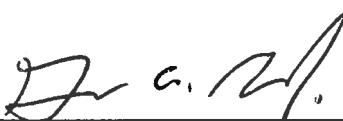
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov.

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 the Hearing Officer this 28th day of August, 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 28th day of August, 2025:

Hon. Theodore Lavit, Counsel for Appellant
Hon. Matthew Bowling, Counsel for Appellee
Hon. Rosemary Holbrook, Personnel Cabinet