

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2021-083

NICHOLAS CAUDILL

APPELLANT

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

TRANSPORTATION CABINET

APPELLEE

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

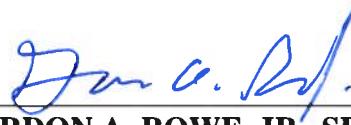
The Board, at its regular September 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated August 8, 2024, and being duly advised,

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 20th day of September, 2024.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Hon. Ned Pillersdorf
Hon. William Fogle
Hon. Rosemary Holbrook (Personnel Cabinet)
J. R. Dobner

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2021-083

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v.

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

TRANSPORTATION CABINET

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* * * * *

This matter last came on for a pre-hearing conference on June 24, 2024, 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/video equipment and were authorized by virtue of KRS Chapter 18A.

The appellant herein, Nicholas Caudill (the “Appellant”), was not present but was represented by his legal counsel, the Hon. Ned Pillersdorf, who appeared by telephone. The appellee herein, the Transportation Cabinet (the “Appellee” or the “Cabinet”), was present by telephone and was represented by the Hon. William H. Fogle.

Pending at the time of the pre-hearing conference was the Appellee’s Motion to Dismiss on jurisdictional grounds, which is the subject of this recommended order.

UNDISPUTED FACTS and PROCEDURAL BACKGROUND

1. The Appellant was employed briefly by the Appellee as a Highway Technician Assistant I in the Kentucky Department of Highways until he was terminated on July 1, 2021 [*See* July 1, 2021 letter from Transportation Cabinet referencing “Separation from Initial Probation” (the “Termination Letter.”)].

2. The Appellant filed an appeal with the Personnel Board on July 12, 2021, challenging his termination on the grounds that he was “discriminated against because he was engaged to the daughter of his supervisor, Transportation Cabinet employee Bobby Smith” [*See* Appeal Form dated July 3, 2021 (the “Appeal Form”) and received by Personnel Board on July 12, 2021; and *see* Appellant’s Response to Motion to Dismiss (the “Response”).].

3. The Appellant was still in his probationary period when his employment was terminated by the Appellee on July 1, 2021, and he has never disputed his status as a probationary employee [*See* Appeal Form, p.2; and *see* July 1, 2021 Termination Letter.].

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4. The Appellant has never claimed that his termination was based on protected class discrimination, despite multiple opportunities to do so.

5. On February 12, 2024, the Appellee filed a Motion to Dismiss the appeal on the grounds that the Appellant was a probationary employee who, pursuant to KRS 18A.111, could be fired for any reason and “has no right to appeal the termination decision” since he “has not alleged any cognizable or recognizable discrimination claim so as to confer jurisdiction on this board.” [See Appellee’s Motion to Dismiss.]

6. Pursuant to an Interim Order entered by the Hearing Officer on November 15, 2023, responses to dispositive motions were due to be filed by March 15, 2024.

7. The Appellant filed an untimely Response to Motion to Dismiss on June 12, 2024 (the “Response Brief”). However, the Appellant did not articulate a protected class discrimination claim in his Response Brief. Instead, the Appellant stated that “he was discriminated against based on his association with his current father-in-law, Bobby Smith.” [See Response Brief].

8. The Appellee timely filed a Reply to Appellant’s Response to Appellee’s Motion to Dismiss (the “Reply Brief”) on June 17, 2024. In its Reply Brief, the Appellee reiterated its position that the Appellant’s appeal should be dismissed because he failed to articulate how the dismissal violated KRS 18A.111 or KRS 18A.095.

9. There are no material issues of fact on the issue of jurisdiction and the appeal can be decided as a matter of law.

CONCLUSIONS OF LAW

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 is not based on a discriminatory reason. *Martin v. Commonwealth*, 822 S.W.2d 858, 860 (Ky. 1991).

2. 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 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.

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.

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4. The Appellant's contention that he was discriminated against solely because of "his association with his current father-in-law" is not a form of protected class discrimination.

5. The Appellant has failed to allege an illegal reason for his termination. Consequently, the Personnel Board does not have jurisdiction to hear this appeal.

RECOMMENDED ORDER

The Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **NICHOLAS CAUDILL V. TRANSPORTATION CABINET (APPEAL NO. 2021-083)**, be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

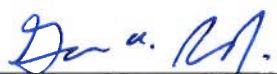
Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are 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 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 the Hearing Officer this 8th day of August, 2024.

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 8th day of August, 2024:

Hon. Ned Pillersdorf, Counsel for Appellant
Hon. William Fogle, Counsel for Appellee