

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-162

MATTHEW S. COOK

APPELLANT

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

FINANCE AND ADMINISTRATION CABINET
LORI H. FLANERY, APPOINTING AUTHORITY

APPELLEE

** **

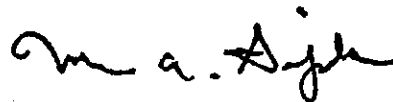
The Board at its regular November 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated October 16, 2014, and being duly advised,

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 19th day of November, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Cary Bishop
Matthew S. Cook
Honor Barker

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-162**

MATTHEW S. COOK

APPELLANT

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

**FINANCE AND ADMINISTRATION CABINET,
LORI H. FLANERY, APPOINTING AUTHORITY**

APPELLEE

** ** *

This matter came on for a pre-hearing conference on August 13, 2014, at 11:30 a.m., ET, 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, Matthew S. Cook, was present and was not represented by legal counsel. The Appellee, Finance and Administration Cabinet, was present and represented by the Hon. Cary Bishop.

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 noted this appeal was filed with the Personnel Board on July 15, 2014. The Appellant indicated he had been dismissed from his position. By letter dated July 14, 2014, Appellant had been advised by Appointing Authority Honor Barker of the Finance and Administration Cabinet that he was being terminated from the position of Mechanical Maintenance Technician III as an employee serving an initial probationary period, and thus, was terminated without cause given. Appellant expressed frustration with this, and wanted to know why he had been terminated, as he believed (in his two months on the job) that he had gotten along well with people and had been recognized as knowing how to do his job, based on having been "left in charge" when his supervisor might be absent. It was explained to the Appellant that an employee serving an initial probationary period is normally not provided any reason or cause as to termination, as such is not required by law.

The parties appeared willing to discuss the matter further off the record. Counsel for the Appellee also stated he would possibly file a Motion to Dismiss, challenging whether the Personnel Board had jurisdiction to consider the appeal.

The Appellee filed a Motion to Dismiss. Appellant, although given ample time in which to do so, did not file a response. The matter stands submitted for a ruling.

BACKGROUND

1. During the relevant times, the Appellant, Matthew S. Cook, was a classified employee serving an initial probationary period.

2. In its Motion to Dismiss, the Appellee, Finance and Administration Cabinet, contends that the Personnel Boards lacks jurisdiction to consider this appeal as the Appellant was terminated from an initial probationary period for which no reason is required to be given. Counsel for the Appellee also noted that Appellant did not indicate he was claiming any sort of protected class discrimination, either on his appeal form or at the pre-hearing conference, although given ample opportunity in which to do so.

3. As noted, Appellant did not file a response to the Motion to Dismiss.

4. KRS 18A.111(1) states:

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.

5. KRS 18A.095(18)(a) states:

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, Matthew S. Cook, was a classified employee serving an initial probationary period.

2. The Hearing Officer finds Appellant, who, at the time of his termination from initial probation, was a classified employee who had not completed the initial probationary period.

3. The Hearing Officer finds that the Appellant did not make any claim during the filing of the appeal, or at the pre-hearing conference, which would give jurisdiction to the Personnel Board to further consider his termination from the period of initial probation.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that the Personnel Board lacks jurisdiction to further consider this matter, and pursuant to KRS 18A.095(18)(a) concludes this matter must be dismissed.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **MATTHEW S. COOK V. FINANCE AND ADMINISTRATION CABINET (APPEAL NO. 2014-162)** 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).

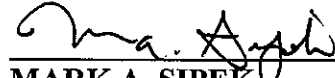
Any document filed with the Personnel Board shall be served on the opposing party.

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.

ISSUED at the direction of **Hearing Officer Boyce A. Crocker** this 16th day of October, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Cary B. Bishop
Mr. Matthew S. Cook