

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2018-035**

ALVIN CORNELIUS

APPELLANT

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

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS**

APPELLEE

*** **

The Board, at its regular April 2019 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 1, 2019, 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 16th day of April, 2019.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Julie Foster
Mr. Alvin Cornelius
Mr. Rodney Moore

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2018-035**

ALVIN CORNELIUS

APPELLANT

V.

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

**JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF CORRECTIONS**

APPELLEE

***** ****

This matter came on for a pre-hearing conference on June 28, 2018, at 9:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Alvin Cornelius, was present by telephone and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Julie Foster.

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 March 2, 2018. Mr. Cornelius was a Correctional Officer serving his initial probationary period at the Blackburn Correctional Complex. The Appellant appealed his probationary dismissal from the Department of Corrections, stating he just wanted to know the reason he was dismissed.

In response to a question from the Hearing Officer, the Appellant stated he was not alleging any type of protected class discrimination. He stated that he wanted to know the reason he was dismissed and also wanted to be eligible to apply for additional jobs with the Department Corrections.

Counsel for the Appellee indicated she wished to file a Motion to Dismiss, after stating they did not have to state a reason for the dismissal for the Appellant. A schedule for a Motion to Dismiss was set.

This matter now stands submitted to the Hearing Officer for a ruling on the Appellee's Motion to Dismiss.

BACKGROUND

1. The Appellant, Alvin Cornelius, was serving his initial probationary period as a Correctional Officer at the Blackburn Correctional Complex.

2. The Appellant was appealing from his dismissal, which was effective close of business February 27, 2018 (Attached hereto as **Recommended Order Attachment A**). The Appellant timely filed his appeal with the Personnel Board on March 2, 2018. Although the Appellant was appealing "dismissal" and "removal from register" on his appeal form, he did not allege any discrimination.

3. At the pre-hearing conference conducted on June 28, 2018, when asked if he was alleging any type of discrimination, the Appellant stated he was not. However, he did want to know the reason for his dismissal.

4. The Appellee filed a Motion to Dismiss with the Personnel Board on July 5, 2018. Counsel for the Appellee stated that pursuant to KRS 18A.111, the Appellant did not have appealable issues. Although given an opportunity to file a response, the Appellant did not do so.

5. 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.

6. KRS 18A.094 (14)(a) states as follows:

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

FINDINGS OF FACT

1. During the relevant times, the Appellant, Alvin Cornelius, was serving his initial probationary period as a Correctional Officer at the Blackburn Correctional Complex. He was dismissed from his position effective February 27, 2018. His dismissal letter included the language, "You shall not be certified on future registers for employment within the Department of Corrections unless the Department of Corrections so requests."

2. The Appellant filed his appeal on March 2, 2018. The Appellant did not allege any form of illegal discrimination on his appeal form or at the pre-hearing conference.

3. The Appellee filed a Motion to Dismiss on July 5, 2018. Although the Appellant was given an opportunity to respond to Appellee's Motion to Dismiss, he did not do so.

4. The Hearing Officer determines that there are no material facts in dispute and this matter may be decided based on the appeal form, the dismissal notice, the Motion to Dismiss, and the statements made at the pre-hearing conference.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes that the Personnel Board lacks jurisdiction because the Appellant has not alleged any form of illegal discrimination in attempting to appeal from his dismissal from initial probation.

2. The Appellee properly informed the Appellant he would not be certified to future registers for the Department of Corrections unless the Department of Corrections requests. This provision in the Appellant's dismissal letter follows the language contained in KRS 18A.111(1).

3. The Board can decide this appeal as a matter of law. KRS 18A.095(18)(a) and KRS 13B.090(2).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **ALVIN CORNELIUS V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2018-035)** 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 Mark A. Sipek** this 1st day of March, 2019.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Julie Foster
Mr. Alvin Cornelius



Cornelius, Alvin

2-28-18

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF CORRECTIONS
BLACKBURN CORRECTIONAL COMPLEX
3111 Spurr Road
Lexington, KY 40511
Telephone (859) 246-2366

James L. Erwin
Commissioner

Tiffany Ratliff
Warden

February 26, 2018

Alvin Cornelius

Dear Mr. Cornelius:

Pursuant to KRS 18A.111, you are advised you will be terminated from the position of Correctional Officer effective close of business February 27, 2018.

You shall not be certified on future registers for employment within the Department of Corrections unless the Department of Corrections so requests.

As an employee serving an initial probationary period as provided by KRS 18A.111, you do not have the right to appeal this action to the Kentucky Personnel Board. However, KRS 18A.095 provides that you may make a claim of discrimination with the Kentucky Personnel Board if you believe the action was based on unlawful discrimination. In accordance with KRS 18A.095, any claim of discrimination must be filed within thirty (30) days, excluding the date notification is sent. Such appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

Sincerely,

Tiffany Ratliff, Warden

Attachment: Appeal Form

cc: Thomas B. Stephens, Personnel Cabinet Secretary
Personnel File

Recommended Order Attachment A