

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2022-140

JASPER COX

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

** ** * * * * *

This matter came on for a pre-hearing conference on March 6, 2023, at 10:30 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, Jasper Cox, was present and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Peter Dooley.

FINDINGS OF FACT

1. The Hearing Officer notes the Appellant filed this appeal with the Personnel Board on October 3, 2022, appealing from his dismissal while serving his initial probationary period as a Correctional Officer. He believed he was subjected to discrimination, and that he was treated differently because he was a new employee. He stated that most of the employees in his class had either resigned or were dismissed.

2. In this case, the Appellant checked the box on the appeal form that states he is appealing a dismissal but has not stated a claim of discrimination. During the pre-hearing conference previously held in this matter, the Appellant admitted that he was not alleging any type of discrimination under KRS 18A.095(12) and merely felt that new employees were not properly prepared for their roles in the institution. Moreover, the Appellant did not deny that he committed the underlying policy violation that is the basis

of his appeal. Therefore, the Appellant has not made an actionable claim under KRS Chapter 18A.

3. The Appellee filed a Motion to Dismiss alleging that the Personnel Board lacked jurisdiction to hear this appeal because the Appellant had not alleged any form of actionable discrimination.

4. The Appellant was employed as a Correctional Officer and was dismissed effective September 1, 2022, while serving his initial probationary period.

5. The Appellant alleged that his dismissal was due to discrimination. He described the discrimination as discrimination against new employees.

6. There are no material issues of fact and this appeal can be decided as a matter of law based on a review of the appeal form, the statement of the parties at the pre-hearing conference, and the Appellee's Motion to Dismiss.

CONCLUSIONS OF LAW

1. As an employee serving his initial probationary period, the Appellant could be dismissed at any time, pursuant to KRS 18A.111. His only right of appeal would be an allegation of illegal discrimination pursuant to KRS 18A.095(12) and (14)(a).

2. Although the Appellant alleged discrimination when he filed his appeal, he made it clear the discrimination was based on his status as a new employee. The merit system allows for distinctions between classified employees, especially while serving their initial probationary period. A classified employee with status may only be dismissed for cause. KRS 18A.095(1). In contrast, a classified employee without status serving his initial probationary period can be dismissed at any time for any reason as long as it is not an illegal reason. KRS 18A.111.

3. There are no genuine issues of material fact and this appeal can be dismissed as a matter of law based on the appeal form, the statements of the parties at the pre-hearing conference, and the Appellee's Motion to Dismiss. KRS 13B.090(2) and KRS 18A.095(18)(a).

RECOMMENDED ORDER

The Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **JASPER COX V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2022-140)** 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.

SO ORDERED at the direction of the Hearing Officer this 6 day of June, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Jasper Cox
Hon. Peter Dooley
Hon. Rosemary Holbrook (Personnel Cabinet)