



**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2019-058**

**BRYAN CREECH**

**APPELLANT**

**V.**

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

**CABINET FOR HEALTH AND FAMILY SERVICES**

**APPELLEE**

This matter came on for a pre-hearing conference on May 3, 2019, at 10:00 a.m. EDT, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Bryan Creech, was present and was not represented by legal counsel. The Agency/Appellee, Cabinet for Health and Family Services, was present and was represented by the Hon. Jenna Davis.

This matter is before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss Appeal for Lack of Jurisdiction, filed with the Personnel Board on May 3, 2019. In their Motion, the Agency argues that the Appellant is an employee of a local health department and has no rights secured by KRS Chapter 18A. The Appellant has had an opportunity to file a response and has done so, arguing that "several members of management staff at the Harlan County Health Department have such strong ties to . . . members of the local health personnel branch [] that a proper response to my appeal is just not possible." This matter now stands submitted to the Hearing Officer for a ruling on the Agency's Motion to Dismiss.

**BACKGROUND/FINDINGS OF FACT**

The Hearing Officer makes the following findings of fact based on the appeal form and attachments, the Agency's Motion to Dismiss, the Appellant's response to the Motion to Dismiss, and the evidence of record.

1. The Appellant, Bryan Creech, was employed by the Harlan County Health Department.

2. The Agency, Cabinet for Health and Family Services, filed a Motion to Dismiss Appeal for Lack of Jurisdiction on May 3, 2019. In their Motion, the Agency argues that employees of local health departments, such as the Harlan County Health Department, have a personnel system separate from that established by KRS Chapter 18A for the classified service. It

is clear, as a matter of law, that employees of local health departments can appeal to the Local Health Department Employment Personnel Council, which is attached to the Cabinet for Health and Family Services pursuant to KRS 211.1752. The Local Health Department Employment Personnel Council administers the personnel system for local health departments established by KRS 211.1755, and that under KRS 211.1752(5)(b)(3) to conduct hearings on appeals for those local health personnel who are disciplined or discharged. As such, the Appellee maintains that this appeal would properly be brought before the Local Health Department Employment Personnel Council and that the Personnel Board has no jurisdiction to hear this appeal.

3. The Appellant filed his response to the Agency's Motion to Dismiss on May 14, 2019. However, the Appellant failed to establish any legal reason why the Personnel Board would have jurisdiction over this matter instead of the Local Health Department Employment Personnel Council.

4. The Hearing Officer finds that personnel employed by local health departments are not employees who can appeal personnel actions to the Personnel Board, but must appeal those actions to the Local Health Department Employment Personnel Council.

#### CONCLUSIONS OF LAW

1. This matter can be decided as a matter of law based upon the appeal form and the pleadings of the parties.

2. The Personnel Board has no jurisdiction to hear this appeal as the Appellant is not an employee with rights found under KRS Chapter 18A, but is a local health department employee and, thus, is governed by KRS Chapter 211. Accordingly, the Appellant must bring any appeal or grievance pursuant to the statutes and regulations governing the Local Health Department Employment Personnel Council.

#### RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **BRYAN CREECH V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2019-058)** 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 Stafford Easterling** this 20<sup>th</sup> day of September, 2019.

**KENTUCKY PERSONNEL BOARD**



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**Mark A. Sipek**  
**Executive Director**

A copy hereof this day mailed to:  
Hon. Jenna Davis  
Bryan Creech  
Howard J. Klein