

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-055

DAWN DAVIS

APPELLANT

VS.

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF JUVENILE JUSTICE

APPELLEE

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

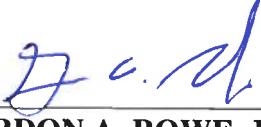
The Board, at its regular June 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated May 12, 2025, and being duly advised,

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 24th day of June, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Dawn Davis
Hon. William Codell
Hon. Peter Ervin
Hon. Rosemary Holbrook (Personnel Cabinet)
Melanie Jenkins

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-055

DAWN DAVIS

APPELLANT

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND
RECOMMENDED ORDER

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF JUVENILE JUSTICE

APPELLEE

* * * * *

This matter last came on for a pre-hearing conference on November 8, 2024, at 2:00 p.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, Dawn Davis (the “Appellant”), was present by telephone and was not represented by legal counsel. The appellee herein, the Justice and Public Safety Cabinet, Department of Juvenile Justice (the “Appellee” or “DJJ”), was represented by the Hon. William Codell, who was present by telephone.

The purposes of the pre-hearing conference were to discuss: the issue(s) for appeal, the jurisdiction of the Personnel Board, the need for dispositive motions, the option of mediation or informal settlement negotiations, and next steps in the appeal. At issue in this appeal is the Appellant’s termination during her probationary employment period, allegedly pursuant to KRS 18A.111. During the pre-hearing conference, the Hearing Officer discussed the importance of jurisdiction and the limits of the Personnel Board’s jurisdiction under KRS 18A.111. Upon request by the Appellee, the Hearing Officer set a schedule for dispositive motions and responses.

After the pre-hearing conference, the Appellee timely filed a Motion to Dismiss the appeal based on KRS 18A.111. The Appellant did not file a response to the Motion. For the reasons set forth herein, the Hearing Officer finds that the Appellee’s Motion to Dismiss is well-taken and recommends this appeal be dismissed as a matter of law.

FINDINGS OF UNDISPUTED FACT and PROCEDURAL BACKGROUND

1. The Appellant was employed by the Appellee as a Correctional Officer for approximately four (4) months at the Warren Regional Juvenile Detention Center until her termination on April 10, 2024 [See April 10, 2024 letter from Justice and Public Safety Cabinet describing termination of the Appellant’s employment (the “Termination Letter.”); and *see* Motion to Dismiss at p.1].

2. The Appellee's termination letter gave no reason for the termination. It merely notified the Appellant that she was being terminated from her position as a Correctional Officer at the Warren Regional Juvenile Detention Center pursuant to KRS 18A.111. [See Termination Letter.]

3. The Appellant timely filed an appeal of her dismissal with the Personnel Board on April 20, 2024.

4. On the Appeal Form, the Appellant did not mark the box for "discrimination" nor did she describe, in any statement on the Appeal Form, any type of illegal discrimination [See Appeal Form.]. In her statement on the Appeal Form that described the facts she believed led to her dismissal, the Appellant conceded that she took naps while on her shift. [See Appeal Form statement at p. 3.] The Appellant explained her behavior by stating she was not trained properly and did not understand the job requirements when not actively checking on juvenile residents. [See Appeal Form statement at p. 3.]

5. The initial pre-hearing conference for this appeal was held on November 8, 2024. During that pre-hearing conference, the Appellant did not allege that she was a victim of discrimination during her employment with the Appellee. The Appellant reiterated her claim that she did not meet expectations because she was not trained properly during her probationary period.

6. The Appellant was still in her probationary period when her employment was terminated by the Appellee on April 10, 2024, and she has never disputed her status as a probationary employee [See Termination Letter.].

7. After the initial pre-hearing conference, the Hearing Officer entered an Interim Order on November 18, 2024, which set forth a schedule for dispositive motions and responses thereto [See Interim Order of November 18, 2024.]. Pursuant to the Interim Order, dispositive motions were to be filed within sixty (60) days of entry of the order. A party responding to a dispositive motion was required to respond within thirty (30) days of the filing of the dispositive motion and the filing party would then have fifteen (15) days to file a reply brief. [See Interim Order of November 18, 2024.].

8. On January 21, 2025, the Appellee filed a motion to dismiss the appeal on the grounds that the Personnel Board lacked jurisdiction because "the Appellant's dismissal occurred during her probationary period, and she has not alleged any form of discrimination." [See Appellee's Motion to Dismiss at p. 2.]

9. The Appellant failed to file a response to the Appellee's Motion to Dismiss. A responsive brief was due by February 20, 2024, and no such response was filed prior to that date, on that date, or at any time thereafter.

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

CONCLUSIONS OF LAW

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

2. 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.” KRS 18A.111(1).

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(11).

4. The Appellant has failed to allege or provide any facts that would support a finding of discrimination. Consequently, there is no genuine issue of material fact at issue and the Appellee is entitled to dismissal as a matter of law. It is well-settled that a motion to dismiss should be granted when the moving party can show that the party who filed the claim “would not be entitled to relief under any set of facts which could be proven in support of his claim.” *Morgan v. Bird*, 289 S.W.3d 222, 226 (Ky. App. 2009). A court should rule on a motion to dismiss when the question at issue is purely a matter of law. *James v. Wilson*, 95 S.W.3d 875, 884 (Ky. App. 2002). In this matter, the Personnel Board clearly does not have jurisdiction as a matter of law, pursuant to KRS 18A.111.

RECOMMENDED ORDER

WHEREFORE, the Hearing Officer, after careful review and consideration of the Appellee’s Motion to Dismiss, the Appeal Form (with attachments), and the evidence of record, recommends to the Kentucky Personnel Board that the appeal of **DAWN DAVIS V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2024-055)**, 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).

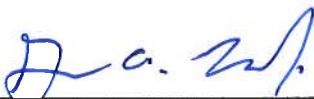
The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov.

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.

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

SO ORDERED at the direction of the Hearing Officer this 12th day of May, 2025.

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 12th day of May, 2025:

Dawn Davis, Appellant
Hon. William Codell, Counsel for Appellee
Hon. Rosemary Holbrook, Personnel Cabinet