

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-135**

TILER DEATON

APPELLANT

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

**PUBLIC PROTECTION CABINET
and
PERSONNEL CABINET**

APPELLEES

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

The Board, at its regular April 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated March 6, 2024, 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 17th day of April, 2024.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day emailed and mailed to:

Tiler Deaton
Hon. Chad Thompson
Hon. Rosemary Holbrook (Personnel Cabinet)
Sabrina Sandoval

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This matter came on for a pre-hearing conference on January 23, 2024, at 10:30 a.m. ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before Hearing Officer Mark A. Sipek. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Tiler Deaton, was present and was not represented by legal counsel. The Appellee, Public Protection Cabinet, was present and was represented by the Hon. Chad Thompson. The Appellee, Personnel Cabinet, was present and was represented by the Hon. Rosemary Holbrook.

The purposes of the pre-hearing conference were to determine which version of KRS Chapter 18A applies to this appeal, to define the issues, to address any other matters relating to this appeal, and to discuss the option of mediation.

BACKGROUND AND FINDINGS OF FACT

1. The Appellant filed her appeal with the Personnel Board on October 4, 2023. She stated she was appealing from a Promotion/Non-selection. She explained that she had applied for a position as an Administrative Section Supervisor and was selected by her Agency. She then learned from the Personnel Cabinet that she did not meet the minimum qualifications for the Administrative Section Supervisor position. The Appellant believed that the decision came down to not crediting her administrative experience as a Deputy Court Clerk. The Appellant stated that all of the events associated with her attempt to be promoted to Administrative Section Supervisor occurred after June 29, 2023.

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2. Counsel for the Personnel Cabinet stated that the Personnel Board did not have jurisdiction over this appeal as a result of Senate Bill 153, and the new version of KRS 18A.095(12)(a). She stated this statute makes clear that the Personnel Cabinet has the final say on whether employees meet the minimum qualifications and there is no right of appeal to the Personnel Board. She stated she would file a motion to dismiss explaining the Personnel Cabinet's position. She also told the Appellant she would meet the minimum qualifications for Administrative Section Supervisor by September 2024.

3. Counsel for the Public Protection Cabinet stated he agreed with the Personnel Cabinet. The Hearing Officer set a dispositive motion schedule.

4. The Appellant was appealing from a Promotion/Non-Selection for a position as an Administrative Section Supervisor.

5. The Personnel Cabinet determined that she did not meet the minimum qualifications.

6. The Appellant applied for the Administrative Section Supervisor with the Public Protection Cabinet in September of 2023.

7. The Appellant was notified that she did not meet the minimum qualifications by the Personnel Cabinet on September 27, 2023.

8. The Appellant requested reconsideration from the Personnel Cabinet and was notified on October 5, 2023, that she did not meet the minimum qualifications.

9. The Appellant filed her Appeal with the Personnel Board on October 4, 2023.

10. Senate Bill 153 became effective on June 29, 2023.

11. The Appellee, Personnel Cabinet, filed a Motion to Dismiss on January 29, 2024.

12. Although given an opportunity to file a response to the Motion to Dismiss, the Appellant failed to do so.

13. There are no material facts in dispute and this appeal can be decided as a matter of law based on the Appeal Form, the statements of the parties at the pre-hearing conference, and the Personnel Cabinet's Motion to Dismiss.

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CONCLUSIONS OF LAW

1. The Hearing Officer adopts the argument section of the Personnel Cabinets Motion to Dismiss which reads as follows:

Senate Bill (SB) 153 became effective on June 29, 2023. Since Appellant's cause of action, a minimum qualification determination, arose after June 29, 2023, her claims must be evaluated under KRS Chapter 18A as amended by S.B. 153. SB 153 revised KRS 18A.095 to state the following regarding minimum qualification reviews conducted by the Personnel Cabinet:

(12)(a) Any applicant for classified employment under KRS Chapter 18A who has been notified by the Personnel Cabinet that he or she did not meet the minimum qualifications for a position may request reconsideration from the secretary not more than ten (1) calendar days after the notification was sent. The secretary's review and determination of the reconsideration shall be completed within ten (10) calendar days from the receipt of the request for reconsideration. The secretary's determination shall be final and shall not be appealable to the Personnel Board.

KRS 18A.095(12)(a). Revised KRS 18A.095(12)(a) states that the Personnel Cabinet Secretary's determination of minimum qualification review "shall be final and shall not be appealable to the Personnel Board." KRS 18A.095(30) further states that "the board shall not have jurisdiction over any appeal except as authorized by this section [KRS 18A.095]." Pursuant to KRS 18A.095(12), the Cabinet's minimum qualification determination on this matter is final. The Personnel Board lacks jurisdiction to hear Deaton's appeal, and the appeal must be dismissed.

2. Having determined that the Personnel Board lacks jurisdiction to hear this appeal this appeal must be dismissed. KRS 18A.095(16)(a) and (30) and KRS 13B.090(2).

RECOMMENDED ORDER

Having determined that the Personnel Board lacks jurisdiction over this appeal, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **TILER DEATON VS PUBLIC PROTECTION CABINET (APPEAL NO. 2023-135)** be **DISMISSED**.

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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).

[Hearing Officer Note: Any document filed with the Personnel Board shall also 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).

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.

ISSUED at the direction of **Hearing Officer Mark A. Sipek** this 6th day of March, 2024.

KENTUCKY PERSONNEL BOARD


Mark A. Sipek
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Chad Thompson
Tiler Deaton
Rosemary Holbrook (Personnel Cabinet)