

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-042**

SHEROEN DUKES

APPELLANT

VS.

**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 October 3, 2024, at 1:30 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, Sheroen Dukes (the “Appellant”), was not present and was not represented by legal counsel. The appellee herein, the Justice and Public Safety Cabinet (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: a) the jurisdiction of the Personnel Board; b) the status of dispositive motions and responsive pleadings thereto; c) the possibility of mediation or informal settlement negotiations; and d) setting dates for an evidentiary hearing and related events, if necessary.

Prior to 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 and was not present at the October 3, 2024 pre-hearing conference to verbally state any objection or 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 Lieutenant at Warren Regional Juvenile Detention Center until his termination on February 18, 2024. [See February 18, 2024 letter from Justice and Public Safety Cabinet describing termination of the Appellant’s employment (the “Termination Letter”).]
2. The Appellant timely filed an appeal of his dismissal with the Personnel Board on March 18, 2024. In his Appeal Form statement, the Appellant argued that his dismissal should be reconsidered because he was “on time every day” and “was

always willing to work over to help cover the facility needs.” [See Appeal Form (the “Appeal Form”) signed and dated March 14, 2024 and marked “RECEIVED” by Personnel Board on March 18, 2024.]

3. On the Appeal Form, the Appellant did not mark the box for “discrimination” nor did he describe in any statement on the Appeal Form any type of illegal discrimination. [See Appeal Form.]
4. The initial pre-hearing conference for this appeal was held on July 3, 2024. During that pre-hearing conference, Appellant was asked directly by the Hearing Officer whether he believed he was a victim of discrimination in his employment with the Appellee. The Appellant stated that he had no facts to support a claim of discrimination and acknowledged he had not listed discrimination as a basis for his termination on the Appeal Form.
5. The Appellant was still in his probationary period when his employment was terminated by the Appellee on February 18, 2024, and he has never disputed his status as a probationary employee. [See Termination Letter.]
6. After the initial pre-hearing conference, the Hearing Officer entered an Interim Order on July 9, 2024, which set forth a schedule for dispositive motions and responses thereto. [See Interim Order of July 9, 2024.] Pursuant to the Interim Order, dispositive motions were to be filed by August 18, 2024. A party responding to a dispositive motion was required to respond within twenty-one (21) days of the filing of the dispositive motion and the filing party would then have ten (10) days to file a reply brief. [See Interim Order of July 9, 2024.]
7. On August 18, 2024, the Appellee timely filed a motion to dismiss the appeal on the grounds that the Appellant was a probationary employee who, pursuant to KRS 18A.111, “could be dismissed without cause.” [See Appellee’s Motion to Dismiss at p.1.] The Appellee also argued that the Appellant had not made a claim of discrimination and, as a probationary employee, could not “invoke the jurisdiction of the Personnel Board” without doing so. [See Appellee’s Motion to Dismiss.]
8. The Appellant failed to file a response to the Appellee’s Motion to Dismiss. A responsive brief was due by September 8, 2024, and no such response was filed prior to that date, on that date, or at any time thereafter.
9. The Appellant has never claimed that his termination was based on protected class discrimination, despite multiple opportunities to do so.
10. There are no material issues of fact on the issue of jurisdiction and this appeal can be decided as a matter of law.

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, Appellant could be dismissed at any time for a good reason, a bad reason, or no reason at all, as long as the dismissal is 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.”
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.
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. Pursuant to KRS 18A.111 and KRS 18A.095, the Personnel Board does not have jurisdiction over this appeal.

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 **SHEROEN DUKES V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2024-042)**, 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).

[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.

SO ORDERED at the direction of the Hearing Officer this 25th day of November, 2024.

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 25th day of November, 2024:

**Sheroen Dukes, Appellant
Hon. William Codell, Counsel for Appellee
Hon. Rosemary Holbrook, Personnel Cabinet**