

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-016

SYDNEY EWING

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

*** **

The Board, at its regular October 2021 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated September 8, 2021, Appellant's Exceptions, 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 14th day of October, 2021.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Carmen Ross
Sydney Ewing
Hon. Rosemary Holbrook (Personnel Cabinet)
Jay Klein

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-016**

SYDNEY EWING

APPELLANT

V.

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEES

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

This matter came on for a pre-hearing conference on March 12, 2020, at 11:30 a.m. EST, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Sydney Ewing, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Carmen Ross.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by the Appellant, the specific section of KRS Chapter 18A which authorizes this appeal, to determine the relief sought by the Appellant, to define the issues, to address any other matters relating to this appeal, and to discuss the option of mediation.

BACKGROUND

1. The Hearing Officer notes this appeal was filed with the Personnel Board on January 16, 2020. On the appeal form, the Appellant, a classified employee with status, indicated she was appealing an "Applicant Rejection," in addition to a claim of penalization, in being denied a promised path to a placement in a Program Investigative Officer II position. The Appellant further explained her claims in the narrative portion of the appeal form wherein she states, in pertinent part:

On 1/2/2020, I sent an email requesting the procedure for me to apply for a Program Investigative Officer II since I met the requirements officially 1/1/2020. I have been a Regional Claims Worker since 7/1/2014 and have 5 ½ years experience. Position was reallocated from FSS III to PIO I through a desk audit. Upper management refuses to respond to request. It has been two weeks with no response.

2. The Appellee filed a Motion to Dismiss arguing that the Appellant has not alleged a penalization. The Appellant filed a response, and the Appellee has filed a reply. This matter has now been assigned to Hearing Officer, Mark A. Sipek, for a ruling on the Appellee's Motion to Dismiss.

FINDINGS OF FACT

1. The Appellant was employed as a FSS III Regional Claims Worker. She states that all similarly classified employees were reallocated to the Program Investigative Officer I position.

2. According to the Appellant, the Appellee did not take into account the employee's knowledge, experience, or seniority. The Appellant sent an email on January 2, 2020, inquiring about the steps to advance to a Program Investigative Officer II position. She filed her appeal because she did not receive a response.

3. The Appellee filed a Motion to Dismiss, alleging that the Appellant had not been penalized when she was not told how she could become a Program Investigative Officer II.

4. The Appellant believed it was a reasonable request. She also appeared to be arguing that she met the minimum qualifications for a Program Investigative Officer II. She may have been requesting a reclassification, or a promotion, into this classification.

5. The Hearing Officer finds Appellant is not entitled to be told how she may advance to a Program Investigative Officer II position. She is not entitled to a reclassification since she does not allege she is performing the duties of a Program Investigative Officer II. She is not entitled to a promotion because no vacancy has been announced.

CONCLUSIONS OF LAW

1. The Appellant has not alleged a penalization, as defined at KRS 18A.095(24). She is not entitled to an explanation as how to advance to a higher position. She also is not entitled to a reclassification or promotion under the facts of the appeal.

2. There are no facts in dispute and this matter may be decided as a matter of law based on the Appellee's Motion to Dismiss, the response, the reply, the appeal form, and the statements of the parties at the pre-hearing conference. KRS 18A.095(18)(a) and KRS 13B.090(2).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board the appeal of **SYDNEY EWING VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2020-016)** 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 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 Mark A. Sipek** this 8 day of September, 2021.

KENTUCKY PERSONNEL BOARD



**MARK A. SIPEK
EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:
Hon. Carmen Ross
Sydney Ewing
Hon. Rosemary Holbrook (Personnel Cabinet)