

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-275

VALARIE FLETCHER

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 March 2017 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 13, 2017, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby 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 15th day of March, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Jennifer Wolsing
Ms. Valarie Fletcher
Mr. Jay Klein

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-275**

VALARIE FLETCHER

APPELLANT

VS.

**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 December 8, 2016, at 10:00 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Valarie Fletcher, was present by telephone and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Jennifer Wolsing.

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

BACKGROUND

1. The Appellant, Valarie Fletcher, filed her appeal with the Personnel Board on October 31, 2016. She stated she was appealing from her dismissal from initial probation as a Therapy Program Assistant. She also alleged discrimination. On the Appeal Form she stated as follows:

I am appealing this separation of Western State facility due to the fact that I and multiple other employees feel that I was discriminated against my job for many reasons. Also I feel I was harassed at the work place which led into this separation on October 24, 2016. I was never written up, no verbal warnings of anything. Sic

2. At the pre-hearing conference, the Appellant stated she was not referring to discrimination based on race, color, religion, ethnic origin, sex, disability, politics or age. She stated she was treated differently than other Therapy Program Assistants. The Appellant described an incident when she came back one-minute late from lunch and had to explain why she was late while her coworkers did not. She stated that her coworkers got to choose where they worked while she never got a choice. She stated her coworkers would often say they could do whatever they wanted to at work. When the Appellant was asked about being harassed in the workplace, she stated that "assignments would fall back on her." Appellant stated she was given no reason for her dismissal.

3. The Appellee filed a Motion to Dismiss stating that the Personnel Board has no jurisdiction to hear the Appellant's appeal. The Cabinet stated that the Appellant was dismissed during her initial probationary period and, pursuant to KRS 18A.111, she had no appeal rights other than a claim of discrimination. Because the Appellant had not alleged illegal discrimination, the Appellee argued that her appeal should be dismissed.

4. Although given an opportunity to respond to the Motion to Dismiss, the Appellant has not filed a response.

FINDINGS OF FACT

1. There are no material facts in dispute and this matter can be decided as a matter of law based on the Appeal Form, the dismissal letter, statements made at the pre-hearing conference, and the Motion to Dismiss.

2. The Appellant was dismissed from her position as a Therapy Program Assistant at Western State Hospital, effective October 26, 2016, while serving her initial probationary period.

3. The Appellant filed her appeal with the Personnel Board on October 31, 2016, challenging her dismissal and alleging discrimination. At the pre-hearing conference, she made clear she was not alleging discrimination based on race, color, ethnic origin, sex, disability, politics, or age. She believed she was treated differently than other Therapy Program Assistants but she did not allege that it was based on any particular protected class.

4. On her Appeal Form, the Appellant also alleged that she was harassed in the work place. However, at the pre-hearing conference, she stated that their harassment involved additional work assignments.

5. The Hearing Officer finds the Appellant was an employee serving her initial probationary period and has not alleged any type of illegal discrimination.

CONCLUSIONS OF LAW

1. The Appellant was serving her initial probationary period pursuant to KRS 18A.111. During this time, she could be dismissed for any reason without the right of appeal unless she alleged some form of illegal discrimination. [See KRS 18A.095(12) and (14)(a).]

2. Because the Appellant has not alleged any form of illegal discrimination or harassment lead to her dismissal her appeal may dismissed pursuant to KRS 18A.095(18)(a).

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **VALARIE FLETCHER VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2016-275)** 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).

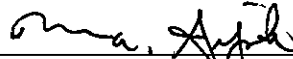
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

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 13th day of February, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Jennifer Wolsing
Ms. Valarie Fletcher