

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-169

PHILLIP DAVID GILES

APPELLANT

V. **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 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated August 27, 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 October, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Phillip David Giles, Appellant
Hon. Robin Cornette, counsel for Appellee
Hon. Rosemary Holbrook (Personnel Cabinet)
Jay Klein

**COMMONWEALTH OF KENTUCKY
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**FINDINGS OF FACT, CONCLUSIONS OF LAW,
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** ** ** ** ** **

This matter came on for a pre-hearing conference on July 30, 2025, at 10:00 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Erritt H. Griggs, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Phillip Giles, was present by telephone and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services (“CHFS”), was present and represented by the Hon. Robin Cornette.

The purposes of the pre-hearing conference were to discuss a) the status of dispositive motions and the responses thereto; b) the option of mediation or informal settlement; and c) next steps in the appeal.

BACKGROUND AND FINDINGS OF FACT

1. The Appellant was hired by the Appellee as a Family Support Specialist I within its Department for Community Based Services on June 16, 2024. *See* Appeal Form narrative, first paragraph.

2. The Cabinet separated the Appellant from his position of Family Support Specialist I, effective November 19, 2024, while still serving his initial probationary period. *See* Appeal Form attachment, Letter from Cabinet Appointing Authority Howard J. Klein, dated November 18, 2024.

3. The Hearing Officer notes the Appellant filed his appeal with the Personnel Board on December 6, 2024, appealing from his probationary dismissal by letter dated November 11, 2024, citing KRS 18A.111 as the basis of its authority to dismiss.

4. Upon inquiry during the April 23, 2025 prehearing conference, the Appellant affirmed that he was on probation at the time of his dismissal and that he wasn’t advancing any claims of protected class discrimination. *See* Interim Order dated April 24, 2025.

5. After discussion of the appeal during the May 23, 2025 pre-hearing conference, counsel for the Appellee stated that she would like to file a Motion to Dismiss on the issue of Personnel Board jurisdiction to hear and rule upon this appeal.

6. By Interim Order dated April 24, 2025, the Appellee was given up to and including June 6, 2025, to file its Motion to Dismiss. The Appellant was provided up to and including July 7, 2025, to file his Response to the Motion to Dismiss.

7. On or about June 6, 2025, the Appellee timely filed a Motion to Dismiss alleging that the Appellant lacked authority to appeal his probationary dismissal pursuant to KRS 18A.111(1) and therefore the Personnel Board lacked jurisdiction to hear or rule upon the substance of the appeal.

8. Although given time to respond to the Appellee's Motion to Dismiss, the Appellant has failed to do so. Upon inquiry during the latest pre-hearing conference, the Appellant asserted that even if he was given additional time, he would not file a response to the Appellee's Motion.

9. There are no genuine issues of material fact, and this matter 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 Appellee's Motion to Dismiss.

ADDITIONAL FINDINGS OF FACT

1. During the relevant times, the Appellant was in his initial probationary period with the CHFS pursuant to KRS 18A.111(1) and 101 KAR 1:325, Section 1.

2. The Hearing Officer finds that the Appellant was a classified employee separated from his position prior to the end of his initial probationary period.

3. The Appellant timely filed his appeal; however, the Hearing Officer finds the Appellant has not made any claim of protected class discrimination. Even upon inquiry, no discrimination claim was made during the pre-hearing conferences nor made in any other filings with the Personnel Board.

4. The Hearing Officer finds that the Personnel Board does not have jurisdiction to hear and rule upon the substance of an appeal where the appellant does not have a regulatory statutorily granted right to challenge the employment action.

CONCLUSIONS OF LAW

1. Pursuant to KRS 18A.111(1) the Appellee was dismissed during his initial probationary period.

2. The Appellant is advancing no claims of protected class discrimination in this appeal.

KRS 18A.111(1) expressly limits the right of a probationary employee to appeal their separation: "An employee may be separated from his position ...during this initial probationary period and shall not have a right to appeal, except as provided by KRS 18A.095."

3. The Hearing Officer concludes as a matter of law that the Personnel Board lacks jurisdiction to further consider this appeal, as the Appellant has not properly invoked the jurisdiction of the Personnel Board, nor made any cognizable claim under KRS 18A.

4. Because there are no issues of material fact and the Board lacks jurisdiction to hear this matter, this appeal can be dismissed as a matter of law based on the appeal form, the statements of the parties at the pre-hearing conference, and the Appellee's Motion to Dismiss. KRS 18A.095(8)(a) and KRS 13B.090(2).

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 **PHILLIP DAVID GILES V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2024-169)** 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 27th day of August, 2025.

KENTUCKY PERSONNEL BOARD


ERRITT H. GRIGGS
GENERAL COUNSEL

A copy hereof this day emailed and mailed to:

Phillip Giles, Appellant
Hon. Robin Cornette, Counsel for Appellee
Hon. Rosemary Holbrook (Personnel Cabinet)