

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-202**

CYNTHIA GILMORE

APPELLANT

VS.

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

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS**

APPELLEE

**** ** * * ***

This matter came on for a pre-hearing conference on December 12, 2019 at 9:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Cynthia Gilmore, was present by telephone and was not represented by legal counsel. The Appellee Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Amy Barker. The Appellee Personnel Cabinet was present and represented by the Hon. Catherine Stevens.

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 Hearing Officer notes the Appellant filed her appeal with the Personnel Board on September 16, 2019, appealing her removal from the register. The Appellant stated that she was a former Classification and Treatment Officer at the Kentucky State Reformatory. She requested to be allowed to be active on state employment registers. She stated that she acknowledged in an Agreed Settlement to be treated as “non-rehireable” by the Department of Corrections. The Appellant stated she is seeking to be hired outside of the Kentucky State Reformatory by the Division of Probation and Parole.

2. All parties agreed that any decision regarding this issue would be made by the Department of Corrections and the Personnel Cabinet could be dismissed as a party.

3. The Appellee filed a Motion to Dismiss arguing that the Appellant has not stated a claim under KRS Chapter 18A and the Board has no jurisdiction to grant her relief.

4. The Appellee explained the Appellant was previously employed with the Department of Corrections and filed two appeals with the Personnel Board following her dismissal. These Personnel Board appeals, Appeal Nos. 2018-209 and 2018-212, were settled between the parties. The Appellee stated as follows in its Motion to Dismiss:

The terms of the settlement agreement specifically considered retention of the register block and included: (1) the Appellant received annual leave that Appellant would have been entitled to upon the date of her separation from employment, subject to all legally required withholdings; (2) the Appellant acknowledged and understood that a register block remained in place and she was not eligible for rehire within the Department of Corrections; (3) the Appellant agreed to withdraw Appeal Nos. 2018-209 and 2018-212; and (4) the Appellant released the Department from any and all claims, liabilities, promises, contracts, suits, costs, expenses, and attorney’s fees which have or could have been asserted by her or on her behalf in the appeal or in any other proceeding and she agreed that if any released claim was filed, pursued or otherwise prosecuted by her, she waived her right to relief from such claim.

5. The Appellee also pointed out that the Settlement Agreement was filed with the Board on January 9, 2019, and a Settlement Order was issued by the Board dated January 24, 2019.

6. The Appellee argues that the Appellant has not stated a penalization and the Board cannot grant her any relief.

7. Although given the opportunity to respond to the Appellee's Motion to Dismiss, the Appellant did not file a response.

FINDINGS OF FACT

1. The Appellant, Cynthia Gilmore, was employed as a Classification and Treatment Officer with the Justice and Public Safety Cabinet, Department of Corrections. Following her dismissal from the Department of Corrections, she filed two appeals with the Personnel Board, Appeal Nos. 2018-209 and 2018-212.

2. The Appellant and the Department of Corrections entered into a Settlement Agreement regarding Appeal Nos. 2018-209 and 2018-212. As a result of this agreement between the parties, the Appellant received her annual leave in exchange to agree to a register block, which would remain in place. She acknowledged that she would be ineligible for rehire within the Department of Corrections. She also agreed to withdraw her two appeals. This Settlement Agreement was filed with the Personnel Board on January 9, 2019.

3. The Personnel Board approved the Settlement in Appeal Nos. 2018-209 and 2018-212 by Order entered on January 24, 2019.

4. The Appellant applied for a position as a Probation and Parole Officer with the Kentucky Department of Corrections, Division of Probation and Parole. She was notified that she was ineligible to be on the register.

5. The Appellant filed this appeal asking that the ban on employment be lifted to the extent that she be allowed to apply for a position with the Division of Probation and Parole.

6. Following the pre-hearing conference, the Department of Corrections considered the Appellant's request and denied her request. They instead filed a Motion to Dismiss.

7. There are no genuine issues of material fact 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, the Appellee's Motion to Dismiss, and the Settlement Agreement and Board Order from Appeal Nos. 2018-209 and 2018-212.

CONCLUSIONS OF LAW

1. The Appellant has not stated an appealable penalization over which the Personnel Board has jurisdiction.

2. The Settlement Agreement entered into regarding the previous appeals by the Appellant and the Department of Corrections clearly included the ban on future employment unless the Department of Corrections agreed to lift that ban. After given the opportunity to lift the ban and allow the Appellant to be considered for future employment, the Appellee declined.

3. The Personnel Board has no jurisdiction to ignore the provisions of the Settlement Agreement of the parties and to grant the Appellant any relief in this case.

4. Pursuant to KRS 18A.095(18)(a), the Board may deny a hearing to an employee after a preliminary hearing if it lacks jurisdiction to grant relief. See also KRS 13B.090(2)

5. KRS 18A.032(1) and (h) reads in part as follows:

(1) Except as provided by the provisions of this chapter, the secretary may refuse to examine an applicant; or, after

examination, may disqualify an applicant, remove his name from a register, refuse to certify any eligible on a register, or may consult with the appointing authority in taking steps to remove such person already appointed if:

(h) He has previously been dismissed from a position in the state service for cause or has resigned while charges for dismissal for cause of which he had knowledge were pending;

6. The Appellee's Motion to Dismiss is **GRANTED**.

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 **CYNTHIA GILMORE VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2019-202)** 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).


[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).

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 27th day of April, 2021.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:
Hon. Amy Barker
Ms. Cynthia Gilmore
Hon. Rosemary Holbrook (Per. Cab.)