



**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2018-240**

**MIKE GINTER**

**APPELLANT**

**V.**

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

**KENTUCKY AUTHORITY FOR EDUCATIONAL TELEVISION**

**APPELLEE**

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This matter last came on for a pre-hearing conference on January 22, 2019, at 10:30 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, Mike Ginter, was present and was not represented by legal counsel. The Agency/Appellee, Kentucky Authority for Educational Television, was present and represented by the Hon. Samuel Flynn and Hon. Sharon Gold.

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

This matter is before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion for Summary Disposition, filed with the Personnel Board on March 8, 2019. In its Motion, the Agency argues that the Appellant, a non-merit employee, has failed to articulate a claim of discrimination as is required by KRS 18A.095(14)(a) despite being given multiple opportunities to do so. The Appellant was given an opportunity to respond to the Agency's motion and belatedly did so on April 29, 2019, in a document submitted to the Agency and not served on the Board, outside of the dispositive motion schedule established by the January 30, 2019 Interim Order. In his late submission, the Appellant stated, in pertinent part, "I don't have any proof about age discrimination other than talk with other past employees, so for me to make any claim as such would have been a waste of my time and yours." Further, the Appellant stated that when he received a Personnel Board appeal form attached to his notice of dismissal, "[t]here was no mention that I had to prove anything (like a form of discrimination), just that I could make an appeal that I didn't agree with the judgment of KET management at the time which I still don't." Because the Appellant submitted his response to the Agency's Motion for Summary Disposition tardily, as permitted by the January 30, 2019 Interim Order, the Agency submitted a

reply to Appellant's response, or lack thereof of, on April 26, 2019. This matter now stands submitted to the Hearing Officer for a ruling on the Agency's Motion for Summary Disposition.

### BACKGROUND/ FINDINGS OF FACT

1. The Hearing Officer notes the facts underlying the instant appeal were largely agreed to by the parties during the pre-hearing conference, the dispositive motions, and the responses thereto. Accordingly, the Hearing Officer largely adopts the facts as articulated by the parties in their respective submissions and as established by the documents submitted with the underlying appeal.

2. Prior to the submission of the instant appeal, the Appellant, Mike Ginter was a Graphic Designer with the working title of Internet Artist employed by the Kentucky Authority for Educational Television. Pursuant to KRS 18A.115(1)(f), the Appellant was a full-time, non-merit KET employee who was terminated without cause from KET on November 2, 2018.

3. Thereafter, on November 30, 2018, the Appellant filed this appeal challenging his dismissal. The Appellant alleged that he was a classified employee, failed to indicate on the appeal form that he was appealing discrimination, and provided a narrative statement on his appeal form that stated, in pertinent part, "I feel like I was set up to fail the "P.I.P" no matter what I did. I have been a good employee for 23 years."

4. During the January 22, 2019 pre-hearing conference held in this matter, the Hearing Officer specifically asked the Appellant if he was alleging any form of discrimination, including age discrimination. The Appellant responded, "possibly, because I am pretty close to retirement. I only had four more years to go. I already had 23." He went on to say that he was "not sure" about a discrimination claim, that he "didn't know," but that it was possible.

5. Thereafter, in the January 30, 2019 Interim Order, the Appellant was ordered to submit a More Definite Statement of his claims and was specifically instructed to set out his claimed penalizations including any assertions of discrimination.

6. The Appellant filed a lengthy More Definite Statement on February 8, 2019, including transcripts of email conversations with Agency representatives. Importantly, however, the majority of the Appellant's statement dealt with his assertions that:

I feel I was unjustly terminated from KET and the main reasons my circumstance happened were due to the isolation of my office and a lack of communication during the last two years. However, I'm the only person being held accountable. I had no or little control over the situation and took my queues from management. Ann Bransom was my manager and put only minimal effort into including me into the web team. The reason I was not more direct

with Ann is because I knew she had been dealing with a lot of pressure and health issues, and I didn't want to burden her with my needs until she had time and was ready to deal with assessing my training and integrating me back into the team. She should bear just as much or more responsibility for her lack of any attempts to evaluate my new skills and allowing me more chances to utilize them before initiating the PIP process.

Ann gave me little attention, guidance, feedback, or empowerment – all the things I had every reason to expect from a supervisor.

7. In his More Definite Statement, the Appellant did make a few, tentative references to his age, arguing that “[m]y isolation could have also been due to her workload, our personalities, and even my age and near retirement status could have played a role too, since I only had three years and three months to go.” The Appellant also stated that “[m]y age and my near retirement may also have played some role in my termination, but I have no evidence to base this on other than talks I’ve had with fellow employees years ago about being pushed to leave and take their retirement package early. Also, there is the incident of the mass firings of many employees (14-15 I think) around 2010, many of whom were near retirement. . . . Both of these events have made me wonder if my age and retirement status may have been a contributing factor in my dismissal.”

8. KRS 18A.095(14)(a) provides:

Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board.

9. KRS 18A.005(24) provides:

‘Penalization’ means demotion, dismissal, suspension, fines, and other disciplinary actions; involuntary transfers; salary adjustments; any action that increases or diminishes the level, rank, discretion, or responsibility of an employee without proper cause or authority, including a reclassification or reallocation to a lower grade or rate of pay; and the abridgment or denial of other rights granted to state employees.

10. KRS 18A.095(18)(a) provides, in pertinent part:

The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of

his right to appeal the denial under the provisions of KRS 18A.100.

### CONCLUSIONS OF LAW

1. Generally speaking, under Chapter 18A, a non-merit employee may be fired for a good reason, a bad reason, or no reason, just not a discriminatory reason. See Martin v. Commonwealth, 822 S.W.2d 858, 860 (Ky. 1991). KRS 18A.095(14)(a) provides, in pertinent part, that any employee “who believes that he has been discriminated against, may appeal to the board.”

2. Here, the Hearing Officer finds the Appellant has failed to articulate a claim of discrimination. While Board appellants are not required to establish a *prima facie* case of discrimination on an appeal form and the procedural bar for articulating a claim of discrimination is rather low, the Hearing Officer finds that the Appellant has not ever clearly stated that his termination was the result of any type of protected class discrimination, despite being given multiple opportunities to do so. To be clear, this is not a finding that the Appellant failed to **prove** discrimination in his appeal form or that the Appellant failed to establish a *prima facie* case of discrimination. Instead, the Hearing Officer finds the specific language used by the Appellant in his appeal form and his submissions of record do not contain a statement sufficient to articulate a claim of discrimination. For instance, the Appellant’s statements that 1) “[m]y isolation could have also been due to her workload, our personalities, and even my age and near retirement status could have played a role too, since I only had three years and three months to go[;]” or that 2) that “[m]y age and my near retirement may also have played some role in my termination, but I have no evidence to base this on other than talks I’ve had with fellow employees years ago about being pushed to leave and take their retirement package early” do not articulate a discrimination claim in a manner sufficient to invoke the jurisdiction of the Personnel Board. Therefore, pursuant to KRS 18A.095(18)(a), dismissal of this claim is appropriate because the Appellant is a non-merit, Chapter 18A employee seeking to invoke the Board’s jurisdiction without advancing a claim of discrimination. Thus, the Appellant’s appeal must be dismissed as it is not authorized by any provision of KRS Chapter 18A. Accordingly, the instant appeal must fail as a matter of law.

3. All pending motions and requests are hereby **DENIED AS MOOT.**

### RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **MIKE GINTER V. KENTUCKY AUTHORITY FOR EDUCATIONAL TELEVISION (APPEAL NO. 2018-240)** 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).

**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 Stafford Easterling** this 3<sup>rd</sup> day of October, 2019.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPER**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Samuel Flynn  
Hon. Sharon Gold  
Mike Ginter