

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2018-220

JONATHAN GRIMES

APPELLANT

VS.

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

FINANCE AND ADMINISTRATION CABINET

APPELLEE

*** **

The Board, at its regular May 2019 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated April 3, 2019, 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 7th day of May, 2019.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Cary Bishop
Mr. Jonathan Grimes
Ms. Stacy Perry

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2018-220**

JONATHAN GRIMES

APPELLANT

**V. FINDINGS OF FACT, CONCLUSION OF LAW
AND RECOMMENDED ORDER**

FINANCE AND ADMINISTRATION CABINET

APPELLEE

***** ****

This matter came on for a pre-hearing conference on February 13, 2019, at 11:30 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, Jonathan Grimes, was present by telephone and was not represented by legal counsel. The Appellee, Finance and Administration Cabinet, was present and represented by the Hon. Cary Bishop.

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.

The Hearing Officer notes the Appellant filed his appeal with the Personnel Board on October 25, 2018. The Appellant stated he was appealing his dismissal and that he was penalized because he was fired for safety precautions. The Appellant stated on his appeal form and at the pre-hearing conference that although he was hired as a Technician I, he was asked to perform duties that should have been performed by a Technician II or III. He then alleged that he was blamed for not taking the appropriate safety precautions to perform tasks that he was not qualified to perform. The Appellant stated that he believes he started in June 2018 and was fired during his initial probationary period on October 19, 2018.

The Appellant stated that when he complained about performing job duties outside of his job classification, he was moved to the service side, but then told on the following Friday that he was fired. The Appellant stated that he was not alleging any type of discrimination.

Counsel for the Appellee requested time to file a Motion to Dismiss. A schedule for a Motion to Dismiss was set.

Counsel for the Appellee filed a Motion to Dismiss Pending Appeal on February 21, 2019. The Appellant was given time to respond, but did not do so. This matter now stands submitted to the Hearing Officer for a ruling on the Appellee's Motion to Dismiss.

BACKGROUND

1. The Appellant, Jonathan Grimes, was serving his initial probationary period as an Automotive Technician I with the Finance and Administration Cabinet, Fleet Operations Branch.

2. The Appellant was appealing from his dismissal effective close of business October 19, 2018, which is attached hereto as **Recommended Order Attachment A**. The Appellant timely filed his appeal with the Personnel Board on October 25, 2018. Although the Appellant was appealing "dismissal" and "Other Penalization: Fired for safety precautions" on his appeal form, he did not allege any discrimination.

3. At the pre-hearing conference conducted on February 13, 2019, when asked if he was alleging any type of discrimination, the Appellant stated he was not.

4. The Appellee filed a Motion to Dismiss with the Personnel Board on February 21, 2019. Counsel for the Appellee stated that pursuant to KRS 18A.111(1), the Appellant did not have appealable issues. Although given an opportunity to file a response, the Appellant did not do so.

5. KRS 18A.111(1) states as follows:

Except when appointed to a job classification with an initial probationary period in excess of six (6) months, and except as provided in KRS 18A.005 and this section, an employee shall serve a six (6) months probationary period when he is initially appointed to the classified service. An employee may be separated from his position, reduced in class or rank, or replaced on the eligible list during this initial probationary period and shall not have a right to appeal, except as provided by KRS 18A.095. The employee may be placed on an eligible list but shall not be certified to the agency from which he was separated unless that agency so requests. Unless the appointing authority notifies the employee prior to the end of the initial probationary period that he is separated, the employee shall be deemed to have served satisfactorily and shall acquire status in the classified service.

6. KRS 18A.094 (14)(a) states as follows:

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

FINDINGS OF FACT

1. During the relevant times, the Appellant, Jonathan Grimes, was serving his initial probationary period as an Automotive Technician I with the Finance and Administration Cabinet, Fleet Operations Branch. He was dismissed from his position effective close of business on October 19, 2018.
2. The Appellant filed his appeal on October 25, 2018. The Appellant did not allege any form of illegal discrimination on his appeal form or at the pre-hearing conference.
3. The Appellee filed a Motion to Dismiss on February 21, 2019. Although the Appellant was given an opportunity to respond to Appellee's Motion to Dismiss, he did not do so.
4. The Hearing Officer determines that there are no material facts in dispute and this matter may be decided based on the appeal form, the dismissal notice, the Motion to Dismiss, and the statements made at the pre-hearing conference.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes that the Personnel Board lacks jurisdiction because the Appellant has not alleged any form of illegal discrimination in attempting to appeal from his dismissal from initial probation. KRS 18A.111(1) and KRS 18A.095.
2. The Board can decide this appeal as a matter of law. KRS 18A.095(18)(a) and KRS 13B.090(2).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **JONATHAN GRIMES V. FINANCE AND ADMINISTRATION CABINET (APPEAL NO. 2018-220)** 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 Mark A. Sipek this 3rd day of April, 2019.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Cary Bishop
Jonathan Grimes



Commonwealth of Kentucky
Finance and Administration Cabinet

Matthew G. Bevin
Governor

**OFFICE OF ADMINISTRATIVE SERVICES
DIVISION OF HUMAN RESOURCES**

702 Capital Avenue, Room 188
Frankfort, KY 40601
(502) 564-7233 / Fax (502) 564-2613

William M. Landrum III
Secretary

Stacy M. Perry
Division Director

October 19, 2018

Jonathan Grimes

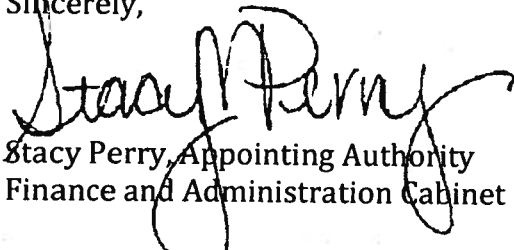
Personnel Number:

Dear Mr. Grimes:

Pursuant to KRS 18A.111, you are advised you will be terminated from the position of Automotive Technician I within the Maintenance Section, Fleet Operations Branch, Division of Fleet Management, Office of Administrative Services, Finance and Administration Cabinet effective close of business October 19, 2018.

As an employee serving an initial probationary period as provided by KRS 18A.111, you do not have the right to appeal this action to the Kentucky Personnel Board. However, KRS 18A.095 provides that you may file a claim of discrimination with the Kentucky Personnel Board if you believe the action was based on unlawful discrimination. In accordance with KRS 18A.095, any claim of discrimination must be filed within thirty (30) days, excluding the date notification is sent. Such appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

Sincerely,



Stacy Perry, Appointing Authority
Finance and Administration Cabinet

Attachment: Appeal Form

C: Thomas B. Stephens, Secretary, Personnel Cabinet
Troy Robinson, Executive Director, Office of Administrative Services
Pete McDonald, Division Director, Division of Fleet Management

Recommended Order Attachment A