

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-214**

MARY GROSS

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 April 20, 2021, at 11:00 a.m. ET, 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, Mary Gross, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Lucas Roberts, who also appeared by telephone.

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, to address any other matters relating to this appeal, to see about joining additional parties, and to discuss the option of mediation.

BACKGROUND

1. The Hearing Officer notes this appeal was filed with the Personnel Board on October 16, 2020. On the appeal form and during the pre-hearing conference, the Appellant, a

classified employee without status, indicated she was challenging her probationary dismissal in addition to alleging that the Agency denied, abridged, or impeded her right to inspect or copy records. The Appellant further explained her claims in the narrative portion of the appeal form wherein she states, in full:

I have 9 years + 5 months with the state. I moved from Pre-Trial back to DCBS. I was seperated from the state 8 days prior to being off probation. A compliant was filed due to me testifying in court for a family friend. I was on personal leave, did not testify as a state social, was never read the compliant filed against me, no one from OHRM spoke to me. I have been a merit employee the entire time with the state according to all documentation. Lesley Spencer spoke to me and told me I would be terminated even before court recordings were recieved and an investigation was completed. (sic)

2. Following discussion, the Appellant made clear that she was a long-time employee of the Administrative Office of the Courts before transferring to the Cabinet for Health and Family Services. After that clarification, the Agency requested an opportunity to submit a dispositive motion in an attempt to resolve these claims.

3. The Appellee filed a Motion to Dismiss. Although given an opportunity to respond, the Appellant has failed to do so. This matter is now assigned to Hearing Officer Mark A. Sipek for ruling on the Appellees Motion to Dismiss.

FINDINGS OF FACT

1. The Appellant, Mary Gross, took a position as a Social Service Worker I effective January 1, 2020. She had resigned her position as a Pretrial Officer with the Administrative Office of the Courts.

2. The Administrative Office of the Courts is part of the Judicial Branch and not a part of the merit system. The Appellant resigned to reappoint into her Social Service Worker I

position. She was serving her initial probationary period, which for a Social Service Worker I is nine (9) months.

3. Eight (8) days before the end of her probationary period, the Appellant was dismissed from her position as a Social Service Worker I.

4. The Appellant filed an appeal alleging that her dismissal was the result of a complaint that she testified in court for a family friend. She alleges that she testified while on personal leave and did not testify as a State Social Worker. She stated she has never read the complaint that was filed against her and that the allegations against her were not fully investigated.

5. She alleged that she was denied, abridged, or impeded the right to inspect or copy records. She did not articulate what records she was referring to on her appeal form or at her pre-hearing conference.

6. The Appellee filed a Motion to Dismiss alleging that the Appellant had filed an appeal from her probationary dismissal but had not alleged illegal discrimination. Although given the opportunity to respond, the Appellant has not filed a response to the Motion to Dismiss.

CONCLUSIONS OF LAW

1. As an employee serving her initial probationary period, the Appellant could be dismissed at any time pursuant to KRS 18A.111. Her only right of appeal would be an allegation of illegal discrimination pursuant to KRS 18A.095(12) and (14)(a).

2. Because the Appellant filed her appeal and did not allege discrimination or any other illegal reason for her dismissal, the Personnel Board lacks jurisdiction to hear this appeal.

3. The Appellant has not articulated the records to which she has been denied access.

4. There are no genuine issues of material fact and 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.

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 **MARY GROSS VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2020-214)** 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 16th day of
September, 2021.

KENTUCKY PERSONNEL BOARD

A handwritten signature in blue ink, appearing to read 'Mark A. Sipek / M.A.S.', written over a horizontal line.

MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Lucas Roberts

Ms. Mary Gross

Hon. Rosemary Holbrook (Personnel Cabinet)