

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-026**

SUZANNE HART

APPELLANT

**VS. FINAL ORDER SUSTAINING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER AS ALTERED**

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

APPELLEE

* * * * *

The Board, at its regular July 2017 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated June 26, 2017, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** the Conclusions of Law and substitute the following:

As a classified employee serving her initial probationary period the Appellant could be dismissed from her position without the right to appeal, except that she could make a claim of illegal discrimination. See KRS 18A.111(1) and KRS 18A.095(12) and (14)(a).

The Appellant made clear that she was not alleging discrimination and, thus, the Personnel Board lacks the jurisdiction to grant the Appellant any relief with regard to her appeal. KRS 18A.095(18)(a) states in part "the Board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant any relief."

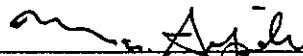
There are no material facts in dispute and this appeal may be decided as a matter of law based on the statements on the appeal form, the statements of the parties at the pre-hearing conference, and the motion to dismiss.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as Altered, be and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is **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 17th day of July, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
SECRETARY

A copy hereof this day mailed to:

Hon. Angela Cordery
Ms. Suzanne Hart
Mr. Rodney E. Moore

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-026**

SUZANNE HART

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 April 18, 2017, at 10:30 a.m., ET, at 28 Fountain Place, 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, Suzanne Hart, 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. Angela Cordery.

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 this appeal was filed with the Personnel Board on January 30, 2017. Suzanne Hart, the Appellant, was appealing her termination. She was dismissed from her position as a Correctional Officer at the Roederer Correctional Complex on

January 27, 2017. Appellant alleged she had been told she was doing a good job and then was dismissed. She stated that she had missed a few days from work, then was told she would be suspended for time and attendance and was asked to sign some paperwork. She stated that she did not sign the paperwork, but requested to talk to someone about time and attendance instead. She stated she was then instructed that she was going to be dismissed.

2. The Appellant stated she felt she was doing her job and did not deserve to be dismissed. When asked if she was alleging any type of illegal discrimination, the Appellant stated no.

3. The Appellee filed a Motion to Dismiss alleging that the Board did not have jurisdiction to hear the Appellant's appeal. The Appellee stated that the Appellant was dismissed while serving her initial probationary period and made it clear that she was not stating a claim of discrimination.

4. Although given time to file a response, the Appellant did not file a response and the for her response has passed.

FINDINGS OF FACT

The Hearing Officer makes the following findings by preponderance of the evidence:

1. The Appellant was employed as a Correctional Officer at the Roederer Correctional Complex with the Appellee. She was serving her initial probationary period and she was told by her supervisor that she was doing a good job.

2. The Appellant was instructed that, due to a problem with time and attendance, she would be suspended. She was requested to sign some paperwork, which she did not do. Thereafter, she was told that she was being dismissed. The Appellant received notice of her dismissal on January 27, 2017. The dismissal informed the Appellant she was being dismissed while serving her initial probationary period and did not have a right to file an appeal, unless she could make a claim of discrimination.

3. The Appellant filed her appeal with the Personnel Board on January 20, 2017. The Appellant made clear she was not claiming discrimination. The Appellant stated she

believed she should not have been dismissed because she was performing satisfactorily in her job.

CONCLUSIONS OF LAW

As a classified employee serving her initial probationary period the Appellant could be dismissed from her position without the right to apply, except that she could make a claim of illegal discrimination. See KRS 18A.111(1) and KRS 18A.095(12) and (14)(a).

The Appellant made clear that she was not alleging discrimination and, thus, the Personnel Board lacks the jurisdiction to grant the Appellant any relief with regard to her appeal. KRS 18A.095(18)(a) states in part "the Board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant any relief."

There are no material facts in dispute and this appeal may be decided as a matter of law based on the statements on the appeal form, the statements of the parties at the pre-hearing conference, and the 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 **SUZANNE HART VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2017-026)** 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

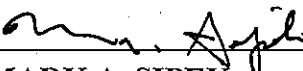
which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

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 26th day of June, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK

EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Angela Cordery

Ms. Suzanne Hart