

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2022-088**

**TAMIRA HIGGINS**

**APPELLANT**

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

**ADMINISTRATIVE OFFICE OF THE COURTS**

**and**

**PERSONNEL CABINET**

**APPELLEES**

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The Board, at its regular February 2023 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 3, 2023, 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 Findings of Fact paragraph 3 and substitute the following:

3. In its Motion to Dismiss, the Appellee stated as follows:

Pursuant to Sec. 116 of the Kentucky Constitution, the Supreme Court of Kentucky has been vested with the exclusive authority over the rules for the appointment of Court of Justice personnel. Further, the Board's jurisdiction to hear appeals is limited to those employment actions involving employees serving under the state personnel system established in KRS 18A.005-18A.200, and KRS 18A.115(1)(1) expressly excludes the Court of Justice from application of those statutes. Thus, the Board does


not have jurisdiction to hear appeals from an employment action involving an AOC employee. As a result, this appeal cannot be heard and considered by the Board and should be dismissed.

**IT IS FURTHER ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as Altered, 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 14<sup>th</sup> day of February, 2023.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
**SECRETARY**

A copy hereof this day mailed to:

Tamira Higgins  
Hon. Margaret Ivie  
Hon. Zach Mowen  
Hon. Rosemary Holbrook (Personnel Cabinet)

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2022-088

TAMIRA HIGGINS

APPELLANT

VS.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER

ADMINISTRATIVE OFFICE OF THE COURTS

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PERSONNEL CABINET

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\*\*\*\* \* \* \* \* \*

This matter came on for a pre-hearing conference on October 17, 2022, at 1:30 p.m., ET, at 1025 Capital Center Drive Suite 105, Frankfort Kentucky, before Hearing Officer Mark A. Sipek. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Tamira Higgins was present and was not represented by legal counsel. The Appellee Administrative Office of the Courts was present and was represented by the Hon. Danielle Haddad. The Appellee Personnel Cabinet was present and was represented by the Hon. Zach Mowen.

The purposes of the pre-hearing conference were to determine the specific penalizations, alleged by the Appellant, to determine the specific section of KRS 18A that authorizes this appeal, to determine the relief sought by the Appellant, to define the issues, to address any other matters relating to this appeal, including whether the Personnel Board has jurisdiction over this appeal, and to discuss the option of mediation.

**FINDINGS OF FACT**

1. The Appellant filed her appeal with the Personnel Board on July 5, 2022, from her dismissal. The Appellant was serving her initial probation and was dismissed. She alleged that her dismissal was the result of race discrimination. She also stated she has since been retaliated against. At the time she was dismissed, she was told she was being terminated for no cause; however, the Human Resources Department at the Administrative Office of the Courts (AOC) had told others that the Appellant was fired

for threatening another employee. The Appellant also stated she has suffered from harassment during her employment and was asked to sign a non-disclosure agreement. She alleged she was listed as an unclassified employee while her coworkers were listed as tenured employees serving their initial probation. The Appellant stated she would like to be reinstated with AOC and to receive backpay.

2. The Appellant has also filed a complaint with the Equal Employment Opportunity Commission (EEOC). She stated that she is working with an investigator from the U.S. EEOC.

3. In its Motion to Dismiss the Appellee is stated as follows:

Pursuant to Sec. 116 of the Kentucky Constitution, the Supreme Court of Kentucky has been vested with the exclusive authority over the rules for the appointment of Court of Justice personnel. Further, the Board's jurisdiction to hear appeals is limited to those employment actions involving employees serving under the state personnel system established in KRS 18A.005-18A.200, and KRS 18A.115(1)(1) expressly excludes the Court of Justice from application of those statutes. Thus, the Board does not have jurisdiction to hear appeals from an employment action involving an AOC employee. As a result, this appeal cannot be heard and considered by the Board and should be dismissed.

4. The Appellant filed a response to the motion to dismiss. She argued that she was an unclassified employee and that she was subjected to race discrimination in that she had to earn her tenured status while her white peers did not. She requested to be reinstated at the Administrative Office of the Courts but under a different supervisor. She did not respond directly to the argument that the Personnel Board did not have jurisdiction over her appeal.

5. It is not in dispute that the Appellant was an employee of the Administrative Office of the Courts which is a part of the Judicial Branch of Government.

6. There are no material facts in dispute and this matter 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 Administrative Office of the Court's Motion to Dismiss, and the

Appellant's Response to the Appellee Administrative Office of the Court's Motion to Dismiss.

### CONCLUSIONS OF LAW

1. Because the Appellant was employed by the Administrative Office of the Courts, which is a part of the Judicial Branch of Government, the Personnel Board lacks jurisdiction to hear this appeal from the Appellant's dismissal. This conclusion is supported by the clear language of KRS 18A.115(1)(l), KRS 27A.050 and the case of *Ex parte Farley*, 570 S.W.2d 617, 620 (KY. 1978). In addition, it is supported by the Personnel Board's Final Order, *Randal Hayslett v. Administrative Office of the Courts*, 2008 WL 3996604 (KY PB).

2. As an administrative agency, the Personnel Board only has the jurisdictional authority allowed by statutes. The fact that the Appellant requests that the Personnel Board hear her appeal, does not grant the Personnel Board jurisdiction in this matter.

3. Dismissal following a preliminary hearing is appropriate when the Personnel Board lacks jurisdiction. KRS 18A.095 (18)(a) and KRS 13B.090(2).

### RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **TAMIRA HIGGINS VS. ADMINISTRATIVE OFFICE OF THE COURTS (APPEAL NO. 2022-088)** 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 fifteen (15) 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).

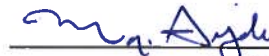
**Any document filed with the Personnel Board shall be served on the opposing party.**

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 3 day of January, 2023.

**KENTUCKY PERSONNEL BOARD**



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**MARK A. SIPEK,  
EXECUTIVE DIRECTOR**

A copy hereof this day e-mailed and mailed to:

Hon. Margaret Ivie  
Tamara Higgins  
Hon. Zachary Mowen  
Hon. Rosemary Holbrook (Personnel Cabinet)