

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-116**

FLOYD HOCKENSMITH

APPELLANT

vs.

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

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

APPELLEE

*** *** *** *** ***

The Board, at its regular April 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated February 20, 2024, 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 17th day of April, 2024.

KENTUCKY PERSONNEL BOARD

Mark A. Sipek
MARK A. SIPEK, SECRETARY

Copies hereof this day emailed and mailed to:

Floyd Hockensmith
Hon. Edward Baylous
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney Moore

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-116

FLOYD HOCKENSMITH

APPELLANT

V. **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 November 8, 2023, at 12:00 p.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, Floyd Hockensmith, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Edward Baylous, who also appeared by telephone.

The purposes of the pre-hearing conference were to determine which version of KRS Chapter 18A applies to this appeal (see PersonnelBoard.ky.gov), to define the issues, to address any other matters relating to this appeal, and to discuss the option of mediation.

This appeal is assigned to Hearing Officer Mark A. Sipek for a ruling on the Appellee's Motion to Dismiss.

BACKGROUND AND FINDINGS OF FACT

1. The Hearing Officer notes this appeal was filed with the Personnel Board on August 21, 2023. On the appeal form and during the pre-hearing conference, the Appellant, a classified employee without status, indicated he was appealing his probationary dismissal without advancing any type of discrimination or retaliation claim(s). The Appellant further explained his claims in the narrative portion of the appeal form wherein he states, in full:

All certification issued was per OSHA standards.

* * * *

Not sure of reason for termination.

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2. Following discussion, including an overview of the Personnel Board process and the fact that the Appellant will have the burden of proof going forward, the Appellee/Agency argued that the Personnel Board does not have jurisdiction over the Appellant's claim(s) and requested an opportunity to file a dispositive motion. The parties then agreed on a briefing schedule.

3. The Appellee filed a Motion to Dismiss. In its motion, the Appellee argued that the Appellant was dismissed from his position as Safety Administrator while serving his initial probationary period. The Appellant failed to allege any illegal discrimination. As a result, the Appellee argued that this appeal must be dismissed.

4. Although given an opportunity to file a response to the Appellee's Motion to Dismiss, the Appellant failed to do so.

5. The Appellant was notified on August 2, 2023, that he was dismissed from his Safety Administrator position effective August 3, 2023. He was serving his initial probationary period. He was also notified he would not be certified on future registers for employment with the Department of Corrections unless the Agency requested.

6. The Appellant filed his appeal with the Personnel Board on August 21, 2023. He did not allege any type of discrimination.

7. There are no genuine issues of material fact and this appeal can be decided as a matter of law based on the Appeal Form, the statements of the parties at the prehearing conference, and the Appellee's Motion to Dismiss.

CONCLUSIONS OF LAW

1. KRS 18A.111(1) provides 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.

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2. KRS 18A.095(11)(a) provides as follows:

Any applicant, classified employee, or federally funded time-limited employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, age forty (40) and above, or any other category protected under state or federal civil rights laws. Nothing in this section shall be construed to preclude any applicant, classified employee, or unclassified employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.

3. As an employee serving his initial probationary period, the Appellant could only appeal a claim of illegal discrimination to the Personnel Board.

4. Because the Appellant did not allege any form of discrimination, there is no relief the Personnel Board can grant him and his appeal must be dismissed. KRS 13B.090(2) and 18A.095(16)(a).

5. Because the Appellant was dismissed and filed his appeal after June 29, 2023, this appeal is decided based on the provisions of KRS Chapter 18A following the passage of Senate Bill 153.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **FLOYD HOCKENSMITH VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2023-116)** 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)

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).

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The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov

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.

Hearing Officer note: Any document filed with the Personnel Board shall be served on the opposing party.

SO ORDERED at the direction of **Hearing Officer Mark A. Sipek** on the 20 day of February 2024.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Floyd Hockensmith
Hon. Edward Baylous
Hon. Rosemary Holbrook (Personnel Cabinet)