

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2018-260

KEVIN HUDSON

APPELLANT

VS.

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

DEPARTMENT OF EDUCATION

APPELLEE

*** **

The Board, at its regular February 2020 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 9, 2020, 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 12th day of February, 2020.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Ashley Lant
Mr. Kevin Hudson

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2018-260**

KEVIN HUDSON

APPELLANT

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

DEPARTMENT OF EDUCATION

APPELLEE

** ** *

This matter last came on for a pre-hearing conference on April 3, 2019, at 10:30 a.m. EDT, 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, Kevin Hudson, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Commonwealth of Kentucky, Department of Education, was present and represented by the Hon. Ashley Lant.

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 and to discuss the option of mediation.

This matter is before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss, filed with the Personnel Board on May 3, 2019. In its Motion, the Agency argues that the Appellant, a certified employee subject to the personnel administration of KRS 156.800, *et seq.*, has failed to invoke the jurisdiction of the Personnel Board as he is not an employee covered by KRS Chapter 18A. The Appellant was given an opportunity to respond to the Agency's motion, but failed to do so. This matter now stands submitted to the Hearing Officer for a ruling on the Agency's Motion to Dismiss.

BACKGROUND/ FINDINGS OF FACT

1. The Hearing Officer notes the facts underlying the instant appeal were largely agreed to by the parties during the pre-hearing conference. Accordingly, the Hearing Officer largely adopts the facts as articulated by the parties in their respective submissions and as established by the documents submitted with the underlying appeal.

2. Prior to the submission of the instant appeal, the Appellant, Kevin Hudson, was a Kentucky Tech Instructor Rank III at the Carroll County Area Technology Center, which is one of 53 area technology centers operated by the Agency across the Commonwealth.

3. On November 27, 2018, the Agency issued the Appellant a notice of termination and informed him that as “a limited status employee, you are subject to reemployment on an annual basis and may be dismissed without cause before your annual anniversary date in accordance [with] KRS 156.826.” The termination letter also informed the Appellant that “as an employee serving in a limited status capacity pursuant to KRS 156.826, you do not have the right to appeal this action except as provided by KRS 156.820(10).”

4. Thereafter, on December 26, 2018, the Appellant filed this appeal challenging his dismissal in addition to advancing a claim of disability discrimination. Following a pre-hearing conference and the establishment of a briefing schedule, the Agency submitted the underlying Motion to Dismiss arguing that the Appellant is not an employee covered by the provisions of KRS Chapter 18A and that the Personnel Board does not have jurisdiction over this appeal. The Appellant was given an opportunity to respond, but has failed to do so.

5. KRS 18A.095(18)(a) provides, in pertinent part:

The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.

CONCLUSION OF LAW

Pursuant to KRS 18A.095(18)(a), the Personnel Board, subsequent to a pre-hearing conference, may, on the recommendation of the Hearing Officer, dismiss or deny an appeal if it lacks jurisdiction to grant relief. The Hearing Officer concludes that the Board lacks jurisdiction to grant relief in this appeal, as the Appellant is not an employee covered by KRS Chapter 18A. As such, the Appellant has not properly invoked the jurisdiction of the Personnel Board and has not stated a claim under law whereby the Board could grant any meaningful relief to the Appellant. Accordingly, the instant appeal must fail as a matter of law.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **KEVIN HUDSON V. DEPARTMENT OF EDUCATION (APPEAL NO. 2018-260)** 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 Stafford Easterling** this 9th day of January, 2020.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Ashley Lant
Kevin Hudson