

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-156

REBECCA JERVIS

APPELLANT

VS.

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF PUBLIC ADVOCACY

APPELLEE

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

The Board, at its regular May 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated April 10, 2025, 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 15th day of May, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Rebecca Jervis
Hon. Melanie Lowe
Hon. Rosemary Holbrook (Personnel Cabinet)

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-156**

REBECCA JERVIS

APPELLANT

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

v.

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

APPELLEE

* * * * *

This matter last came on for a pre-hearing conference on January 22, 2025, at 12:00 p.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Gordon A. Rowe, Jr., Executive Director/Hearing Officer. The proceedings were recorded by audio equipment and were authorized by virtue of KRS Chapter 18A.

The appellant herein, Rebecca Jervis (the “Appellant”), was not present and was not represented by legal counsel. The Hearing Officer noted that he tried to contact the Appellant by telephone three (3) separate times and was directed to voice mail each time. The Hearing Officer left voice messages for the Appellant to call into the conference, but she never did so. The appellee herein, Justice and Public Safety Cabinet, Department of Public Advocacy (the “Appellee”), was present by telephone and was represented by the Hon. Melanie Lowe. The Hearing Officer set forth the issues to be discussed at the pre-hearing conference: a) the status of dispositive motions; and b) next steps in the appeal.

As discussed in the previous pre-hearing conference, the issue on appeal is whether there was just cause for the Appellee’s reversion of the Appellant to her former position of Administrative Specialist III. The Appellee has taken the position that the Personnel Board does not have jurisdiction over this appeal because the Appellant was in a probationary period when she was reverted back to the position of Administrative Specialist III. The Hearing Officer gave the Appellee until October 31, 2024, to file a dispositive motion on the issue of jurisdiction and the Appellee timely filed a Motion to Dismiss the appeal based on lack of jurisdiction on October 31, 2024. The Appellant had until December 16, 2024, to respond to the Motion to Dismiss but to date has not done so. The deadline for the response has clearly passed.

In the previous pre-hearing conference, the Appellant also stated that the Appellee retaliated against her after she filed her appeal with the Personnel Board, at least in part by

denying her leave sharing request. The Hearing Officer permitted the Appellant ten (10) days after entry of his previous order to state her retaliation claim but, to date, the Appellant has failed to amend her appeal. The deadline for the amendment has clearly passed.

The Hearing Officer, having reviewed the Appellee's Motion to Dismiss, the record in this appeal, and having listened to the statements of the parties, has concluded that the Appellee's Motion to Dismiss the appeal should be granted for the reasons stated hereinafter.

STATEMENT OF UNDISPUTED FACTS

1. The Appellant was promoted to the job of Human Resource Administrator in the Department of Public Advocacy on June 16, 2023. As a result of her promotion, the Appellant was placed on promotional probation in the new position, which was to last for six (6) months.

2. By letter dated October 30, 2023, before her promotional probation period ended, the Appellee gave the Appellant timely notice that she was being reverted back to the position of Administrative Specialist III and informed her the reason was she "failed to satisfactorily complete your promotional probationary period." [See Reversion Letter dated October 30, 2023.] The reversion took effect on November 1, 2023.

3. An employee in promotional probation status must serve a probationary period of six (6) months. KRS 18A.005(26) and KRS 18A.111. The employee may be reverted back to her former position if she "fails to successfully complete promotional probation." KRS 18A.005(34).

4. The Appellant timely appealed her reversion on November 30, 2023, which was within thirty (30) days of the personnel action she appealed.

5. The issue for appeal is whether the Personnel Board has jurisdiction to hear the appeal of the reversion.

6. An employee reverted from promotional probation can appeal the reversion to the Personnel Board only if the employee can show that the action was based on discrimination due to a category protected under state or federal civil rights laws. KRS 18A.005(34).

7. The Appellant has not claimed any type of discrimination under state or federal civil rights laws. The Appellant did not check the box for "Discrimination" on her appeal form and has not otherwise indicated in her appeal form or in statements before the Hearing Officer that any type of protected class discrimination was the reason for her reversion.

8. The Appellant stated in her appeal form that her reversion was due to a “training/management failure.” She stated that her “manager was out of the office for a variety of reasons throughout my time there, which makes training difficult.” [See Appeal Form statement.] The Appellant also stated that one of the reasons given for her reversion was that she had been late for work on too many occasions. She asserted that her tardiness was caused by “time blindness,” which was not accommodated by her employer. [See Appeal Form statement.]

9. In a pre-hearing conference, the Appellant speculated that the Appellee denied her leave sharing request as a retaliatory measure. However, the Appellant never explained how the denial of her leave sharing request was retaliatory nor has she ever provided any affirmative evidence to support her retaliation claim.

10. On October 31, 2024, the Appellee timely filed a motion to dismiss the appeal. As grounds for dismissal, the Appellee argued that it followed all of the necessary procedures for reversion from probationary appeal and that under KRS 18A.005(34), the Appellant could only appeal in the event she was pursuing a discrimination claim under KRS 18A.095.

11. The Appellant failed to file a response to the Appellee’s Motion to Dismiss. A responsive brief was due by December 16, 2024, and no such response was filed prior to that date, on that date, or at any time thereafter. The Appellant has not otherwise provided any type of affirmative evidence that would show that her reversion was due to the type of discrimination that would have permitted an appeal to the Personnel Board under KRS 18A.005(34) and KRS 18A.095(11).

12. Based on the evidence in the record, there are no material issues of fact on the issue of jurisdiction and the appeal can be decided as a matter of law.

CONCLUSIONS OF LAW

1. It is well-established that a motion to dismiss should only be granted if the moving party can show that the party who filed the claim “would not be entitled to relief under any set of facts which could be proven in support of his claim.” *Morgan v. Bird*, 289 S.W.3d 222, 226 (Ky. App. 2009). The pleadings filed by the claiming party “should be liberally construed in the light most favorable to the plaintiff, all allegations being taken as true.” *Pari-Mutuel Clerks’ Union of Kentucky, Local 541, SEIU, AFL-CIO v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977). A court should rule on a motion to dismiss when the question at issue is purely a matter of law. *James v. Wilson*, 95 S.W.3d 875, 884 (Ky. App. 2002).

2. The issue before the Personnel Board is purely an issue of law: whether the Board has jurisdiction to hear an appeal of an employee on promotional probation who is not claiming discrimination. That question must be answered in the negative; the Board does not have jurisdiction over this appeal.

3. A reviewing body has “an affirmative obligation to ensure that it is acting with in its subject matter jurisdiction” and shall dismiss a case “at any point in the litigation” if that body “determines that it lacks subject-matter jurisdiction.” *Basin Energy Co. v. Howard*, 447 S.W.3d 179, 187 (Ky. App. 2014).

4. The Personnel Board does not have authority to hear any appeal not specifically authorized by KRS Chapter 18A. KRS 18A.095(30). In fact, the Personnel Board is **required** to dismiss any appeal in which it determines “it lacks jurisdiction to grant relief.” KRS 18A.095(16)(a).

5. The Personnel Board only has jurisdiction to hear the appeal of a reversion from promotional probation where the employee has made a claim of prohibited discrimination under KRS 18A.095(11).

6. The Appellee had the authority to revert the Appellant to her previous position and followed the necessary procedures to do so. The Appellee reverted the Appellant for unsatisfactory completion of promotional probation before the probationary period expired. The Appellee properly and timely gave the Appellant written notice of the reversion before she had satisfactorily completed her six (6) month promotional probation, which was in accord with 101 KAR 1:325, Section 2(2).

7. An employee may only appeal reversion from promotional probation where the Appellant can show the reversion was related to prohibited discrimination. KRS 18A.005(34). The Appellant has made no such showing in this appeal. She has not produced any affirmative evidence to show the reversion was related to any type of discrimination prohibited by state or federal civil rights laws. *See* KRS 18A.095(11).

8. The Appellant’s claim that the Appellee failed to accommodate her “time blindness” fails as a matter of law. The Appellant has not provided any affirmative evidence that

her employer was on notice that she had any disability which would have required an accommodation¹ by the Appellee.

9. The Appellant's claim that the Appellee failed to train her properly, even if accepted as true, does not constitute discriminatory treatment precluded by KRS 18A.095 nor does it provide any other valid basis for the Personnel Board to have jurisdiction over this appeal.

10. The fact that the Appellant may have been notified of the reasons for her reversion does not provide a basis for jurisdiction. KRS 18A.111(8).

11. The Personnel Board does not have jurisdiction to hear the appeal of the Appellant's reversion because she has not produced any facts that would show her appeal fits the exception to the rule that Personnel Board can only hear the appeal of a reversion when the reversion was related to any form of discrimination precluded by state or federal civil rights laws. *See* KRS 18A.005(34); and *see* KRS 18A.095(11).

12. Pursuant to KRS 18A.005(34), the Personnel Board does not have jurisdiction over this appeal and the Appellee is entitled to judgment as a matter of law.

RECOMMENDED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Personnel Board that the appeal of **REBECCA JERVIS V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF PUBLIC ADVOCACY (APPEAL NO. 2023-156)** 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

¹ Although "time blindness" is a recognized condition which may be associated with ADHD, it is not on its own a recognized disability. The Appellant has not made any showing as to how any condition she had would be a qualifying disability under the ADA or any other civil rights laws.

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).

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.

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

SO ORDERED at the direction of the Hearing Officer this 10th day of April, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR.
EXECUTIVE DIRECTOR

A copy hereof was emailed and mailed to the following persons at their respective addresses as provided to the Personnel Board on this 10th day of April, 2025:

Rebecca Jervis, Appellant
Hon. Melanie Lowe, Counsel for Appellee
Hon. Rosemary Holbrook, Personnel Cabinet