

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-124**

MELISSA LEE

APPELLANT

VS.

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

PUBLIC PROTECTION CABINET

APPELLEE

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

The Board, at its regular July 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated May 30, 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 14th day of July, 2025.

KENTUCKY PERSONNEL BOARD


GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Melissa Lee
Hon. Jennifer Wolsing
Hon. Jacob Walbourn
Hon. Rosemary Holbrook (Personnel Cabinet)
Alice M. Cooper

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-124

MELISSA LEE

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDED ORDER

PUBLIC PROTECTION CABINET

APPELLEE

* * * * *

This matter is before the Hearing Officer on the Public Protection Cabinet's Motion for Summary Judgment.

This appeal last came on for a pre-hearing conference on February 18, 2025, at 3:30 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/video equipment and were authorized by virtue of KRS Chapter 18A.

During the pre-hearing conference, the appellant herein, Melissa Lee (the "Appellant"), appeared by telephone and was not represented by legal counsel. The appellee herein, the Public Protection Cabinet (the "Appellee" or "PPC"), was represented by the Hon. Jennifer Wolsing, who appeared in person.

The purposes of the pre-hearing conference were to discuss and address: the dispositive motion filed by the Appellee and subsequent responsive pleadings, and next steps in the appeal.

This appeal is based on the Appellant's non-selection for promotion to the position of Insurance Program Manager. The Appellant has claimed the successful candidate did not meet the qualifications for the position and that at least one interviewer discriminated against her. During an earlier pre-hearing conference, the Hearing Officer set a schedule for dispositive motion practice. After that earlier pre-hearing conference, the Appellee filed a motion for summary judgment, which essentially argued that the appeal should be dismissed based on its untimely filing, and because the Appellant has failed to make a *prima facie* case of disability discrimination. The Appellant timely filed a response to the motion for summary judgment and the Appellee filed a reply brief.

The parties were allowed to present arguments to support their positions during the pre-hearing conference. Counsel for the Appellee argued that the interview process was conducted according to state law and customary agency procedures and that none of the interviewers even knew about the Appellant's claimed disability. She also argued that the appeal was filed six (6) days too late since it was filed thirty-six (36) days after the Appellant was notified of her non-

selection. The Appellant argued that the thirty (30) day period should not have begun to run until she obtained records through an open records request regarding the selection process. During the pre-hearing conference, she also continued to argue that the successful candidate did not have the qualifications for the position.

FINDINGS OF FACT and PROCEDURAL BACKGROUND

1. The Appellant is a classified employee with status employed by the Appellee in its Department of Insurance.

2. The Appellant applied for the position of Insurance Program Manager in early 2024. She was granted an interview on July 1, 2024. Bradley Wilson was also granted an interview and was eventually chosen by the interview panel as the successful candidate.

3. By electronic correspondence dated July 18, 2024 (the Non-Selection Letter) and sent to Appellant through the MyPurpose database for state employees, the Appellee informed the Appellant that she was not selected for the position of Insurance Program Manager. [See Exhibit E to Motion for Summary Judgment; and *see* Exhibit E1 to Appellee's Supplement to Reply Supporting Motion for Summary Judgment.]

4. The Appellee sent the Appellant the Non-Selection Letter on July 18, 2024. The Appellant has never contested the July 18, 2024 date as the date the Non-Selection Letter was mailed to her.

5. KRS 18A.095(12)(b) required the Appellant to appeal her non-selection based on any alleged violation of appointment or promotion procedures within thirty (30) calendar days of the date the non-selection notice was mailed to her or sent electronically (excluding the date it was sent). Likewise, the Appellant was required to file an appeal based on any discriminatory action she believed may have blocked her promotion within thirty (30) calendar days of the alleged discriminatory action. KRS 18A.095(11)(b). Accordingly, she had to file an appeal of her non-selection on or before August 17, 2024.

6. The filing date of the Appellant's appeal is not in dispute. The Appellant submitted an appeal of her non-selection to the Personnel Board on August 23, 2024, by filing an Appeal Form (with attachments) on that date. The Appellant signed and dated the Appeal Form on August 23, 2024, and it was stamped as "RECEIVED" by the Personnel Board on August 23, 2024. [See Appeal Form]. At no time has the Appellant ever denied or produced any evidence to show that the Appeal Form was filed on a date other than August 23, 2024.

7. The Appellee timely filed a motion for summary judgment on October 1, 2024. In the motion, counsel for the Appellee argued the appeal was untimely, having been filed thirty-six (36) days after notification of the Appellant's non-selection had been sent, which was beyond the time limits allowed under KRS 18A.095(11)(b) and KRS 18A.095(12)(b). The Appellee also argued that the Appellant failed to make out a *prima facie* case of disability discrimination because she produced no affirmative evidence to support for her discrimination claim.

8. The Appellant timely filed a response to the Motion for Summary Judgment on January 5, 2025 (the “Appellant’s Response”). In the Appellant’s Response, the Appellant argued that her time to file the appeal should have begun to run on the date she received a response to an open records request in which she requested more information about the interview and selection process. However, the Appellant has offered no legal support for her assertion that the time limit for an appeal set forth in KRS 18A.095 could be extended by her open records request. The version of KRS 18A.095 in effect at the time the Appellant filed her appeal plainly states that an appellant who appeals non-selection must do so within thirty (30) calendar days of the date her notification of her non-selection was sent. *See* KRS 18A.095(12)(b).

9. The Appellant conceded in the Appellant’s Response that she could offer no proof that her non-selection was due to a disability and that counsel for the Appellee “may be correct” in her assertion that the Appellant cannot make a *prima facie* case of discrimination. [See Appellant’s Response at p. 3.]

10. On January 6, 2025, the Appellee filed its reply brief. The Appellee supplemented its reply brief on February 26, 2025, to provide a clearer copy of Exhibit E to the Motion for Summary Judgment [*See* PPC’s Supplement to Reply Supporting Motion for Summary Judgment, with Exhibit E1 showing the July 18, 2024 Non-Selection notification.]

STANDARD OF REVIEW

1. Summary judgment should be entered when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure (“CR”) 56.03; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 482 (Ky. 1991). The movant should only be granted summary judgment when the right to judgment as a matter of law is “shown with such clarity that there is no room left for controversy.” *Steelvest, Inc.*, 807 S.W.2d at 482. A party opposing a motion for summary judgment must present “at least some affirmative evidence showing that there is a genuine issue of material fact for trial.” *Id.* at 482.

2. There is no genuine issue of material fact in this case as to the timing of the appeal filing and the application of the filing deadlines under KRS 18A.095(11)(b) and KRS 18A.095(11)(b).

CONCLUSIONS OF LAW

1. 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, even if the issue is not raised by the parties.” *Basin Energy Co. v. Howard*, 447 S.W.3d 179, 187 (Ky. App. 2014).

2. The Kentucky Personnel Board was created by KRS Chapter 18A and its jurisdiction is defined thereby. KRS Chapter 18A sets the parameters of the Personnel Board’s jurisdiction in terms of subject matter and timeliness of the appeal. An agency may not act

outside the time limitations imposed by statute and is not empowered to add or subtract from the requirements of the statute. *Public Service Commission of Kentucky v. Attorney General of the Commonwealth*, 860 S.W.2d 296, 298 (Ky. App. 1993).

3. KRS 18A.095 unambiguously requires the Board to deny an appeal of an “employee who has failed to file an appeal within the time prescribed by this section.” KRS 18A.095(16)(a). This Board has scrupulously and consistently followed this jurisdictional mandate. *See, e.g., Lori Bachman v. Cabinet for Health and Family Services*, 2022 WL 1080747 at *3 (KY PB March 16, 2023)(holding that Personnel Board did not have jurisdiction to hear an appeal filed one (1) day after time to appeal expired).

4. Pursuant to KRS 18A.095, the Appellant had thirty (30) days after July 18, 2024, to file an appeal of her non-selection and/or disability discrimination. *See* KRS 18A.095(11)(b) and KRS 18A.095(12)(b).

5. The Appellant’s appeal filing occurred thirty-six (36) days after she was first notified of her non-selection on July 18, 2024. Since KRS 18A.059 unequivocally requires such a filing to occur within thirty (30) days of notification of non-selection, the appeal was untimely as a matter of law. Thus, the Personnel Board does not have jurisdiction to hear the appeal and it should be dismissed.

RECOMMENDED ORDER

WHEREFORE, the Hearing Officer, after careful review and consideration of the Appellee’s Motion for Summary Judgment, the Appellant’s Response to Appellee’s Motion for Summary Judgment, the Appellee’s Reply Brief, the Appeal Form and the evidence of record, recommends to the Kentucky Personnel Board that the appeal of **MELISSA LEE V. PUBLIC PROTECTION CABINET (APPEAL NO. 2024-124)**, 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).

[Hearing Officer Note: Any document filed with the Personnel Board shall also be served on the opposing party.]

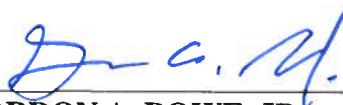
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with

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.

SO ORDERED at the direction of the Hearing Officer this 30th day of May, 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 30th day of May, 2025:

Melissa Lee, Appellant
Hon. Jennifer Wolsing, Counsel for Appellee
Hon. Rosemary Holbrook, Personnel Cabinet