



**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NOs. 2019-219 & 2019-224**

**JUSTIN LITTLE**

**APPELLANT**

**VS.**

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

**TRANSPORTATION CABINET**

**APPELLEE**

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This matter came on for a pre-hearing conference on December 18, 2019, at 11:00 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, Justin Little, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Transportation Cabinet, was present and represented by the Hon. William Fogle.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by the Appellant, the specific section of KRS Chapter 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.

**BACKGROUND**

1. The Hearing Officer notes Appeal No. 2019-219 was filed with the Personnel Board on October 4, 2019, and Appeal No. 2019-224 was filed on October 16, 2019. On the appeal forms, the Appellant, a classified employee without status, indicated he was appealing his dismissal in addition to advancing a claim of discrimination. The Appellant further explained his claims in the narrative portion of the appeal form wherein he states, in full:

No reason for dismissal was given to me as to why I am being dismissed prior to today, October 2, 2019, also there was no formal reason given to me today when I was called into the district office for the Executive director to inform me that I was being terminated. I am left without employment, and with no explanation as to why.

2. Following discussion, the Appellant made clear that he was a probationary employee who was dismissed before the end of his probationary period and was not given a reason as to why. The Appellant also explicitly confirmed that his claim(s) of discrimination were not based on any allegation of protected class status. The Agency then argued that the Board does not have jurisdiction over these appeals and requested the opportunity to file a dispositive motion.

3. The Appellee has filed a Motion to Dismiss. The Appellant had submitted a statement which amounts to a letter of reference. This matter has now been assigned to Hearing Officer Mark A. Sipek for a ruling on the Appellee's Motion to Dismiss.

### **FINDINGS OF FACT**

1. The Appellant was employed by the Transportation Cabinet as a Highway Technician Assistant I in the Department of Highways, District 10.

2. While serving his initial probationary period, he received notice on October 2, 2019, that he would be officially separated from his position effective close of business October 2, 2019.

3. In his dismissal letter, the Appellant was informed that he could file a claim pursuant to KRS 18A.095 based on unlawful discrimination.

4. On October 4, 2019, the Appellant filed an appeal from his dismissal and checked the box for discrimination.

5. On his appeal form and at the pre-hearing conference, the Appellant made clear that he filed his appeal because he was dismissed before the end of his probationary period and was not given a reason why. The Appellant explicitly confirmed that his claims of discrimination were not based on any allegation of protected class status.

6. The Appellee filed a Motion to Dismiss arguing that the Appellant's claim is legally deficient since his discrimination claim was not based on any of the protected classes outlined in KRS Chapter 18A.

7. Although given an opportunity to respond to the Appellee's Motion to Dismiss, the Appellant has not filed a response. He did submit a letter which amounts to a reference for re-employment.

**CONCLUSIONS OF LAW**

1. As an employee serving his initial probationary period, pursuant to KRS 18A.111 the Appellant could be dismissed without cause. The Appellant can only file an appeal based on a claim of illegal discrimination. KRS 18A.095(12) and (14)(a).
2. As outlined in the Findings of Fact, although given an opportunity to articulate a specific claim of discrimination, the Appellant did not do so.
3. The Appellant has not articulated a claim of illegal discrimination, and the Personnel Board lacks jurisdiction to hear his appeal.
4. There are no 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 pre-hearing conference, and the Appellees Motion to Dismiss. KRS 18A.095(18)(a) and KRS 13B.090(2)

**RECOMMENDED ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeals of **JUSTIN LITTLE VS. TRANSPORTATION CABINET (APPEAL NOS. 2019-219 AND 2019-224)** 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).

**[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.

**ISSUED** at the direction of **Hearing Officer Mark A. Sipek** this 3<sup>rd</sup> day of September, 2021.

**KENTUCKY PERSONNEL BOARD**



**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. William Fogle  
Mr. Justin Little  
J. R. Dobner  
Hon. Rosemary Holbrook (Personnel Cabinet)