

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-037**

DEVIN MATHISON

APPELLANT

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

KENTUCKY DEPARTMENT OF VETERANS AFFAIRS

APPELLEE

*** **

The Board, at its regular June 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated April 14, 2025, Appellant's Exceptions, [Appellant's Request for Oral Argument was not considered as its was untimely filed], and being duly advised,

IT IS HEREBY ORDERED that the Personnel Board will not hold oral argument in this appeal.

IT IS FURTHER 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 24th day of June, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Devin Mathison
Hon. Tamara Reid-McIntosh
Hon. Rosemary Holbrook (Personnel Cabinet)

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 RECOMMENDED ORDER**

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APPELLEE

* * * * *

This matter is before the Hearing Officer on the Kentucky Department of Veterans Affairs' amended Motion to Dismiss.

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.

FINDINGS OF FACT and PROCEDURAL BACKGROUND

1. The Appellant was a probationary employee who was employed by the Appellee at the Thomson-Hood Veterans Center in Wilmore, Kentucky.
2. Although the Appellant had been a merit employee of the Kentucky Department of Veterans Affairs ("KDVA") with status prior to 2021, the Appellant resigned his merit employment on March 30, 2021, and accepted a position with KDVA as a Licensed Practical Nurse ("LPN") with a personal service contract ("PSC"), which allowed him to receive a higher salary but deprived him of his KRS Chapter 18A status. The Appellant terminated his PSC on June 28, 2023, and was appointed as a probationary employee with KDVA on July 1, 2023.
3. By correspondence dated December 16, 2023 (the "Dismissal Letter"), the Appellee informed the Appellant that he was being terminated from his probationary position as a Licensed Practical Nurse, effective December 16, 2023. [See December 16, 2023 termination letter (the "Termination Letter").]
4. The Appellant has acknowledged that he received notification of his termination on December 16, 2023.

5. The Appellant submitted an appeal of his termination to the Personnel Board on February 26, 2024, by filing an Appeal Form (with attachments) on that same date. The Appeal Form is stamped as being received by the Personnel Board on February 26, 2024.

6. The filing date of the Appellant's appeal is not in dispute. As shown above, the Appeal Form was stamped as "RECEIVED" by the Personnel Board on February 26, 2024. [See Appeal Form]. At no time has the Appellant ever denied the filing date or produced any evidence to show that the Appeal was filed on a date other than February 26, 2024.

7. The Appellee timely filed an Amended Motion to Dismiss on October 1, 2024. In the motion, the Appellee argued the appeal was untimely, having been filed seventy-two (72) 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 (12)(b).

8. The Appellant did not file a response to the Amended Motion to Dismiss.

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." *Id.* 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 KRS 18A.095. The only question before the Personnel Board at this juncture is a question of law, whether the Board has jurisdiction to hear the appeal.

CONCLUSIONS OF LAW

3. A reviewing body has "an affirmative obligation to ensure that it is acting within 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).

4. 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).

5. A reviewing body has “an affirmative obligation to ensure that it is acting with in its subject matter jurisdiction” and jurisdiction is such an important issue that the reviewing body 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).

6. Pursuant to KRS 18A.095, Appellant had thirty (30) days after December 16, 2023 to file an appeal of his dismissal and or/ to make a claim of discrimination to the Board. *See* KRS 18A.095(11)(b) and (12)(b).

7. 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).

8. The Appellant’s appeal filing occurred more than seventy-two (72) days after he was first notified of his dismissal on December 16, 2023. Since KRS 18A.059 unequivocally requires such a filing to occur within thirty (30) days of notification of dismissal, the appeal was untimely as a matter of law. There is no set of facts under which the Appellant will be able to show that his appeal was filed timely and there are no genuine issues of material fact on the issue of timeliness of the appeal.

9. The Personnel Board does not have jurisdiction to hear the appeal of the Appellant’s dismissal because his appeal was untimely. Therefore, this appeal should be dismissed.

RECOMMENDED ORDER

WHEREFORE, the Hearing Officer, after careful review and consideration of the Appellee’s Motion to Dismiss and Amended Motion to Dismiss, the Appeal Form and the evidence of record, recommends to the Kentucky Personnel Board that the appeal of **DEVIN MATHISON V. KENTUCKY DEPARTMENT OF VETERANS AFFAIRS (APPEAL NO. 2024-037)**, 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).

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 14th 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 14th day of April, 2025:

Devin Mathison, Appellant
Hon. Tamara Reid-McIntosh, Counsel for Appellee
Hon. Rosemary Holbrook, Personnel Cabinet