



**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2019-258**

**RANDALL MATTHEWS**

**APPELLANT**

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

**TRANSPORTATION CABINET**

**APPELLEE**

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This matter last came on for a pre-hearing conference on January 15, 2020, at 10:00 a.m. EST, 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, Randall Matthews, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Transportation Cabinet, was present and represented by the Hon. Will Fogle.

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, 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 January 17, 2020. In its Motion, the Agency argues that the Appellant, a classified employee without status, has failed to articulate a claim over which the Personnel Board has jurisdiction as the Appellant was separated from state service during his initial probationary period, pursuant to the provisions of KRS 18A.111, and the Appellant has failed to properly invoke that statute because the Appellant is not advancing a claim of discrimination. 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. 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. At the time of the submission of his Personnel Board appeal, the Appellant, Randall Matthews, was a classified employee without status formerly employed by the Transportation Cabinet. By letter dated October 23, 2019, the Agency informed the Appellant that “you will be officially separated from you position as a Highway Technician Assistant I, in the Department of Highways, District Seven effective the close of business Wednesday, October 23, 2019.”

3. On November 20, 2019, the Appellant filed the instant appeal, alleging:

Never received write up's or disciplinary actions and separation paper's does not say any other signatures other than mine. No delivered by signature or witnessed by signature.

4. KRS 18A.111(1) provides, in full:

Except when appointed to a job classification with an initial probationary period in excess of six (6) months, and except as provided in KRS 18A.005 and this section, an employee shall serve a six (6) months probationary period when he is initially appointed to the classified service. An employee may be separated from his position, reduced in class or rank, or replaced on the eligible list during this initial probationary period and shall not have a right to appeal, except as provided by KRS 18A.095. The employee may be placed on an eligible list but shall not be certified to the agency from which he was separated unless that agency so requests. Unless the appointing authority notifies the employee prior to the end of the initial probationary period that he is separated, the employee shall be deemed to have served satisfactorily and shall acquire status in the classified service.

5. KRS 18A.095 (12) provides, in full:

Any classified employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age forty (40) and above. Nothing in this section shall be construed to preclude any classified or unclassified employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.

6. KRS 18A.095 (14)(a) provides, in full:

Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board.

7. KRS 18A.005(24) provides:

‘Penalization’ means demotion, dismissal, suspension, fines, and other disciplinary actions; involuntary transfers; salary adjustments; any action that increases or diminishes the level, rank, discretion, or responsibility of an employee without proper cause or authority, including a reclassification or reallocation to a lower grade or rate of pay; and the abridgment or denial of other rights granted to state employees.

8. 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.

#### CONCLUSIONS OF LAW

1. Generally speaking, under Chapter 18A, a classified employee without status, unlike a classified employee with status, may be fired for a good reason, a bad reason, or no reason, just not a discriminatory reason. See Martin v. Commonwealth, 822 S.W.2d 858, 860 (Ky. 1991). KRS 18A.095(14)(a) provides, in pertinent part, that any employee “who believes that he has been discriminated against, may appeal to the board.”

2. Here, the Hearing Officer finds the Appellant has failed to articulate a claim of discrimination. Similar to the Board’s ruling in Mike Ginter v KET (KY PB 2018-240), while Board appellants are not required to establish a *prima facie* case of discrimination on an appeal form and the procedural bar for articulating a claim of actionable discrimination is rather low, the Hearing Officer finds that the Appellant has not ever asserted that his termination was the result of any type of protected class discrimination, despite being given multiple opportunities to do so. It is well-established that the Board does not have jurisdiction over probationary dismissals absent an allegation of discrimination. Therefore, pursuant to KRS 18A.095(18)(a), dismissal of this claim is appropriate because the Appellant is a classified Chapter 18A employee without status seeking to invoke the Board’s jurisdiction without advancing a recognizable claim of discrimination. Thus, the Appellant’s appeal must be dismissed as it is not authorized by any provision of KRS Chapter 18A. 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 **RANDALL MATTHEWS V. TRANSPORTATION CABINET (APPEAL NO. 2019-258)** 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 8<sup>th</sup> day of October, 2020.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day mailed to:

Hon. Will Fogle  
Randall Matthews  
J. R. Dobner