

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-073**

ROY MAYFIELD, JR.

APPELLANT

vs.

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

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

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 March 26, 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.
GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Roy Mayfield, Jr.
Hon. Edward Baylous
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney E. Moore

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-073

ROY MAYFIELD, JR.

APPELLANT

v.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDED ORDER

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF JUVENILE JUSTICE

APPELLEE

* * * * *

This matter last came on for a pre-hearing conference on January 9, 2025, at 11:00 a.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.

The appellant herein, Roy Mayfield, Jr. (the "Appellant"), was present in person and was not represented by legal counsel. The appellee herein, the Justice and Public Safety Cabinet, Department of Juvenile Justice (the "Appellee" or "DJJ"), was present by telephone and was represented by the Hon. Seth Fawns.

Prior to the pre-hearing conference, the Appellee filed a motion for summary judgment arguing that the appeal should be dismissed because the Appellant was a probationary employee and had failed to produce sufficient evidence of discrimination to fit within the exception to the general rule under KRS 18A.111 that employees in their probationary period may be dismissed for any reason except a discriminatory reason. The Appellant did not file a response to the motion for summary judgment. During the pre-hearing conference, the parties discussed the points raised by the Appellee in support of summary judgment and the Hearing Officer noted that the Appellant did not respond to the motion for summary judgment. The Hearing Officer listened to the Appellant's description of incidents that he believed led to his termination (none of which were cited in the letter of termination he received on May 11, 2023) and, since the pre-hearing conference, has again reviewed the motion for summary judgment and the record in this case. For the reasons set forth in more detail below, the Hearing Officer finds that the Appellee's Motion for Summary Judgment is well-taken and this appeal should be dismissed.

FINDINGS OF FACT and PROCEDURAL BACKGROUND

1. The Appellant was employed briefly by the Appellee as a Correctional Officer at the Fayette Regional Juvenile Detention Center in the Department of Juvenile Justice ("DJJ")

until he was terminated on May 11, 2023. [See May 11, 2023 letter from DJJ to the Appellant, attached to Appeal Form (the Termination Letter).]

2. The Appellant was still in his probationary period when his employment was terminated by the Appellee on May 11, 2023. The Appellant never disputed his status as a probationary employee. [See Appeal Form, p. 2; and see May 11, 2023, Termination Letter.] The Termination Letter did not list a reason for the termination. It did inform the Appellant that, as a probationary employee and pursuant to KRS 18A.111, he did not have the right to appeal to the Personnel Board unless he was claiming discrimination. [See Termination Letter.]

3. The Appellant filed an appeal with the Personnel Board on May 19, 2023, challenging his termination on the basis of discrimination. Under the “Discrimination” category on his Appeal Form, Appellant checked the boxes for “race,” “color,” “ethnic origin,” and “sex.”

4. Also on May 19, 2023, the Appellant submitted a personal statement (the “Personal Statement,” which was dated May 11, 2023) regarding what he believed led to his firing. Neither in the Personal Statement nor in the Appeal Form does the Appellant cite any facts that would provide any affirmative evidence of discrimination on the basis of race, color, ethnic origin or sex.

5. The Appellant conceded in the Personal Statement that he made some missteps in his brief, probationary employment with DJJ, namely: being tardy for a class (Personal Statement at p. 2), using a curse word in an online class (Personal Statement at p. 5), and an uncomfortable personal interaction with a coworker (Personal Statement at p. 4). The Appellant also discussed at length a swimming incident in which he contended he was incorrectly perceived as swimming in the nude. The Appellant repeated his recollection of these incidents in several pre-hearing conferences but never connected any of these incidents to any discriminatory animus on the part of any person who could have made the decision to terminate his employment. The mere fact that the other parties involved in these incidents may have been of a different race (or had “cultural differences,” as characterized by the Appellant) does not show any discriminatory animus, even viewing these incidents in the light most favorable to the Appellant.

6. On September 8, 2023, the Appellee propounded discovery requests to the Appellant. In those requests, the Appellee asked the Appellant to identify any employees who discriminated against him and every fact that would support his discrimination claims. The Appellee also asked the Appellant to identify any employees of a different race who were similarly situated to the Appellant and were treated differently than he was. The Appellant never responded to the Appellee’s discovery requests nor did he provide any other evidence in the record to identify any employees who discriminated against him, to identify any employees of a different race who were similarly situated but were treated differently than he was, or to otherwise support his discrimination claims.

7. Over the course of multiple pre-hearing conferences, the Appellant stated that he intended to answer the Appellee's discovery requests, but he never did so. [See Interim Orders dated May 30, 2024, August 21, 2024, and September 13, 2024.]

8. On September 27, 2024, the Appellant timely filed a motion for summary judgment on the grounds that the Appellant was a probationary employee who, pursuant to KRS 18A.111, could be fired for any reason, except a discriminatory reason, but had failed to produce any affirmative evidence that would support a finding of discrimination. [See Appellee's Motion for Summary Judgment.]

9. Pursuant to the Interim Order entered by the Hearing Officer on September 13, 2024, the Appellant's response to the Motion for Summary Judgment was due to be filed no later than October 31, 2024.

10. The Appellant never filed a response to the Appellee's Motion for Summary Judgment.

11. On November 18, 2024, the Appellee timely filed a Reply in Support of Motion for Summary Judgment pointing out that the Appellant failed to file a response to the Motion for Summary Judgment.

CONCLUSIONS OF LAW

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. In this appeal, the Appellant failed to produce any affirmative evidence of discrimination that would preclude his termination while in probationary employment.

3. The Personnel Board does not have jurisdiction to hear an appeal of a probationary employee, unless the employee makes a claim of protected class discrimination. KRS 18A.111(1). As a probationary employee, the Appellant could be dismissed at any time for a good reason, a bad reason, or no reason at all, as long as the dismissal is not based on a discriminatory reason. *Martin v. Commonwealth*, 822 S.W.2d 858, 860 (Ky. 1991).

4. KRS 18A.111 provides that "[A]n employee may be separated from his position...during his initial probationary period and shall not have a right to appeal, except as provided by KRS 18A.095." See KRS 18A.111(1).

5. Claims under KRS 18A.095(11)(a) provide the only exception to the general rule that a probationary employee can be dismissed at any time and for any reason. *See KRS 18A.111(1).* Pursuant to KRS 18A.095, state employees are protected from discrimination as set forth in various state and federal anti-discrimination statutes. Specifically, any state employee “may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, age forty (40) and above, or any other category protected under state or federal civil rights laws.” KRS 18A.095(11)(a).

6. The Appellant is not entitled to the exception under KRS 18A.111 because he has failed to show that he can make out a *prima facie* case of discrimination under any of the protected categories cited in his Appeal Form.

7. The Appellant’s recitations of incidents he believed led to his firing do not provide any affirmative evidence to support the contention that the Appellant was discriminated against based on his race, color, ethnic origin and/or sex. At best, the Appellant has alleged that the other parties involved in these incidents may have been of a different race (or had “cultural differences,” as characterized by the Appellant). That fact, by itself does not show any evidence of discrimination, even taking these incidents in the light most favorable to the Appellant.

8. In order to make out a *prima facie* case of discrimination, the party alleging discrimination must prove that:

- a) he is a member of a protected class;
- b) he was subject to an adverse employment action;
- c) he was qualified for the job; and
- d) he was replaced by a person outside the protected class or he was treated differently than similarly situated individuals outside the protected class.

McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973).

9. Even if a complainant makes out a *prima facie* case, the employer may rebut the presumption of discrimination by articulating a legitimate, non-discriminatory reason for the adverse employment action. *McDonnell Douglas Corp.*, 411 U.S. at 802 (1973); *Board of Regents of Northern Kentucky University v. Weickgenannt*, 485 S.W.3d 299 (Ky. 2016).

10. In this appeal, the Appellant’s case fails on the last prong of the *McDonnell Douglas* analysis. The Appellant has never provided any evidence that any employees of a different race, ethnicity, color, or sex who were similarly situated to him were treated more favorably than he was, which is a critical failure for his *prima facie* case.

11. The Appellee is entitled to summary judgment because the Appellant has failed to produce sufficient, affirmative evidence of discrimination which would have precluded his termination and, without such evidence, it is clear the Appellee had the authority to terminate the Appellant under KRS 18A.111 as a matter of law. The Board does not have the authority to review the termination decision, and the appeal should be dismissed.

RECOMMENDED ORDER

WHEREFORE, the Hearing Officer, after careful review and consideration of the Appellee's Motion for Summary Judgment, the Appeal Form (with attachments) and the evidence of record, recommends to the Kentucky Personnel Board that the appeal of **ROY MAYFIELD, JR. V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2023-073)**, 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).

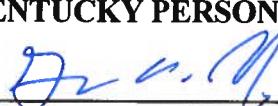
The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov

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 26th day of March, 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 26th day of March, 2025:

Roy Mayfield, Jr., Appellant
Hon. Edward Baylous, Counsel for Appellee (substituting)
Hon. Rosemary Holbrook, Personnel Cabinet