

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-009

MICHAEL MCDONALD

APPELLANT

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

**JUSTICE AND PUBLIC SAFETY CABINET  
DEPARTMENT OF CORRECTIONS  
J. MICHAEL BROWN, APPOINTING AUTHORITY**

**APPELLEE**

\*\* \*\* \*

The Board at its regular July 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated June 4, 2014, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby 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 16<sup>th</sup> day of July, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Angela Cordery  
Michael McDonald  
Stephanie Appel

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-009**

**MICHAEL MCDONALD**

**APPELLANT**

**VS.**

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

**JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF CORRECTIONS  
J. MICHAEL BROWN, APPOINTING AUTHORITY**

**APPELLEE**

\*\* \*\* \*

This matter came on for a pre-hearing conference on March 5, 2014, at approximately 11:00 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Michael McDonald, was present by telephone and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Angela Cordery, also appearing by telephone.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by Appellant, to determine the specific section of KRS 18A which authorizes this appeal, to determine the relief sought by Appellant, to define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

The Appellant filed his appeal with the Personnel Board on January 13, 2014, from dismissal by the Department of Corrections from his position as Correctional Officer by letter dated January 2, 2014. In his appeal, the Appellant questioned why he was not told why he had been terminated, noting he had been told he was a great officer, and had even been moved to first shift to accommodate him. Appellant stated he had missed about one and a half weeks due to illness.

Counsel for the Appellee asked for time in which to file a motion to dismiss. The Hearing Officer explained this process to the Appellant. A briefing schedule was set.

Appellee filed a Motion to Dismiss in accordance with the briefing schedule. Appellant was given ample time in which to file a response, but did not do so. This matter is now ready for a ruling on Appellee's Motion to Dismiss.

**BACKGROUND**

1. During the relevant times the Appellant, Michael McDonald, was a classified employee who had not yet completed his initial probationary period.

2. In its Motion to Dismiss, the Appellee notes that Appellant had expressed in his appeal he wanted to know why he was terminated because he did not have any write-ups.

3. Counsel also notes that at the pre-hearing conference held in this matter, Appellant did not indicate he was making any claim of discrimination based on protected class.

4. As noted, Appellant was given ample time in which to respond and did not do so.

5. KRS 18A.111(1) states as follows:

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.

6. KRS 18A.095(18)(a) states as follows:

The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. 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.

### **FINDINGS OF FACT**

1. During the relevant times the Appellant, Michael McDonald, was a classified employee who had not yet completed his initial probationary period.
2. The Hearing Officer finds that Appellant was terminated from his position prior to completing his initial probationary period on January 2, 2014.
3. The Appellant filed a timely appeal with the Personnel Board, but did not indicate that he was making any claim of discrimination based on protected class.
4. Appellant has no right pursuant to KRS Chapter 18A to challenge his termination unless he is making some other claim because a classified employee who has not yet completed an initial probationary period, the Agency does not have to give cause.

### **CONCLUSION OF LAW**

The Hearing Officer concludes as a matter of law that Appellant has not made any claim of discrimination based on a protected class, and he was terminated from his position prior to completion of his initial probationary period, the Personnel Board pursuant to KRS 18A.095(18)(a) lacks jurisdiction to further consider this appeal as it lacks the ability to grant relief based on the claims stated by the Appellant.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **MICHAEL MCDONALD VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2014-009)** 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.

**SO ORDERED** at the direction of Hearing Officer Boyce A. Crocker this 4<sup>th</sup> day of June, 2014.

**KENTUCKY PERSONNEL BOARD**



MARK A. SIPEK  
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Angela Cordery  
Michael McDonald