

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-020**

**PHYLLIS B. MILBY**

**APPELLANT**

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

**CABINET FOR HEALTH AND FAMILY SERVICES  
J. P. HAMM, APPOINTING AUTHORITY**

**APPELLEE**

**\*\* \*\* \***

The Board at its regular April 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 18, 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 April, 2014.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. Rebecca Wooldridge  
Phyllis B. Milby  
J. P. Hamm

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

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**APPELLEE**

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This matter came on for a pre-hearing conference on March 5, 2014, at 10:00 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, Phyllis B. Milby, was present by telephone and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Rebecca Wooldridge.

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 Hearing Officer notes this appeal was filed with the Personnel Board on January 28, 2014. The Appellant was appealing having been terminated by letter dated January 22, 2014, from her position as a Family Support Specialist I in the Two Rivers Service Region.

At the pre-hearing conference, Appellant read a statement into the record which challenged the dismissal as she was not given proper training or proper mentoring (in the Appellant's view).

The Hearing Officer is aware counsel for the Appellee had filed a motion to dismiss on February 5, 2014. Appellant stated she never received this motion, though the certificate of service indicated it had been mailed to Appellant's home address that date. The Hearing Officer asked counsel for the Appellee to send another copy of this motion to the Appellant, and also asked the Appellant to call either the Personnel Board or counsel for the Appellee if she did not receive a copy of the motion to dismiss by the week of March 10, 2014.

This matter is now submitted to the Hearing Officer for a ruling on Appellee's Motion to Dismiss, to which Appellant filed a response and Appellee has filed a reply.

**BACKGROUND**

1. During the relevant times, the Appellant, Phyllis Milby, was a classified employee without status, as she had not completed her initial probationary period at the time of her termination.

2. In its Motion to Dismiss, the Appellee, Cabinet for Health and Family Services, contends the Appellant was terminated from her position as a Family Support Specialist I in the Two Rivers Service Region in the Department of Community-Based Services prior to having completed the probationary period associated with that position. The Appellee contends that Appellant has alleged no discrimination, nor made any other allegations which would avail herself of the Personnel Board's jurisdiction by which to challenge her termination from initial probation.

3. As noted, the Appellant did file a timely response. She contends she never received proper mentoring from her supervisors or principles during the time of her employment with the Cabinet. Appellant states the completion of her probationary period would have been February 1, 2014, as she began employment on August 1, 2013. She stated, "I didn't receive six (6) months, especially when I was told by my supervisor she knew I was not going to make it through probation in December 2013."

4. The Appellant also attached a statement, read during the pre-hearing conference, giving further detail to her claims of not being mentored properly during her employment.

5. The Appellee filed a timely reply, quoting from KRS 18A.111(1), which states:

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.

6. The Appellee contends that the probationary period is not a guarantee of employment for that period, but rather a time during which an employee can be evaluated to determine whether the employee will be accorded status in the classified service.

7. KRS 18A.095(18)(a) states:

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, Phyllis Milby, was a classified employee without status, as she had not completed her initial probationary period at the time of her termination.
2. The Hearing Officer finds that the Appellant was a classified employee without status who was terminated during her initial probationary period from her employment prior to completing that initial probationary period.
3. The Hearing Officer finds that the Appellant has not stated a claim over which the Personnel Board has jurisdiction.

### **CONCLUSIONS OF LAW**

1. The Hearing Officer concludes as a matter of law that the Personnel Board is without jurisdiction to consider this appeal, as the Appellant was terminated from an initial period of probation without cause, and the Appellant has not made a claim of discrimination which would otherwise give the Personnel Board jurisdiction over such appeal.
2. The Hearing Officer concludes as a matter of law that pursuant to KRS 18A.095(18)(a), it is without jurisdiction to further consider this Appeal.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **PHYLLIS B. MILBY V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2014-020)** 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 Boyce A. Crocker** this 18<sup>th</sup> day of March, 2014.

**KENTUCKY PERSONNEL BOARD**



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

A copy hereof this day mailed to:

Hon. Rebecca Wooldridge  
Ms. Phyllis B. Milby