





2. Prior to the submission of the instant appeal, the Appellant, Jennifer Milliner, was a Social Worker I, employed by the Department for Community Based Services (DCBS) within the Cabinet for Health and Family Services (CHFS). Pursuant to KRS 18A.111, the Appellant was a full-time, probationary employee who was terminated without cause from CHFS on April 1, 2019.

3. Thereafter, on April 10, 2019, the Appellant filed this appeal challenging her dismissal and removal from future registers in addition to advancing a claim of discrimination. The Appellant attempted to clarify her claim of discrimination on the appeal form, stating “due to open investigation on my children & family – complaint filed with ombudsman – attorney was involved[.] The acting SRA that was over our open investigation[.] So, due to fighting for my family & getting an attorney, I get terminated. Talk about retaliation because I protected my own family.” Most relevantly, the Appellant added, in pertinent part, in the narrative statement of her appeal form that the Agency discriminated against her “because I was a mom and knew what to do.”

4. Before the Board conducted a pre-hearing conference, the Agency submitted a barebones Motion to Dismiss, arguing the Appellant failed to properly invoke the Personnel Board’s jurisdiction by advancing an actionable claim of discrimination.

5. During the July 10, 2019 pre-hearing conference held in this matter, the Appellant voiced some annoyance at the Agency arguing she failed to articulate an actionable claim of discrimination. The Hearing Officer specifically asked the Appellant if she was alleging any form of protected class discrimination and the Appellant reiterated her belief that she was discriminated against because she was a parent. The Appellant talked at length, however, about the open CHFS investigation into her family and the policy/procedural errors the Agency made during their investigation. She also requested an opportunity to respond to the Agency’s Motion to Dismiss, so that she could explain her claim of discrimination. The Appellant failed to submit a response to the Agency’s Motion to Dismiss.

6. KRS 18A.111(1) provides:

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.

7. KRS 18A.095(14)(a) provides:

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

8. 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.

9. 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 KRS Chapter 18A, a classified employee without status may, unlike an unclassified employee, 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 recent 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 clearly stated that her termination was the result of any type of protected class discrimination, despite being given multiple opportunities to do so. To be clear, this is not a finding that the Appellant failed to **prove** discrimination in her appeal form or that the Appellant failed to establish a *prima facie* case of

discrimination. Instead, the Hearing Officer finds the specific language used by the Appellant in her appeal form and her submissions of record do not contain a statement sufficient to articulate a claim of discrimination. For instance, the Appellant's statement that she believed she was terminated "because I was a mom and knew what to do" does not articulate a discrimination claim in a manner sufficient to invoke the jurisdiction of the Personnel Board. A claim of "parental" discrimination does not appear to be rooted in gender or any other protected class and the Hearing Officer is disinclined to stretch the Appellant's statement far enough to make it fit. Further, the Appellant does not articulate an actionable claim of retaliation in her statement that "due to open investigation on my children & family – complaint filed with ombudsman – attorney was involved[.] The acting SRA that was over our open investigation[.] So, due to fighting for my family & getting an attorney, I get terminated. Talk about retaliation because I protected my own family." 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 **JENNIFER MILLINER V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2019-080)** 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 2<sup>nd</sup> day of December, 2019.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day mailed to:

Hon. Carmen Ross  
Jennifer Milliner  
Jay Klein