

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-238**

MICHAEL OHLER

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

** ** * * *

This matter last came on for a pre-hearing conference on April 13, 2022, at 11:30 a.m. EDT, 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, Michael Ohler, was present in-person and was not represented by legal counsel. The Agency/Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Olivia Peterson, who appeared by telephone.

This matter is now before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss, filed with the Personnel Board on January 6, 2021, and "Appellee's Submission Pursuant to April 25, 2022 Interim Order," submitted on July 18, 2022. In its Motion, the Agency argues that the Appellant is an employee of a local health department and has no rights secured by KRS Chapter 18A. The Appellant has had an opportunity to file a response, but has 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

The Hearing Officer makes the following findings of fact based on the appeal form and attachments, the Agency's Motion to Dismiss, the statements made by the Appellant during the April 13, 2022 pre-hearing conference, and the evidence of record.

1. The Appellant, Michael Ohler, was employed by the WEDCO Health Department, which serves residents of Harrison, Nicholas, Scott, and Bourbon counties. Like all Health Departments, pursuant to KRS Chapter 211, WEDCO is not structured as a department under the Cabinet of Health and Family Services (CHFS) and, instead, is a standalone agency with its own governing board.

2. The Agency submitted a Motion to Dismiss, filed with the Personnel Board on January 6, 2021, and “Appellee’s Submission Pursuant to April 25, 2022 Interim Order,” submitted on July 18, 2022. In its Motions, the Agency argues that employees of local health departments, such as WEDCO, have a personnel system separate from that established by KRS Chapter 18A for the classified service. It is clear, as a matter of law, that employees of local health departments can appeal to the Local Health Department Employment Personnel Council, which is attached to the Cabinet for Health and Family Services pursuant to KRS 211.1752. The Local Health Department Employment Personnel Council administers the personnel system for local health departments as established by KRS 211.1755, and under KRS 211.1752(5)(b)(3) conducts hearings on appeals for those local health personnel who are disciplined or discharged. As such, the Appellee maintains that the Personnel Board has no jurisdiction to hear this appeal.

3. The Appellant was given an opportunity to explain how the Personnel Board would have jurisdiction, but he did not submit any written explanation. The issue of jurisdiction was addressed verbally during the April 13, 2022 pre-hearing conference, however, and the Hearing Officer finds that the Appellant failed to establish any legal reason why the Personnel Board would have jurisdiction over this matter instead of the Local Health Department Employment Personnel Council, either in written or verbal form.

4. The Hearing Officer finds that personnel employed by local health departments are not employees who can appeal personnel actions to the Personnel Board, but must appeal those actions to the Local Health Department Employment Personnel Council.

CONCLUSIONS OF LAW

1. This matter can be decided as a matter of law based upon the appeal form and the pleadings of the parties.

2. The Personnel Board has no jurisdiction to hear this appeal as the Appellant is not an employee with rights found under KRS Chapter 18A, but is a local health department employee and, thus, is governed by KRS Chapter 211. Accordingly, the Appellant must bring any appeal or grievance pursuant to the statutes and regulations governing the Local Health Department Employment Personnel Council.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **MICHAEL OHLER V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2020-238)** 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).

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 5th day of December, 2022.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Michael Ohler
Hon. Olivia Peterson
Hon. Rosemary Holbrook (Personnel Cabinet)