

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-156

JAMES OSBORNE

APPELLANT

FINAL ORDER
SUSTAINING HEARING OFFICER'S
VS. 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 December 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated November 13, 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 17th day of December, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Angela Cordery
James Osborne
Bobbie Underwood

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
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V. FINDINGS OF FACT, CONCLUSIONS OF LAW
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JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS,
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APPELLEE

** ** *

This matter came on for a pre-hearing conference on August 28, 2014, at 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, James D. Osborne, was present by telephone and was not represented by legal counsel. Mr. Osborne stated he did not receive the pre-hearing Order, but was ready to proceed with the pre-hearing conference. The Appellee, Department of Corrections, was also present and represented by the Hon. Angela Cordery.

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 July 7, 2014. The Appellant was appealing having been terminated from his position as Correctional Officer while still within his initial probationary period by letter dated June 30, 2014. Appellant stated he had never missed a day of work, had never been late, and he loved his job. Appellant wondered if there was any chance of being hired back, and was surprised at having been terminated from his position.

Counsel for the Appellee asked for time in which to file a motion to dismiss, stating she would challenge whether the Personnel Board had jurisdiction to consider this appeal. The Hearing Officer briefly explained this process to the Appellant.

The Appellee filed a Motion to Dismiss in accord with the briefing schedule. Appellant, although given time, did not file a response to the Appellee's Motion to Dismiss. The matter is now submitted to the Hearing Officer for a ruling on the Appellee's Motion to Dismiss.

BACKGROUND

1. During the relevant times, Appellant, James D. Osborne, was an employee serving an initial probationary period.

2. In its Motion, the Appellee contends the Personnel Board lacks jurisdiction to consider this appeal as Appellant is attempting to appeal having been separated from a period of initial probation. Counsel contends that employees serving a period of initial probation may be separated during that period without any right to appeal to the Personnel Board except as provided by KRS 18A.095, specifically if the employee is claiming some sort of protected class discrimination. Counsel contends that both in the appeal form and at the pre-hearing conference, Appellant never indicated he was making any claim of discrimination.

3. As noted, Appellant did not file a response to the Appellee's Motion to Dismiss.

4. 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, Appellant, James D. Osborne, was an employee serving an initial probationary period.
2. The Hearing Officer finds Appellant filed this appeal with the Personnel Board on July 7, 2014. Appellant had been separated from his position as Correctional Officer by letter dated June 30, 2014, without cause.
3. In his appeal, Appellant stated he was let go without completing probation without being told why, even though he had never missed a day and was never late or had done anything wrong. Appellant did not make any claim of discrimination, either on the appeal form or at the pre-hearing conference.
4. The Hearing Officer finds the Personnel Board lacks jurisdiction to consider this appeal, as the Appellant was separated from a period of initial probation without cause. The Hearing Officer finds that the Personnel Board would not have the jurisdiction to consider an appeal of such separation unless a claim of discrimination was being made, which Appellant has not done.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that pursuant to KRS 18A.095(18)(a), the Personnel Board lacks jurisdiction to further consider this appeal and the matter should be dismissed.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **JAMES D. OSBORNE V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2014-156)** 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 13th day of November, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Angela Cordery
Mr. James D. Osborne