

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-103

HAROLD PARKS, III

APPELLANT

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

KENTUCKY BOARD OF NURSING  
PAULA SCHENK, APPOINTING AUTHORITY

APPELLEE

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The Board at its regular April 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 13, 2015, 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 21<sup>st</sup> day of April, 2015.

KENTUCKY PERSONNEL BOARD

  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Morgan Ransdell  
Harold Parks, III

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-103**

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**FINDINGS OF FACT, CONCLUSIONS OF LAW  
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**KENTUCKY BOARD OF NURSING  
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**APPELLEE**

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This matter came on for evidentiary hearing on January 26 and 27, 2015, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Harold Parks, was present and was not represented by legal counsel. He was accompanied by Sherrick Bond and Paul Kubala, both representatives of the Disabled American Veterans Chapter in Louisville, Kentucky. The Appellee, Kentucky Board of Nursing, was present and represented by the Hon. Morgan Ransdell. Also present was the Hon. Nathan Goldman, Senior Attorney, and Bernadette Sutherland, Agency representative.

This matter involves the termination of the Appellant during his initial probationary period by letter dated May 9, 2014. This was clarified by letter dated May 20, 2014, advising that the electronic payroll system required an effective date of May 20, 2014. The Appellant was terminated from his position as an Administrative Specialist III/Practice Assistant.

The Appellant's appeal proceeded on the basis of his claim of disability discrimination, as he was a Disabled American Veteran. The burden of proof was placed upon the Appellant by a preponderance of the evidence to show that the action taken was not appropriate and was based upon discrimination.

**STIPULATION**

Prior to the hearing, the Appellee stated that it would stipulate to the fact that the Appellant was an individual with a physical disability, as defined by the Americans with Disabilities Act (ADA).

**BACKGROUND**

1. The Appellant's first witness was **Bernadette Sutherland**. She testified that she has been the Deputy Executive Director of the Kentucky Board of Nursing (KBN) since August 2013. She also serves as the manager of the Support Training Branch. In addition, she added that she had retired from the Board in 2007, but had returned in 2013, having a total of approximately twenty-four years of service with the Board.

2. The witness testified that she reviewed the Appellant's application for state employment and did notice the application indicated Appellant was a disabled veteran. However, she explained that she never saw a specific list of disabilities or a Veterans Administration Disability rating.

3. She indicated that she is generally aware of the ADA and its requirements for accommodations; however, she was not aware of any duty of the Agency Human Resources Officer to bring a list of the Appellant's disabilities to her for review.

4. She added she was aware of the disabilities which were stated in various physicians' letters submitted by the Appellant. She also explained that she feels that employees must make known their disabilities to their employer, along with any requests for accommodations for those.

5. The witness then testified that the Agency did furnish various accommodations to the Appellant, including an ergonomic chair, a larger computer screen, and an ergonomic mouse. She testified that at no time was she aware that the Appellant's claimed disabilities included mental ones.

6. The witness stated that during the first few weeks of employment, the Appellant's duties were rather simple ones. She also added that at one point she had complimented him on the job he did in getting a color guard pulled together for a bicentennial celebration. She also added that she and others offered assistance to the Appellant during his first few months. The Appellee reserved the right to call this witness on its case in chief.

7. The Appellant's next witness was **Sandra Coffey**. She has been the Human Resources Administrator at the KBN for approximately two years. She testified that she processed the Appellant's paperwork and confirmed that on his application, he indicated he was a disabled veteran.

8. She also stated that she saw no additional documents concerning disabilities suffered by the Appellant. This witness added that she was asked to create a termination letter effective May 9, 2014, and did so. She was not given any documentation as to his work performance. She also explained that on May 8, 2014, she had received a communication from the Appellant asking for a meeting so that he could learn more about the federal Family and Medical Leave Act (FMLA) and any rights he was entitled to as a disabled veteran. The witness

explained that it was purely coincidence that on the following day, May 9, she created the termination letter, having been asked to do so on May 8 as well.

9. She concluded by stating that she was aware that Bernadette Sutherland had made some accommodations for the Appellant, but is not aware of any plan which was created in conjunction with those.

10. The Appellee then reserved the right to recall this witness in its case in chief.

11. Appellant's next witness was **Pamela Hagan**. She has been employed by the KBN in excess of eighteen years, and since June 2013 functioned as an Advanced Practice and Education Consultant.

12. She defined the duties of the Appellant's position, Practice Assistant, as providing clerical and administrative support to the Education Consultants. She testified that when she began her job, it was evolving, and to some extent the support functions of the Practice Assistant were also evolving. She added that as the probationary period of the Appellant continued, she provided input to her supervisor who was over the Practice Assistants. This input included detailing the Appellant's errors, which consisted, in part, of spelling and use of tense in the documents he created.

13. The witness then detailed other duties of the Appellant, which included having to grasp all activities going on with the various committees and the full KBN. Other duties included processing travel vouchers, which she stated he did satisfactorily. Appellant was also responsible for filing and for documenting calls and other communications received from the public. The interaction which she had with the Appellant was to provide constructive criticism to him. In addition, she added that there was a manual which had been created by the Appellant's predecessor in the position, which should have explained to him the various steps and procedures to take in doing his job.

14. This witness also testified that there were some format changes which had occurred from the time the previous assistant, Cheryl Skaggs, had retired. However, she emphasized these were mostly procedural, as opposed to substantive changes. As an example, the witness explained that some format changes resulted in some items being typed in all capitals, rather than lowercase. In addition, she also stated that the Agency allowed Skaggs to return at various times to assist in training the Appellant on his job. The Appellee then reserved the right to call this witness in its case in chief.

15. The Appellant's next witness was **Lahoma Prather**. She began employment with the KBN in February 2013 as a Nurse Practice Consultant. As a result, she only worked with the Appellant for a short time prior to his termination.

16. Part of her duties involved answering practice procedures and other questions from nurses. In her job, she was supported by the Appellant. In summary, she defined the Appellant's attitude as above-average and his skills as below-average.

17. She explained that some of the Appellant's problems included scheduling the meetings properly and also getting out work product to the chairman of the various committees. As an example, she explained at the end of April 2014, the Appellant had said, "It is not time to send out the agenda yet," when in actuality this agenda should have been sent out one week prior.

18. She also explained that in her position, she was the point person for the content of agenda items, and that he was the point person for editing and sending out the work product and the agenda. However, she felt that after reviewing some of his work, she had to do much of the editing of his work product.

19. On cross-examination, the witness testified that in May 2014 was the first time that the Appellant informed her he was a disabled veteran. She remembers only that he complained of various pain issues. Also, in former conversations, he told her about the stress of having been in military service, but she added that these conversations were not in terms of any types of specific diagnoses. She also denied that the Appellant ever mentioned to her he was dealing with a mental disability.

20. The Appellant's next witness was **Diane Thomas**. She has been the Executive Assistant to the Director at KBN for the past seven years. She indicated that the Appellant was generally timely in submitting documents for review; however, she noticed that there were generally errors on the agendas which he produced and in the formats used. She informed him of these, and stated that the Appellant asked her for assistance in correcting those problems. She also added that the Appellant would come and ask her questions, but after making the needed corrections, would still frequently come back to have the same problems addressed.

21. This witness felt that with the manual provided for the Appellant and with assistance from his predecessor, Cheryl Skaggs, for approximately three or four different days, that the Appellant should have been further along with his knowledge of the duties. This witness stated that she only knew of the Appellant's back and hand issues regarding any disability. This witness was then reserved by Appellee for recall on direct.

22. Appellant, **Harold Parks**, called himself as a witness. For his opening statement, the Appellant produced a document which was marked as Appellant's Exhibit 1. Both parties agreed that this could be allowed as testimony.

23. As background, Appellant submitted that the termination and disability discrimination referenced herein was not deliberate, but he claims due to a lack of knowledge concerning the plight of Disabled American Veterans. The Appellant also confirmed that the KBN had made accommodations by furnishing a chair, a monitor, and an ergonomic mouse for his injured right hand. Appellant's argument was that his unseen mental disability was not taken into account concerning the training and time provided to him to fully understand and grasp the duties of his position.

24. Regarding his background, Appellant submitted that he had completed twenty-three years of service in the United States Army, where he suffered various disabilities. After retiring from the Army, Appellant worked for two years with the Georgia Department of Agriculture then with the United States Department of Agriculture as a Veterinary Program Assistant for seven years. Appellant then moved to Louisville, Kentucky, where he worked for Humana for two years as a Medicare Enrollment Specialist. He then was employed with the Cabinet for Health and Family Services as an Administrative Specialist II/Fingerprinting and Background Investigation Clerk. He worked there for one year and then became employed with the KBN in the position from which he was terminated.

25. The effective hire date for the Appellant with the Agency was November 16, 2013. Subsequent to his termination, the witness testified that since October 2014, he has been employed with the Workforce Development Cabinet as a Workforce Development Specialist, who works with the résumés of job seekers.

26. Regarding his disabilities, the witness testified that it is difficult for a veteran to talk about mental issues, such as acute anxiety and PTSD. He added that when he began with the KBN, he had a severe infection which affected him for approximately one month. He also claimed that the KBN did not have sufficient knowledge of veterans in his situation (hostile and combat action) so as to effectively work with them.

27. The witness then explained that his first-line supervisor was Bernadette Sutherland and that he was a Practice Assistant to both Pamela Hagan and Lahoma Prather.

28. On cross-examination, the witness testified that he first used the terms anxiety and PTSD with Lahoma Prather in April 2014 while in her office. He confirmed that he did not request of Prather any accommodation based on his mental issues. He also confirmed that the KBN granted every accommodation which he did request.

29. Appellant announced closed. Appellee then moved for a Directed Verdict, which was **DENIED** by the Hearing Officer.

30. Appellee then began its case by calling **Sandra Coffey** as its first witness. As Human Resources Administrator, the witness introduced various exhibits. Some of these involved the appointment of the Appellant, showed that an EEO/Affirmative Action Plan was in place, and also involved the termination letter.

31. The witness testified as to Appellee's Exhibit 8, the Position Description for the position held by Appellant. She pointed out that some of the duties of that position included: providing professional support to the Nursing Practice Consultant and the Education Consultant; to compile and draft correspondence, meeting reports, updates and to maintain advisory opinion statements; to compile Nursing Practice Annual Reports; to research information for practice related issues; to coordinate leadership programs across the state; to communicate effectively via in writing, by telephone, and/or in person responding to inquiries regarding nursing practice procedures.

32. The witness also introduced Appellee's Exhibit 9, a May 9, 2014 e-mail at 11:06 a.m. from the Appellant requesting a meeting regarding FMLA as it related to being a disabled employee. This exhibit also showed the witness' response that day at 3:28 p.m. The witness denied that the termination letter of May 9 had been generated as a result of Appellant's inquiries as to FMLA related to his disability. In addition, this witness declared that she had never been aware of the Appellant claiming that he had a mental disability.

33. Appellee's next witness was **Diane Thomas**. As the assistant to the Executive Director, part of her duties includes the compiling of information for Board members and the Executive Director. She introduced Appellee's Exhibit 12, a 2014 Board and Committee Upload Schedule which was prepared in November 2013. Among other things, this schedule not only lists the upcoming meeting dates, but also the dates for submitting documents and for uploading those.

34. Appellee's Exhibits 13 and 14 relate to the agenda for the March KBN meeting. These show that although the matter of recording the meetings was discussed in January, the Appellant again requested to know on March 12, 2014, via an e-mail, whether the committee meetings should be recorded. This witness stated she previously informed him that only the Board meetings were to be recorded.

35. The witness then referred to Appellee's Exhibit 25, some portions out of the Practice Assistant Handbook. She stated that pp. 2 and 4 in this exhibit reflected revisions made by the Appellant which were not accurate and which had been previously discussed. This also included an example in Appellee's Exhibit 27 of a Board document which needed to be put in WORD format, but was not.

36. The witness then opined that she felt in light of the assistance provided to the Appellant by those on staff, and the fact that the Appellant's predecessor, Cheryl Skaggs, had returned to give him guidance, that he had not shown the necessary improvement and competence to finish the probationary period. She added that she herself had to go over things repeatedly. This witness also denied that Appellant had ever informed her he had mental issues which would rise to the level of disability.

37. On cross-examination, the witness was questioned about the manual given to the Appellant. She replied that he often told her, he "didn't see it" in the manual, referring to questions he frequently asked, and to her that meant that he had not checked the manual first before questioning her.

38. The witness then stated that she had shared her concerns about the Appellant's work performance with Director Paula Schenk and Assistant Director Bernadette Sutherland. These concerns were shared after her earlier e-mails to the Appellant regarding what should be sent out and after he "botched" it. As another example of Appellant's failure to grasp his duties, she related an incident in March 2014 where the Appellant sent out an e-mail to the full Board of committee actions. This witness explained that the business of each committee was to be considered confidential until it had gone before the full Board for final approval. She related this failure to Schenk and Sutherland.

39. The witness then next explained that the Appellant had shown her the proposed agenda for the May Board meeting. She stated that Appellant had not made all the corrections needed before publishing this agenda. She again reiterated that the first time she had heard about any "mental" issues was on the day of this hearing.

40. Appellee's next witness was **Pamela Hagan**. She has a BS and MA in Nursing. Her job duties included answering practice questions related to advanced practice. She also facilitates the Board in making policy and is involved in the issuance of Advisory Opinions. She stated these opinions originate from the work of some of the committees.

41. The witness testified that she had worked with the Appellant while working with the practice committee. She related that during some informal conversations, Appellant had told her he had some hand and visual physical issues. She insisted that he never informed her of having mental issues.

42. The witness again related that Appellant's predecessor, Cheryl Skaggs, had returned from retirement on at least four days to assist the Appellant in learning his duties. The witness indicated that her concerns with the Appellant's work involved punctuation, grammar, and spelling. She also explained that she had to do more creating and editing of documents herself because the Appellant continually made errors.

43. Appellee's next witness was **Lahoma Prather**. She has a BS and MA in Nursing. Her duties involve answering questions from LPNs, RNs and Dialysis Techs regarding appropriate practice procedures. The witness staffs the practice committee of the full Board and sometimes makes recommendations regarding the Advisory Opinions and statements which are issued by that Board.

44. She confirmed the earlier testimony regarding the assistance and guidance given to the Appellant through orientation, documentation, and manual prepared by retiree Cheryl Skaggs.



45. This witness stated that she found the Appellant to be very pleasant, but at some point she told him it was “just not working.” She felt certain deficiencies of Appellant related to the timing of producing work product and the format it was in. She acknowledged that he asked questions if his work was pointed out to be wrong.

46. This witness also stated that she had never been aware of any mental issues expressed by the Appellant.

47. Appellee’s next witness was **Cheryl Skaggs**. She retired from the KBN in September 2013, after having held the Appellant’s position of Practice Assistant for almost seven years.

48. She related that her duties had included assisting with preparation of the meeting agendas, doing the meeting reports, and coordinating the leadership programs for nurses. She also confirmed that prior to retiring she had prepared an instructional manual for her successor. This manual included steps to be taken, the various templates used, and sample documents.

49. The witness testified that the Appellant contacted her sometime in February 2014 regarding an issue for which he needed help. Partly as a result, she arranged with the KBN to come back some four different days in March to assist him. She related that after each of these meetings with him, the Appellant stated that he understood what they were covering. However, Skaggs stated that she never saw any finished work product produced by the Appellant.

50. The witness also stated that although the Appellant did mention to her a hand injury from which he suffered, he never talked to her about any possible mental disability.

51. This witness also confirmed earlier testimony that no basic procedures were changed after her retirement, but possibly some formatting changes did occur.

52. On cross-examination, asked about possible changes after her retirement, the witness replied the basic duties did not change, rather only that they had become more “techy.” She also explained that she got approval before sending anything out and added that the job was “not rocket science.”

53. Lastly, the witness explained that the Appellant seemed to have her orally explain the instructions for various projects to him rather than having read about those procedures from the manual.

54. Appellee’s next witness was **Paula Schenk**. She has a BS in Nursing and MA in Public Health. She began employment with the KBN in May 1991 as a Continuing Education Consultant. Thereafter, she progressed up various levels before becoming the Executive Director of the KBN over two years ago.

55. The witness explained that she was the Appellant's second-line supervisor. She had discussions with Diane Thomas and Sutherland about giving the Appellant some assistance with his duties. As a result, Cheryl Skaggs was allowed to return to help the Appellant.

56. She explained that Appellant's performance problems were brought to her attention in late April and early May 2014. This occurred through meetings with both Sutherland and Thomas wherein they expressed concerns about his job performance.

57. Specifically, they related concerns about the Appellant's ability to perform tasks for which he had been assisted repeatedly. This witness asked Sutherland for a recommendation as to whether to allow the Appellant to complete his probationary period; the recommendation from Sutherland was to terminate.

58. This meeting occurred on May 8, 2014, and later that afternoon, the witness explained that Human Resource Administrator Coffey was told to generate the termination letter. She also confirmed that no mention was ever made by the Appellant to her of any mental disability issues.

59. Appellee's next witness was **Bernadette Sutherland**. She has a BS and MA in Nursing and has over forty years nursing experience. Since August 13, she has been the Deputy Executive Director of the KBN, having returned from retirement in 2007. She explained that she was a supervisor over the Nurse Practice Assistants and was the first-line supervisor of the Appellant.

60. The witness confirmed the duties of that position as previously outlined in Appellee's Exhibit 8. Essentially, the Nurse Practice Assistant is a position which provides different forms of support to the consultants.

61. This witness explained that she among others had been involved with the initial interviews with the Appellant. He was one of several called back for a second interview and she recommended that the Appellant be hired. She also noticed on his application that he was a disabled veteran.

62. The witness then introduced Appellee's Exhibit 16, an orientation plan for staff at the KBN. The witness explained that after being hired, the Appellant was exposed to the various items contained on the orientation plan and that written materials were provided to him.

63. The witness noted that Appellee's Exhibit 17, the November 2013 monthly calendar, shows that after the Appellant's first day of work on November 18 that he was then assigned to train with Diane Thomas on November 27. Part of the orientation also involved giving the Appellant a "who does what" list, containing names and areas of responsibility for various staff members to which he could refer.

64. The witness also explained that a primary reason for allowing Cheryl Skaggs to return to assist the Appellant was that he needed "major assistance" to understand his role and how to fulfill it. As a result, Skaggs met with the Appellant four times beginning in early March and ending on March 28, 2014. As an example of the Appellant's apparent confusion relating to his job duties, the witness pointed out an April 29, 2014 e-mail from the Appellant to Skaggs in which he stated, "It's no secret, I am lost right about now."

65. The witness then introduced Appellee's Exhibit 24, an e-mail from the Appellant explaining that he had lost four practice folders and asking that they be restored. The witness introduced Appellee's Exhibit 25, relating to February and May 2014 versions of a general practice information document, in which the Appellant had failed to revise properly and to incorporate earlier changes asked for by Thomas in February 2014. Also, the witness introduced Appellee's Exhibit 27, an e-mail relating to the preparation for the meetings of various committees. The witness explained that the Appellant had sent out a draft agenda before it had been finalized by her.

66. Again, the witness explained that she felt the Appellant would have been much better off had he read the manual, as previously testified to by Skaggs and others.

67. As further proof of the Appellant's inability to grasp his duties, the witness introduced Appellee's Exhibit 31, an e-mail chain in early May 2014 explaining that a draft agenda had been sent out in improper format by the Appellant. This was after he had been given a sample to go by in March. Finally, the witness related an incident in May 8, 2014, in which the Appellant had sent out the same three e-mails to Board members involving the same subject matter. One of these finally was sent with the necessary attachments. The witness explained that this was very confusing to the Board members getting three e-mails on the same subject.

68. She explained that after this incident, she decided to recommend termination of the Appellant's initial probationary period.

69. Lastly, the witness testified that the Appellant had never made any mention to her of mental disability issues.

70. On cross-examination, the witness answered that several people were aware of Appellant's performance issues. She feels as though he was given much assistance by Skaggs and others. She also added that because of the comments returned to him for corrections, the Appellant should have known that his work was not up to standards and that his job might be in jeopardy.

71. She also added that she felt she pointed out the work deficiencies sufficiently so as to allow the Appellant to tell her of any mental or learning disability, for which he needed in accommodation. She added that she did not think it was proper for her to question the Appellant regarding his private medical information, but that had he mentioned it, the issue of mental disability would have been given consideration.

72. The Appellee closed.

### **FINDINGS OF FACT**

1. The effective hire date of the Appellant was November 16, 2013.
2. He was first notified by letter of May 9, 2014, that he would be terminated from his initial probationary position of Administrative Specialist III on May 9, 2014. He then received a letter dated May 20, 2014, clarifying the previous letter should have stated "effective close of business Friday, May 9, 2014." This letter further explained that since the Appellant had worked and received pay for May 9, the electronic payroll system required an effective date of May 20, 2014.
3. Substantial testimony supported that the Appellant had trouble grasping many of the responsibilities of his job, and his work product exhibited frequent errors in grammar and tense, causing his supervisors to edit much of his work.
4. Apart from supervisory assistance, the Appellant was provided the assistance of his retired predecessor, Cheryl Skaggs, who had not only prepared a "step-by-step" manual of how to perform his job duties, but returned on four different days in March 2014 to personally assist him.
5. The Agency provided all accommodations requested by the Appellant in the form of an ergonomic chair, a larger computer screen, and an ergonomic mouse.
6. The supervisors' testimony acknowledged they were aware the Appellant was a disabled veteran. Likewise witnesses Prather, Thomas, Hagan and Sutherland testified they were never informed by the Appellant of any mental disability issues to which they could respond.

### **CONCLUSIONS OF LAW**

1. The Personnel Board has jurisdiction to adjudicate claims of discrimination which might also brought pursuant to KRS 344.040(1). [See KRS 344.200 and KRS 344.450.]
2. In this case, the Appellant bears the initial burden of proving a *prima facie* case of discrimination. *Jefferson County vs. Zaring*, 91 S.W.3d 583 (2002), citing *McDonnell Douglas Corp. vs. Green*, 411 U.S. 792, 93 S.Ct. 1817, 36 L.Ed.2d 668 (1973). One way this burden can be met is by proof that the Plaintiff (1) is a member of a protected class, (2) qualified for and applied for an available position, (3) did not receive the job, and (4) that the position remained open and the employer sought other applicants. Upon establishing a *prima facie* case of discrimination, the burden shifts to the Defendant employer to articulate a "legitimate non-discriminatory" reason for its action. *Texas Dep't. of Community Affairs vs. Burdine*, 450 U.S.

248, 101 S.Ct. 1089, 67 L.Ed.2d 207 (1981). If the employer is able to prove such a “legitimate non-discriminatory” reason for failing to hire or promote the Plaintiff, the Plaintiff “bears the burden of showing by a preponderance of the evidence that the (legitimate reason) propounded by the employer is merely a pretext to camouflage the true discriminatory reason underlying its actions.” See *McDonnell Douglas Corp. vs. Green* (1973).

3. In this case, the Appellant proved the *prima facie* case of discrimination, as evidenced by the stipulation made by the Agency that he was disabled within the meaning of the Americans with Disabilities Act. Further, the Appellant was qualified for the position for which he was chosen until his separation during his initial probationary period. The Hearing Officer concludes as a matter of law that the Appellee/employer articulated several legitimate non-discriminatory reasons for its actions in termination. Among these were: Appellant had trouble grasping many of the job responsibilities and his work product exhibited frequent errors. Additionally, the Appellant was provided extra assistance by the return of his retired predecessor and provided a manual regarding the responsibilities of his job duties. In addition, the employer also provided those accommodations requested by the Appellant in the form of an ergonomic chair, larger computer screen, and an ergonomic mouse.

4. The Hearing Officer also concludes as a matter of law that the Appellant failed to notify his superiors that he was suffering from mental disability issues, thereby preventing them from attempting to address any such pertinent issues.

5. The Hearing Officer concludes the Appellant failed to carry his burden of proof to show the reasons cited by the Agency were a pretext to camouflage the true discriminatory reason underlying its actions.

6. The Hearing Officer further concludes as a matter of law that the Appellant failed to carry his burden of proof by a preponderance of the evidence to show that the action taken was not appropriate and was based upon discrimination under the Americans with Disabilities Act.

#### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **HAROLD PARKS, III VS. KENTUCKY BOARD OF NURSING (APPEAL NO. 2014-103)** 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).

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 R. Hanson Williams** this 13<sup>th</sup> day of March, 2015.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day mailed to:

Hon. Morgan Ransdell  
Harold Parks, III