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APPELLANT

VS.

TRANSPORTATION CABINET

APPELLEE

*** *** *** *** ***

The Board at its regular June 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 19, 2015, and being duly advised,

IT IS FURTHER 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 24th day of June, 2015.

KENTUCKY PERSONNEL BOARD

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MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Fogle
Daniel Phillips
Kathy Marshall

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-017**

DANIEL M. PHILLIPS

APPELLANT

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

**KENTUCKY TRANSPORTATION CABINET,
MIKE HANCOCK, APPOINTING AUTHORITY**

APPELLEE

** ** ** ** **

This matter came on for a pre-hearing conference on March 16, 2015, at 11:30 a.m., E.T., 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, Daniel M. Phillips, was present by telephone and was not represented by legal counsel. The Appellee, Kentucky Transportation Cabinet, was present and represented by the Hon. Will Fogle.

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 noted this appeal was filed with the Personnel Board on January 20, 2015. Appellant checked the boxes on the appeal form for "dismissal" and "demotion." In the narrative portion of his appeal, Appellant stated, "I was dismissed on January 15, 2015, without warning (sic) they would not tell me why I was being dismissed. I did what I was told. There was no previous warnings or notifications."

Attached to the appeal was a letter signed by Appointing Authority Carol Beth Martin of the Transportation Cabinet, advising Appellant he has been separated from his initial probationary period of employment as a Highway Equipment Operator I.

At the pre-hearing conference, Appellant indicated he would like to know why he was let go, as he had done everything he was told, and was given no warning. Appellant stated he would be very interested in getting his job back.

The Appellee filed a Motion to Dismiss. Though given ample time in which to file a response, the Appellant did not do so. The matter now stands for a ruling on the Appellee's Motion to Dismiss.

BACKGROUND

1. During the relevant times, the Appellant, Daniel M. Phillips, was a classified employee serving a period of initial probation.

2. In its Motion to Dismiss, the Appellee, Transportation Cabinet, contends the Personnel Board lacks jurisdiction to consider Appellant's appeal, as Appellant was separated during his initial probationary period and did not successfully complete that initial probationary period. Counsel continues by arguing that the Appellant did not make any claims of discrimination, either in his appeal or at the pre-hearing conference.

3. As noted, though Appellant was given ample time in which to file a response to the Motion to Dismiss, he did not do so.

4. KRS 18A.111(1) states:

18A.111 Probationary periods for classified service -- Initial and promotional.

- (1) 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 ligible 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.

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

18A.095 Rights of executive branch employees.

- (18)(a) 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, Daniel M. Phillips, was a classified employee serving a period of initial probation.
2. The Hearing Officer finds that the Appellant was separated from his position while still in his initial probationary period.
3. The Hearing Officer finds that having been separated prior to completion of his initial probationary period, the Appellant did not attain status in the classified service.
4. The Hearing Officer finds that having not attained status in the classified service and not having made any claim of protected class discrimination, the Personnel Board lacks jurisdiction to consider this appeal.

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 consider this appeal made by a former employee who did not successfully complete an initial probationary period, and who is not making any claims of discrimination.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **DANIEL M. PHILLIPS V. KENTUCKY TRANSPORTATION CABINET, (APPEAL NO. 2015-017)** 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 19th day of May, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Will Fogle
Mr. Daniel M. Phillips
Ms. Kathy Marshall