

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2025-055**

MISCHELLE PINKSTON

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

*** **

The Board, at its regular November 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated October 27, 2025, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer 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 21st day of November, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Mischelle Pinkston, Appellant
Hon. Patricia Abell, counsel for Appellee
Hon. Rosemary Holbrook (Personnel Cabinet)
Jay Klein

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2025-055**

MISCHELLE PINKSTON

APPELLANT

v.

RECOMMENDED ORDER

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

* * * * *

This matter last came on for a pre-hearing conference on September 18, 2025, at 1:00 p.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Erritt H. Griggs, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant herein, Mischelle Pinkston (the “Appellant”), was present by telephone and was not represented by legal counsel. The Appellee herein, the Cabinet for Health and Family Services (the “Appellee” or “CHFS”), was represented by the Hon. Patricia Abell, who also was present by telephone.

The purposes of the pre-hearing conference were to discuss a) the status of dispositive motions and responsive pleadings thereto; and b) next steps in the appeal.

Based upon her filings, including her appeal form and response to the Motion to Dismiss, and her statements made during the pre-hearing conferences, the Appellant is appealing the terms of her probationary dismissal that prevent her certification for future employment with DCBS.

Prior to the initial pre-hearing conference, on May 14, 2025, the Appellee timely filed a motion to dismiss the appeal based on the provisions of KRS 18A.111. The Appellant filed a response to the Appellee’s motion on September 05, 2025. For the reasons set forth herein, the Hearing Officer finds that the Appellee’s Motion to Dismiss is well-taken and recommends this appeal be dismissed as a matter of law.

FINDINGS OF UNDISPUTED FACT and PROCEDURAL BACKGROUND

1. The Appellant, Mischelle Pinkston, was employed by Appellee as a Family Support Specialist I for the Department for Community Based Services (“DCBS”) within CHFS until her termination on October 31, 2023. [See October 31, 2023, letter from CHFS terminating the Appellant’s employment (the “Termination Letter,” attached to the Appellee’s Motion to Dismiss.)]

2. The Appellant did not timely file an appeal of her dismissal with the Personnel Board. In her Appeal Form, filed with the Personnel Board on April 11, 2025, the Appellant marked the “other/claim not listed” category and went on to explain in her attachments that she was appealing her “disqualification notice that prevents me from being certified... within the Department for Community Based Services.” [See Appeal Form and its Attachments (the

“Appeal Form”) signed and dated April 10, 2025, and marked “RECEIVED” by the Personnel Board on April 11, 2025.]

3. On the Appeal Form, the Appellant did not mark the box for “discrimination” nor in any statement on the Appeal Form did she describe any type of illegal discrimination [See Appeal Form.].

4. There is no dispute that the Appellant was still in her probationary period when her employment was terminated by the Appellee on October 31, 2023, and she has never disputed her status as a probationary employee [See Termination Letter.].

5. After the initial pre-hearing conference occurred on May 14, 2025, the Hearing Officer entered an Interim Order on May 20, 2025, which set forth a schedule for dispositive motions and responses thereto [See Interim Order of May 20, 2025.].

6. On May 14, 2025, the Appellee timely filed a motion to dismiss the appeal on the grounds that Appellant was a probationary employee who, pursuant to KRS 18A.111 and upon separation during probation, “shall not have a right to appeal...” and “shall not be certified to the agency from which he was separated unless that agency so requests.” [See Appellee’s Motion to Dismiss at p.2]. Moreover, the Appellee argued that the Appellant had no claim under KRS 18A.095 entitling her to invoke the jurisdiction of the Personnel Board. [See Appellee’s Motion to Dismiss.].

7. The Appellant filed a response to Appellee’s Motion to Dismiss on September 5, 2025. The Appellant affirmed, in opposition to the motion, that she is not appealing her probationary dismissal but is instead appealing the terms of her probationary dismissal that prevent her certification for future employment with DCBS.

8. In her Response to Appellee’s Motion to Dismiss, the Appellant points out that the termination letter issue to her on October 31, 2023, dismissal letter included the following language: “You shall not be certified on future registers for employment with DCBS unless DCBS so requests.” [See Appellant’s Response and Termination Letter.].

9. There are no material issues of fact on the issue of jurisdiction and the appeal can be decided as a matter of law.

CONCLUSIONS OF LAW

1. The Personnel Board does not have jurisdiction to hear an appeal of a probationary employee, unless the employee makes a claim of protected class discrimination. As a probationary employee, the Appellant could be dismissed at any time for a good reason, a bad reason, or no reason at all, as long as the dismissal is not based on a discriminatory reason. *Martin v. Commonwealth*, 822 S.W.2d 858, 860 (Ky. 1991).

2. The Appellant has failed to allege or provide any facts that would support a finding of discrimination.

3. KRS 18A.111 provides that “[A]n employee may be separated from his position...during his initial probationary period and shall not have a right to appeal, except as provided by KRS 18A.095.”

4. KRS 18A.111(1) further provides that “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.”

5. The plain language of KRS 18A.11(1) is mandatory as applied to the facts of this case. The statute mandates that while “The employee may be placed on an eligible list...” they “...shall not be certified to the agency from which he was separated unless the agency so requests.”

6. Moreover, the statute precludes the appeal of an employee separated from an agency while on probation.

7. There is no dispute that the Appellant was separated from DCBS while on probation.

8. There is no dispute that DCBS has not requested that the Appellant be certified for future employment with it.

9. Consequently, there is no genuine issue of material fact at issue and the Appellee is entitled to dismissal as a matter of law. Pursuant to KRS 18A.111 and KRS 18A.095, the Personnel Board does not have jurisdiction over this appeal.

RECOMMENDED ORDER

WHEREFORE, the Hearing Officer, after careful review and consideration of the Appellee’s Motion to Dismiss, the Appeal Form (with attachments) and the evidence of record, recommends to the Kentucky Personnel Board that the appeal of **MISCHELLE PINKSTON V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2025-055)**, be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

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)

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).

The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov.

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.

Any document filed with the Personnel Board shall be served on the opposing party.

SO ORDERED at the direction of the Hearing Officer this 27th day of October 2025.

KENTUCKY PERSONNEL BOARD



ERRITT H. GRIGGS
GENERAL COUNSEL

A copy hereof was emailed and mailed to the following persons at their respective addresses as provided to the Personnel Board on this 27th day of October 2025:

Mischelle Pinkston, Appellant
Hon. Patricia Abell, Counsel for Appellee
Hon. Rosemary Holbrook, Personnel Cabinet