

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2017-173

JEMARR POTTS

APPELLANT

VS.

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

\*\*\* \*\*

The Board, at its regular February 2018 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 17, 2018, 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 15<sup>th</sup> day of February, 2018.

KENTUCKY PERSONNEL BOARD

  
\_\_\_\_\_  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Jennifer Wolsing  
Hon. Kimberly Hawthorne  
Mr. JeMarr Potts  
Mr. Jay Klein

**COMMONWEALTH OF KENTUCKY  
KENTUCKY PERSONNEL BOARD  
APPEAL NO. 2017-173**

**JEMARR POTTS**

**APPELLANT**

**VS.**

**RECOMMENDED ORDER**

**CABINET FOR HEALTH AND FAMILY SERVICES**

**APPELLEE**

\*\*\* \*\*

This matter came on for evidentiary hearing on January 10, 2018, at 9:30 a.m., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before Stephen T. McMurtry, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, JeMarr Potts, was present and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was also present and represented by the Hon. Jennifer Wolsing and the Hon. Kimberly Hawthorne.

Both parties advised that they were ready for the hearing after which the Hearing Officer advised JeMarr Potts that he had the burden of proof on all issues including his claim of veteran status discrimination in his discharge from employment while a probationary employee. Mr. Potts informed the Hearing Officer that he had no evidence to present.

The Cabinet through counsel moved the Hearing Officer to recommend to the Personnel Board dismissal of the appeal. Prior to a ruling on this motion, the Hearing Officer heard Mr. Potts' complaint that the Cabinet had failed to obtain, pursuant to his discovery request, certain documents, a personal diary and homework he had turned in to a "trainer" at the Eastern Kentucky University, who taught a course the Cabinet required Potts to attend during his probationary employment.

Counsel for Appellee Jennifer Wolsing produced a discovery response on behalf of the Cabinet, served October 10, 2017, on Mr. Potts, stating that Emily Watts, Potts' former Academy Instructor at the Training Branch had destroyed the requested documents after learning that Mr. Potts was no longer employed by the Cabinet. The Hearing Officer determines that Emily Watts was the "trainer" to whom Mr. Potts turned in his homework and personal diary and that the Cabinet had fully complied with K.R.S. 13B.090(3) in its efforts to obtain the documents requested by Mr. Potts. Mr. Potts did not explain how his personal diary and homework would be admissible to prove veteran status discrimination.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **JEMARR POTTS VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2017-173)** be **DISMISSED**.

**NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4), each party shall have fifteen 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 exception 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 the 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 Stephen T. McMurtry** this 17<sup>th</sup> day of January, 2018.

**KENTUCKY PERSONNEL BOARD**

  
\_\_\_\_\_  
**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Jennifer Wolsing  
Hon. Kimberly Hawthorne  
JeMarr Potts