

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-192

RIYADH RAMADHANI

APPELLANT

VS.

ORDER DISMISSING APPEAL

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

*** **

The Board, at its regular April 2022 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 16, 2022, 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 13th day of April, 2022.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

Copies hereof this day sent to:

Riyadh Ramadhani
Hon. Stewart C. Burch
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney Moore

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-192**

RIYADH RAMADHANI

APPELLANT

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

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS**

APPELLEE

This matter came on for evidentiary hearing on February 22, 2022, at 9:30 a.m., ET, before the Kentucky Personnel Board, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Riyadh Ramadhani, was present and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Stewart Burch. Also present as Agency representative was Warden Vanessa Kennedy.

BACKGROUND

1. The Hearing Officer notes the Appellant filed his appeal with the Personnel Board on September 3, 2020, from his probationary dismissal. He alleged that his dismissal was the result of discrimination based on the color of his skin and the fact that he is Arabic. He stated that he only worked for the Department of Corrections for one (1) week and was dismissed while in his initial training. He stated he was not even measured for a uniform. The Appellant stated that he did nothing wrong and believed he should not have been dismissed.

2. Prior to the hearing, the Hearing Officer ordered the Appellee to provide the Appellant with a copy of his personnel file within thirty (30) days. The Hearing Officer also discussed the availability of discovery, the need to file a witness and exhibit list, and the use of subpoenas with the Appellant. The Appellant stated he had everything he needed to proceed.

3. The issue for the evidentiary hearing was the Appellant's claim that he was dismissed as a result of discrimination based on race, color, and national origin. The burden of proof was on the Appellant to prove discrimination by a preponderance of the evidence.

4. In his opening statement, the Appellant stated that he did not receive any reason for his dismissal. He did not do anything wrong and should not have been dismissed.

5. In the Appellee's opening statement, Agency counsel pointed out that the Appellant was a probationary employee and asserted that the Appellant was fired because he made a female employee feel uncomfortable. He was given direction to resolve this issue and disregarded the direction. The Appellee stated there was no discrimination in this case.

6. The **Appellant, Riyadh Ramadhani**, testified as his only witness. He stated that, prior to the termination at issue in this appeal, he was employed by the Justice and Public Safety Cabinet, Department of Corrections (DOC), at the Kentucky Correctional Institution for Women (KCIW) as a Correctional Officer. He said he was only employed for one (1) week before he was dismissed.

7. The Appellant stated he is currently employed by United Parcel Service and also works at a gas station.

8. The Appellant stated that, in August 2020 while working at KCIW, he was in training. He stated he was given no reason for his dismissal. He stated that he believes he was dismissed because of his color. He stated that many coworkers believed that he was Hispanic. He stated that his national origin is Tunisian. He describes himself as Arabic. He stated that no one asked him his national origin when he worked for the Appellee.

9. The Appellant believed that he might have been dismissed because his parents needed the car for a medical appointment and his father dropped him off at work. He stated there was a question during his initial interview regarding reliable transportation.

10. When asked if he made any statement or acted in any way that could be deemed inappropriate, the Appellant stated he mentioned his ex-wife at work. The Appellant stated it was his dream to have a long career with the Department of Corrections.

11. The Appellant stated that no one ever said anything to him about his race when he was at work.

12. Admitted into evidence during the Appellant's testimony was an Anti-Harassment Policy Statement signed by the Appellant on August 3, 2020, his first day of employment. The Appellant stated he read and understood this policy. This policy instructed employees to avoid harassment based on race, color, national origin, sex, age, religion, sexual orientation, gender identity, genetic information, disability, political affiliation, or veteran status. The policy also states that anyone who has a complaint has a duty to immediately tell management. The Appellant stated that he never complained of any discrimination while at work.

13. The Appellant acknowledged an incident with Brandy Johannes and Mike Hiser on August 7, 2020, the date he was terminated. The Appellant stated he was in training, working on a computer, and was instructed to move to a computer further away from Johannes. He stated he

did not want to move because he was having trouble with other computers. The Appellant stated that no one told him he did anything wrong.

14. The Appellant rested his case. The Appellee made a Motion for Directed Verdict, which was **OVERULLED** by the Hearing Officer.

15. The Appellee called **Warden Vanessa Kennedy** as its first witness. She is the Warden at KCIW and has been employed with DOC for twenty-three (23) years.

16. Warden Kennedy stated that sex harassment is taken seriously by DOC. She acknowledged that the Anti-Harassment Policy Statement, which was admitted into evidence as **Appellee's Exhibit 1**, was distributed to all employees. The Warden also stated that KCIW has a total workforce that is 44% minority and 70% minority within security.

17. Warden Kennedy stated that the Appellant was hired as a Correctional Officer and began working on August 2, 2020. The Appellant was terminated from his probationary position on August 7, 2020. A copy of the dismissal letter was introduced into evidence as **Appellee's Exhibit 3**. As an employee serving his initial probationary period, the Appellant was dismissed without cause and was not given a reason for his dismissal.

18. Warden Kennedy stated that the Appellant was terminated based on a report from Mike Hiser. Warden Kennedy understood that the Appellant was sitting close to Nurse Brandy Johannes during training and making her feel uncomfortable. KCIW was also attempting to practice social distancing during the training. Warden Kennedy reviewed the report from Training Coordinator Amanda Dees. Based on this information, she decided to terminate the Appellant.

19. **Mike Hiser** was the next witness to testify to the Appellee. He is the Offender Information Supervisor at KCIW. On August 7, 2020, he noticed the Appellant and Nurse Brandy Johannes working closely together on computers in the training area. Hiser instructed the Appellant to move away from Johannes. Hiser came back a few minutes later and the Appellant had not moved. He again instructed him to move to a different computer. The Appellant complied. Hiser prepared an Occurrence Report, which was introduced into evidence as **Appellee's Exhibit 4**.

20. **Amanda Dees** testified next. She is currently a Unit Administrator at KCIW. In 2020, she was the Training Coordinator. In August 2020, she was in charge of new staff training. They were conducting some of this training on computers. Johannes came to her and told her she was uncomfortable working near the Appellant. Johannes asked if she could call her supervisor. Johannes told Dees that the Appellant was talking about violent pornographic pictures and driving under the influence (DUI) charges he had from another country.

21. The Appellee introduced into evidence **Appellee's Exhibit 5**, the report Dees prepared on August 7, 2020, regarding these events. Her report reads in part as follows:

Once we arrived, Johannes stated that trainee Ramadhani had been making her uncomfortable. She stated that he was sitting too close to her and had made several comments that she considered inappropriate. She stated that he would talk about his family and, specifically, that he believes that if someone does him wrong, that he must do that person wrong in return...but he personally didn't have to because he has an uncle that would "take care of that for him" and that uncle previously had been so violent that he had hurt people so badly that they were sent to the hospital. He further stated that his uncle had a pornographic picture of a woman hanging on the wall in his home to show which direction he should kneel to pray. She then stated he had told her that he (trainee Ramadhani) had received several DUI's but he received them in another country so they wouldn't show up on a background check here in Kentucky. Johannes stated that she had told Ramadhani several times that she needed to focus on her computer-based training, however, he would continue talking to her. In addition, she would try to move away from him in the room and he would scoot closer to her. After receiving this information, I informed Warden Vanessa Kennedy."

22. The Appellant testified on rebuttal. He stated that he does not drink and has never had any DUIs. He also stated that his uncle is now dead, and those things are no longer true.

FINDINGS OF FACT

1. The Appellant, Riyadh Ramadhani, started working as a Correctional Officer at the Kentucky Correctional Institution for Women on August 3, 2020. He was serving a six (6) month probationary period.

2. Following reports from Mike Hiser and Amanda Dees, Warden Vanessa Kennedy dismissed the Appellant on August 7, 2020. Because he was serving his initial probationary period, the Appellant was dismissed without cause and was not given a reason for his dismissal. (Testimony of Warden Kennedy and Appellee's Exhibit 3).

3. The Appellant, who is from Tunisia, appealed his dismissal stating that he was dismissed because of the color of his skin and because he is Arabic.

4. Warden Kennedy dismissed the Appellant because she had received reports that the Appellant had made a female employee uncomfortable. Specifically, the reports indicated the Appellant was working too closely to the female employee. The Appellant also discussed violent pornographic pictures with the employee, and the fact that he had DUIs in other countries. (Testimony of Warden Kennedy, Mike Hiser, Amanda Dees, and Appellee's Exhibits 4 and 5).

5. The Appellant offered no evidence that he was fired because of his race, color, or national origin. He did not introduce any evidence refuting the reason stated by Warden Kennedy for his dismissal.

CONCLUSIONS OF LAW

1. As an employee serving his initial probationary period, pursuant to KRS 18A.111 the Appellant could be dismissed without cause. The Appellant can only file an appeal based on a claim of illegal discrimination. KRS 18A.095(12) and (14)(a).

2. By filing his appeal and alleging discrimination based on race, color, and national origin, the Appellant properly invoked the jurisdiction of the Personnel Board. KRS 18A.095(12) and (14)(a).

3. The Appellee articulated legitimate, nondiscriminatory reasons for the Appellant's dismissal. Although given the opportunity to present evidence that these reasons were pretextual, the Appellant failed to introduce any such evidence. The Appellant failed to carry his burden of proof that his dismissal was the result of illegal discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 93 S.Ct. 1817 36 L.Ed.2d 668 and KRS 13B.090(7).

4. Although the Appellee's Exhibit 5 contains hearsay, it is still sufficient to establish the Appellee's motive for the Appellant's probationary dismissal. In other words, it is not necessary to determine whether the Appellant committed the actions alleged in Appellee's Exhibit 5. It is sufficient that the Appellee established that these allegations were the reason for the Appellant's termination. In any event, this hearsay evidence is admissible under KRS 13B.090(1) because "it is the type of evidence that reasonable and prudent persons would rely on in their daily affairs."

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Personnel Board that the appeal of **RIYADH RAMADHANI VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2020-192)**, 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 Mark A. Sipek** this 16 day of March, 2022.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Stewart C. Burch
Riyadh Ramadhani
Hon. Rosemary Holbrook (Personnel Cabinet)