

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-075**

WILLIAM J. RAWLINGS

APPELLANT

VS.

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

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS,
J. MICHAEL BROWN, APPOINTING AUTHORITY**

APPELLEE

This matter previously came on for a pre-hearing conference on June 3, 2014, at 9:30 a.m., ET, 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, William J. Rawlings, was present and was not represented by legal counsel. The Appellee, Department of Corrections, was also present and represented by the Hon. Angela Cordery.

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 Appellant filed this appeal with the Personnel Board on April 14, 2014. Appellant checked the boxes for Dismissal and Other Penalization, specifically "Sick Days/Absences." Appellant was terminated from his position as Correctional Officer at the Luther Lockett Correctional Complex by letter dated March 28, 2014, prior to completing his initial probationary period.

During the course of the pre-hearing conference, Appellant stated why he had been absent on certain occasions.

Counsel for the Appellee asked for time in which to file a Motion to Dismiss. The Hearing Officer explained this procedure to the Appellant, and gave him time in which to file a response.

This matter now stands submitted to the Hearing Officer for a ruling on the Appellee's Motion to Dismiss.

BACKGROUND

1. During the relevant times, the Appellant, William J. Rawlings, was a classified employee without status terminated while serving an initial probationary period.

2. In its Motion to Dismiss, the Appellee, Department of Corrections, contends that the Personnel Board lacks jurisdiction to consider this appeal, as Appellant has not made a claim over which the Personnel Board would have jurisdiction, since Appellant was terminated for failing to satisfactorily complete his initial probationary period.

3. The Appellant, though given ample time in which to file a response, did not do so.

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

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 eligible 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:

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, William J. Rawlings, was a classified employee with status terminated while serving an initial probationary period.

2. The Hearing Officer finds that the Appellant was terminated from an initial probationary period without having been given cause.

3. The Hearing Officer finds that the Appellant has not made a claim of any discrimination occurring during the initial probationary period over which the Personnel Board would have jurisdiction, but rather Appellant appears to have been contending that his absences were legitimate, and he was otherwise a good employee.

4. The Hearing Officer finds Appellant has not made any claim of protected class discrimination over which the Personnel Board would have jurisdiction.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes as a matter of law that in order for the Personnel Board to have jurisdiction to adjudicate this appeal brought by a former employee who was terminated while serving an initial probationary period, a claim of protected class discrimination would have to have been made. The Appellant did not do so or articulate any such at the pre-hearing conference, on appeal, and did not file any response to the Motion to Dismiss.

2. The Hearing Officer concludes that pursuant to KRS 18A.095(18)(a), after having conducted the pre-hearing conference and having given the Appellant ample time in which to have responded to the motion filed by the Appellee, there is no judicable claim and this matter should be dismissed.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **WILLIAM J. RAWLINGS V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2014-075)** 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 25th day of August, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Angela Cordery
Mr. William J. Rawlings