

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-076

CHRISTOPHER REID

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES
J. P. HAMM, APPOINTING AUTHORITY

APPELLEE

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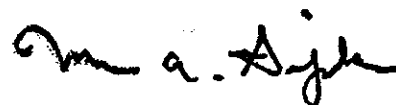
The Board at its regular August 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated July 13, 2015, and being duly advised,

IT IS HEREBY 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 20th day of August, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Kathleen Hines
Christopher Reid
J. P. Hamm

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
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AND RECOMMENDED ORDER**

**CABINET FOR HEALTH AND FAMILY SERVICES,
J. P. HAMM, APPOINTING AUTHORITY**

APPELLEE

This matter came on for a pre-hearing conference on June 11, 2015, at 2:00 p.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Christopher Reid, was present by telephone and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Kathleen Hines.

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, to see about joining additional parties, and to discuss the option of mediation.

The Appellant filed his appeal with the Personnel Board on April 13, 2015, from his dismissal during his initial probationary period. The Appellant stated he was dismissed because of an arrest. He felt the Cabinet treated him like he was guilty when he had just been charged, and that his dismissal was unfair. When asked at the pre-hearing conference, the Appellant stated he was not alleging any form of illegal discrimination.

The Appellee had filed a Motion to Dismiss, and a schedule was set for the Appellant to file a response and the Appellee to file a reply.

The Appellant filed a response to the Appellee's Motion to Dismiss, to which the Cabinet filed a reply. The matter now stands submitted to Hearing Officer Boyce A. Crocker for a ruling.

BACKGROUND

1. During the relevant times, the Appellant, Christopher K. Reid, was a classified employee serving a period of initial probation. The Appellant had been employed by the Appellee Cabinet for Health and Family Services (CHFS) as a Correctional Officer in the Department for Behavioral Health Developmental and Intellectual Disabilities at the Kentucky Correctional Psychiatric Center (KCPC).

2. In its Motion to Dismiss filed prior to the pre-hearing conference, the Appellee contends the Personnel Board lacks jurisdiction to consider this appeal as the Appellant has not stated a cause of action over which the Personnel Board has jurisdiction. Counsel cites KRS 18A.111, noting that Appellant was serving a period of initial probation, and has no right to appeal this action unless he is claiming discrimination based on membership in a protected category, and that Appellant had not done so.

3. As noted, Appellant filed a timely response. In his response, Appellant contends he believes that the way KCPC went about his dismissal "was wrong and very unprofessional. I didn't even know the real reason I got dismissed until I had to do a hearing with them over my unemployment insurance." Appellant further stated, "I was dismissed for not disclosing my arrest." Appellant stated he might not have personally told his employer he had been arrested, but the employer did know what was going on. Appellant continued by stating, "I would like for my name to be taken off the Do Not Hire list just in case the opportunity presented itself for a job I could pursue it."

4. The Appellee filed a timely reply. In its reply, the Appellee contends that during the pre-hearing conference, Appellant indicated he was not pursuing or making any claim of discrimination, and that as such, had failed to state a claim over which the Personnel Board would have jurisdiction.

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, Christopher K. Reid, was a classified employee serving a period of initial probation. The Appellant had been employed by the Appellee Cabinet for Health and Family Services (CHFS) as a Correctional Officer in the Department for Behavioral Health Developmental and Intellectual Disabilities at the Kentucky Correctional Psychiatric Center (KCPC).

2. The Hearing Officer finds that the Appellant was terminated from his position as a Correctional Officer with the Appellee while serving a period of initial probation, and as such, the termination was without cause in the letter dated March 16, 2015.

3. The Hearing Officer finds that the Appellant has not stated a claim over which the Personnel Board would have jurisdiction.

4. The Hearing Officer finds that Appellant has instead contended that the way in which the Appellee handled the dismissal was inappropriate and unprofessional.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes as a matter of law that as the Appellant has not stated a claim over which the Personnel Board would have jurisdiction to consider his having been terminated from the period of initial probation, the Personnel Board is without jurisdiction to consider this appeal further pursuant KRS 18A.095(18)(a).

2. The Hearing Officer further concludes as a matter of law that pursuant to KRS 18A.111(1), that unless the Appellee Cabinet for Health and Family Services so requests the Personnel Cabinet, Appellant may not be placed on employment registers with CHFS.

3. The Hearing Officer concludes that the Personnel Board lacks jurisdiction to further consider this appeal as noted above, and the appeal should be dismissed.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **CHRISTOPHER K. REID V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2015-076)** 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 3rd day of July, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Kathleen Hines
Mr. Christopher Reid