

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-284

ANGELA ROARK

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

** ** *

The Board at its regular March 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 11, 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 17th day of March, 2015.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Jennifer Wolsing
Hon. Edward E. Dove
J. P. Hamm

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APPELLEE

This matter came on for a pre-hearing conference on January 8, 2015, at 11:30 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, Angela Roark, was not present, however, she was represented by the Hon. Edward Dove, who appeared by telephone. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Jennifer Wolsing.

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 Hearing Officer notes this appeal was filed with the Personnel Board on November 3, 2014. The Appellant indicated in the appeal she was a contract worker employed by the Big Sandy Area Development District, working in the Pineville CHFS office. Appellant was notified of a pending transfer from Pineville to Richmond, which, according to counsel, led to Appellant's resignation which essentially was a constructive discharge due to this involuntary transfer.

In accordance with the briefing schedule, this matter is submitted to the Hearing Officer for a ruling.

BACKGROUND

1. During the relevant times, Appellant, Angela Roark, was an employee of the Big Sandy Area Development District (BSADD). Appellant worked in the Appellee's Pineville office as a Food Stamp clerical worker.

2. In its Motion to Dismiss, counsel for Appellee contends the Personnel Board lacks jurisdiction to consider this appeal because the Appellant was a contract employee working for the Cabinet's Department of Community-Based Services, employed by the BSADD. Counsel cites KRS 18A.075(3) to support this argument that the Personnel Board may only hear appeals from certain types of Appellants, and it would not include contract employees.

3. Appellant, by counsel, filed a timely response. Counsel contends his client was essentially constructively discharged because once she was no longer welcome in the Pineville office of the Appellee, she was reassigned to the Richmond, Kentucky office of the Cabinet for Health and Family Services, which distance caused her to leave her employment. Counsel argues there was no doubt that Appellant's work as a contract employee was for the benefit of the Cabinet for Health and Family Services. Counsel cites KRS 18A.010(1) as part of the purpose of the Personnel Board to establish a system of personnel administration to "improve morale and motivation of state employees." Counsel argues, citing (in favor of his argument) a Court of Appeals case, *Kentucky Region Eight v. Commonwealth*, 507 S. W. 2d 489 (Ky. App. 1974), in which the then Court of Appeals apparently pushed for a broad interpretation of the definition of state employee.

4. Appellee replied it was "inconceivable" Appellant could be considered a merit employee under KRS 18A, as she had not been hired by the state, did not receive a state salary and was not subject to any state personnel regulations. Counsel also states that the Appellee did not transfer Appellant, rather, she was transferred by BSADD.

FINDINGS OF FACT

1. During the relevant times, Appellant, Angela Roark, was an employee of the Big Sandy Area Development District (BSADD). Appellant worked in the Appellee's Pineville office as a Food Stamp clerical worker.

2. The Hearing Officer finds that the Personnel Board has jurisdiction to consider appeals from certain types of employees and also non-employees, pursuant to KRS 18A.075 and KRS 18A.095.

3. However, the Hearing Officer does not find that Appellant fits into any of these categories. As an employee of an Area Development District, the Appellant is not,

in fact, an employee for purposes of KRS 18A. Appellant also was not seeking to file an appeal as an eligible on a register or applicant for a position, but was rather challenging a personnel action imputed to the Cabinet for Health and Family Services.

4. The Hearing Officer finds the Personnel Board does not have jurisdiction to consider an appeal from a contract employee, even if performing services for a state agency right alongside KRS 18A employees. The terms of the contract would dictate what rights, if any, the contract employee would have in the employment relationship.

5. The Hearing Officer finds that does not include the ability to challenge a personnel decision affecting that contract employee under the rights granted to KRS 18A employees.

CONCLUSION OF LAW

Based on the Findings of Fact, the Hearing Officer concludes that as a matter of law that pursuant to KRS 18A.095(18)(a), the Personnel Board is without jurisdiction to consider this appeal and thus, the matter must be dismissed. See also: *Monique Roberts v. Education and Workforce Development Cabinet*, (PB 2009-055), and *Loni Suiter v. Cabinet for Health and Family Services*, (PB 2009-274).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **ANGELA ROARK V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2014-284)** 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 11th day of February, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Jennifer Wolsing
Hon. Edward E. Dove