

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-003

DAVID ROBINSON

APPELLANT

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

TRANSPORTATION CABINET

APPELLEE

*** **


The Board, at its regular October 2021 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated September 8, 2021, 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 14th day of October, 2021.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Fogle
David Robinson
Hon. Rosemary Holbrook (Personnel Cabinet)
J. R. Dobner

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-003**

DAVID ROBINSON

APPELLANT

v.

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

TRANSPORTATION CABINET

APPELLEE

** ** * * *

This matter came on for a pre-hearing conference on February 18, 2020, at 12:00 p.m. EST, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, David Robinson, was present and was not represented by legal counsel. The Agency/Appellee, Transportation Cabinet, was present and represented by the Hon. Will Fogle.

The purposes of the pre-hearing conference were to define the issues, to address any other matters relating to this appeal, and to discuss the option of mediation.

BACKGROUND

1. The Hearing Officer notes this appeal was filed with the Personnel Board on January 6, 2020. On the appeal form and during the pre-hearing conference, the Appellant, a classified employee without status, indicated he was appealing his probationary dismissal without advancing any claim of discrimination. The Appellant further explained his claims in the narrative portion of the appeal form, wherein he states, in pertinent part:

I started w/ Cabinet on July 1, 2019. I order to get my CDLs, the doctor at ... said I had to be checked for sleep apnea before I could get my permit. I wasn't able to go get checked for at least 60 days after hire date b/c of no insurance, so that limited my time from 6 to 4 months. I have done everything to get my CDL permit.

2. Following discussion, the Appellee requested an opportunity to file a dispositive motion, arguing that the Appellant has failed to properly invoke the jurisdiction of the Personnel Board. The Appellant was given an opportunity to file a response to the Appellee's Motion to Dismiss but did not. This matter has now been assigned to Hearing Officer Mark A. Sipek for

ruling on the Appellee's Motion to Dismiss.

FINDINGS OF FACT

1. The Appellant was employed as a Highway Technician Assistant I with the Transportation Cabinet.
2. While serving his initial probationary period, the Appellant was dismissed, effective close of business, January 3, 2020. The Appellant was informed that he had the right to file a claim of discrimination with the Personnel Board within thirty (30) days.
3. The Appellant filed an appeal with the Personnel Board on January 6, 2020. The Appellant stated he was not able to get his Commercial Driver's License (CDL). He stated that he needed to be checked by a doctor for sleep apnea before he could get his CDL. He was unable to see a doctor because he did not have health insurance.
4. The Appellee filed a Motion to Dismiss alleging that the appeal should be dismissed because the Appellant has not made any claim of discrimination.

CONCLUSIONS OF LAW

1. As an employee serving his initial probationary period, the Appellant could be dismissed without cause and could only appeal his dismissal based on a claim of illegal discrimination. KRS 18A.111 and KRS 18A.095(12) and (14)(a).
2. As stated in the Findings of Fact, the Appellant has made no claim of discrimination, therefore, the Personnel Board lacks jurisdiction to hear his appeal.
3. This appeal can be decided as a matter of law based on the appeal form, the statements of the parties at the pre-hearing conference, and the Appellee's Motion to Dismiss. KRS 18A.095(18)(a).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **DAVID ROBINSON V. TRANSPORTATION CABINET (APPEAL NO. 2020-003)**, 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 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).

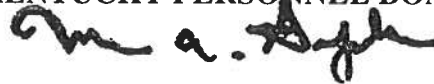
Any document filed with the Personnel Board shall be served on the opposing party.

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 8 day of September, 2021.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Will Fogle
David Robinson
J.R. Dobner
Hon. Rosemary Holbrook (Personnel Cabinet)