

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-235

CHARLES ROSS

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

*** **

The Board, at its regular March 2017 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 13, 2017, 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 15th day of March, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Catherine Stevens
Mr. Charles Ross
Mr. Rodney E. Moore

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**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-235**

CHARLES ROSS

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VS.

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

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

APPELLEE

** ** *

This matter came on for a pre-hearing conference on October 10, 2016, at 10:00 a.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, Charles Ross, was present by telephone and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Catherine Stevens.

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.

BACKGROUND

1. The Appellant, Charles Ross, filed his appeal with the Personnel Board on August 25, 2016 from his dismissal as a Correctional Officer at the Bell County Forestry Camp. The Appellant stated that he started working on February 22, 2016, and he was dismissed on August 1, 2016, while serving his initial probationary period.

2. On his Appeal Form the Appellant stated that he was dismissed for playing basketball, although he had seen coworkers and supervisors do the same, and was led to believe there was nothing wrong with this. He stated he was the first and only employee to be terminated for this.

3. At the pre-hearing conference, the Appellant was asked if he was alleging any type of discrimination. He denied that he was alleging any protected class discrimination, however, he did believe he was treated differently because the staff and supervisors did not like him. He felt there were personality differences between him and the rest of the staff.

4. Counsel for the Appellee filed a Motion to Dismiss alleging that the Appellant's appeal should be dismissed because he did not allege any type of illegal discrimination and was appealing his dismissal from his initial probation.

5. The Appellant was given time to file a response to the Motion to Dismiss, however, he did not file one.

FINDINGS OF FACT

1. There are no material facts in dispute and this matter can be decided as a matter of law based on the appeal form, the dismissal letter, statements made at the pre-hearing conference, and the Motion to Dismiss.

2. The Appellant was notified of his dismissal in a letter dated August 1, 2016, signed by Warden David Green. He was dismissed while serving his initial probationary period as a Correctional Officer at the Bell County Forestry Camp.

3. The Appellant filed an appeal from his dismissal. He believed he was dismissed for playing basketball, when he had never been informed this was wrong, and had witnessed other employees doing the same.

4. The Appellant was an employee serving his initial probationary period and did not allege any type of illegal discrimination. He believed he was treated differently because the staff and supervisors did not like him.

CONCLUSIONS OF LAW

1. Because the Appellant was dismissed while serving his initial probationary period, the Appellee could dismiss him for any reason as long as it was not based on illegal discrimination. [See KRS 18A.111, KRS 18A.095(12) and (14)(a).] Because the Appellant only alleged that he was dismissed because the staff and supervisors did not like him, he has not stated a claim upon which the Personnel Board can grant him any relief.

2. Pursuant to KRS 18A.095(18)(a), the Personnel Board may deny the appeal if it lacks jurisdiction. Because the Appellant has not alleged illegal discrimination, the Personnel Board lacks jurisdiction to hear this appeal.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **CHARLES ROSS VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2016-235)** 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

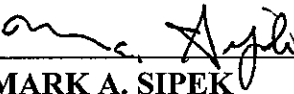
8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

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 13th day of February, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Catherine Stevens
Mr. Charles Ross