

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2017-021**

**SEAN RYAN**

**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**

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The Board, at its regular March 2018 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 29, 2018, 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 14<sup>th</sup> day of March, 2018.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. Amy Barker  
Mr. Sean Ryan  
Mr. Rodney E. Moore

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
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This matter came on for a pre-hearing conference on April 27, 2017, 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, Sean Ryan, 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, Sean Ryan, filed his appeal with the Personnel Board on January 25, 2017. He alleged that he was penalized and discriminated against when he was terminated from his position of Correctional Officer with the Luther Luckett Correctional Complex.

2. At the pre-hearing conference, he was asked to provide details regarding his claim that he had been discriminated against. He specifically denied that he had been discriminated against based on his race, gender, religion, disability, politics or age.

3. The Appellant stated he had a prescription for allergy medication and that he had a reaction to the medication. He stated he asked to leave work early on one occasion, but was not allowed to. He stated that he left his medication at the front of the institution with Internal Affairs. He stated that his direct supervisor and the Warden knew of his allergies and medication.

4. The Appellant stated that he received a verbal counseling after an incident with an inmate a few days before he was told he was being dismissed.

5. Counsel for the Appellee questioned the Appellant at the pre-hearing conference regarding these allegations. The Appellee requested time to file a Motion to Dismiss. A schedule was set for motion practice.

6. In its Motion to Dismiss, the Appellee stated that the appeal should be dismissed because it does not state a claim under KRS 18A.095, KRS 18A.111, or any other provision of KRS Chapter 18A.

7. Although given an opportunity to respond to the Appellee's Motion to Dismiss, the Appellant did not file a response.

### **FINDINGS OF FACT**

1. The Appellant, Sean Ryan, was dismissed while serving his initial probation as a Correctional Officer at the Luther Luckett Correctional Complex. He was not given a reason for his dismissal.

2. The Appellant filed an appeal with the Personnel Board, checking the box for discrimination. At the pre-hearing conference, the Appellant denied that he was alleging discrimination due to race, gender, religion, disability, politics or age.

3. The Appellant stated that he suffered from allergies and he believed the Warden was aware that he was taking allergy medication. He did not explain in any way how this could have resulted in a discriminatory dismissal. He did not request any accommodations which were denied during his employment.

4. There were no material facts in dispute, and this appeal can be decided as a matter of law based on the appeal form, statements of the parties at the pre-hearing conference, and the motion to dismiss.

**CONCLUSIONS OF LAW**

1. The Appellant was dismissed during his initial probationary period and, pursuant to KRS 18A.111, he had no right to appeal unless he alleged a claim of illegal discrimination, pursuant to KRS 18A.095.

2. Although the Appellant checked the box for discrimination on his appeal, he denied that he was alleging discrimination based on race, gender, religion, disability, politics or age. Thus the Appellant's appeal did not state a claim, pursuant to KRS 18A.095(14).

3. Although the Appellant mentioned allergy and allergy medications, he did not allege any type of disability discrimination. He also did not allege any accommodation for which he was denied.

4. Because the Board lacks jurisdiction to grant relief, based on the Appellant's appeal, this matter can be dismissed after a preliminary hearing. KRS 18A.095(18)(a).

**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 **SEAN RYAN VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2017-021)** 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 29<sup>th</sup> day of January, 2018.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Amy V. Barker  
Mr. Sean Ryan