

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-075**

JOSEPH SCANDRANI

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

*** *** *** *** ***

The Board, at its regular October 2023 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated September 21, 2023, 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 17th day of October, 2023.

KENTUCKY PERSONNEL BOARD

mark a. sipek
MARK A. SIPEK, SECRETARY

Copies hereof this day sent to:

Joseph Scandrani
Hon. Christopher Ballantine
Hon. Rosemary Holbrook (Personnel Cabinet)
Jay Klein

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-075

JOSEPH SCANDRANI

APPELLANT

V.

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

** ** ** ** ** **

This matter came on for a pre-hearing conference on July 19, 2023, at 11:00 a.m. at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Joseph Scandrani, was present by telephone and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and was represented by the Hon. Christopher Ballantine, also appearing by telephone.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by the Appellant, to determine the specific section of KRS Chapter 18A that authorizes this appeal, to determine the relief sought by the Appellant, to define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

BACKGROUND AND FINDINGS OF FACT

1. The Appellant filed his appeal with the Personnel Board on June 8, 2023, alleging demotion and involuntary transfer. The Appellant was promoted from his position as an Administrative Specialist II to a position as a Medicaid/Medicare Specialist II. After approximately five (5) months in his new position, he was reverted to his previous position in Lexington as an Administrative Specialist II and assigned to a position in Frankfort. The Appellant stated he was not alleging any type of illegal discrimination. He also stated that there was no second action regarding the involuntary transfer. He stated that he previously served as Administrative Specialist II for the Public Protection Cabinet, Department of Insurance, in Frankfort.

2. In a statement attached to his appeal form, the Appellant stated as follows:

Joseph Scandrani
Findings of Fact, Conclusions of Law,
and Recommended Order
Page 2

On May 17, 2023, I was notified that I would be reverted to my (sic) previous position of Administrative II due to failing to "satisfactorily complete...promotional probationary period." I am writing to appeal this decision. I am requesting that I be restored to Medicaid/Medicare Specialist II until I can transfer into a position of that same pay grade, or, at a minimum have my probationary period extended.

During my probationary period, I received zero face to face in person training. I performed the position to the best of my ability, while constantly reaching out asking questions on what to improve on, trying to assist with other things, asking for areas to grow etc. I reached out and asked that my supervisor, Erica Davis, do a weekly TEAMS meeting Mondays at 8am to discuss projects or things to work on and improve weekly.

I received no disciplinary action and no communication concerning my progress toward meeting my goals during my probation. I asked for ways to be more helpful or to meet my goals but received no feedback. I have attached examples of emails I received during my probation that I believe indicate that I was satisfactorily meeting my goals while allowing my supervisor to have input.

I am grateful for my position and want to add value to the organization and believe I can do so. However, I respectfully submit that I wasn't given proper direction to meet the goals of the job. I am continuing to ask for objective and concrete direction. I continue to ask for my supervisor, or a designee, to state the exact standards required to satisfactorily complete probation. I further request feedback, in writing, throughout the process. I look forward to returning to my previous position, or to be assisted and given the option to transfer either within or outside this cabinet into a position of the same paygrade (14). (sic)

3. The Appellant also attached a separate statement describing the interaction with his supervisor. He attached emails that show he offered to do more work and requested more guidance and at one point in his statement, the Appellant stated, "for someone such as myself, being diagnosed and treated for ADHD disorder, having unclear goals and expectations made the position an uphill battle to grasp."

4. On December 16, 2022, the Appellant was promoted to a Medicaid/Medicare Specialist II position and began serving a promotional probationary period of six (6) months.

5. On May 17, 2023, the Appellant was provided written notice that he had failed to complete the promotional probationary period and was reverted to his former position and pay grade as an Administrative Specialist II, pay grade 10, effective May 18, 2023. The Appellant

Joseph Scandrani
Findings of Fact, Conclusions of Law,
and Recommended Order
Page 3

received this notice in a letter signed by Howard J. Klein, the Cabinet's designated appointing authority.

6. The Appellant filed his appeal with the Personnel Board on June 8, 2023. He made no claim of unlawful discrimination on his appeal form.

7. At the pre-hearing conference on July 19, 2023, he specifically stated he was not alleging any type of illegal discrimination.

8. Although he referenced his ADHD disorder on an attachment to his appeal form, he never alleged that he suffered any discrimination as a result of this condition. He did not allege that he requested any type of accommodation for his condition. Lastly, he did not allege that he was denied any accommodation for his condition.

9. The Appellee filed a Motion to Dismiss alleging that the Personnel Board lacked jurisdiction to hear this appeal because the Appellant did not allege any form of illegal discrimination.

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

11. There are no issues of material fact and 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 with attachments.

CONCLUSIONS OF LAW

1. As a classified employee serving a promotional probationary period, the Appellant could only appeal from his reversion by alleging some form of illegal discrimination. KRS 18A.005(27), 18A.095(12) and (14)(a), and KRS 18A.111.

2. Because the Appellant appealed from his probationary reversion but did not allege any form of illegal discrimination, the Personnel Board lacks jurisdiction to proceed to a hearing in this matter.

3. The Personnel Board lacks jurisdiction to hear this appeal and the Appellee's Motion to Dismiss is granted.

4. For purposes of ruling on the Motion to Dismiss, all of the Appellant's allegations are accepted as true. *Pike v. George et al.*, 434 S.W.2d 626 (Ky. 1968).

5. Because all of the events associated with this appeal occurred prior to the passage of Senate Bill 153, all references to KRS 18A are to the sections in effect at the time of the events associated with this Appeal.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **JOSEPH M. SCANDRANI V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2023-075)** 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 fifteen (15) 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).

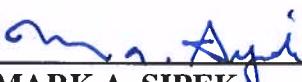
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

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.

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

SO ORDERED at the direction of the Hearing Officer this 21 day of September, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Joseph Scandrani
Hon. Christopher Ballantine
Hon. Rosemary Holbrook (Personnel Cabinet)