

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-004

CURTIS SMITH

APPELLANT

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

FINANCE AND ADMINISTRATION CABINET

APPELLEE

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

The Board, at its regular November 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated October 14, 2025, 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 21st day of November, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Curtis Smith, Appellant
Hon. Shan Dutta, counsel for Appellee
Hon. Ashley Daily, co-counsel for Appellee
Hon. Cary Bishop, co-counsel for Appellee
Hon. Rosemary Holbrook (Personnel Cabinet)
Laura Sharp

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FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDED ORDER

FINANCE AND ADMINISTRATION CABINET

APPELLEE

* * * * *

This matter is before the Hearing Officer on the Motion for Summary Judgment filed by the Appellee, Finance and Administration Cabinet. The appeal last came on for a pre-hearing conference on December 11, 2024, at 11:00 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Gordon A. Rowe, Jr., Executive Director/Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A. The appellant herein, Curtis Smith (the “Appellant”), was present in person and was not represented by legal counsel. The appellee herein, Finance and Administration Cabinet (the “Appellee”), was present in person and was represented by the Hon. Shan Dutta. Dale Clemons appeared as Agency representative.

At issue in this appeal is the Appellant’s claim that he was penalized by his supervisor due to some upholstery work he completed for the supervisor outside of normal work hours as part of the Appellant’s private upholstery business. The Appellant has claimed that his supervisor was unhappy with the price for the upholstery work and allegedly stated he would “remember that at work.” During the pre-hearing conference, the parties discussed their views on the matter and counsel for the Appellee requested a dispositive motion schedule, arguing that the Appellant could not prove he was penalized by his employer as a matter of law. Since the pre-hearing conference, the Appellee has filed a Motion for Summary Judgment, the Appellant has filed a response to the Motion for Summary Judgment and the Appellee has filed a reply brief. After reviewing the briefs filed by each party, the Hearing Officer has concluded, for the reasons stated in more detail below, that the Appellee is entitled to judgment as a matter of law.

FINDINGS OF FACT

1. At the time the appeal was filed, the Appellant was employed by the Appellee as a Construction Superintendent I. [See Appeal Form.] The Appellant was supervised by Chad Purvis. [See Appellee's Motion for Summary Judgment at p. 2.]

2. Outside of his state employment, the Appellant performed upholstery work for various clients. At some point, Chad Purvis became one of the Appellant's clients and he performed some upholstery work on a vehicle owned by Mr. Purvis. [See Appellant's October 25, 2022 personal statement (the "Personal Statement"), which was attached to the Appeal Form, at pp. 2-3.] All of this work was done off of state property and outside the Appellant's state work hours. [See Appellant's Personal Statement at pp. 2-3; and see Appellee's Motion for Summary Judgment at pp. 2-3.]

3. On September 12, 2022, the Appellant texted Mr. Purvis informing him of the price for the work. After receiving the text, Mr. Purvis allegedly called the Appellant and yelled at him angrily, including uttering some obscene words. [See Appellee's Motion for Summary Judgment, Exhibit C (Requests for Admission No. 4).] He complained about the price being too high and told the Appellant that he "owed him" for letting the Appellant take time off work to take his daughter to school and that he would "remember that at work." [See Appellant's Personal Statement at p. 3.] The Appellant considered these comments to be a threat of retaliation. However, according to the Appellant himself, he texted Mr. Purvis later that same evening and Mr. Purvis told him that his upholstery "work looked great and he was satisfied with it." [See *id.*] All of this activity took place after work hours and outside state property. [See Appellant's Personal Statement; and see Appellee's Motion for Summary Judgment at p. 3].

4. The Appellant has alleged that, when he returned to work the next day (September 13, 2022), Mr. Purvis "ignored me all day" and the Appellant received work instructions from coworkers. [See Appellant's Personal Statement at p. 3; and see Appellee's Motion for Summary Judgment at 3.]

5. On the date he was "ignored," the Appellant went to his human resources department and informed a person named "Stephanie" that he felt unsafe and that he considered Mr. Purvis's statement he would "remember that at work" as a threat. [See Appellant's Personal Statement at p.3.] He also told her that he wanted to find a different job away from Mr. Purvis. [See *id.*]

6. Mr. Purvis was on vacation for the remainder of the week of September 12, 2022. He returned on September 19, 2022. According to the Appellant, Mr. Purvis cursed at another employee when he returned to his office and found the employee sitting in his chair. [See Appellant's Personal Statement at p. 4; and *see* Appellee's Motion for Summary Judgment at 4.]

7. On an unspecified occasion prior to the events of September 12-13, 2022, the Appellant alleges that he heard Mr. Purvis make verbal threats toward an unidentified person in "upper level management" who Mr. Purvis apparently felt humiliated him. [See Appellant's Personal Statement at p. 2.]

8. The Appellant has alleged that Mr. Purvis's cursing and yelling made him feel anxious and stressed.¹ On September 19, 2022, the Appellant asked Stephanie if he could take some time off for his mental health, which he was allowed to do. [See Appellant's Personal Statement at p. 4; and *see* Appellee's Motion for Summary Judgment at 3-4.] The Appellant also stated to Stephanie that he wanted to transfer to another department in the Cabinet so that he would not be under Mr. Purvis's supervision. [See Appellant's Personal Statement at p. 4.]

9. On October 21, 2022, the Appellant was approved for FMLA leave. [See Appellee's Motion for Summary Judgment at p. 4.] The Appellee backdated his leave to September 20, 2022 (the date he first formally requested FMLA leave) and his leave concluded on January 3, 2023. [See *id.*] The Appellant exhausted his leave time during that period. In the letter from the Appellee approving his leave, it was noted that he requested to retain zero sick days. [See *id.*] The Appellant eventually exhausted his sick time during the leave period and was scheduled to return to work after January 3, 2023. [See *id.*]

10. The Appellant made another request for FMLA leave on January 9, 2023, almost immediately after his initial FMLA leave time expired. [See Appellee's Motion for Summary Judgment at p. 4.] The Appellee requested more information from the Appellant to support the request but that information was never supplied by the Appellant or any medical professional treating him and the second FMLA leave request was denied on that basis. [See *id.*] However, the Appellant was allowed to take additional time off work without further penalty by utilizing his personal leave bank until his request for a voluntary transfer within the Finance and Administration Cabinet was granted. [See *id.*]

¹ It should be noted that, other than the phone call of September 12, 2022, which occurred outside of work, the Appellant has not pointed to any incidents in which Mr. Purvis yelled or cursed at him, or otherwise threatened him.

11. This appeal was filed by the Appellant on January 9, 2023. In an attachment to his appeal, the Appellant described the incidents he was complaining of and the relief he was seeking in more detail. [See Appellant's Personal Statement at pp. 3-6.] In his appeal, he alleged that he felt "harassed, threatened and retaliated against" by Mr. Purvis, his immediate supervisor. [See Appeal Form.] He also claimed the state failed to provide him with "a safe workplace." [See *id.*] The Appellant alleged that Mr. Purvis's actions toward him and the Appellee's handling of his claims against Mr. Purvis amounted to a penalization. [See *id.*] In his response to the Appellee's Motion for Summary Judgment, the Appellant further claimed he was subjected to retaliation in the form of a sub-par annual review he received from Mr. Purvis for 2022. However, the Appellant has acknowledged that, when he followed the process set forth in 101 KAR 2:190, Section 7, and challenged his annual performance review, it was "reconsidered and then scored fairly." [See Appellant's Response to Appellee's Motion for Summary Judgment (the "Appellant's Response") at p. 2.]

12. As a remedy, the Appellant requested that he be transferred to another work location that would be outside the supervision of his then-supervisor, Chad Purvis. [See Appellant's Personal Statement at pp. 4, 6.] The Appellant also claimed that, as a result of the Appellee not providing a safe workplace, he was forced to exhaust all his personal leave time. [See Appellant's Response at 2.]

13. On April 17, 2023, the Appellant was approved for a temporary transfer to a different position within the Finance and Administration Cabinet. Within months, his transfer was made permanent and the Appellant never again worked under the supervision of Mr. Purvis. Thus, after September 19, 2022, when the Appellant was first granted FMLA leave, the Appellant did not report to his workstation under Mr. Purvis's supervision and he had no work contact with Mr. Purvis after that time.

14. Consequently, the Appellant only worked under Mr. Purvis for a total of two (2) days following the September 12, 2022 phone call in which he alleged Mr. Purvis yelled at him (September 13 and September 19, 2022). During that time period, the only action that Mr. Purvis took toward Appellant was that he ignored him on September 13.

15. The Appellant has alleged that he felt harassed, threatened and intimidated by Mr. Purvis because he often used obscenities and yelled. He alleged that Mr. Purvis even threatened another employee who criticized his work. However, except for the incident of September 12,

2022, the Appellant has not alleged that Mr. Purvis yelled at him, directed obscenities toward him, or ever made any specific threats against him.

16. After the Appellant's initial complaints about Mr. Purvis in September 2022, the Appellee conducted two separate investigations into the Appellants' allegations regarding Mr. Purvis's conduct. Both investigations determined there was no wrongdoing on the part of Mr. Purvis. [See Appellee's Motion for Summary Judgment at [4-5].]

STANDARD OF REVIEW

1. Summary judgment should be entered when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure ("CR") 56.03; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 482 (Ky. 1991). The movant should only be granted summary judgment when the right to judgment as a matter of law is "shown with such clarity that there is no room left for controversy." *Steelvest*, 807 S.W.2d at 482. A party opposing a motion for summary judgment must present "at least some affirmative evidence showing that there is a genuine issue of material fact for trial." *Id.* at 482.

2. There is no genuine issue of material fact in this case as to whether the Appellant was penalized or suffered harassment or retaliation as a matter of law.

CONCLUSIONS OF LAW

1. This appeal must be dismissed because, even construing the alleged facts in the light most favorable to the Appellant, he cannot establish that he was "otherwise penalized" as that term is defined by KRS 18A.005. Additionally, the Appellant has not shown that he was harassed or retaliated against by his supervisor or by the Cabinet as a matter of law.

2. Under the version of KRS Chapter 18A in effect at the time the Appellant filed his appeal,² a penalization of a state employee meant "demotion, dismissal, suspension, fines, and other disciplinary actions; involuntary transfers; salary adjustments; any action that increases or diminishes the level, rank, discretion, or responsibility of an employee without proper cause or authority, including a reclassification or reallocation to a lower grade or rate of pay; and the abridgment or denial of other rights granted to state employees." KRS 18A. 005(30).

² KRS Chapter 18A was amended by the Kentucky Legislature, effective June 29, 2023. Among other changes, the category of other penalizations was removed from KRS 18A.095 as a basis for the Personnel Board's jurisdiction.

3. None of the actions attributed to the Appellee fit within the definition of a penalization under the version of KRS Chapter 18A in effect at the time of the appeal. *See KRS 18A.005(30)*. The Appellant was not demoted, dismissed, suspended or subjected to any other disciplinary actions by the Appellee nor was his salary decreased by an act of the Appellee. The Appellant knowingly and voluntarily requested leave from his job and then a transfer. He was not involuntarily transferred, reclassified or reallocated nor did the Appellee take any other action to diminish his rank or responsibility without cause.

4. Additionally, the Appellant's claims that he was harassed and retaliated against based on the dispute with Mr. Purvis fail as a matter of law. Even construing the facts in the light most favorable to the Appellant, those facts do not amount to harassment or retaliation.

5. Specifically regarding harassment, assuming for argument's sake that the Appellant could raise a claim of harassment not connected to membership in a protected class (the Appellant has never claimed to be in a protected class), it is clear that the Appellant has not been subjected to the kind of severe and pervasive conduct that constitutes a harassment claim. *Ammerman v. Board of Education of Nicholas County, et al.*, 30 S.W.3d 793 (Ky. 2000). In order to overcome a motion for summary judgment in a hostile environment claim, the incidents complained of must be more than episodic and one offensive utterance is not sufficient to maintain a hostile environment claim. *Harris v. Forklift Systems*, 510 U.S. 17 (1993).

6. Regarding Mr. Purvis specifically, the only actions the Appellant has pointed out are the vague threat on September 12, 2022 that he would "remember that at work," Mr. Purvis's passive act of ignoring him on September 13, the day after their dispute over the price of the upholstery work, and his cursing at another employee on September 19. These isolated episodes, only one (1) of which was even directed at the Appellant, cannot form the basis of an action for harassment nor do they provide a rational basis to conclude that the Appellant was wrongfully forced to exhaust his leave time at work.³

7. Regarding the Appellant's claims of retaliation, the Appellant has claimed that Mr. Purvis threatened on September 12, 2022 to remember the price dispute at work. However, the Appellant has produced no evidence that Mr. Purvis ever acted on this alleged threat. The

³ The Appellant voluntarily and knowingly decided to take FMLA leave (and exhaust his remaining leave) after September 19, 2022, until his voluntary transfer occurred in April 2023. He only worked for Mr. Purvis for two (2) business days after the initial dispute regarding the upholstery work on September 12 and used over 200 days of leave time.

Appellant has also claimed that his employer's denial of his second request for FMLA leave and his annual evaluation rating were retaliatory acts that occurred after he complained about Mr. Purvis. None of these claims have merit.

8. The record is clear that the second FMLA request was denied because the Appellant failed to submit required documentation to support the request. The Appellant has not produced any evidence to contradict this legitimate, non-retaliatory reason for denying his second FMLA request. In addition, the Appellee granted the Appellant's leave request without penalty. Although he did exhaust his leave bank, he did so voluntarily and with knowledge that he could eventually run out of leave time if he failed to return to work.

9. The Appellant's claim about his 2023 evaluation rating is moot because the evaluation was changed upon the Appellant's internal request and the Appellant received the highest possible rating.

10. The Appellant did not suffer any other disciplinary action, involuntary transfer, rank or salary reductions, or any other adverse employment actions that could be construed as retaliatory after reporting Mr. Purvis's conduct to the Appellee.

11. Thus, the Appellant has failed to provide any affirmative evidence to show that he was wrongfully penalized by the Appellee or subjected to harassment or retaliation in violation of law and his appeal should be dismissed as a matter of law.

RECOMMENDED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Personnel Board that the appeal of **CURTIS SMITH V. FINANCE AND ADMINISTRATION CABINET (APPEAL NO. 2023-004)** 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).

[Hearing Officer Note: Any document filed with the Personnel Board shall also 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).

The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov.

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.

SO ORDERED at the direction of the Hearing Officer this 14th day of October, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR.
EXECUTIVE DIRECTOR

A copy hereof was emailed and mailed to the following persons at their respective addresses as provided to the Personnel Board on this 14th day of October, 2025:

Curtis Smith, Appellant
Hon. Shan Dutta, Counsel for Appellee