

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2015-105

KAREN L. SOUTHARD

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES  
J. P. HAMM, APPOINTING AUTHORITY

APPELLEE

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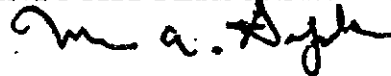
The Board at its regular October 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 26, 2015, and being duly advised,

**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 14<sup>th</sup> day of October, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Kathleen Hines  
Karen L. Southard  
J. P. Hamm



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PERSONNEL BOARD  
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**VS.                      FINDINGS OF FACT, CONCLUSION OF LAW  
AND RECOMMENDED ORDER**

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**APPELLEE**

\* \* \* \* \*

This matter came on for a pre-hearing conference on July 9, 2015, at 10:00 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Karen L. Southard, was present by telephone and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Kathleen Hines.

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

The Hearing Officer noted this appeal was filed with the Personnel Board on June 1, 2015. The Appellant was appealing from dismissal and removal from register. This was in response to a letter dated May 27, 2015, which informed Appellant she was being terminated from her position as a Family Support Specialist I in the CHFS Two Rivers Service Region without cause, effective May 28, 2015.

In her appeal, Appellant indicated she believed she had performed the duties above and beyond expectations, and during the pre-hearing conference, indicated she was dumbfounded when she was let go without any reason given. Appellant stated at the pre-hearing conference she did not necessarily wish to return to the employ of the Cabinet, but rather, was desirous of an explanation as to why she was terminated.

The Hearing Officer noted that prior to the pre-hearing conference, Counsel for the Appellee filed a Motion to Dismiss. The Hearing Officer discussed this with the parties, indicating to Appellant he would give her time in which to file a response to the Appellee's Motion to Dismiss. The Hearing Officer also encouraged Counsel for the Appellee to determine if, based on Appellant's statements during the pre-hearing conference, there was a way to give



more information as to her termination to Ms. Southard. Counsel indicated she would be willing to explore this possibility.

This matter is submitted for a ruling. The Appellee filed a Motion to Dismiss prior to the pre-hearing conference. Though given time in which to file a response, the Appellant has not done so.

### **BACKGROUND**

1. During the relevant time, the Appellant, Karen L. Southard, was a classified employee serving a period of initial probation.

2. In its Motion to Dismiss, the Appellee, Cabinet for Health and Family Services (CHFS), contends Appellant, who had been a Family Support Specialist I was terminated from her position prior to completing initial probation and achieving status in the classified service. The Appellee contends that as Appellant has claimed no discrimination based on membership in a protected class, or any other claim of discrimination, the matter must be dismissed.

3. As noted above, though given ample time in which to file a response, Appellant has not done so.

4. KRS 18A.095(18)(a) states:

The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.

### **FINDINGS OF FACT**

1. During the relevant time, the Appellant, Karen L. Southard, was a classified employee serving a period of initial probation.

2. The Hearing Officer finds that Appellant was a classified employee serving a period of initial probation, who was, in fact, terminated from her position prior to having completed the period of initial probation.

3. The Hearing Officer finds the Appellant has made no claims of discrimination to the Personnel Board.



**CONCLUSION OF LAW**

The Hearing Officer concludes as a matter of law that the Appellant, as a classified employee terminated while serving a period of initial probation, has no rights of appeal to the Personnel Board, unless some claim of discrimination is being made pursuant to KRS 18A.095. Having found no such claim is being made, the Hearing Officer concludes as a matter of law that pursuant to KRS 18A.095(18)(a), this appeal should be dismissed as the Personnel Board lacks jurisdiction to further consider this matter.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **KAREN L. SOUTHARD V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2015-105)** 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).

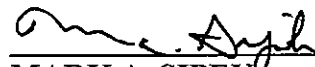
**Any document filed with the Personnel Board shall be served on the opposing party.**

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 Boyce A. Crocker** this 26<sup>th</sup> day of August, 2015.

**KENTUCKY PERSONNEL BOARD**



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

A copy hereof this day mailed to:  
Hon. Kathleen Hines  
Ms. Karen L. Southard