

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-186

JESSICA MCCLEAN (formally "STOWE")

APPELLANT

VS.

****CORRECTED****
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 May 5, 2021, at 1:30 p.m. EDT, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Jessica McClean, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Carmen Ross, who also appeared by telephone.

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

BACKGROUND

1. The Hearing Officer notes this appeal was filed with the Personnel Board on August 14, 2021. On the appeal form and during the pre-hearing conference, the Appellant, a third-party contractor without status, indicated she was appealing her dismissal from a Contact Tracer position with the Eight Eleven Group. The Appellant further explained her claims in the narrative portion of the appeal form wherein she states, in pertinent part:

My dismissal while out for back surgery was mismanagement, abuse of power, and retaliation.

2. Following discussion, the Appellee requested an opportunity to file a dispositive motion as to the Appellant's claims arguing that the Board does not have jurisdiction over contract employees. The parties then agreed to a briefing schedule.

3. The Appellee filed a Motion to Dismiss. Although given time to respond, the Appellant filed to do so. This matter has now been assigned to Hearing Officer, Mark A. Sipek,

for a ruling on the Appellee's Motion to Dismiss.

FINDINGS OF FACT

1. The Appellant was employed as a Contract Tracer with the Eight Eleven Group. This Agency had a contract with the Department of Public Health to conduct contract tracing of COVID-19 cases.
2. According to documentation supplied by the Appellant, she was hired on June 24, 2020, and dismissed on July 17, 2020. Her employment was with Technical Youth LLC, doing business as Medasource.
3. As an employee with an Agency that has a contract with the Cabinet for Health and Family Services, the Appellant was not a state employee. She was neither a classified nor an unclassified employee.
4. The Appellant alleges she was dismissed while she was out for back surgery. She accuses her employer of mismanagement, abuse of power, and retaliation.
5. The Appellee filed a Motion to Dismiss alleging that the Personnel Board did not have jurisdiction over this appeal because the Appellant was not a state employee. Although given an opportunity to respond, the Appellant has not filed a response to this motion.

CONCLUSIONS OF LAW

1. The Personnel Board's jurisdiction is limited to appeals from state employees against their agencies. The Personnel Board does not have jurisdiction with regard to employees who work for agencies that have contracts with state government. KRS 18A.075 and 18A.095. *Angela Roark v. Cabinet for Health and Family Services*, 2015 WL 1407350, (PB 2014-284). *Monique Roberts v. Education and Workforce Development Cabinet*, (PB 2009-055), and *Loni Suiter v. Cabinet for Health and Family Services*, (PB 2009-274).
2. There are no genuine issues of material fact and this appeal can be decided as a matter of law based on the appeal form, the statement of the parties at the pre-hearing conference, and the Appellee's Motion to Dismiss. KRS 18A.095(18)(a) and 13B.090(2).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board the appeal of **JESSICA MCCLEAN (formally "STOWE") VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2020-186)** 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 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 Mark A. Sipek** this 10 day of September, 2021.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Carmen Ross
Jessica McClean
Hon. Rosemary Holbrook (Personnel Cabinet)