

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-168

TOY STRONG

APPELLANT

VS.

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

JUSTICE AND PUBLIC SAFETY CABINET,
KENTUCKY STATE POLICE

APPELLEE

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

The Board, at its regular April 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated March 6, 2024, 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 April, 2024.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

Copies hereof this day emailed and mailed to:

Toy Strong
Hon. Shawna Kincer
Hon. Rosemary Holbrook (Personnel Cabinet)

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

This matter came on for a pre-hearing conference on March 4, 2024, at 10:00 a.m., ET, at 1025 Capital Center Drive, Suite 105, 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, Toy Strong, was present and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Kentucky State Police, was present and was represented by the Hon. Shauna Kinser. Both parties appeared by telephone.

BACKGROUND AND FINDINGS OF FACT

1. The Appellant, Toy Strong, filed his appeal with the Personnel Board on December 27, 2023. He checked the "action" box for Promotion/Non-selection and stated on his appeal form the following:

I was not selected to continue in the application process for KSP Cadet Class 104 based on my background investigation. The only offenses which I have ever been convicted of, are traffic violations. I have paid a few fines but my background should not exclude me from the application process.

2. The Appellant included an e-mail he received notifying him that, based on a background investigation, he would not continue in the application process for a Kentucky State Police cadet. This e-mail reads as follows:

After careful consideration and review of our background investigation, you were not selected to continue in the application process for Cadet Class 104. If you are interested in future consideration for employment, you will be required to submit a new application and complete the cadet selection process again. Your removal was based on the following:

Toy Strong
Findings of Fact, Conclusions of Law,
and Recommended Order
Page 2

- Prior criminal history
- Inconsistencies with items reported

APPEALS

Pursuant to 502 KAR 45:115, KRS 16.050 requires the State Police Personnel Board to consider appeal from applicants.

3. In the notice scheduling the pre-hearing conference, the parties were notified that the issues and purposes of the pre-hearing conference were as follows:

The Personnel Board is in receipt of the appeal form you have filed against the Kentucky State Police. Pursuant to KRS 18A.115(1)(r), the Personnel Board does not have jurisdiction over appeals filed by "Department of Kentucky State Police troopers." **During the pre-hearing conference, the Appellant shall show cause why this appeal should not be dismissed for lack of jurisdiction.** See also KRS 16.050(7) and (8).

4. At the pre-hearing conference, the Appellant stated that while the Personnel Board does not have jurisdiction over the Department of Kentucky State Police troopers, he was not yet a trooper.

5. The Appellant also stated that he did not file an appeal with the State Police Personnel Board and believed he only had ten (10) days to appeal to that entity. It was not clear what date he was notified that he would not continue in the application process.

6. At the pre-hearing conference, both parties were asked if they wished to file anything in writing regarding the issue of whether or not the Personnel Board had jurisdiction over this appeal. Neither party was interested in filing anything in writing.

7. There are no material facts in dispute and this appeal can be decided as a matter of law based on the appeal form and the statements of the parties at the pre-hearing conference.

CONCLUSIONS OF LAW

1. KRS 18A.115(1)(r) reads as follows:

(1) The classified service to which KRS 18A.005 to 18A.200 shall comprise all positions in the Executive Branch classified service now existing or hereafter established, except the following:

(r) Department of Kentucky State Police troopers.

2. KRS 16.050(3)(7) and (8) read as follows:

Toy Strong
Findings of Fact, Conclusions of Law,
and Recommended Order
Page 3

- (3) There is created a Department of Kentucky State Police Personnel Board consisting of the commissioner and four (4) other members to be appointed by the Governor, two (2) to be appointed from each of the two (2) major political parties.
- (7) The board shall promulgate administrative regulations to carry out the purposes herein, which shall include provisions for:
 - (a) Open competitive examination as to fitness of applicants for employment as officers; and
 - (b) Establishment of eligible lists as a result of such competitive examinations, from which lists vacancies shall be filled.
- (8) The board shall hear appeals from applicants for employment for which examinations are being given or have been conducted and from eligibles on examination registers subject to the procedural rules which the board may adopt pursuant to the provisions of this section.

3. Thus, the Personnel Board lacks jurisdiction here this appeal and the Department of Kentucky State Police Personnel Board has jurisdiction. KRS 16.050(8).

4. Because the Personnel Board lacks jurisdiction to hear this appeal, it can be dismissed following the pre-hearing conference. KRS 13B.090(2) and 18A.095(16)(a).

RECOMMENDED ORDER

Because the board lacks jurisdiction over this appeal, the Hearing Officer recommends to the Personnel Board that the appeal of **TOY STRONG VS. JUSTICE AND PUBLIC SAFETY CABINET, KENTUCKY STATE POLICE (APPEAL NO. 2023-168)** 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).

Toy Strong
Findings of Fact, Conclusions of Law,
and Recommended Order
Page 4

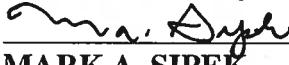
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

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 6 day of March, 2024.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Toy Strong
Hon. Shauna Kinser
Hon. Rosemary Holbrook (Personnel Cabinet)