

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-272

SANDRA TABOR

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET  
DEPARTMENT OF CORRECTIONS  
J. MICHAEL BROWN, APPOINTING AUTHORITY

APPELLEE

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The Board at its regular May 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated April 14, 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 20<sup>th</sup> day of May, 2015.

KENTUCKY PERSONNEL BOARD

  
\_\_\_\_\_  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Angela Cordery  
Sandra Tabor  
Bobbie Underwood

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-272**

**SANDRA N. TABOR**

**APPELLANT**

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

**JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF CORRECTIONS,  
J. MICHAEL BROWN, APPOINTING AUTHORITY**

**APPELLEE**

\*\* \*\* \*

This matter came on for a pre-hearing conference on January 8, 2015, at approximately 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, Sandra N. Tabor, was present by telephone and was not represented by legal counsel. The Appellee, Department of Corrections, was present and represented by the Hon. Angela Cordery.

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

The Hearing Officer noted this appeal was filed with the Personnel Board on October 29, 2014. The Appellant was appealing having been terminated from her position as Correctional Officer at the Western Kentucky Correctional Complex by letter dated October 1, 2014. Appellant was serving a period of initial probation when she was terminated.

In her appeal form and at the pre-hearing conference, Appellant stated she was never given cause for the termination. Counsel for the Appellee indicated she wished to file a motion to dismiss, challenging whether the Personnel Board had jurisdiction to consider this appeal. The Hearing Officer briefly explained this to the Appellant and set a briefing schedule.

The Appellee filed a timely Motion to Dismiss. Though given ample time in which to respond, Appellant did not file a response. The matter is submitted for a ruling on the Appellee's Motion to Dismiss.

### **BACKGROUND**

1. During the relevant times, Appellant, Sandra N. Tabor, was a classified employee serving a period of initial probation.

2. In its Motion to Dismiss, the Appellee contends Appellant has not stated a claim in this appeal which would confer jurisdiction on the Personnel Board. Counsel notes Appellant was terminated from her position as a Correctional Officer while still serving a period of initial probation, and that KRS 18A.111(1) severely curtails the jurisdiction of the Personnel Board in such circumstance. Counsel noted Appellant had not claimed any sort of discrimination protected pursuant to KRS 18A.095.

3. Though given ample time in which to file a response, Appellant did not do 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 times, Appellant, Sandra N. Tabor, was a classified employee serving a period of initial probation.

2. The Hearing Officer finds this appeal was filed by an Appellant terminated while serving a period of initial probation as a Correctional Officer with the Department of Corrections.

3. The Hearing Officer finds that Appellant was not able to challenge the underlying reasons for her termination, but could rather claim discrimination, if she believed such existed.

4. The Hearing Officer finds Appellant did not make any claim of protected class discrimination, and did not file a response to the Motion to Dismiss alleging any other cause of action.

### **CONCLUSION OF LAW**

The Hearing Officer concludes as a matter of law that this appeal should be dismissed as Appellant has not stated a cause of action over which the Personnel Board would have jurisdiction, and that pursuant to KRS 18A.095(18)(a), the Personnel Board, upon holding a pre-

hearing conference and considering dispositive motions, may dismiss matters over which it does not have jurisdiction.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **SANDRA N. TABOR V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2014-272)** 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 14<sup>th</sup> day of April, 2015.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day mailed to:

Hon. Angela Cordery  
Ms. Sandra N. Tabor