

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-282**

DEREK THOMPSON

APPELLANT

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

TRANSPORTATION CABINET

APPELLEE

*** **

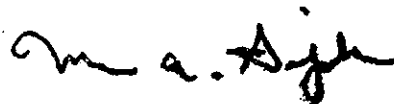
The Board, at its regular June 2017 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 10, 2017, and being duly advised,

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 15th day of June, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Fogle
Mr. Derek Thompson
Mr. J. R. Dobner

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V.

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

TRANSPORTATION CABINET

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This matter came on for a pre-hearing conference on March 2, 2017, at 11:30 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Derek Thompson, was present by telephone and not represented by legal counsel. The Appellee, Transportation Cabinet, was present and represented by the Hon. William Fogle.

This matter is before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss filed with the Personnel Board on March 17, 2017. At issue is the Appellant's claim that he had been harmed when a Ferry Crew Foreman position in Monroe County allegedly had its job duties changed after the Appellant chose not to apply for the position. The Agency's Motion to Dismiss argues that the Appellant failed to alleged a penalization as the term is defined in KRS 18A.005(24). The Appellant has had an opportunity to file a response, but has not done so. This matter now stands submitted to the Hearing Officer for a ruling on the Appellee's Motion to Dismiss.

BACKGROUND

1. During the relevant times, Appellant, Derek Thompson, was a classified employee with status within the Transportation Cabinet.

2. The Appellant claims an "other penalization" in that he (Appellant) was notified an opening would be occurring for the Ferry Crew Foreman (Highway Superintendent I) in Monroe County, on or around September 1, 2016. Appellant stated that after inquiring as to the duties of the position, he was told that it would consist of approximately 95% paperwork. As a result, the Appellant decided not to apply for the position.

3. Sometime later, presumably after the Ferry Crew Foreman position was filled, Appellant claims he was then told the duties of the position would only consist of approximately 25% paperwork. The Appellant seeks an opportunity to reapply for the position and argues that the position should have been reposted.

4. During the March 2, 2017 pre-hearing conference (PHC), the Appellant acknowledged that he did not apply for the Ferry Crew Foreman position and acknowledged that he did not review the Class Specification and/or Position Description for the Ferry Crew Foreman position. Further, the Appellant did not allege the Ferry Crew Foreman position was filled based on any discriminatory or legally impermissible basis.

5. As noted above, the Agency filed a Motion to Dismiss with the Personnel Board on March 17, 2017. The Agency contended that the Appellant failed to articulate a penalization as defined by KRS 18A.005(24). The Appellant failed to respond.

6. KRS 18A.005(24) states:

“Penalization” means 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;

7. 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 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, Derek Thompson, was a classified employee with status within the Transportation Cabinet.

2. The Hearing Officer finds that after inquiring as to the duties of the Monroe County Ferry Crew Foreman position, the Appellant was told that it would consist of approximately 95% paperwork. As a result, the Appellant decided not to apply for the position.

3. The Hearing Officer finds that, even assuming the Appellant's claims about the Monroe County Ferry Crew Foreman position are wholly accurate, the Appellant has not articulated a penalization under KRS 18A.005(24)

CONCLUSION OF LAW

The Hearing Officer concludes, as a matter of law, that the Appellant did not articulate a penalization as defined by KRS 18A.005(24). This is because Appellant's claims do not implicate any right afforded to merit employees by KRS Chapter 18A. In its role as an employer, the Commonwealth speaks through its documents; here, Appellant acknowledges that he did not review the Class Specification and/or the Position Description for the Ferry Crew Foreman position. Appellant was not penalized in choosing to rely on the unverified verbal statements of another employee. Therefore, pursuant to KRS 18A.095(18)(a), the Personnel Board lacks jurisdiction to consider this appeal as the Board is unable to grant relief.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **DEREK THOMPSON V. TRANSPORTATION CABINET, (APPEAL NO. 2016-282)** 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 Stafford Easterling** this 10th day of May, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. William Fogle
Mr. Derek Thompson
J. R. Dobner