

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-078

MICHELLE TREVINO

APPELLANT

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

TOURISM, ARTS AND HERITAGE CABINET,
DEPARTMENT OF FISH AND WILDLIFE RESOURCES

APPELLEE

*** **

The Board, at its regular January 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated December 15, 2023, 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 18th day of January, 2024.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

Copies hereof this day emailed and mailed to:

Michelle Trevino
Hon. Scott Porter
Hon. Rosemary Holbrook (Personnel Cabinet)

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This matter came on for a pre-hearing conference on September 1, 2023, 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, Michelle Trevino, was present and was not represented by legal counsel. The Appellee, Tourism, Arts and Heritage Cabinet, Department of Fish and Wildlife Resources, was present and was represented by the Hon. Scott Porter, who appeared in person.

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

BACKGROUND AND FINDINGS OF FACT

1. The Appellant filed her appeal with the Personnel Board on June 14, 2023, from her probationary dismissal. The Appellant testified that she believed she was a reappointment and was not aware that she was serving a probationary period until she was one (1) month into her job as a Purchasing Agent I. The Appellant stated that her supervisor told her she would not be serving a probationary period. She later heard from the Branch Manager, after her supervisor was dismissed, that she was serving a probationary period. The Appellant was dismissed on June 7, 2023.

2. The Appellant's previous employment was with Department for Public Advocacy and the Department of Corrections. She stated that her last date of employment with the Department of Corrections was June 30, 2021. When she started with the Tourism, Arts and Heritage Cabinet (TAH), Department of Fish and Wildlife Resources on December 16, 2022, she had been out of the classified service for more than one (1) year. The Hearing Officer told the parties that, pursuant to 101 KAR 1:325, Section 3, because the Appellant had a break of more than twelve (12) months from the classified service, she would need to serve a probationary period.

3. The Appellant stated that, during her employment, she discovered some issues that she felt were unethical, and these matters were investigated. She believes that she had a target on her back, and that employees were biased against her. The Appellant stated she spoke to Human Resources three (3) or four (4) times about this matter. Around the time of her dismissal, she was told that the investigation would not be pursued any further. The Appellant also stated that she believes she was treated differently because she did not come from the Department of Fish and Wildlife Resources. Although she had procurement experience, she did not know how things were done at the Department of Fish and Wildlife Resources.

4. The Appellant stated she was not alleging any type of protected class discrimination. She said that she would like to have a copy of her personnel file and was interested in mediation.

5. The Appellee filed a motion to dismiss alleging that the Personnel Board lacked jurisdiction to hear this appeal. The Appellee argued that, because there was more than a one (1) -year break in service, the Appellant was required to serve an initial probationary period. Because she did not allege any type of illegal discrimination, the Appellee alleged the Personnel Board lacked jurisdiction to hear this appeal.

6. The Appellant was given an opportunity to file a response to the Appellee's motion to dismiss but failed to do so.

7. The Appellant was previously employed as a Purchasing Agent I with the Justice and Public Safety Cabinet, Department of Corrections. She left that position and separated from state government on June 30, 2021.

8. The Appellant was hired by the Appellee on December 16, 2022.

9. The Appellant was dismissed from her position with the Appellee on June 7, 2023.

10. The Appellant filed an appeal with the Personnel Board on June 14, 2023, but did not allege any form of illegal discrimination.

11. This appeal can be decided as a matter of law based on the Appeal Form, the statements of the parties at the pre-hearing conference, and the Appellee's Motion to Dismiss.

CONCLUSIONS OF LAW

1. Because the Appellant had more than a twelve (12) month break in service from her previous employment when she was hired by the Appellee, she had to serve an initial probationary period. 101 KAR 1:325 Section 3(2) reads as follows:

An employee who is reinstated to the classified service more than twelve (12) months after a break in service, except an employee ordered reinstated pursuant to KRS 18A.111(3), shall serve an initial probationary period.

2. Although the Appellant filed a timely appeal from her probationary dismissal, she did not allege any form of illegal discrimination and, thus, the Personnel Board lacks jurisdiction to hear her appeal. KRS 18A. 111 and KRS 18A. 095(12) and (14) (a).

3. Because the Personnel Board lacks jurisdiction to grant relief to the Appellant, this appeal can be dismissed as a matter of law without an evidentiary hearing based on the Appeal Form, the statements of the parties at the pre-hearing conference, and the Appellee's motion to dismiss. KRS 18A.095(18)(a) and KRS 13B.090(2).

4. Because all of the events associated with this appeal happened before the passage of Senate Bill 153, this case has been decided based on the provisions of KRS Chapter 18A in effect at the time.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **MICHELLE TREVINO V. TOURISM, ARTS AND HERITAGE CABINET, DEPARTMENT OF FISH AND WILDLIFE RESOURCES (APPEAL NO. 2023-078)** 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).

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.

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

SO ORDERED at the direction of the Hearing Officer this 15 day of December, 2023.

KENTUCKY PERSONNEL BOARD



**MARK A. SIPEK
EXECUTIVE DIRECTOR**

A copy hereof this day emailed and mailed to:

Michelle Trevino
Hon. Scott Porter
Hon. Rosemary Holbrook (Personnel Cabinet)