

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2022-161**

ANDREW TRIMBLE

APPELLANT

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

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS**

APPELLEE

*** **

The Board, at its regular February 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated January 9, 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 for failure to prosecute.**

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 14th day of February, 2024.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

Copies hereof this day emailed and mailed to:

Andrew Trimble
Hon. Jonathan Gifford
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney Moore

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2022-161**

ANDREW TRIMBLE

APPELLANT

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

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS**

APPELLEE

** ** ** ** **

This matter came on for a pre-hearing conference on March 29, 2023, at 10:30 a.m. ET, 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, Andrew Trimble, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Jonathan Gifford, who appeared by telephone.

The purposes of the pre-hearing conference to determine the specific penalization(s) alleged by the Appellant, 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 Hearing Officer notes this appeal was filed with the Personnel Board on November 23, 2022. On the appeal form and during the pre-hearing conference, the Appellant, a classified employee without status, indicated he was appealing disability discrimination in addition to a challenge to the Agency's extension of his probationary period. The Appellant further explained his claims in the narrative portion of the appeal form wherein he states, in pertinent part:

My probation was extended due to the fact I was out of work for medical reasons. I am the only person who has been off that was forced to extend probation.

2. The Appellee filed a Motion to Dismiss and Judgment as a Matter of Law. In its motion, the Appellee stated that the Appellant was promoted on May 16, 2022. After his

promotion, he was off work for medical leave for a period of seventy-five (75) days between July 7, 2022, and November 6, 2022. On November 8, 2022, the Appellee issued a letter to the Appellant notifying him that, pursuant to KRS 18A.005(27), his probationary period was extended by seventy-five (75) days and that his new completion date would be February 20, 2023.

3. The Appellant alleged that two individuals had missed more than twenty (20) consecutive days during their probationary period. The Appellee demonstrated that one (1) of the two (2) individuals had only missed a total of twelve (12) consecutive days. The other had missed seventy-four (74) days and her probationary period should have been extended, however, due to an administrative oversight it was not.

4. The Appellee argued that the Appellant failed to state a claim of disability discrimination. In addition, he was not penalized when his probationary period was extended in accordance with the statute.

5. The Appellant, although given an opportunity to respond to the Appellee's motion to dismiss, failed to do so.

6. Nonetheless, the motion to dismiss was **DENIED** as the Hearing Officer determined that there were genuine issues of material fact.

7. The Appellee then filed a Motion to Dismiss Appeal as Moot, arguing that the Appellant had resigned his position with the Justice and Public Safety Cabinet, Department of Corrections, effective April 18, 2023.

8. The Appellant was given an opportunity to respond to this second motion to dismiss but again failed to do so.

9. Nonetheless, the Motion to Dismiss Appeal as Moot was **DENIED** because the Appellant could still be entitled to relief if he could establish his claim of disability discrimination.

10. In the Interim Order dated October 13, 2023, denying the second motion to dismiss, the Hearing Officer ordered the Appellant to file a statement with the Personnel Board by no later than November 13, 2023, stating whether or not he wished to proceed with this appeal. The Appellant was also notified that, if such a statement was not filed with the Personnel Board, the Hearing Officer would recommend dismissal of this appeal for failure to prosecute.

11. The Appellant did not file a response with the Personnel Board by November 13, 2023, or any date thereafter.

12. The Hearing Officer finds that the Appellant has failed to prosecute this appeal and, therefore, it should be dismissed.

CONCLUSIONS OF LAW

1. KRS 13B.080 (6) reads as follows:

If a party properly served under KRS 13B.050 fails to attend or participate in a prehearing conference, hearing, or other stage of the administrative hearing process, or fails to comply with the orders of a hearing officer, the hearing officer may adjourn the proceedings and issue a default order granting or denying relief as appropriate, or may conduct the proceedings without the participation of the defaulting party, having due regard for the interests of justice and the orderly and prompt conduct of the proceedings. A default order shall be considered a recommended order and shall be processed as provided in KRS 13B.110.

2. In this case, the Hearing Officer has found that the Appellant has failed on at least three (3) occasions to comply with orders of the Hearing Officer, and in the last Interim Order, the Appellant was informed that his failure to comply would result in a recommendation to dismiss this appeal. Thus, dismissal of this appeal is appropriate pursuant to KRS 13B.080(6).

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

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **ANDREW TRIMBLE V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL 2022-161)** be **DISMISSED** for failure to prosecute.

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.

ISSUED at the direction of Hearing Officer this 9 day of January, 2024.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Andrew Trimble
Hon. Jonathan Gifford
Hon. Rosemary Holbrook (Personnel Cabinet)