

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2017-131

JUSTIN TROUT

APPELLANT

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

COMMONWEALTH OF KENTUCKY  
DEPARTMENT OF EDUCATION

APPELLEE

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The Board, at its regular June 2018 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 9, 2018, 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 13<sup>th</sup> day of June, 2018.

KENTUCKY PERSONNEL BOARD

  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Ashley Lant  
Hon. James Pruitt

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2017-131**

**JUSTIN TROUT**

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AND RECOMMENDED ORDER**

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DEPARTMENT OF EDUCATION**

**APPELLEE**

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This matter came on for a pre-hearing conference on September 21, 2017, at 10:00 a.m. EST, at 28 Fountain Place, 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, Justin Trout, was not present but was represented by the Hon. James Pruitt, who appeared by telephone. The Appellee/Agency, Department of Education, was present and represented by the Hon. Ashley Lant.

This matter is before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss, filed with the Personnel Board on October 30, 2017. At issue is the Appellant's claim that he was improperly dismissed from his position as the Principal of the Millard Area Technology Center ("Millard ATC"), in addition to being subjected to political discrimination. The Agency's Motion to Dismiss argues that the Personnel Board does not have jurisdiction over this matter because the Appellant is a certified employee covered by KRS 156.800 *et. seq.* The Appellant was given an opportunity to file a response to the Agency's Motion to Dismiss but has failed to do so. This matter now stands submitted to the Hearing Officer for a ruling on the Agency's Motion to Dismiss as Moot.

**BACKGROUND**

1. During the pendency of this appeal, Appellant, Justin Trout, was a certified employee with the Kentucky Department of Education.
  
2. The Appellant was employed by the Department of Education as a Kentucky Technical Center Principal with the Office of Career and Technical Education, Millard County Area Technology Center ("Millard ATC").

3. On May 26, 2017, the Appellant was separated from his position with the Millard ATC.

4. The Appellant alleged his termination was unjust, alleged political discrimination, and timely filed the instant Personnel Board appeal on June 15, 2017.

5. The Personnel Board conducted an initial pre-hearing conference on September 21, 2017. During the pre-hearing conference, the Agency stated the Personnel Board does not have jurisdiction over this matter and requested an opportunity to file a dispositive motion. The Appellant stated that he believed the Board did, in fact, have jurisdiction over the instant appeal and requested an opportunity to respond to any dispositive motion. Accordingly, a briefing schedule was established at the request of the parties.

6. Thereafter, on October 30, 2017, the Agency filed a Motion to Dismiss arguing that, because the Appellant is a KRS Chapter 156 employee, the Board does not have jurisdiction over this appeal as a matter of law.

7. The Appellant was given until November 30, 2017 to file a response to the Agency's Motion to Dismiss but has failed to do so.

8. KRS 156.800(4) provides, in full:

“Certified employees” means those employees who fill school or educational assignments requiring the issuance of a certificate. These employees in the Office of Career and Technical Education are subject to personnel administration under KRS 156.800 to 156.860.

9. KRS 156.808(1) provides, in full:

The Kentucky Board of Education shall promulgate, by administrative regulations, personnel policies and procedures for all full-time and part-time unclassified employees, certified and equivalent staff, including administrative, teaching, and supervisory staff in the Office of Career and Technical Education central office and state-operated vocational facilities. All other staff shall remain under the authority of the Kentucky Personnel Cabinet and KRS Chapter 18A. Employees who transfer to or from the KRS Chapter 18A personnel system shall transfer accrued annual, compensatory, and sick leave.

10. KRS 156.808(1) provides, in full:

Any certified, equivalent, or unclassified employee may appeal an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age to the board<sup>1</sup>. Nothing in this section shall be construed to preclude any employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.

### FINDINGS OF FACT

1. During the pendency of the appeal, the Appellant, Justin Trout, was a certified employee, governed by the provisions of KRS 156.800 to KRS 156.860.
2. From a review of the appeal form underlying this appeal as well as review of the relevant statutes, the Hearing Officer finds that the Appellant has not alleged a penalization governed by KRS Chapter 18A.
3. The Hearing Officer finds that the Personnel Board lacks jurisdiction to consider this appeal pursuant to the language set forth in KRS 18A.095(18)(a) and that there is no relief that can be afforded the Appellant.

### CONCLUSIONS OF LAW

1. The Hearing Officer concludes as a matter of law that, pursuant to KRS 18A.095(18)(a), the Personnel Board lacks jurisdiction to further consider this appeal as the Board lacks the ability to grant relief based on the claim stated by the Appellant.
2. Because the Appellant is a certified employee governed by KRS Chapter 156, the Hearing Officer concludes as a matter of law that, pursuant to KRS 18A.005(24), the Appellant has failed to state a penalization that would entitle him to any further consideration by the Personnel Board of the matters raised in his appeal. Stated simply, the Kentucky Personnel Board is not the proper venue for the Appellant's claims.
3. The Hearing Officer concludes this appeal must fail as a matter of law.

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<sup>1</sup> For the purposes of KRS 156.800 *et seq.*, pursuant to KRS 156.800(3), "Board" means the Kentucky Technical Education Personnel Board established in KRS 156.840."

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **JUSTIN TROUT V. DEPARTMENT OF EDUCATION (2017-131)** 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 9<sup>th</sup> day of May, 2018.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPER**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Ashley Lant  
Hon. James Pruitt  
Justin Trout