

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-049**

BRITTANY WAGERS

APPELLANT

VS.

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

**** ** * * ****

This matter came on for a pre-hearing conference on May 19, 2023, at 10:30 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, Brittany Wagers, was present and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and was represented by the Hon. Jamal Woolridge.

The purposes of the pre-hearing conference were to determine the specific penalizations alleged by the Appellant, to determine the specific section of KRS Chapter 18A that authorizes this appeal, to determine whether this appeal was filed within the time limitations set forth in KRS 18A.095, to determine the relief sought by the Appellant, and to discuss the option of mediation.

BACKGROUND AND FINDINGS OF FACT

1. The Appellant filed her appeal with the Personnel Board on April 7, 2023. She was appealing from her dismissal while serving her initial probationary period as a Social Worker I. The Appellant began working on June 16, 2022, and was serving a nine (9) – month probationary period. She was notified on March 2, 2023, that she was dismissed.

2. The Appellant felt that her dismissal was unfair and unjust. She stated that she was complemented on her work. To the extent she had any problems, she was not coached or counseled in any way. She also believes that her dismissal was a form of retaliation. She stated that, on the same day she was dismissed, she went to court and was instructed not to speak, however, she responded to the Judge when she was asked questions. She believed that her dismissal could be the result of either gender or religious discrimination. He stated that her supervisor played a large role in her dismissal. Counsel for the Appellee stated he would like a schedule to file a dispositive motion.

3. The Appellee filed a Motion for Summary Judgment on June 20, 2023. In this motion the Appellee argued that the Appeal was untimely. The Appellee contended that the Appellant had thirty (30) days to file her appeal and she did not file it in time.

4. The Appellant was notified of her dismissal on March 2, 2023. She was informed that she had 30 days to file an appeal with the Personnel Board based on a claim of discrimination.

5. The Appellant filed her appeal with the Personnel Board on April 7, 2023.

6. The Appellee also argues that the Appellant has failed to allege any protected class discrimination.

7. The Appellant referenced sex and religious discrimination at her pre-hearing conference.

8. Although given an opportunity to respond to the Appellee's Motion for Summary Judgment, the Appellant did not file a response.

CONCLUSIONS OF LAW

1. As a classified employee serving her initial probationary the Appellant could be dismissed without cause. KRS 18A.111 The Appellant could only appeal her dismissal by claiming discrimination pursuant to KRS 18A.095(12) and (14)(a).

2. The Appellant had thirty (30) calendar days after the notification of her dismissal

to file her appeal with the Personnel Board. KRS 18A.095(14)(d), and *Anthony Holder vs Tourism Arts and Heritage Cabinet, Department of Parks and Personnel Cabinet, 2017 WL 6731510 (Ky PB)*.

3. Based on the undisputed facts, the Appellant filed her Appeal more than thirty (30) days after she received notice of her dismissal. As a result, the Personnel Board lacks jurisdiction to hear this appeal.

4. There are no material issues of fact, and this appeal can be decided as a Matter of Law based on the Appeal form, the statement of the parties at the pre-hearing, and the Appellee's Motion for Summary Judgment. KRS 18A.095(18)(a) and KRS 13B.090(2).

5. Because all the events underlying this appeal occurred before the effective date of Senate Bill 153, all references to KRS Chapter 18A are to the sections in effect at the time of the events associated with this appeal.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **BRITTANY WAGERS VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2023-049)** 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).

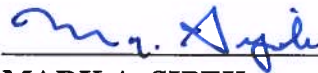
[Hearing Officer Note: Any document filed with the Personnel Board shall also be served on the opposing party.]

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 Mark A. Sipek** this 9th day of August, 2023.

KENTUCKY PERSONNEL BOARD



**MARK A. SIPEK
EXECUTIVE DIRECTOR**

A copy hereof this day emailed and mailed to:

Hon. Jamhal Woolridge
Brittany Wagers