

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-031

FREMECO WAKEFIELD

APPELLANT

VS.

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF JUVENILE JUSTICE

APPELLEE

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This matter came on for a pre-hearing conference on April 26, 2023, at 10:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before Mark Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Fremeco Wakefield, was present and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and was represented by the Hon. Heather Lee. At the time of this Findings of Fact, Conclusions of Law, and Recommended Order, the Appellee is now being represented by the Hon. Mark Bizzell.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by the Appellant, to determine the specific sections of KRS Chapter 18A that authorizes the 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 his appeal with the Personnel Board on March 9, 2023, from his probationary dismissal as a Correctional Officer. The Appellant alleged he did nothing wrong and was not given any reason for his dismissal. He specifically denied alleging that his dismissal was the result of any protected class discrimination. He believed he was discriminated against for following the rules.

2. Counsel for the Appellee believed that the Personnel Board lacked jurisdiction to hear this appeal and requested time to file a written Motion to Dismiss.

3. In its Motion to Dismiss, the Appellee stated as follows:

This matter is before the Personnel Board on appeal of Appellant's termination from initial probation. Appellant was appointed as a Youth Worker I at DJJ on or around November 11, 2022. On February 1, 2023, Appellant was reallocated as a Correctional Officer. On February 11, 2023, Appellant was terminated from initial probation. Appellant filed this appeal with the Personnel Board on March 9, 2023. Appellant has not alleged any protected class discrimination. Because Appellant's termination was from initial probation and because no protected class discrimination has been alleged, Appellant's appeal should be dismissed for failure to state a claim upon which relief may be granted.

Not only was the Appellant terminated from his initial probation period, but he also failed to allege any actionable discrimination. In both his appeal form and during testimony at the pre-hearing conference on April 26, 2023, Appellant did not allege any actionable claims of discrimination. The only allegation of discrimination that Appellant made was that he believed he was discriminated against for following the rules, which is not protected class discrimination. See *Interim Order* dated April 27, 2023. Pursuant to KRS 18A.095(12), only those allegations of discrimination due to race, color, religion, national origin, sex, disability, or age are actionable in the present case.

4. Although given an opportunity to respond to the Appellee's Motion to Dismiss, the Appellant failed to do so.

5. The parties agree that the Appellant was employed as a Correctional Officer and was dismissed effective February 16, 2023, while serving his initial probationary period. The record is also clear that the Appellant is not advancing any claim of protected class discrimination in his challenge to his probationary dismissal.

6. There are no material issues of fact and this appeal can be decided as a matter of law based on a review of the Appeal Form, the statement of the parties at the pre-hearing conference, and the Appellee's Motion to Dismiss.

CONCLUSIONS OF LAW

1. As an employee serving his initial probationary period, the Appellant could be dismissed at any time, pursuant to KRS 18A.111. His only right of appeal would be an allegation of illegal discrimination pursuant to KRS 18A.095(12) and (14)(a).
2. Although the Appellant alleged discrimination at the pre-hearing conference, it was clear that the discrimination was based on his claims that he followed the rules. A classified employee without status serving his initial probationary period can be dismissed at any time for any reason, as long as it is not an illegal reason. KRS 18A.111.
3. The Appellant has failed to allege an illegal reason for his termination.
4. There are no genuine issues of material fact and this appeal can be dismissed 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. KRS 13B.090(2) and KRS 18A.095(18)(a).
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

The Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **FREMECO WAKEFIELD V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2023-031)** 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).

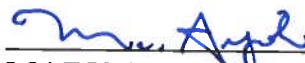
Any document filed with the Personnel Board shall be served on the opposing party.

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.

SO ORDERED at the direction of the Hearing Officer this 19 day of July, 2023.

KENTUCKY PERSONNEL BOARD



**MARK A. SIPER
EXECUTIVE DIRECTOR**

A copy hereof this day emailed and mailed to:

Fremeco Wakefield
Hon. Mark Bizzell
Hon. Rosemary Holbrook (Personnel Cabinet)