

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2022-098

KAYLA WARD

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

*** **

The Board, at its regular April 2023 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated March 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 19th day of April, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

Copies hereof this day sent to:

Kayla Ward
Hon. Christopher Ballantine
Hon. Rosemary Holbrook (Personnel Cabinet)
Jay Klein

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This matter came on for a pre-hearing conference on November 14, 2022, at 11:00 a.m., ET, at 1025 Capital Center Drive Suite 105, Frankfort Kentucky, before Hearing Officer Mark A. Sipek. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Kayla Ward, was present and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present by telephone and was represented by the Hon. Peyton Sands.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by the Appellant, to determine the specific section of KRS 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.

FINDINGS OF FACT

1. The Appellant filed her appeal with the Personnel Board on July 25, 2022. At first glance, it appeared she was challenging her dismissal from an initial probationary period.
2. The Appellant, however, alleged that she was a previous state employee and had been reinstated. She argued she did not have to serve a probationary period.
3. The Appellee contended that the Appellant had more than a twelve (12) - month break in service and was required to serve a probationary period.
4. A briefing schedule was set for the Appellee to file a dispositive motion.
5. On January 6, 2023, counsel for the Appellee filed a Motion to Dismiss and argued that the Appellant voluntarily left her employment with the Appellee on March 1, 2019. The Appellant was reinstated on April 1, 2022, with a three (3) year and one (1) month break in service as a result. Pursuant to 101 KAR 1:325, Section 3(2), the Personnel Cabinet correctly processed her reinstatement as requiring an additional probationary period. The Appellee terminated the Appellant during her six (6) - month probationary period.
6. The Appellant did not allege her dismissal was the result of any form of illegal discrimination.

7. Although given an opportunity to file a response to the Appellee's Motion to Dismiss, the Appellant failed to do so.

8. On March 14, 2023, the Appellee filed a Reply Supporting Appellee's Motion to Dismiss additionally requesting that the Appellant's appeal be considered for dismissal for failure to prosecute appeal pursuant to KRS 13B.080(6).

9. The Hearing Officer finds that the Appellant was previously employed with the Appellee and voluntarily left her employment on March 1, 2019.

10. On April 1, 2022, the Appellant was reinstated with the Appellee as a Social Service Worker II.

11. Pursuant to 101 KAR 1:325, Section 3(2), because the Appellant had more than a twelve (12) – month break in service, she was required to serve an initial probationary period.

12. The Appellant was dismissed from her position with the Appellee on July 14, 2022, during her initial probationary period.

13. There are no material facts in dispute, and this appeal may be decided as a matter of law based on the appeal form, the statements of the parties at the pre-hearing conference, the Appellee's Motion to Dismiss with attachments, and the Reply Supporting Appellee's Motion to Dismiss.

CONCLUSIONS OF LAW

1. Because there was more than a one (1) - year break in service before the Appellant was reinstated as a Social Service Worker II, she was required to serve an initial probationary period before again attaining status.

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. As an employee serving her initial probationary period, the Appellant could have been dismissed at any time during the probationary period, pursuant to KRS 18A.111(3). Her only right of appeal would be based on an allegation of illegal discrimination, pursuant to KRS 18A.095(12) and/or KRS 18A.095(14)(a).

3. The Appellant did not allege any form of illegal discrimination as required by KRS 18A.095(12) or KRS 18A.095(14)(a).

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).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **KAYLA WARD VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2022-098)** 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.

ISSUED at the direction of **Hearing Officer Mark A. Sipek** this 15 day of March, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK,
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Kayla Ward
Hon. Christopher Ballantine
Hon. Rosemary Holbrook (Personnel Cabinet)