

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-246

KIARRA M. WATHEN

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

*** **

The Board, at its regular April 2019 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 19, 2019, 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 16th day of April, 2019.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Amy Barker
Ms. Kiarra M. Wathen
Mr. Rodney Moore

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-246**

KIARRA M. WATHEN

APPELLANT

V.

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

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

APPELLEE

This matter came on for a pre-hearing conference on February 14, 2018, at 10:30 a.m. EST, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Kiarra M. Wathen, was present and was not represented by legal counsel. She was accompanied by John Campbell. The Appellee, Justice and Public Safety Cabinet, was present and represented by the Hon. Alex Mattingly.

This matter is before Hearing Officer Darren Embry for a ruling on the Agency's Motion to Dismiss filed with the Personnel Board on February 21, 2018, arguing that the Appellant failed to properly submit her appeal in a timely fashion following the Agency's probationary dismissal of the Appellant, issued by the Agency on November 20, 2017. The Appellant has had an opportunity to file a response, but has failed to do so. This matter now stands submitted to the Hearing Officer for a ruling on the Appellee's Motion to Dismiss.

BACKGROUND

1. While in state service, the Appellant, Kiarra M. Wathen, was a classified employee without status within the Justice and Public Safety Cabinet, Department of Corrections.

2. The Appellant served as a Correctional Officer at the Kentucky Correctional Institution for Women before her probationary dismissal.

3. The letter informing the Appellant of her probationary dismissal detailed that she had no right to appeal the termination to the Personnel Board, pursuant to KRS 18A.111. It went on to inform her, however, that KRS 18A.095 granted her the right to file a claim of discrimination with the Board, if she believed her termination was the result of unlawful discrimination. The letter then specifically instructed the Appellant that any claim of discrimination must be filed with the Board within thirty (30) days.

4. The Agency terminated the Appellant on November 20, 2017. During the February 14, 2018 pre-hearing conference, the Appellant acknowledged being hand-delivered her termination letter on that day.

5. The Appellant then filed an appeal with the Personnel Board on December 21, 2017, challenging her probationary dismissal and alleging racial discrimination.

6. As noted above, the Agency filed a Motion to Dismiss with the Personnel Board on February 21, 2018. The Agency contended that the probationary dismissal letter issued to the Appellant, dated November 20, 2017, was hand-delivered to the Appellant on that date, that the Appellant had 30 days from the date of notice of the dismissal in which to have filed an appeal with the Personnel Board, and her appeal is untimely and must be dismissed.

7. During the initial pre-hearing conference, the Appellant admitted that she was hand-delivered the dismissal letter on November 20, 2017.

8. As established by the date stamp on the appeal, the Appellant's appeal was received by the Personnel Board on December 21, 2017.

9. KRS 18A.095(14)(a) states:

Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board.

10. KRS 18A.095(14)(d) states:

An appeal to the board by applicants or eligibles under subsections (11) and (13) of this section and under this subsection shall be filed in writing with the executive director not later than thirty (30) calendar days after the notification of the action in question was mailed.

11. KRS 18A.095(18)(a) states:

The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.

FINDINGS OF FACT

1. During the relevant times, the Appellant, Kiarra M. Wathen, was a classified employee without status, serving as a Correctional Officer before her probationary dismissal.
2. The Hearing Officer finds that, in accordance with Appellant's admission during the February 14, 2018 pre-hearing conference, and a review of the probationary dismissal the Agency issued, the Appellant received her dismissal letter on November 20, 2017.
3. The Hearing Officer finds that the dismissal letter correctly notifies the Appellant that she had 30 days in which to file an appeal with the Personnel Board.
4. The Hearing Officer finds that Appellant filed her appeal with the Personnel Board on December 21, 2017.
5. The Hearing Officer finds (assuming Appellant received her dismissal letter, as she concedes, on November 20, 2017), she had until December 20, 2017, to file her appeal. This is calculated by counting 30 calendar days from November 21, 2017 (the day after Appellant received her suspension letter), which results in December 20, 2017, being the due date.
6. The Hearing Officer finds that because the appeal was not received by the Personnel Board until December 21, 2017, the appeal was untimely filed and did not comply with KRS 18A.095(14)(d).

CONCLUSION OF LAW

The Hearing Officer concludes, as a matter of law, that having found Appellant did not file her appeal within the 30-day time limit and that, pursuant to KRS 18A.095(14)(d), the Personnel Board lacks jurisdiction to consider this appeal as it was untimely filed.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **KIARRA M. WATHEN V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2017-246)** 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 Darren Embry** this 19th day of February, 2019.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Amy Barker
Kiarra M. Wathen