

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2019-113

ANGEL M. WINCHESTER

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF CRIMINAL JUSTICE TRAINING

APPELLEE

\*\*\* \*\*

The Board, at its regular April 2020 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 12, 2020, 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 22<sup>nd</sup> day of April, 2020.

KENTUCKY PERSONNEL BOARD

  
\_\_\_\_\_  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Deaidra C. Douglas  
Ms. Angel Winchester

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2019-113**

**ANGEL WINCHESTER**

**APPELLANT**

**VS.**

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

**JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF CRIMINAL JUSTICE TRAINING**

**APPELLEE**

**\*\* \*\* \* \* \***

This matter came on for a pre-hearing conference on September 10, 2019, at 10:00 a.m., ET, 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, Angel Winchester, was present by telephone and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Criminal Justice Training, was present by telephone and represented by the Hon. Deaidra Douglas.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by Appellant, to determine the specific section of KRS Chapter 18A which authorizes this appeal, to determine whether this appeal was filed within the time limitation set forth in KRS 18A.095, to determine the relief sought by Appellant, to define the issues, to determine whether the Board has jurisdiction over this appeal, and to address any other matters relating to the appeal.

**BACKGROUND**

1. The Appellant filed her appeal with the Personnel Board on May 6, 2019, from her dismissal. The Appellant alleged she was bullied and harassed by her supervisor. She complained about how she was treated and the situation only got worse. The Appellant stated that the conditions at work were so bad that she was placed on additional medication for high blood pressure.

2. The Appellant admitted that she was a contract worker through ADECCO. She stated the supervisor who was harassing her was a state employee.

3. Before the pre-hearing conference, counsel for the Appellee filed a Motion to Dismiss. The Appellee states that the Appellant has no standing to bring a claim before the Personnel Board because she is not an employee of the Commonwealth as defined in KRS 18A.005 (14). Because she was not an employee the Appellee alleges she could not have suffered a penalization as defined in KRS 18A.005 (24) by the Department of Criminal Justice Training.

4. The Appellee stated that the Appellant was an employee of ADECCO Temporary Staffing, a company that held a contract with the Justice and Public Safety Cabinet, Department of Criminal Justice Training. Counsel for the Appellee attached a copy of the contract to her Motion to Dismiss.

5. The Appellant filed a response to the Motion to Dismiss. The Appellant requested that her appeal not be dismissed just because she was not a state worker. She alleges she was bullied by her supervisor and requested that her case be allowed to move forward.

6. The Appellant alleged she was forced to do extra work and her supervisor yelled at her. She also claims that he set her up and then claimed she did not perform tasks when she did. The Appellant believed that she reported everything on time and was retaliated against because of it. In addition to being dismissed she alleges she was promised that she would be promoted when the supervisors job came open.

7. The Appellee filed a reply reiterating that because the Appellant is not a state employee the Board lacks jurisdiction to hear her appeal.

### **FINDINGS OF FACT**

1. The Appellant was a contract worker employed through ADECCO working for the Department of Criminal Justice Training, she was not a state employee.

2. The Appellant was dismissed and alleged that she was bullied while on the job and was retaliated against for reporting her supervisor.

3. The fact that the Appellant alleged that her supervisor was a state employee does not give the Board jurisdiction to hear this appeal.

4. The Hearing Officer finds that there are no material facts in dispute and that this matter can be decided as a matter of law based on the appeal form, the statements made at the pre-hearing conference, the Motion to Dismiss, the response and the reply.

### CONCLUSIONS OF LAW

1. The Appellant is not an employee as that term is defined at KRS 18A.005 (14).

2. Because she is not an employee, the Personnel Board lacks jurisdiction to hear her appeal regarding her dismissal from employment. See *Angela Roark v. Cabinet for Health and Family Services*, 2015 WL 1407350 (Ky. PB). See also *Monique Roberts v Education and Workforce Development Cabinet*, 2009 WL 2749988 (Ky. PB), and *Loni Suiter v Cabinet for Health and Family Services*, 2010 WL 2154307 (Ky. PB).

3. Because the Board lacks jurisdiction over this matter, this appeal may be dismissed following a pre-hearing conference and motion practice. KRS 18A.095(18)(a) and KRS 13B.090(2)

### 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 **ANGEL WINCHESTER VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CRIMINAL JUSTICE TRAINING (APPEAL NO. 2019-113)** 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).

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 12<sup>th</sup> day of March, 2020.

**KENTUCKY PERSONNEL BOARD**

  
\_\_\_\_\_  
**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Deaidra Douglas  
Angel Winchester