

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-163

JOSEPH WOOD

APPELLANT

VS.

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

FINANCE AND ADMINISTRATION CABINET

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 March 1, 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. Cary Bishop
Mr. Joseph Wood
Ms. Stacy Perry

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-163**

JOSEPH WOOD

APPELLANT

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

FINANCE AND ADMINISTRATION CABINET

APPELLEE

*** **

This matter came on for a pre-hearing conference on November 7, 2017, at 10:30 a.m., ET, at 28 Fountain Place, 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, Joseph Wood, was present by telephone and was not represented by legal counsel. The Appellee, Finance and Administration Cabinet, Kentucky River Authority, was present and represented by the Hon. Cary Bishop.

The purposes of the pre-hearing conference were to define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

This matter now stands submitted to the Hearing Officer for a ruling on the Appellee's Motion to Dismiss.

BACKGROUND

1. The Appellant, Joseph Wood, filed his appeal with the Personnel Board on August 4, 2017. The Appellant was appealing his dismissal. The Appellant was serving his initial probationary period as a Lock Master I with the Kentucky River Authority. He was dismissed approximately ten days before the end of his probationary period.

2. The Appellant described an incident that occurred where he was involved in an altercation with an employee. He believed that the other employee was in the wrong and the other employee resigned. The Appellant did not think he would face any consequences, however, shortly thereafter, he was informed he had been dismissed.

3. The Appellant did not allege discrimination on his appeal form. At the pre-hearing conference, when asked if he was alleging any type of discrimination, the Appellant stated that he did not think that he could and he did not know why he was dismissed. He also acknowledged that he filled out his appeal form on May 11, 2017, but it did not arrive to the Personnel Board until August 4, 2017. [**Hearing Officer Note:** The Appellant appears to have mailed his appeal form to the Personnel Board on August 2, 2017, as indicated by the postmark on the outside of the envelope.]

4. The Agency filed a Motion to Dismiss with the Personnel Board on November 21, 2017. The Agency argued that the Appellant failed to properly submit his appeal in a timely fashion in response to the dismissal letter issued May 2, 2017, by Troy Robinson, Appointing Authority for the Agency. The Appellant had 30 days from the date of notice of the Appellant's dismissal to file an appeal, however, the appeal was received some 90 days after the termination letter was sent. Therefore, Appellant's appeal is untimely and must be dismissed.

5. In the Agency's Motion to Dismiss, they also argued that the Board lacked jurisdiction to hear the Appellant's appeal because he was dismissed during his initial probationary period and did not allege any type of illegal discrimination.

6. KRS 18A.111(1) states as follows:

Except when appointed to a job classification with an initial probationary period in excess of six (6) months, and except as provided in KRS 18A.005 and this section, an employee shall serve a six (6) months probationary period when he is initially appointed to the classified service. An employee may be separated from his position, reduced in class or rank, or replaced on the eligible list during this initial probationary period and shall not have a right to appeal, except as provided by KRS 18A.095. The employee may be placed on an eligible list but shall not be certified to the agency from which he was separated unless that agency so requests. Unless the appointing authority notifies the employee prior to the end of the initial probationary period that he is separated, the employee shall be deemed to have served satisfactorily and shall acquire status in the classified service.

7. KRS 18A.094 (14)(a) and (d) states as follows:

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

...

(d) 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.

8. KRS 18A.095(18)(a) states as follows:

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, Joseph Wood, was serving his initial probationary period as a Lock Master I with the Kentucky River Authority. He was dismissed approximately ten days before the end of his probationary period.
2. The Hearing Officer finds that Appellant received notice of his termination on May 2, 2017.
3. The Hearing Officer finds that the termination letter notifies Appellant that he had 30 days in which to file an appeal with the Personnel Board.
4. The Hearing Officer finds that although Appellant signed his appeal form on May 11, 2017, he did not mail it to the Personnel Board until August 2, 2017, as indicated by the postmark on the outside of the envelope. The Personnel Board received Appellant's appeal form on August 4, 2017.
5. The Appellant did not allege any form of illegal discrimination on his appeal form or at the pre-hearing conference.
6. The Appellant did not respond to the Appellee's Motion to Dismiss.

7. The Hearing Officer determines that there are no material facts in dispute and this matter may be decided based on the appeal form, the dismissal notice, the Motion to Dismiss, and the statements made at the pre-hearing conference.

CONCLUSIONS OF LAW

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

2. The Hearing Officer concludes that the Personnel Board also lacks jurisdiction because the Appellant has not alleged any form of illegal discrimination in attempting to appeal from his dismissal from initial probation.

3. The Board can decide this appeal as a matter of law. KRS 18A.095(18)(a) and KRS 13B.090(2).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **JOSEPH WOOD V. FINANCE AND ADMINISTRATION CABINET (APPEAL NO. 2017-163)** 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 Mark A. Sipek** this 1st day of March, 2019.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Cary Bishop
Joseph Wood