

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2015-242

DEBBIE WOOLUMS

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

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The Board, at its regular March 2017 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 10, 2017, Appellant's Exceptions to Recommended Order, 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 15<sup>th</sup> day of March, 2017.

KENTUCKY PERSONNEL BOARD

  
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MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Angela Cordery  
Hon. Edward E. Dove  
Mr. Rodney E. Moore

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
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**VS.**

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**JUSTICE AND PUBLIC SAFETY CABINET,  
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**APPELLEE**

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This matter came on for an evidentiary hearing on November 9, 2016, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before E. Patrick Moores, Hearing Officer.. The proceedings were recorded by audio-video equipment pursuant to the authority found at KRS Chapter 18A.

The Appellant, Debbie Woolums, was present and was represented by legal counsel, Hon Edward E. Dove of Lexington. The Appellee, the Department of Corrections (hereinafter DOC), was represented by the Hon. Angela Cordery, of the Justice and Public Safety Cabinet's Office of Legal Services.

**I. STATEMENT OF THE CASE**

1. **Debbie Woolums** appeals the DOC's decision of August 28, 2015, to terminate her from the position of Accountant III with the Kentucky Correctional Institution for Women (KCIW), at Pewee Valley, near LaGrange, Kentucky. The notice of the termination was issued by letter from Janet Conover, Warden. Ms. Woolums was serving in her initial probationary status. KRS 18A.111 provides that a probationary employee has no right of appeal for termination while serving in the probationary status. However, KRS 18A.095(14)(a) provides that any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the Board.

2. The letter from Warden Conover did not inform Ms. Woolums of the reason for her termination, as no reason is required for an employee terminated during the probationary period. Ms. Woolums filed a supplemental document to her appeal stating that she began her employment with KCIW on August 17, 2015. She stated in the supplemental document to her appeal that her manager, Lisa Lewis, failed to give her proper training and that Ms. Lewis improperly asked her age, following which she alleges that Lewis began to treat her with an attitude of personal dislike, and essentially leaving her on her own to learn the system for handling accounts payable.

3. Ms. Woolums stated in the supplemental documentation to her appeal that she was told of her termination by an unknown employee, and that when she asked the reason for her termination, she was told by the unknown employee that she did not have any right to receive a reason.

4. Ms. Woolums filed a timely appeal with the Kentucky Personnel Board on September 23, 2015, alleging that she had been discriminated against because of her age and disability.

5. A Pre-Hearing Conference was held before the Kentucky Personnel Board on November 23, 2015, by telephonic conference, at which Ms. Woolums was represented by legal counsel, Hon. Mary Melton, of the Golden Law Office of Lexington. The Cabinet was represented by Hon. Angela Cordery of the Cabinet's Office of Legal Services. The issue presented was whether Appellant Woolums was discriminated against because of disability and her age. The Appellee had the burden of proof, which is by a preponderance of the evidence, and the matter was set for an evidentiary hearing on February 24 and 25, 2016.

6. On January 25, 2016, the Hon. Mary Melton filed notice of withdrawal as attorney for the Appellant. The Board issued an order converting the evidentiary hearing to a pre-hearing conference to discuss the status of the appeal. The Appellant was granted 60 days to find new legal counsel. On June 7, 2016, the Hon. Edward E. Dove of Lexington entered an appearance as legal counsel for the Appellant.

7. On August 16, 2016, another pre-hearing conference was held and the Appellant was not present, however, her legal counsel, Mr. Dove, was present, as was the Cabinet's legal counsel, Ms. Cordery. The matter was set for an evidentiary hearing on November 9, 2016. The issue remained as to whether the Appellant was terminated because of age or disability discrimination. The Appellant had the burden of proof by a preponderance of the evidence.

8. The evidentiary hearing was conducted on November 9, 2016. At the conclusion of the presentation of the evidence, the matter was submitted to the Hearing Officer for a Finding of Facts, Conclusion of Law and Recommended Order.

## **II. STATEMENT OF FACTUAL EVIDENCE PRESENTED**

1. **Debbie Woolums** has been unemployed since her termination from the DOC. She previously was employed with the Department of Transportation for 3½ years as an accountant and four years with Xerox as a transaction processor. In between those jobs, she had spent some time on disability. Woolums said she was interviewed for a job for the position of Accountant III with the DOC by Lisa Lewis, and that she thought the job interview went well.

2. The Job Class Specification of the position of Accountant III, occupied by Woolums, was introduced into the record by the Appellee, Department of Corrections. It describes the job as having an initial probationary period of six months and that the characteristics of the job involve the ability to perform the technical accounting activities in the maintenance of accounting and financial records.

3. Woolums testified that she was notified on July 16, 2015, that she needed to do a drug screen and two weeks later she was asked to submit a list of her medications. She was offered a job with the DOC working at the Kentucky Correctional Institution for Women as an Accountant III, assigned to work in the Accounts Payable section. She said the only orientation she received covered her benefits and the work schedule. There was no review of the work she would be performing.

4. Her first day of work was August 17, 2015, commuting from her home in Lexington, and she was assigned to supervisor Lisa Lewis. She testified that she was trained by Bernice McGruder, in addition to instructions from Ms. Lewis relevant to the accounts payable. Woolums testified that she took notes from Ms. Lewis' instructions and that Ms. Lewis was very blunt with her, but would not sit next to her while she did her work in order to check her work.

5. Woolums testified that Ms. Lewis was not very helpful to her and complained about their office being short-staffed. She said that when she asked Lewis a question about her work that Lewis would tell her to "look at your notes." She testified that on one occasion she went into Lewis' office to use her stapler, and on another occasion she went into Lewis' office to return a pair of glasses she had left on Woolums' desk. She described that Lewis got upset with her and demanded that she not enter her office without knocking.

6. On August 28, 2015, Woolums was terminated without being given a reason. She testified that she believes that it was because of her age, as one day when Woolums first began working at KCIW, Lewis mentioned that day was her husband's birthday, and asked Woolums her age. Woolums said that she told Lewis she was age 54, and that, thereafter, Lewis gave her differential treatment that no one else received. Woolums described the treatment as Lewis yelling at her over what she described as "very small things."

7. **Lisa Lewis** is the Fiscal Manager for KCIW with the responsibility of overseeing the budgeting and financial matters, and maintaining the spreadsheets to keep up with the money, accounts payable and costs to run the facility. She has three staff members, and that Woolums was assigned to work under her supervision. She said that Woolums did fine in her job interview and was selected for the job as Accountant III.

8. Lewis testified that Woolums was given a week of computer based training before being assigned to her department and that she was scheduled to undergo training at the DOC Academy, but they had not yet started a new class. Lewis said that Woolums was given in-office training on the office E-MARS accounting system utilized to process the accounting for delivery and purchase orders. Lewis testified that she trained Woolums on the system, instructing her to take notes through the steps of her training on the system. She said that Woolums had difficulty with learning to operate the system from the beginning, particularly with creating PDF documents for printing. She said that Woolums even struggled to comprehend her notes from the training.

9. Lewis testified that on August 24, 2015, after four days of attempting to teach the accounting system to Woolums, she determined that Woolums was not able to process the documentation. She said she went to the Warden and discussed the problems with Woolums, and the Warden instructed her to utilize Woolums doing just the basic payroll. However, Lewis testified that Woolums was not even able to adequately process the documents to do the payroll, as she struggled with processing the payroll.

10. Lewis testified that she had no recollection of discussing her husband's birthday with Woolums, nor did she recall ever discussing Woolums' age. She further denied being aware that Woolums had a disability and denied ever previously seeing her medical record which Woolums produced during her testimony. Lewis testified that everyone on her staff was over the age of 40, with one staff member being 62, and that she herself was in her 50's. She also denied ever yelling at Woolums.

11. Lewis testified that Woolums was hired under a six-month probationary period. She testified that she explained to Warden Conover the struggles that Woolums was having performing her job, and recommended letting her go. Warden Conover agreed.

12. **Stephen Lyons** is the Human Resource Administrator at KCIW. He testified that during her pre-hire application process, Woolums tested positive on a controlled substance she was tested on during her drug screen. He testified that he requested Woolums provide a chart of her medications and, that after he reviewed it, her positive test result was no longer an issue. He testified that he was never aware of the fact that she had a disability issue or that she had ever made any request for an accommodation. He testified that he was serving on jury duty when the decision was made to terminate Woolums and that he had no involvement in the decision. He said that all employment decisions are made by the Warden.

13. **Janet Conover** has been the Warden of KCIW for the past 7 years, charged with overseeing all activities in the prison facility. She testified that she signed the letter dated August 28, 2015, giving Woolums notice of her termination. She stated that Lewis was unable to advance Woolums training as she was unable to show the ability to master the tools she had been given to do the requested work.

14. Warden Conover testified that she made the decision to terminate Woolums after going over her work performance and failure to demonstrate an ability to do the work. She further said that she was never told by Woolums of any age discrimination incident or alleged disability. If Woolums had ever mentioned either of these issues, Warden Conover said she would have ordered an immediate investigation. Warden Conover testified that the only discussion she had about Woolums was her job performance.

### **III. FINDINGS OF FACT**

1. The Appellant, Debbie Woolums, is over 40 years of age and was hired on August 17, 2015, as an Accountant III, on a six-month probationary status with the Kentucky Correctional Institution for Women.

2. The Appellant underwent two weeks of in-office training in the Accounts Payable section. Her Supervisor, Lisa Lewis, observed that Woolums was demonstrating difficulty learning how to process the documentation to perform the accounting functions.

3. Lewis felt that Woolums had not demonstrated the ability to do the job requirements, and discussed the problem with Warden Conover, who recommended she be assigned to work on payroll.

4. After attempting to train Woolums to process the payroll, Lewis went back to the Warden and recommended that Woolums be terminated. Warden Conover agreed and issued a letter on August 28, 2015, that she was being terminated.

5. Woolums was hired under a six-month probationary status, and was terminable at will.

6. KRS 18A.111 provides that a probationary employee has no right of appeal for termination while serving in the probationary status. However, KRS 18A.095(14)(a) provides that any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may file an appeal to the Board.

7. The Appellant exercised the only appeal right available to her by alleging she had been discriminated against because of her age and due to her disability.

8. The Appellant failed to produce any evidence of discrimination based on age nor due to a disability. The staff that she joined is all over the age of 40, with one staff member being 62 years of age and the supervisor being in her 50s. No evidence was presented that a younger person was hired to replace her. Further, the evidence reveals that she never disclosed any disability that required an accommodation.

9. There is no probative evidence of discrimination, and that as a probationary employee the Appellant was terminable at will.

#### IV. CONCLUSIONS OF LAW

1. In proving a *prima facie* case of discrimination, the claimant must prove that he or she 1) is a member of a protected class, 2) was subjected to adverse employment action, 3) was qualified for his or her position, and 4) was replaced by, or treated less favorably than, a person outside the protected class. *Mitchell v. Toledo Hospital*, 964 F.2d 577 (6th Cir. 1992).

2. An employee hired by the Commonwealth under a probationary status means that, during the probationary timeframe, if the employee fails to demonstrate the ability to perform the requirements of the job, or fails to show other satisfactory performance, the employee is terminable at the will of the employer. The state of the law concerning at-will employment in the Commonwealth is well-established. At-will employment permits an employer to fire employees for good cause, for no cause, or for a cause that some might view as morally indefensible. See *Grzyb v. Evans*, 700 S.W.2d 399 (Ky. 1985). The termination of a state employee on an at-will probationary status is not appealable. KRS 18A.111. The only exception for state employees is the statutory provision at KRS 18A.095(14)(a) that any employee may appeal an adverse employment action based on discriminatory conduct.

3. Although the Appellant is a member of the protected age group, she did not present evidence showing an adverse employment action against her based upon her age. Furthermore, she failed to present any evidence of her qualifications for her job. The bulk of the evidence was that the Appellant failed to demonstrate she had the ability to perform the work being offered. Therefore, she cannot establish a *prima facie* case of discrimination. The act terminating her employment was based on her inability to perform the functions of the job. The Commonwealth as employer is not required under the termination at-will doctrine to retain the employee for the full probationary period before making a determination that the employee cannot perform the job. That is why the termination can be made at the employer's will.

4. The age issue is countered by the DOC by establishing that all the members of the staff to which the Appellant was assigned is over the age of 40, with one employee being age 62, and the supervisor being over 50 years of age. The Appellant presented no evidence as to a younger employee being hired in her place.

5. The Appellant failed to present any evidence that her termination was based upon any disability. The testimony from the DOC was that none of them knew anything about an alleged disability, nor has the Appellant made any request for an accommodation based on her alleged disability.

6. The Appellant failed to notify the employer of the alleged discrimination against her. The evidence established that, pursuant to the Cabinet's policy, had such a charge been made by the Appellant, an investigation would have been immediately initiated by the Cabinet. She failed to raise that issue, if it actually existed, which the evidence fails to show.

**V. RECOMMENDED ORDER**

Having considered and weighed all the evidence and the laws of the Commonwealth of Kentucky, and based upon the foregoing Findings of Fact and Conclusions of Law, it is the recommendation of the Hearing Officer that the appeal of **DEBBIE WOOLUMS VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2015-242)** be **DISMISSED**.

**NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13.B.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 E. Patrick Moores**, this 10<sup>th</sup> day of February, 2017.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Edward E. Dove  
Hon. Angela Cordery