

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2017-203

ROBERT DALE YATES

APPELLANT

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

TRANSPORTATION CABINET

APPELLEE

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The Board, at its regular May 2019 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated April 4, 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 7<sup>th</sup> day of May, 2019.

KENTUCKY PERSONNEL BOARD

  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Fogle  
Mr. Robert Dale Yates  
Mr. J. R. Dobner

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2017-203**

**ROBERT DALE YATES**

**APPELLANT**

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

**TRANSPORTATION CABINET**

**APPELLEE**

This matter last came on for a pre-hearing conference on December 7, 2017, at 11:15 a.m. EST, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Robert Dale Yates, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Transportation Cabinet, was present and represented by the Hon. Will Fogle.

This matter is now before Hearing Officer Stafford Easterling, on his own accord, for reconsideration of the Interim Order entered by the Personnel Board on January 24, 2019.

**BACKGROUND**

1. The Appellant, Robert Dale Yates, was a classified employee without status, with the Transportation Cabinet, employed as a Highway Equipment Operator I.
2. On or about September 6, 2017, the Appellant was separated from state service before the successful completion of his probationary period.
3. As is standard, the letter informing the Appellant of his probationary dismissal detailed that he had no right to appeal his termination to the Personnel Board, pursuant to KRS 18A.111. It went on to inform him, however, that KRS 18A.095 granted him the right to file a claim of discrimination with the Board if he believed his termination was the result of unlawful discrimination.
4. The Appellant filed the instant appeal with the Personnel Board on October 4, 2017, challenging an alleged HIPAA violation.
5. As noted above, the Agency filed its Motion to Dismiss with the Personnel Board on January 30, 2018, arguing the Appellant's HIPAA claim should be dismissed because the

Personnel Board lacks jurisdiction over HIPAA violations. Importantly, the Agency's Motion to Dismiss did not address the remainder of the Appellant's claims.

6. 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 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, Robert Dale Yates, was a classified employee without status, with the Transportation Cabinet, employed as a Highway Equipment Operator I.
2. After being notified of his probationary dismissal on September 6, 2017, the Appellant filed the instant appeal challenging an alleged HIPAA violation.
3. The Agency argues that the Personnel Board does not have jurisdiction over alleged HIPAA violations.
4. Pursuant to federal law, the Hearing Officer finds that the U.S. Department of Health and Human Services is responsible for the enforcement of HIPAA. 45 CFR Part 160, Subparts C, D, and E.
5. Accordingly, without a further showing that a HIPAA violation amounts to a penalization as defined by KRS Chapter 18A, the Personnel Board does not have jurisdiction over purported HIPAA violations.

### **CONCLUSION OF LAW**

The Hearing Officer concludes, as a matter of law, that without a showing that a HIPAA violation amounts to a penalization as defined by KRS Chapter 18A, the Personnel Board does not have jurisdiction over purported HIPAA violations and the Personnel Board lacks jurisdiction to consider the Appellant's appeal.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **ROBERT DALE YATES V. TRANSPORTATION CABINET (APPEAL NO. 2017-203)** 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 Stafford Easterling** this 4<sup>th</sup> day of April, 2019.

**KENTUCKY PERSONNEL BOARD**

  
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**Mark A. Sipek**  
**Executive Director**

A copy hereof this day mailed to:

Hon. Will Fogle  
Robert Dale Yates  
J.R. Dobner