COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-213

BEVERLY C. ROBINSON **APPELLANT**

VS.

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

KENTUCKY TRANSPORTATION CABINET

AND

PERSONNEL CABINET **APPELLEES**

*** *** *** *** ***

The Board at its regular April 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 10, 2016, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby 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 20th day of April, 2016.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:
Hon. William Fogle
Hon. Rosemary Holbrook
Ms. Beverly C. Robinson
Mr. J. R. Dobner

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TRANSPORTATION CABINET

And

PERSONNEL CABINET **APPELLEES**

** ** ** ** **

This matter came on for a pre-hearing conference on October 5, 2015, at 10:00 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Beverly M. Robinson, was present by telephone and was not represented by legal counsel. The Appellee, Transportation Cabinet, was present and represented by the Hon. William Fogle. Also present as agency representative was J. R. Dobner.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by Appellant, to determine the specific section of KRS 18A which authorizes this appeal, to determine the relief sought by Appellant, to define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

This appeal was filed with the Personnel Board on August 28, 2015, alleging sex discrimination. The Appellant is an Administrative Specialist III, Grade 12, and has six years' seniority. She works at the district office in Clay County. She said there were three men within the office who were told they would resign/reinstate. Two of the three, Paul Nicholson and

Bradley Yaden, were allowed to resign/reinstate at midpoint. She stated that Les Dixon did not. The Appellant also did not receive midpoint. She stated she did not believe the decision was based on her sex.

Both parties agreed that the Personnel Cabinet should be made a party to this appeal. Counsel for the Appellee Transportation Cabinet stated he would like to file a Motion to Dismiss and a schedule for motion practice was set.

In accordance with the briefing order, the Appellee Transportation Cabinet and the Appellee Personnel Cabinet filed Motions to Dismiss. Though given ample time, the Appellant did not respond to either motion. The matter is submitted for a ruling to Hearing Officer Boyce A. Crocker.

BACKGROUND

1. During the relevant times, the Appellant, Beverly M. Robinson, was a classified employee with status.

2. The Appellee Transportation Cabinet filed the first Motion to Dismiss and claiming there is nothing in the Merit Act (KRS 18A.095) or its corresponding regulations which applies to this situation and that the Personnel Board is, therefore, without jurisdiction to consider this appeal or grant relief. Counsel cites 101 KAR 2:034, Section 1, and notes that nothing similar to what is stated in that regulation has occurred here, and Appellant has failed to identify any individual in her work county with the same education and experience, in the same classification, who had received a raise that was brought up to mid-point so as to entitle her to a salary adjustment.

3. Counsel for the Personnel Cabinet also filed a Motion to Dismiss. Counsel notes the Personnel Cabinet should not be a party to this action as the Transportation Cabinet made these discretionary decisions.

4. 101 KAR 2:034, Section 1, states:

Classified compensation administrative regulations, New Appointments.

(1) An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.

(2) The appointing authority shall adjust to that salary an employee who is earning less than the new appointee's salary, if the appointing authority determines that the incumbent employee:

(a) Is in the same job classification;

(b) Is in the same work county; and

(c) Has a similar combination of education and experience relating to the relevant job class specification.

5. 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 writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.

FINDINGS OF FACTS

The Hearing Officer makes the following findings by preponderance of the evidence:

1. During the relevant times, the Appellant was a classified employee with status.

2. The Hearing Officer finds Appellant has made clear that other individuals working in Clay County received pay raises perhaps through the resign/reappoint or resign/reinstate process, and that Appellant was also promised such a pay raise, but such ultimately did not materialize.

3. The Hearing Officer finds that this appeal fails to state a claim over which the Personnel Board can grant relief as Appellant has not made any other claim or cited any other individual within the same classifications, same work county, or a similar combination of education and experience who did receive a raise which might entitle Appellant to consideration for a raise.

4. The Hearing Officer also finds Appellant has withdrawn any claim of discrimination when she stated at the pre-hearing conference that she did not believe the decision to deny her mid-point was based on her sex.

5. The Hearing Officer further finds that Appellant has not made any other claims which would appear to give the Personnel Board jurisdiction to grant relief and, in fact, Appellant's failure to respond to the Motions to Dismiss leaves the Hearing Officer with little choice but to recommend dismissal.

CONCLUSION OF LAW

The Hearing Officer concludes the Personnel Board that the Appellant has failed to state a claim over which the Personnel Board can grant relief and/or failed to state a penalization over which the Personnel Board may have jurisdiction.

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 **BEVERLY M. ROBINSON V. TRANSPORTATION CABINET AND PERSONNEL CABINET (APPEAL NO. 2015-213)** 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

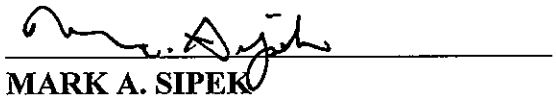
response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted 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 Boyce A. Crocker** this 10th day of March, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. William Fogle
Hon. Rosemary Holbrook
J. R. Dobner
Ms. Beverly M. Robinson