COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-260

MAUREEN BAIRD **APPELLANT**

VS.

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

KENTUCKY TRANSPORTATION CABINET

AND

PERSONNEL CABINET **APPELLEES**

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

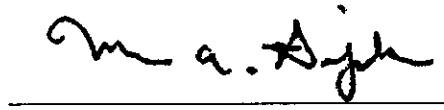
The Board at its regular April 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 7, 2016, and being duly advised,

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. Maureen Baird
Mr. J. R. Dobner

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-260

MAUREEN BAIRD **APPELLANT**

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

TRANSPORTATION CABINET

And

PERSONNEL CABINET **APPELLEES**

** ** ** ** **

This matter came on for a pre-hearing conference on December 15, 2015, at 11:30 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Maureen Baird, was present by telephone, and was not represented by legal counsel. The Appellee Transportation Cabinet was present and represented by the Hon. Will Fogle. The Appellee Personnel Cabinet was present and represented by the Hon. Rosemary Holbrook.

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.

The Hearing Officer noted this appeal was filed with the Personnel Board on October 7, 2015. The Appellant checked the box on the appeal form for "Other Penalization" and specified in her statement, "Discrimination based on email on 9/17/15 in which raises were awarded to a few using a calculator that figured raises 1st on Grade changes, 2nd New "Special" Entrance Rates; 3rd Adjustments to avoid salary compression. Email also advises discretion based on possibly 'Jealousy' over raises because 'Everyone does not get them.' This is not the way raises are suppose to be given. This is very unfair this could have funded 5% raises for all employees. Obviously this was done secretively. I am asking for the difference between the highest &

lowest percentage used on calculator be added to my base pay. These raises were extremely unfair." (sic)

Appellant stated that she is an Engineering Assistant I, which is a Pay Grade 8, and has held that job approximately 8 years. She has done Tech work in the past (referring to Transportation Engineering Technologist work).

The reference Appellant made in her appeal to an email in September 2015, Appellant stated, was an email sent out in January 2015 from Thomas Gilpin that she did not see until approximately September 16, 2015, regarding these raises or salary adjustments given to certain classifications. As noted in her appeal, Appellant asked as relief to have a certain percentage added to her base pay rate.

The Hearing Officer noted Appellant mentioned the word discrimination at the outset of her appeal, but, as the Hearing Officer understands it, Appellant is not making an appeal of discrimination based on any protected classifications such as sex, race, color, national origin, age, political opinion or belief, or disability.

The Appellees Transportation Cabinet and Personnel Cabinet asked for time in which to file Motions to Dismiss. They also asked for Appellant to provide them with a copy of the email to which she made reference, both in the appeal and at the pre-hearing conference. The Appellant agreed she would do so.

The Appellees filed timely Motions to Dismiss, and the Appellant did not respond to those directly, but she did file an email requested by counsel for the Transportation Cabinet, along with some documents attached to that. The matter is ready for a ruling.

BACKGROUND

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

2. In its Motion to Dismiss, counsel for Appellee Transportation Cabinet contends Appellant, Transportation Cabinet Engineering Assistant I in KYTC District 8, says this appeal is based on seeking a pay raise due to Engineers having received a pay raise. Counsel contends that Appellant "conspicuously fails to even allege that any Engineering Assistant Is were hired at mid-point or otherwise had their salary adjusted in any way."

3. The Appellee Personnel Cabinet also filed a Motion to Dismiss. Counsel states Appellant did not point to any statute or regulation that would support her claims and failed to identify any employees in her work county, in her same job classification, with the same

education and experience, who received salary increases that would entitle Appellant to a salary adjustment, and failed to otherwise allege any appealable penalization pursuant to KRS 18A.005(24).

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

FINDINGS OF FACT

The Hearing Officer makes the following Findings of Fact by preponderance of the evidence:

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

2. The Hearing Officer finds the Appellant essentially was challenging some of the pay raises given to Engineers and others in the engineering series, but did not point specifically to any Engineering Assistant Is who received a raise or that otherwise were treated differently than she.

3. The Hearing Officer also finds that Appellant, at the pre-hearing conference, had abandoned any claims of protected class discrimination.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes that since the Appellant has not stated any claim of penalization over which the Personnel Board might have jurisdiction, and having abandoned any claim of discrimination, this appeal should be **DISMISSED.**

2. The Hearing Officer, as the Appellees will be aware by now, has allowed certain other appeals to go to evidentiary hearing involving Transportation Engineer IIs and Transportation Engineer IIIs (TET IIs and TET IIIs). The analysis there is centered around the *Cabinet for Human Resources v. Kentucky State Personnel Board et al.*, cases 846 S.W.2d 711 (Ky. 1992), also known as the *Bargo* cases.

3. The Hearing Officer does not believe this appeal is similar to those of the TET IIs and TET IIIs who have been allowed to pass on to evidentiary hearing. The primary difference, the Hearing Officer believes, is that the TET IIs and TET IIIs arguably have, both on the written job classifications and also in actuality, more experience and qualifications than the TET Is that were affected by the across-the-board raises. The Hearing Officer believes that the Transportation Engineering Assistant I series would have lesser qualifications and that the *Bargo* analysis does not apply.

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 **MAUREEN BAIRD VS. TRANSPORTATION CABINET AND PERSONNEL CABINET (APPEAL NO. 2015-260)** be **DISMISSED.**

NOTICE OF EXCEPTION AND APPEAL RIGHTS

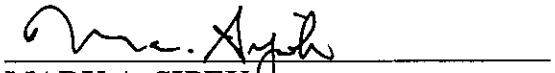
Pursuant to KRS 13.B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that 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 7th 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. Maureen Baird