

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-034**

LORI AKERS

APPELLANT

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

FINANCE AND ADMINISTRATION CABINET

APPELLEE

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

The Board, at its regular May 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated April 14, 2025, 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 15th day of May, 2025.

KENTUCKY PERSONNEL BOARD

Dr. A. M.
GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Lori Akers
Hon. Shan Dutta
Hon. Cary Bishop
Hon. Ashley Dailey
Hon. Rosemary Holbrook (Personnel Cabinet)
Laura Sharp

**COMMONWEALTH OF KENTUCKY
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**FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

FINANCE AND ADMINISTRATION CABINET

APPELLEE

** * * * *

This matter is before the Hearing Officer on the appellee Finance and Administration Cabinet's (the "Appellee") Motion for Summary Judgment. The appeal last came before the Hearing Officer in a pre-hearing conference on November 14, 2024, which was held at 3:00 p.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Gordon A. Rowe, Jr. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The appellant, Lori Akers (the "Appellant"), was present in person at the pre-hearing conference and was not represented by legal counsel. The Appellee, Finance and Administration Cabinet, was present via Zoom videoconferencing and was represented by the Hon. Cary Bishop, the Hon. Shan Dutta, and the Hon. Ashley Daily.

During the November 14, 2024 pre-hearing conference, the parties discussed the Appellee's Motion for Summary Judgment, which was filed on September 23, 2024. The Hearing Officer noted that the Appellant did not file a response to the Appellee's Motion for Summary Judgment and asked during the pre-hearing conference whether the Appellant wanted to raise any arguments or cite to any facts that might preclude judgment as a matter of law on the issue of jurisdiction. The Appellant responded in the negative. The Hearing Officer informed the parties that he was considering the Motion for Summary Judgment and would render a decision based on the arguments in the motion and any material facts which had become part of the record. For the reasons set forth herein, the Hearing Officer finds the Appellee's Motion for Summary Judgment well-taken on the issue of jurisdiction and recommends the Appellant's claims be dismissed by the Personnel Board.

PROCEDURAL BACKGROUND

1. The appeal was filed by the Appellant on February 22, 2024. The Appellant alleged in her Appeal Form that the Appellee violated KRS 18A.095 by hiring employees in the same classification and in lower grade classifications within the Department of Revenue who were hired at a higher rate of pay than the Appellant.

2. On September 23, 2024, the Appellee filed a Motion for Summary Judgment, in which it argued that the Personnel Board did not have jurisdiction to hear the appeal essentially because no action had been taken against the Appellant that violated KRS 18A.095 or any other provision of KRS Chapter 18A.

3. The Appellant did not file a response to the Appellee's Motion for Summary Judgment. Pursuant to the Hearing Officer's prior Interim Order of July 23, 2024, any response to the Motion for Summary Judgment was due to be filed within thirty (30) days of the date the Motion for Summary Judgment was filed, or no later than October 23, 2024.

STATEMENT OF UNDISPUTED FACTS

1. The Appellant is employed as a Taxpayer Services Specialist III by the Department of Revenue, which is part of the Finance and Administration Cabinet. The Appellant has been an employee of the Revenue Department since July 16, 2001. Her annual salary at the time of the appeal was \$47,200.56.

2. The Appellant filed this appeal with the Personnel Board on February 22, 2024. In her appeal form (the "Appeal Form"), the Appellant alleged that her employer, the Appellee, violated KRS 18A.095 (along with KRS 18A.138). The Appellant explained the basis for her appeal in an Appeal Form statement:

In Oct 2023, Michael A Anderson and Ann E Cleveland received an increase to \$65,168.64. We are all Taxpayer Services Spec III. We all work together and we all perform the same duties. At that time, Kristen L. Hudnall received an increase to \$59,246.88. She is actually a pay grade below me -Taxpayer Service Spec II. Not only doing the same work, I have been an employee for many, many years longer than them. So, I was informed by my Branch Manager that I would receive this too-by Dec 31, 2023. Nothing about this is fair or equal. I want equal pay for equal work as it is supposed to be.

[See Appeal Form at p. 1.]

3. The Appellant has not been demoted, suspended, involuntarily transferred, or dismissed by the Appellee nor has the Appellant's salary been reduced by the Appellee.

4. The Appellant requests "equal pay for equal work" but has not alleged that the salary inequity/salary compression issue she raised is based upon her membership in any protected class or otherwise constitutes any type of prohibited discrimination.

5. The Appellant requested that her salary be raised to fix salary inequity/salary compression within the Department of Revenue.

6. The Appellee has not disputed the facts asserted by the Appellant. Instead, the Appellee contends that the basis of the appeal is outside the jurisdiction of the Personnel Board.

CONCLUSIONS OF LAW

1. Summary judgment should be entered when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Kentucky Rules of Civil Procedure ("CR") 56.03; *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 482 (Ky. 1991). The movant should only be granted summary judgment when the right to judgment as a matter of law is "shown with such clarity that there is no room left for controversy." *Id.* at 482.

2. A party opposing a motion for summary judgment must present "at least some affirmative evidence showing that there is a genuine issue of material fact for trial." *Id.* at 482.

3. There is no genuine issue of material fact in this case. The facts are not disputed at all. The only question before the Personnel Board at this juncture is whether the Board has jurisdiction to hear the appeal, which is a question of law.

4. The Appellant has not established that the Appellee has violated KRS 18A.095 in regard to her employment. The Appellant has not been subjected to any of the personnel actions specifically listed under KRS 18A.095 for review by the Board, which include: a) dismissal, b) demotion, c) suspension, d) involuntary transfer, and e) protected class discrimination.

5. Under the version of KRS Chapter 18A in effect at the time Appellant filed her appeal,¹ the Personnel Board only has jurisdiction over the following types of action involving

¹ KRS Chapter 18A was amended by the Kentucky Legislature, effective June 29, 2023. Among other changes, the category of other penalizations was removed from KRS 18A.095 as a basis for the Personnel Board's jurisdiction.

state employees: an “employee who is dismissed, demoted, suspended without pay, or involuntarily transferred may, within thirty (30) calendar days” of those specific personnel actions, appeal the action to the Personnel Board. KRS 18A.095(9). In addition, an employee who has been subjected to a discriminatory action based on their protected class status may appeal any such action to the Personnel Board within thirty (30) calendar days of the action. KRS 18A.095(11).

6. The Personnel Board does not have authority to hear any appeal not specifically authorized by KRS Chapter 18A. In fact, the Personnel Board is **required** to dismiss any appeal in which it determines “it lacks jurisdiction to grant relief.” KRS 18A.095(16)(a).

7. The Appellant has not been dismissed, demoted, suspended without pay, involuntarily transferred, or denied any other rights she is entitled to under KRS 18A.095.

8. The Appellee’s action(s) of hiring and paying employees at higher rates of pay than the Appellant, even employees in lower grade classifications such as Taxpayer Specialist II, is a salary dispute and does not constitute an impermissible, adverse personnel action against the Appellant since her salary was not reduced or otherwise affected. *See Allen v. Justice and Public Safety Cabinet, Department of Corrections*, Appeal No. 2022-146, 2023 WL 4404751 at *3 (KY PB June 13, 2023).

9. The Appellant had the discretion to adjust the Appellant’s salary but was not required to do so.

10. Senate Bill 153 (SB 153) of the 2023 Kentucky legislative session expressly removed the Personnel Board’s authority to hear appeals involving “salary adjustments” and the catch-all category of “other penalizations.”

11. Even prior to SB 153 and the modification of KRS 18A.095, the Personnel Board held that it had no jurisdiction to hear appeals based on an agency granting salary adjustment to some employees that other agency employees did not receive, even when the adjustments seemed to lead to an unfair result. *See Allen v. Justice and Public Safety Cabinet, Department of Corrections*, 2023 WL 4404751 at *3 (KY PB 2023) (holding that the Appellant did not suffer a penalization or an adverse employment action when other co-employees, some in lower grade classifications, received raises while she did not); and *see Chris Southworth et al. v. Finance and Administration Cabinet*, 2020 WL 7426176 at *7, 8 (KY PB 2020)(Board found no penalization when some employees were allowed to resign and reinstate, which triggered salary increases, and other employees were not allowed to do so); and *see Scott Huddleston et al. v. Transportation Cabinet and Personnel Cabinet*, 2018 WL 4037967 at *4, 5 (KY PB 2018)(no penalization where

the Appellants failed to show any statute or regulation entitled them to a raise, even though other employees received raises through resign and reinstate personnel action).

12. After passage of SB 153, it is clear that the Personnel Board cannot hear appeals involving salary claims, salary adjustments, or other salary disputes, unless otherwise specifically authorized. *Christopher Banks, Appellant v. Justice and Public Safety Cabinet, Department of Juvenile Justice, Appellee*, 2024 WL 1765101, at *2 (KY PB 2023-0134).

13. Finding no violation of KRS 18A.095, the Personnel Board does not have jurisdiction to grant the relief sought by the Appellant.

14. The salary compression/salary inequity issue alleged by the Appellant does not amount to the type of unlawful conduct the Personnel Board can review under KRS 18A.095. Therefore, this Board is without jurisdiction and the Appellee is entitled to judgment as a matter of law, pursuant to KRS 18A.095.

RECOMMENDED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Personnel Board that the appeal of **LORI AKERS V. FINANCE AND ADMINISTRATION CABINET (APPEAL NO. 2024-034)** 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 fifteen (15) 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).

The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov.

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.

Any document filed with the Personnel Board shall be served on the opposing party.

SO ORDERED at the direction of the Hearing Officer this 14th day of April, 2025.

KENTUCKY PERSONNEL BOARD


GORDON A. ROWE, JR.
EXECUTIVE DIRECTOR

A copy hereof was emailed and mailed to the following persons at their respective addresses as provided to the Personnel Board on this 14th day of April, 2025:

Lori Akers, Appellant
Hon. Shandee Dutta, Counsel for Appellee
Hon. Cary Bishop, Counsel for Appellee
Hon. Ashley Daily, Counsel for Appellee