

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-235

ROBERT BAKER

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF JUVENILE JUSTICE

APPELLEE

*** **

The Board, at its regular November 2021 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated October 22, 2021, 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 18th day of November, 2021.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Codell
Robert Baker
Hon. Rosemary Holbrook (Personnel Cabinet)
Cynthia Watson

**COMMONWEALTH OF KENTUCKY
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**V. FINDINGS OF FACT, CONCLUSIONS OF LAW
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DEPARTMENT OF JUVENILE JUSTICE**

APPELLEE

**** * * * * *

This matter came on for a pre-hearing conference on May 24, 2021, at 11:00 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Robert Baker, was present and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and represented by the Hon. William Codell. Both parties appeared by telephone.

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.

FINDINGS OF FACT

1. The Hearing Officer notes the Appellant filed his appeal with the Personnel Board on December 3, 2020, alleging his salary was unfair compared to his coworkers. Specifically, the Appellant alleged that he is a Youth Worker III and, following increases in 2019, he earns less than several Youth Worker II employees he works with. He filed a grievance relating to this issue but did not receive any relief. The Appellant is not alleging any type of discrimination.

2. The Appellant stated on his appeal form as follows:

I am a Youth Worker III with 21 years with Dept of Juvenile Justice with a salary of \$38,595.36 annually. There was at least 5 staff with Title Youth Worker II that obtained a salary increase in the same facility that bumped them to \$41,084.16 in 2019. It is unclear on why this increase came to only

a select few and the justification given by my upline is also unclear. This is unfair and I seek to obtain a salary to reflect years of experience and to follow guidelines in salary per grade level. (sic)

3. Following a pre-hearing conference, the Appellee filed a Motion to Dismiss and Motion for Summary Judgment.

4. The Appellant is employed as a Youth Worker III with a primary workstation at the Breathitt County Juvenile Detention Center.

5. The difference in pay between some Youth Worker IIIs and Youth Worker IIs in Breathitt County was caused by the closure of the Cadet Leadership and Education Program that was previously operated by the Department of Juvenile Justice in Breathitt County. The Appellee supported this and many other facts in its Motion with an Affidavit of Cynthia Watson, who is employed as the Human Resource Branch Manager for the Appellee.

6. Following the closure of the Cadet Leadership and Education Program, an employee who was formerly a Social Service Clinician I (grade 15) was reclassified to a Youth Worker II at the Breathitt County Regional Juvenile Detention Center. Because he was reclassified to a lower grade, he received the same salary that he did prior to his reclassification. He also received a pay increase due to his job being changed from working 37.5 hours as a Social Service Clinician I to 40 hours per week as a Youth Worker II.

7. Thereafter, Youth Worker II and Youth Worker III employees were included in hazardous duty retirement effective September 1, 2019. This resulted in an increase of 3% regarding employee contribution rates. The Appellee decided to give employees in the Youth Worker II and Youth Worker III jobs a raise sufficient to cover the additional 3% contribution rate effective September 1, 2019. The Appellee processed resign/reinstate actions from the applicable employees to give them a raise to cover the 3% increase in withholding from their paychecks for the increased retirement contribution rate.

8. This resign/reinstate process resulted in a further raise for the former Social Service Clinician I employee. In addition, other Youth Worker IIs received raises to match this salary as a result of 101 KAR 2:034, Section 1(2). The regulation requires the adjustment of salary for employees in the same job classifications if they work in the same county and have a similar combination of education and experience relating to the relevant job class specification. As a result, several Youth Worker IIs ended up with a salary greater than the Appellant's Youth Worker III salary.

9. In its Motion to Dismiss and Motion for Summary Judgment, the Appellee argued that the Appellant had failed to articulate a penalization.

10. Although given an opportunity to file a response to the Appellee's Motion to Dismiss and Motion for Summary Judgment, the Appellant has failed to do so.

11. There are no material facts in dispute and this matter can be decided as a matter of law based on the appeal form and attachments, the statement of the parties at the pre-hearing conference, and the Appellee's Motion to Dismiss and Motion for Summary Judgment.

CONCLUSIONS OF LAW

1. The Appellee has failed to state a penalization as defined in KRS 18A.005(24). The fact that the Appellant's salary is less than employees in lower graded positions is not enough to state a penalization.

2. The Appellee has demonstrated it followed the applicable regulations in setting the Appellant's salary and the Youth Worker IIs that the Appellant has complained earn a higher salary. 101 KAR 2:034. The Appellant has not disputed any of these facts.

3. Because there are no material facts in dispute and the Appellant has not articulated a penalization, there is no relief that the Personnel Board can grant the Appellant. As a result, this appeal is subject to dismissal based on the Appellee's Motion to Dismiss and Motion for Summary Judgment. KRS 18A.095(18)(a) and KRS 13B.090(2).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board the appeal of **ROBERT BAKER V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2020-235)** 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 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).

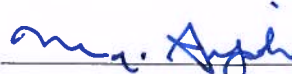
Any document filed with the Personnel Board shall be served on the opposing party.

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 Mark A. Sipek** this 22 day of October, 2021.

KENTUCKY PERSONNEL BOARD



**MARK A. SIPEK
EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. William Codell
Mr. Robert Baker
Hon. Rosemary Holbrook (Personnel Cabinet)