

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2021-055**

THELMA BLAIR

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

** ** * * *

This matter last came on for a pre-hearing conference on January 5, 2022, at 11:30 a.m. EDT, at 1025 Capital Center Drive, Suite 105, 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, Thelma Blair, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Peyton Sands, who also appeared by telephone.

This matter is now before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss, filed with the Personnel Board on February 11, 2022. The Appellant has had an opportunity to file a response but has failed to do so.

BACKGROUND/FINDINGS OF FACT

The Hearing Officer makes the following findings of fact based on the appeal form and attachments, the Agency's Motion to Dismiss, the statements made by the Appellant during the January 5, 2022 pre-hearing conference, and the evidence of record.

1. The Appellant, Thelma Blair, is employed by the Cabinet of Health and Family Services (CHFS) as a Case Management Specialist II with the Department for Community Based Services. The Appellant's appeal to the Personnel Board primarily concerns the Agency's failure to respond to her submission of an internal grievance challenging the setting of her salary, an alleged grade change with no raise, and her belief that she had been penalized through not receiving a promotional raise after working for the Agency for six (6) months.

As agreed to by the parties during the November 1, 2021 pre-hearing conference, the Appellant was grieving a yearslong series of personnel actions that came to a head when the Appellant became interested in obtaining a position as a Case Manager I in Floyd County, which was the same pay grade as a higher-graded position from which the Appellant had previously

transferred. Pursuant to the applicable statutes and regulations, in order to receive a higher salary through a pay grade change, the Appellant was required to obtain a position in a pay grade higher than the one she previously left. Unfortunately for the Appellant, she learned late in the application process that she would not receive a pay raise, if she were to accept the Case Manager position and declined to accept that position. She also informed that she was on probation as a result of certain previous personnel actions, but because she was allowed to retain her higher salary from her previous higher graded position, she would also not receive a five percent (5%) probationary increase. The Appellant felt that the yearslong grieved series of personnel actions operated to her disadvantage and she then purportedly brought an internal grievance to challenge that series of personnel actions.

During pre-hearing conferences conducted on this appeal, the Hearing Officer and the parties came to an agreement as to which personnel actions would be considered timely appealed and over which the Personnel Board would have jurisdiction. Specifically, given that the personnel actions of which the Appellant primarily complained, a 2019 move to a Case Manager II position, occurred years before she submitted her Board appeal, the scope of the appeal narrowed to the question of whether the Appellant had been penalized through the Agency not submitting a written answer to the internal grievance she allegedly submitted to the Agency.

2. The Agency submitted a Motion to Dismiss, filed with the Personnel Board on February 11, 2022. In its Motion, the Agency argues that the Appellant never actually submitted an internal grievance to the Agency and, as a result, the Appellant cannot have been penalized through the Agency's lack of response to that grievance. Given the previously mentioned narrowing of the appeal to the bare question of whether the Appellant had been penalized through the Agency's response to her internal grievance, the fact that the Appellant did not actually submit an internal grievance to the Agency means that she cannot have been penalized through the Agency's lack of response to that grievance. As such, the Personnel Board has no jurisdiction to hear this appeal.

3. The Appellant was given an opportunity to explain how: 1) the Personnel Board would have jurisdiction over either her complaints about the personnel actions taken years ago, 2) how her salary was improperly set, pursuant to the applicable statutes and regulations, and/or 3) the Agency penalized her through its handling of her internal grievance(s), but she did not submit any written explanation. However, the issue of the Personnel Board's jurisdiction over this appeal was addressed at length verbally during the November 2021 and January 2022 pre-hearing conferences, and the Hearing Officer finds that the Appellant has failed to establish any legal reason why the Personnel Board would have jurisdiction over this matter.

4. The Hearing Officer finds that the Appellant has failed to establish any penalization over which the Personnel Board would have jurisdiction.

5. KRS 18A.005(24) provides:
'Penalization' means demotion, dismissal, suspension, fines, and other disciplinary actions; involuntary transfers; salary adjustments; any action that increases or diminishes the level, rank, discretion, or responsibility of

an employee without proper cause or authority, including a reclassification or reallocation to a lower grade or rate of pay; and the abridgment or denial of other rights granted to state employees.

CONCLUSIONS OF LAW

1. This matter can be decided as a matter of law based upon the appeal form and the pleadings of the parties.

2. Because the Appellant cannot establish that the 1) the Personnel Board would have jurisdiction over either her complaints about the personnel actions taken years ago, 2) her salary was improperly set, pursuant to the applicable statutes and regulations, and/or 3) the Agency penalized her through its handling of her internal grievance(s), the Appellant has failed to articulate a penalization as defined by KRS 18A.005(24). This is because the Appellant's claims do not implicate any right afforded to merit employees by KRS Chapter 18A. Therefore, pursuant to KRS 18A.095(18)(a), the Personnel Board lacks jurisdiction to consider this appeal as the Board is unable to grant relief.

3. The Hearing Officer would note that the Appellant's frustration with her salary is definitely understandable. However, across the merit system, each job classification, employment position, and individual salary is analyzed to determine whether they are in compliance with the applicable provisions of statute and regulation, including KRS Chapter 18A and the 101 KAR series, even though it sometimes results in salaries that cause confusion and frustration by employees. This approach, which was mandated by the General Assembly, can sometimes produce results that appear unfair when comparing salaries across job classifications, across agencies, across county lines, and across individual employee's competence. Nonetheless, no matter how reasonable or seemingly unfair, such frustration does not give rise to an actionable penalization. For the reasons set out above, the Appellant has failed to articulate an actionable penalization.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **THELMA BLAIR V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2021-055)** 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).


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 9th day of February, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Thelma Blair
Hon. Peyton Sands
Hon. Rosemary Holbrook (Personnel Cabinet)