

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-102**

JOHN BOLTON

APPELLANT

v.

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

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS**

APPELLEE

* * * * *

This matter last came on for a pre-hearing conference on January 15, 2025, at 10:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Gordon A. Rowe, Jr., Executive Director/Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The appellant herein, John Bolton (the “Appellant”), was present by telephone and was not represented by legal counsel. The appellee herein, the Justice and Public Safety Cabinet, Department of Corrections (the “Appellee”), was represented by the Hon. Mark Bizzell, who was present by telephone.

The purpose of the pre-hearing conference was to discuss the status of the appeal, including the Appellee’s Motion to Dismiss, and next steps in the appeal.

At issue in this case is the Appellee’s claim that he was unjustly denied the opportunity to do overtime work. The Appellant has alleged that the Appellee failed to follow internal Department of Corrections’ policies regarding posting of available overtime hours.

During the January 15, 2025 pre-hearing conference, the parties discussed the Appellee’s Motion to Dismiss, which was filed on October 3, 2024. The Hearing Officer noted that the Appellant did not file a response to the Appellee’s Motion to Dismiss 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 he was considering the Motion to Dismiss, and would render a decision based on the arguments in the motion and any material facts

that had become part of the record. For the reasons set forth herein, the Hearing Officer finds the Appellee's Motion to Dismiss well-taken on the issue of jurisdiction and recommends the Appellant's claims be dismissed by the Personnel Board.

PROCEDURAL BACKGROUND

1. This appeal was filed by Appellant on July 1, 2024. The Appellant alleged in his appeal form that the Appellee violated his rights under KRS 18A.095 by refusing to give him overtime. [See Appeal Form and attached Grievance Form.]

2. Immediately prior to the initial pre-hearing conference, on October 3, 2024, the Appellee filed a Motion to Dismiss the appeal (the "Motion to Dismiss"), based on the argument that the Personnel Board did not have jurisdiction to hear the appeal because the refusal of overtime is not an action over which the Personnel Board has jurisdiction under KRS 18A.095 or any other provision of KRS Chapter 18A.

3. The Appellant did not file a response to the Appellee's Motion to Dismiss.

FINDINGS OF UNDISPUTED FACT

1. The Appellant is employed by the Appellee as a Recreation Leader at the Roederer Correctional Complex ("RCC"), located in LaGrange, Kentucky. The Appellant has been an employee of the Department of Corrections for over sixteen (16) years and is a classified employee with status.

2. The Appellant filed this appeal with the Personnel Board on July 1, 2024. In his appeal form (the "Appeal Form"), the Appellant alleged that his employer, the Appellee, violated KRS 18A.095 by refusing to give him overtime. In the initial pre-hearing conference of October 4, 2024, the Appellant asserted that the Appellee failed to follow institutional policy at RCC on how overtime availability and assignments should be determined. The Appellant explained that overtime was supposed to be made available through institutional radio call-ins but was instead being made available through a written sign-up list. The Appellant previously raised this issue in an internal grievance filed at RCC. [See Grievance Form attached to Appeal Form.] It is not clear how the grievance process concluded.

3. The Appellant claimed he was denied overtime on May 14, 15, and 16, 2024. [See Grievance Form attached to Appeal Form.]

4. The Appellant has not alleged that the denial of overtime (or the improper listing of overtime) was based upon his membership in any protected class or otherwise constitutes prohibited discrimination.

5. 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.

6. The Appellee has not disputed the facts asserted by the Appellant. Instead, the Appellee has argued that, even taking the facts asserted as true, the Appellant's claims are not within the jurisdiction of the Personnel Board as a matter of law.

CONCLUSIONS OF LAW

1. A motion to dismiss should only be granted when it appears the complaining party would not be entitled to relief under any set of facts that could prove his claim. *Pari-Mutuel Clerk's Union, Local 541 v. Kentucky Jockey Club*, 551 S.W.2d 801 (Ky. 1977). In examining whether it is proper to grant such a motion, the facts must be liberally construed in favor of the complaining party and the facts alleged in the complaint document must be accepted as true. *Pike v. George*, 434 S.W.2d 626 (Ky. 1968). A court should rule on a Motion to Dismiss when the question at issue is purely a matter of law. *James v. Wilson*, 955 W.3d 875, 889 (Ky. App 2002).

2. There is no genuine issue of material fact in this appeal and no set of facts under which the Appellant could prevail on this appeal. The facts are not disputed. 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.

3. In administrative law, the term "jurisdiction" has three aspects: personal jurisdiction, subject-matter jurisdiction, and agency's scope of statutory authority. *Puckett v. Cabinet for Health & Fam. Servs.*, 621 S.W.3d 402, 410 (Ky. 2021).

4. The Personnel Board's scope of statutory authority is defined and limited by KRS Chapter 18A.

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

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.

action to the Personnel Board. KRS 18A.095(9). In addition, an employee 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. *See* KRS 18A.095(30). 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, subjected to protected class discrimination, or denied any other rights he is entitled to under KRS 18A.095.

8. The Appellant does not have the statutory right to challenge the refusal of overtime (or the agency’s refusal to place him on the overtime sign-up list).

9. To the extent the appeal could be considered a request for salary adjustment or a claim of salary inequity, the Appellant’s claims would still be outside the scope of the Personnel Board’s authority. Senate Bill 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”] under KRS 18A.095.

10. It is clear that, after passage of SB 153, 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).

11. The undisputed facts reflect no violation of any of the Appellant’s rights under KRS 18A.095, and therefore the Personnel Board is without jurisdiction to grant the relief sought by the Appellant and the Appellee is entitled to judgment as a matter of law.

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 **JOHN BOLTON V. FINANCE AND ADMINISTRATION CABINET (APPEAL NO. 2024-102)** 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 3rd 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 3rd day of April, 2025:

John Bolton, Appellant
Hon. Mark Bizzell, Counsel for Appellee