

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2023-138

ALISHA CLARK

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

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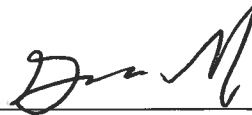
The Board, at its regular October 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated August 22, 2025, and being duly advised,

**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 24<sup>th</sup> day of October, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Alisha Clark, Appellant  
Hon. Jamhal Woolridge, counsel for Appellee  
Hon. Rosemary Holbrook (Personnel Cabinet)  
Jay Klein

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2023-138**

**ALISHA CLARK**

**APPELLANT**

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

**v.**

**CABINET FOR HEALTH AND FAMILY SERVICES**

**APPELLEE**

\* \* \* \* \*

This matter is before the Hearing Officer on a Motion to Dismiss and Motion for Summary Judgment filed by the appellee herein, the Cabinet for Health and Family Services. The appeal last came on for a pre-hearing conference on April 25, 2024, at 10:00 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark Sipek. Those proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The appellant herein, Alisha Clark (the "Appellant"), was present by telephone and was not represented by legal counsel. The appellee herein, the Cabinet for Health and Family Services (the "Appellee" or "CHFS"), was present by telephone and was represented by the Hon. Jamhal Woolridge.

At issue in this appeal is the Appellant's claim that she should be entitled to a pay raise because nurses in lower pay grades who have less experience and fewer responsibilities than she does make more in salary than the Appellant. The salary differential is the result of a Special Entrance Rate used to recruit new nurses into state government and a discretionary pay increase utilized to retain nurses already working in state government. The Appellee did not apply either raise to Appellant's job classification, which the Appellant has deemed arbitrary and a penalization.

After the pre-hearing conference, the Hearing Officer set up a schedule for dispositive motions and responses. The Appellee timely filed its Motion to Dismiss and Motion for Summary Judgment (the "Motion to Dismiss") on May 23, 2024, arguing that neither the Special Entrance Rate nor the discretionary raises awarded to other nurses amounted to a penalization of the Appellant. The Appellant filed a written response (the "Response") to the Motion to Dismiss on June 20, 2024, in which she again argued that the raises were arbitrary and that she was penalized when the agency refused to award her a commensurate raise. The Appellee timely filed a Reply to Appellant's Response to Motion to Dismiss and Motion for Summary Judgment (the Reply Brief") on July 3, 2024.

After reviewing the Appellee's Motion to Dismiss, the Appellant's Response, and the Appellee's Reply Brief, the Hearing Officer has determined that the Appellant has not suffered a penalization as a matter of law and that the appeal should be dismissed.

### **FINDINGS OF FACT**

1. The Appellant is a grade 18 Assistant Director working in Appellee's Department of Medicaid Services ("DMS"). In that capacity, the Appellant manages nurses who are grade 16. The Appellant is a registered nurse ("RN"), like many of the nurses she manages, but she has more nursing experience and more responsibilities, due to her management duties, than the nurses she manages. [See Appeal Form.]

2. Although the Appellant is an RN, her job classification is Assistant Director, which is a different job classification and pay grade than the nursing classification. [See Appeal Form; and see Motion to Dismiss at p. 1].

3. The Appellant has a lower salary than the nurses she manages. The Appellant has stated that her salary at the time she filed her appeal was \$87,500 per year while nurses she manages who have the job classification of Nurse Consultant Inspectors ("NCIs") and who are grade 16 employees, make as much as \$95,000 per year. [See Interim Order dated December 27, 2024; and see Motion to Dismiss at p. 2].

4. The differences between the Appellant's salary and the salaries of nurses she manages resulted primarily from a Special Entrance Rate (SER) implemented in June 2023 for all nursing classifications and a discretionary increase implemented in that same month for all nursing classifications. The SER Entrance Rate was implemented by the Personnel Cabinet to assist in recruiting new nurses to state government and to retain current nursing employees. [See Appellant's Response at p. 1; and see Motion to Dismiss at p. 2.] CHFS also requested a discretionary increase for all nursing classifications, which was approved by the Personnel Cabinet in June 2023. [See Exhibits B and C to Motion to Dismiss.] Neither the SER nor the discretionary increase applied to the Appellant's Assistant Director job classification.

5. This appeal was filed by the Appellant on October 13, 2023. On the appeal form (the "Appeal Form"), the Appellant alleged that she was "penalized" by the Appellee granting an "arbitrary additional raise" to grade 16 nurses who have the same licensure she does but have "less than a year of Medicaid experience," yet they "make significantly more than me at a paygrade 18 who has more responsibilities." [See Appeal Form at p. 2.]

6. The Appellant has not pointed to any statutory or regulatory authority which would require her to receive a raise commensurate with the SER or the discretionary increase paid to nurses, who the Appellant has admitted were in a different job classification and a different pay grade.

7. 101 KAR 2:034, Section 8, governs Special Entrance Rates. The regulation states that, when a Special Entrance Rate is implemented for new employees in a particular job

classification, the agency's appointing authority "shall adjust the salary of an employee in that job classification who is below the special entrance rate to the new rate." In such a situation, an agency **may** grant other employees "in that job classification...a salary adjustment equal to the difference between the entrance to the pay grade and the new entrance rate," if sufficient funds are available to the agency. As stated above, the Appellant is in a different job classification than the nurses she manages.

8. The Appellant has not alleged that she is the victim of protected class discrimination prohibited by state or federal law.

### STANDARD OF REVIEW

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*, 95 S.W.3d 875, 884 (Ky. App. 2002).

### CONCLUSIONS OF LAW

1. Even assuming that the version of KRS Chapter 18A in effect prior to the June 29, 2023 effective date of the current version of KRS Chapter 18A (prior to passage of Senate Bill 153) would apply to this appeal and construing the alleged facts in the light most favorable to Appellant, she cannot establish that she was "penalized" as that term is defined by KRS 18A.005.

2. Under the version of KRS Chapter 18A in effect at the time the raises were approved by the Personnel Cabinet (prior to June 29, 2023),<sup>1</sup> a penalization of a state employee meant "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." KRS 18A. 005(30).

3. The Appellant did not suffer a penalization. She was not subjected to any of the actions specifically listed under KRS 18A.005(30) and she has not been denied any other right granted to a state employee.

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<sup>1</sup> KRS Chapter 18A was amended by the Kentucky Legislature, effective June 29, 2023. Among other changes, the category of "penalizations" was removed from KRS 18A.095 as a basis for the Personnel Board's jurisdiction. It is not clear from the record as to when the raises in dispute took effect, but since the parties seem to agree that the raises at issue were decided upon prior to June 29, 2023, the Hearing Officer will apply the version of KRS 18A.095 in effect prior to June 29, 2023.

4. Although KRS 18A.005(30) mentions the term “salary adjustments” as a form of penalization, a plethora of past decisions by the Board makes it clear that the Appellant is not penalized by other employees’ salaries being raised, as long as her own pay is unaffected. *See Vicki 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 Appellants failed to show any statute or regulation entitled them to a raise, even though other employees received raises through resign and reinstate personnel actions).

5. Although the Appellee could have awarded the Appellant a raise equivalent to the amount of the SER and the discretionary increase, if sufficient funds were available, the Appellant was not penalized when the agency decided not to award her a raise because her own pay was unaffected (not lowered). The Appellee has correctly argued in its Motion to Dismiss that it was not required to award the Appellant a raise under 101 KAR 2:034 or any other state statute because she was not in the job classification or pay grade of the nurses who received the SER and the discretionary increase. Thus, the Appellant has not suffered a penalization as that term is defined under KRS 18A.005(30) and the Appellee is entitled to judgment as a matter of law. This appeal should be dismissed by the Personnel Board.

#### **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 **ALISHA CLARK V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2023-138)** 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).

**[Hearing Officer Note: Any document filed with the Personnel Board shall also be served on the opposing party.]**

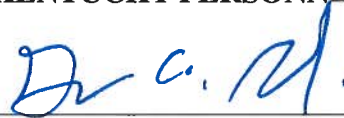
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

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

**SO ORDERED** at the direction of the Hearing Officer this 22<sup>nd</sup> day of August, 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 22<sup>nd</sup> day of August, 2025:

**Alisha Clark, Appellant**  
**Hon. Jamhal Woolridge, Counsel for Appellee**  
**Hon. Rosemary Holbrook, Personnel Cabinet**