

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-109

JEFFERY CRESS

APPELLANT

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

FINANCE AND ADMINISTRATION CABINET

APPELLEE

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

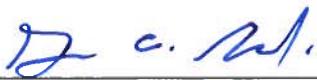
The Board, at its regular July 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated June 18, 2025, and being duly advised,

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 14th day of July, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Jeffery Cress
Hon. Shandeept Dutta
Hon. Cary Bishop
Hon. Ashley Daily
Hon. Rosemary Holbrook (Personnel Cabinet)
Laura Sharp

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PERSONNEL BOARD
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FINDINGS OF FACT, CONCLUSIONS OF LAW
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FINANCE AND ADMINISTRATION CABINET

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** * * * *

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 January 23, 2025, which was held at 11:00 a.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, Jeffrey Cress (the "Appellant"), was present at the pre-hearing conference, appearing by Zoom videoconferencing, 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.

At issue in this appeal is the Appellant's complaint that he received a lower percentage increase in salary relative to several coworkers when the Appellant and his colleagues' positions were reclassified to the position of Property Assessment Coordinator IV. During the January 23, 2025 pre-hearing conference, the parties discussed the Appellee's Motion for Summary Judgment, which was filed on November 12, 2024. The Hearing Officer noted that the Appellant did not file a response to the Appellee's Motion for Summary Judgment. The Hearing Officer asked the Appellant (and his colleagues present during the pre-hearing conference) whether he 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 Appellant (and other parties present) 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 appeal be dismissed by the Personnel Board.

PROCEDURAL BACKGROUND

1. The appeal was filed by the Appellant on July 22, 2024. In his appeal form, the Appellant alleged that the Appellee violated his rights under KRS 18A.095 by giving him a lower raise, percentage-wise, than several of his coworkers when he and his coworkers were reclassified to the job classification of Property Assessment Coordinator IV. The Appellant has claimed that giving him a lower percentage raise than several of his coworkers was a penalization.

2. In an internal grievance which preceded the Appeal, the Appellant claimed that his coworkers received raises equivalent to 25.7% of their former salary while he received a raise equivalent to 17.18% of his former salary. Even though the entire group now makes the same salary, the Appellant claims these salary adjustments were a penalization for him because he has several more years of experience than his colleagues, who received larger percentage raises. [See Appeal Form at p.1; and *see* attached Grievance Form.] The Appellant's grievance was denied by the Finance and Administration Cabinet.

3. On November 12, 2024, the Appellee filed a motion for summary judgment, in which it argued that the Personnel Board does 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 and because salary adjustments and "other penalizations" are no longer within the jurisdictional purview of the Personnel Board.

4. 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 September 26, 2024, any response to the Motion for Summary Judgment was due to be filed within forty-five (45) days of the date the Motion for Summary Judgment was filed, or no later than December 27, 2024.

FINDINGS OF UNDISPUTED FACT

1. The Appellant is employed as a Property Assessment Coordinator IV by the Department of Revenue, which is part of the Finance and Administration Cabinet. The Appellant is a classified employee with status.

2. On May 1, 2024, the Appellant, together with several of his colleagues, was re-classified from a Property Assessment Coordinator III to a Property Assessment Coordinator IV.

3. Prior to the reclassification(s), the Appellant made \$3,319 more than his coworkers. As a result of the reclassifications, the Appellant and his colleagues now "receive the same salary." [See Grievance Form attached to the Appellant's Appeal Form.] The Appellant has alleged he was penalized by the reclassifications and subsequent salary increases because he has several more years of experience than his colleagues but they received larger percentage raises as a result of the reclassification. [See Appeal Form at p.1; and see attached Grievance Form.] In his Appeal Form statement, the Appellant alleged that the Appellee violated KRS 18A.095 because:

"All four of my co-workers were given a salary increase of \$11,731 and I was given a salary increase of \$8,411. Why am I being penalized for having more years experience than my colleagues (sic)."

[See Appeal Form at p. 1.]

4. On the Appeal Form, the Appellant marked the box for "Other" as the type of personnel action he is appealing.

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 Appellant has not alleged (nor is there any evidence in the record) that the lower percentage raise he received relative to his coworkers was based upon his membership in any protected class or otherwise constituted any type of prohibited discrimination.

7. 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.” *Steelwest*, 807 S.W.2d. at 482. 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.

2. There is no genuine issue of material fact in this case. The facts asserted by the Appellant are not disputed at all. The only question before the Personnel Board is a question of law: whether the personnel action being complained about by the Appellant is an action over which the Board has jurisdiction.

3. Under the version of KRS Chapter 18A in effect at the time the Appellant filed his appeal,¹ the Personnel Board only 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 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).

4. The Appellant has not established that the Appellee has violated KRS 18A.095 in regard to his employment. The Appellant has not been subjected to any of the personnel actions specifically listed under KRS 18A.095 for review by the Board.

5. 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).

6. To the extent Appellant is appealing the reclassification of his coworkers to the position of Property Assessment Coordinator IV, the Personnel Board does not have jurisdiction over such personnel actions.

7. KRS 18A.095(10) explains the right of a state employee to challenge a reclassification. Based on the plain language of that subsection, the right to make such a challenge is limited to an employee who has experienced a “reclassification to a lower grade.” KRS 18A.095(10)(a)2.

¹ KRS Chapter 18A was amended by the Kentucky Legislature after passage of Senate Bill 153, 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.

8. The Appellant has not been reclassified to a lower grade position; he has been promoted to the higher-grade position of Property Assessment Coordinator IV, and received a salary increase along with the promotion.

9. Further, KRS 18A.095 clearly limits reconsideration of reclassification decisions to the Secretary of the Personnel Cabinet. KRS 18A.095(10). KRS 18A.095 plainly states that the Secretary of the Personnel Cabinet has final authority to consider reclassification actions made by state agencies and her determination regarding such actions is "final and shall not be appealable to the Personnel Board." KRS 18A.095(10)(b).

10. At best, the Appellant's claim is a request for a salary adjustment due to salary inequity, which the Appellant has characterized as a penalization. Senate Bill 153 (SB 153) of the 2023 Kentucky legislative session expressly removed the Personnel Board's authority to hear appeals involving salary adjustments, salary inequity claims, and the catch-all category of "other penalizations" under KRS 18A.095.

11. The Personnel Board has already found that, after passage of SB 153, it is clear the 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).

12. The Personnel Board has consistently held that there is no regulation or statute that mandates similarly situated state employees be paid at the same rate. *Michael Frost et al. v. Transportation Cabinet, et al.*, 2019 WL 5212758 (KY PB 2015-143, et al.); *George Fortune v Cabinet for Health and Family Services*, 2008 WL 4329627 (KY PB 2006-381, 2006-384). The Franklin Circuit Court has held that there is no statute or regulation which requires uniformity of pay, even in Kentucky's merit system. *Adkins, et al. v. Energy and Environment Cabinet, et al.*, Civ. Action No. 18-CI-00027 (Franklin Cir. Ct. Feb. 4, 2020).

13. The Appellee has not violated any of the provisions of KRS 18A.095 in relation to the Appellant, which means the Personnel Board does not have jurisdiction over this appeal 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 **JEFFREY CRESS V. FINANCE AND ADMINISTRATION CABINET (APPEAL NO. 2024-109)** be **DISMISSED** on grounds of lack of jurisdiction.

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.]

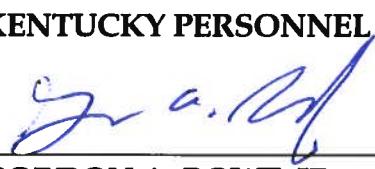
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

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

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 18th day of June, 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 18th day of June, 2025:

Jeffrey Cress, Appellant
Hon. Shandeep Dutta, Counsel for Appellee
Hon. Cary Bishop, Counsel for Appellee
Hon. Ashley Daily, Counsel for Appellee
Hon. Rosemary Holbrook, Personnel Cabinet