

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-225

CYNTHIA FANNIN

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

*** **

The Board, at its regular May 2021 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 30, 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 12th day of May, 2021.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Kristin Wehking
Cynthia Fannin
Rodney Moore

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-225**

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

**JUSTICE AND PUBLIC SAFETY CABINET,
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APPELLEE

** ** * * *

This matter came on for a pre-hearing conference on February 19, 2020, at 10:00 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, Cynthia Fannin, was present by telephone and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Kristin Wehking.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by Appellant, to determine the specific section of KRS Chapter 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.

BACKGROUND

1. The Hearing Officer notes the Appellant filed her appeal with the Personnel Board on October 17, 2019, alleging that she has been penalized due to a salary discrepancy. The Appellant has been a Correctional Officer for 12.5 years and makes \$33,600 per year. She stated that she received a raise sometime during 2014 or 2015 when all Correctional Officers were raised to the same level. The Officers who were on probation at that time were raised to the same level as she and received an additional five percent when they completed their

probation. As a result, these Officers earn \$1,680 more than the Appellant. The Appellant cited the provisions of 101 KAR 2:034, Section 1.

2. The Appellee requested time to file a dispositive motion. In its Motion to Dismiss, the Appellee stated the facts as follows:

“Appellant, Cynthia Fannin, filed this appeal on October 17, 2019, alleging that she has been penalized due to a salary discrepancy. At the pre-hearing conference on February 19, 2020, Appellant explained that she has been a Correctional Officer for 12.5 years, and makes \$33,600 per year. [Interim Order, February 27, 2020 at page 1.] Appellant stated that she received a raise sometime during 2014 or 2015, when all Correctional Officers were raised the same level. [Interim Order, February 27, 2020 at page 1.] Officers who were on probation at that time were raised to the same level and received an additional five percent pay when they completed their probation. [Interim Order, February 27, 2020 at page 1.] As a result, these Officers earn \$1,680 more than Appellant. (Interim Order, February 27, 2020 at page 1.) Appellant stated in her appeal form that, while she has 12 years’ experience in her position, Officers who received a raise during probation are now earning \$1,680 more, and “have 5 years’ [of experience in the same position.] [Appeal form, page 2.]”

3. As a result, the Appellee argued that the Appellant’s appeal is barred by the statute of limitations, citing KRS 18A.095(29), which requires that an appeal shall be filed within one year of the penalization or from the date the employee reasonably should have known of the penalization. The Appellee argued that Appellant’s time to file an appeal expired, at the latest, on December 31, 2016.

4. The Appellant was granted time to file a response to the Motion to Dismiss but did not file one.

FINDINGS OF FACT

1. The Appellant, Cynthia Fannin, has been a Correctional Officer for 12.5 years and makes \$33,600 per year. She is a classified employee with status.

2. Sometime during 2014 or 2015, all Correctional Officers were given a raise to the same level of pay.

3. Officers who were on probation were raised to the same level and received an additional five percent when they completed their probation. As a result, these officers earn \$1,680 more than the Appellant. These Officers now have five years of experience and earn more than the Appellant who has 12.5 years' experience.

4. The Appellant knew or should have known she had been penalized no later than December 31, 2016.

5. There are no material facts in dispute and this appeal can be decided as a matter of law based on the appeal form, the statements of the parties at the pre-hearing conference, and the Motion to Dismiss.

CONCLUSIONS OF LAW

1. The Appellant's appeal is bared by the statute of limitations contained at KRS 18A.095(29) and, thus, the Personnel Board lacks jurisdiction to hear this appeal.

2. In addition, the Appellant has failed to state a penalization. The salary discrepancy as described by the Appellant is the result of provisions of 101 KAR 2:034, which allows for a five percent increase upon the completion of the probationary period. There is no requirement that employees who are off probation receive the same increase.

3. Because the Personnel Board lacks the authority to grant the Appellant any relief, this appeal may be dismissed after a preliminary hearing. KRS 18A.095(18)(a).

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **CYNTHIA FANNIN VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2019-225)** 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 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).

[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).

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 30th day of March, 2021.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Kristin Wehking
Cynthia Fannin
Hon. Rosemary Holbrook