

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD

LANA CHARNEY (APPEAL NO. 2024-172) AND
NATALIE FULK (APPEAL NO. 2024-181)

APPELLANTS

VS.

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

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

The Board, at its regular September 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated August 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 Appellants' appeals are 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 18th day of September, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Lana Charney
Natalie Fulk
Hon. Olivia Peterson
Hon. Amy Robertson
Hon. Rosemary Holbrook (Personnel Cabinet)
Jay Klein

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD**

**LANA CHARNEY (APPEAL NO. 2024-172) AND
NATALIE FULK (APPEAL NO. 2024-181)**

APPELLANTS

v.

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

* * * * *

These consolidated appeals came on for a pre-hearing conference on May 28, 2025, at 10:00 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.

Neither of the appellants herein, Lana Charney or Natalie Fulk (collectively, the "Appellants"), appeared at the pre-hearing conference and neither appellant was represented by legal counsel. The Hearing Officer attempted to reach both Appellants by phone and left messages at their respective voicemails but neither appellant returned the call during the time scheduled for the pre-hearing conference. The appellee herein, the Cabinet for Health and Family Services (the "Appellee" or "CHFS"), was present and represented by the Hon. Amy Robertson and the Hon. Olivia Peterson, who both appeared by telephone.

At issue in this appeal are the Appellants' claims that they are victims of salary inequity and are not receiving pay equal to newly hired state employees in their job classification. These employees have not claimed any protected class discrimination. The Appellee timely filed a motion to dismiss (the "Motion to Dismiss") on March 26, 2025. The Appellants have not filed a response to the motion and the time for filing a response expired on April 26, 2025, per a prior Interim Order of February 27, 2025.

The Hearing Officer, having listened to the statements of the parties, having reviewed the file in this matter, and the Appellee's motion to dismiss, and for the reasons stated below, recommends that the Personnel Board dismiss these appeals.

FINDINGS OF FACT AND PROCEDURAL BACKGROUND

1. Both Appellants, Lana Charney and Natalie Fulk, are classified employees with status. At the time their appeals were filed, both Appellants held the job classification of Human Services Surveyors in CHFS' Officer of Inspector General, Department of Regulated Childcare, Northern Branch. [See Appellants' Appeal Form statements.]

2. Appellant Lana Charney filed her appeal on December 2, 2024, and the appeal was designated Appeal No. 2024-172. Appellant Natalie Fulk filed her appeal on December 16, 2024, and the appeal was designated Appeal No. 2024-181. Both Appellants have alleged in their appeals a salary inequity with newly hired Human Services Surveyors in the Southern Branch, who the Appellants allege will be paid significantly more (approximately \$7,500 more) than existing Human Services Surveyors. [See Appellants' Appeal Form statements.] The Appellants allege further that they were informed by CHFS' Officer of Human Resource Management that the salary differential was due to recruitment initiatives and that no existing employees' salaries would be lowered or otherwise affected. Both Appellants have requested "equal pay." [See Appellants' Appeal Form statements.]

3. These appeals (Appeal No. 2024-172 and Appeal No. 2024-181) were consolidated by Interim Order entered on February 27, 2025. Both appeals involve the same relevant, operative facts and those facts are undisputed for purposes of the Motion to Dismiss.

4. The Appellee filed a Motion to Dismiss on March 26, 2025, in which it argued the Personnel Board should dismiss these appeals because, under KRS Chapter 18A, it does not have subject matter jurisdiction over the Appellants' salary inequity claims. Neither Appellant filed a response to the Appellee's Motion to Dismiss.

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

2. These consolidated appeals must be dismissed because, as a matter of law, the Personnel Board does not have jurisdiction over salary inequity claims.

3. The Personnel Board's jurisdiction is generally limited to claims specified under KRS 18A.095. In this case, the Appellants have not established that the Appellee has violated KRS 18A.095 in regard to their employment. The Appellants have not been subjected to any of the personnel actions specifically listed under KRS 18A.095 for review by the Board, which include: a) dismissal, b) demotion, c) suspension, d) involuntary transfer, and e) protected class discrimination.

4. Although the Appellants alleged in their Appeal forms that they were victims of "compensation discrimination," neither Appellant has alleged or set forth any fact to show that the alleged salary inequities resulted from discrimination based on their membership in any protected class. As stated by the Appellee, compensation discrimination, or discrimination based upon date

of hire (or newly hired status), is not a recognized category of discrimination under KRS 18A.095(11)(a).

5. Under the version of KRS Chapter 18A in effect at the time the Appellants filed their appeals,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).

6. 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).

7. The Appellants have not been dismissed, demoted, suspended without pay, involuntarily transferred, discriminated against based on a protected class, or denied any other rights they are entitled to under KRS 18A.095.

8. The Appellee’s action(s) of hiring and paying employees at higher rates of pay than the Appellants, even employees in lower grade classifications, is a salary dispute and does not constitute an impermissible, adverse personnel action against the Appellants since their salary was not reduced or otherwise affected. *See Allen v. Justice and Public Safety Cabinet, Department of Corrections*, Appeal No. 2022-146, 2023 WL 4404751 at *3 (KY PB June 13, 2023).

9. The Appellee had the discretion to adjust the Appellants’ salaries in accord with newly hired employees but was not required to do so.

10. Senate Bill (SB) 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.”

11. Even prior to SB 153 and the modification of KRS 18A.095, the Personnel Board held that it had no jurisdiction to hear appeals based on an agency granting salary adjustments to some employees which other agency employees did not receive, even when the adjustments seemed to lead to an unfair result. *See 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

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.

the Appellants failed to show any statute or regulation entitled them to a raise, even though other employees received raises through resign and reinstate personnel action).

12. After passage of SB 153, it is clear 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).

13. The salary inequity issue alleged by Appellants does not amount to the type of conduct the Personnel Board can review under KRS Chapter 18A. Therefore, this Board is without jurisdiction 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 consolidated appeals of **LANA CHARNEY (APPEAL NO. 2024-172) AND NATALIE FULK (APPEAL NO. 2024-181) V. CABINET FOR HEALTH AND FAMILY SERVICES** 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.

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Natalie Fulk
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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 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 18th day of August, 2025:

Lana Charney, Appellant
Natalie Fulk, Appellant
Hon. Olivia Peterson, Counsel for Appellee
Hon. Amy Robertson, Counsel for Appellee
Hon. Rosemary Holbrook, Personnel Cabinet