

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-260**

RONNIE GROSS

APPELLANT

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

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

AND

KENTUCKY RETIREMENT SYSTEMS

APPELLEES

* * * * *

The Board, at its regular July 2021 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 20, 2021, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** Background paragraph 2, and substitute the following:

2. Following the pre-hearing conference, a Motion to Dismiss schedule was set. The Appellee Department of Juvenile Justice filed a Motion to Dismiss. The Appellee Kentucky Retirement Systems filed a Motion to be Dismissed as a party. The Appellant did not respond to either Motion.

B. **Delete** Finding of Fact paragraphs 1 and 2, and substitute the following:

1. The Appellant, Ronnie Gross, was a Youth Worker for the Department of Juvenile Justice from 1999 through 2014. From 2014 through 2017, he was classified as

a Maintenance Supervisor. He said that, during that time, he performed the work of a Youth Worker. He would like to be reclassified as a Youth Worker so that he would be eligible for hazardous duty retirement for the period of time from 2014 through 2017.

2. The Kentucky Retirement Systems, in its Motion to Dismiss, stated that the Personnel Board lacks jurisdiction to hear this appeal against the Kentucky Retirement Systems. This argument was summarized as follows:

The Systems is not a proper party to this action. No authority has been cited in KRS Chapter 18A which would permit this Personnel Board action to be brought against the Systems, when the Systems is not Appellant's employer. The only avenue for a member of the Systems, such as Appellant, to appeal a determination of the Systems is set forth in KRS 61.645(16), which provides for the appeal process when an order of the Systems substantially impairs the benefits or rights of a member. Kentucky Retirement Systems has exclusive jurisdiction for such appeals. Pursuant to KRS 61.645(16), the affected member may request an administrative hearing to be held in accordance with KRS Chapter 13B. The Board may establish an appeals committee who shall have the authority to act upon the recommendation and report of the hearing officer appointed to the matter. If the member is aggrieved by the Final Order of the Board, he or she may appeal the determination to the Franklin Circuit Court in accordance with KRS Chapter 13B.

C. **Delete** Finding of Fact paragraph 5, and substitute the following:

5. The Kentucky Retirement Systems does not allow for individual employees to seek hazardous duty coverage based on their job duties. This must be done according to all jobs with the same title.

D. **Delete** Finding of Fact paragraph 7, and substitute the following:

7. If the Appellant were reclassified for that period of time as a Youth Worker, the employee could request the Department of Juvenile Justice to complete the Form 4150 Certification of Employment Hazardous Positions, so that they can get the cost calculations to convert his time to hazardous duty. The Appellant was provided this form regarding his previous service as a Youth Worker from 1999 through 2014 and, as of the date of Kentucky Retirement Systems' Motion to Dismiss, he had not completed a copy of Form 4150.

E. **Delete** Finding of Fact paragraph 12, and substitute the following:

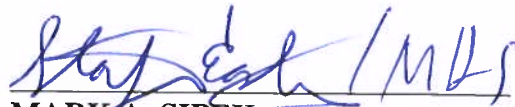
12. In addition, the Department of Juvenile Justice argues that this appeal is untimely since it was not filed until November 20, 2019, when the Appellant was promoted to Maintenance Superintendent in 2014 and left the Department of Juvenile Justice in October 2017. They argued that, based on KRS 18A.095(29), the Appellant should have no more than a year to file his appeal with the Personnel Board.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as Altered, be and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order, and Appellant's appeal is **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 15th day of July, 2021.

KENTUCKY PERSONNEL BOARD

A handwritten signature in blue ink, appearing to read "Mark A. Sipek (MKS)", written over a horizontal line.

**MARK A. SIPEK
SECRETARY**

A copy hereof this day mailed to:

Hon. William Codell
Hon. Leigh Ann Jordan Davis
Ronnie Gross
Hon. Rosemary Holbrook (Personnel Cabinet)
Cynthia Watson

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-260**

RONNIE GROSS

APPELLANT

VS.

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

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

AND

KENTUCKY RETIREMENT SYSTEMS

APPELLEES

** ** * * *

This matter came on for a pre-hearing conference on May 19, 2020, at 10:30 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, Ronnie Gross, was present and was not represented by legal counsel. The Appellee Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and represented by the Hon. William Codell. The Appellee Kentucky Retirement Systems was present and represented by the Hon. Leigh Ann Davis. All parties participated by telephone.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by Appellant, to determine the specific section of KRS 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, to determine if the appeal was filed within the time limitations set forth in KRS 18A.095, and to discuss the option of mediation.

BACKGROUND

1. The Hearing Officer notes the Appellant filed his appeal with the Personnel Board on November 20, 2019. The Appellant clarified that he was a classified employee. He was appealing the possibility of obtaining hazardous duty retirement for the three years that he worked for the Department of Juvenile Justice, from 2014 through 2017. The Appellant was classified as a Maintenance Worker, however, he stated he often performed the work of a Youth Worker. The Appellant served as a Youth Worker from 1999 through 2014. All parties agreed the Appellant would have the opportunity to purchase hazardous duty retirement for this period of time. At the pre-hearing conference, it was determined that the Appellant would probably have to be reclassified to a Youth Worker to cover the period from 2014 through 2017.

2. Following the pre-hearing conference, a Motion to Dismiss schedule was set. The Appellee Department of Juvenile Justice, filed a Motion to Dismiss. The Appellee Kentucky Retirement Systems filed a Motion to be Dismissed as a party. The Appellant did not respond to either Motion.

FINDINGS OF FACT

1. The Appellant, Ronnie Gross, was a Youth Worker for the Department of Juvenile Justice from 1999 through 2014. From 2014 through 2017, he was classified as a Maintenance Worker. He said that, during that time, he performed the work of a Youth Worker. He would like to be reclassified as a Youth Worker so that he would be eligible for hazardous duty retirement for the period of time from 2014 through 2017.

2. The Kentucky Retirement Systems in its Motion to Dismiss, stated that the Personnel Board lacks jurisdiction to hear this appeal against the Kentucky Retirement Systems. This argument was summarized as follows;

The Systems is not a proper party to this action. No authority has been cited in KRS Chapter 18A which would permit this Personnel Board action to be brought against the Systems, when the Systems is not Appellant's employer. The only avenue for a member of the Systems, such as Appellant, to appeal a determination of the Systems is set forth in KRS 61.645(16), which provides for the appeal process when an order of the Systems substantially

impairs the benefits or rights of a member. Kentucky Retirement Systems has exclusive jurisdiction for such appeals. Pursuant to KRS 61.645(16), the affected member may request an administrative hearing to be held in accordance with KRS Chapter 13B. The Board may establish an appeals committee who shall have the authority to act upon the recommendation and report of the hearing officer appointed to the matter. If the member is aggrieved by the Final Order of the Board, he or she may appeal the determination to the Franklin Circuit Court in accordance with KRS Chapter 13B.

3. The process for classifying a position as hazardous duty is set out at KRS 61.592.

4. For a position to be considered as hazardous duty, the employer must request such classification from the Board of Trustees of the System, pursuant to KRS 61.592(2). The Department of Juvenile Justice has not certified any positions as hazardous duty until September 1, 2019. For those positions that are certified as hazardous: Youth Worker I, II, and III, and Youth Worker Supervisor.

5. The Kentucky Retirement Systems does not allow for individual employee to seek hazardous duty coverage based on their job duties. This must be done according to all jobs with the same title.

6. Most importantly, Kentucky Retirement Systems does not permit Youth Worker positions to convert their previous service in those positions to hazardous duty. Thus, even if the Appellant were reclassified to a Youth Worker position for the period 2014 through 2017, he would not be eligible for hazardous duty retirement.

7. If the Appellant were reclassified for that period of time as a Youth Worker, the employee could request the Department of Juvenile Justice to complete the Form 4150 Certification of Employment Hazardous Positions, so that they can get the cost calculations to convert his time to hazardous duty. The Appellant was provided this form regarding his previous service as a Youth Worker from 1999 through 2014 and, as of the date of Kentucky Retirement Systems Motion to Dismiss, he had not completed a copy of Form 4150.

8. The Hearing Officer finds that the dispute as to whether or not the Appellant served as a Youth Worker or a Maintenance Supervisor I from the period 2014 through 2017 is a dispute between the Appellant and the Department of Juvenile Justice, and the Kentucky Retirement Systems should be dismissed as a party.

9. In its Motion to Dismiss, the Department of Juvenile Justice argued that the Appellant has not articulated a penalization and that the appeal is untimely filed.

10. The Department of Juvenile Justice attached to its Motion to Dismiss a Position Description, which the Appellant signed upon taking the Maintenance Supervisor position in 2014. On this Position Description, he acknowledged that he would, on occasion, perform the job duties of a Youth Worker at the Juvenile Detention Center. The Appellant received increased pay for his promotion to Maintenance Supervisor, even though he occasionally performed the work of a Youth Worker. The Appellant left the Department of Juvenile Justice on October 16, 2017, to take a job with the Kentucky State Police. In this appeal, the Appellant is requesting to be retroactively reclassified to the position of Youth Worker from the time he took the promotion to Maintenance Supervisor until the date he left the Department of Juvenile Justice in October 2017.

11. The Department of Juvenile Justice contends that occasionally performing the duties of a Youth Worker while being paid an increased salary for a promotion to Maintenance Supervisor does not constitute a penalization as defined at KRS 18A.005(24).

12. In addition, the Department of Juvenile Justice argues that this appeal is untimely since it was not filed until November 20, 2019 when the Appellant was promoted to Maintenance Superintendent in 2014 and left the Department of Juvenile Justice in October 2017. They argued that, based on KRS 18A.095(29), the Appellant should have no more than a year to file his appeal with the Personnel Board.

CONCLUSIONS OF LAW

1. The Appellant has failed to state a claim against the Kentucky Retirement Systems. The Kentucky Retirement Systems is not the Appellant's employer and has no control whether he is classified as a Youth Worker or a Maintenance Supervisor I.

2. The Personnel Board lacks the authority to designate a position as a hazardous duty position for members of the Kentucky Employment Retirement System pursuant to KRS 61.592.

3. The Appellant has not articulated a penalization. Occasionally performing the job duties of a Youth Worker while being classified as a Maintenance Supervisor does not constitute a penalization as the term is defined at KRS 18A.005(24).

4. The Appellant's appeal is untimely. The Appellant was a Maintenance Supervisor for the Department of Juvenile Justice from 2014 through October 16, 2016. He did not file this appeal until November 20, 2019, which exceeds one year from the date he knew or should have known of his penalization. This appeal is untimely pursuant to KRS 18A.095(29).

5. 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 Appellees' Motion to Dismiss. See KRS 18A.095(18)(a) and KRS 13B.090(2).

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 **RONNIE GROSS VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE AND KENTUCKY RETIREMENT SYSTEMS (APPEAL NO. 2019-260)** 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.]

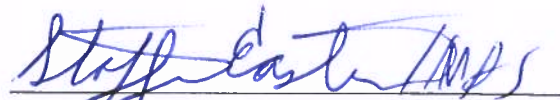
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

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.

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

ISSUED at the direction of Hearing Officer Mark A. Sipek this 20th day of May, 2021.

KENTUCKY PERSONNEL BOARD



**MARK A. SIPEK
EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. William Codell
Hon. Leigh Ann Davis
Ronnie Gross
Hon. Rosemary Holbrook (Personnel Cabinet)