

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-084

JUSTIN HALL

APPELLANT

VS.

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

TRANSPORTATION CABINET

APPELLEE

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

The Board, at its regular April 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated February 20, 2024, 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 17th day of April, 2024.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

Copies hereof this day emailed and mailed to:

Hon. Andrew Downey
Hon. Edwin Logan
Hon. Rosemary Holbrook (Personnel Cabinet)
J. R. Dobner

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This matter came on for a pre-hearing conference on November 1, 2023, at 12:00 p.m. ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Justin Hall, was present by telephone at the office of his legal counsel, the Hon. Andrew Downey. The Agency/Appellee, Transportation Cabinet, was present and represented by the Hon. Edwin Logan, who also appeared by telephone.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by the Appellant, to determine the specific section of KRS Chapter 18A that authorizes this appeal, to determine which version of KRS Chapter 18A applies to this appeal (see PersonnelBoard.ky.gov), to determine the relief sought by the Appellant, to define the issues, to address any other matters relating to this appeal, and to discuss the option of mediation.

This Appeal has now been assigned to Hearing Officer Mark A. Sipek for a ruling on the Appellee's Motion to Dismiss.

BACKGROUND AND FINDINGS OF FACT

1. The Hearing Officer notes this appeal was filed with the Personnel Board on June 22, 2023. On the appeal form and during the pre-hearing conference, the Appellant, a classified employee with status, indicated he was alleging that he was penalized through improper compensation for mandatory on-call duty. The Appellant further explained his claims in the narrative portion of the appeal form wherein he states, in full:

Not appropriately compensated for “on call” duty as contemplated by FLSA Code of Federal Regulations 29 CFR sec. 785.16 – off duty.

2. Following discussion, the Agency argued that the Personnel Board no longer has jurisdiction over these types of appeals due to the amendments to KRS Chapter 18A brought about by 2023 Senate Bill 153. As a result, the Agency requested an opportunity to file a dispositive motion explaining why this appeal should be dismissed as a matter of law. After discussion of the dispositive motion process, a briefing schedule was established.

3. At the pre-hearing conference, counsel for the Appellant argued that his client had suffered a penalization because it was a demotion and a salary adjustment.

4. In its Motion to Dismiss, the Appellee argued that the Appellant has not suffered a demotion, citing the definition of the term in the statute.

5. The Appellee also argued that, under both the new and old version of the statute, the Personnel Board has no jurisdiction over claims for compensation for being “on call.” The Appellee alleged that this claim must be brought under KRS Chapter 357 and jurisdiction lies with the Kentucky Labor Cabinet.

6. The Appellee also argued that the Appeal was untimely.

7. The Appellant responded to the Motion to Dismiss arguing that he suffered a penalization because it was a demotion and salary adjustment. He also stated that the Appellee did not give him notice that he had sixty (60) days to file an appeal. He alleged that the Personnel Board had jurisdiction to determine if he was entitled to be compensated for his time spent while on call.

8. The Appellant filed a grievance with his first line supervisor on March 23, 2023, requesting that he be compensated for mandatory on call work he alleged that he was entitled to be paid pursuant to the Fair Labor Standards Act.

9. The Appellant pursued this matter through the grievance process to Tracy Hyatt, the Appointing Authority designee. The Appellant’s grievance was denied. Hyatt stated that the Appellant was not entitled to compensation because he was completely relieved from duty at the end of the workday and could effectively use his time for his own purposes when he remained on-call. She stated that he was being properly compensated.

10. The Appellant filed this appeal with the Personnel Board on June 22, 2023.

11. Senate Bill 153 went into effect on June 29, 2023.

12. There are no genuine issues of material fact, and this case can be decided as a matter of law based on the Appeal Form, the statements of the parties at the pre-hearing conference, the Appellee's Motion to Dismiss with attachments, and the Appellant's response to the Motion to Dismiss with attachments.

CONCLUSIONS OF LAW

1. Because all the events underlying this Appeal occurred before the effective date of Senate Bill 153, all references to KRS Chapter 18A are to the sections in effect at the time of the events associated with this Appeal.

2. Because the Appellant did not receive notice that he had been penalized and had sixty (60) days to file his appeal pursuant to KRS 18A.095(8)(d), he had one (1) year to file his appeal from the date he knew or should have known he was penalized. KRS 18A.095(29)

3. Because the Appellant filed his appeal within one year of when he learned he would not be compensated for being on-call, his appeal was timely filed with the Personnel Board.

4. Despite having filed his appeal within the time limitations set forth in the statute, the Appellant has not alleged a penalization over which the Personnel Board has jurisdiction.

5. A demotion is defined at KRS 18A.005(11) as follows:

(11) "Demotion" means a change in the rank of an employee from a position in one (1) class to a position in another class having a lower minimum salary range and less discretion or responsibility;

6. The Appellant did not suffer a demotion as there was no change in his rank, class or salary range.

7. Penalization is defined at KRS 18A.005(24) as follows:

(24) "Penalization" means 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;

8. The Appellant has alleged that he has a claim fitting this definition because he is appealing a salary adjustment. The Hearing Officer concludes that not being paid for on call hours is not a salary adjustment as contemplated by the definition of penalization.

9. To the extent that the definition of penalization allows employees to appeal based on "other rights granted to state employees," this does not include rights over which other agencies clearly have jurisdiction. In this case, the Appellant's claims under the Fair Labor Standards Act are governed by the United States Department of Labor. In addition, any claims for compensation for on-call work are governed by state law at KRS Chapter 357 and are under the jurisdiction of the Kentucky Labor Cabinet. For this reason, the Personnel Board lacks jurisdiction to hear this appeal.

10. Because the Personnel Board lacks jurisdiction and is incapable of granting relief, this appeal can be dismissed as a matter of law based on the Appellee's Motion to Dismiss and the Appellant's response. KRS 13B.090(2) and 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 **JUSTIN HALL VS. TRANSPORTATION CABINET (APPEAL NO. 2023-084)** 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)

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).

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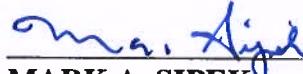
The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov

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.

Any document filed with the Personnel Board shall be served on the opposing party.

ISSUED at the direction of the Hearing Officer this 20th day of February, 2024.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Edwin Logan
Hon. Andrew Downey
J. R. Dobner