COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-119

CASEY HENSON **APPELLANT**

VS.

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CRIMINAL JUSTICE TRAINING **APPELLEE**

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

The Board, at its regular June 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated April 23, 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 24th day of June, 2025.

KENTUCKY PERSONNEL BOARD

GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

CaSey Henson
Hon. Kimberly Green
Hon. Rosemary Holbrook (Personnel Cabinet)
Michelle Ralston

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-119

CASEY HENSON **APPELLANT**

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

JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CRIMINAL JUSTICE TRAINING **APPELLEE**

* * * * * * * * *

This matter last came on for a pre-hearing conference on March 26, 2025, at 11:30 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.

The appellant herein, CaSey Henson (the "Appellant"), was present by telephone and was not represented by legal counsel. The appellee herein, Justice and Public Safety Cabinet, Department of Criminal Justice Training ("Appellee" or "DOCJT"), was present by telephone and was represented by the Hon. Kimberly Green, counsel of record for the Appellee.

The purpose of this pre-hearing conference was to discuss the Personnel Board's jurisdiction and the Appellee's Motion to Dismiss the appeal.

This appeal is based on the Appellant's claim of salary inequity in DOCJT. Specifically, the Appellant claims she did not receive a raise because she was in her probationary period and because she was assigned the job title of Law Enforcement Training Instructor I-Telecommunications, even though employees hired after her who were doing essentially the same job functions did receive a raise. The Appellant was informed by the Appellee that when she finishes her probationary period, she would have a new job title and would receive the raise she is now seeking. The Appellant is not claiming any type of illegal discrimination.

Counsel for the Appellee filed a Motion to Dismiss the appeal on the grounds that the Personnel Board does not have jurisdiction to hear an appeal dealing with salary inequity. The Hearing Officer explained to the Appellant the significance of jurisdiction in determining the Personnel Board's authority to hear appeals and the limits on the Board's jurisdiction to hear

cases involving salary inequity. The Appellant did not file a response to the Motion to Dismiss. After reviewing the Appellee's Motion to Dismiss and hearing the arguments of the parties during the pre-hearing conference, the Hearing Officer has concluded that this appeal should be dismissed on jurisdictional grounds.

FINDINGS OF FACT and PROCEDURAL BACKGROUND

1. The Appellant was hired as a Law Enforcement Training Instructor I-Telecommunications on November 16, 2023. [*See* Appeal Form, attached statement at p. 1; and *see* Motion to Dismiss at p. 1.] The Appellant's position included a twelve (12) month probationary period.

2. In early 2024, the Appellant's position was "absorbed into broader category of Law Enforcement Training Instructor." [*See* Appeal Form statement at p. 1.] In June 2024, non-probationary employees in the Law Enforcement Training Instructor position received raises but the Appellant did not. [*See* Appeal Form, attached statement at p. 1; and *see* Motion to Dismiss at p. 2.] In support of her appeal, the Appellant has stated that:

> "In June 2024, all Law Enforcement Training Instructors received a salary adjustment. However, I noticed in July 2024 that I had not received the adjustment, unlike others in my section. Upon bringing this to the attention of HR at DOCJT, I was informed on August 12, 2024, that I would not receive the salary adjustment until I have completed my probationary period. The rationale given was related to my position title, which is set to change only after my probationary period ends." Appellant further stated that this situation "creates an inequity in compensation for the same work performed by myself and my colleagues."

[*See* Appeal Form, attached statement at p. 1.]

3. The Appellant filed her appeal with the Personnel Board on August 13, 2024. In her appeal, the Appellant argued that she should receive a salary adjustment equivalent to the increase received in June 2024 by non-probationary employees in the same job classification of Law Enforcement Training Instructor. [*See* Appeal Form, attached statement at p. 1.]

4. The Appellant was still a probationary employee when she filed the appeal.

5. By Interim Order dated November 1, 2024, the Hearing Officer set forth a dispositive motion schedule. The schedule required the Appellee to file a dispositive motion, if at all, within sixty (60) days of entry of the Interim Order. The Appellee timely filed its Motion to Dismiss on November 7, 2024, arguing that the Personnel Board does not have jurisdiction to hear this appeal because it is based on a claim of salary inequity. In its motion, the Appellee argued that due to Senate Bill ("SB") 153, passed in the 2023 legislative session and which took effect on June 29, 2023, the Personnel Board no longer has jurisdiction to hear appeals involving salary inequity claims.

6. The Appellant did not file a response to the Appellee's Motion to Dismiss.

CONCLUSIONS OF LAW

1. It is well-established that a motion to dismiss should only be granted if the moving party can show that the party who filed the claim "would not be entitled to relief under any set of facts which could be proven in support of his claim." *Morgan v. Bird*, 289 S.W.3d 222, 226 (Ky. App. 2009). The pleadings filed by the claiming party "should be liberally construed in the light most favorable to the plaintiff, all allegations being taken as true." *Pari-Mutuel Clerks' Union of Kentucky, Local 541, SEIU, AFL-CIO v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977). 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. There is no genuine issue of material fact in this case. The only question before the Personnel Board at this juncture is purely a question of law: whether the Board has jurisdiction to hear an appeal regarding a salary inequity claim. That question must be answered in the negative because the salary adjustment sought by the Appellant is not one of the actions over which the Kentucky General Assembly has given the Board jurisdiction under KRS 18A.095.

3. 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).

4. Under the version of KRS Chapter 18A in effect at the time the Appellant filed her appeal,[1] the Personnel Board only has jurisdiction over the following personnel actions 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

[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.

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).

5. The Appellant has not established that the Appellee has violated KRS 18A.095 regarding her employment. The Appellant has not been subjected to any of the personnel actions specifically listed under KRS 18A.095 for review by the Board; the Appellant has not been dismissed, demoted, suspended without pay, involuntarily transferred, discriminated against (based on any prohibited category) or denied any other rights she is entitled to under KRS 18A.095.

6. The Appellee's action(s) of compensating non-probationary employees at higher rates of pay than the Appellant is a salary dispute and does not constitute an impermissible, adverse personnel action against the Appellant since the Appellant's 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).

7. Senate Bill 153 of the 2023 Kentucky legislative session expressly removed the Personnel Board's authority to hear appeals involving salary adjustments and/or appeals falling under the catch-all category of "other penalizations."

8. 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 Vicki 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 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 actions).

9. 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).

10. In addition, it is clear that, even if the Board had authority to hear this appeal, the Appellee has not violated any statute or regulation involving the Appellant's pay while she was in her probationary period. Mandatory salary adjustments are only required when an employee is not on initial or promotional probation. *See* 101 KAR 2:034, Section 1. There is no dispute that the Appellant was still on initial probation at the time of the appeal filing and thus, was not entitled to the salary adjustment received by non-probationary employees in her job classification.

11. The salary inequity issue alleged by the Appellant does not amount to the type of conduct the Personnel Board can review under KRS 18A.095. Thus, finding no violation of KRS 18A.095, 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 appeal of **CASEY HENSON V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CRIMINAL JUSTICE TRAINING (APPEAL NO. 2024-119), 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.

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 23rd day of April, 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 23rd day of April, 2025:

CaSey Henson, Appellant
Hon. Kimberly Green, Counsel for Appellee