

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-149**

ANGELA HOLBROOK

APPELLANT

VS. 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 February 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated November 27, 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 24th day of February, 2025.

KENTUCKY PERSONNEL BOARD

Gordon A. Rowe, Jr.
GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Angela Holbrook
Hon. Jesse Robbins
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney E. Moore

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This matter is before the Hearing Officer on appellee Justice and Public Safety Cabinet, Department of Corrections' (the "Appellee or "DOC") motion to dismiss.

The appeal last came before the Hearing Officer in a pre-hearing conference on March 22, 2024, which was held 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, Angela Holbrook (the "Appellant"), was present at the pre-hearing conference and was not represented by legal counsel. She was accompanied by her husband, Mark Holbrook. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present in-person and was represented by the Hon. Jesse Robbins.

During the pre-hearing conference, the parties discussed the Appellee's motion to dismiss, and the Hearing Officer gave the Appellant until March 29, 2024 to file a More Definite Statement on a claim of age discrimination and a claim of retaliation the Appellant raised for the first time in the pre-hearing conference. The Appellant never filed a More Definite Statement on her unsupported claims of age discrimination and retaliation. Additionally, the Appellant never filed a response to the Appellee's motion to dismiss.

The deadlines having passed for the Appellant to respond to the motion to dismiss or to file a More Definite Statement, this matter is now before the Hearing Officer for a ruling on the Appellee's motion to dismiss.

PROCEDURAL BACKGROUND

1. The Appellant filed her appeal with the Personnel Board on November 9, 2023. On her Appeal Form she stated as follows: "Adjustment to Salaries in Same Position. Reason Department of Corrections state these increases is due to Same work county which is not accurate." (sic)

2. The Appellant is a Fiscal Manager at the Blackburn Correctional Complex. She has alleged in this appeal that a new Fiscal Manager was hired at the Luther Luckett Correctional Complex at midpoint. After this promotion, six (6) other Fiscal Manager employee salaries were increased to the exact same salary. The Appellant attached to her Appeal Form the Personnel Action Notifications (“PANs”) showing the raises given to these Fiscal Managers. The Appellant’s salary was not raised. She filed an internal grievance with the Appellee regarding the raises.

3. On September 26, 2023, Blackburn Correctional Complex Warden Caudill denied the Appellant’s grievance. In doing so, he cited Section 1 of 101 KAR 2:034 (the “Compensation Regulation). Caudill stated that Holbrook was “the incumbent employee in this scenario” and that her salary wasn’t reviewed since she fell within a different work county. Holbrook worked in Lexington, Fayette County, and all the other fiscal managers receiving salary increases worked at other institutions which are located outside Fayette County.

4. After the initial pre-hearing conference on December 18, 2023, the Appellee filed a motion to dismiss.

5. During a subsequent pre-hearing conference on March 22, 2024, the Appellant stated for the first time that she believed she was denied a salary increase due to age discrimination and/or retaliation. She provided no facts to substantiate her age discrimination claim. The only alleged fact she mentioned in support of her retaliation claim was her belief that she was retaliated against for asking questions of the Department of Corrections Finance Director, Mike McKinney.

6. As a result of the age discrimination and retaliation claims made by Appellant on March 22, 2024, the Hearing Officer gave the Appellant until March 29, 2024 to file a More Definite Statement relating to her new claims. The Appellant never filed a More Definite Statement nor did she make any other attempt to provide any support for the vague, unsupported claims of age discrimination and retaliation stated during the March 22, 2024 pre-hearing conference.

FINDINGS OF FACT

1. The Appellant, Angela Holbrook (Holbrook), works in the business office of the Blackburn Correctional Complex (“BCC”), which is located in Fayette County, Kentucky. Her job title is Fiscal Manager.

2. Holbrook filed a grievance on September 26, 2023, requesting that her salary be adjusted based on salary increases received by other Fiscal Managers in the Department of Corrections (“DOC”) who worked in different DOC institutions, all of which were located in different counties than Holbrook’s work county.

3. On September 26, 2023, Warden Caudill denied Holbrook’s grievance. Referring to Section 1 of 101 KAR 2:034, Caudill wrote that Holbrook was “the incumbent employee in this scenario” and that her salary was not required to be increased because she worked in a different county than the other Fiscal Managers.

4. Holbrook worked in Fayette County while all the other Fiscal Managers who had their pay increased worked at institutions outside Fayette County.

5. Relying on the Compensation Regulation, Deputy Commissioner Randy White agreed with Warden Caudill and found that Holbrook's salary was correct. Commissioner Cookie Crews also reviewed Holbrook's grievance and decided that, according to the Compensation Regulation, no adjustment in Holbrook's salary was required.

6. Holbrook filed an appeal with the Personnel Board on November 9, 2023. In her Appeal Form, Holbrook stated that she was a classified employee seeking to have her salary adjusted because she holds the same position as other DOC employees whose salaries were increased.

7. Holbrook checked the box for KRS 18A.095 as the specific statute, regulation, or policy allegedly violated by her employer. On her appeal form, Holbrook did not state any specific actions the Appellee took against her, other than failing to adjust her salary when other fiscal managers' salaries were increased.

8. To support her claim, Holbrook stated that the following six (6) Fiscal Managers, whose work locations were in other counties, had their salaries increased:

- Tabitha Nichter: who worked at Luther Luckett Correctional Complex (LLCC) in Oldham County. Her pay changed on June 16, 2023 due to a Position Number Change/Promotion to Midpoint.
- Ronald Miller: who worked at Roederer Correctional Complex in Oldham County. His pay changed on July 16, 2023.
- Lisa Craigmyle: who worked at Kentucky State Reformatory in Oldham County. Her pay changed on July 16, 2023.
- Erika Watt: who worked in Oldham County. Her pay changed on July 16, 2023.
- Lisa Lewis: who worked at Kentucky Correctional Institute for Women in Shelby County. Her pay changed on July 16, 2023.
- Alan Dockery: who worked in Franklin County. His pay changed on July 16, 2023.

9. As seen in the PANs attached to Holbrook's Appeal Form, Nichter was promoted from RCC Purchasing Officer II to LLCC Fiscal Manager on June 16, 2023. Nichter received a legislative salary adjustment on July 1, 2023. All the other personnel actions for the fiscal managers that weren't legislative adjustments or annual increments occurred on or after July 1, 2023.

10. As shown hereinabove, all of the Fiscal Managers who received pay increases after Nichter was promoted were employed in counties that were outside Fayette County, where the Appellant worked.

11. The Appellant has not identified any individual in her same job classification who works in the same work county as the Appellant (Fayette County) and who has education and experience similar to the Appellant's who received a raise after Nichter was promoted or who has higher pay than the Appellant.

12. All the events associated with this appeal occurred after June 29, 2023, except for the promotion of Tabitha Nichter.

13. The Appellant failed to provide a More Definite Statement regarding her complaints of age discrimination and retaliation, despite being given the opportunity to do so. The Appellant has otherwise failed to produce any facts or point out any facts in the record which would support her claims of age discrimination or retaliation.

14. There are no genuine issues of material fact in this case and it can be decided as a matter of law based on the Appeal Form, statements of the parties at the pre-hearing conference, and the Appellee's motion to dismiss.

CONCLUSIONS OF LAW

1. The Hearing Officer finds that the Appellee's motion to dismiss should be sustained because the Appellant has failed to state a claim upon which relief can be granted.

2. As correctly stated by the Appellee, a motion to dismiss on grounds of failure to state a claim should only be granted when it appears the complaining party would not be entitled to relief under any set of facts that could prove her 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).

3. The Appellant's claim that her salary should have been raised when Tabitha Nichter was promoted to Fiscal Manager (the same position the Appellant holds) or when the other Fiscal Managers who worked in other counties received raises, has no legal basis. Although it is somewhat unclear as to whether Ms. Nichter's promotion is a new appointment, even construing the facts in the light most favorable to the Appellant's position, i.e., Ms. Nichter promotion constituted a new appointment, the Appellee had discretion in regard to raising the Appellant's salary.

4. 101 KAR 2:034, which is often referred to as the Compensation Regulation, did not require the Appellee to raise the Appellant's salary after promoting/appointing Ms. Nichter to the Appellant's job classification, or even after raising the pay of the other Fiscal Managers, who all worked in different counties than the Appellant.

5. The Compensation Regulation did not require the Appellee to raise the Appellant's salary to the same level as promotional employee Tabitha Nichter. 101 KAR 2:034, Section 1, requires a state agency to raise the salary of incumbent employees **only** when there is a new appointment in an agency to the same job classification and the incumbent employee meets certain specific criteria, including that: a) the incumbent employee is in the same department or office; b) the incumbent employee works in the same county as the new appointee; and c) the incumbent employee has a similar combination of education and experience.

6. 101 KAR 2:034, Section 1, describes the salary requirements for new appointments and instructs the agency as to when the agency is **required** to raise the salary of incumbent employees in the same job classification as a new appointment:

- (1) An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.
- (2) The appointing authority shall adjust to that salary an employee who is not on initial or promotional probation and is earning less than the new appointee's salary, if the appointing authority determines that the incumbent employee:
 - (a) is in the same job classification;
 - (b) is in the same department or office;
 - (c) is in the same work county; and
 - (d) has a similar combination of education and experience relating to the relevant job class specification.

7. If all the conditions of 101 KAR 2:034, Section 1, are not met, a state agency has discretion as to whether it will grant raises to employees in the same job classification but it is not required to do so.

8. Although the Appellant and all the other Fiscal Managers named in her appeal have the same job classification, work in the same department, and [presumably] have similar education and experience, the Appellant is clearly not working in the same county as any of the other Fiscal Managers, including promotional employee/new appointment Tabitha Nichter and therefore, she does not meet all of the criteria under the Compensation Regulation that would have required the Appellee to raise her salary to midpoint.

9. Holbrook has failed to produce any specific facts to support the vague and unsupported verbal claims of age discrimination and retaliation she raised during her pre-hearing conference.

10. The Appellant has not alleged any type of personnel action or penalization on the part of the Appellee that would provide the Personnel Board with jurisdiction. KRS 18A.095, as amended after SB 153 in 2023, essentially limited the Personnel Board's jurisdiction to hearing appeals involving dismissals, demotions, suspensions without pay, involuntary transfers and unlawful discrimination.

None of those actions were taken against the Appellant in this case. The Appellant's pay has not been reduced nor has she been dismissed, demoted or involuntarily transferred. Moreover, even if the Appellant's claims might have arisen before SB 153 limited the Personnel Board's jurisdiction, the Appellee's action of raising the salaries of other employees did not constitute a penalization against the Appellant since her salary was not reduced. *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).

11. For all the foregoing reasons, the Appellant has failed to state a claim upon which relief can be granted and the Appellee is entitled to judgment as a matter of law pursuant to KRS 12.02, KRS 18A.095 and 101 KAR 2:034.

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 **ANGELA HOLBROOK VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2023-149)** 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.

ISSUED at the direction of Hearing Officer this 27th day of November, 2024.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR.

EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Jesse Robbins
Angela Holbrook
Rosemary Holbrook (Personnel Cabinet)