

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2021-131**

CARMEN IGNAT

APPELLANT

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

KENTUCKY INFRASTRUCTURE AUTHORITY

APPELLEE

*** **

The Board, at its regular December 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated October 31, 2025, Appellant's exceptions, Appellee's response to exceptions, 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 19th day of December, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Hon. Edward Dove, counsel for Appellant
Hon. Matt Stephens, counsel for Appellee
Hon. Rosemary Holbrook (Personnel Cabinet)

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2021-131**

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

KENTUCKY INFRASTRUCTURE AUTHORITY

APPELLEE

** ** ** ** **

This matter comes before Hearing Officer Brenda D. Perry upon the Motion of the Appellee to Dismiss for failure to state a claim upon which relief may be granted.

FACTS AND PROCEDURAL HISTORY

1. The Appellant Carmen Ignat filed her appeal on October 28, 2021. On the Appeal Form, it denoted that she was represented by counsel and that Appellant was a classified employee. In the section of the appeal form that outlined the basis for the appeal, a box was checked for “employee evaluation.” On the second page of the appeal form, in the section that denotes “*Classified, eligible or applicant, prepare this section. The following is a short, plain and concise statement of the facts which relate to the action I am appealing.*” The Appellant provided: “See Attachment.”

2. The final section of the appeal form stated, “*Date of receipt of notice of Appealed action. Attach a copy of any written notice which you received relating to this appeal.*” That portion of the appeal form was left blank.

3. The Attachment to the appeal form was a one and a half (1 ½) page narrative that begins, “I have been denied a proper evaluation for the year 2020 as well as the process for the year 2021.” The letter outlines the outcome of a prior Personnel Board Appeal and that the Appellant had been issued a demotion letter in February. The narrative then continues:

“Currently, there have been some discussions about how to complete my evaluation, but I do not know how I can be evaluated on duties when the person who supervised me the longest after September of 2020 is not working for the agency any longer.” And “The agency has failed to comply with the requirements of the personnel regulation for evaluations and my rights as a merit system employee have been violated. ...I had received my

evaluation for the interim of 2020 as well as a follow up when I transferred from Revenue to the Infrastructure program but, as of this date, I have never had a proper evaluation for my interim of 2021 nor have I had my duties accurately reflected in my evaluation.”

See Ignat Appeal Form.

4. Since the filing of the Appeal Form, the Appellant filed a motion for a pre-hearing conference, pre-hearing conferences were held, steps were taken by both parties to work toward completion of the evaluations and both parties filed a September 2023 request that the Personnel Board order the Personnel Cabinet to complete a desk audit of the Appellant’s position. The Personnel Cabinet then filed a Request for Extension of time to complete the desk audit. An Order was entered granting the Personnel Cabinet’s request for extension, and the Personnel Cabinet filed a Notice of Compliance that the Desk Audit was completed in February of 2024.

5. Another pre-hearing conference was held in March 2024, and Hearing Officer Mark A. Sipek (who has since retired) ordered the parties to submit a status report by April 24, 2024. On April 24, 2024, counsel for the Appellee submitted a Joint Status Report, which provided:

1. The parties have been corresponding by electronic mail and telephone since the discussion among themselves in lieu of the pre-hearing conference on March 7, 2024.
2. The parties have discussed a new loan program resulting from legislation passed during the 2024 regular session of the General Assembly of the Commonwealth of Kentucky.
3. The Appellant and her supervisor have a meeting scheduled Thursday, April 25, 2024 to discuss the Appellant’s roles with the new program. It is the goal of the Parties to resolve the issues of this appeal with the implementation of the new program.
4. There are no currently pending motions. The parties agree to another status report due no later than May 16, 2024.

5. On June 20, 2024, the Appellant’s counsel made a Motion for a Status Conference. It provided:

“Comes the Appellant, by counsel, and refers to the final order of this Board of October 19, 2022, which ordered Appellant to be reinstated her former position of Financial Investment and Forecasting Program Specialist

position, grade 16, or position of like pay and status. Appellant received back payment and was reinstated into her position about January 2023. Thereafter, Appellant was provided with position descriptions of her duties, which were not those of her formal position or position of like status. (A footnote provided “There has been an ongoing attempt to correct Appellant’s duties so her evaluations for 2023 and 2024 would be based upon grade 16 duties. However, Appellee has shown no interest in giving Ms. Ignat her previous duties even though other employees have been given them.”)”)”

“When the parties were unable to agree to the position description and duties, it was agreed that a desk audit will be conducted by the Personnel Cabinet. The Board ordered same on September 21, 2023 and the Personnel Cabinet conducted the audit. A notice of compliance was filed by the Personnel Cabinet on February 12, 2024 with a copy of the desk audit, which concluded that Appellant’s position should be classified as a grade 14 Financial Investment & Forecasting Technician II since she was not performing grade 16 duties. The audit supported Appellant’s contention that she was not returned to her previous position as ordered by the Board, nor given duties of a grade 16 position as ordered by the Board.”

“Accordingly, Appellee has failed to comply with the final order of the Personnel Board of October 19, 2022 and the Board should order Appellee to comply with the Personnel Cabinet’s Audit which shows that ‘she does not provide input to forecasting groups, predicting revenue and resources from data received and analyzed.’”

“Alternatively, schedule this matter for a status conference.”

6. In response to the Motion, on July 2, 2024, the Appellee provided that the Appellant is referring to the Final Orders of the Board in separate cases, specifically *Ignat v. Kentucky Infrastructure Authority*, Appeal No. 2021-29 and Appeal No. 2021-36, which required the Appellee to reinstate the Appellant to her previous position or to a position of like pay and status with back pay, which they did. However, the Appellee points out that the instant case is an evaluation appeal; that the Appellant did not request reconsideration or follow the appeal process under 101 KAR 2:190, Section 7, which provides, “[t]he employee who has complied with this administrative regulation may appeal a final evaluation which has an overall rating in either of the two (2) lowest overall ratings to the Personnel Board.” The response continues, “In the present case, although Appellant filed an appeal to challenge her evaluation, she did not request reconsideration in accordance with 101 KAR 2:190 and, ‘[c]onsequently, failure to utilize the reconsideration process takes away the right to appeal an evaluation to the Personnel Board.”

7. Therefore, after three (3) years of proceedings, the Appellee put forth the position that the Board should dismiss the Appellant's appeal.

8. The Board issued an Interim Order on August 20, 2024, ordering the parties to brief on the issue of the dismissal of the claim. The Appellee filed its Memorandum In Support, followed by a Response by the Appellant and Appellee's Reply to Appellant's Response. In the Memorandum in Support, the Appellee expounded on its position, arguing that the Personnel Board lacks jurisdiction over the instant case because the Appellant failed to request reconsideration of any evaluation. In support, the Appellee points to existing Personnel Board decisions, which detail that not every grievance experienced by a merit employee is an actionable penalization

9. In her Response, the Appellant's counsel recites the case history and its current status:

"The history of Appeal No. 2021-131 is that Appellant was not given evaluations after she was promoted to her position with the Appellee in September 2020. After the various personnel actions taken by the Appellee, Appellant still had not had proper evaluations and, by agreement in accordance with this appeal, the evaluations were completed for 2020, 2021 and 2022. The 2020 evaluation was satisfactory. The 2021 evaluation was distinguished, and the 2022 evaluation was exceptional. It is noted that the 2021 and 2022 evaluations were based on duties she was performing after she had been improperly removed from her grade 16 position, which was the subject matter the successful appeals in 2021-029 and 2021-036."

"It must be noted in this record that the March 24, 2021 letter, which the Personnel Board ruled upon, had indicated that Ms. Ignat had been involuntarily transferred to a Finance Investment and Forecasting Program Technician III, pay grade 15. However, the duties that she was given, as the Personal Cabinet indicated in its audit, were at grade 14 duties."

"Appellant will now respond to the arguments set forth in the memorandum of the Appellee."

"First and foremost, it is clear that, while the Appellee contends that it is complied with the Personnel Board's Order of October 19, 2022, it is quite apparent from the audit that was conducted pursuant to this appeal that Appellant was performing duties of a grade 14 classified position; in fact, one grade lower than what Appellee attempted to involuntary transfer her to. These duties are the same duties that Appellee had attempted to utilize

in Ms. Ignat's 2023 evaluation and the 2024 evaluation. Therefore, it is clear that this appeal is still before the Board based on the fact that there was an attempt to do Appellant's evaluations by agreement and because of the failure to comply with the evaluation law and regulation. She was entitled to have these evaluations included in accordance with the law; i.e. Chapter 18A. Thus, the Board does have jurisdiction since the appeal started under the old definition of penalization and was basically negotiated and agreed to by the parties to continue until the Appellee completed all the evaluations which it had failed to do as evidenced by the fact that Appellant has continued to be performing duties of the grade 14 position and not a grade 16 position."

10. While lengthy, the Hearing Officer believes the procedural history to date is important to the pending motion to dismiss for failure to state a claim upon which relief may be granted because very little of it relates to the actual basis upon which the Appellant filed her appeal - the evaluation and even in pleadings, for example, in the June 2024 Motion for the Status Conference, the Appellant's counsel sought an outcome that had absolutely nothing to do with the Appellant's evaluation, providing in relevant part:

"Accordingly, Appellee has failed to comply with the final order of the Personnel Board of October 19, 2022 and the Board should order Appellee to comply with the Personal Cabinet's Audit which shows that 'she does not provide input to forecasting groups, predicting revenue and resources from data received and analyzed.' Alternatively, schedule this matter for a status conference."

See June 20, 2024 Motion for Status Conference.

11. It is important to note that, through the above request for relief, the Appellant is seeking the Board enforce an October 19, 2022 Order that was not in existence (and would not be for nearly a year) at the time the instant evaluation appeal case was filed on October 28, 2021.

12. Jurisdiction is an issue that is determinative at the onset. The makeup of the Personnel Board's Appeal Form is designed with its jurisdictional limits in mind. It provides a series of check boxes to force the Appellant and/or the Appellant's counsel to outline whether or not the Personnel Board has jurisdiction. In this case, the Appellant and/or her counsel checked the box indicating that the Appellant is a classified employee, and that she was appealing an Employee Evaluation.

13. Jurisdiction for the Personnel Board is conferred by the General Assembly, in KRS 18A.095.

14. The version of KRS 18A.095 in effect at the time the appeal was filed in October of 2021 provides:

- (1) A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.
- (8) A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:
 - (a) the demotion, suspension, or other penalization.
 - (b) the effective date of the demotion, suspension, or other penalization.
 - (c) The specific reason for the action including:
 - 1. The statutory or regulatory violation;
 - 2. The specific action or activity on which the demotion, suspension, or other penalization is based;
 - 3. The date, time and place of the action or activity; and
 - 4. The name of the parties involved; and
 - (d) that he or she has the right to appeal to the personnel board within sixty (60) days, excluding the date that he or she received notification of the personnel action.
- (15) An evaluation may be appealed to the board if an employee has complied with the review procedure established in KRS 18A.110(7)(j)

15. The version of KRS 18A.110 in effect at the time the appeal was filed provides, as it pertains to the secretary of the Personnel Cabinet:

- (1) The secretary shall promulgate comprehensive administrative regulations for the classified service governing:
 - (i) Employee evaluations.
- (7) The administrative regulations shall provide:
 - (j) For a uniform system of annual employee evaluation for classified employees, with status, that shall be considered in

determining eligibility for discretionary salary advancements, promotions and disciplinary actions. The administrative regulations shall:

- (4) Permit a classified employee, with status, who receives either of the two (2) lowest possible evaluation ratings to appeal to the Personnel Board after exhausting the internal dispute resolution procedure. The final evaluation shall not include supervisor comments on ratings other than the lowest two (2) ratings.

16. Thus, even though the General Assembly granted the Personnel Board jurisdiction over matters involving “other penalizations,” it limited the jurisdiction to penalizations relative to evaluations in which the Appellee received one of the two (2) lowest ratings.

17. In this case, the Appellant has appealed on the basis of not receiving what she and/or her counsel deemed a “proper evaluation.” The version of 101 KAR 2:190, the regulation establishing the evaluation process in effect at the time the Appellant filed the appeal on October 28, 2021 provided:

Section 1. General Provisions.

- (1) The provisions of this administrative regulation shall be effective beginning with 2020 performance year activities.
- (2) The annual performance period shall be one (1) calendar year beginning on January 1.
- (3) Except as provided in subsection (5)(d) of this section, performance evaluations shall be completed no later than January 31 after the end of the annual performance period.
- (4) All agencies shall use the Annual Employee Performance Evaluation procedure established by the secretary.

Section 7. Reconsideration and Appeal Process.

- (1) Within five (5) working days of the annual performance evaluation meeting, an employee may request reconsideration of the annual performance evaluation by the evaluator.

- (2) If the employee refuses to sign the final evaluation, the evaluation shall not be eligible for reconsideration.
- (3) Within five (5) working days of the receipt of the request for reconsideration, the initial reconsideration shall be conducted by the evaluator.
- (4) The next line supervisor shall review the request for reconsideration within ten (10) working days of receipt of the request for reconsideration.
- (5) The next line supervisor shall inform both the employee and evaluator of the decision.
- (6) If neither the evaluator nor the next line supervisor responds to the request for reconsideration in the designated time period, the employee may submit a written request to the appointing authority for response to the request for reconsideration and compliance with this section.
- (7) Within sixty (60) calendar days after an employee has received the reconsideration decision, the employee who has complied with this administrative regulation may appeal a final evaluation which has an overall rating in either of the two (2) lowest overall ratings to the Personnel Board.

18. It is important to the Hearing Officer's consideration that the Appeal Form filed by the Appellant relative to her evaluation contained **none** of the requirements that grant the Board jurisdiction over the appeal. First, there was no evaluation attached. Second, there was no indication that the Appellant received either of the two (2) lowest ratings. Third, there was no indication that the Appellant availed herself of the required reconsideration process as outlined in 101 KAR 2:190. Fourth, with the Appellant filing her appeal on October 28, 2021, there was nothing to indicate that she filed her appeal within sixty (60) days of the January 31 deadline for the Appellee to complete the Appellant's evaluation.

19. In response to the Appellee's Motion to Dismiss, the Appellant, through counsel, admits that this is indeed the case, outlining that evaluations were completed, even if after the filing of the instant appeal, and that the ratings received are not one of the two (2) lowest ratings. The Appellant provides:

"The history of Appeal No. 2021-131 is that the Appellant was not given evaluations after she was promoted to her position with the Appellee in

September 2020. After the various personnel actions taken by the Appellee, Appellant still had not had proper evaluations and, by agreement in accordance with this appeal, the evaluations were completed for 2020, 2021 and 2022. The 2020 evaluation was satisfactory. The 2021 evaluation was distinguished, and the 2022 evaluation was exceptional.”

See Appellant’s Response to Motion to Dismiss.

20. Likewise, regarding the Appellant’s 2023 and 2024 evaluations, the Appellant must complete the steps required under 101 KAR 2:190 before filing an appeal with the Board.

21. With that being the case, it is clear from the Appeal Form that the Board lacks jurisdiction to entertain this appeal and the Appellant’s Appeal should be dismissed for failure to state a claim upon which relief may be granted.

22. Therefore, under the standards for a Motion to Dismiss for failure to state a claim, the Appellee prevails, and the Motion to Dismiss is **SUSTAINED**. This ruling is supported by case law which provides, “A decision to grant a motion to dismiss under CR 12.02 for failure to state a claim only if it appears that the pleading party could not prove any set of facts in support of his claim that would entitle him to relief.” *Wood v. Wyeth-Ayerst Laboratories, Div. of Am. Home Products*, 82 S.W.3d 849, 851 (Ky. 2002), citing *Pari-Mutuel Clerks’ Union of Kentucky, Local 541, SEIU, AFL-CIO v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977). “In reaching its decision, the trial court is not required to make any factual determination, but the question is purely a matter of law.” *D.F. Bailey, Inc. v. GRW Engineers, Inc.*, 350 S.W.3d 818, 820 (Ky. App. 2011) (citing *James v. Wilson*, 95 S.W.3d 875, 883-84 (Ky. App. 2002)).

CONCLUSIONS OF LAW

1. For the above reasons stated herein, the Hearing Officer concludes that the Appellee’s Motion to Dismiss the Appellant’s appeal of her evaluation should be sustained.

RECOMMENDED ORDER

The Hearing Officer hereby recommends that the appeal of **CARMEN IGNAT V. KENTUCKY INFRASTRUCTURE AUTHORITY** (Appeal No. 2021-131) 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 **Hearing Officer Brenda D. Perry** this 31st day of October, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR.
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon Edward E. Dove, Counsel for Appellant
Hon Matt Stephens, Counsel for Appellee