

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2016-287**

**JOHN JUMP**

**APPELLANT**

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

**ENERGY AND ENVIRONMENT CABINET**

**APPELLEE**

**AND**

**PERSONNEL CABINET**

**INTERVENOR**

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The Board, at its regular May 2018 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated April 11, 2018, 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 14<sup>th</sup> day of May, 2018.

**KENTUCKY PERSONNEL BOARD**

  
**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. Erritt Griggs

Hon. Rosemary Holbrook

~~Mr. [Redacted]~~  
Mr. David Dooley

John Jump

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2016-287**

**JOHN JUMP**

**APPELLANT**

**V.**

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

**ENERGY AND ENVIRONMENT CABINET**

**APPELLEE**

**AND**

**PERSONNEL CABINET**

**INTERVENOR**

\*\* \*\* \* \* \*

This matter last came on for a pre-hearing conference on April 26, 2017, at 10:00 a.m. EST, at 28 Fountain Place, 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, John Jump, was present and was not represented by legal counsel. The Agency/Appellee, Energy and Environment Cabinet, was present and represented by the Hon. Leesa Moorman. The Intervenor, Personnel Cabinet, was present and represented by the Hon. Rosemary Holbrook.

This matter is now before Hearing Officer Stafford Easterling for a ruling on the Agency' and Intervenor's Joint Motion for Summary Judgment and Joint Motion to Dismiss for lack of jurisdiction, filed with the Personnel Board on June 26, 2017. At issue are the Appellant's claims that he has been penalized as a result of the Agency changing the grade classification of certain job classifications in the Environmental series of jobs. The Appellant explains his claims in the narrative portion of his appeal form wherein he states, in full:

On September 15, 2016, an email addressed to EEC Staff was sent by Bruce Scott, Deputy Secretary, announcing the change in grade level for Environmental Control Supervisor from grade 15 to grade 16. The qualifications for the position for Environmental Engineer Supervisor which I hold which is a grade 16 is considerably more rigorous [sic] than that of Environmental Control Supervisor.

Following discussion with the parties, the Appellant clarified that his claim was that he was entitled to an increase in grade level and/or pay because of the additional qualifications required to be a grade 16 Environmental Engineering Supervisor versus a newly grade 16 Environmental Control Supervisor. He argues that because of the considerably more rigorous qualification requirement, he should be afforded additional compensation. As relief, the

Appellant requests to have his classification increased by a minimum of one (1) grade and to receive a pay increase.

After hearing the clarification of the Appellant's claims, the Agency and Intervenor requested the opportunity to submit dispositive motions. The Agency and Intervenor then submitted a Joint Motion to Dismiss (and a Joint Motion for Summary Judgment inapplicable to this appeal) on June 26, 2017, arguing, amongst other grounds, that the Appellant has failed to articulate a penalization as defined by KRS 18A. The Appellant failed to file a response to the Joint Motion to Dismiss. The Agency and Intervenor then filed a Joint Reply to Appellants Robertson' and Jackson's Response to Motion for Summary Judgment and Motion to Dismiss, highlighting that the Appellant did not respond, that the discrimination claim does not relate to a protected class and that the Appellant's claim can essentially be reduced to "it's not fair." The Agency and Intervenor then go on to argue that the Personnel Board does not have jurisdiction over every matter an employee may deem "unfair," and that this claim should be dismissed for lack of jurisdiction.

This matter now stands submitted to the Hearing Officer for a ruling on the Agency's Motion to Dismiss and the ultimate question of whether the Personnel Board has jurisdiction over this appeal.

### **BACKGROUND**

1. During the pendency of this appeal, the Appellant, John Jump, was a classified employee with status with the Energy and Environment Cabinet, serving as an Environmental Engineer Supervisor.

2. The Appellant claims that, on or about September 15, 2016, he became aware of the salary of a change in grade level for two job classifications – changing the position of Environmental Control Supervisor (ECS) from grade 15 to grade 16 and changing the position of Environmental Control Manager (ECM) from grade 16 to grade 17.

3. Given the considerably more rigorous qualifications required to meet the minimum qualifications established for the Environmental Engineer Supervisor position, the Appellant now alleges a penalization in the Agency's elevation of the ECS and ECM job classifications. As relief, the Appellant seeks the Agency elevate his position a minimum of one grade to reflect his additional qualifications and for him to receive a pay raise accordingly.

4. As noted above, the Agency filed a Motion to Dismiss with the Personnel Board on June 26, 2017, arguing the Appellant's claim should be dismissed because the Appellant cannot identify a statute or regulation that was violated by the Agency and/or the Intervenor and because the Appellant cannot identify a statute or regulation that entitles him to the salary pay adjustment that the Appellant seeks. They also assert that the Appellant's claim is moot as the Appellant's current salary (\$5,110.86) is higher than the entry level salary for the next highest pay grade (\$3,908.94). Therefore, the Agency and Intervenor contend that the Personnel Board lacks jurisdiction over this appeal.

5. KRS 18A.005(24) provides:

'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.

6. 101 KAR 2:034, Section 1 (2) provides:

The appointing authority shall adjust to that salary an employee who 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 work county; and
- (c) Has a similar combination of education and experience relating to the relevant job class specification.

### **FINDINGS OF FACT**

1. During the pendency of the instant appeal, the Appellant, John Jump, was a classified employee with status within the Energy and Environment Cabinet. The Appellant is a pay grade 16 Environmental Engineer Supervisor with a monthly salary of approximately \$5,110.86.

2. It is undisputed that on or about September 16, 2016, the Agency granted a grade level increase for two job classifications – increasing the position of Environmental Control Supervisor (ECS) from grade 15 to grade 16 and increasing the position of Environmental Control Manager (ECM) from grade 16 to grade 17.

3. It is also undisputed that the Agency implemented this job classification change with the approval of the Intervenor, the Personnel Cabinet.

4. The Appellant alleges that by raising the pay grade of positions with less stringent qualifications, he has been penalized.

5. The Appellant does not allege that he was subjected to a decrease in pay, that the job classification of his position was decreased, that he was moved to another job classification, or that he had less discretion or responsibility in his Environmental Engineer position.

6. Lastly, although the Appellant requests a grade level increase and does not directly address salary adjustment, underlying this appeal is a clear request for a salary increase. Therefore, out of an abundance of caution, the Hearing Officer will address any potential claims of entitlement to a salary adjustment. To the extent that this appeal is the Appellant's attempt to gain the benefit of the salary increase afforded to the Environmental Control positions, the Hearing Officer finds the Appellant's right to a salary adjustment, if any such right exists, would be established by the provisions of 101 KAR 2:034.

### CONCLUSIONS OF LAW

1. First, to the extent the Appellant seeks a direct salary adjustment, identical to the Conclusions of Law reached previously by the Personnel Board in Kathryn Parrish v. Office of the Attorney General, 2012 WL 3059632, the Hearing Officer finds "that a salary comparison, such as that being sought by Appellant in this appeal, is strictly governed by the administrative regulation found at 101 KAR 2:034, Section 1." Pursuant to that regulation, "in order to qualify for salary comparisons, the employees must fall squarely within the confines of that regulation." Here, pursuant to 101 KAR 2:034, the Appellant would only be entitled to a salary adjustment if: 1) he made a lesser salary than the Environmental Control Supervisor and the Environmental Control Manager, evidence of which is not in the record; 2) he is in the same job classification, which he is not; 3) he was in the same work county, evidence of which is not in the record; and 4) he has a similar combination of education and experience relating to the relevant job class specification. Viewing the record in the light most favorable to the Appellant, the Hearing Officer deems the Appellant to have a similar or superior combination of education and experience; nonetheless, there is still no "relevant job class specification" that the Appellant and the Environmental Control Supervisor or Manager share. Moreover, the Hearing Officer finds that the Agency's actions do not operate to trigger the provisions of 101 KAR 2:034. Thus, 101 KAR 2:034 does not offer the Appellant justification for any salary adjustment.

2. Further, pursuant to the holding in Cabinet for Human Resources v. Kentucky State Personnel Board and Bargo, et. al., 846 S.W.2d 711 (1992), salary adjustments in a tangential class are not penalizations unless pay discrepancies within the same job classification result in employees with less education and experience receiving higher pay than those with higher qualifications. Because those conditions have not been met, the Hearing Officer finds that Bargo does not provide justification for the salary adjustment the Appellant requests.

3. Finally, the Hearing Officer would note that, across the merit system, each job classification, employment position, and individual salary is analyzed to determine whether they are in compliance with the applicable provisions of statute and regulation, including KRS Chapter 18A and the 101 KAR series, even though it sometimes results in salaries that cause confusion and frustration by employees. This approach, which was mandated by the General Assembly, can sometimes produce results that appear unfair when comparing salaries across job

classifications, across agencies, across county lines, and across individual employee's competence. Nonetheless, no matter how reasonable, such frustration does not give rise to an actionable penalization. For the reasons set out above, the Appellant has failed to articulate an actionable penalization.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **JOHN JUMP V. ENERGY AND ENVIRONMENT CABINET AND PERSONNEL CABINET (APPEAL NO. 2016-287)** 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 Rapiet v. Philpot, 130 S.W.3d 560 (Ky. 2004).

**Any document filed with the Personnel Board shall 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.

**SO ORDERED** at the direction of **Hearing Officer Stafford Easterling** this 11<sup>th</sup> day of April, 2018.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPER**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Erritt Griggs  
Hon. Rosemary Holbrook  
John Jump