

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-099**

PHIL JUSTICE

APPELLANT

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

TRANSPORTATION CABINET

APPELLEE

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

The Board, at its regular May 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated April 14, 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 15th day of May, 2025.

KENTUCKY PERSONNEL BOARD

Gordon A. Rowe, Jr.

Copies hereof this day emailed and mailed to:

Phil Justice
Hon. William Fogle
Hon. Rosemary Holbrook (Personnel Cabinet)
J. R. Dobner

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-099

PHIL JUSTICE

APPELLANT

v.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDED ORDER

TRANSPORTATION CABINET

APPELLEE

* * * * *

This matter last came on for a pre-hearing conference on January 8, 2025, at 10:30 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, Phil Justice (the "Appellant"), was present for the conference by telephone. The Appellant was not represented by legal counsel. The appellee herein, the Transportation Cabinet (the "Appellee"), was represented at the conference by the Hon. William Fogle, who appeared in person.

The Hearing Officer opened the pre-hearing conference by introducing the respective parties and setting forth the issues to be discussed at the conference. The purposes of the pre-hearing conference were to: a) discuss the jurisdiction of the Personnel Board; b) discuss the dispositive motion on jurisdiction filed by Appellee; and c) discuss next steps in the appeal.

This appeal is a request for salary equity. The Appellant works on the Canada Pike D-12 highway crew and has approximately thirteen (13) years of work experience with the Appellee but has alleged that he is paid less than coworkers with the same job title and duties and who work in the same county but have less service time than the Appellant. The Appellant checked the category "other" in regard to the basis for his claim.

The Appellee has filed a Motion to Dismiss the appeal on the grounds that the Personnel Board does not have jurisdiction to hear an appeal based on a salary inequity claim since, after passage of Senate Bill 153 ("SB 153"), KRS 18A.095 no longer authorizes the Board to hear cases based on alleged salary inequities. Counsel for the Appellee raised the jurisdictional issue in the pre-hearing conference and briefly reiterated its arguments in the motion to dismiss. The Appellant did not file a response to the Motion to Dismiss. In the pre-hearing conference, the Appellant pointed out the unfairness in the unequal rates of pay but did not address the jurisdictional argument made by the Appellee. After some discussion, the Hearing Officer stated that he would review the Appellee's motion and the record in the appeal and then issue a recommended order on the Motion to Dismiss.

After reviewing the submissions of the parties and listening to arguments related thereto, and for the reasons stated herein, the Hearing Officer recommends the Personnel Board dismiss this appeal. As explained more fully below, after the passage of SB 153, which took effect on June 29, 2023, the Personnel Board lacks jurisdiction to hear appeals based on claims of salary inequity. Accordingly, the Appellee's motion is well-taken and this appeal should be dismissed on jurisdictional grounds.

FINDINGS OF FACT and PROCEDURAL BACKGROUND

1. The Appellant is a classified employee with status. The Appellant has been employed by the Appellee as a Highway Technician for approximately thirteen (13) years, is part of the Canada D-12 highway crew, and works in Pike County. [See Appeal Form.]

2. The Appellant filed his appeal with the Personnel Board on June 28, 2024. In his appeal, the Appellant argued that he should receive a salary increase because he works with several employees in his work crew who work in the same county (Pike County) and who have the same job classification and duties but have several years less experience than him, but are receiving a higher rate of pay than the Appellant. [See Appeal Form.]

3. Prior to filing his appeal, the Appellant filed an internal grievance requesting that his salary be raised to the level of other employees in his work crew who have less experience than the Appellant but have a higher salary rate than the Appellant. The grievance was denied.

4. On July 15, 2024, prior to the initial pre-hearing conference, the Appellee filed a Motion to Dismiss this appeal (the "Motion to Dismiss") on the grounds that the Personnel Board does not have jurisdiction to hear the appeal. In its motion, the Appellee argued that due to SB 153, which was passed in the 2023 legislative session and took effect on June 29, 2023, the Personnel Board no longer has jurisdiction to hear appeals involving salary inequity claims or to order salary adjustments due to such alleged inequities.

5. 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 facts asserted by the

Appellant are not disputed at all. The only question before the Personnel Board at this juncture is purely a question of law: whether the undisputed facts regarding the Appellant's lower salary relative to his coworkers constitutes the type of personnel action over which the Board has jurisdiction. That question must be answered in the negative.

3. The Appellant has not established that the Appellee has taken any actions in regard to his employment that would be under the scope of the Board's jurisdiction under KRS 18A.095. The Appellant has not been subjected to any of the personnel actions specifically listed under KRS 18A.095 for review by the Board, which include: a) dismissal, b) demotion, c) suspension, d) involuntary transfer, and e) protected class discrimination.

4. Under the version of KRS Chapter 18A in effect at the time the Appellant filed his appeal,¹ the Personnel Board only has jurisdiction over the following types of action 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 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 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).

6. The Appellant has not been dismissed, demoted, suspended without pay, involuntarily transferred, or denied any other rights he is entitled to under KRS 18A.095.

7. Senate Bill 153 of the 2023 Kentucky legislative session expressly removed the Personnel Board's authority to hear appeals involving "salary adjustments" and 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 adjustment to some employees that 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 though resign and reinstate personnel actions).

¹ KRS Chapter 18A was amended by the Kentucky Legislature, effective June 29, 2023.

9. After passage of SB 153, it is clear the Personnel Board cannot hear appeals involving salary inequity 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. Finding no violation of KRS 18A.095, the Personnel Board does not have jurisdiction to grant the relief sought by the Appellant.

11. The salary compression/salary inequity issue alleged by the Appellant does not amount to the type of unlawful conduct the Personnel Board can review under KRS 18A.095. Therefore, the Board is without jurisdiction and the Appellee is entitled to judgment as a matter of law, pursuant to KRS 18A.095.

12. The Hearing Officer notes that, although the Board is without jurisdiction to consider this appeal, all of the factors under 101 KAR 2:034, Section 1, appear to have been met. Further, it would appear that the Personnel Cabinet may have authority to address the Appellant's claims under 101 KAR 2:034, Section 1, and the Hearing Officer recommends that the Personnel Cabinet analyze the Appellant's claim to have his salary adjusted to midpoint. As the Board has frequently noted in cases involving salary disputes 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, even though such analysis may sometimes result in salaries that cause confusion and frustration by employees. The analysis in this case should be conducted by the Personnel Cabinet.

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 **PHIL JUSTICE V. TRANSPORTATION CABINET (APPEAL NO. 2024-099)** 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).

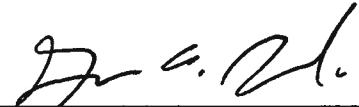
The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov.

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.

SO ORDERED at the direction of the Hearing Officer this 14th 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 14th day of April, 2025:

Phil Justice, Appellant
Hon. William H. Fogle, Counsel for Appellee
Hon. Rosemary Holbrook, Personnel Cabinet