

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-051

CARL KRATZER

APPELLANT

v.

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

FINANCE AND ADMINISTRATION CABINET

APPELLEE

*** **

This matter came before the Hearing Officer on a ruling for a Motion to Dismiss filed by the Appellee. The Appellant filed a response to said motion, and the Appellee has filed a reply to the Motion to Dismiss.

BACKGROUND AND FINDINGS OF FACT

1. The Appellant has filed an appeal with the Personnel Board claiming his current position, Engineering Technical Associate, should have been reclassified to that of a Statewide Project Manager. As his requested relief, the Appellant states that he performs identical duties to Statewide Project Managers employed by the Cabinet. The Appellant, therefore, wishes to receive compensation like that received by Statewide Project Managers.

2. A Desk Audit was performed by the Personnel Cabinet on January 21, 2020. In this audit, the Personnel Cabinet agreed to revise the Appellant's position description, but maintains that Appellant will remain in his current Engineering Technical Associate classification.

3. The core of the Appellant's Motion to Dismiss is that he disagrees with the findings of the Personnel Cabinet's Desk Audit and felt it should have resulted in a reclassification of his position. Unlike appeals where a failure to comply with promotional statutes and regulations were involved, in this case no promotional position existed. In essence, the Appellant is asking: (1) the Board to order the creation of a promotional position and, (2) order that he fill the position. The Hearing Officer finds that the Board is without authority to grant either request.

4. Under any argument, the Appellant is simply asking the Board to order an Agency to increase his salary. KRS 18A.005(24) lists several specific actions that are categorized as penalizations. As held in *Perkins v. Cabinet for Health and Family Services*, No. 2005-CA-002287-MR, 2007 WL 1893374, "A review of the specified disciplinary actions clearly shows the legislative intent was to include only those actions which had a direct and immediate impact on the affected employee, such as loss of rank, responsibility, pay, or discretion." Therefore, any reclassification that does not result in a loss of responsibility, rank, pay, or discretion is not included in the definition of penalization in KRS 18A.005(24). The Personnel Board has

previously considered the arguments that Appellant now propounds and has found it is beyond the Board's authority to address. The Appellant argues that the creation of Statewide Project Manager and Statewide Project Branch Manager positions entitled him to appeal the non-creation of a higher paying position for him. The Board has previously considered this argument in *Phelps, et al. vs. Environmental and Public Protection Cabinet*, 2005 WL 6154648 (Ky PB 2005-087). In *Phelps*, the focus was on the reclassification of the Environmental and Public Protection Cabinet (EPPC) Engineering Series positions. A similar reclassification was not performed regarding EPPC Geological Series positions. As in this case, the appealing Geologists in *Phelps* argued that their positions should receive a reclassification, as the positions "have virtually identical educational, work experience, and professional licensure requirements, as well as similar (and in some branches, identical) job duties." The Appellants in *Phelps* argued for expanding the definition of "penalization" to include failure to re-classify positions.

5. In *Phelps*, the Board discounted the argument that non-reclassifications are appealable to the Board.

6. The Appellant argues that he works on projects with Statewide Project Managers and, by working on a team with a higher-rank employee, he should be entitled to identical pay across a team. The Board discounted this argument in the case of *Dunn, et al. v Cabinet for Human Resources*, 1995 WL 17873452 (KY PB 93-295).

CONCLUSIONS OF LAW

1. The Hearing Officer concludes as a matter of law that under the circumstances of this case, the Board is without jurisdiction to order an increase in the Appellant's pay.

2. The Hearing Officer concludes as a matter of law that the Appellant has failed to cite a penalization under KRS 18A.005(4).

RECOMMENDED ORDER

The Hearing Officer hereby recommends to the Personnel Board that the Appeal of **CARL B. KRATZER V. FINANCE AND ADMINISTRATION CABINET (APPEAL NO. 2019-051)** 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 *Rapier 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.

ISSUED at the direction of **Hearing Officer R. Hanson Williams** this 7 day of July 2021.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Cary B. Bishop
Hon. Paul Fauri
Ms. Rosemary Holbrook (Personnel Cabinet)