

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD

RICKY LEMASTER (APPEAL NO. 2023-147) AND
MICHAEL SEAGRAVES (APPEAL NO. 2023-148)

APPELLANTS

VS.

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

TRANSPORTATION CABINET

APPELLEE

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

The Board, at its regular March 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated February 12, 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 Appellants' appeals are 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 4th day of March, 2024.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

Copies hereof this day emailed and mailed to:

Ricky LeMaster
Michael Seagraves
Hon. William Fogle
Hon. Rosemary Holbrook (Personnel Cabinet)
J. R. Dobner

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD

RICKY LEMASTER (APPEAL NO. 2023-147)
MICHAEL SEAGRAVES (APPEAL NO. 2023-148)

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

TRANSPORTATION CABINET **APPELLEE**

*** * * * ***

These matters came on for a pre-hearing conference before the Kentucky Personnel Board on December 19, 2023, at 11:00 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellants, Ricky LeMaster and Michael Seagraves, were present in-person and were not represented by legal counsel. The Appellee, Transportation Cabinet, was present in-person and was represented by the Hon. William Fogel.

The purposes of the pre-hearing conference were to determine which version of KRS Chapter 18A applies to these appeals, to determine if the Personnel Board has jurisdiction over these appeals, to define the issues, to address any other matters relating to these appeals, and to discuss the option of mediation.

BACKGROUND AND FINDINGS OF FACT

1. At the outset of the pre-hearing conference, all parties agreed that these appeals could be consolidated. The Appellants filed their appeals with the Personnel Board on October 31, 2023, alleging that they had not received a pay raise as promised. Both Appellants were employed as Highway Equipment Operator IVs. They took classes and were promised that they would be moved into the Highway Technician II classification with a ten percent (10%) raise. They completed the classes in approximately 2018. Effective July 1, 2020, it appears the Appellants were reclassified to Highway Technician IIs and received five percent (5%) raises. They are aware of other individuals, including Brian Lafferty (Lafferty), who received a ten percent (10%) raise. The

**Ricky LeMasters and Michael Seagraves
Findings of Fact, Conclusions of Law,
and Recommended Order
Page 2**

Appellants are requesting a salary adjustment for the additional five percent (5%) retroactive to July 1, 2020.

2. The Appellee filed a motion to dismiss arguing that salary adjustments are no longer within the jurisdiction of the Personnel Board as a result of Senate Bill 153, which took effect on June 29, 2023. In addition, the Appellee argued that pursuant to Personnel Cabinet Regulation 101 KAR 2:034, the Appellants would not be entitled to raises based on a salary comparison because they are both employed in Johnson County, while Lafferty is employed in Floyd County. The regulation requires that the employees compare themselves to someone in the same work county. Lastly, the Appellee argued that any claim by the Appellants that they did not receive the additional five percent (5%) raise, would be barred by the one (1) year statute of limitations. See Com., Dept. of Revenue, Finance and Administration Cabinet v. McDonald, 304 S.W.3d 62. (Ky. App., 2009).

3. The Appellants filed a response to the Appellee's motion to dismiss. They stated that this dispute has been ongoing since July 1, 2020, well before the enactment of Senate Bill 153. They stated they believed that pursuant to 101 KAR 2:034, they are entitled to a raise because all three (3) employees (the two Appellants and Lafferty) are classified as Highway Technician IIs and perform the same job duties in District 12.

4. In their response, the Appellants stated as follows:

Any attempt to separate the individuals is a distinction without a difference. Floyd County is simply one holler over from Johnson and all three are a part of one unit, Division 12. If Brian Lafferty was part of Division 6, then regulation 101 KAR 2:034 would be applicable, but not when all three employees have same classification and work in Division 12.

5. In response to the one-year statute of limitations argument, the Appellants contend that they had been pursuing their claims since July 1, 2020. They stated they followed the proper channels and were promised action. They referred to these as "empty promises."

6. The Appellee's reply stated that the Personnel Board lacks jurisdiction over this matter and that the appeals were untimely filed. Finally, they argue that because Lafferty is employed in Floyd County, the Appellants' claims would fail on the merits.

7. The Appellants have been employed with the Transportation Cabinet for over twenty (20) years. For over a decade, they were classified as Highway Equipment Operator IVs. In 2018, they started attending classes to become Highway Technician IIs

**Ricky LeMasters and Michael Seagraves
Findings of Fact, Conclusions of Law,
and Recommended Order
Page 3**

and were promised a ten percent (10%) raise. After completing the classes and becoming Highway Technician IIs, they only received a five percent (5%) raise. Lafferty received a ten percent (10%) raise.

8. The Appellants have been contesting this matter since July 1, 2020.
9. The Appellants filed their appeals with the Personnel Board on October 31, 2023.
10. The Appellants are employed in Johnson County and Lafferty is employed in Floyd County.
11. There are no genuine issues of material fact and these appeals can be decided as a matter of law based on the Appeal Forms, the statements of the parties at the pre-hearing conference, the Appellee's motion to dismiss, the Appellants' response, and the Appellee's reply.

CONCLUSIONS OF LAW

1. 101 KAR 2:034, Section 1, reads as follows:

Section 1. New Appointments.

- (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.

Ricky LeMasters and Michael Seagraves
Findings of Fact, Conclusions of Law,
and Recommended Order
Page 4

(3) If sufficient funds are available, the appointing authority may identify each incumbent employee affected by subsection (2) of this section whose salary is less than five (5) percent above the appointment salary assigned to the new employee. The appointing authority may adjust all affected incumbent employees' salaries to five (5) percent above the new appointee's salary.

2. The Appellants admit that they are requesting a raise received by an employee who is in a different work county, thus, they have not met the requirements of the regulation and are not entitled to a raise.

3. In addition, the Appellants failed to allege that Lafferty received his raise when he was appointed as a Highway Technician II.

4. The Appellants also failed to allege that they had a similar combination of education and experience as to Lafferty.

5. For these reasons, the Appellants have not alleged all of the elements necessary for a salary increase pursuant to 101 KAR 2:034, Section 1.

6. The Appellants also filed their appeals with the Personnel Board more than one (1) year after they contested not receiving the same raise as Lafferty. Their appeals are untimely pursuant to KRS 18A.095(29).

7. These appeals can be decided as a matter of law because the Personnel Board cannot grant any relief to the Appellants. KRS 13B.090(2) and KRS 18A.095(18)(a).

8. Because all the events underlying these Appeals occurred before the effective date of Senate Bill 153, all references to KRS Chapter 18A are to the sections in effect at the time of the events associated with these Appeals.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeals of RICKY LAMASTER (APPEAL NO. 2023-147) AND MICHAEL SEAGRAVES (APPEAL NO. 2023-148) VS. TRANSPORTATION CABINET 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).

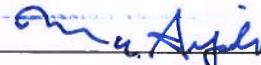
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

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.

[Hearing Officer Note: Any document filed with the Personnel Board shall also be served on the opposing party.]

SO ORDERED at the direction of the Hearing Officer this 12 day of February, 2024.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Ricky LeMaster
Michael Seagraves
Hon. William Fogel
Hon. Rosemary Holbrook (Personnel Cabinet)