

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-209**

LINDA LITTLE

APPELLANT

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

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF JUVENILE JUSTICE**

APPELLEE

***** ****

The Board, at its regular March 2023 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 3, 2023, 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 16th day of March, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

Copies hereof this day sent to:

Linda Little
Hon. William Codell
Hon. Rosemary Holbrook (Personnel Cabinet)
Cynthia Watson

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APPELLEE

** ** * * *

This matter last came on for a pre-hearing conference on April 12, 2021, at 11:00 a.m. ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Linda Little, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and represented by the Hon. William Codell, who also appeared by telephone.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by the Appellant, the specific section of KRS Chapter 18A that authorizes this appeal, to determine the relief sought by the Appellant, to define the issues, to address any other matters relating to this appeal, to see about joining additional parties, and to discuss the option of mediation.

This matter is now before Hearing Officer Stafford Easterling for a ruling on the Agency's "Motion to Dismiss and Motion for Summary Judgment," filed with the Personnel Board on August 6, 2021. Pursuant to the agreed-upon briefing schedule, the Appellant was given an opportunity to file a response to the Agency's Motion, but has failed to do so. This matter now stands submitted to the Hearing Officer for a ruling on the Agency's dispositive motion.

BACKGROUND/FINDINGS OF FACT

The Hearing Officer makes the following findings of fact based on the appeal form and attachments, the Agency's "Motion to Dismiss and Motion for Summary Judgment" and attachments, the statements made by the Appellant during the prior pre-hearing conference, and the evidence of record.

1. When she submitted her appeal, the Appellant, Linda Little, was employed by the Justice and Public Safety Cabinet, Department of Juvenile Justice, as a Youth Worker II at the Breathitt Regional Juvenile Detention Center in Breathitt County. The Appellant submitted an appeal form in 2020 seeking review of the Agency's setting of her salary after the closure of the Cadet Leadership and Education Program ("CLEP").

As agreed to by the parties, the Agency's CLEP program in Breathitt County was closed in 2018 causing the transfer of CLEP staff to other DJJ facilities in the area. One of those transferred CLEP staff members, Ryan Bush, was employed as a Social Service Clinician I, which is a Grade 15 position. Upon CLEP's closure, Bush was transferred to the Breathitt County Day Treatment Center and reclassified to a Youth Worker II position, which is a Grade 10 position. Pursuant to 101 KAR 2:034, Bush was allowed to retain his Grade 15 salary in his new Grade 10 position causing the frustrations and claims of penalization underlying this appeal.

At the core of the Appellant's Personnel Board appeal is her belief that she was penalized through the Agency not adjusting her salary when Bush was allowed to reclass into the Grade 10 position. As a result of being allowed to retain his Grade 15 salary, Bush received a higher salary than all of the Youth Worker IIs in Breathitt County, including the Appellant. As a result of Bush's reclassification, the Agency determined that the provisions of 101 KAR 2:034 triggered, given that all positions and actions were in Breathitt County, and adjusted the salary of certain Youth Worker IIs as a result. The Agency engaged in a review of Breathitt County's Youth Worker IIs to determine which employee(s) had a similar combination of education and experience as Bush and to raise to Bush's salary those employees who were similarly situated to Bush. The documentation submitted by the parties demonstrates significant differences between the Appellant and Bush, including the fact the Bush has a college degree while the Appellant does not. Given the evidence of record, the Agency persuasively argues that the Appellant and Bush are not similarly situated, given Bush's college degree and Little's lack therefore of.

2. As stated previously, the Agency submitted a Motion to Dismiss and Motion for Summary Judgment arguing that the Personnel Board should dismiss the Appellant's appeal. In its Motion, the Agency sets out a brief salary history of Bush, the employee with which the Appellant compares herself, and the salary history of the Appellant and then explained how all salaries were set in compliance with the applicable statutes and regulations, including 101 KAR 2:034. As such, the Agency maintains that the Personnel Board has no jurisdiction to hear this appeal as the "Appellants have failed to articulate a penalization as defined by KRS § 18A.005(24)."

3. The Appellant was given an opportunity to explain how Bush being allowed to keep his Grade 15 salary upon reclassifying to a Grade 10 position in accordance with the applicable statutes and regulations penalized her, to establish that her salaries were not set in accordance with the applicable statutes and regulations, including 101 KAR 2:034, and/or to advance any argument that the Personnel Board would have jurisdiction over her claims, but she did not submit any further explanation.

4. The Hearing Officer would also note that the Bush was not a “new appointee” as the term is used in the 101 KAR series and, therefore, 101 KAR 2:034 would not mandate an adjustment of the Appellant’s salary. Nonetheless, even accepting *arguendo* that 101 KAR 2:034 would apply to a reclassification and even applying the higher requirements of that regulation here, given the requirements of 101 KAR 2:034, the Hearing Officer finds that, given that she did work in the same job classification as Bush, the Appellant could have initially established the applicability of 101 KAR 2:034, Section 1(2). However, also pursuant to that regulation, the Hearing Officer finds that the Appellant would have failed to establish that she possessed “a similar combination of education and experience relating to the relevant job class specification” as Bush, because Bush had a college degree while the Appellant does not.

5. The Hearing Officer finds that the Agency correctly applied the relevant statutes and regulations in setting both the Appellant’s salary and Bush’ salary.

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.

7. 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.

CONCLUSIONS OF LAW

1. Because the Appellant cannot establish that the Agency misapplied the provisions of 101 KAR 2:034, Section 1, to her detriment, the Appellant has failed to articulate a penalization as defined by KRS 18A.005(24). This is because the Appellant’s claims do not implicate any right afforded to merit employees by KRS Chapter 18A. The Appellant was not penalized in the Agency correctly applying the relevant statutes and regulations in setting their employees’ salaries.

Therefore, pursuant to KRS 18A.095(18)(a), the Personnel Board lacks jurisdiction to consider this appeal as the Board is unable to grant relief.

2. 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 or seemingly unfair, 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 **LINDA LITTLE (APPEAL NO. 2020-209) V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE** 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).

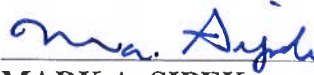
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

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.

Any document filed with the Personnel Board shall be served on the opposing party.

SO ORDERED at the direction of **Hearing Officer Stafford Easterling** this 3rd day of February, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Linda Little
Hon. William Codell
Hon. Rosemary Holbrook (Personnel Cabinet)