

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-124

LOGAN MERCER

APPELLANT

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 January 25, 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 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 4th day of March, 2024.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

Copies hereof this day emailed and mailed to:

Logan Mercer
Hon. Edwin Logan
Hon. Rosemary Holbrook (Personnel Cabinet)
J. R. Dobner

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-124

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APPELLANT

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

TRANSPORTATION CABINET

APPELLEE

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

This matter came on for a pre-hearing conference on September 15, 2023, at 10:00 a.m., ET, at 1025 Capital Center Drive, Suite 105, 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, Logan Mercer, was present and was not represented by legal counsel. The Appellee, Transportation Cabinet, was present and was represented by the Hon. Edwin Logan. The parties appeared by telephone.

The purposes of the pre-hearing conference were to determine the issues associated with the appeal and to determine the next steps.

BACKGROUND AND FINDINGS OF FACT

1. The Appellant filed his appeal on September 1, 2023, alleging “lack of pay uniformity in my job classification.” His appeal was based on KRS 18A.095, 18A.110, and 101 KAR 2:034. On his appeal form he stated as follows:

I am choosing to appeal the decisions of the first, second, third & final supervisor reviews. The majority of them refer to my lack of receiving equal pay with people hired after me as a “timing issue.” I don’t accept this statement; please refer to 101 KAR 2:034 attached, exhibit A, specifically Sec 1(2) a, b, c, d. One point made I do agree with is being underpaid can result in poor moral, especially when new hires are paid more than an employee with longevity processing similar or more combination of experience relating to the relevant job class specification. (sic)

2. After the pre-hearing conference, the Appellee filed a Motion to Dismiss stating in part as follows:

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Logan Mercer filed this appeal for an increase in pay citing KRS 18A.095; 101 KAR 2:034; and KRS 18A.110 as the basis for appeal which was filed on September 1, 2023. KRS 18A.095, which is in effect at this time, does not provide for a right to appeal for the Appellant. The Appellant was not dismissed, demoted, suspended with pay, or involuntarily transferred and there exists no cause of action for this appeal. The Appellant has likewise provided no allegation or example of a resolution of conflicting provisions of law under KRS 18A.110 or any factors setting forth discrimination. The Appellant further cites 101 KAR 2:034 but matters of reclassification for reallocation are no longer appealable under KRS 18A.095(10)(b). The Appellant has failed to articulate a justiciable issue over which the Kentucky Personnel Board has jurisdiction. The Personnel Board has no authority to provide the relief which the Appellant is seeking.

3. Although given an opportunity to respond to the Appellee's Motion to Dismiss, the Appellant failed to do so.

4. The Appellant referenced a coworker who makes more than he does and cited 101 KAR 2:034. He alleged he should be paid the same as his coworker. The Appellant states his coworker was hired four (4) years ago. The Appellant started two (2) years earlier.

5. The Appellant has failed to allege any facts that would demonstrate the Personnel Board has jurisdiction or could grant relief. The Appellant did not allege sufficient facts on his Appeal Form or during his two (2) pre-hearing conferences. The Appellant also had the opportunity to request discovery and to respond to the Appellee's Motion to Dismiss.

- a. The Appellant did not allege the date his coworker received a raise which is the basis for the appeal. He did not allege the coworker's raise was before June 29, 2023.
- b. The Appellant did not allege his coworker was "appointed" when he received his raise.
- c. The Appellant did not allege his coworker was in the same job classification.
- d. The Appellant did not allege he was assigned the same work county as his coworker.
- e. The Appellant did not allege a similar combination of education and experience as his coworker.

6. There are no material facts in dispute and this appeal can be decided as a matter of law based on the Appeal Form, the statements of the parties at the pre-hearing conference, the Appellee's Motion to Dismiss, and the lack of a response from the Appellant.

CONCLUSIONS OF LAW

1. The Appellant has failed to provide sufficient facts that would allow the Personnel Board to grant any relief.

2. By not providing the date of his coworker's raise, it is unclear if this appeal is governed by KRS Chapter 18A before the changes of Senate Bill 153.

3. The Appeal was filed on September 1, 2023. Based on this date, the Board does not have jurisdiction over "penalizations" or "salary adjustments."

4. Even if the Appellant's appeal is governed by the "old" KRS Chapter 18A, he has not stated an appeal for which the Personnel Board can grant relief. He has not alleged any facts that would demonstrate he was penalized by the Appellee by not granting him a raise under 101 KAR 2:034.

5. 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.

6. The Appellant has not alleged that he was requesting a salary increase as a result of an appointment to his same job classification, in his same work county, or involving an employee with a similar level of education and experience.

7. This Appeal can be decided as a matter of law because the Personnel Board cannot grant any relief. KRS 13B.090(2) and KRS 18A.095(16)(a).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **LOGAN MERCER VS. TRANSPORTATION CABINET (APPEAL NO. 2023-124)** 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 25 day of January, 2024.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Edwin Logan
Logan Mercer
Hon. Rosemary Holbrook (Personnel Cabinet)