

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2022-028

KELLI MORROW

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**

and

PERSONNEL CABINET

APPELLEES

*** **

The Board, at its regular February 2023 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 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 14th day of February, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

Copies hereof this day sent to:

Kelli Morrow

Hon. Jamhal Woolridge

Hon. Catherine Stevens

Hon. Rosemary Holbrook (Personnel Cabinet)

Cynthia Watson

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This matter came on for a pre-hearing conference on July 11, 2022, at 10:00 a.m. at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Kelli Morrow, was present and was not represented by legal counsel. The Appellee Justice and Public Safety Cabinet, Department of Juvenile Justice was present and represented by the Hon. Jamhal Wooldridge. The Appellee Personnel Cabinet was present and represented by the Hon. Catherine Stevens.

The purposes of the pre-hearing conference were to discuss the status of the appeal, to discuss whether or not the parties need discovery, to discuss the possibility of mediation, and to schedule and evidentiary hearing, if appropriate.

FINDINGS OF FACT

1. The Appellant filed Appeal No. 2022-028 with the Personnel Board on March 9, 2022, stating she was penalized when the Social Service Clinician II job classification was raised to a Grade 16 and the classifications for the Certified Psychologist series (Crtfd Psygst/Psych Asc/Licd Psych Pra I and II, as identified by Personnel Action Notification forms) were not similarly modified. The Appellant noted that the Social Service Clinician IIs received a ten percent (10%) increase in salary as a result of their grade change and also received an increment of an additional two thousand four hundred dollars (\$2,400). Again, the employees in the Appellant's classification series, Certified Psychologists, did not receive this benefit.

2. The Personnel Cabinet filed a Motion for Summary Judgment. In the introduction of the motion, Counsel for the Personnel Cabinet stated as follows:

Appellant is employed by Appellee, Department for Juvenile Justice ("DJJ"), as a Certified Psychologist II, salary grade 16. In her appeal, she claims to be entitled to a salary grade increase because the Social Service Clinician II ("SSCII") job classification received an increase from Grade 15 to Grade 16 in December 2021. Additionally, Appellant claims she is entitled to the same \$2,400.00 increment that the General Assembly granted to SSCII's effective on May 1, 2022 as the result of the passage of HB 1, the "2022 Budget Bill".

The Personnel Board lacks jurisdiction to consider the salary issues raised by the Appellant as they do not present an actionable penalization. There is no statutory provision within KRS Chapter 18A or a related administrative regulation that would entitle Appellant to the salary grade increase she seeks. Additionally, the \$2,400.00 increment enacted in the Budget Bill for certain specific job classifications, but not including Certified Psychs, is outside the jurisdiction of the Board. Accordingly, this appeal must be dismissed as a matter of law.

3. The Personnel Cabinet also pointed out as follows:

Appellant asserts that, since Certified Psychs had traditionally been one pay grade ahead of SSCII's, she should also receive a one salary grade increase (to grade 17), with a 10% salary increase, plus an additional \$2,400.00 increment to match. Certified Psych IIs and SSCII's are not in the same job series or profession. Certified Psychs are in the 4400-Psychology job series and SSCII's are in the 6200-Human Services job series.

Effective December 16, 2021, the SSCII job classification received a one salary grade increase from Grade 15 to Grade 16. As explained in a statement from the Office of the Governor on December 8, 2021, a crisis in staffing, retention, and recruitment with certain job classifications in the social worker field necessitated the salary grade change and ten percent (10%) salary adjustment. The job classifications to receive the increase were listed in the statement. SSCII's were listed. Certified Psych IIs were not listed.

The \$2,400.00 salary increment received by SSCII's was provided for in the 2022 Budget Bill passed by the General Assembly. In the Budget

Bill (HB I), the General Assembly provided that SSCIs and several other specified job classifications in the social worker field would receive this increment, effective May 1, 2022:

(2) Notwithstanding KRS 18A.355, relating to anniversary date, and notwithstanding KRS 156.808(6)(e) and 163.032(1), an increment of \$2,400 is provided, effective May 1, 2022, followed by an eight percent salary increase effective July 1, 2022, on the base salary or wages of each of the following classifications:

- a) Case Management Specialist I, II, and III;
- b) Family Services Office Supervisor;
- c) Family Support Specialist I, II, and III;
- d) Field Services Supervisor;
- e) Public Assistance Program Specialist;
- f) Service Region Administrator;
- g) Service Region Administrator Associate;
- h) Service Region Clinical Associate;
- i) Social Services Aide I and II;
- j) Social Services Clinician I and II;
- k) Social Services Specialist; and
- l) Social Services Worker I and II.

It is clear in HB I that the Certified Psych II job classification, like over 1,000 other job classifications across the merit system, was not designated by the General Assembly to receive the \$2,400.00 increment.

4. The Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, filed a Motion to Dismiss and a Motion for Summary Judgment arguing that the Appellant had failed to articulate a penalization as defined by KRS 18A.005(24).

5. The Appellant filed a lengthy response to the Appellees' motions. The Appellant pointed out that the Certified Psychologist is used interchangeably with the Social Service Clinician II Series in the Department of Juvenile Justice. She also added, the Certified Psychologist requires a master's degree with licensure by the Kentucky Board of Psychological Examiners whereas the Social Service Clinician II classification requires no licensure and allows for experience to substitute for education. The Appellant also pointed out that the Department of Juvenile Justice took personnel action using resign/reinstate to provide a ten percent (10%) increase to the position of Juvenile Services District Supervisor without taking similar personnel action with respect to Certified Psychologists. The Appellant specifically complained about salary discrepancies and salary compression.

6. In her response, the Appellant stated:

I continue to propose the same solutions I previously proposed as outlined below:

- The job classification of Crtfd Psygst/Psych Asc/Lied Psych Pra II should be reclassified to a pay grade 17 with a 10% salary increase, which would be comparable to what was awarded to the Social Service Clinician II job classification: Or
- The job classification of Crtfd Psygst/Psych Asc/Lied Psych Pra II should be awarded a 10% salary increase consistent with what was provided to the Social Service Clinician II.

My hope is that the Personnel Board will review this information in totality since I have not been awarded an opportunity for mediation to provide my arguments in support of my grievance and appeal to date. I hope for a positive resolution to this issue. And if it is not found my favor, I hope the Personnel Board reviews the hiring practices of DJJ and becomes involved with DJJ in establishing better guidelines for how job classifications are used and rectifies the issue of multiple job classifications being used to hire for the same position.

7. The Department of Juvenile Justice filed a reply to the Appellant's response arguing that the perceived lack of fairness between the salaries for Certified Psychologist Series versus salaries for the Social Service Clinician Series does not automatically constitute a penalization.

8. There are no issues of material fact 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 conferences, the dispositive motions, the Appellant's Response, the Appellees' Joint Reply, and all attachments.

CONCLUSIONS OF LAW

1. The Appellant has made two (2) claims, neither of which constitute a penalization pursuant to KRS 18A.005(24).

2. The Appellant alleges that she is entitled to have her salary grade increased because salary grades were increased by HB 1 for certain specifically enumerated Social Service Clinician positions and that salaries for the Appellant's Certified Psychologist series should have been similarly increased. She further argues that, pursuant to KRS 18A.110(7)(b), it is within the

discretion of the Personnel Cabinet, after consultation with the appropriate Agency appointing authorities, the State Budget Director, and following due consideration of the Commonwealth's financial resources, to come up with an appropriate pay plan for employees in the classified service.

3. The Hearing Officer notes, given the specific facts of this case, that even if the Appellant's grade were to be changed as requested, she would not necessarily receive a pay increase as it is completely within the appointing authority's discretion whether to grant five percent (5%) or ten percent (10%) salary adjustment or no salary adjustment after a pay grade change. 101 KAR 2:034, Section 3(7).

4. The Appellant's claim that she is entitled to a salary increase based on the Budget Bill (HB 1) is outside the jurisdiction of the Personnel Board and does not constitute a penalization as defined by KRS 18A.005(24). The Appellant cannot appeal to the Personnel Board from the General Assembly's decision to grant some employees a salary raise and not others. *See Hart v. Personnel Board, Commonwealth of Kentucky*, 905 S.W.2d 507 (Ky. App 1995).

5. Although the Appellant's arguments may seem reasonable and the actions denying her a salary increase may seem unfair, her frustration does not give rise to an actionable penalization. *Michelle Gross v. Justice and Public Safety Cabinet, Department of Juvenile Justice and Personnel Cabinet*, 2022 WL 3153512 (KY PB 2021-013).

6. Because the Appellant has not stated a claim that constitutes a penalization, the Personnel Board can dismiss her claim following a preliminary hearing and based on written motion. KRS 13B.090(2) and KRS 18A.095(18)(a).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **KELLI MORROW V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE AND PERSONNEL CABINET (APPEAL NO. 2022-028)** 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.

ISSUED at the direction of **Hearing Officer Mark A. Sipek** this 3 day of January, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK,
EXECUTIVE DIRECTOR

A copy hereof this day e-mailed and mailed to:

Hon. Jamhal Woodridge
Hon. Catherine Stevens
Kelli Morrow
Hon. Rosemary Holbrook (Personnel Cabinet)