

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-073

WILLIAM PEABODY

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 August 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated July 10, 2025, 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 August, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

William Peabody
Hon. William Fogle
Hon. Rosemary Holbrook (Personnel Cabinet)
J. R. Dobner

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-073**

WILLIAM PEABODY

APPELLANT

v.

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

TRANSPORTATION CABINET

APPELLEE

* * * * *

This matter last came on for a pre-hearing conference on January 23, 2025, at 10:00 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Gordon A. Rowe, Jr., Executive Director/Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The appellant herein, William Peabody (the "Appellant"), was present for the conference by telephone. The Appellant was not represented by legal counsel. The appellee herein, the Transportation Cabinet (the "Appellee"), was represented at the conference by the Hon. William Fogle, who appeared in person.

The Hearing Officer opened the pre-hearing conference by introducing the issues to be discussed at the conference: a) the jurisdiction of the Personnel Board; and b) the dispositive motion filed by the Appellee.

This appeal is a request for salary equity. The Appellant is a Highway Technician Superintendent and has several years of work experience with the Appellee. The Appellant has alleged that he is paid less than coworkers (highway technician supervisors) with the same job title who were hired more recently and highway technicians in lower job classifications. The Appellant checked the category of "discrimination" as a basis for his appeal.

The Appellee has filed a Motion to Dismiss this appeal on the grounds that the Personnel Board does not have jurisdiction since, after passage of Senate Bill 153 ("SB 153"), KRS 18A.095 no longer authorizes the Board to hear cases based on alleged salary inequities or salary disputes. The Appellee raised the jurisdictional issue in the pre-hearing conference and reiterated its arguments in the Motion to Dismiss. The Appellant did not file a response to the Motion to Dismiss. During the pre-hearing conference, the Appellant pointed out the unfairness in the unequal rates of pay but did not address the jurisdictional argument made by the Appellee. After some discussion, the Hearing Officer stated that he would review the Appellee's Motion and the record in the appeal, and then issue a recommended order on the Motion to Dismiss.

After reviewing the submissions of the parties and listening to arguments related thereto, and for the reasons stated herein, the Hearing Officer recommends the Personnel Board dismiss this appeal. As explained more fully below, following the passage of SB 153, which took effect on June 29, 2023, the Personnel Board lacks jurisdiction to hear appeals based on salary adjustments or salary inequity. Accordingly, the Appellee's Motion is well-taken and this appeal should be dismissed on jurisdictional grounds.

FINDINGS OF FACT and PROCEDURAL BACKGROUND

1. The Appellant is a classified employee with status. The Appellant is employed by the Appellee as a Highway Technician Supervisor I. [See Appeal Form at p. 2].

2. The Appellant filed his appeal with the Personnel Board on May 24, 2024. In his appeal, the Appellant argued that he should receive a salary increase because other highway technicians in his job series received raises, except for the supervisors. He complained that he should receive a raise because: "raises were given to the protected class of HWY Technicians. I feel I am discriminated against as a Highway Technician Supervisor in the same class with more responsibility." He requested relief in the form of "a wage correction to regulate the disparity." [See Appeal Form at p. 2.]

3. On June 27, 2024, prior to the initial pre-hearing conference, the Appellee filed a motion to dismiss this appeal (the "Motion to Dismiss") on the grounds that the Personnel Board does not have jurisdiction to hear this appeal. In its Motion, the Appellee argued that due to SB 153, passed in the 2023 legislative session and taking effect on June 29, 2023, the Personnel Board no longer has jurisdiction to hear appeals involving salary inequity claims or requests for salary adjustments due to such alleged inequities.

4. The Appellant did not file a response to the Appellee's Motion to Dismiss.

CONCLUSIONS OF LAW

1. It is well-established that a motion to dismiss should only be granted if the moving party can show that the party who filed the claim "would not be entitled to relief under any set of facts which could be proven in support of his claim." *Morgan v. Bird*, 289 S.W.3d 222, 226 (Ky. App. 2009). The pleadings filed by the claiming party "should be liberally construed in the light most favorable to the plaintiff, all allegations being taken as true." *Pari-Mutuel Clerks' Union of Kentucky, Local 541, SEIU, AFL-CIO v. Kentucky Jockey Club*, 551 S.W.2d 801, 803 (Ky. 1977). A court should rule on a motion to dismiss when the question issue is purely a matter of law. *James v. Wilson*, 95 S.W.3d 875, 884 (Ky. App. 2002).

2. There is no genuine issue of material fact in this case. The facts asserted by the Appellant are not disputed at all. The only question before the Personnel Board at this juncture is whether the undisputed facts regarding the Appellant's employment and his lower salary relative to his coworkers and subordinates constitute the type of personnel action over which the Board has jurisdiction as a matter of law. That question must be answered in the negative.

3. The Appellant has not established that the Appellee has violated KRS 18A.095 in regard to his employment. The Appellant has not been subjected to any of the personnel actions specifically listed under KRS 18A.095 for review by the Board, which include: a) dismissal, b) demotion, c) suspension, d) involuntary transfer, and e) protected class discrimination.

4. Under the version of KRS Chapter 18A in effect at the time the Appellant filed his appeal,¹ the Personnel Board only has jurisdiction over the following types of action involving state employees: an “employee who is dismissed, demoted, suspended without pay, or involuntarily transferred may, within thirty (30) calendar days” of those specific personnel actions, appeal the action to the Personnel Board. KRS 18A.095(9). In addition, an employee who has been subjected to a discriminatory action based on their protected class status may appeal any such action to the Personnel Board within thirty (30) calendar days of the action. KRS 18A.095(11).

5. The Personnel Board does not have authority to hear any appeal not specifically authorized by KRS Chapter 18A. In fact, the Personnel Board is **required** to dismiss any appeal in which it determines “it lacks jurisdiction to grant relief.” KRS 18A.095(16)(a).

6. The Appellant has not been dismissed, demoted, suspended without pay, involuntarily transferred, or denied any other rights he is entitled to under KRS 18A.095.

7. Senate Bill 153 of the 2023 Kentucky legislative session expressly removed the Personnel Board’s authority to hear appeals involving “salary adjustments” and the catch-all category of “other penalizations.”

8. Even prior to SB 153 and the modification of KRS 18A.095, the Personnel Board held that it had no jurisdiction to hear appeals based on an agency granting salary adjustments to some employees which other agency employees did not receive, even when the adjustments seemed to lead to an unfair result. *See Vicki Allen v. Justice and Public Safety Cabinet, Department of Corrections*, 2023 WL 4404751 at *3 (KY PB 2023) (holding that the Appellant did not suffer a penalization or an adverse employment action when other co-employees, some in lower grade classifications, received raises while she did not); and *see Chris Southworth et al. v. Finance and Administration Cabinet*, 2020 WL 7426176 at *7, 8 (KY PB 2020)(Board found no penalization when some employees were allowed to resign and reinstate, which triggered salary increases, and other employees were not allowed to do so); and *see Scott Huddleston et al. v. Transportation Cabinet and Personnel Cabinet*, 2018 WL 4037967 at *4, 5 (KY PB 2018)(no penalization where the Appellants failed to show any statute or regulation entitled them to a raise, even though other employees received raises though resign and reinstate personnel actions).

9. After passage of SB 153, it is clear the Personnel Board cannot hear appeals involving salary claims, salary adjustments, or other salary disputes, unless otherwise specifically authorized. *Christopher Banks, Appellant v. Justice and Public Safety Cabinet, Department of Juvenile Justice, Appellee*, 2024 WL 1765101, at *2 (KY PB 2023-0134).

¹ KRS Chapter 18A was amended by the Kentucky Legislature, effective June 29, 2023. Among other changes, the category of other penalizations was removed from KRS 18A.095 as a basis for the Personnel Board’s jurisdiction.

10. Although the Appellant has attempted to characterize this salary equity issue as a discrimination claim, it is clear from the statements contained in the Appeal Form and the statements made at the preceding pre-hearing conferences (September 11, 2024 and January 23, 2025) that the Appellant is not claiming that he is being paid less than his coworkers and subordinates based on his membership in a protected class recognized by state or federal civil rights laws. The Appellant is claiming that he is being discriminated against because he is a supervisor, which is not a protected class. The issue in this appeal is salary compression or salary inequity, which is not the type of issue the Personnel Board can review under KRS 18A.095. Therefore, the Personnel Board is without jurisdiction in this appeal and the Appellee is entitled to judgment as a matter of law, pursuant to KRS 18A.095(16)(a) and KRS 13B.090(2).

11. The Hearing Officer notes that, as the Board has frequently observed in cases involving salary disputes, across the merit system, the analysis of job classifications and individual salaries, which is frequently undertaken to ensure compliance with the applicable provisions of statutes and regulations, may sometimes result in salary discrepancies that cause confusion and frustration for employees. However, after passage of Senate Bill 153, it is clear the Personnel Board can no longer take action in regard to such inequities.

RECOMMENDED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Personnel Board that the appeal of **WILLIAM PEABODY V. TRANSPORTATION CABINET (APPEAL NO. 2024-073)** 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).


The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov.

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 the Hearing Officer this 10th day of July, 2025.

KENTUCKY PERSONNEL BOARD



**GORDON A. ROWE, JR.
EXECUTIVE DIRECTOR**

A copy hereof was emailed and mailed to the following persons at their respective addresses as provided to the Personnel Board on this 10th day of July, 2025:

**William Peabody, Appellant
Hon. William H. Fogle, Counsel for Appellee
Hon. Rosemary Holbrook, Personnel Cabinet**