

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-079**

BRIAN PIERCE

APPELLANT

VS.

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

TRANSPORTATION CABINET

APPELLEE

** ** ** ** **

This matter came on for a pre-hearing conference on June 30, 2016, at 10:00 a.m., ET, at 28 Fountain Place, 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 Appellant, Brian Pierce, was present by telephone and was not represented by legal counsel. The Appellee, Transportation Cabinet, was present and represented by the Hon. William Fogle.

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

BACKGROUND

1. The Appellant, Brian Pierce, filed his appeal with the Personnel Board on April 8, 2016. The Appellant alleged that he was not selected for a reclassification from Transportation Engineering Assistant II to Transportation Engineering Technologist I. The Appellant stated he was recommended by his supervisor, but was not selected. He alleged that a coworker with less experience was reclassified because he had a Bachelor's degree. The Appellant alleged that the coworker's Bachelor's degree was not in a related subject.

2. The Appellant stated he was hired by the Transportation Cabinet on January 1, 2012. He alleged that when he was hired he only needed a high school diploma, plus four years' experience for the Transportation Engineering Technologist I position, and now six years'

experience is required. He believed that the class specifications, which were in place at the time of his hire, should be the specifications that apply to his request for reclassification.

3. At the pre-hearing conference, counsel for the Appellee requested time to file a Motion to Dismiss. A schedule was adopted.

4. The Appellee filed its Motion to Dismiss on August 15, 2016. The Appellant was granted time to file a response, however, no response has been filed. This matter now stands submitted for a ruling on the Appellee's Motion to Dismiss.

FINDINGS OF FACT

1. The Appellant, Brian Pierce, was hired by the Transportation Cabinet on January 1, 2012. At the time he filed his appeal, he was a Transportation Engineering Assistant II. He stated that his supervisor recommended him for reclassification to Transportation Engineering Technologist I.

2. The Appellant was denied reclassification because he did not meet the minimum qualifications for Transportation Engineering Technologist I according to the class specifications. For an individual without a Bachelor's or Associate's degree, the class specifications currently call for six years' engineering-related experience to meet the minimum qualifications for Transportation Engineering Technologist I.

3. At the time the Appellant was hired, the class specifications only required four years' engineering-related experience. The Appellant believed that the class specifications in place at the time of his hire should apply to him, and he should be eligible for reclassification. He believes he should be reclassified to Transportation Engineering Technologist I.

4. The allegations made by the Appellant on his Appeal Form are accepted as true for purposes of ruling on this motion.

5. The Hearing Officer finds there are no material facts in dispute.

CONCLUSIONS OF LAW

1. Pursuant to KRS 18A.025, the Personnel Cabinet, and not the Transportation Cabinet, is responsible for establishing all employee class specifications.

2. Minimum qualifications are an essential part of the merit system, establishing which applicants are eligible to be placed in a particular job classification. Minimum qualifications, once established, apply to all applicants and there is no provision which allows for applying an earlier qualification for an applicant based on their seniority with state government. [See KRS 18A.005(6) and (28), KRS 18A.010(1) 101 KAR 2:046, Section 2: and 101 KAR 2:020, Section 1(5).]

3. There is no legal basis for the Appellant's request to have separate minimum qualifications applied for him based on his date of hire, and, thus, he is not eligible for reclassification as that term is defined at KRS 18A.005(30), and he has not established that he has been penalized as the term is defined at KRS 18A.005(24).

4. There are no material facts in dispute and the Hearing Officer concludes that this matter can be decided as a matter of law based on the Appeal Form, the statements of the parties at the pre-hearing conference, and the Appellee's Motion to Dismiss.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **BRIAN PIERCE VS. TRANSPORTATION CABINET (APPEAL NO. 2016-079)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

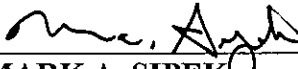
Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) 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.

ISSUED at the direction of **Hearing Officer Mark A. Sipek** this 29th day of December, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. William Fogle
Mr. Brian Pierce
J. R. Dobner