

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2025-042

JERRY PING

APPELLANT

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

TRANSPORTATION CABINET

APPELLEE

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

The Board, at its regular November 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated October 27, 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 21st day of November, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Jerry Ping, Appellant
Hon. William Fogle, counsel for Appellee
Hon. Rosemary Holbrook (Personnel Cabinet)
J.R. Dobner

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2025-042**

JERRY PING

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 September 16, 2025, at 1:00 p.m., EST, 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, Jerry Ping (the “Appellant”), was not present for the conference and 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 by telephone.

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 to hear and rule upon the pay disparity claim raised in the appeal; b) the Appellee’s motion to dismiss and any responses and replies thereto; and c) next steps in the appeal.

The Appellant is a Highway Technician I in District 6, working out of the Traffic Sign Shop. He has alleged that several state highway employees in District 6 who work out of the same location receive a \$5.00 per hour locality premium even though they share some of the same duties.

Prior to the initial pre-hearing conference, the Appellee, by counsel, filed a motion to dismiss this appeal on the grounds that the Personnel Board does not have jurisdiction to hear the appeal since, after passage of Senate Bill 153 (“SB153”), KRS 18A.095 no longer authorizes the Board to hear cases based on alleged salary inequities or salary disputes. In support of its motion to dismiss, the Appellee also cited to a recent Personnel Board appeal involving a salary dispute, which was dismissed after a dispositive motion and a ruling on the issue of jurisdiction. *See Christopher Pollett v. Transportation Cabinet* (KY PB Case No. 2024-072).

During the initial pre-hearing conference (July 25, 2025), the Hearing Officer gave the Appellant until September 12, 2025, to file a response to the Appellee’s Motion to Dismiss. No response was filed by September 12, 2025, or thereafter. During the September 16, 2025 pre-

hearing conference, the Appellee reiterated its jurisdictional argument. After some discussion, the Hearing Officer stated that he would review the Appellee's motion and the record on appeal and then issue a recommended order on the motion to dismiss.

After reviewing the submissions of the parties, listening to related arguments, and for the reasons more fully explained below, the Hearing Officer recommends the Personnel Board dismiss this appeal. After 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 pay 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 I. [See Appeal Form at p. 2].

2. The Appellant filed his appeal with the Personnel Board on March 21, 2025. In his appeal, the Appellant argued that he should receive a pay increase equivalent to the \$5.00 per hour locality premium received by other workers in his shop. He complained that he shares similar duties to these other employees and, therefore, should receive the same locality premium. [See Appeal Form at p. 2.]

3. Prior to filing this appeal, the Appellant filed an internal grievance with the Appellee in which he alleged that the salary disparity between Highway Technician I employees and Highway Technician Assistant I employees (who share some of the same duties, including snow removal), resulting from the locality premium, should be eliminated by providing Highway Technician I employees the same locality premium. [See Grievance Form, attached to the Appeal Form.] The Appellee denied the grievance. In its March 11, 2025, Grievance Response letter addressed to the Appellant, the Appellee explained that the locality premium for employees in the Highway Technician Assistant I job classification was recommended by the Appellee and approved by the Personnel Cabinet in accord with the provisions of 101 KAR 2:034, Section 9(1), to address turnover and recruitment issues in that job classification. The same turnover and recruitment issues did not exist in the Highway Technician I job classification. [See March 11, 2025 Grievance Response, which was attached to the Appeal Form.]

4. On July 17, 2025, 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, after passage of Senate Bill 153 during the 2023 legislative session (which took effect on June 29, 2023), the Personnel Board no longer has jurisdiction to hear appeals involving salary inequity claims or requesting salary adjustment due to such alleged inequities.

5. The Appellant did not appear at the September 16, 2025 pre-hearing conference and failed to file a response to the Appellee's Motion to Dismiss.

6. The Appellant has never claimed that the alleged salary discrepancy is attributable to any form of protected class discrimination.

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 at 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 is a question of law: whether the undisputed facts regarding the Appellant’s employment and pay, including his exclusion from the locality premium paid to Highway Technician Assistant I employees in his work location, constitutes the type of personnel action over which the Board has jurisdiction to grant relief. That question must be answered in the negative.

3. Under KRS Chapter 18A, 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).

4. 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).

5. The Appellant’s claims fall outside the jurisdiction of the Personnel Board because he has not been subjected to any of the personnel actions specifically listed under KRS 18A.095. The Appellant has not been dismissed, demoted, suspended without pay, involuntarily transferred, subjected to protected class discrimination, or denied any other rights he is entitled to under KRS 18A.095.

6. After passage of Senate Bill 153 during the 2023 Kentucky legislative session, it is clear the Personnel Board cannot hear appeals involving salary claims, or other pay 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).

7. Regarding the locality premium at issue here, awarding the premium is under the exclusive jurisdiction of the Secretary of the Personnel Cabinet. Kentucky Administrative Regulations make it clear that the Secretary of the Personnel Cabinet “may authorize the payment of a locality premium for an employee...in a job classification...where the agency can demonstrate sustained recruitment and retention issues.” 101 KAR 2:034, Section 9(1). The locality premium, if authorized, applies “to all employees...in the **job classification** and work county for which the locality premium is approved.”¹ *Id.* There is no provision in any Kentucky statute or regulation allowing for such a determination to be reviewed by the Personnel Board.

8. The Appellant’s claim that the locality premium is not part of base pay or wages and thus not subject to the jurisdictional bar on review of salary claims is without merit. Clearly, by unequivocally excluding salary disputes from the jurisdiction of the Personnel Board, the General Assembly intended to exclude all salary adjustment or pay inequity claims from the Board’s jurisdiction.

9. The sole issue in this appeal is a claim of pay inequity attributable to a locality premium, which is not the type of issue the Personnel Board can review under KRS 18A.095. Therefore, the Personnel Board does not have jurisdiction over 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).

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 **JERRY PING V. TRANSPORTATION CABINET (APPEAL NO. 2025-042)** 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).

[Hearing Officer Note: Any document filed with the Personnel Board shall also be served on the opposing party.]

¹ It should be noted that the Appellant, as a Highway Technician I, is in a different job classification than the Highway Technician Assistant I employees (maintenance crew employees) who receive the locality premium.

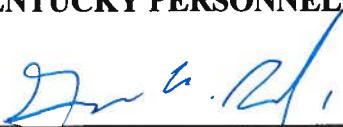
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

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.

SO ORDERED at the direction of the Hearing Officer this 27th day of October, 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 27th day of October, 2025:

Jerry Ping, Appellant
Hon. William H. Fogle, Counsel for Appellee
Hon. Rosemary Holbrook, Personnel Cabinet