

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD**

**RICHARD HALL (APPEAL NO. 2020-005)
JOSHUA RICHIE (APPEAL NO. 2020-007)
WARREN COMBS (APPEAL NO. 2020-010)
ESTATE OF GREGORY STRONG (APPEAL NO. 2020-012)
LISA PERRY (APPEAL NO. 2020-017)**

APPELLANTS

**FINAL ORDER
ALTERING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

VS.

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF JUVENILE JUSTICE**

APPELLEE

*** **

The Board, at its regular March 2023 meeting, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order dated January 27, 2023, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be **ALTERED** as follows:

A. **Delete** Introductory paragraph 5 (not numbered) and substitute the following:

The Agency noted that they had previously submitted a "Motion to Dismiss and Motion for Summary Judgment" and a briefing schedule had been previously entered, allowing the Appellants an opportunity to respond, but the Appellants failed to do so. The Appellants, as a group, again requested an opportunity to respond to the Agency's previously submitted Motion. The Hearing Officer granted the Appellants' request, and a new briefing schedule was entered. The Appellants failed to submit any response to the Agency's Motion. This matter now stands submitted to the Hearing Officer for a ruling on the Appellees' Joint Motion for Summary Judgment.

B. Delete Background/Findings of Fact paragraph 1 and substitute the following:

1. When they initially submitted their appeals, the Appellants, Richard Hall, Joshua Richie, Warren Combs, Gregory Strong, and Lisa Perry, were all employed by the Justice and Public Safety Cabinet, Department of Juvenile Justice, in Breathitt County. The Appellants held the following positions: 1) Richard Hall, Gregory Strong, and Lisa Perry were Youth Worker Supervisors, 2) Joshua Richie was a Youth Worker III, and 3) Warren Combs was a Youth Worker II. The Appellants all submitted appeal forms in 2020 seeking review of the Agency's setting of their salary after the closure of the Cadet Leadership and Education Program ("CLEP").

As agreed to by the parties, the Agency's CLEP program in Breathitt County was closed in 2018 causing the transfer of CLEP staff to other DJJ facilities in the area. One of those transferred CLEP staff members, Ryan Bush, was employed as a Social Service Clinician I, which is a Grade 15 position. Upon CLEP's closure, Bush was transferred to the Breathitt County Day Treatment Center and reclassified to a Youth Worker II position, which is a Grade 10 position. Pursuant to 101 KAR 2:034, Bush was allowed to retain his Grade 15 salary in his new Grade 10 position causing the frustrations and claims of penalization underlying this appeal.

At the core of the Appellants' Personnel Board appeals is their belief that they were penalized through the Agency not adjusting their salaries when Bush was allowed to reclass into the Grade 10 position. As a result of being allowed to retain his Grade 15 salary, Bush received a higher salary than almost all Youth Worker IIs, Youth Worker IIIs, and Youth Worker Supervisors, including the Appellants, even though Youth Worker IIIs and Youth Worker Supervisors are higher graded positions. Importantly, however, of the Appellants, only Warren Combs was employed in the same job as Bush, which would have triggered the provisions of 101 KAR 2:034, given that all positions and actions were in Breathitt County. Given the evidence of record, the Agency persuasively argues that Combs and Bush are not similarly situated, given Bush's college degree and Combs' lack therefore of.

C. **Delete** Background/Findings of Fact paragraph 4 and substitute the following:

4. Therefore, given the requirements of 101 KAR 2:034, the Hearing Officer finds that Appellants Hall, Richie, Strong, and Perry have failed to establish the applicability of any provision of 101 KAR 2:034, given that those Appellants did not work in the same job classification as Bush, in addition to failing to establish any entitlement to a salary adjustment.

The Hearing Officer would also note that the Bush was not a “new appointee” as the term is used in the 101 KAR series and, therefore, 101 KAR 2:034 would not mandate an adjustment of the Appellants’ salary. Nonetheless, even accepting *arguendo* that 101 KAR 2:034 would apply to a reclassification and even applying the higher requirements of that regulation here, even though Combs was in the same job classification and worked in the same county as Bush, the Hearing Officer finds that Combs would have failed to establish that he possessed “a similar combination of education and experience relating to the relevant job class specification” as Bush, because Bush had a college degree while Combs did not.

D. **Delete** the Recommended Order and substitute the following:

IT IS HEREBY ORDERED that the appeals of **RICHARD HALL (APPEAL NO. 2020-005), JOSHUA RICHIE (APPEAL NO. 2020-007), WARREN COMBS (APPEAL NO. 2020-010), GREGORY STRONG (APPEAL NO. 2020-012), AND LISA PERRY (APPEAL NO. 2020-017) V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE**, are **DISMISSED**.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer, as altered, are approved, adopted, and incorporated herein by reference as a part of this Order and that the Appellants’ appeals are **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 16th day of March, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Codell
Richard Hall
Joshua Ritchie
Warren Combs
Estate of Gregory Strong
Lisa Perry
Hon. Rosemary Holbrook (Personnel Cabinet)
Cynthia Watson

**COMMONWEALTH OF KENTUCKY
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**RICHARD HALL (APPEAL NO. 2020-005)
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APPELLANTS

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

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF JUVENILE JUSTICE**

APPELLEE

** ** * * *

This matter last came on for a pre-hearing conference on May 23, 2022, at 10:00 a.m. ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellants, Joshua Richie and Lisa Perry, were present by telephone and were not represented by legal counsel. The Appellants, Richard Hall and Gregory Strong, were not present, but communicated to Appellants Richie and Perry that they were interested in continuing to pursue their appeals. The Appellant, Gregory Strong, was not present and, upon information and belief, has passed away since the last pre-hearing conference on his appeal. The Agency/Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and represented by the Hon. William Codell, who also appeared by telephone.

The purposes of the pre-hearing conference were to discuss the status of the appeals and to schedule an evidentiary hearing, if appropriate.

Prior to the May 23, 2022 pre-hearing conference, the Agency submitted a Motion to Dismiss. During the pre-hearing conference, the Appellants again made clear that they were seeking a salary adjustment in response to other salary adjustments given to Youth Worker IIs with DJJ. The Appellants, when they first submitted their appeals, were: 1) a Youth Worker III in the same county who did not receive a salary adjustment (Richie), 2) a Youth Worker II in another county who did not receive a salary adjustment (Combs) and 3) Youth Worker Supervisors who did not receive a salary adjustment and were making less than Youth Worker IIs (Hall, Strong, and Perry).

The Agency noted that they had previously submitted a "Motion to Dismiss and Motion for Summary Judgment" and a briefing schedule had been previously entered, allowing the

Appellants an opportunity to respond, but the Appellants failed to do so. The Appellants, as a group, again requested an opportunity to respond to the Agency's previously submitted Motion. The Hearing Officer granted the Appellants' request, and a new briefing schedule was entered. The Appellants failed to submit any response to the Agency's Motion. This matter now stands submitted to the Hearing Officer for a ruling on the Appellees' Joint Motion for Summary Judgment

BACKGROUND/FINDINGS OF FACT

The Hearing Officer makes the following findings of fact based on the appeal form and attachments, the Agency's "Motion to Dismiss and Motion for Summary Judgment" and attachments, the statements made by the Appellant during the prior pre-hearing conferences, and the evidence of record.

1. When they initially submitted their appeals, the Appellants, Richard Hall, Joshua Richie, Warren Combs, Gregory Strong, and Lisa Perry, were all employed by the Justice and Public Safety Cabinet, Department of Juvenile Justice, in Breathitt County. The Appellants held the following positions: 1) Richard Hall, Gregory Strong, and Lisa Perry were Youth Worker Supervisors, 2) Joshua Richie was a Youth Worker III, and 3) Warren Combs was a Youth Worker II. The Appellants all submitted appeal forms in 2020 seeking review of the Agency's setting of their salary after the closure of the Cadet Leadership and Education Program ("CLEP").

As agreed to by the parties, the Agency's CLEP program in Breathitt County was closed in 2018 causing the transfer of CLEP staff to other DJJ facilities in the area. One of those transferred CLEP staff members, Ryan Bush, was employed as a Social Service Clinician I, which is a Grade 15 position. Upon CLEP's closure, Bush was transferred to the Breathitt County Day Treatment Center and reclassified to a Youth Worker II position, which is a Grade 10 position. Pursuant to 101 KAR 2:034, Bush was allowed to retain his Grade 15 salary in his new Grade 10 position, which caused the frustrations and claims of penalization underlying this appeal.

At the core of the Appellants' Personnel Board appeals is their belief that they were penalized through the Agency not adjusting their salaries when Bush was allowed to reclass into the Grade 10 position. As a result of being allowed to retain his Grade 15 salary, Bush received a higher salary than almost all Youth Worker IIs, Youth Worker IIIs, and Youth Worker Supervisors, including the Appellants, even though Youth Worker IIIs and Youth Worker Supervisors are higher graded positions. Importantly, however, of the Appellants, only Warren Combs was employed in the same job as Bush, which would have triggered the provisions of 101 KAR 2:034, given that all positions and actions were in Breathitt County. Given the evidence of record, the Agency persuasively argues that Combs and Bush are not similarly situated, given Bush's college degree and Combs' lack thereof of.

2. As stated previously, the Agency submitted a Motion to Dismiss and Motion for Summary Judgment arguing that the Personnel Board should dismiss the Appellants' appeals. In its Motion, the Agency sets out a brief salary history of Bush, the employee with which the Appellants compare themselves, and the salary history of the Appellants and then explained how

all salaries were set in compliance with the applicable statutes and regulations, including 101 KAR 2:034. As such, the Agency maintains that the Personnel Board has no jurisdiction to hear this appeal as the “Appellants have failed to articulate a penalization as defined by KRS § 18A.005(24).”

3. The Appellants were given an opportunity to explain how Bush being allowed to keep his Grade 15 salary upon reclassifying to a Grade 10 position in accordance with the applicable statutes and regulations penalized them, to establish that their salaries were not set in accordance with the applicable statutes and regulations, and/or to advance any argument that the Personnel Board would have jurisdiction over their claims, but they did not submit any further explanation.

4. Therefore, given the requirements of 101 KAR 2:034, the Hearing Officer finds that Appellants Hall, Richie, Strong, and Perry have failed to establish the applicability of any provision of 101 KAR 2:034, given that those Appellants did not work in the same job classification as Bush, in addition to failing to establish any entitlement to a salary adjustment.

The Hearing Officer also finds that Appellant Combs did establish the applicability of 101 KAR 2:034, Section 1(2), given that he did work in the same job classification as Bush. However, also pursuant to that regulation, the Hearing Officer finds that Combs failed to establish that he had “a similar combination of education and experience relating to the relevant job class specification” as Bush, because Bush had a college degree while Combs did not.

5. While perhaps unfair for experienced, highly skilled employees like the Appellants to make less than an employee new to the job classification like Bush, the Hearing Officer finds, nonetheless, that the Agency correctly applied the relevant statutes and regulations in setting both the Appellants’ salary and Bush’ salary.

6. 101 KAR 2:034, Section 1(2) provides:

The appointing authority shall adjust to that salary an employee who 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 work county; and
- (c) Has a similar combination of education and experience relating to the relevant job class specification.

7. KRS 18A.005(24) provides:

‘Penalization’ means demotion, dismissal, suspension, fines, and other disciplinary actions; involuntary transfers; salary adjustments; any action

that increases or diminishes the level, rank, discretion, or responsibility of an employee without proper cause or authority, including a reclassification or reallocation to a lower grade or rate of pay; and the abridgment or denial of other rights granted to state employees.

CONCLUSIONS OF LAW

1. Because the Appellants cannot establish that the Agency misapplied the provisions of 101 KAR 2:034, Section 1, to their detriment, the Appellants have failed to articulate a penalization as defined by KRS 18A.005(24). This is because the Appellants' claims do not implicate any right afforded to merit employees by KRS Chapter 18A. The Appellants were not penalized in the Agency correctly applying the relevant statutes and regulations in setting their employees' salaries, even though such application resulted in what may appear to be an unfair result. Therefore, pursuant to KRS 18A.095(18)(a), the Personnel Board lacks jurisdiction to consider this appeal as the Board is unable to grant relief.

2. The Hearing Officer would note that, across the merit system, each job classification, employment position, and individual salary is analyzed to determine whether they are in compliance with the applicable provisions of statute and regulation, including KRS Chapter 18A and the 101 KAR series, even though it sometimes results in salaries that cause confusion and frustration by employees. This approach, which was mandated by the General Assembly, can sometimes produce results that appear unfair when comparing salaries across job classifications, across agencies, across county lines, and across individual employee's competence. Nonetheless, no matter how reasonable or seemingly unfair, such frustration does not give rise to an actionable penalization. For the reasons set out above, the Appellant has failed to articulate an actionable penalization.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeals of **RICHARD HALL (APPEAL NO. 2020-005)**, **JOSHUA RICHIE (APPEAL NO. 2020-007)**, **WARREN COMBS (APPEAL NO. 2020-010)**, **GREGORY STRONG (APPEAL NO. 2020-012)**, and **LISA PERRY (APPEAL NO. 2020-017) V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE** 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.

SO ORDERED at the direction of **Hearing Officer Stafford Easterling** this 27th day of January, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. William Codell
Richard Hall
Joshua Ritchie
Warren Combs
Estate of Gregory Strong
Lisa Perry
Hon. Rosemary Holbrook (Personnel Cabinet)