




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 15<sup>th</sup> day of September, 2022.

**KENTUCKY PERSONNEL BOARD**

  
\_\_\_\_\_  
**MARK A. SIPEK  
SECRETARY**

A copy hereof this day mailed to:

Carmen Rodriguez  
Hon. Matthew Lynch  
Hon. Andrew Bryson  
Hon. Rosemary Holbrook (Personnel Cabinet)  
Leslie Tindall

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2022-038

CARMEN RODRIGUEZ

APPELLANT

V. FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND RECOMMENDED ORDER

EDUCATION AND LABOR CABINET  
(formerly known as LABOR CABINET)

APPELLEE

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This matter came on for a pre-hearing conference on June 3, 2022, at 10:30 a.m., ET, 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, Carmen Rodriguez, was present in person and was not represented by legal counsel. The Appellee, Education and Labor Cabinet (formerly known as Labor Cabinet), was present and was represented by the Hon. Andrew Bryson, who appeared by telephone. Also present for the Appellee was appointing authority Leslie Tindall and legal intern Helen McArthur, who also appeared by telephone.

The purposes of the pre-hearing conference were to determine the specific penalization alleged by the Appellant, to determine the specific section of KRS Chapter 18A that authorizes this appeal, to determine the relief sought by the Appellant, to define the issues, to address any other matters relating to this appeal, and to discuss the possibility of mediation.

**FINDINGS OF FACT**

1. The Appellant filed her appeal with the Personnel Board on March 23, 2022. The Appellant is a Federally Funded Time-Limited (FFTL) employee. She was hired by the Appellee on October 16, 2021, as a Workforce Development Specialist I. She contended that, based on her experience, she was qualified as a Workforce Development Specialist II and should have initially been hired into that position. After discussing this matter with several employees of the Agency, the Appellant's job class title was changed to Workforce Development Specialist II, effective December 16, 2021. The Appellant contended that she should have been a Workforce Development Specialist II throughout the entirety of her employment and asks that she receive retroactive backpay for the period from October 16, 2021, through December 16, 2021, as a Workforce Development Specialist II.

2. On her appeal form, the Appellant identified herself as a classified employee. At the pre-hearing conference, however, she acknowledged that she was a Federally Funded Time-Limited employee.

3. The Appellee filed a Motion to Dismiss alleging that as a FFTL employee, the Appellant was an unclassified employee with limited rights of appeal to the Personnel Board. Specifically, the Appellee argued that the Appellant would have to allege some form of discrimination in order for the Board to have jurisdiction over her appeal.

4. In its Motion to Dismiss, the Appellee states the following argument:

As a FFTL employee, Rodriguez does not have a right to request retroactive pay, and the Kentucky Personnel Board lacks jurisdiction to hear Rodriguez's appeal. FFTL employees such as Rodriguez are unclassified employees and do not have the same appeal rights as merit employees by virtue of KRS 18A.005 to 18A.200. *See* KRS 18A.115(1)(ad); *State Pers. Bd. of Ky. v. Greenwell*, 795 S.W.2d 381, 382 (Ky. 1990).

Employees of the Commonwealth in the unclassified service, including FFTL employees, have limited rights of appeal to the Board as spelled out in the statutory scheme of KRS 18A.005 through 18A.200. The extent of the Board's jurisdiction to hear appeals from FFTL employees such as Rodriguez is found at the definition of "Federally funded time-limited employee," which states unambiguously that Rodriguez "shall not have the right of appeal to the Personnel Board except as provided by KRS 18A.095(14) and 18A.140." *See* KRS 18A.005(15).

Pertinent to this motion, KRS 18A.095(14) confers jurisdiction on the Board to hear claims of discrimination on the basis of a protected class from "[a]ny employee," including FFTL and other unclassified employees. KRS 18A.140 confers jurisdiction on the Board to hear claims of undue political influence or discrimination from all state employees, including FFTL or other unclassified employees. Rodriguez has claimed neither in her appeal form or orally during the prehearing conference on June 3, 2022, and as such she lacks standing before the Board. Given the Board's lack of jurisdiction to hear this appeal, the appointing authority's decision on Rodriguez's request for retroactive pay is final and non-appealable. *See* KRS 18A.005(15).

The statutory language at issue is unambiguous. The resulting conclusion is that the Board may not hear Rodriguez's appeal for retroactive pay based on her allegation that she was misclassified for two months. Rodriguez's limited appeal rights are created by statute, and the Board is

required to strictly comply with the "legislative conditions" created by KRS 18A.005 through 18A.200. *Com., Dep't of Revenue, Fin. and Admin. Cabinet v. McDonald*, 304 S.W. 3d 62, 67 (Ky. App. 2009); *see also* KRS 13A.130.

5. The Appellant responded that she disagreed with the Appellee's Motion to Dismiss and requested that her appeal not be dismissed.

6. After review, the Hearing Officer finds that, starting on October 16, 2021, and throughout her employment with the Appellee, the Appellant has been as a FFTL employee. As a FFTL employee, the Appellant is defined as an unclassified employee at KRS 18A.005(15).

7. The Appellant has not alleged any form of illegal discrimination either on her appeal form, in her response to the Appellee's Motion to Dismiss, or at the pre-hearing conference.

8. The Appellant does not allege that the Appellee took any action against her "for cause."

9. There are no material issues of fact, 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 conference, the Appellee's Motion to Dismiss, and the Appellant's Response to the Motion to Dismiss.

10.

### CONCLUSION OF LAW

1. KRS 18A.005(15) defines a Federally Funded Time-Limited employee as follows:

"Federally funded time-limited employee" means an employee in the unclassified service, appointed to a position that is funded one hundred percent (100%) by a federal grant or grants. An employee appointed to a federally funded time-limited position shall be required to meet the minimum requirements for the classification in which he or she is hired and, subject to the provisions of KRS 18A.113, shall serve at the pleasure of the appointing authority during a period of time that shall not exceed the life of the federal grant that funds the position. A federally funded time-limited employee who has been aggrieved by notice of disciplinary action or termination, other than an action based on expiration of the federal grant funding, may petition the appointing authority of the agency for the opportunity to be heard by the appointing authority or his designee prior to the effective date of the disciplinary action or termination. The decision of the appointing authority shall be final except as provided by KRS 18A.095(14) and 18A.140. A federally funded time-limited employee shall not have the right of appeal to the Personnel Board except as provided by KRS 18A.095(14) and 18A.140.

As is clear from the definition, a FFTL employee is an unclassified employee with limited rights of appeal to the Personnel Board.

2. A FFTL employee alleging illegal discrimination can appeal to the Personnel Board, pursuant to KRS 18A.095(14) and KRS 18A.140. The Appellant has not alleged discrimination in this appeal.

3. The Kentucky Supreme Court has recognized the limited rights of FFTL employees in the case of *State Personnel Board of Kentucky v. Greenwell*, 795 S.W.2d 381, 382 (Ky. 1990).

4. Unclassified employees may also appeal to the Personnel Board if they are penalized for a cause, pursuant to KRS 18A.095(9). There is no allegation in this case that any action was taken against the Appellant "for cause."

5. As a result, the Board lacks jurisdiction to hear this appeal and to grant relief to the Appellant. This appeal can be dismissed following a preliminary hearing and upon a written Motion to Dismiss. KRS 18A.095(18)(a) and KRS 13B.090(2).

6. Notably, there are issues of fact in this case over which the Personnel Board would have had jurisdiction had the Appellant been a classified employee.

7.

### RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **CARMEN RODRIGUEZ V. EDUCATION AND LABOR CABINET** (formally known as **LABOR CABIENT**) (APPEAL NO. 2022-038) 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).

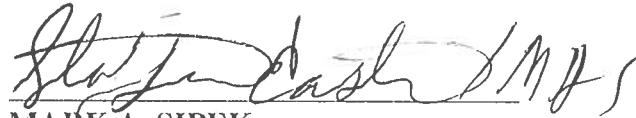
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

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.

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

**ISSUED** at the direction of Hearing Officer Mark A. Sipek this 17 day of August, 2022.

**KENTUCKY PERSONNEL BOARD**



**MARK A. SIPEK,  
EXECUTIVE DIRECTOR**

A copy hereof this day emailed and mailed to:

Hon. Andrew Bryson  
Carmen Rodriguez