

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2021-037

JENNIFER LYNN SMITH

APPELLANT

VS.

ORDER DISMISSING APPEAL

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

APPELLEE

*** **

The Board, at its regular May 2022 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 7, 2022, 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 10th day of May, 2022.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

Copies hereof this day sent to:

Hon. Adrian Jacob
Jennifer Lynn Smith
Hon. Rosemary Holbrook (Personnel Cabinet)

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2021-037**

JENNIFER LYNN SMITH

APPELLANT

**V. FINDING OF FACTS, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

APPELLEE

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

This matter came on for a pre-hearing conference on January 25, 2022, at 10:30 a.m. ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before Hearing Officer Mark A. Sipek. The proceedings were recorded by audio equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Jennifer Lynn Smith, was present by telephone and was not represented by legal counsel. The Appellee, Education and Workforce Development Cabinet, was present by telephone and represented by the Hon. Adrian Jacob.

The purposes of the pre-hearing conference were to discuss the status of the appeal, to determine if a period of discovery was necessary, to discuss the option of mediation, and to schedule an evidentiary hearing, if appropriate.

FINDINGS OF FACT

1. The Hearing Officer notes this appeal was filed with the Personnel Board on April 12, 2021. On the appeal form and during the October 21, 2021 initial pre-hearing conference, the Appellant, a classified employee with status, indicated she was alleging a penalization through a disparity in pay. The Appellant further explained her claims in the narrative portion of the appeal form wherein she states, in pertinent part:

In May 2020, I was informed that my pay would be increased to match that of a newly hired Voc Rehab Counselor in the area. I assumed it was Amy Jones in the East Louisville District office since she had been recently hired. On 2/10, I looked at the website transparency.ky.gov and saw that her pay is higher than mine although I have worked in this role 5.5 years longer than her. This inspired me to look at the salary of the counselor most recently hired in my office, the Louisville District, which was Maria Miller. I found out that she, too, was being paid a higher wage although she was just hired in February 2020. (sic)

2. Following discussion, the Appellant made clear that she was asserting that she was being penalized because of other employees receiving a higher salary than she does for performing the same work, despite her having more seniority.

3. Following the second pre-hearing conference, the Appellee filed Appellee's Motion for Summary Judgment. The Appellant was given an opportunity to respond to the motion for summary judgment but failed to do so.

4. In its motion, the Appellee argued that the Personnel Board does not have jurisdiction over this appeal because the Appellant has not alleged an actionable penalization. After review of the submitted documentation, including attachments to the Motion for Summary Judgment, the Hearing Officer agrees that the Appellant as failed to state an actionable claim and, therefore, this appeal must be dismissed.

5. The Hearing Officer finds that the Appellant, Jennifer Lynn Smith, is a merit employee with status, employed as a Vocational Rehabilitation Counselor in the Education and Workforce Development Cabinet. Her workstation is in Jefferson County.

6. Effective May 16, 2020, Amy Jones was appointed as a Vocational Rehabilitation Counselor in Jefferson County with a salary of \$2,937.22 per month. Pursuant to 101 KAR 2:034, Section 1(2), effective May 16, 2020, the Appellant's salary was increased from \$2,844.76 to \$2,937.22 per month to match the salary of Ms. Jones.

7. Upon completion of her initial probationary period, Ms. Jones then received a five percent (5%) salary increase to \$3,084.10. The Appellant's salary remained unchanged.

8. The Appellant also stated that Maria Miller is a Vocational Rehabilitation Counselor in Jefferson County. While still serving her initial probationary probation, Ms. Miller also received a salary increase on the appointment of Ms. Jones to \$2,937.22 per month, effective May 16, 2020. Like Ms. Jones, when Ms. Miller successfully completed her initial probationary period, she received a five percent (5%) salary increase to \$3,084.10.

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 conferences, and the Appellee's Motion for Summary Judgment.

CONCLUSIONS OF LAW

1. 101 KAR 2:034, Section 1 reads as follows:

Section 1. New Appointments.

- (1) An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.
- (2) 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 department or office;
 - (c) Is in the same work county; and

- (d) Has a similar combination of education and experience relating to the relevant job class specification.

2. The Appellant met all the criteria enumerated in 101 KAR 2:034, Section 1(2) to receive a salary increase to match the salary of the newly appointed employee, Ms. Jones. Ms. Miller also received the benefit of the salary increase.

3. 101 KAR 2:034, Section 4(1) states:

Section 4. Salary Advancements.

- (1) Initial probation increase. A full-time or part-time employee who completes an initial probationary period shall be granted a five (5) percent salary advancement on the first of the month following completion of the probationary period

4. Thereafter, pursuant to this regulation, Ms. Jones and Ms. Miller then received a five percent (5%) salary increase when they successfully completed their initial probationary period.

5. The Appellant has not cited any statute or regulation that would entitle her to an additional salary increase due to another employee's receipt of an initial probationary period increase.

6. Based on the Findings of Fact, the Appellant has not been penalized as that term is defined at KRS 18A.005(24).

7. Because the Appellant has failed to allege an appealable penalization, the Personnel Board lacks jurisdiction to grant her relief, and this appeal may be dismissed based on the Appellee's Motion for Summary Judgment. KRS 18A.095(18)(a) and KRS 13B.090(2).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **JENNIFER LYNN SMITH V. EDUCATION AND WORKFORCE DEVELOPMENT CABINET (APPEAL NO. 2021-037)** 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).

Any document filed with the Personnel Board shall be served on the opposing party.

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 the Hearing Officer this 7th day of April, 2022.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Adrian Jacob
Jennifer Lynn Smith
Hon. Rosemary Holbrook (Personnel Cabinet)