

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-100

ABILENE STEWARD

APPELLANT

VS.

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

JUSTICE AND PUBLIC SAFETY CABINET,
KENTUCKY STATE POLICE

APPELLEE

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

The Board, at its regular June 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated April 23, 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 24th day of June, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Abilene Steward
Hon. Alea Amber Arnett
Hon. Rosemary Holbrook (Personnel Cabinet)
Hon. Shawna Kincer

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-100

ABILENE STEWARD

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v.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDED ORDER

JUSTICE AND PUBLIC SAFETY CABINET,
KENTUCKY STATE POLICE

APPELLEE

* * * * *

This matter last came on for a pre-hearing conference on January 23, 2025, at 1:30 p.m., ET, 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, Abilene Steward (the “Appellant”), appeared by telephone. She was not represented by legal counsel. The appellee herein, the Justice and Public Safety Cabinet, Kentucky State Police (the “Appellee”), was represented at the conference by the Hon. Alea Amber Arnett, who appeared by telephone.

The purpose of the pre-hearing conference was to discuss the jurisdiction of the Personnel Board and the Appellee’s pending Motion to Dismiss.

This appeal is based on the Appellant’s claim that seven (7) employees hired after her will have higher salaries than hers after their probationary period expires [*See Appeal Form.*]. Prior to the pre-hearing conference, the Appellee filed a Motion to Dismiss based on the Personnel Board’s lack of jurisdiction over salary disputes/salary inequity claims. Essentially, the Appellee argued in its Motion to Dismiss that the appeal should be dismissed because, after passage of Senate Bill 153 (“SB 153”), KRS 18A.095 no longer authorizes the Board to hear cases based on alleged salary inequities or “other penalizations.” [*See Appellee’s Motion to Dismiss at p.3.*] The Appellant did not respond to the Motion to Dismiss.

After reviewing the submissions of the parties and listening to arguments related thereto, and for the reasons stated in more detail hereinafter, the Hearing Officer recommends the Personnel Board dismiss this appeal. As explained more fully below, after the passage of SB 153, which took effect on June 29, 2023, the Personnel Board lacks jurisdiction to hear appeals

based on claims of salary inequity. Accordingly, the Appellee's Motion to Dismiss is well-taken and this appeal should be dismissed on jurisdictional grounds.

FINDINGS OF FACT and PROCEDURAL BACKGROUND

1. The Appellant is employed by the Appellee as a Public Safety Telecommunicator I. [See Appeal Form; and see Appellee's Motion to Dismiss (the "Motion to Dismiss") at p. 1.]

2. The Appellant filed this appeal with the Personnel Board on May 1, 2024. The Appellant has claimed in her appeal that at least seven (7) employees hired after her in the same job classification "will make more money than I do once they are off their probationary period." [See Appeal Form at p. 2.] The salary discrepancy has primarily resulted from the customary salary increase five percent (5%) that state employees receive after completing their probationary period (which the Appellant also received after she completed her probationary period) plus a legislative change that applied a six percent (6%) increase to certain positions in the Kentucky State Police but not to the Appellant's position. [See Appellee's Motion to Dismiss at p. 1.]

3. On July 23, 2024, prior to the initial pre-hearing conference, the Appellee filed a Motion to Dismiss this appeal on the grounds that the Personnel Board does not have jurisdiction to hear the appeal. In its motion, the Appellee argued that due to SB 153, which was passed in the 2023 Kentucky legislative session and which took effect on June 29, 2023, the Personnel Board no longer has jurisdiction to hear appeals involving salary inequity claims or to order salary adjustments due to such inequities.

4. In an interim Order dated September 1, 2024, the Hearing Officer set a deadline of December 20, 2024, for the Appellant to respond to the Appellee's Motion to Dismiss. The Appellant did not file a response to Appellee's Motion to Dismiss on or after December 20, 2024.

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 but even taking all the facts asserted by the Appellant as true, she cannot prevail in this action. The only question before the Personnel Board at this juncture is purely a question of law, whether the Personnel Board has jurisdiction to hear an appeal based on a claim of salary inequity. That question must be answered in the negative.

3. The Appellant has not established that the Appellee has taken any actions in regard to her employment which would be under the scope of the Board's jurisdiction under KRS 18A.095. The Appellant has not been subjected to any of the personnel actions specifically listed under KRS 18A.095 for review by the Board, which include: a) dismissal, b) demotion, c) suspension, d) involuntary transfer, and e) protected class discrimination.

4. Under the version of KRS Chapter 18A in effect at the time the Appellant filed her appeal,¹ 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).

5. 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).

6. The Appellant has not been dismissed, demoted, suspended without pay, involuntarily transferred, discriminated against based on a protected class, or denied any other rights she is entitled to under KRS 18A.095.

7. The Appellant marked "Other" as a category of appeal on her appeal form but this option is no longer a basis for appeal to the Personnel Board. Senate Bill 153 of the 2023 Kentucky legislative session expressly removed the Personnel Board's authority to hear appeals involving the catch-all category of "other penalizations."

8. Even prior to SB 153 and the modification of KRS 18A.095, the Personnel Board held that it had no jurisdiction to hear appeals based on an agency granting salary adjustments to some employees which other agency employees did not receive, even when the adjustments seemed to lead to an unfair result. *See Vicki Allen v. Justice and Public Safety Cabinet*,

¹ KRS Chapter 18A was amended by the Kentucky Legislature, effective June 29, 2023.

Department of Corrections, 2023 WL 4404751 at *3 (KY PB 2023) (holding that the Appellant did not suffer a penalization or an adverse employment action when other co-employees, some in lower grade classifications, received raises while she did not); and *see Chris Southworth et al. v. Finance and Administration Cabinet*, 2020 WL 7426176 at *7, 8 (KY PB 2020)(Board found no penalization when some employees were allowed to resign and reinstate, which triggered salary increases, and other employees were not allowed to do so); and *see Scott Huddleston et al. v. Transportation Cabinet and Personnel Cabinet*, 2018 WL 4037967 at *4, 5 (KY PB 2018)(no penalization where Appellants failed to show any statute or regulation entitled them to a raise, even though other employees received raises through resign and reinstate personnel actions); and *see Kelly Morrow v. Justice and Public Safety Cabinet, Dept. of Juv. Justice and Personnel Cabinet*, 2023 WL 2660708 at *4 (KY PB) (employee cannot appeal General Assembly's decision to "grant some employees a salary raise and not others").

9. After passage of SB 153, it is clear the Personnel Board cannot hear appeals involving salary claims, salary adjustments, or other salary 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).

10. The salary inequity issue appealed by the Appellant does not amount to the type of unlawful conduct the Personnel Board can review under KRS 18A.095. Therefore, the Board is without jurisdiction and the Appellee is entitled to judgment as a matter of law, pursuant to KRS 18A.095.

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 **ABILENE STEWARD V. JUSTICE AND PUBLIC SAFETY CABINET, KENTUCKY STATE POLICE (APPEAL NO. 2024-078)** 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.]

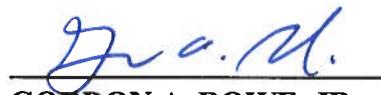
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

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 23rd day of April, 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 23rd day of April, 2025:

**Abilene Steward, Appellant
Hon. Amber Alea Arnett, Counsel for Appellant**