

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2022-143

LOUISE TIMBERS

APPELLANT

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

TRANSPORTATION CABINET

APPELLEE

** **

This matter came on for a pre-hearing conference on November 15, 2022, at 11:00 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 Appellant, Louise Timbers, was present by telephone and was not represented by legal counsel. The Appellee, Transportation Cabinet, was present and represented by the Hon. Will Fogle, who also appeared by telephone.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by the Appellant, the specific section of KRS 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, to address filed motions, and to discuss the option of mediation.

FINDINGS OF FACT

1. The Hearing Officer notes this appeal was filed with the Personnel Board on October 6, 2022. On the appeal form and during the pre-hearing conference, the Appellant, a classified employee with status, indicated she was appealing an "other" penalization, specifically, "unfair compensation." The Appellant further explained her claims in the narrative portion of the appeal form wherein she states, in pertinent part:

Unfair compensation – New Admin. Spec. II making more than me, Admin.
Spec. III

2. The Appellant attached to her appeal form a grievance that she filed more than a year before her appeal. She alleged that, although she was a fifteen (15) - year employee serving as an Administrative Specialist III, the Appellee hired an Administrative Specialist II at a higher rate of pay. The Appellee then bumped up all Hardin County Administrative Specialist IIs to a salary almost three thousand seven hundred dollars (\$3,700) more than the Appellant's salary. The Appellant also provided a timeline showing that an Administrative Specialist II who had filed a

grievance had her salary increased to the same level as the other Administrative Specialist IIs. Additional Administrative Specialist IIs were hired at a higher rate of pay.

3. Following discussion of the Appellant's claims, the Appellant made clear that she is requesting additional compensation from March 2019 until present. The Agency then requested an opportunity to file a dispositive motion explaining why this appeal should be dismissed as a matter of law. After discussion of the discovery and dispositive motion processes, a briefing schedule was established.

4. On November 22, 2022, the Appellee filed a Motion to Dismiss. The Appellee argued as follows:

The facts in this matter are not disputed. Appellant, an administrative specialist III at the Kentucky Transportation Cabinet, district four (4) office in Elizabethtown, Kentucky alleges that another employee was hired in that office as an administrative specialist II at a higher salary than she (Timbers) was making. These facts do not implicate that the provisions of the applicable salary adjustment regulation so that the appeal must be dismissed as a matter of law.

The applicable regulation states as follows: "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: Is in the same class..." 101 KAR 2:034(2). As discussed, Appellant is classified as an administrative specialist III and has not alleged that any other employee in that class has been hired at a higher salary so as to implicate the salary adjustment regulation. As such, the appeal fails as a matter of law and must be dismissed.

5. On February 14, 2023, the Appellant filed a Response to the Appellee's Motion to Dismiss and filed her own Motion for Summary Judgment. The Appellant presented a timeline comparing herself to several Administrative Specialists IIs who earned more than she did. She stated that, despite filing a grievance requesting that her salary be raised to the same level as these Administrative Specialist IIs, no action was taken by the Appellee. She also pointed out that she had more years of service and more education than many of these other employees. The Appellant referenced one (1) Administrative Specialist III who received an increase from thirty-four thousand dollars (\$34,000) to fifty thousand dollars (\$50,000). The Appellant's salary remained unchanged. The Appellant pointed out that she has received "Exceptional" and "Distinguished" performance evaluation ratings. She attached several documents showing her excellent work record with the Commonwealth of Kentucky.

6. The Appellee filed Appellee's Response on March 3, 2023, pointing out that the Administrative Specialist III the Appellant compared herself to has been in that position since 2010. The Appellee argued that that employee's appointment could not be used to require a raise of the Appellant's salary.

7. The Hearing Officer finds that the Appellant is an Administrative Specialist III employed in Hardin County with the Transportation Cabinet.

8. Beginning in 2019, the Appellee began hiring Administrative Specialist IIs earning considerably more than the Appellant.

9. The Appellant alleged that, in 2020, the Appellee gave an Administrative Specialist III a considerable increase and did not change the salary of the Appellant. The Appellee produced personnel actions showing that the employee in question had earned a high rate of pay since at least 2010 and has been an Administrative Specialist III since that time.

10. The Appellant did not demonstrate that the Appellee appointed any Administrative Specialist IIIs in Hardin County to a higher rate of pay with the same or similar combination of education and experience as the Appellant.

11. The Appellant has not demonstrated that she is entitled to a higher rate of pay. The Hearing Officer finds that the Appellee correctly applied the relevant statutes and regulations in setting the Appellant's salary.

12. There are no material issues of fact, and this case can be decided as a matter of law based on the appeal form, the statements of the Appellant at the pre-hearing conference, the Appellee's Motion to Dismiss, the Appellant's Response to the Appellee's Motion for Summary Judgment and her own Motion for Summary Judgment, the Appellee's Response, and all attachments.

CONCLUSIONS OF LAW

1. The Hearing Officer finds that the Agency correctly applied the relevant statutes and regulations in setting the Appellant's salary and the other employees' salaries.

2. 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.

3. 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.

4. Because the Appellant cannot establish that the Agency misapplied the provisions of 101 KAR 2:034, Section 1, to her detriment, the Appellant has failed to articulate a penalization as defined by KRS 18A.005(24). This is because the Appellant’s claims do not implicate any right afforded to merit employees by KRS Chapter 18A. The Appellant was not penalized in the Agency correctly applying the relevant statutes and regulations in setting their employee’s salaries. 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.

5. 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 appeal of **LOUISE TIMBERS V. TRANSPORTATION CABINET (APPEAL NO. 2022-143)** 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).

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 **Hearing Officer Mark A. Sipek** this 15 day of March, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Louise Timbers
Hon. Will Fogle
Hon. Rosemary Holbrook (Personnel Cabinet)