

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2022-002

JAMES VICKERS

APPELLANT

v.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

TRANSPORTATION CABINET

APPELLEE

** ** ** ** **

This matter came on for a pre-hearing conference on June 1, 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, James Vickers, was present and was not represented by legal counsel. The Appellee, Transportation Cabinet, was present and was represented by the Hon. William Fogle.

The purposes of the pre-hearing conference were to discuss 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 option of mediation.

FINDINGS OF FACT

1. The Appellant filed his appeal with the Personnel Board on January 14, 2022. He alleged he was penalized by not receiving a salary adjustment, pursuant to 101 KAR 2:034. The Appellant is employed as a Highway Technician II in Jackson County, Kentucky. He alleged that after he was hired other employees were brought in as Highway Technician IIs at a higher rate of pay and his pay has not been adjusted pursuant to the above-cited regulation. He stated he filed a grievance regarding this issue; however, no one answered the question as to why his salary was not adjusted.

2. The Appellee was instructed to determine if the Transportation Cabinet appointed any Highway Technician IIs in Jackson County at a higher salary than the Appellant, starting with the date of the Appellant's reclassification. The Appellee indicated that if it found the answer was yes, it would work on a salary increase for the Appellant. If the answer was no, the Appellee would file a Motion to Dismiss.

3. The Appellee filed a Motion to Dismiss, which reads in part as follows:

As set forth in the interim order dated June 2, 2022 and the corrected interim order dated June 6, 2022, this appeal turns on whether any other employee has been appointed by KYTC as a Highway Technician II in Jackson County, KY at a higher rate of pay than that earned by Appellant, so as to implicate the provisions of the salary adjustment regulation, 101 KAR 2:034, Section 1. KYTC Human Resource Branch Manager, J.R. Dobner has examined the relevant records regarding this issue and has determined that there have been no appointments to the position of Highway Technician II in Jackson County at a higher rate of pay than that of the Appellant subsequent to Appellant's reclassification in 2019. Accordingly, the provisions of the salary adjustment regulation are simply not applicable, and the appeal is legally baseless, and the appeal must be dismissed.

4. The Appellant was given an opportunity to respond to the Appellee's Motion to Dismiss but has failed to do so. The Appellant has not disputed any of the facts established in the Appellee's Motion to Dismiss.

5. The Hearing Officer finds that the Appellee has not appointed any Highway Technician IIs in Jackson County at a higher rate of pay than the Appellant since the date of the Appellant's reclassification in 2019.

6. There are no material issues of fact in this appeal and the appeal can be decided as a matter of law based on the Appellant's appeal form, the statements of the parties at the pre-hearing conference, and the Appellee's Motion to Dismiss.

CONCLUSIONS OF LAW

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

- (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.

This regulation applies to new appointments.

2. Because the Appellee did not appoint anyone in the Appellant's job classification at a higher salary, he was not entitled to a salary increase.

3. 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 reason set out above, the Appellant has failed to articulate an actionable penalization.

4. There are no genuine issues of material fact and this appeal can be dismissed as a matter of law based on the appeal, the statements of the parties at the pre-hearing conference, and the Appellee's Motion to Dismiss. KRS 13B.090(2) and KRS 18A.095(18)(a).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **JAMES VICKERS V. TRANSPORTATION CABINET, (APPEAL NO. 2022-002)** 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).

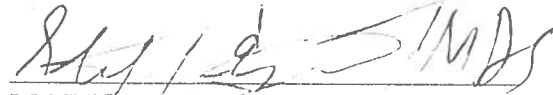
Any document filed with the Personnel Board shall be served on the opposing party.

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 17 day of August 2022.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK,
EXECUTIVE DIRECTOR

A copy hereof this day e-mailed and mailed to:

Hon. William Fogle
James Vickers
Hon. Rosemary Holbrook (Personnel Cabinet)
J. R. Dobner