

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-074**

ALEXANDER YOUNG

APPELLANT

VS. **SUSTAINING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS

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 May 5, 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:

Hon. Oliver H. Barber, Jr.
Hon. Mark Bizzell
Hon. Edward Baylous
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney E. Moore

COMMONWEALTH OF KENTUCKY
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FINDINGS OF FACT, CONCLUSIONS OF LAW AND
RECOMMENDED ORDER

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APPELLEE

* * * * *

This matter last came on for a pre-hearing conference on January 8, 2025, at 10:00 a.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, Alexander Young (the “Appellant”), was present by telephone and was represented by his legal counsel, the Hon. Oliver Barber, who appeared by telephone. The appellee herein, the Justice and Public Safety Cabinet, Department of Corrections (the “Appellee”), was present by telephone and was represented by the Hon. Mark Bizzell.

The purposes of the pre-hearing conference were to discuss the Personnel Board’s jurisdiction and the status of the Appellee’s Motion to Dismiss and responsive pleadings thereto.

At issue in this appeal is a salary disparity between the Appellant and a coworker with the same job classification. The Appellant stated in his appeal that a fellow Social Services Clinician I (“SSCI”) who was hired after him (January 2022) has a “similar combination” of education and experience and works in the same county as the Appellant but makes more money than the Appellant. The Appellee filed a Motion to Dismiss the appeal on the grounds that the Personnel Board does not have the jurisdiction to hear a case involving a salary dispute and because the appeal is untimely. The Appellant filed a response to the motion to dismiss on or about November 22, 2024 and the Appellee filed a reply brief on December 2, 2024.

After reviewing the submissions of the parties and listening to arguments related thereto, and for the reasons stated herein, the Hearing Officer recommends the Personnel Board dismiss this appeal. As explained more fully below, after the passage of Senate Bill (SB) 153, which took effect on June 29, 2023, the Personnel Board lacks jurisdiction to hear appeals based on salary inequity. Additionally, the Appellant’s claim of discrimination is time-barred.

PROCEDURAL BACKGROUND

1. This appeal was filed by Appellant on May 29, 2024. The Appellant alleged in his appeal form that the Appellee violated his rights under KRS 18A.095 and 101 KAR 2:034 by failing to adjust his salary after it hired an employee in January 2022 at a higher rate of pay than the Appellant, even though that employee has the same job classification and same work county as the Appellant and has a similar combination of education and work experience.

2. On October 28, 2024, the Appellee filed a motion to dismiss the appeal, in which it argued that the Personnel Board did not have jurisdiction to hear the appeal essentially because the Personnel Board does not have jurisdiction over an appeal based on salary inequity. The Appellee also argued that no action had been taken against the Appellant that violated KRS 18A.095 or any other provision of KRS Chapter 18A and the Appellant's claim of age discrimination was time-barred, having been filed more than thirty (30) days after the hiring and salary adjustment of the employee(s) to whom the Appellant is comparing himself.

3. The Appellant timely filed a Response to Motion to Dismiss (the "Response Brief") on November 22, 2024. In his Response Brief, the Appellant argued that he was entitled to a salary adjustment to match his pay rate to the pay rate of his coworker, Kenny Holderman. The Appellant also argued that a special entrance rate (the "SER"), passed by the Kentucky General Assembly in 2023 and implemented in December 2023, was creating a salary discrepancy between younger, newly hired employees and the Appellant. Due to the SER, younger employees hired after the Appellant allegedly make more money than the Appellant after their six-month probationary period.

4. The Appellee filed Appellee's Reply to Appellant's Response to Motion to Dismiss (the "Reply Brief") on December 2, 2024. In its Reply Brief, the Appellee again argued that the Board does not have jurisdiction over salary disputes and that the appeal was filed untimely.

STATEMENT OF UNDISPUTED FACTS

1. The Appellant is a classified employee with status, currently employed as a Social Service Clinician I by the Department of Corrections, which is part of the Justice and Public Safety Cabinet. The Appellant has been an employee of the Justice and Public Safety Cabinet since 2004. At the time of his appeal, the Appellant's annual salary was \$55,369.

2. The Appellant filed this appeal with the Personnel Board on May 29, 2024. In his appeal form (the "Appeal Form"), the Appellant alleged that his employer, the Appellee, violated KRS 18A.095, 101 KAR 2:034, and 101 KAR 3:045. The Appellant attached to the Appeal Form a copy of a grievance he apparently filed with the Appellee in September 2023. In a statement describing the nature of the grievance, the Appellant stated that fellow SSCI Kenny Holderman was hired on January 1, 2022, in the same work county and facility as the Appellant and that Mr. Holderman's educational background and experience is substantially similar to the

Appellant's, but Mr. Holderman makes substantially more money than the Appellant. The Appellant stated that:

When comparing Mr. Holderman's career and education to mine, the levels required, locality, previous positions, education, and experience is nearly identical, with some categories far in my favor, such as tenure and other completed courses." He went on to state that: "It should also be noted that despite having the most tenure and experience at this location, I am the 4th lowest paid clinician."

3. The Appellant stated in his appeal that Mr. Holderman has an annual salary of \$60,517, compared to his annual salary of \$55,369. The Appellee has not disputed this factual assertion.

4. The Appellant claims he was first made aware of Mr. Holderman's higher salary in May 2023. [See Appellant's Response to the Motion to Dismiss (the "Response Brief") at p. 2.] However, Mr. Holderman received the higher salary on January 1, 2022.

5. In his Response Brief, the Appellant states that pay raises provided to clinicians such as himself in November 2023 seemed to "resolve the immediate pay discrepancy between Mr. Young and Mr. Holderman." [See Response Brief at p. 2.] The Appellant stated that, after the November 2023 raise, his annual salary rose to \$67,123. [See Response Brief at p. 3.]

6. The Appellant also checked the box for "Discrimination" on his Appeal Form but did not specify the type of discrimination involved in his appeal. In his Response Brief, the Appellant alleged that "younger, newly hired employees," make more than he does and that the "vast majority" of these employees are "below the age of 40." [See Appellant's Response to Motion to Dismiss at p. 4.] However, the Appellant has not asserted that any new employees were hired at a higher salary in the thirty (30) day period preceding his appeal filing.¹

7. Pursuant to 101 KAR 2:034, Section 1(2), when an agency makes a new appointment, the appointing authority is required to adjust the salary of an incumbent employee "who is not on initial or promotional probation and is earning less than the new appointee's salary," to the level of the new appointment's salary if the appointing authority has sufficient funds available and 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."

¹ Pursuant to KRS 18A.095, appeals to the Personnel Board must be filed within thirty (30) days of the protested employment action.

8. The Appellant has not been demoted, suspended, involuntarily transferred, or dismissed by the Appellee nor has the Appellant's salary been reduced by the Appellee.

9. The Appellant requested in his appeal that his salary be raised to the same amount as Mr. Holderman to fix salary inequity/salary compression within the Department of Revenue.

10. By the Appellant's own admission, SSCIs are all making the same salary of \$67,123. However, newly hired SSCIs are also receiving a 5% increment after their probationary period, which raises their salaries to \$70,480. [See Response Brief at p. 3.]

11. The Appellee has not disputed the facts asserted by the Appellant. Instead, the Appellee contends that the basis of the appeal is outside the jurisdiction of the Personnel Board.

CONCLUSIONS OF LAW

1. Summary judgment should be entered when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476, 482 (Ky. 1991). The movant should only be granted summary judgment when the right to judgment as a matter of law is "shown with such clarity that there is no room left for controversy." *Steelvest*, 807 S.W.2d at 482. A party opposing a motion for summary judgment must present "at least some affirmative evidence showing that there is a genuine issue of material fact for trial." *Id.* at 482.

2. There is no genuine issue of material fact in this case. The facts are not disputed at all. The only question before the Personnel Board at this juncture is whether the Board has jurisdiction to hear the appeal, which is entirely a question of law.

3. The Appellant has not established that the Appellee has violated KRS 18A.095 in regard to his employment. 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 his appeal,² 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).

² KRS Chapter 18A was amended by the Kentucky Legislature, effective June 29, 2023. Among other changes, the category of other penalizations was removed from KRS 18A.095 as a basis for the Personnel Board's jurisdiction.

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, or denied any other rights he is entitled to under KRS 18A.095.

7. Senate Bill 153 of the 2023 Kentucky legislative session expressly removed the Personnel Board’s authority to hear appeals involving “salary adjustments” and 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 that 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, Department of Corrections*, 2023 WL 4404751 at *3 (KY PB 2023) (holding that 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 the Appellants failed to show any statute or regulation entitled them to a raise, even though other employees received raises though resign and reinstate personnel actions).

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. In his Response Brief, the Appellant also cites “penalization” as a reason for his appeal but concedes that the category of penalization was “deleted or repealed in its entirety per SB 153” as a basis for appeal by the Kentucky Legislature in 2023. [See Response Brief at p. 6.] The Appellant is correct on this point; the Kentucky General Assembly unambiguously removed the category of “other penalization” after passage of SB 153 and thus, the Board is without jurisdiction to rule on an alleged penalization on appeal.

11. The Appellant’s discrimination claims must also fail as a matter of law.

12. Pursuant to KRS 18A.059(11)(a), the Appellant was required to file a discrimination claim based on any protected class discrimination within thirty (30) days of the alleged discriminatory personnel action.

13. The principal discriminatory act complained of, the Appellee setting Mr. Holderman's salary higher than the Appellant's, occurred when Mr. Holderman was appointed on January 1, 2022. The Appellant's discrimination claim was not filed until more than two (2) years later (May 2024), which is far longer than the thirty (30) days allowed under KRS 18A.059(11)(a). In fact, the claim was filed more than one (1) year after the Appellant stated he first discovered the salary inequity (even though the statute of limitations is based on the date of the personnel action rather than the date of discovery).

14. In addition, the Appellant has conceded that SSCIs are now making the same salary (except for the probationary increase) and that the November 2023 pay raise resolved the discrepancy between his salary and Mr. Holderman's salary.

15. The Appellant has not established any form of protected class discrimination directed at him in comparison to Mr. Holderman. He has not alleged or provided any evidence that Mr. Holderman is of a different race, color, ethnicity, national origin, sex, religion, or age than the Appellant. In fact, although the Appellant checked the box for discrimination on his Appeal Form, he did not specify the type of discrimination on the Appeal Form or in the pre-hearing conferences that followed his initial filing.

16. The Appellant claimed for the first time in his Response Brief that younger employees make more than he does. However, he never identified any of these employees and never pointed out any act of alleged discrimination in pay that occurred within the thirty (30) days prior to his appeal filing. By his own admission, the Appellant was aware of the SER affecting younger, newly hired employees by December 2023 but failed to file an appeal until May 29, 2024, at least four (4) months after KRS 18A.095 would have required him to file an appeal based on age discrimination. *See KRS 18A.095(11)(b)*. Therefore, the Appellant's discrimination claim fails due to untimeliness and the lack of any affirmative evidence to support the assertion of age discrimination.

17. In addition, the Appellant cannot appeal the SER implemented by the General Assembly, or its effect on the salary of newly hired employees. An employee cannot appeal a legislative decision to award some employees a raise but not others. *Morrow v. Justice and Public Safety Cabinet, Department of Juvenile Justice and Personnel Cabinet*, 2023 WL 2660708 at *4 (KY PB)

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

19. As the Board has frequently noted in cases involving salary disputes, 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, even though such analysis may sometimes result in salaries that cause confusion and frustration by employees.

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 **ALEXANDER YOUNG V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2024-074)**, 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).

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.

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

SO ORDERED at the direction of the Hearing Officer this 5th day of May, 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 5th day of May, 2025:

**Hon. Oliver Barber, Counsel for Appellant
Hon. Mark Bizzell, Counsel for Appellee
Hon. Rosemary Holbrook, Personnel Cabinet**