

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-074**

LAURA LYNNE BEST

APPELLANT

V.

**FINDINGS OF FACT, CONCLUSION OF LAW
AND RECOMMENDED ORDER**

PUBLIC PROTECTION CABINET

APPELLEE

This matter last came on for a pre-hearing conference on March 5, 2018, at 10:00 a.m. EST, 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, Laura Lynne Best, was present and was not represented by legal counsel. The Agency/Appellee, Public Protection Cabinet, was present and represented by the Hon. Kate Bennett.

This matter is before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss filed with the Personnel Board on April 6, 2018, arguing that the Appellant failed to file her appeal in a timely manner, that the Appellant failed to allege a discrimination claim in a timely manner, and that the Appellant would be unable to win her appeal as a matter of law. The Appellant has had an opportunity to file a response and did so, briefly, on August 6, 2018. The Agency then filed a reply to the Agency's response on August 21, 2018. This matter now stands submitted to the Hearing Officer for a ruling on the Agency's Motion to Dismiss.

BACKGROUND/FINDINGS OF FACT

1. During the relevant time period, the Appellant, Laura Lynne Best, was a classified employee with status employed by the Public Protection Cabinet, Department of Housing, Buildings, and Construction (DHBC). The Appellant served as Staff Assistant, a merit position.

2. The Appellant filed the instant appeal on March 28, 2017, alleging she was penalized by "compensation assessment."

3. Specifically, the Appellant alleged she had been penalized because another employee, Gary Feck, reverted back into the classified service as a Staff Assistant, the same position held by the Appellant, and that employee made more money than did she. She also advanced additional claims including an allegation of gender discrimination.

4. Importantly, as a factual matter, Feck reverted to a Staff Assistant on February 8, 2016 and the Appellant acknowledges that she was made aware of Feck's reversion and salary shortly thereafter.

5. Over a year after Feck's reversion, on March 28, 2017, the Appellant then filed an appeal with the Personnel Board arguing she is entitled to a higher salary as a result of Feck's reversion and alleging gender discrimination in determining her salary. The Appellant explained her significant delay in submitting her Board appeal by asserting that she feared retribution from PPC's then-Director of Personnel, Lynn Gillis.

6. As noted above, the Agency filed a Motion to Dismiss with the Personnel Board on April 6, 2018. Amongst other arguments, the Agency contended that, pursuant to KRS 18A.095(29), the Appellant had one year from the date of the alleged penalization or from the date that the Appellant knew or should have known about the alleged penalization in which to have filed an appeal with the Personnel Board, and her appeal is untimely and must be dismissed.

7. During the pre-hearing conferences held in this matter and in her response to the Agency's Motion to Dismiss, the Appellant admitted that she was aware of both Feck's reversion and his significantly higher salary shortly after his February 8, 2016 reversion. The Hearing Officer finds the Appellant's admission credible.

8. As established by the date stamp on the appeal, the Appellant's appeal was received by the Personnel Board on March 28, 2017.

9. KRS 18A.095(14)(a) states:

Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board.

10. KRS 18A.095(14)(d) states:

Notwithstanding any other prescribed limitation of action, an employee that has been penalized, but has not received a written notice of his or her right to appeal as provided in this section, shall file his or her appeal with the Personnel Board within one (1) year from the date of the penalization or from the date that the employee reasonably should have known of the penalization.

11. KRS 18A.095(18)(a) states:

The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall

notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.

12. The Hearing Officer finds, assuming Appellant as aware of Feck's reversion as she concedes shortly after February 8, 2016, that she would have had until approximately mid-February 2017 in which to file her appeal. This is calculated by counting one year from February 8, 2016 (the day Feck reverted), which results in February 8, 2017, being the due date. Even assuming that the Appellant did not find out about Feck's reversion on the day it occurred, but instead "near the time it occurred," as she concedes, the Appellant's appeal would be due sometime in mid-February 2017. It was not filed with the Board, however, until March 27, 2017.

13. Accordingly, the Hearing Officer finds that because the appeal was not received by the Personnel Board until March 27, 2017, the appeal was untimely filed and did not comply with the requirements of KRS 18A.095(29). Because there do not appear to be equitable grounds to toll the applicable statute of limitations, the Hearing Officer will not substantively address the Appellant's claim that she filed her appeal untimely due to a fear of retaliation. And because the appeal is hereby deemed untimely, the Hearing Officer declines to address the remainder of the Agency's grounds for dismissal.

CONCLUSION OF LAW

The Hearing Officer concludes, as a matter of law, that the Appellant did not file her appeal within the one year time limit established by KRS 18A.095(29). Therefore, the Personnel Board lacks jurisdiction to consider this appeal as it was untimely filed.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **LAURA LYNNE BEST V. PUBLIC PROTECTION CABINET (APPEAL NO. 2017-074)** 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 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 **Hearing Officer Stafford Easterling** this 18th day of January, 2019.

KENTUCKY PERSONNEL BOARD



**Mark A. Sipek
Executive Director**

A copy hereof this day mailed to:

Hon. Kate Bennett
Laura Lynne Best