

5

C

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD**

**MICHAEL R. BAKER (APPEAL NO. 2015-114)
HAL D. SATTERLY (APPEAL NO. 2015-117)**

APPELLANT

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

TRANSPORTATION CABINET

APPELLEE

*** **

The Board at its regular December 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated October 29, 2015, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellants' appeals are 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 15th day of December, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Fogle
Michael R. Baker
Hal D. Satterly
J. R. Dobner

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD**

**MICHAEL R. BAKER (Appeal No. 2015-114)
and HAL D. SATTERLY (Appeal No. 2015-117)**

APPELLANTS

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

**TRANSPORTATION CABINET,
MIKE HANCOCK, APPOINTING AUTHORITY**

APPELLEE

** ** ** ** **

These consolidated matters came on for a pre-hearing conference on August 17, 2015, at 11:00 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellants, Michael R. Baker and Hal D. Satterly, were present and were not represented by legal counsel. The Appellee, Transportation Cabinet, was present and represented by the Hon. Will Fogle.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by Appellants, to determine the specific section of KRS 18A which authorizes these appeals, to determine the relief sought by Appellants, to define the issues, to address any other matters relating to the appeals, and to discuss the option of mediation.

These appeals were filed with the Personnel Board on June 12, 2015. Both Appellants indicated they are appealing grievance denials. The substance of the appeals is an alleged violation of KRS 18A.010(1), or as stated by Appellants, the spirit of the merit law. Both Appellants filed grievances that were ultimately denied by the Appointing Authority for the Transportation Cabinet, Ms. Carol Beth Martin.

The substance of the grievances and of these appeals is that a person less qualified than the Appellants was transferred (or placed) into the position of Assistant Director for the Division of Graphic Design and Printing. The employee who was transferred into the position was Ms. Hope Purvis, who had previously been an Assistant Director in the Office of Support Services, under the direction of Executive Director, Patrick Grugin. The Appellants stated Ms. Purvis had no experience in the position. The Appellants stated they understood that Mr. Grugin stated it was within his purview to abolish a position, then re-instate the position and transfer someone into it, but Appellants believe that such violated the spirit of the merit law.

In addition to the grievances filed, Mr. Baker stated he had filed a complaint with the EEO, which was also denied. Mr. Baker made reference to a person being selected for an Assistant Director position in the Office of Support Services, but also indicated later during the pre-hearing conference he would not be filing an appeal on that.

Appellant Michael Baker also mentioned that women have been favored for 20 years in top level positions in his division, but the Hearing Officer does not understand Baker to be making a discrimination claim.

Counsel for the Appellee asked for time in which to file a Motion to Dismiss, stating he did not believe a penalization had been stated, or that a matter over which the Personnel Board had jurisdiction had been stated. The parties discussed this. A briefing schedule was established, and an evidentiary hearing date was set, should the appeals survive the Transportation Cabinet's Motion to Dismiss.

The parties filed pleadings in accordance with the Interim Order entered August 21, 2015, and the matter is submitted for a ruling.

BACKGROUND

1. During the relevant times, the Appellants, Michael R. Baker and Hal D. Satterly, were classified employees with status.

2. In its Motion to Dismiss, Counsel for the Appellee, Transportation Cabinet, contends the Personnel Board lacks jurisdiction to consider this matter as the Appellants have not suffered a penalization pursuant to KRS 18A.005(24). Counsel also states that the regulations and statutes specifically provide for the filling of positions by transfer. Counsel disputes the notion that the transfer of an otherwise qualified person would violate the spirit of KRS Chapter 18A, and the statement at KRS 18A.010 that calls for the application of merit principles.

3. The Appellants filed a timely joint Response to the Appellee's (sic) Motion to Dismiss. The Appellants state they are not challenging the transfer specifically of Ms. Purvis to the Assistant Director position, but rather the abolishment of a position and re-establishment of it without regard for qualifications. Appellants contend they were, in fact, penalized when they were not allowed the opportunity to apply for a merit promotional position which should have been filled competitively. The Appellants stated "both are asking only that the position of Assistant Director of Graphic Design and Printing, since it has been re-established, be advertised and filled in accordance with the Career Opportunity System process and in the spirit of the 18A.010(1)." (sic)

4. 101 KAR 2:076, Section 1 states:

Section 1. Filling of Vacancies.

A vacancy in the classified service, which is not filled by promotion, transfer, or demotion, shall be filled by probationary appointment, reemployment of a career or laid-off employee, reversion, or reinstatement.

5. KRS 18A.010(1) states:

The general purpose of KRS 18A.005 to 18A.200 is to establish for the state a system of personnel administration based on merit principles and scientific methods governing the recruitment, examination, appointment, promotion, transfer, lay-off, removal, discipline, and welfare of its classified employees and other incidents of state employment. All appointments and promotions to positions in the state classified service shall be made solely on the basis of merit and fitness, to be ascertained by competitive examination, except as hereinafter specified. The General Assembly finds that this chapter is necessary in order to improve the morale and motivation of state employees and to gain the maximum utilization of human resources in order to provide better service to the citizens of this Commonwealth.

6. KRS 18A.005(24) states:

"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;

7. 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.

FINDINGS OF FACT

1. During the relevant times, the Appellants, Michael R. Baker and Hal D. Satterly, were classified employees with status.

2. The Hearing Officer finds that while the actions of the Appellee, Transportation Cabinet, did not allow the Appellants to compete for a promotion, such actions do not violate KRS Chapter 18A.

3. The Hearing Officer finds that the Appointing Authority's response to the Appellants' grievances regarding the action taken demonstrates clearly that the position was properly filled by transfer. The Hearing Officer is aware that a promotion, with the goal being the advancement and betterment of career employees, may be a preferred option, but it is not the only option allowed for under KRS Chapter 18A for the filling of vacant positions, and transfer, per the statute and regulation, does not violate the law.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that, pursuant to KRS 18A.095(18)(a), the Personnel Board lacks jurisdiction to further consider this appeal, as the position in question was properly filled by transfer and the Appellants are not making any claim of discrimination.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeals of **MICHAEL R. BAKER V. TRANSPORTATION CABINET, (APPEAL NO. 2015-114)** and **HAL D. SATTERLY V. TRANSPORTATION CABINET, (APPEAL NO. 2015-117)** 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 Boyce A. Crocker** this 29th day of
October, 2015.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. William Fogle
Mr. Michael R. Baker
Mr. Hal D. Satterly
Mr. J. R. Dobner