



**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2017-075**

**CHRISTINA BROCK**

**APPELLANT**

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

**CABINET FOR HEALTH AND FAMILY SERVICES**

**APPELLEE**

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This matter came on for an evidentiary hearing on September 15, 2017, at 9:30 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Christina Brock, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Lucas Roberts. Appearing as Agency representative was Gary Farmer.

Appellant's appeal involves the issue of whether she was penalized when she was reclassified to a Case Management Specialist II (CMS II) and did not receive a pay raise. A copy of the appeal form is attached hereto and incorporated herein as **Recommended Order Attachment A**.

The burden of proof was placed upon the Appellant by a preponderance of the evidence to show that a penalization occurred.

**BACKGROUND**

1. The undisputed facts are that the Appellant, in April 2015, was promoted to a Case Management Specialist I (CMS I), Pay Grade 13. She completed her probation and received a promotional increase on November 1, 2015. Thereafter, on July 1, 2016, she was reclassified from a CMS I to a CMS II. Both positions were Pay Grade 13 at that time and she did not receive a pay increase.

2. Approximately September 15, 2016, the Commissioner issued a Memorandum that salary structures were changing. At that time, a new special entrance rate was established for the Case Management Specialist I and the Case Management Specialist II was raised to a Pay Grade 14. The Appellant received a five percent pay increase as a result of this change.

3. The Appellant's first witness was **Angela Goodin**. She is a Public Assistance Program Specialist currently based in Frankfort. She testified that she was a former CMS I working in Bell County. She began there in February 2012 until she was transferred to Frankfort in September 2014. She testified that John Robbins was her supervisor in Bell County. Her duties as a CMS I included some face-to-face meetings with clients and working in the call center. She then detailed the difference between a Kentucky Work Program (KWP) Manager as opposed to a CMS I. The KWP worker would routinely get more detailed information from clients in meetings in the office, whereas the duties of a call center worker (CMS I) required less face-to-face meetings with clients and more preliminary information gathering on the phone. The witness indicated that a CMS I who did not perform KWP duties would not be considered as performing CMS II duties.

4. The witness added that during her time in Bell County, she did not know anyone who was reclassified from a CMS I to a CMS II.

5. **Appellant, Christina Brock**, called herself as the next witness. She testified that she was reclassified from a CMS I to a CMS II, effective July 1, 2016. This reclassification was done without her knowledge. She feels that her supervisor, John Robbins, initiated this reclassification in an attempt to get her a pay raise.

6. However, since the reclassification kept Appellant in the same Pay Grade 13, she received no pay increase.

7. She then testified that by an email dated August 15, 2016 (Appellant's Exhibit 4), all staff were notified of the intent to implement new pay grades and special entrance rates (SER) for a number of positions in an attempt to improve morale and retain hardworking social service staff.

8. As a result of this salary structure change, the CMS II (Pay Grade 14) monthly salary was raised from \$2,670.20 to \$2,937.20. The SER for a CMS I (Pay Grade 13) was changed from a monthly salary of \$2,670.20 to \$2,803.72.

9. Appellant argues that because she was incorrectly and prematurely reclassified to a CMS II before this salary structure change, she missed out on receiving the five percent SER salary given to the CMS I employees. She insists that even though she was reclassified to a CMS II, she continued to do the duties of only a CMS I and should not have been reclassified. The Appellant does not deny that she received a five percent increase after the CMS II classification was raised to a Pay Grade 14.

10. On cross-examination, the witness stated that as an example of being improperly reclassified from CMS I to CMS II, she only began receiving training on the CMS II duties in May 2017, and has been training on those duties for four months. She still works in the call center approximately two days per week.

11. The Appellant's next witness was **Cynthia Widener**. She is employed as a CMS II with the agency in the Bell County office. She stated that she was a CMS I worker for approximately three and a half years before being reclassified to a CMS II. This occurred approximately five years ago. She stated that she is now assisting the Appellant with her KWP training, which includes face-to-face meetings with clients and working with recertifications.

12. She stated that prior to September 2016, she was not aware of any other CMS IIs in either the Middlesboro or Pineville offices in Bell County. She stated that as of September 16, 2016, she was the only CMS II in Middlesboro.

13. Appellant's next witness was **Rick Nelson**. Mr. Nelson is a member of the Kentucky General Assembly from Bell County and was contacted by the Appellant after not receiving the five percent increase she thought she should have received upon being reclassified from CMS I to CMS II. The witness stated that he told her to follow the appeals process and tried to give her moral support.

14. The Appellant's next witness was **Gary Farmer**. He has been the Service Region Administrator Associate based in Harlan and is over the Bell County Region.

15. He testified that from 2000 through 2015, no one was ever reclassified from a CMS I to a CMS II in Bell County.

16. The witness confirmed that prior to the salary structure change in September 2016, anyone reclassified to a CMS II position who remained in the same pay grade 13 received no monetary increase. However, upon the change in grade from a pay grade 13 to a pay grade 14 for CMS IIs, they did receive a five percent increase. He confirmed the Appellant received this five percent raise.

17. Both parties then announced closed. The Agency then moved for a Summary Judgment in their favor, which was **GRANTED** by the Hearing Officer.

18. The Agency argued that the Appellant had not been penalized pursuant to the meaning of KRS 18A.005(24). That subsection states, as follows:

- (24) '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.

19. The Agency also argued in support of this motion, citing 101 KAR 2:034, Section 3, Salary Adjustments, (3) Reclassification. This section states as follows:

(3) **Reclassification.**

- (a) An employee who is advanced to a higher pay grade through reclassification shall receive the greater of five (5) percent for each grade or the new grade minimum except as provided under subsection (2)(b) of this section.

...

20. In essence, the Agency argued that because the Appellant was reclassified but not advanced to a higher pay grade (remaining in pay grade 13), she was not entitled to a five percent raise at that time.

**FINDINGS OF FACT**

1. The Appellant was reclassified from a CMS I (Grade 13) to CMS II (Grade 13) effective July 1, 2016. She received no pay increase by virtue of 101 KAR 2:034, Section 3(3), Reclassification. She did not appeal the action, but has attempted to encompass it in her present appeal.

2. The Appellant did receive a five percent pay increase given to CMS IIs as a result of the September 15, 2016 salary structure change announced by the Commissioner.

3. The new monthly salary for CMS Is was raised to \$2,803.72 effective September 16, 2016. The new monthly salary for CMS IIs was raised to \$2,937.20 effective September 16, 2016.

4. Had the Appellant remained a CMS I as of September 16, 2016, her monthly salary would have risen to \$2,803.72. However, she had already been reclassified to a CMS II prior to that and, because of the timing of the salary structure change which occurred some two and a half (2 ½) months afterward, she was unable to have the advantage of the special entrance rate given to CMS Is.

5. The Appellant's claim that she was improperly classified does not meet the definition of penalization under KRS 18A.005(24) because it was not to a lower grade or rate of pay, and did not diminish the level, rank or responsibility of the Appellant.

**CONCLUSION OF LAW**

The Hearing Officer concludes as a matter of law that the Appellant failed to carry her burden of proof by a preponderance of the evidence to show she was penalized by the actions taken herein.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **CHRISTINA BROCK V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2017-075)** 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 R. Hanson Williams** this 11<sup>th</sup> day of October, 2017.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Lucas Roberts  
Ms. Christina Brock

**APPEAL FORM**

\*\*\*ALL APPEALS TO THE PERSONNEL BOARD MUST BE ON THIS FORM\*\*\*

This appeal to the Kentucky Personnel Board is hereby filed pursuant to the provisions of KRS Chapter 18A. The following information is provided as required by law.

For Official Use Only

APPEAL NO.

2017-075

NAME:	<u>Brock</u> (LAST)	<u>Christina</u> (FIRST)	<u>K.</u> (MIDDLE)	<u></u> (MAIDEN)	<u></u> (SOC. SEC. NO.)
HOME ADDRESS:	<u></u> (STREET)	<u></u> (CITY)	<u></u> (STATE)	<u></u> (ZIP CODE)	
WORK STATION ADDRESS:	<u></u> (STREET)	<u>Middlesboro</u> (CITY)	<u>Ky</u> (STATE)	<u>40965</u> (ZIP CODE)	
HOME PHONE NO:	<u></u>				
	WORK STATION PHONE NO: <u></u>				
CABINET OR AGENCY:	<u>Cabinet for Health and Family Services DCBS CHFS</u>				
NAME OF APPOINTING AUTHORITY:	<u>Alan Sisk</u>				

REPRESENTED BY ATTORNEY:	<input checked="" type="checkbox"/> NO	<input type="checkbox"/> YES
ATTORNEY'S NAME, ADDRESS AND PHONE NO:	<u></u>	

I AM A:	<input checked="" type="checkbox"/> Classified employee	<input type="checkbox"/> Unclassified employee
	<input type="checkbox"/> Applicant for employment	<input type="checkbox"/> Eligible on register

I AM APPEALING THE FOLLOWING ACTIONS: (Check appropriate box or boxes)		
<input type="checkbox"/> DISMISSAL	<input type="checkbox"/> DEMOTION	<input type="checkbox"/> SUSPENSION
<input type="checkbox"/> DISCIPLINARY FINE	<input type="checkbox"/> INVOLUNTARY TRANSFER	<input type="checkbox"/> LAYOFF
<input type="checkbox"/> EMPLOYEE EVALUATION	<input type="checkbox"/> REALLOCATION	<input checked="" type="checkbox"/> RECLASSIFICATION
<input type="checkbox"/> APPLICANT REJECTION	<input type="checkbox"/> DENIED, ABRIDGED OR	<input type="checkbox"/> DISCRIMINATION Circle those that
<input type="checkbox"/> REMOVAL FROM REGISTER	IMPEDED RIGHT TO INSPECT OR	apply [race, color, religion, ethnic origin,
	COPY RECORDS	sex, disability, political, age (over 40)]
<input type="checkbox"/> OTHER PENALIZATION (Specify): <u></u>		

Recommended Order  
Attachment A

CLASSIFIED, ELIGIBLE OR APPLICANT, PREPARE THIS SECTION

The following is a short, plain, and concise statement of the facts which relate to the action I am appealing:

I was reclassified to a CMII after probation ended. The other CM's were not reclassified to CMII as I was, causing me to be treated unequally. I did not receive a raise with the reclass or a written description of new job duties or assigned new job duties. As one of the newest CM's I do not understand why I was the only CM to be changed to a CMII. A few days after my title was changed a new description for CMII was released permitting a 5% raise to be a CMII. Now all the CM's are receiving this raise except for me as they were not

UNCLASSIFIED EMPLOYEE, PREPARE THIS SECTION

The following is a short, plain, and concise statement of reason or cause given for dismissal or other penalization:

Changed to a CM-III  
and I am not different but  
will now receive  
lower pay for the same job  
and be overlooked for  
the same opportunity.

DATE OF RECEIPT OF NOTICE OF APPEALED ACTION: (Attach a copy of any written notice which you received relating to this Appeal.)

Christine Brock

SIGNATURE

3-27-17

DATE

ATTORNEY'S SIGNATURE (if any)

DATE

For Official Use Only

Received

MAR 31 2017

Personnel Board

THIS FORM IS TO BE MAILED OR DELIVERED TO:

KENTUCKY PERSONNEL BOARD  
28 FOUNTAIN PLACE  
FRANKFORT, KENTUCKY 40601



Received

MAR 31 2017

Dear Sir or Madam,

3/29/17

Personnel Board

Today 3/29/17 I was informed this type of appeal is available and that I need to file this appeal before the decision of my grievance is reached due to the filing time frames. I had previously been instructed that my only option was to file a grievance. My grievance is active at this time and has not been finalized as of today. I am asking you to grant me a hearing on this matter so I may provide all evidence, paperwork, and explain and discuss my situation. I am not sure if this is how it works, to grant a hearing, however I am asking for your help with this issue as I have fell through the cracks and receiving different actions than the other CM's and now this has caused me to not receive the same pay - for the same duties they will receive.

Thank you,  
Christina Brock

I was ~~instructed~~ informed today that this appeal needs to be sent before the grievance is finalized. I have documents to support the reasons as this has taken longer than usual to send this appeal so please let me know if I have ~~do~~ did this wrong or what I need to provide other than this description. Thank you.

Please let me know if you need a  
copy of the grievance, emails, timeline, etc.

Thank you,

Christine Brock

Q

Received

MAR 31 2017

To Whom It May Concern:

I have sent my grievance through <sup>Personnel Board</sup> the chain of command, and I am not sure if I explained my situation as the responses I have received are not clearing up the concerns that I have documented ~~personnel board~~ <sup>concerning</sup> unequal treatment which resulted in lower wages for myself and causing me to not receive a pay increase equal to the other case managers while performing identical job duties for the state.

I am asking for equal pay and treatment and to be granted the ~~500~~ <sup>pay increase</sup> increase that the other case managers are receiving to be reclassified to a CM II, as this is currently what all case managers are receiving at this time due to the fact that they were never reclassified to CM II after completing their ~~probation~~ probation period as a CM I.

The process that ~~should be~~ <sup>is</sup> set up for reclassification ~~and~~ <sup>appears</sup> to not have been being followed which is as follows: Once a case manager I completes their probation period they would receive a 5% increase, which we all did, but the only thing different is I received a new title as Case mgr II.

As you may be able to see by reviewing my personnel file, I am

one of the newest case mgrs. in the state when I received CM II title. Other case mgrs. who have been working in the program longer did receive their 5% increase after being removed from probation but their job title was never changed as mine was. (I'm not sure anyone was except me)

The week after I received an email that my title changed with no new duties, grade change, or pay increase, we received the email about state wide pay changes turning a CM II to a pay grade 14 with a 5% pay increase and 6 month probation period. <sup>Now they received the SER raise plus 5%.</sup>

This caused all of the other case managers who went through the same process as myself (but without a title change) to be eligible for an additional 5% raise that I will not receive due to my title changing after probation and theirs did not.

My supervisor received a list of names that were up for reclass and due to my year as CM I he sent me up to be a CM II. The other case managers were never sent up for theirs and some have been

CM for 15 years and at retirement,  
This is my grievance that if  
I was given CM II title as  
the newest worker with no new  
assignments or duties (Ky employee  
Handbook) after probation, ~~and that~~ that the  
other case managers ~~were not~~  
~~reclassified~~ should have been treated  
the same way. As with Family Support  
Specialists are reclassified to Family  
Support Specialist II's - they are all  
treated the same and follow the  
reclass process timely ~~and~~ and  
equally during this process.

I feel that it is unfair that  
if case mgr's were not reclassified  
any more that my supervisor should  
have been informed that no one  
did this anymore or it needs to be  
researched as if this process should  
have been being followed by the  
state, why the others were not  
reclassified. All workers have the  
right to be treated the same which  
keeps the agency in line with  
equal pay for our job specifications.

I am asking for this situation  
to be reviewed and requesting to be  
considered for the same reclassification  
percentage increase because I had  
followed the same procedures that  
all other CM's followed. There was no  
difference.

There was no difference in my process of receiving the job title CM II when getting off probation as it was for other CM's getting off probation and their titles being left as a I.

The difference I do see now is the other CM's who should have already been CM II's (as they have been CM's longer than I have) are now eligible for the 5% increase that I have not been considered for.

All I received six days before they were notified of the CM II raise was an email saying I will not receive ~~any~~ anything except a title change. I now will not receive equal pay for equal work. I am asking for equal treatment ~~as~~ as I am just like they are. No worker should be treated unequally and receive less pay for the same job due to confusion involved in the CM reclass process. When I was changed, the CM's told me that had to be a mistake because no one does that anymore. Please help remedy this as I have been a faithful worker and need your help. Thank you,  
Christina Brock