

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2015-039**

**JAIME B. BRUCE**

**APPELLANT**

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

**TOURISM, ARTS AND HERITAGE CABINET  
DEPARTMENT OF PARKS  
BOB STEWART, APPOINTING AUTHORITY**

**APPELLEE**

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The Board at its regular November 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated October 9, 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 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 24<sup>th</sup> day of November, 2015.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. Leigh Powers  
Hon. G. Michael Ingram

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PERSONNEL BOARD  
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DEPARTMENT OF PARKS,  
BOB STEWART, APPOINTING AUTHORITY**

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This matter came on for evidentiary hearing on July 22 and 23, 2015, at 11:00 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Roland Merkel, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Jaime B. Bruce, was present and represented by the Hon. G. Michael Ingram. The Appellee, Tourism, Arts and Heritage Cabinet, Department of Parks (Pine Mountain State Resort Park), was present and represented by the Hon. B. Leigh Powers. Also present for the Appellee was Ms. Becky Cottongim, Paralegal, and Ms. Laurie Googe, agency representative.

The issue in the case is whether there was just cause for the demotion of the Appellant from the position of Sales Representative at the Pine Mountain State Resort Park to the position of Park Desk Clerk, effective January 16, 2015, with a reduction in salary from \$16.432 per hour to \$12.64 per hour, and whether such action was excessive or erroneous. The burden of proof was upon the Appellee to prove its case by a preponderance of the evidence.

The rule separating witnesses was invoked and employed throughout the course of the proceedings. Both parties presented their respective opening statements.

**BACKGROUND**

1.     The first witness for the Appellee was **LaDonna Miller**. For the past six years Ms. Miller has been employed by the Department of Parks as the Director of Sales and Marketing. She supervises such activities for the entirety of the Kentucky Parks system. She also supervises two central staff officers who conduct training. In the eastern region, where Appellant is employed, Jovan Wells conducted such training. Prior to Ms. Wells, Carol McMasters conducted the training. The Appellant comes under the supervision of Ms. Miller.

2. The Appellant, Jaime Bruce, had been employed at the Pine Mountain State Resort Park (PMSRP) at the front desk, when, in September 2011, she began her position in Group Sales. The regional trainers came to the park to conduct training in small components. During 2011 and 2012, Appellant was trained by Carol McMasters. These trainings typically took about two days. Ms. Wells started training the Appellant in February 2013. Appellant had been struggling in her position, so it was decided training would start over. Appellant was trained a second time in the entirety.

3. Ms. Miller identified Appellee's Exhibit 1 as Standard Operating Procedure to be followed by employees in Group Sales. They are to use this document to maximize revenue. It covers procedures from the initial customer call through the event itself or cancellation of same. It explains how to make and keep contact with customers, process contracts and obtain deposits. Once a customer is secured, a Banquet Event Order (BEO) is created, which sets out specific details for the event, such as the day, time, set-up, options, and menus.

4. Once a BEO is drafted, copies are presented to all Park departments that will be involved in the event, such as Food Service, Maintenance, Housekeeping, Front Desk, Set-up/Maintenance, and the Park Manager. A weekly meeting of key staff is held at the Park to review upcoming events for that week. All of these procedures were explained and taught to the Appellant, including constructing and using BEOs.

5. Ms. Miller identified Appellee's Exhibit 2 as a series of emails and documents evidencing Appellant's training through 2014.

6. During 2011 and 2012, some issues arose including customer complaints. Appellant's main problems were in the areas of food, correct counts, communicating with the Kitchen, and making certain everything on the books had a signed contract.

7. Oversight of set-up of events was part of Appellant's duties. She was required to set-up and make sure the audio-video (AV) equipment was in place and working before an event began. There were reports of AV equipment not having been set-up correctly. On one occasion, the sound system did not work properly when the Governor gave a speech.

8. Ms. Miller identified Appellee's Exhibit 3 as the January 6, 2015 letter of demotion issued to Appellant by Laurie Googe, Human Resources Director. It had been three years and the problems previously addressed with Appellant had still occurred. It was decided Appellant could not meet expectations of performance of her job duties. Ms. Googe asked Ms. Miller whether there was an excessive amount of errors. Ms. Miller told her yes, particularly since they continued to cost the Park revenue. She made a recommendation to Ms. Googe that as Appellant was not fulfilling her role, she could not continue employment in that position. A form had been submitted to HR, and it was processed from there. Appellant had prior disciplinary actions over the past three years.

9. At the request of the Hearing Officer, Hearing Officer Exhibit 1 was secured and admitted into the record. That document is a "Personnel Cabinet Reclassification, Position Description Required" document which describes the job duties and tasks for a Parks Group Sales Coordinator, the position held by the Appellant (the exhibit identifies the Appellant by her former name "Jaime N. Hensley").

10. **Rita Jackson-Edmondson**, who since March 1, 2014, has been the Park Manager at PMSRP, was the next witness. Her prior position was Business Manager at the Park.

11. Appellant had been employed as a Front Desk Clerk at PMSRP until 2011. She was promoted to Group Sales Coordinator about February 2012. Appellant had trouble staying on task, and it took her awhile to finish a task. As Business Manager, Ms. Jackson-Edmondson became Appellant's supervisor in early 2013. She was aware of Appellant's disciplinary history.

12. In 2013, the witness put Appellant on a Performance Improvement Plan (PIP), (Appellee's Exhibit 4). She met with Appellant on a weekly basis to discuss performance issues. Appellant did improve, and in October 2013, the PIP was dropped. However, Appellant engaged in a pattern where her performance improved for a couple of months and, thereafter, she repeated past mistakes.

13. Ms. Jackson-Edmondson identified Appellee's Exhibit 5 as the July 10, 2014 suspension letter issued to the Appellant. On Memorial Day weekend of 2014, Governor Beshear came to speak at the park during the Kentucky Mountain Laurel Festival. On that Friday night, Appellant made known to the witness that the microphone on hand was shorting out. She directed Appellant to find the other microphone.

14. The next day, Ms. Jackson-Edmondson noticed the Governor was speaking without a microphone. Appellant told her she thought she would have time to fix the problem, but she did not and could not find the second microphone.

15. Appellant was responsible to make sure set-ups were done correctly and that all equipment was working properly. The witness described the incident of October 8, 2014, as contained in Appellee's Exhibit 3. During the incident of September 24 and 25, 2014, Appellant failed to deliver a menu to the kitchen. It is Appellant's responsibility to work out the menu with the group, and then with the Food Services Manager.

16. Ms. Jackson-Edmondson identified Appellee's Exhibit 6 as an email complaint from Leigh A. Baker, Program Manager of Team Up 4 Health. This was a program put on by the Bell County Health Department. Ms. Baker stated she had extreme difficulty having Appellant return her telephone calls.

18. Appellant always apologized after each incident, and admitted she "messed up." All the witness could do was document these events.

19. She identified Appellee's Exhibits 7, 8 and 9 as the 2013 first, second and third interim reviews, respectively, of the Appellant. These reviews documented consistent problems Appellant had, particularly her follow-up with customers.

20. She identified Appellee's Exhibit 10 as Appellant's 2014 Annual Employee Performance Evaluation. She was given an overall final performance evaluation score of 192, which was in the "Needs Improvement" category. Appellant needed to pay closer attention to details, return telephone calls, and follow up on scheduling.

21. Stephen Eastin, who was the Park Manager at the time, had been Appellant's prior supervisor. The witness requested on a number of occasions to become Appellant's supervisor, as she oversaw and interacted with Group Sales in her position as Business Manager. She eventually was made the Appellant's supervisor.

22. There were weekly staff meetings to discuss the BEOs. Appellant told Ms. Jackson-Edmondson she had problems getting some principals to attend those meetings. The witness and Appellant both sent emails advising park employees they were required to attend.

23. The next witness was **Jovan Wells**. Since 2013, Ms. Wells has been employed as a Sales Manager with the Department of Parks, and works with all parks in the eastern region of the state, including PMSRP.

24. With regard to a portion of Appellee's Exhibit 2, the spreadsheet shows when an employee is trained and the topic described. The employee then enters the initials of the trainer for that segment.

25. Ms. Wells started training the Appellant in the winter of 2013 and helped her in problem areas pertaining to sales calls. She came in to train Appellant once every two weeks, and then did a follow up in the fall and another in the spring. Ms. Wells was aware of Appellant's problems in areas of communication, details, and following up with groups. She sent emails to her supervisor, the Park Manager and Appellant to keep everyone updated on the training progress. After training, Ms. Wells observed Appellant's improvement, but thereafter issues would arise again. The same issues would repeat. Appellant's performance was "up and down."

26. She identified Appellee's Exhibit 11 as an email she sent to Laurie Googe on November 20, 2014, detailing a recap of the trainings she performed with Appellant. She had told Appellant that if one more issue arose, it would probably be her "last strike." She told Appellant that she trained her all she could, and it was up to Appellant now to use that training to her advantage. Appellant understood matters in training very well. Things would go well for a while thereafter, but then issues would crop up after a few weeks.

27. During training, they discussed that any AV equipment should be checked; she should check microphones and make sure all the equipment was working. Appellant's revenue numbers steadily increased and generally were in good shape.

28. The next witness was **Thomas "Duane" Wagner**, who, for the past year, has been employed by the Department of Parks at PMSRP as Food Services Operations Manager I. Prior to that time, he was employed at Applebee's in Lexington, Kentucky, as a Kitchen Manager. He described his duties at the park, which included development of park menus for events, as well as the main dining room, supervision of management of the kitchen and dining room, and purchasing. He worked closely with Group Sales, particularly in banquet orders, set-ups, types of silverware to be used, and the meal menu. Over the past year, he had worked frequently with the Appellant.

29. He identified Appellee's Exhibit 12 as the Banquet Event Order (BEO) for an event with the Leadership Tri-County Group, September 25, 2014, through September 26, 2014. The BEO describes when the event takes place, what types of meals are required, set-up style, number of participants, and the banquet menu. A BEO is prepared well in advance of the event so that it may be reviewed to see what is needed for that event.

30. Mr. Wagner receives deliveries at the Park on Tuesdays and Thursdays. He had advised Appellant of those delivery dates and what items are specifically received on those dates. He had also provided her information on order deadline dates. He would regularly print out color-coded documents showing the upcoming order deadline and delivery dates, and delivered a copy to the Dining Supervisor, Kitchen Supervisor, and Appellant.

31. He identified Appellee's Exhibit 13 as the BEO for the Brill Twin Services – Employee Sign-Up event. In that case, there were some menus that had not been run by Food Service. Food Service was advised of the menu at the last minute. The group itself had been offered sirloin for a meal. The kitchen did not have enough sirloin on hand, and therefore had to offer ribeye, which is a higher-priced meat item. Sirloin was bought at \$1.97 per pound, while ribeye was purchased at \$7.30 per pound. It was the Appellant, as Group Sales Coordinator, who was responsible to get menu items to Food Service in a timely manner, so that appropriate stock may be obtained. He relies on the BEOs to determine what is needed for the event. Failure to timely provide such BEOs or include all information results in a nightmare to be able to provide for the customers. He experienced a lot of frustration dealing with the Appellant on these events.

32. In one case, he did not receive a BEO until the day of the event. This led to running short of some meats.

33. In another case, a large group had been expected for an event. He telephoned Frankfort to secure additional help. Subsequently he was notified that the number of participants for the event had decreased. He called Frankfort again and advised the extra help was not required. Appellant thereafter called him at home and said the number of participants had again gone up. He telephoned Frankfort, who advised they could only spare one person. In this case, there were set times and set guarantees that were not met. They had to make good with what they had.

34. For another event, there was quite a bit of back and forth about the menu. He then received delivery of the food for the menu that group selected. At the last minute, the group decided to change to a deli-style menu. He and his staff had to go out and buy the meats and other items at retail. He never received a change order.

35. Problems were persistent. There were many details which required his follow-up, when it should not have been so required. It was a pervasive issue which never got better and was very frustrating.

36. The next witness was **Laurie Gooze**. Since 2006, Ms. Gooze has been employed by the Department of Parks as Human Resources Director and acts as its Appointing Authority.

37. The Appellant was employed as a Desk Clerk at PMSRP in 2004. Gooze first became aware of Appellant's performance issues in 2010, when a one-day suspension was issued. In 2011, Appellant was promoted to Group Sales Coordinator. She received two written reprimands from her Park Manager.

38. Ms. Gooze identified Appellee's Exhibit 14 as the November 27, 2012 written reprimand Appellant received for time and attendance issues. She identified Appellee's Exhibit 15 as the written reprimand Appellant received on February 13, 2013, for failure to return telephone calls or contact guests in a timely manner. That reprimand specifically set out four different incidents.

39. More performance issues arose, and Appellant was placed on a Performance Improvement Plan.

40. Appellant also received a four-day suspension due to an incident at the Mountain Laurel Festival. Ms. Gooze discussed this second suspension with the Appellant, and specifically asked how they could help her. Ms. Gooze asked if Appellant would want to be demoted to another job that she could perform. Appellant apologized and admitted to having made mistakes. She told Ms. Gooze that she certainly could do this job.

41. When more issues arose, Ms. Gooze started writing an Intent to Dismiss letter. While in the process, she was made aware of more issues, which she added to that letter (Appellee's Exhibit 16).

42. Ms. Gooze met with Ladonna Miller to determine whether Appellant's errors were worse than what has been experienced at other parks. She conferred with Jovan Wells, who presented a timeline of the Appellant's trainings. Ms. Gooze followed up with Rita Jackson-Edmondson. She then met with legal personnel and reviewed discipline which had been issued to other employees in similar situations. She decided an Intent to Dismiss was the proper step. She did not feel they could continue to absorb the losses or suffer the bad contacts with park customers.

43. The Intent to Dismiss letter was issued December 1, 2014 (Appellee's Exhibit 16). A pre-termination hearing was held. The Appellant provided additional information which Ms. Googe considered. Ms. Googe was also made aware by others of allegations of impropriety against Mr. Eastin, Appellant's previous Park Manager. In view of all this, Ms. Googe decided to reduce the discipline to a demotion.

44. Although Mr. Eastin had been accused by Appellant of having issued the two written reprimands because he was angry at her following their relationship, he did have strong documentation to support such discipline, and there was nothing to indicate he had singled her out.

45. On January 6, 2015, Ms. Googe issued the Appellant a Revised Personnel Action: Demotion in Lieu of Termination (Appellee's Exhibit 3). Based on a number of events cited in the letter, which allegedly constituted lack of good behavior, Appellant was notified that, effective January 16, 2015, she was being demoted with cause from her position as Sales Representative at PMSRP, to the position of Park Desk Clerk, with a resulting reduction in salary from \$16.432 per hour to \$12.640 per hour.

46. The Appellee rested its case.

47. The first witness for the Appellant was **Jaime Bruce**. Following her demotion, and since January 2015, Ms. Bruce had been employed by the Department of Parks at PMSRP as a Desk Clerk. In August 2011, she had been promoted to the position of Group Sales Coordinator. She described her duties.

48. In July 2012, she received a written reprimand for tardiness issues. She received a second written reprimand in February 2013. Subsequently she was placed on a Performance Improvement Plan. She agreed she had to improve her performance following up set-ups for events. The Housekeeping Department used to do the set-ups, and then it had been switched to the Maintenance Department. The Maintenance Department did not always get set-ups done correctly. She was used to being able to rely on Housekeeping, but could not rely on the Maintenance staff. She disagreed with the remainder of the items described in the PIP.

49. Appellant was the one who designed the current format of the BEOs being used by PMSRP. The current form includes more detailed information on the template. Whenever substantive revisions were made to a particular BEO, she made sure the revised BEO was placed in the appropriate person's mailbox or delivered in person. With reference to off-site park sales calls, she had been encouraged not to do these, as she had job duties to perform in the office.

50. With regard to an allegation that she had not been working an effective work schedule, she cited two separate instances. One was Mother's Day, which she had never previously been required to work. She had been advised the Friday prior that she was expected to be present. She advised her superiors that she already had plans for the day. The second event was a wedding. She was present the night before the event, and had spoken to the bride to make sure everything was alright. The following day there were some issues pertaining to food.



51. With reference to the Mountain Laurel Festival, on the Friday night at the Director's Dinner, Appellant could not find the "good" microphone. She told this to the participants, and that she had set-up the old microphone, so it would not short out. She had also checked that microphone the next day, and notified the Chairman not to touch the microphone or it would short out. The Chairman apparently did not follow instructions, and the microphone shorted-out during his speech. In the past, participants normally ate and thereafter the Governor gave his speech. She thought she would have sufficient time to fix the microphone while the group went to the buffet. However, the Governor arrived late and gave his speech before the participants ate. He gave his speech without using a microphone.

52. With reference to the incidents that occurred thereafter in September, October and November, Appellant testified that at that time she was in the first trimester of her pregnancy and was not working at full capacity. She had experienced a miscarriage earlier in the year. With the Berea group, she made sure the tables and television were set-up in the room. Provision of the microphone was not on the BEO. She received a telephone call after she left for the day. She told staff where the microphone was, and that individual then set it up. The next day, the Berea group leader told Appellant about tripping over a short microphone cord and ripping the connection from the wall. She had Maintenance make the appropriate repairs, and all was okay.

53. With reference to the Denver group, they had been offered a limited menu. The Park no longer offered buffets to groups of less than 20 people. She was aware that sirloin was a special of the day offered at that time. She assumed there was plenty of steak on hand. She sent an email of the menu to Mr. Wagner. The group complained they did not have a red meat option. This was the first group that the Park had on its new menu.

54. The contact person for the Brill Twin group called Appellant to cancel the event. They had already paid and ordered food. She told him they could not refund his money. The contact became irate, and she offered to let him reschedule. The contact never got back to Appellant in a timely manner. Appellant thereafter told the Dining Room staff that the group had canceled. She does not remember if she gave this information to the Kitchen. The contact person did call back later to reschedule. The Appellant was on administrative leave at that time.

55. With reference to the Alden Resources group, their contract was due back at a time when Appellant was out of the office. It was placed in a "To Do Later" pile. The group then canceled. She was able to re-rent half of that space.

56. There was only one woman with whom Appellant dealt with who called the Park to say she didn't want to work with Appellant.

57. There were times Maintenance would flat out refuse to fix set-ups upon Appellant's request. She made this known to the Business Manager several times.

58. The Appellant had more than a friendship relationship with Stephen Eastin, but it was not sexual. Things did not work out between them. She then dated someone else. Once

her now-husband proposed, there was an increase in discipline from Eastin. This is when she began receiving the first of the written reprimands. Prior to that time, she received good evaluations. When she returned from her honeymoon, the second written reprimand was waiting for her. This write-up was issued because a \$25 check written by a customer had remained on Appellant's desk for about two weeks.

59. When Mr. Eastin left his position at PMSRP and took a job at Lake Cumberland SRP, everything was quiet for quite a long time, until the Mountain Laurel Festival. Appellant did not believe she would be here today in this proceeding if matters with Mr. Eastin had not occurred.

60. Appellant had met, early on, with Ms. Googe to discuss her responsibilities. At the time she received a suspension, the whole situation with Mr. Eastin was intimidating. Once Eastin left employment at PMSRP, Appellant believed there would no longer be any problems. That is the reason she did not mention Eastin or the intimidating factors in any prior disciplinary matters. She did not want to talk about it unless she had to as a last resort.

61. At the pre-termination hearing, she admitted to having made some mistakes, but did not admit to all the allegations in that letter.

62. She testified she handled over 300 group sales per year. The Fall is the busiest time of the year for the Park. During September, October and part of November, when she last worked in that position, she handled more than 80 events.

63. **Stephen Eastin** was the next witness. For the past year and a half, Eastin has been employed by the Department of Parks as Park Manager for the Lake Cumberland SRP. The previous four years, he was the Park Manager at PMSRP. At the time he started working at PMSRP, Appellant had been working the front desk. When the Group Sales employee retired, Appellant was special detailed to that position. She then applied for the job, but did not get it. She returned to her duties at the front desk. About a year later, the Group Sales position vacancy posted again. Appellant was the sole applicant on the register, and received that job.

64. He identified Appellee's Exhibit 17 as the August 30, 2010 suspension he issued to the Appellant. He described the details of this incident and had sent a recommendation to Human Resources.

65. In discussing the written reprimand he issued for time and attendance (Appellee's Exhibit 14), he testified Appellant was not the only employee to whom he had given a written reprimand for such issues.

66. Mr. Eastin and Ms. Bruce were definitely friends. Following the Mountain Laurel Festival, he took key staff, including the Appellant, to Keeneland for a day in April 2012. At that time, Appellant had recently divorced.

67. After the event, the entire group went to Mr. Eastin's home. Appellant lingered for about 45 minutes after the others left. It was at that time they kissed for the first time. Their relationship lasted approximately six weeks. It was not a physical relationship, and there really wasn't anything between them.

68. Any subsequent disciplinary action he issued had not been retaliatory. Such actions were all based on legitimate business reasons. They were not based on any jealousy on his part. He had nothing to do with nor did he participate in any disciplinary action issued after he took the job at Lake Cumberland SRP.

69. He and Appellant were very good friends and kissed on about three occasions over six weeks. He gave her gifts. Her birthday was late in May. He gave her cards and a lottery ticket. He gave her a card about every day in May. Among the gifts, he gave her underwear and a special bottle of alcohol she had requested. The relationship ended when he was made aware she was seeing "Greg." At first, he felt "I was getting played here." In the last couple of months, he had been suspended himself for the relationship he had with Appellant.

#### **FINDINGS OF FACT**

1. Jaime B. Bruce, the Appellant, was employed by the Kentucky Department of Parks as a Park Group Sales Coordinator at the Pine Mountain State Resort Park. She held that position since February 2012 up to the time of her demotion. She is a classified employee with status.

2. As part of her duties, Ms. Bruce was required to provide oversight for the set-up and operations of group events booked at the Park. She was also responsible for contact with event leaders, securing their contracts and payments, and arranging meal menus. Her duties included ensuring AV equipment had been set up and was in proper operating condition. A more complete description of duties appears in the "Personnel Cabinet Reclassification, Position Description Required" (Hearing Officer Exhibit 1), which description is incorporated in its entirety by reference herein.

3. During the course of her employment as a Desk Clerk at PMSRP, Appellant, on August 30, 2010, received a one-day suspension for lack of good behavior/insubordination.

4. During her employment as Park Group Sales Coordinator, she received the following disciplinary actions:

- November 27, 2012: Written reprimand for failure to arrive at work per the work schedule (Appellee's Exhibit 14);
- February 13, 2013: Written reprimand for failure to return telephone calls or contact guests in a timely manner (Appellee's Exhibit 15);

- July 10, 2014: A four-day suspension for lack of good behavior and unsatisfactory performance of duties (Appellee's Exhibit 5).

5. Appellant was placed on a Performance Improvement Plan (PIP) for the period of July 15, 2013, through October 15, 2013. (Appellee's Exhibit 4.)

6. The specific areas identified in the PIP that required improvement were:

- Attention to detail on BEOs;
- Group set ups not being checked for accuracy
- Sales calls not being made off park;
- Not working an effective work schedule and prioritizing workload to meet the business needs and ensure customer satisfaction.

7. Appellant's Annual Employee Performance Evaluation for 2014 shows she received an overall performance evaluation of 192, which is in the category of "Needs Improvement." (Appellee's Exhibit 10.)

8. During the last few months of his employment as PMSRP Park Manager, Stephen Eastin became involved in a personal relationship with the Appellant. This personal relationship occurred during a period of time when Mr. Eastin had been Appellant's supervisor, and for which he later received disciplinary action in the nature of a suspension.

9. On December 1, 2014, Laurie Googe, Human Resources Director and Appointing Authority, issued to Ms. Bruce an Intent to Dismiss letter (Appellee's Exhibit 16). This letter was issued based on allegations of lack of good behavior/failure to follow-up with group sales event. Specifically cited were: an October 8, 2014 incident involving the Berea College Alumni group; a September 22, 2014 incident involving a senior group (SEEK); a September 24, 2014 incident involving the Denver United Methodist group; a September 25, 2014 incident involving the Tri-County Leadership group; a November 17, 2014 incident involving the Division of Water group; a November 18, 2014 incident involving the Brill Twins group; and a November 24, 2014 incident involving the Alden Resources group.

10. A pre-termination hearing was held on December 17, 2014. Participants included the Appellant, Laurie Googe, Misty Judy (Tourism, Arts and Heritage Executive Director of Human Resources) and B. Leigh Powers (Tourism, Arts and Heritage Legal Counsel). Following this hearing, Ms. Googe decided to reduce the disciplinary action to a demotion, and issued a January 6, 2015 letter reversing the termination. Appellant was demoted to her previous position as Park Desk Clerk effective January 16, 2015, with a reduction in salary from \$16.432 per hour to \$12.640 per hour. (Appellee's Exhibit 3.)

11. Appellant timely filed her appeal of such disciplinary action with the Kentucky Personnel Board.

### **CONCLUSIONS OF LAW**

1. The issue in this case is whether there was just cause for the disciplinary action taken against the Appellant, Jaime B. Bruce, and whether it was excessive or erroneous. The Appellant was demoted from the position of Sales Representative at the Pine Mountain State Resort Park to the position of Park Desk Clerk, effective January 16, 2015, with a reduction in salary from \$16.432 per hour to \$12.64 per hour. The burden of proof was on the Appellee to prove its case by a preponderance of the evidence.

2. Jaime B. Bruce is a classified employee with status. A classified employee with status may not be demoted or otherwise penalized except for cause. KRS 18A.095(1).

3. A “penalization” includes, but is not limited to, demotion and any action that diminishes the level, rank, discretion or responsibility of an employee without proper cause; and the abridgement or denial of other rights granted to state employees. KRS 18A.005(24).

4. “Preponderance of evidence” means: “...evidence, which as a whole, shows that the facts sought to be proved is more probable than not. With respect to burden of proof in civil actions means greater weight of evidence, or evidence which is more credible and convincing to the mind.” Blacks Law Dictionary, 5ed., pp. 1064. The ultimate burden of persuasion in all administrative hearings is met by a preponderance of the evidence in the record. Failure to meet the burden of proof is grounds for a recommended order from the Hearing Officer. KRS 13B.090(7).

5. Following the December 17, 2014 pre-termination hearing, Laurie Googe, Human Resources Director, reconsidered her earlier decision to terminate Appellant from her position. By letter of January 6, 2015, she notified Ms. Bruce of demotion to Park Desk Clerk (Appellee’s Exhibit 3). That action was based on a violation of 101 KAR 1:345, Section 1, Lack of Good Behavior and Unsatisfactory Performance of Job Duties, as well as violation of DOP Policy 01-03 (Conduct Policy).

6. A great deal of testimony dealt with the responsibilities and duties Appellant was required to perform. Those duties were also set out extensively in the Personnel Cabinet position description document (Hearing Officer Exhibit 1). Among her duties, Ms. Bruce was required to coordinate group events; communicate the needs and requirements of such group to all affected departments at the park, including the Park Manager; coordinate menu requirements with the kitchen and the dining room; inspect room set-ups and special details; follow up with groups; provide the proper audio-video equipment requested by the group, and confirming personally that all AV equipment was set up and operating properly. Ms. Bruce was properly trained in the duties and requirements of her position. In fact, due to shortcomings in performance, she was trained in the entirety a second time. She appeared to understand fully what was expected of her at the time of each training session, and would soon thereafter show improvement in

performance. However, testimony of witnesses indicated that Appellant had a consistent pattern of showing initial improvement followed by a decline in performance. Many times the decline in performance resulted in additional consultation with her, and in some instances, disciplinary action. That history of disciplinary action is set out above in paragraph four of the Findings of Fact. She had also been placed on a Performance Improvement Plan for the period of July 15 through October 15, 2013. (Appellee's Exhibit 4.) Her Annual Employee Performance Evaluation for 2014, which resulted in a performance evaluation of 192, showed she was in the "Needs Improvement" category. (Appellee's Exhibit 10.)

7. Ms. Googe, in the January 6, 2015 letter, thoroughly documented the group events where problems were encountered. Those problems included: (1) October 8, 2014, with the Berea College Alumni group; (2) September 22, 2014, with the Senior group (SEEK); (3) September 24, 2014, with the Denver United Methodist group; (4) September 25, 2014 with the Tri-County Leadership group; (5) November 17, 2014, with the Division of Water group; (6) November 18, 2014, with the Brill Twins group; (7) November 24, 2014, with the Alden Resources group.

8. The Hearing Officer is troubled by the testimony showing Ms. Bruce and her former supervisor, Stephen Eastin (former Park Manager of PMSRP), had been engaged in a personal relationship during the time Mr. Eastin was her supervisor. The testimony is not clear whether Ms. Bruce earnestly had been fending off Mr. Eastin's advances, or by such behavior, had been enticing him to keep her in his good graces. What is most troubling, is that had Ms. Bruce indeed believed that such acts of Mr. Eastin were harassment, and that the disciplinary actions she received at his behest were retaliatory, that she would have reported those concerns to anyone at or near the time of those incidents. She did not do this. Nevertheless, there is more than sufficient testimony from other witnesses as to the deficiencies in Appellant's performance of her duties.

9. Considering the totality of the evidence, Appellee has shown by a preponderance of the evidence that there was just cause for the disciplinary action taken against the Appellant, and that such disciplinary action in the nature of a demotion was neither excessive nor erroneous. The evidence was more than sufficient to show Appellant's history of performance constituted lack of good behavior and unsatisfactory performance of job duties.<sup>1</sup>

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **JAIME B. BRUCE V. TOURISM, ARTS AND HERITAGE CABINET, DEPARTMENT OF PARKS, (APPEAL NO. 2015-039)** be **DISMISSED**.

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<sup>1</sup> The Hearing Officer was not provided a copy of DOP Policy 01-03 (Conduct Policy), and therefore makes no Finding, Conclusion, or Recommendation in relation to that policy.

**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 Roland Merkel** this 9<sup>th</sup> day of October, 2015.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day mailed to:

Hon. Leigh Powers

Hon. G. Michael Ingram