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**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-179**

JOHN M. COFFEY

APPELLANT

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

**TOURISM, ARTS AND HERITAGE CABINET,
DEPARTMENT OF FISH AND WILDLIFE RESOURCES**

APPELLEE

*** **

The Board, at its regular September 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 3, 2016, Appellee's Motion for Extension of Time, Board Order Granting Motion, Appellant's Exceptions and Request for Oral Argument, Appellee's Exceptions, Appellant's Response to Exceptions, Appellee's Response to Appellant's Exceptions, oral arguments 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 3rd day of September, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:
Hon. David B. Wicker
Hon. Paul F. Fauri

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**V. FINDINGS OF FACT, CONCLUSIONS OF LAW
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APPELLEE

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This matter came on for an evidentiary hearing on January 28, 2016, April 18, 2016 and April 26, 2016, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Colleen Beach, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, John M. Coffey, was present at the evidentiary hearing and represented by the Hon. Paul Fauri. The Appellee, Tourism, Arts and Heritage Cabinet, Department of Fish and Wildlife Resources, was present and represented by the Hon. David B. Wicker.

BACKGROUND

1. Appellee called its first witness. **Misty Judy** is presently employed as General Counsel of the Executive Branch Ethics Commission, a position she has held since November 1, 2015. Prior to that (from August, 2014 until November, 2015), she was the Executive Director, Office of Human Resources, in the Tourism, Arts and Heritage Cabinet, and the acting Human Resource Director for the Department of Fish and Wildlife Resources (KDFWR).

2. Judy stated the Tourism, Arts and Heritage Cabinet oversees 14 agencies, five of which are large enough to have their own Human Resource Director on staff. For the remaining 9 agencies, she acted as the Human Resource Liaison for appointments and disciplinary actions. During the time that is the subject of this appeal—the summer of 2015—she was the Human Resource Director for the Department of Fish and Wildlife Resources because the prior director, Charles Booker, had resigned in May, 2015.

3. Judy first became familiar with Appellant because Booker had discussed him with Judy before Booker's resignation. Judy stated that Booker had told her that Appellant had come to him to discuss some issues of concern. Booker referred him to Judy.

4. On July 24, 2015, Appellant's work station was temporarily re-assigned from Camp Wallace in Madison County (where Appellant was Camp Director), to the Salato Wildlife Education Center (Salato Center) in Franklin County. Judy testified it was her decision to temporarily reassign Appellant, which she did pursuant to 101 KAR 2:095, Section 3(2).

5. Appellant was informed of his reassignment by a memorandum Judy wrote to Appellant on July 24, 2015. The memo informed Appellant "It has been determined that your services will be best utilized in Frankfort on a temporary basis and you are therefore directed to report to Norm Minch, Assistant Director of Information and Education, at the Salato Center . . . on July 28, 2015." The memo further stated that Appellant would be reimbursed for travel expenses, and that he could continue to use his state-issued vehicle. (Appellee's Exhibit 1.)

6. Judy addressed the events that led to Appellant's reassignment. On May 11, 2015, Judy had a phone conversation with Appellant. He told her he was about to start the summer program at Camp Wallace, and that he was a long-term employee. Judy stated, "He brought up wage and hour issues, that is, the use of compensatory time and how to code it. He stated he was concerned about getting a Block 50."

7. Judy explained that a "Block 50" refers to a state employee's accumulation of compensatory hours. If an employee earns 240 "comp" hours, the employee is paid for a "block" of 50 hours.

8. Judy stated that during the May 11, 2015, phone conversation, Appellant also raised concerns about his "on-call" duties, the health and safety of the campers, the issue of his commuter status, and how the fact that camp staff live at camp Monday through Friday affected payroll. He also discussed an asbestos issue dating back to 1983, and questioned if it had been remediated properly.

9. After the phone call, Judy's perception of Appellant was that he was "articulate, had an extensive list of concerns, and was frustrated."

10. On June 8, 2015, Judy met with Tim Slone, Director of Information and Technology (Appellant's second-line supervisor); Laura Burford, Assistant Director of Information and Technology (Appellant's first-line supervisor); Karen Waldrop, Deputy Commissioner; and Charles Bush, Deputy Commissioner.

11. Judy requested a copy of Appellant's personnel file, and the personnel files of the Directors of the other two summer camps run by the Department of Fish and Wildlife Resources.

12. At the meeting, Waldrop stated that she and the other staff present had concerns about Appellant as well. Appellant had earlier gone to them with complaints that "he was unappreciated and had no life."

13. Judy learned at the meeting that it was "standard practice" for Conservation Educators (CEs) to "burn down their comp time during the school year." Judy explained that

during the summer when CEs work all week at camp (like Appellant), overtime is anticipated. During the school year, the CEs are asked to use up their comp time as their schedule is much more flexible then. Judy stated the Agency can require an employee to use comp time instead of vacation time if the employee has over 180 hours of comp time. Judy stated she was told at the June 8, 2015 meeting that the Agency had asked Appellant to stay below 200 hours of comp time in the past, but he was "very unhappy about that."

14. Judy testified the Agency anticipates Appellant would earn 15 to 20 hours of compensatory time per week while at camp, but Appellant was claiming much more comp time than that: 51 hours for the pay period 6/1/15 to 6/15/15 (Appellant's Exhibit 2); 53 hours for the pay period 6/16/15 to 6/30/15 (Appellant's Exhibit 3); and 83 hours for the pay period 7/1/15 to 7/15/15. (Appellant's Exhibit 7.) Tim Slone asked Appellant for written justification of the overtime he claimed on the 7/15/15 timesheet, which Appellant did not provide to Slone's satisfaction. Slone changed Appellant's timesheet to reflect 45 hours of compensatory time for that pay period. (Appellant's Exhibit 6.)

15. Judy stated she was concerned about the hours Appellant claimed he was working because "no other camp director was amassing that amount of comp time."

16. Judy met with Appellant on July 7, 2015. After the meeting, Judy testified she was a "little worried." Judy explained Appellant had expressed concerns about the inadequacy of the camp's staffing. He also complained that camp staff was not appreciated, and he felt they were "prisoners." He told Judy his time at camp "kept him from having a successful marriage or family." Appellant also expressed dissatisfaction that there were limited opportunities for fraternization—the Agency forbids staff from drinking alcohol or leaving camp while on duty. According to Judy, Appellant voiced his opinion that camp staff should get "per diems" for hotel rooms and food. Appellant told Judy he "worried himself to death" about the children's health and safety, particularly about those children with allergies. Appellant also complained of two job positions within the Department of Fish and Wildlife Resources he had applied for but did not get.

17. During their July 7, 2015 meeting, Judy and Appellant also discussed Appellant's concerns about possible asbestos at the camp, his Block 50 "situation," and the fact that he felt he did not make enough money for the level of responsibility he held. Judy summarized the meeting: Appellant "exhibited behaviors that showed he was very stressed." She came to this conclusion based on Appellant's tone of voice and his demeanor. "He got emotional," Judy stated, "and angry when we were discussing certain issues. He had a much more desperate type attitude than when I had spoken to him in May." Judy described his situation as one that was "escalating." Judy stated she had a lot going on that summer, but she put Appellant at the top of her priority list.

18. After her July 7, 2015 meeting with Appellant, Judy decided she needed to "look at other options for [Appellant], including a Kentucky Employee Assistance Program (KEAP) referral." The next day, she met with Billye Haslett, the Department of Fish and Wildlife Resources' new Human Resource Director (Charles Booker's former position). She wanted

Haslett to be “second chair” in the investigation into Appellant’s situation. Judy asked Haslett to look into possible openings or transfers for Appellant. Coincidentally, a CE IV position in the Aquatics program, one of the two jobs Appellant had previously applied for, was open. While Appellant, an Administrative Branch Manager, was a pay grade higher, the salary range was similar. Judy contemplated asking Appellant to consider taking the demotion while allowing him to keep his current salary.

19. Judy reviewed Appellant’s job performance evaluations and saw that they were “excellent” during the school year, but there were “increasing concerns” for his job performance while at camp.

20. On July 17, 2015, at 1:44 a.m., Appellant forwarded to Judy an email from Tim Slone asking Appellant to provide written documentation for each work day for the pay period ending July 15, 2015. Appellant’s timesheet for that period indicated that he had exceeded 240 hours of compensatory time and would consequently be receiving a “Block 50.” Slone also directed Appellant to not work more than 37.5 hours per week. (Appellee’s Exhibit 3.)

21. Judy’s response to Appellant’s forwarding Slone’s email to her was to officially offer him the CE IV job as Aquatics Director. Judy had the position stationed in Madison County, where Appellant lives, to address his commuting concerns. Appellant was then offered the job in writing, and asked to respond in writing which Appellant refused to do. He did email her the following response shortly after she offered him the Aquatics position:

Just to let you know, I will not be communicating with my supervisors from this point forward until the issue is resolved unless it is via email. If it is via phone or in person, I will be recording the conversation and or have witnesses and legal counsel present. If they want to end this dispute amicably, I will gladly accept the back pay for all of the time forced to be on call/at camp for my career and retire. If that is with straight comp it is six years with interest, if with time and a half it is nine years. Thanks, Misty. (sic) (Appellee’s Exhibit 3.)

22. Judy testified that after she read this email, she felt that the situation “was getting out of control.” Judy stated: “I can’t have an employee saying that he won’t talk to supervisors. [Appellant] was the contact between Central office and the camp. I felt that as the HR Director, I had to step in. I felt that there were signs that Appellant’s situation was escalating.”

23. Appellant sent Judy other emails during this same timeframe. On July 17, 2015, at 1:55 a.m., Appellant forwarded to Judy emails he had sent to his first-line supervisor, Laura Burford. In one, Appellant told Burford: “Have slept a grand total of 4 hours in three days this week. Up for two days straight dealing with storm issues at camp....” (Appellee’s Exhibit 4.)

24. On July 23, 2015, Tim Slone, Appellant’s second-line supervisor, sent Judy an email regarding the documentation he asked Appellant to provide for the July 15, 2015, timesheet. Slone wrote:

...Nowhere in [Appellant's] documentation did he list specific times, phone logs, or any documentation that aids in documenting how many hours he may have worked. However, I do not believe he worked 24 hours on the 8th, 9th, 13th or 14th.....On 7/13, [Appellant] writes: 'In office at 7 am as I hadn't slept anyway and needed to check the weather radar site.'.....On 7/14, [Appellant] writes 'No sleep again tonight. Must be the stress'...On 7/15, [Appellant] writes, 'Might have slept four hours. Four hours in three days...Welcome to camp....'

Slone concluded his email: "Regardless of the status of [Appellant's] timesheet, this is an employee that is stressed." (Appellee's Exhibit 5.)

25. To Judy, the thought of Appellant having very little sleep while being responsible for a camp of over two hundred children made her "very worried." She felt that she needed to intervene in some way because, in Judy's estimation, Appellant's situation was turning from a time management issue into a safety issue. Judy testified she "could not, in good faith, put him back to work at the camp with no sleep and the stress levels he reported."

26. Later that day (July 23, 2015), Judy received a second email from Slone, informing her that when he had called Camp Wallace to speak to Appellant, the phone was dropped, and [Appellant] had apparently walked out of the office, informing the staff present to pass along the message that Slone was to email Appellant if he needed to communicate with him. Slone informed Judy that he was "alarmed" by this behavior and found Appellant to be disrespectful. (Appellee's Exhibit 6.)

27. Judy met with Appellant and he confirmed that he had been up several days in a row due to significant storm issues. Judy explained to him that it was not appropriate for him to claim work time when he woke up in the middle of the night. Judy suggested that they create a work schedule in which Appellant would only work 37.5 to 45 hours per week. Judy informed Appellant that the Directors at the other two residential camps take one day off per week. According to Judy, Appellant refused to consider this option, citing the need for him to be at camp throughout the week. Judy testified that she was very frank with Appellant, and told him that she could not allow him to refrain from sleeping while he was responsible for campers. Judy added that he also could not refuse to speak to his supervisors. Judy testified Appellant rejected every single one of her suggestions, and told her that he could not be away from camp, nor could he put his second-in-command, Gary Rogers, in charge. Judy concluded: "We were at a stalemate."

28. After this conversation, Judy decided she needed to remove Appellant from his position at Camp Wallace. She felt like Appellant "was not in his right mind to be working there---there was a liability issue." Judy also cited other reasons for removing Appellant from camp: She and Billye Haslett were going to Camp Wallace to conduct a face-to-face investigation with camp staff. She felt the employees there would be more comfortable speaking to them if their supervisor, Appellant, was not present. Secondly, there was an opening at the

Salato Wildlife Education Center (Salato). Its manager, Laurie Davidson, a CE IV, had died tragically while on vacation. In Judy's estimation, "Salato needed help and [Appellant] needed a break from camp."

29. Judy looked at Appellant's position description, then spoke to someone at Salato (she could not remember who). This staff person told her they would "love to have an experienced educator audit their education program and help improve it." Judy felt Appellant's duties at Salato would be consistent with his past work experience. She denied Appellant was temporarily assigned to Salato in retaliation. Judy stated, "I was trying to avoid a crisis situation."

30. Appellant's first-line supervisor, Laura Burford, assured Judy that Gary Rogers, a CE IV at Camp Wallace with the most seniority, could provide adequate oversight of the camp in Appellant's absence.

31. On July 24, 2015, Judy convened a meeting with Appellant to inform him that he was being put on temporary assignment to Salato. Judy prepared two letters. The first was put in Appellant's personnel file, and informed Appellant his work station was being temporarily changed, and admonished him to work no more than 37.5 hours per week without prior approval from his temporary supervisor, Mr. Norm Minch. (Appellee's Exhibit 7.) The second letter was not put in his personnel file; and addressed Appellant's refusal not to speak to his supervisor by telephone.

32. During Appellant's temporary assignment, his grade, title and salary did not change. She denied it was a "penalization."

33. Judy was asked if she considered putting Appellant on a different kind of leave. Judy answered that she had "heavily considered" putting him on directed sick leave. Judy explained that directed sick leave is implemented if the employee has displayed behavior that indicates he may be a danger to himself or others. Judy ultimately rejected putting Appellant on that leave, primarily because Appellant would have had to use his own leave. She also considered placing Appellant on special investigative leave. "But that requires an allegation of wrong-doing. At that time, he had dropped a phone and refused to speak to his supervisor. I did not want to put his career in jeopardy. I thought he just needed a break," Judy testified.

34. Judy described the temporary assignment of an employee as a "tool for HR to use to move the employee from his present situation." She thought it was the best course of action because it allowed Judy and Haslett to conduct the investigation at Camp Wallace without Appellant present, and it gave Appellant "a mental health break." Judy added that Salato "needed him." Judy was also mindful that the temporary assignment would exert no negative influence on Appellant's personnel record. When asked if the temporary assignment was used as a disciplinary measure, she answered "Absolutely not." She also denied that the assignment was done in retaliation for his receiving a Block 50.

35. Through Judy's testimony, her letter to Appellant, dated October 14, 2015, informing him of the findings of her and Haslett's investigation was introduced into the record as Appellee's Exhibit 8. Pursuant to the investigation, Judy and Haslett interviewed: camp staff (Gary Rogers, Laura Shoop, Betty Lewis and Annette Sturms); Laura Burford, Appellant's first-line supervisor; Charles Bush, Deputy Commissioner; and Personnel Cabinet employees, Mr. Gillis and Ms. Bailey. Judy and Haslett also attended a presentation on FLSA, and reviewed personnel files.

36. The findings of their investigation can be summarized as follows:

1. The KDFWR is in compliance with the Fair Labor Standards Act (FLSA).
2. Appellant is an Exempt employee under the FLSA. He is not "on-call" and, therefore, is not entitled to 24-hour compensation when working at Camp Wallace.
3. As for the camp's storm shelter, the report confirmed that while the cistern and lower level of two Counselor cabins are not ideal, a "Camp Emergency plan has been developed that does make use of available resources."
4. A leak in the office roof was identified and fixed; asbestos found in structures had been addressed and a plan for future removal, if necessary, developed.
5. Judy's final conclusion was that Appellant "appears to be correctly identified under the FLSA and is not owed any additional wages. All other recommendations set forth above in the report should be followed." (Appellee's Exhibit 8.)

37. Judy testified that when she interviewed camp staff, they expressed concern regarding Appellant, specifically, that he seemed "frazzled, burned out, and was not sleeping."

38. On September 11, 2015, Judy sent a memorandum to Appellant, informing him that his temporary assignment at Salato had ended, and directed him to return to his work station and position as Administrative Branch Manager in Madison County. (Appellee's Exhibit 10.)

39. On cross-examination, Judy testified that during her 7/7/15 conversation with Appellant, she had asked him to take one day off per month for the purpose of "reducing his stress level and his compensatory time." When asked why she had not mandated this, Judy responded, "It had happened once before and [Appellant] got so mad at Tim Slone that he was confrontational. During this timeframe, I was trying to get him to 'buy in' to the solution. [Appellant] was so disgruntled. I was trying not to take control from him. I was trying to work with him." Appellant did have a week of vacation scheduled the week of June 29, 2015, but he chose to work instead.

40. Judy was asked to address the written reprimand Appellant received on October 7, 2015, for insubordination, specifically, for “refusing to speak with Tim Slone.” Judy stated that after she had interviewed multiple witnesses, she determined Appellant had not intentionally dropped the phone when Slone called on July 23, 2015. However, he did refuse to speak to Slone in front of a Camp Wallace staff member. He also communicated to Judy in his 7/17/15 email that he would “not be communicating with [his] supervisors from this point forward until the issue is resolved unless it is via email.” (Appellee’s Exhibit 3.) Judy felt a written reprimand was the appropriate response to this misconduct.

41. Due to a scheduling conflict, and by agreement of the parties, Appellant took his first witness out of order. **Gary Rogers** has been employed by KDFWR for almost 30 years. He is currently a CE IV. Rogers was detailed into Appellant’s Camp Director position on July 24, 2015, when Appellant was temporarily reassigned to the Salato Wildlife Education Center.

42. Rogers described his relationship with Appellant as “just fine” when Appellant was transferred. Rogers had assumed Appellant had been sent home “to work off his comp time.”

43. Rogers stated the camp week starts before the children actually arrive Monday, as he and other staff travel to various “pick-up places” to bus the children to camp. “On a typical Monday, you have already worked three hours before you get there,” Rogers stated.

44. Camp officially starts at 11:00 a.m. on Monday. Appellant normally conducts the orientation. Then the children are sent to their cabins while staff completes paperwork. The schedule of classes and programs begins after that. There are typically 200 campers per week.

45. Rogers was asked to recall the night of the big storm that occurred on July 13, 2015. Rogers described it as “the storm of the century—an incredible tornado-like event coming right at you.” Rogers stated that while the children go to bed at 10:30 p.m., staff usually hang out in the office until 11:30 p.m. Rogers went to bed that night at midnight, but Appellant stayed up monitoring the radar screen. Rogers and Appellant share a trailer on camp property. Appellant did not return to his room that night.

46. Rogers was asked if he had any concerns about Appellant’s mental health. He answered, “No, I’m concerned about his physical health.”

47. Rogers was asked what the camp’s compensatory time policy was. He answered, “I’ve never seen a written policy. But we were told when I started working here, years ago, “not to get more than 20 hours comp time in a week.”

48. Rogers added that sometimes he had to work more than 20 hours of comp time, which Appellant had to approve. “Sometimes you just have to work,” he stated. But he has only received one Block 50, about fifteen or twenty years ago. He was told to “never let that happen again.”

49. Rogers testified he went to Salato in late August 2015 and saw Appellant working there. "He was putting tables together." On another day, he observed Appellant weed-eating. Rogers stated he spoke to Appellant often during that timeframe. "He was doing maintenance, building stuff. He was seldom, if ever, doing educational programs."

50. On cross-examination, Rogers stated that Appellant liked to work at night. "It's the only time he can get work done. The camp office is busy all day long. People are in and out all day. If you want to concentrate and get work done, you need to work when no one is there." Rogers added that Appellant feels like he can never leave, "but in the past couple of years he has gotten better about leaving me or Betty Lewis in charge."

51. Rogers was asked if he felt underutilized. He answered "Yes," but added he had never told Appellant that. Rogers stated that Appellant doesn't like to delegate. However when asked if he could stay up one night per week, Rogers answered "Only if someone made me—I need to get up at 6:00 a.m. If you stay up half the night, it is hard to be alert the next day."

52. As for the storm shelter, Rogers stated the children were not moved to it the night of July 13, 2015, because they would only fit if standing shoulder-to-shoulder. When Rogers took Judy and Haslett to inspect the shelter, they were "appalled."

53. Rogers stated that Appellant does not ask him to justify the comp time he takes because he files a weekly report that details everything he does.

54. **Betty Lewis** is a Conservation Educator II, a position she has held since 2007. When school is not in session, that is, from mid-May until August, she works at Camp Wallace.

55. Lewis testified that she was interviewed by Billye Haslett and Misty Judy sometime in July, 2015. "We talked about the inner workings of camp," Haslett stated. "They asked me what would happen if I disagreed with [Appellant] about something. I told them we would go out in a golf cart and work it out."

56. Lewis stated she claims compensatory time when she works at camp. She explained: "When the kids are awake, we are awake. They're up from 7:00 a.m. until 11:00 p.m."

57. Lewis was asked if she was restricted in the amount of compensatory time she could take. She responded: "Not anymore. Prior to this happening, I thought there was a limit. I had been told by Mr. Webb, who used to work in Information and Education, that I needed to limit my work day to 10 and a half hours. But when Ms. Judy came to the camp to interview me, she told me there was no such restriction." Judy told her that if she is working, she is supposed to be paid. Lewis testified she often works 12 hours in a day, depending on the schedule. "We have to make sure the kids are supervised at all times."

58. Lewis was present at the camp when the storm on July 13-14, 2015, occurred. She stated that someone is supposed to stay awake during a storm like that to monitor the radar, but she was not sure if there was an official policy regarding that.

59. When Appellant was temporarily transferred to Salato, the entire staff "pitched in" to take up the slack from his absence. They also had to deal with some weather-related issues during that timeframe, such as high water and downed trees.

60. **Tim Slone** has been employed as the Director of the Division of Information and Education since 2003. Part of his job duties includes the supervision of all three summer camps. Slone explained that the residential camps are for fourth, fifth and sixth graders living in Kentucky. The Department has operated these camps since the 1950s. They provide programs in archery, fishing, boating, nature studies and firearms safety.

61. The staff at Camp Wallace is comprised of 21 college counselors, three supervisory counselors, six conservation educators, two maintenance workers, one office staff person, three cooks, and the Branch Manager, who acts as the Camp Director.

62. The duties of the Camp Director are to supervise the staff, and to ensure the safety and well-being of all campers. When not at camp, that is, during the school year, the Branch Manager supervises the Conservation Educators (CE) who go to schools throughout the state and deliver programs on subjects such as fish and mammals of Kentucky. The Branch Manager also delivers programs himself, though not as many as the CEs do.

63. Slone stated that he has known Appellant since 2003. He described Appellant's management style as "authoritarian." Slone stated that Appellant chose not to delegate.

64. When asked if Appellant has reliable staff, Slone answered that he did, and that Gary Rogers had been at camp as long as Appellant. Betty Lewis has a lot of experience working at camp, as well, Slone noted.

65. Last year Slone began noticing a difference in Appellant's demeanor: "He became frustrated with the state system and the lack of raises. He has also been angry at the lack of funding." Appellant became particularly frustrated when budget cuts mandated the elimination of a maintenance worker position and a camp counselor position. Slone added that this staff reduction was done at all three camps. He explained, "We have a budget target we have to hit. Most of our budget is tied up with permanent staff and the rising cost of transportation to and from camp, as well as the cost of food. The only thing we can control is the hiring of interim staff."

66. Slone was asked to address Appellant's inability to sleep. Slone stated that he learned of the emails Appellant had sent to Laura Burford, which documented he was awake late into the night. This was a concern because "camp is stressful enough without adding the lack of sleep. The Branch Manager makes decisions that affect the health and safety of children and staff. You want your Camp Director to be well-rested."

67. Slone stated that it is normal for Camp Directors to work long hours, and they are instructed "not to go into the camp season with a lot of compensatory time." Typically, Camp Directors (and CEs) use their compensatory leave during the school year because it is anticipated that they will earn quite a bit of comp leave over the summer. Camp Directors are encouraged to take compensatory leave during the summer, as well. The Director of Camp Webb, for instance, usually takes Monday or Fridays off. Slone stated that some camp staff also take vacations during the summer to help "burn down" their comp leave.

68. Slone was asked if there was a policy in his department regarding compensatory time. Slone answered, "When it gets to 170 accumulated hours, to get that high, it should be late in the summer." It would not be unusual for a Camp Director to earn in the area of 25 hours of compensatory leave per week during camp season.

69. Through Slone's testimony, an email memorandum he sent to the three Camp Directors (Appellant, Jack Lee, and Bill Fannin) on June 16, 2015, was introduced into the record as Appellee's Exhibit 15. In the email, Slone instructed the directors to "Please watch your time. As the camp director you have to manage your own time as well as that of your staff. Managing your time now will prevent problems later in the camping season."

70. Slone was asked why Appellant had not been specifically instructed to get his compensatory leave balance reduced. He responded that the issue was more properly addressed by Appellant's first-line supervisor, Laura Burford. He added that Appellant had originally scheduled some time off in June and July.

71. Slone first became aware of Appellant's complaints about his stress level at the June 8, 2015 meeting he held with Appellant and Misty Judy. Slone testified Appellant seemed "stressed and claimed he was unhappy and not eating or sleeping." At this time, the Aquatics position was open, and it seemed like a good fit for Appellant as he had "always wanted that position and he is an avid angler."

72. In July, Appellant's compensatory leave balance was getting "too high," according to Slone, and Appellant continued to seem to have a lot of stress. Appellant's timesheet for July 15, 2015 triggered a Block 50 (which Appellant received). Slone stated, "No one should get that without prior approval because we don't budget for it. I told him not to work any additional compensatory time, and asked him for justification of the comp hours he claimed." Slone added that if a timesheet triggers a Block 50, he has to justify it to his own supervisor. In his tenure as Director, an employee had triggered a Block 50 only once before, and that was in error.

73. Slone added that another reason Appellant was not mandated to take time off was that "we expect Branch Managers to manage their own time—he manages everyone else's."

74. In support of his timesheet, Appellant prepared a document entitled "Weekly Report" for the week of July 1 – July 18, 2015. One entry reads: "Constantly dealing with campers, counselors, other staff. Mostly positive dealings, some unpleasant. Rarely sleep at

camp or get time to have a meal without some issue interrupting it. Expected to live and work away from work station without option of hotel accommodation or per diem. Also being taxed at improper rates for the counties work is actually taking place in. Have been forced to do this for over 20 years.”(sic). (Appellee’s Exhibit 16, entry for 7/11/15.)

75. Appellant also submitted a revised timesheet that claimed 83 hours of compensatory time, and claimed that he had worked a straight 24-hour day for the dates of July 8, 9, 13, and 14, 2015. (Appellant’s Exhibit 7.) In Slone’s estimation, even if there had been storms at camp on a couple of those days, a Camp Director must delegate the monitoring of the storm to another staff member. Other Camp Directors during that same period had claimed only 16 hours of compensatory time.

76. On July 23, 2015, Slone called Appellant for the purpose of requesting that he meet with Ms. Judy and Ms. Haslett. When he called the camp, a counselor answered the phone. He could hear the Appellant ask the counselor who was on the line. The phone was dropped and when the counselor got back on, she told Slone that Appellant had said for Slone to contact him by email. Slone was concerned by this behavior because it is “improper” for a Branch Manager to refuse to speak to the Director, especially in front of other camp staff. Appellant received a written reprimand on October 7, 2015, for his refusal to speak to Slone that day.

77. At this point, Slone consulted with Judy, and suggested that a temporary assignment to The Salato Wildlife Education Center (“Salato”) might be an appropriate option as Appellant, in his estimation, “needed a break from camp,” and Salato needed the help as they had just lost their Branch Manager. Slone added that Appellant is a “master educator” and would be an asset in an education setting, such as Salato.

78. When asked what Appellant did at Salato after the temporary transfer there, Slone stated that he was not supervising Appellant there, but that he thought he had been doing an educational program with a bobcat. He added that at that time Salato was an “all hands on deck” situation as they were preparing for a memorial service for Laurie Davidson, the Branch Manager, who had tragically died.

79. Slone denied that the temporary transfer to Salato had been done in retaliation for Appellant’s receiving a Block 50. Slone answered: “No, he didn’t seem capable at that time of detaching from camp.”

80. When Appellant finished the temporary assignment at Salato, he was assigned back to his prior position, and will be Camp Director of Camp Wallace this upcoming summer, Slone stated.

81. On cross-examination, Slone was asked to compare Camp Wallace to the two other camps the Department runs. Slone stated that Camp Currie is in Western Kentucky; its maximum capacity is 208; it has a pool, but no lake. Camp Webb is in Eastern Kentucky; its maximum capacity is 198; it has a lake, but no pool. Camp Wallace, where Appellant is stationed, has a maximum capacity of 202; it has a pool and lake. The camps’ staffing is

"comparable, but not identical." Each camp has six Conservation Educators. Other staff is "as close to equal as we can make it," Slone testified.

82. Camp Wallace consists of a dining hall, a maintenance building, a camp office, cabins for campers and counselors, a pool, and a lakefront. Appellant and Gary Rogers share a trailer. Slone added that the trailer is "not nice." (At Camp Currie, the Director sleeps in the office. At Camp Webb, the Director sleeps in a counselor's cabin.) The pool at Camp Wallace is "old and small." It is generally used by campers without swimming experience. The lake at Camp Wallace has floating docks. The lake has a sharp drop off, and the water level there drops to over 40 feet.

83. As for a storm shelter, Slone stated that Camp Wallace has an old cistern that could suffice in an emergency.

84. At all three camps, the campers shoot guns.

85. Slone admitted that many of the campers at all three camps are on daily medications, and some have special needs. To date, there has never been a serious incident with a camper, although hospital runs for minor injuries is "not unusual."

86. Slone was asked who stands in for the Camp Director when he is absent. Slone responded that "by regulation, a CE IV can stand in as "Acting Camp Director." Slone added that a CE III may also stand in as Acting Camp Director if no CE IV is available (or in an emergency situation), but it is not designated as a "Job Expectation" on the CE III employee's performance evaluation. Slone stated that a staff member does not have to be a CE III or IV to listen to the weather radio.

87. Slone did not assign Appellant his duties at Salato. As for following up on Appellant after the transfer, Slone stated that he did discuss Appellant with Salato's Acting Director, Norm Minch, who described Appellant as "doing great."

88. **Norm Minch** is a Program Manager, which is equivalent to an Assistant Division Director. He has been in the Information and Education Division for the past 30 years. His job duties include oversight of the Kentucky Afield television program; the Information Center, an agency-produced magazine; and the Salato Wildlife Education Center.

89. Minch stated that Salato is staffed by two different units: one unit is responsible for education; the other takes care of the facility and the animals housed there. Salato also has a number of interim employees and a Branch Manager. Four months of the year Salato is closed to the public.

90. During the summer of 2015, Salato lost its Branch Manager. A CE IV stepped into that position, so a CE IV position became available.

91. Salato education staff work Tuesday through Saturday, as Saturday is its busiest day for visitors.

92. Minch stated that Appellant was tasked with a number of varied job duties while at Salato. He audited the educational programs and provided suggestions; and he assisted with “interpreting” the bobcat kitten exhibit. Appellant’s job duties also included assisting with policing the facility for trash and broken limbs, as well as putting together the benches intended for Laurie Davidson’s memorial service. (The service was later moved to a church in Lexington.) Minch stated it was his understanding that Appellant had volunteered to assist with the bench construction. Minch concluded, “[Appellant] did an excellent job. He was a blessing in disguise.”

93. On cross-examination, Minch was asked if Appellant had performed the duties of a Branch Manager while at Salato. Minch responded that Appellant did not because Brent McCarty had stepped up to the position of Acting Branch Manager during this time. McCarty had been a CE IV at Salato before Ms. Davidson’s death.

94. Appellant re-called **Tim Slone**. Through Slone’s testimony, a December 15, 2015 email from Laura Burford was introduced into the record. Attached to the email were updated performance evaluations forms for the CE I through CE IV positions. In the email, Burford noted that the evaluations were very similar to the prior forms, with a few exceptions. One item Burford specifically noted, “I added that CE IIIs and IVs may serve as Camp Director in his absence.” (Appellant’s Exhibit 14.)

95. Slone was asked why that change was made. He answered that Burford “was making the evaluations consistent with what was already in the job description. “Over time, with cutting and pasting, the evaluations and the position descriptions were sometimes inconsistent.”

96. On cross-examination, Slone testified that Camp Directors are not expected to stay at the camp twenty-four hours per day, seven days per week. Not only could Gary Rogers oversee the camp in Appellant’s absence, but CE IIIs or IVs from other camps could also be moved to Camp Wallace to stand in for Appellant, as needed.

97. **Billye Haslett** is the Director of Administrative Services Division, Department of Fish and Wildlife Resources, a position she has held since July 1, 2015.

98. Haslett was asked why Rogers was detailed into Appellant’s position as Branch Manager. She answered that because Appellant was re-assigned to Salato—albeit for a short period of time—Rogers was picking up Appellant’s Branch Manager duties and she felt that “if we were asking him to do the full duties of that position, then we should pay him for it.”

99. Haslett was asked why she didn’t ask Appellant to take time off when his compensatory time balance was increasing. She responded that Appellant “had gotten very irritated in the past when he had been directed to take time off, and he was already in an irritated state.”

100. Haslett was asked to review Appellant's Exhibit 5, an email chain from Haslett to Misty Judy on July 16 and 17, 2015. In the email, Haslett wrote "Coffee is on leave the week of July 20th. Our ultimate goal is to not have him return to the Camp, and immediately transition him to the aquatic education position upon his return to work, assuming he agrees to the offer." (sic) (Appellant's Exhibit 5.)

101. Haslett explained why she did not want him to return to camp: "Something happened that had made him very disgruntled with camp. His transfer was an attempt to get him out of the stressed state he was in." As for offering Appellant the Aquatics Education position, Haslett added, "We went out of our way to create this job for him. It was first advertised as a CE I, but we changed it to a CE IV to accommodate him. It would have been a demotion, but we were going to let him keep his salary. We changed the location of the job from Frankfort to Madison County to make it easier for him. The transfer was for his health and safety of the campers. It was an attempt to salvage an employee who was in a stressed state—he wasn't sleeping or eating." Haslett noted that Appellant verbally declined the Aquatics position to Misty Judy.

102. Haslett had been involved in trying to resolve the concerns Appellant had raised. He complained about the lack of TV reception at his trailer at camp; the condition of the camp; employees working off the clock; the inadequacy of the storm shelter; and he complained that Fish and Wildlife would not pay for him to stay at a hotel.

103. Haslett said that each of these issues was addressed: she determined that employees were accounting for their time properly; the storm shelter is not ideal, but is the best they can do right now; a state inspector was brought down to the camp to analyze and address the asbestos situation; and she is currently trying to address the TV reception at camp.

104. On cross-examination, Haslett was asked what the camp employees had told her about Appellant when she interviewed them. She answered that they told her Appellant was "frazzled, acted nervous. One employee stated she did not want to ask him questions—she went to Gary Rogers or Betty Lewis instead."

105. Haslett denied that Appellant's receipt of a Block 50 impacted his transfer to Salato.

106. Haslett testified that employees can determine their leave balances on KHRIS, the state's time-keeping system, which every state employee has access to.

107. The Appellant, John Coffey, testified on his own behalf. He began his career with the Department of Fish and Wildlife Resources as a CE I in 1993. He was promoted up the ranks to CE III. In 2005, he became a Program Supervisor, and in 2009, was promoted to Administrative Branch Manager. Appellant has worked at Camp Wallace since 1989, when he was hired as a camp Counselor.

108. Appellant's job duties include the operation of Camp Wallace, and the supervision of Conservation Educators and camp Maintenance staff. CEs typically teach 65 classes per month to fourth, fifth and sixth graders. As Branch Manager, Appellant also teaches classes himself during the school year—about 40 classes per month.

109. The camp season begins mid-May when lifeguard training is offered. Campers start the week after Memorial Day.

110. A typical week at camp begins with camper orientation. After campers are assigned to their cabins, camp activities begin. Campers arrive Monday and leave Friday, around noon. On average, the camp houses 204 campers (the maximum number it can hold is 208). No one except the Maintenance Supervisor (who lives on the property) is allowed to be at camp on the weekends.

111. Camp Wallace has 21 counselors, one office assistant, three Counselor Supervisors, six Conservation Educators, three Cooks, one Maintenance Supervisor, and one Maintenance worker. According to Appellant, his staff has decreased "tremendously" since he has been the camp's Director. He has lost funding for one Counselor position and one Maintenance worker. During the same timeframe, the behavioral issues of the campers have "sky-rocketed." Appellant estimated that 40% of the campers are on medications. "We're also seeing more and more campers with Asperger's Syndrome and autism," Appellant stated.

112. In Appellant's estimation, Camp Wallace is more difficult to supervise than the other two camps. Camp Currie, in Western Kentucky, is "very contained. The boating and fishing area are within eyesight of each other. It has an Olympic-sized pool and a separate nurse's station. Camp Webb has a shallow lake front, and the fishing and swimming area are attached. In a pinch, one supervisor can supervise both activities." By contrast, Camp Wallace "is on a hill. Kids don't like to climb hills. The pool is 1960's era. The lake has a floating dock. The water goes from 4 feet to 15 feet to 40 feet. The separate swimming areas create the greatest need for supervision."

113. On a typical Monday at camp, Appellant starts getting phone calls at 6:00 a.m. from Miller transportation or parents. He makes the schedule for the staff, and does Orientation. When the activities begin, the phone calls from parents begin. Some want to speak directly with the Camp Director. During the day he is also making purchases and coding bills. He may also be attending to other paperwork or disciplinary issues. In the evening, the first wave of home-sickness begins. "By this time the CEs are worn out." Appellant stated that he doesn't normally go to sleep until 2:30 or 3:30 a.m. Appellant estimated that he normally works at least 12 or 14 hours per day while camp is in session. Working 16 hours on a Monday is not unusual, Appellant stated.

114. Appellant was asked to address the timesheet he submitted on 7/15/15 claiming that he had worked 20 hours on 7/13/15; 19 hours on 7/14/15; and 16 hours on 7/15/15. (Appellant's Exhibit 4). Appellant responded that 7/13/15 was the day of the storm. He was up late watching for tornadoes; listening to the radio throughout the night. The radio "was

constantly delivering warnings.” There were more tornado warnings on 7/14/15, and on 7/15/15, he was attempting to get timesheets done and there was a record flooding of Lake Cumberland: “We couldn’t get to our docks. We had four Counselors helping the Maintenance staff.”

115. Tim Slone questioned this timesheet. Appellant submitted a new one, claiming 24 hours for 7/8/15, 7/9/15, 7/13/15 and 7/14/15 (Appellant’s Exhibit 7). When asked why he had changed the numbers, Appellant responded: “I was upset that they had questioned my time.”

116. As for the Aquatics position, Appellant first applied for it in 2004. When it became available again in 2014, he did not apply: “I didn’t apply, because I didn’t want it. In 2004, it might have been a step-up. But not now. It’s an insult to me. It would be a demotion.”

117. Appellant was queried if he knew that CE IIIs and CE IVs could be “Acting Directors.” Appellant stated that if they did assume the role of Acting Director, “they would be doing stuff that was not on their evaluation. I’ve never seen on any document that they can be Acting Camp Director.”

118. Appellant explained why he did not wish to speak to Tim Slone on July 23, 2015, when Slone called: “There had been other developments regarding statements he [Slone] made to me. I asked him if we were getting extra help. He told me he had requested it, but the request was denied. I went to talk to Charles Booker.¹ I told him that we are short-staffed, and somebody denied our request for more staff. Booker said ‘No one asked for additional staff. It was available if someone had asked.’”

119. On July 24, 2015, Appellant was assigned to the Salato Wildlife Education Center. He went from working Monday through Friday, to Tuesday through Saturday. This was problematic for him because his grandmother has severe dementia and he helps her one or two Saturdays per month. Appellant told Misty Judy he did not want to work Saturdays, but could not recall if he had told her about his grandmother.

120. Appellant’s job tasks at Salato were varied. He worked on assessing their audio tours, then typed up his analysis; he killed wasps; assembled benches; did weed-eating; pithed frogs. He did bobcat education for perhaps one hour per day, at the request of the animal care personnel. He did not feel that there was a need for him to be there at all. He did not perform the duties of a Branch Manager.

121. In Appellant’s estimation, his evaluation for that time period “went down. I wasn’t given credit for some tasks, and I didn’t complete some tasks because I couldn’t schedule them.”

122. Appellant was asked why he made the complaints about Camp Wallace in the first place. He answered: “I got fed up. We need help. Our kids are mentally and physically needy. No matter what’s going on with our staff, those 203 kids have to be supervised.”

¹ Charles Booker was the Director of Administrative Services before Billye Haslett.

123. Appellant was given a KEAP referral when his tenure at Salato ended. He felt it was insulting. "I wanted to tear it up," Appellant stated.

124. On cross-examination, Appellant was asked if he had said that he felt "like a prisoner at camp." Appellant clarified that he said he felt "like a prisoner without conjugal visits." And when he said that "camp had ruined his life," what he meant was that "people don't want to date someone who's not around."

125. Appellant did take some days off the summer of 2015, specifically 6/29, 6/30, 7/1, and 7/2. When asked who was in charge of the camp during his absence on those days, Appellant answered: "I don't know. That's for Frankfort to decide." As for Gary Rogers, Appellant conceded he had 30 years of experience at camp, but acting as Director "is not a responsibility listed in his job evaluation." Appellant added that he cannot delegate to Rogers because "Gary sleeps through stuff. I stay awake to keep everybody safe." Appellant noted that he does not always agree with Gary's assessment of weather risks.

126. In 2014, Appellant was ordered to take time off to decrease his compensatory leave balance. "It was upsetting because I don't feel I am compensated properly. I worked really hard and then they wanted to burn down my comp time."

127. Appellant stated that he does expect his staff to manage their compensatory time, but it is usually not an issue.

128. At the end of Appellant's testimony, the Appellant rested his case.

129. Appellee re-called **Misty Judy** on rebuttal. She was asked to recount the meeting she had with Appellant on 7/7/16. Judy stated that Appellant told her he felt like a prisoner, that working at camp had destroyed his chance to have a relationship, and that there was no fraternization. He felt he should have a per diem, and be allowed to stay at a hotel. He complained that he had no "conjugal visits."

130. Appellant did tell Judy that his grandmother had Alzheimers, and that he assisted with her care. He did not mention that he cared for her on Saturdays specifically.

131. In Judy's opinion, Appellant's getting a Block 50 only confirmed the things he had already told her; specifically that he had not been sleeping, and was working late into the night. "He was absolutely stressed and burned out."

132. Judy considered other leave options for Appellant. In order to put him on Investigative Leave, she would have to have made a finding of wrong-doing. To put him on Directed Sick Leave, she would have to find him a threat to himself or others. She did not think it appropriate to come to either conclusion. As she was considering the proper action, she learned that the Director of Salato had died, and that Salato needed assistance.

133. Judy understood that Appellant would be picking up CE I, II, III, and IV work. She stated that she did not know—until the evidentiary hearing—he was performing maintenance work.

134. Judy added, “[Appellant] was very adamant he didn’t want to reduce his comp time. He wanted to get maximum comp time because he wanted to retire with the highest amount and the highest comp time.” As a Branch Manager, Judy expected him to manage his time and his leave balances.

135. Judy left him on temporary assignment at Salato until September 11, 2015, because she and Haslett were trying to finish the investigation. The need for Appellant to get the classroom programs ready for the school year became apparent, so they took him off his duty at Salato before the investigation was actually completed.

136. 101 KAR 2:095, Section 3, (2) and (3) states:

Section 3. Work Station and Temporary Assignment.

- (2) A work station may be changed to better meet the needs of the agency.
- (3) An employee may be temporarily assigned to a different work station in a different county.
 - (a) If an employee is temporarily assigned to a different work station in a different county, the assignment shall not last more than sixty (60) calendar days.
 - (b) Temporary assignment may be renewed with the approval of the Secretary of Personnel.
 - (c) A temporarily reassigned employee shall be reimbursed for travel expenses in accordance with 200 KAR 2:006, and the appointing authority shall notify the employee in writing prior to the effective date of the action.

137. KRS 18A.095(1) reads:

A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.

138. 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;

FINDINGS OF FACT

1. Appellant is a Conservation Educator IV and an Administrative Branch Manager of the Central District Branch of Conservation Education, Kentucky Department of Fish and Wildlife Resources (“KDFW”). During the summer months, Appellant is Camp Director of Camp Earl Wallace Conservation Camp in Wayne County. Appellant’s regular workstation is in Madison County, where he resides.

2. On August 5, 2015, Appellant filed an appeal with the Personnel Board, alleging “Other Penalization.”

3. By Interim Order dated September 23, 2015, it was established that at issue in the evidentiary hearing would be Appellant’s claim he was penalized when given a temporary assignment to Frankfort, and when he was denied credit for compensatory time. The burden of proof for those issues was placed on Appellee. The Appellant also claimed he was temporarily assigned to Frankfort in retaliation for having complained about camp safety issues. The burden of proof on the retaliation claim was placed on Appellant.

4. Appellant first spoke to Misty Judy, then acting Human Resource Director for KDFW, on May 11, 2015. During this conversation, Appellant expressed his dissatisfaction with a number of Department policies regarding wage and hour issues, and raised his concern regarding some safety issues at camp.

5. On June 8, 2015, Judy met with Appellant’s first and second-line supervisors, Laura Burford and Tim Slone, respectively; Karen Waldrop, KDFW’s Commissioner; and Charles Bush, Deputy Commissioner. According to Judy, the staff present stated they also had concerns about Appellant, and informed her that he had earlier complained to them that “he was unappreciated and had no life.”

6. Judy testified that she also found worrying the amount of compensatory time Appellant was claiming that summer. While it was expected that a Camp Director would earn 15 to 20 hours of compensatory time per week during the camp season, Appellant was claiming more than twice that amount.

7. On July 7, 2015, Judy met with Appellant. According to Judy’s testimony, Appellant told her that he felt he was a “prisoner” at camp, and that his camp schedule had “kept him from having a successful marriage or family.” He complained that camp staff had limited

opportunities for fraternization, and stated he was frustrated that he did not get a "per diem" allowance for a hotel room or food. Appellant also related that he was "worried to death" about the safety of the children at camp. Judy stated that after this meeting, she was concerned about Appellant. In her estimation, he was "exhibiting behaviors that showed he was very stressed." Judy stated that Appellant became emotional and angry when he discussed certain issues. Compared to his demeanor when they spoke in May, she felt his stress level was "escalating."

8. After this meeting, Judy began considering other options for Appellant, including the possibility of a Kentucky Employee Assistance Program (KEAP) referral. She also began to look for other positions for Appellant within KDFW. A Conservation Educator IV position in the Aquatics program was available. This was a job Appellant had applied for in the past (but was not offered). While it would have been a demotion, Judy was open to letting him keep his current salary, if he accepted the position.

9. Judy reviewed Appellant's job performance evaluations. She noted that while his performance during the school year was adjudged "excellent," his supervisors were having "increasing concerns" for his job performance at camp.

10. For the pay period ending July 15, 2015, Appellant submitted a timesheet that claimed 52 hours of compensatory time. This timesheet triggered a Block 50. Appellant's second-line supervisor, Tim Slone, requested that Appellant provide documentation of how he spent his time during those two weeks, and asked him to re-submit the timesheet, as he had not signed it properly. Appellant submitted a second timesheet claiming that he worked 24 straight hours on July 8, 9, 13, and 14, 2015. At the evidentiary hearing, Appellant stated that he had claimed that amount because he was aggravated that his timesheet had been questioned. He defended the hours he had originally claimed by explaining that he was monitoring a weather radio during a very bad storm on July 13 to 14, 2015. Tim Slone was not satisfied with Appellant's documentation of the hours he worked as stated on his July 15, 2015 timesheet, and created a timesheet for him, taking into account what other Camp Directors had claimed during this same timeframe-- 8.5 hours of compensatory time for July 13, 14, and 15, 2015 (Appellant's Exhibit 6).

11. Appellant had been repeatedly warned by Judy and Slone to watch the amount of compensatory time he worked. A memorandum, dated June 16, 2015, from Slone to all three Camp Directors admonished: "Please watch your time. As the camp director, you have to manage your own time as well as that of your staff. Managing your time now will prevent problems later in the camping season." (Appellee's Exhibit 15.)

12. While working at camp, Appellant was sending emails very late at night to his supervisor, Laura Burford, and also to Judy. Judy spoke to Appellant, and explained that it was not appropriate for him to claim work time when he awoke in the middle of the night. She suggested they create a work schedule in which Appellant would only work 37.5 to 45 hours per week. According to Judy, Appellant refused to consider this option.

13. The Hearing Officer finds that Appellant was not improperly denied credit for working additional compensatory time. Appellant failed to adequately document the hours he claimed on his 7/15/15 timesheet, despite his second-line supervisor's request, which forced Slone to create a timesheet for him. By his own admission, Appellant's claim that he worked 24 hours on 4 different days was made because he was "upset" that his hours had been questioned. The 8.5 hours of compensatory time given Appellant (on the timesheet Slone created) for the two storm days (July 13 and 14, 2015) were similar to the hours claimed by the other two Camp Directors and was reasonable under the circumstances. While the weather radio at camp may have needed to be monitored for a 24-hour period, that task should have been delegated to other camp staff.

14. Slone called Appellant on July 23, 2015, to advise him that Judy and Haslett had requested a meeting. The phone was answered by a camp staff person who handed the phone to Appellant and advised him Slone was on the line. The phone was dropped and Appellant told the staff person to have Slone communicate with him by email.

15. Appellant sent Judy an email on July 17, 2015, which stated: "Just to let you know, I will not be communicating with my supervisors from this point forward until the issue is resolved unless it is via email. If it is via phone or in person, I will be recording the conversation and or have witnesses and legal counsel present. If they want to end this dispute amicably, I will gladly accept back pay for all of the time forced to be on call/at camp for my career and retire. If that is straight comp it is six years with interest, if with time and a half it is nine years." (Appellee's Exhibit 3.)

16. After receiving this email, Judy felt that the situation with Appellant was "getting out of control." To Judy, it was unacceptable that Appellant refused to speak to his supervisors. "[Appellant] was the contact between Central office and camp. I felt that as HR Director, I had to step in."

17. Judy concluded that Appellant "was not in his right mind to be working at camp." In her estimation, Appellant's situation had turned from a time management issue to a safety issue. She decided Appellant needed to be removed from camp. At the evidentiary hearing, Judy cited two other reasons for removing Appellant from Camp Wallace: she was conducting an investigation into Appellant's complaints about camp, and felt that staff would feel more comfortable speaking to her without Appellant present; and the Salato Wildlife Education Center needed more staff due to the tragic death of its Branch Manager.

18. On July 24, 2015 (effective July 28, 2015), Appellant's workstation was temporarily changed to Salato Wildlife Education Center in Franklin County, Kentucky. His work hours changed to Tuesday through Saturday. Appellant's grade, title and salary did not change. Appellant was allowed to keep his KDFW vehicle, so he incurred no travel expenses.

19. It was uncontroverted at the evidentiary hearing that while Appellant did perform a few educational program duties while at Salato (he occasionally exhibited the bobcat kitten and made a written assessment of Salato's audio tours), his primary job duties were more focused on

maintenance tasks. Appellant testified he “killed wasps, did weed-eating, pithed frogs, and assembled benches.” Gary Rogers corroborated that testimony, stating that on the occasions he had visited Salato, he observed Appellant “doing maintenance, building stuff. He was seldom—if ever—doing educational programs.”

20. On September 16, 2015, Appellant’s temporary change of workstation ended, and he returned to working in Madison County.

21. The Hearing Officer finds that the action taken by Appellee constitutes a “penalization” pursuant to KRS 18A.005(24). Appellant suffered a clear diminution of his job responsibilities when his work station was temporarily transferred to Salato Wildlife Education Center. He went from supervising a staff of approximately 36 at Camp Wallace to performing primarily maintenance work.

22. The Hearing Officer finds that the Cabinet acted within its authority to penalize Appellant for cause. Appellant exhibited poor judgment and insubordinate behavior toward his supervisors. He disregarded his supervisors’ admonitions to monitor his compensatory time. He refused to communicate with his second-line supervisor except by email. Appellant failed to delegate camp responsibilities, including weather monitoring, to other capable camp staff, which had the combined effect of his getting very little sleep, and his claiming an unusually large amount of compensatory time. Appellant’s behavior was described by Judy as “escalating.” The Hearing Officer finds credible Judy’s testimony that she doubted Appellant’s ability to act safely and effectively as Camp Director.

23. The Hearing Officer finds that the temporary transfer of Appellant to a different work station in a different county was done in accordance with Section 3 of 101 KAR 2:095: the assignment was for less than 60 days, Appellant incurred no travel expenses, and the change was done to better meet the needs of the Agency.

24. The Hearing Officer finds that Appellant failed to meet his burden of proof to show that the temporary transfer was done in retaliation for his complaints about camp safety or his claims of compensatory time. The evidence of record adequately demonstrated that Appellant was transferred due to his erratic behavior and his apparent inability to manage his work time and stress levels.

25. In his post-hearing brief, Appellant requests – in addition to sustaining his appeal – that the Board recommends the Appellee conduct an independent review of the camp program “to ensure that the campers are provided with sufficient staff for supervision and their overall safety.” While Appellant testified that he worried about camper safety and stated that he had lost a couple of staff positions over the years, no other evidence was presented at the evidentiary hearing for the Hearing Officer to make the determination that the supervision of campers at Camp Wallace was inadequate or that an investigation into this matter is warranted.

26. In his post-hearing brief, Appellant also requests that the October 7, 2015 written reprimand “be set aside and held for naught, because the incident was resolved on July 24, 2015

(Appellee's Exhibit 7)." The written reprimand was issued for Appellant's misconduct on July 23, 2015, when Appellant refused to speak to his second-line supervisor, Tim Slone, by telephone. The Hearing Officer assumes Appellant is contending that the transfer to Salato on July 24, 2015, was punishment for this misconduct. The Hearing Officer disagrees. The transfer to Salato was implemented because his supervisors doubted his ability to safely and effectively act as Camp Director. The reprimand was issued to address a specific act of insubordination. The Hearing Officer finds the transfer did not "resolve" the disciplinary issue of Appellant's misconduct, and the written reprimand should not be set aside.

CONCLUSIONS OF LAW

1. The Cabinet's temporary assignment of Appellant to Frankfort constituted a "penalization" pursuant to KRS 18A.005(24).
2. The Cabinet acted within its authority to penalize Appellant for cause.
3. The Appellant failed to meet his burden of proof to show that the temporary assignment was done in retaliation.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **JOHN M. COFFEY V. TOURISM, ARTS AND HERITAGE CABINET, DEPARTMENT OF FISH AND WILDLIFE RESOURCES, (APPEAL NO. 2015-179)** 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 Colleen Beach** this 3rd day of August, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. David B. Wicker
Hon. Paul Fauri