

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-070

JESSICA A. HARRIS

APPELLANT

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

EDUCATION AND WORKFORCE DEVELOPMENT
THOMAS O. ZAWACKI, APPOINTING AUTHORITY

APPELLEE

** **

The Board at its regular March 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 17, 2014, 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 **SUSTAINED to the extent** therein.

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 19th day of March, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy mailed this day to:

Hon. Rosemary Holbrook
Hon. Brenda Dinkins Allen
Stan Riley

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-070**

JESSICA A. HARRIS

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VS.

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

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET
THOMAS O. ZAWACKI, APPOINTING AUTHORITY**

APPELLEE

** ** ** ** **

This matter came on for evidentiary hearing on January 13, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Roland P. Merkel, Hearing Officer. The proceedings were recorded by audio/video equipment and authorized by virtue of KRS Chapter 18A.

Appellant, Jessica Harris, was present and represented by the Hon. Brenda Dinkins Allen. Appellee, Education and Workforce Development Cabinet, was present and represented by the Hon. Rosemary Holbrook. Also present as Agency representative was Mr. Mark White.

The issue presented was the appropriateness of the Appellant's 2012 Annual Employee Performance Evaluation rating, whereby she received an overall final score of 245, which placed her in the category of "Needs Improvement." The burden of proof was on the Appellee to show by a preponderance of the evidence that the assignment of such overall final score was justified.

The rule separating witnesses was invoked and employed throughout the course of the hearing. Appellant presented an opening statement. Appellee waived presentation of an opening statement.

BACKGROUND

1. The first witness for the Appellee was **Anthony Hudgins**. Mr. Hudgins is employed as Workforce Development Manager where he oversees daily operations of the Tax Enforcement Branch, including three sections. In 2012, he was employed as a Workforce Development Operations Administrator where he served as the section supervisor of the Status Section. At that time he supervised seven to ten employees including the Appellant, Jessica A. Harris. He had been Appellant's first-line supervisor from April 2011 to March 2013.

2. In 2012, Appellant was employed as a Workforce Development Facilitator. Her duties included processing and conducting SUTA Dumping investigations as well as processing regular account transfers. "SUTA Dumping" refers to an event where an employer has shifted employees from one company to another in an attempt to manipulate its own tax rate. During 2012, Appellant and two other employees performed the same job functions. In mid-January of that year, one of those employees left.

3. Mr. Hudgins identified Appellee's Exhibit 1 as the Appellant's Annual Employee Performance Evaluation for the period of January 1 through December 31, 2012. Pages 1 through 3 contain the Performance Plan. Mr. Hudgins prepared the information in the columns under "Duties," "PTS" and "Expectations," as well as having assigned the respective point values to each subcategory. These duties and expectations had been reviewed with the Appellant on January 17, 2012, as evidenced by her signature on p. 4 of the document. This document also included the interim review meeting documentations with Appellant during the first (1/2/2012 to 4/30/2012), second (5/1/2012 to 8/31/2012), and third (9/1/2012 to 12/31/12) review periods. Each interim review document contains comments on topics Hudgins discussed with Harris at that time.

4. He identified Appellee's Exhibit 2 as the notes he prepared for his meeting with Appellant during the first 2012 interim review. These notes include points he discussed with the Appellant at that time. Likewise, he prepared similar notes for his second 2012 interim review with the Appellant, which notes he identified as Appellee's Exhibit 5.

5. An employee in Appellant's position was expected to process at least twenty-five SUTA transfers per quarter and perform a minimum of fifty investigations per quarter. (Appellee's Exhibit 1, p. 1). Hudgins gave Appellant a score of "2" (Barely Meets Expectations) for this category on the annual evaluation. All through the year Hudgins had tracked the SUTA Dumping Transfers processed by each of the three employees of that section.¹ Those records are reflected on the document the witness identified as Appellee's Exhibit 3. On the first page of that document it shows Appellant had completed, for each quarter of 2012: 20, 16, 46, and 22 SUTA Dumping Transfers, for a total of 104. With the exception of her performance during the third quarter, Appellant fell below the goals set as part of the expectations for her position. When compared with the other employee, "Louise" had processed 50, 70, 86, and 34 SUTA Dumping Transfers during each quarter of that year.

6. Page 2 of Appellee's Exhibit 3 shows how the witness tracked the employee's processing of Regular Transfers during 2012. Appellant completed no such transfers for the first, second or third quarters. She completed 26 Regular Transfers in the fourth quarter. When compared with the performance of Louise (106, 26, 142 and 84), Appellant fell well below expectations. Hudgins felt that when it came to processing account transfers, Appellant chose

¹ The employee identified as "Lindsey" left employment in mid-January of 2012.

not to perform this duty. That is why he assigned her a "1" (Fails to Meet Expectations) in that category. Processing Regular Transfers did not take a lot of time; it required the data entry of Regular Transfers that came into the office. Employees were instructed to pick up such transfers from a box, on their own, and to process same on a daily basis.

7. With reference to the next category on the evaluation, "Assist Employers and Field Auditors with Issues of Subjectivity and Successorship," Hudgins had assigned her a rating of "2." During the first interim meeting, he had discussed this issue with the Appellant, and told her more follow-up telephone calls were required to obtain more information. Appellant lacked punctuality and was away from her desk quite a bit. When she was away from the desk she could not serve customers as required. She needed to be able to explain to employers successorship issues and other matters. Furthermore, she had not always logged into the phone line as required. She was not always ready to begin her workday upon her arrival at the worksite. She was often observed conducting personal business during work time, such as balancing her personal checkbook, and grading papers for a course she taught at a second job.

8. The Appellant and Louise took a lunch break later than the rest of the employees in the office. They then were assigned to answer telephones from noon to 12:30 p.m. Despite such assignment, Appellant often started her lunch early, before 12:30, or she just left the work area. Telephone call logs indicated there were times Appellant should have been logged in to the telephone, but was not. In the interim meeting notes, the witness had recorded that Appellant's performance was not at a level she should be. All the above resulted in her inability to be able to explain successorship or other transfer requirements to employers.

9. With reference to the category of "shows initiative/creativity," Hudgins gave Appellant a rating of "2." Appellant needed to improve her productivity and take initiative to determine what other duties she needed to complete during the workday. She did not show such initiative or creativity in her performance.

10. With reference to the category of "works under pressure," he gave her a rating of "2." He believed Appellant's inability to meet her production goals and her performance below expected levels evidenced an inability to multi-task or meet the regular goals of the position, let alone in the event of added pressure.

11. With reference to the category of "dependability/responsibility," he gave the Appellant a rating of "2." Again, Hudgins testified that all throughout Appellant had been reminded to keep break times to fifteen minutes. She had also been instructed not to conduct personal business. All of this took her away from being able to attend to customers and employers, and interfered with her ability to meet performance goals.

12. The Appellant had been provided, by Hudgins and other employees, one-on-one training throughout. During 2012, Harris had not taken any extended leave or sick time.

13. He identified Appellee's Exhibit 4 as an incident log he maintained on Appellant for the period of January through December 2012. He kept such a log on all employees to help him track relevant matters during the course of the year for purposes of later evaluations. He does not document every incident or problem with an employee.

14. Hudgins noted that his log for 5/23/12, the day after his first interim meeting with Appellant, recorded Harris signed-in at 8 a.m. that morning and did not return to her desk until 8:25; she also took a thirty-minute morning break; she was also observed to have been working on personal business. All this occurred one day after she had been instructed not to perform in such a manner.

15. It was expected of Harris that she be able to answer all questions, including technical questions, regarding transfers and successorship, whenever a customer or employer called. On many occasions she referred employer phone calls to other employees. Coworkers had complained about these telephone call referrals to Hudgins.

16. In the third interim review, Hudgins checked off the box denoting, "The employee's performance has remained consistent since the last interim review and no other comments are necessary that affect the employee's overall rating for the performance evaluation period." (Appellee's Exhibit 1, p. 8). Appellant's performance had not significantly changed since the second interim review.

17. The final performance evaluation score assigned to the Appellant for 2012 was "245" which placed her in the "Needs Improvement" category. Hudgins discussed this evaluation with the Appellant during January of 2013. Appellant disagreed with the evaluation and requested reconsideration.

18. As part of the reconsideration, Harris submitted a two-page letter accompanied by a series of sample e-mails, identified by the witness as Appellee's Exhibit 6. He had reviewed and considered such documentation. He viewed the documents as evidence of Appellant's agreement with his rating and citation of areas that were lacking and an attempt to justify why she did not do her job. He decided there would be no change in the evaluation score as there were no facts to justify a change. He viewed the attached e-mails as basically "friendly talk" with others.

19. Appellant disagreed with this reconsideration and requested a final reconsideration from the next-line supervisor, Assistant Director Melissa Beasley.

20. He identified Appellee's Exhibit 7 as a group of e-mails that are part of the chain of e-mails shown in Appellee's Exhibit 6, but which were omitted from submission by the Appellant when she asked for reconsideration. Appellee's Exhibit 7 shows that a customer's questions were referred by the Appellant to Tara Welch, who then answered the questions; Appellant then passed on the information through her own e-mail back to the party who had made that inquiry.

21. The next witness was **John Coleman**, who since September 1, 2012, has been the Workforce Development Manager of the Tax Audit Branch, Division of Unemployment Insurance. He manages operations of more than fifty tax auditors across the state. During 2012 he was employed in the position of Workforce Development Manager of the Tax Enforcement Branch where he was Appellant's second-line supervisor until September 1, 2012. He had reviewed the 2012 Performance Plan for the Appellant to make sure the duties and expectations listed therein were consistent with her employment position. He deemed that they were and he signed off on it.

22. Coleman had never received complaints from customers or field auditors about the Appellant. Early in cross-examination, he testified there was no documentation here to show Appellant's lack of knowledge of unemployment insurance laws or an inability to communicate technical issues to customers or auditors. However, in subsequent testimony, when he had reviewed the interim evaluations and notes generated by Hudgins pertinent to same, Coleman stated he believed such comments including those where Hudgins believed Appellant's performance was not to the level where it should be, and that follow-up calls to employers for information were required, as well as conducting "personal business" on state time, rendered his prior testimonial statement inaccurate.

23. The next witness was **Melissa Beasley**, who for the past six years has been the Assistant Director of Tax in the Division of Unemployment Insurance. She oversees the Tax Enforcement Branch and the Tax Audit Branch. She had been Appellant's second-line supervisor from September 1, 2012, through March 2013. She was the one who had signed Appellant's 2012 year-end evaluation and performed a final reconsideration.

24. She had received Appellant's request for a final reconsideration. She reviewed the 2012 evaluation, with attached interim evaluations and notes, and met separately with Hudgins and Appellant. She also reviewed the reconsideration documents submitted by the Appellant (Appellee's Exhibit 6) and the incident log kept by Hudgins (Appellee's Exhibit 4). Appellant had asked for a review of ratings that were less than three and requested one or more of such ratings be raised to a "3." In this process she determined that Appellant had in only one of four quarters met the minimum requirement of SUTA processing; that she performed no regular transfers at all for three of the four quarters, and then 26 in the fourth quarter. Performance of "0" transfers is never an acceptable expectation.

25. She determined Appellant had given no information to warrant raising the scores of "1" or "2". The evaluation performed by Hudgins and the score of "245" was accurate and justified. She decided there should be no changes.

26. On January 31, 2013, Beasley issued a letter to Harris advising there would be no change on the 2012 evaluation (Appellee's Exhibit 8).

27. When cross-examined on the category of "Assist employers and field auditors with issues of subjectivity and successorship," Beasley stated she observed there to be no document or notation on the evaluations that performance in this area was deficient. However, a score of "2" was still correct for a number of reasons: Appellant was not meeting overall expectations of the position; how one performs on the SUTA Dumping team is very important; if one is not meeting performance requirements, this indicates a problem in one's knowledge of those requirements.

28. Appellee closed its case in chief. The Appellant presented no witnesses on her behalf. Each of the parties presented their respective closing arguments.

FINDINGS OF FACT

1. During the entirety of 2012, the Appellant, Jessica A. Harris, had been employed by the Education and Workforce Development Cabinet, Office of Employment and Training, Division of Unemployment Insurance, Tax Enforcement Branch, Employer Status Section, as a Workforce Development Facilitator. She is a classified employee with status. Included in her employment duties, Appellant was required to conduct SUTA Dumping investigations and process SUTA Dumping transfers; process account transfers; establish, reactivate, reinstate employer reserve accounts; assist employers and Field Auditors with issues of subjectivity and successorship; issue letters of good standing; assist other Tax Enforcement Branch employees with complex issues and cases; and perform other job tasks and duties as assigned. (Performance Plan at Appellee's Exhibit 1).

2. During 2012, Anthony Hudgins had been employed as a Workforce Development Operations Administrator and was the supervisor of the Employer Status Section. At that time, he was Appellant's first-line supervisor.

3. Hudgins routinely monitored employee incidents throughout the course of a year. The incident log he kept on the Appellant for 2012 documented two occasions when Appellant had graded papers from her other employment, during work hours; she had been counseled about not having logged into her telephone to take telephone calls; she had been away from her desk an inordinate amount of time; the day after having received her first interim evaluation in May of

2012, Appellant signed in to work at 8:00 a.m., but did not return to her desk until 8:25; she took a half-hour morning break; she was observed working on personal business during work time. Appellant had called Tara Welch for help with a telephone inquiry from an employer, and had walked away leaving Ms. Welch to finish the investigation; Appellant had put an employer on hold on the telephone to answer a cell phone call (Appellee's Exhibit 4).

4. Hudgins also kept a record of the number of SUTA Dumping Transfers and Regular Transfers processed by the three employees in his section. For each quarter of 2012, Appellant had completed 20, 16, 46, and 22 SUTA Dumping Transfers, while Louise had completed 50, 70, 86 and 34 transfers (Appellee's Exhibit 3). The goal for employees was to process at least 25 SUTA transfers per quarter and perform a minimum of 50 investigations per quarter (Appellee's Exhibit 1).

5. The number of Regular Transfers processed by Appellant for each quarter of 2012 were 0, 0, 0, and 26, while the transfers processed by Louise were 106, 26, 142, and 84 (Appellee's Exhibit 3).

6. Prior to his first interim review with Appellant on May 22, 2012, Hudgins drafted notes containing the talking points and issues he would review with Harris (Appellee's Exhibit 2). Although Appellant's performance had improved at that point, Hudgins believed it still had not reached the level where it should be. The low number of cases processed and the performance of no Regular Transfers had been discussed. She was also warned not to perform personal business during work time, as she had been observed balancing her personal checkbook, scheduling appointments, writing in her personal planner, grading papers and recording grades, and being on the internet. She was counseled that her punctuality could be better and that her break times needed to be kept to fifteen minutes. She was also reminded to cover the 12-12:30 lunch period and to be at her desk during that time with her telephone ready to field calls (Appellee's Exhibit 2).

7. Hudgins had also drafted a set of notes in preparation for his meeting with the Appellant for her second interim review (Appellee's Exhibit 5). During the interim review held September 12, 2012, he discussed the following with Harris: She had failed to process any Regular Transfers year-to-date; her productivity needed to be increased, as well as the processing of SUTA investigations; she was reminded to stay logged onto her telephone, ready to take calls, particularly during the lunch period; she required improvement in punctuality and arriving to work ready to begin the workday; she was reminded break times needed to be kept to fifteen minutes (Appellee's Exhibit 1).

8. At the third interim review on January 10, 2013, Hudgins had checked off the box on that document that denoted, "The employee's performance has remained consistent since the last interim review and not other comments are necessary that affect the employee's overall rating for the performance evaluation period." (Appellee's Exhibit 1.)

9. The final performance evaluation was performed by Hudgins on January 10, 2013. He had placed rating scores on the first three pages of the Annual Employee Performance Evaluation, which scores added to a total of "245." This placed Harris' overall performance evaluation in the "Needs Improvement" category.

10. Harris disagreed with the performance evaluation and requested reconsideration. In that reconsideration she submitted a two-page letter with attachments (Appellee's Exhibit 6). Upon further review, Hudgins determined there would be no change on the evaluation.

11. Harris disagreed with the results of the initial reconsideration and requested reconsideration by the next-line supervisor.

12. Melissa Beasley, who was the next-line supervisor for the Appellant during that time, reviewed the 2012 evaluation, along with attached interim evaluations, notes, reconsideration documents submitted by the Appellant, and the Incident Log kept by Hudgins. She met separately with Hudgins and the Appellant.

13. In this reconsideration, Beasley noted that Appellant had challenged the scores for which she had received a rating less than "3." Beasley determined that Appellant had provided no information to warrant raising those scores that were rated a "1" or "2." On January 31, 2013, Beasley issued a letter to Harris advising there would be no changes (Appellee's Exhibit 8).

14. The duties and expectations contained in Appellant's 2012 Performance Plan were consistent with her employment position.

15. There was no documentation to show that Appellant lacked knowledge or expertise to provide technical assistance on subjectivity/liability requirements under Kentucky Unemployment Insurance law or the policies and procedures of the Division. While witnesses for the Appellee offered testimony that Appellant's behaviors of not reporting to her desk in a timely manner, taking longer than normal breaks, not logging into the telephone during the lunch hour, or passing off telephone inquiries to coworkers, interfered with her ability to perform her job, there was neither an indication in the interim reviews or the final performance, or the testimony, that Appellant lacked knowledge or expertise in the Unemployment Insurance laws or technical issues.

16. Appellant received a rating of “2” for SUTA Dumping investigations, which rating was justified. The preponderance of the evidence shows that she “barely met” those expectations. (Appellee’s Exhibit 3).

17. There was a preponderance of the evidence to show that Appellant “failed to meet expectations” in processing account transfers. Employees were required to check the account transfer in-box on a daily basis and by the end of the day complete any such matters. Appellant failed to complete any regular transfers for the first three quarters of 2012 and only 26 in the fourth quarter. This was out of a total of 420 such items for the year. This left “Louise” to complete 358 of those transfers, while Lindsey, who vacated her position in mid-January of 2012, completed 36, ten more than Harris had completed for the entire year (Appellee’s Exhibit 3).

18. A preponderance of the evidence showed that Appellee’s assignment of a rating of “2” to the Appellant for categories of “Shows initiative/creativity; Works under pressure; and Dependability/responsibility” were justified.

19. The Appellant timely filed her appeal with the Kentucky Personnel Board.

CONCLUSIONS OF LAW

1. Pursuant to KRS 18A.095(15), “An evaluation may be appealed to the board if an employee has complied with the review procedure established in KRS 18A.110(7)(j). That subsequent statutory provision requires the promulgation of an appropriate administrative regulation, which is found at 101 KAR 2:180, Section 7(7). The regulation provides that a classified employee with status who receives either of the two lowest possible evaluation ratings may appeal to the Personnel Board for review after exhausting the internal dispute resolution procedure.

2. Jessica A. Harris is a classified employee with status who has complied with the review procedures established in KRS 18A.110(7)(j), and thus was entitled to appeal to the Kentucky Personnel Board her 2012 performance evaluation score of “245” which fell in the “Needs Improvement” category. Harris filed her appeal with the Kentucky Personnel Board in a timely manner.

3. Appellee has shown by a preponderance of the evidence that assigning Appellant a rating of "2" (Barely Meets Expectations) was appropriately assigned in evaluating the following duties:

A. SUTA Dumping investigations: Harris failed to meet the goal of processing at least 25 SUTA Transfers per quarter, having processed 20, 16, 46, and 22 respectively (Appellee's Exhibit 3).

B. Shows initiative/creativity: Harris failed to consistently maintain work standards. She performed personal, non-business tasks during work time; she failed to consistently log into her telephone during the noon to 12:30 p.m. time period; she spent an inordinate amount of time away from her desk or on breaks longer than permitted; through the first three quarters of 2012 she did not take any initiative to process any regular transfers.

C. Works under pressure: Harris' failure to meet goals set out in her Performance Plan under normal work conditions showed a very low output of good work results. The testimony of Anthony Hudgins on this issue is correct when he stated Appellant's inability to meet her production goals and her performance below expected levels evidenced an inability to multi-task or meet the normal everyday goals of the position, let alone meeting such goals in the event of added pressure.

D. Dependability/responsibility: Harris' failure to meet the goal of processing at least 25 SUTA transfers per quarter, and failing to process anymore than 26 Regular transfers during the entire year, in conjunction with performance of personal, non-business tasks during work time, failure to regularly log into the telephone, and spending an inordinate amount of time away from her desk, more than adequately supported the rating assigned to her on this category.

4. Appellee has shown by a preponderance of the evidence that the assignment of a rating of "1" (Fails to Meet Expectations) was appropriately assigned to Appellant in the category of processing account transfers. Harris, as well as other Workforce Development Facilitators, was required on a daily basis to process Successorship determinations. Harris did no such transfers for the first three quarters of 2012. It was only during the fourth quarter that she processed 26. One other Workforce Development Facilitator had, before she left employment in mid-January 2012, already processed by that date 36 transfers. Another Workforce Development Facilitator named "Louise" processed 358 transfers for that same year, for an average of 89.5 transfers per quarter.

5. Appellee has failed to show by a preponderance of the evidence that the rating of “2” (Barely Meets Expectations) was appropriately assigned to Appellant for the duty identified as “Assist employees and field auditors with issues of subjectivity and successorship.” The “expectations” set out for this duty requires one provide to customers “technical assistance on subjectivity/liability requirements under KY UI laws and the policies and procedures of the Division.” The Cabinet attempted to show that as Appellant did not perform up to expectations with regular and SUTA Dumping transfers, that she regularly conducted personal business while at work, and that on a few occasions referred customer telephone calls to other office employees, that this necessarily showed she had problems understanding and, therefore, explaining the subjectivity liability requirements to customers.

In his first interim review notes, Anthony Hudgins mentioned, “I think your performance has improved and you have become more comfortable talking with employers, but it is still not to the level as I think it should be.” (Appellee’s Exhibit 2). He transferred this issue from his notes to the First Interim Review Meeting Documentation, where he stated and made known to Appellant, “Jessica has displayed an increased knowledge and comfort level with her investigations and discussing details with employers . . . Jessica has shown an increase (sic) knowledge and comfort level with her job tasks.” (Appellee’s Exhibit 1, p. 5).

In his second interim review notes, Hudgins made no mention of Appellant’s ability or lack thereof in communicating issues of subjectivity and successorship to employers and field auditors, nor did he make any mention of a problem in the Second Interim Review Meeting Documentation (Appellee’s Exhibit 5; Appellee’s Exhibit 1, p. 7).

In the Third Interim Review Meeting Documentation, Hudgins checked the box that stated, “The employees performance has remained consistent since the last interim review and no other comments are necessary that affect the employees overall rating for the performance evaluation period.” (Appellee’s Exhibit 1, p. 8). This indicates that Hudgins believed Harris’ performance had not changed since the second interim review, and as no mention was made during the second interim review of deficiencies in Harris’ ability to communicate issues of subjectivity and successorship to employers and field auditors, she would, therefore, have adequately met expectations in that category. Therefore, she should have been given a rating of “3” for a line-item score of 21. This would raise her final performance evaluation score by seven points, to 252, which results in an overall performance evaluation in the “Good” category.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **JESSICA A. HARRIS VS. EDUCATION AND WORKFORCE DEVELOPMENT CABINET (APPEAL NO. 2013-070)** be **SUSTAINED to the extent**, that the final score on her 2012 Annual Employee Performance Evaluation be changed from 245 to 252, which would place such performance evaluation in the "Good" category. Appellant, having prevailed, shall be credited for any leave time she used attending hearing or pre-hearing conferences in this matter. [KRS 18A.095(25)].

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13.B.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 also 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 P. Merkel** this 17th day of February, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Rosemary Holbrook
Hon. Brenda Dinkins Allen