

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-240

MEGAN F. MAYNARD

APPELLANT

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

FINANCE AND ADMINISTRATION CABINET  
LORI H. FLANERY, APPOINTING AUTHORITY

APPELLEE

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The Board at its regular June 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 11, 2015, Appellee's exceptions, Appellant's exceptions (returned as untimely), Appellant's response, 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 **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 24<sup>th</sup> day of June, 2015.

KENTUCKY PERSONNEL BOARD

  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Katherine Fitzpatrick  
Megan F. Maynard  
Honor Barker

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-240**

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**V. FINDINGS OF FACT, CONCLUSIONS OF LAW  
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**FINANCE AND ADMINISTRATION CABINET,  
LORI H. FLANERY, APPOINTING AUTHORITY**

**APPELLEE**

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This matter came on for an evidentiary hearing on March 9, 2015, 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, Megan F. Maynard, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Finance and Administration Cabinet, was present and represented by the Hon. Katherine Fitzpatrick. Appearing as agency representative was Laura Ferguson.

**BACKGROUND**

1. The Appellant, Megan F. Maynard, is a classified employee with status, employed by the Finance and Administration Cabinet, Office of Administrative Services. Appellant filed this appeal with the Personnel Board on October 9, 2014, indicating on her appeal: "Other Penalization," specifically, "selection method for RMA II 33479BR."

2. The successful candidate for this position was Jacob Hicks. A Notice of Compliance was filed on December 8, 2014, by the Appellee, stating it had notified Mr. Hicks of his right to intervene. Mr. Hicks did not request to intervene in this proceeding.

3. The issue for the evidentiary hearing was whether the Appellee complied with the statutory or regulatory requirements in filling the position of Resource Management Analyst II (RMA II). As the burden of proof lay with the Appellant, she went first in the presentation of proof.

4. The Appellant, Megan F. Maynard, testified on her own behalf. Maynard was first hired as a Purchasing Associate (Grade 11) in January 2007. She assumed the position of Administrative Assistant II at the Customer Resource Center (CRC) in 2009. In August, 2011, she was promoted to Administrative Assistant III in the Office of Administrative Services, where

she currently works. Her current job duties entail processing payments in the eMARS system, which is the state's financial management system. She is also one of three employees who holds a "Pro-card," which is used as a means of making payments for various state government expenditures.

5. Appellant applied for a Resource Management Analyst II position, Pay Grade 14, in the Customer Resource Center in July, 2014. Through Appellant's testimony, a copy of the job details in the position, posted on the Personnel Cabinet's career opportunities portal, was introduced as Appellant's Exhibit 1. According to this job posting, the job duties for this position are as follows: "This position maintains the eMARS training software, provides backup for the Pro-card Administrator and develops training materials for new and functional processes."

6. On August 13, 2014, Appellant was interviewed for the position by Barbara Aldridge-Montfort. Ultimately, Jacob Hicks, a Resource Management Analyst I in the CRC, was chosen to be promoted in to the position.

7. Through Appellant's testimony, her application for employment, and the application of Jacob Hicks were introduced into evidence as Appellant's Exhibits 8 and 9, respectively.

8. Referring to the application, Appellant noted that both she and Hicks had graduated from a four-year college. As for job experience, Appellant stated that she had 97 months' experience with the eMARS system, while Hicks had only 9 months' experience. Appellant added that she was part of the eMARS upgrade team while she has been employed in the CRC, and has been a Pro-card holder for the past 72 months.

9. Though Appellant's testimony, a letter dated September 10, 2014, from Geri E. Grigsby, General Counsel of the Finance and Administration Cabinet, was introduced into the record as Appellant's Exhibit 2. The letter is addressed to Appellant, and is a response to her Open Records Request. Appellant noted that Grigsby's response to her request for "A copy of the scoring method and determination methods that was used in selecting the most qualified candidate for 3497BR" was the following: "There are no documents responsive to this request."

10. Appellant noted that only one person, Barbara Aldridge-Montfort, interviewed the candidates for the RMA II position. In Appellant's estimation, a one-person interview panel "is not normal."

11. Through Appellant's testimony, the position description for Jacob Hick's Resource Management Analyst II position (the position Mr. Hicks was promoted into) was introduced into the record as Appellant's Exhibit 3. Appellant noted that two tasks listed on this description do not appear on the Job Details posting (Appellant's Exhibit 1) for this position. These two tasks are:

**Task No. 1:**

Administers the Department's Learning Software, Comm-unicating Programmatic Needs to Agency Staff&Users of Thedistance Learning Software (sic.) 20%

**Task No. 6:**

Coordinates With Technical Resources to Resolve Tehnical Problems Associated With Those Aspects of Agency and/or Vendor Functional&Programmatic Problems/Result of Tec Pro (sic.) 10%

12. Through Appellant's testimony, a copy of the questions asked by Barbara Aldridge-Montfort in her interview of Appellant and Jacob Hicks, and Montfort's handwritten notation of their answers, was introduced into the record as Appellant's Exhibits 4 and 5, respectively.

13. Appellant noted that many of the questions asked in the interview were not relevant to the job tasks listed in the Job Details posting (Appellant's Exhibit 1). Appellant noted that her answer to Question 3: "What experience do you have working with the Commonwealth's Procurement Policies and procedures?" indicated she had 2 1/2 years experience as a "Buyer – OPS," while Hicks had only 9 months experience in the "Vendor – Set-up."

14. Through Appellant's testimony, her evaluations from 2009 to 2013 were introduced into the record as Appellant's Exhibit 7; Jacob Hicks' evaluations for 10/16/13 through 12/31/13 were introduced into the record as Appellant's Exhibit 6. Appellant's evaluation score for 2012 was 453 (Outstanding), and for 2013 was 451 (Outstanding). Hicks' evaluation score for 10/16/13 through 12/31/13 was 354 (Highly Effective).

15. **Ed Ross** has been the State Controller since 1992. He estimated that he had been involved in "hundreds" of hirings and promotions during his tenure in state government.

16. Ross was asked if it was "proper procedure" to have an interview panel consisting of only one person. Ross answered that it depended on the circumstance, and the position that was being interviewed for. Ross testified he trusted Barbara Aldridge-Montfort's judgment, and that they discussed the top three candidates, as determined by Montfort.

17. On cross-examination, Ross stated that the interview was just one part of the process.

18. After Ross and Montfort discussed the candidates, they brought their recommendation to Ross's supervisor, Troy Robinson, the Appointing Authority.

19. **Connie Downey** is a Supervisor in the CRC. She supervises two to three employees. Downey was asked why she wasn't on the interview panel for the RMA II position. Downey responded, "I can't answer that."

20. Downey was asked if the hiring process “gave the appearance of pre-selection.” Downey answered, “No.”

21. On cross-examination, Downey stated that she was Appellant’s supervisor while Appellant was employed in the CRC. She characterized Appellant as a “help desk employee.” Downey stated that Appellant answered calls and e-mails from users and vendors. Downey stated that Appellant did a “very good job.”

22. **Barbara Aldridge-Montfort** is the Division Director of CRC. She supervises six employees, including Connie Downey and Jacob Hicks.

23. Montfort was asked why she was the only person conducting interviews for the RMA II position. She responded that she and Donald Sweasy, Executive Director of Account Services, were in the midst of conducting a statewide accounting, and they were too busy for both of them to be involved in the interview process. As for Connie Downey, she was not selected to participate in the process because she would not be supervising that position. She added that another reason she also could not include Downey as an interviewer was the fact that there was not enough staff to handle the workload if Downey was occupied with the interview process.

24. Montfort addressed the job duties of the RMA II position as stated in the job posting (Appellee’s Exhibit 1). She testified that “the position was posted with certain duties as determined by Ed Ross. But the posting was done two to three months after we made the request. In that interim period, we began to get ready to upgrade the eMARS system. We knew we needed to get individual employees to specialize in different areas for the upgrade. We didn’t know the specific duties, but we knew ‘reporting’ would be a big piece of it.”

25. Montfort testified that she would not have included the “Pro-card” piece of the job duties if she had created the job posting, but she would have included manning the help desk, plus re-evaluating other duties based on the eMARS update.

26. Montfort addressed the selection process. She stated that she has “standard” questions she asks of all candidates. She asks the same questions, verbatim, of all applicants interviewed. She also writes down the applicant’s answer to each question.

27. Montfort was asked why she chose Jacob Hicks for the promotion to the RMA II position. She stated that Jacob Hicks had nine months experience in the CRC. In addition to working the help desk, Hicks also focused on reporting duties. Montfort added that Hicks trained in the “InfoAdvantage” FAS-3 system. Montfort added that Hicks had been “performing very well since he started at CRC. He had shown great progress on the reporting side of things. The reporting piece was important to the upgrade. She felt like Hicks would be a “good fit” for the upgrade.

28. Hicks also met the qualifications for the job and “he was what we were looking for.”

29. As for Hicks assisting the Pro-card Administrator (a job duty listed on the job posting), Montfort stated that he assists in that role only in his capacity as working the help desk.

30. Montfort was asked if she did not think that applicants look at the job duties of a particular job posting before determining if they should apply. She answered, "A lot of people look at these RMA services as technical."

31. On cross-examination, Montfort was asked how many promotions or hirings she had participated in. She answered, "Three as Division Director. Six before that."

32. Montfort explained the process she went through when determining who the successful candidate would be for the RMA II position. "I came up with standard questions to ask each of the people interviewed. Normally, I would describe the job duties of the position in the interview, but in this situation, we were not entirely sure what the duties would be. Once all the interviews were completed, I sat down with Donald Sweasy and Mr. Ross, and we discussed the candidates."

33. Montfort testified that she considered each interviewee's application, evaluations, seniority, and job performance. She added, "I do look at seniority, but it is not high on my consideration list. We look at someone who's had experience – we look at the application, resume', the work ethic as reflected in evaluations. Sometimes candidates offer letters of recommendation, and we will look at those as well."

34. Montfort was asked who Jamie Breeze is. Montfort replied that he was the employee whose vacated position opened up the position in question. Breeze started with the CRC in 2002 or 2003, and resigned April 9, 2014. He was a RMA II, and the posted job description was "basically what Jamie Breeze had been doing." Breeze's last day was April 30, 2014. Mr. Ed Ross did the "request to hire" paperwork sometime in early May, 2014.

35. After Breeze left, Montfort testified that management "stepped back to re-evaluate what all our employees were doing – we added and subtracted certain duties." Montfort explained that her office is tasked with updating the eMARS system every two years. The last update was in 2012. "We are going live with the new upgrade starting next month." Montfort explained that eMARS is a financial program that handles state government's "Enterprise system, finances, budget and accounting procurement. Things like pay checks, paying child support, and ensuring that state government's bills get paid are all things that come from eMARS." As the eMARS software gets upgraded, her division is responsible for testing the software and making sure it is implemented throughout state government.

36. Montfort was asked what "change of direction" affected the RMA II position. She answered that her division was in the process of upgrading the reporting side of eMARS, which had not been done since 2006. "It was one area we needed to focus a lot of staff on."

37. Montfort explained that "reporting" was "how the data behind eMARS gets retrieved. If you want to protect certain data, you have to issue reports."

38. Montfort was asked again to address why she chose Jacob Hicks for the RMA II position. Montfort stated that he was working in her division as an RMA I, and was being supervised by Connie Downey. Montfort had recommended Hicks for specialized training – a three-day course called Web Intelligence Report Design. “We thought Hicks was one of those people who would be good at learning the Business Objects piece of eMARS. He seemed to take things and run with it when we give him opportunities. He was a go-getter. He could do things without too much assistance.”

39. Montfort addressed why the job detail job posting was not changed. She stated that the job did not post for two and a half to three months after the request. There was a “lack of communication between Mr. Ross and Donald Sweasy and myself, and a lot happened between the request and the ‘upgrade decisions.’” Montfort added that she had lost three employees as well, one of them a key member of the upgrade team.

40. Montfort received around 90 applications for the RMA II position, and determined that twenty were appropriate. Ultimately, six were interviewed. By statute, she had to interview two veterans’ applications and the three employees from the Office of the Controller. She also interviewed Appellant because she had previous eMARS experience. Montfort added that another applicant had eMARS experience, but that applicant declined the interview.

41. The top two candidates were Jacob Hicks and another employee in the Office of the Controller, Sarah Jones. Hicks was chosen over Jones because he had “done more reporting stuff than Sarah.”

42. On re-direct, Montfort was asked if the position she posted was the same as the one she hired for. She answered, “We needed someone to assist with the upgrade. It was not in the posting, no.” As for how this may have been misleading to applicants, Montfort replied, “We could have re-posted it, but there was a three-month lag time between the request and the posting. We informed the applicants during the interview process of the job duties. We discussed that the job that was posted would be taken in a different direction.” Montfort added that, due to the upgrades and the loss of some employees, her division was hiring people and trying to lay out new roles.

43. At the end of Montfort’s testimony, the Appellant rested her case.

44. The Appellee called **Jacob Hicks**. Hicks was promoted to the position of RMA II, which is the subject matter of this appeal.

45. Hicks began his career in state government as a Resource Program Officer, from June 2012 to October 2013, first in the Division of Collections, and then in Corporate Collections. He was hired as a Resource Management Analyst I in the Kentucky Finance and Administration Cabinet in October, 2013.

46. Hicks testified that he regularly looks at state job postings. He saw the posting for the RMA II position on the last day he could apply for it. Appellee’s Exhibit 5 is an e-mail chain

between Hicks and Sarah Jones, his co-worker at the Customer Resource Center, dated July 10, 2014. In the first e-mail, Hicks asks Jones if she applied for "Jamie's position that's open." Jones responds "yes" and asks Hicks if he is going to apply. His answer is "I don't think so. You have been here longer than me. And I doubt they would want me to do that along with the EBI upgrade stuff."

47. Hicks asks Jones, "Why are they going to give someone a 14 Pay Grade to maintain training materials and the training environment?"

48. Jones answers, "I think they are wanting to bring in someone with previous eMARS experience, but it seems kind of silly when they would still have to be trained to do all those things (no one just knows how to do that stuff!) And we're both here already doing some of that stuff and know a little about it? I figured they would bring someone in as a 12 like they did both of us? It would be cool if they would just reclassify us to a 14!" (sic.)

49. Hicks responded, "Yea, I thought they would reclassify us both to a 13 then bring a 12 in for Jamie's position."

50. Hicks stated that he was interviewed and then "didn't know anything until I got the job. I found out about the promotion about one month after the interview."

51. At the interview, Montfort asked Hicks if he had experience in developing training courses. He answered her, "No, but I can learn." As for working on the eMARS upgrade, Hicks testified that Montfort had told him earlier that he would be working on the upgrade, but said "nothing specific to the RMA II position."

52. Hicks was asked to look at the job posting and identify which duties on that job description he does not perform as an RMA II. Hicks stated that he does not work directly with the Pro-card Administrator, although he does assist the administrator with her reports. He added that if someone has a question about their Pro-card documents, he will assist with that. As for "maintains the eMARS training software," Hicks stated that he maintains the upgrade software.

53. 101 KAR 1:400, Section 1 states:

**Section 1. Promotion.**

(1) Agencies shall consider an applicant's qualifications, record of performance, conduct, seniority and performance evaluations in the selection of an employee for a promotion.

(2) Promotions may be interagency or intra-agency.

(3) (a) An employee in the classified service, other than a career employee, may be promoted to a position in the unclassified service.

(b) He shall not have reversion rights to a position in the classified service.

(c) An employee who was promoted or changed as a result of other action, with no break in service, from a position in the classified service to a position in the unclassified service prior to July 15, 1986, shall retain the reversion rights he held at the time of promotion or other action.

54. KRS 18A.0751(4)(f) states:

**18A.0751 Personnel Board -- Regulatory authority.**

(4) These administrative regulations shall provide:

(f) For promotions which shall give appropriate consideration to the applicant's qualifications, record of performance, conduct, and seniority. Except as provided by this chapter, vacancies shall be filled by promotion whenever practicable and in the best interest of the service;

**FINDINGS OF FACT**

1. The Appellant, Megan Maynard, applied for promotion to the position of Resource Management Analyst II with the Cabinet's Office of the Controller, Office of Statewide Accounting, Division of Customer Resource Center, in July, 2014. At the conclusion of the application process, Jacob Hicks was promoted to the position. Appellant timely filed this appeal to the Kentucky Personnel Board.

2. The job classification of Resource Management Analyst II is a Grade 14 position. The minimum qualifications are a Bachelor's degree for the educational requirement and two years experience in systems analysis, business administration, or public administration. Experience in computer programming, systems analysis, information services, research and statistics, business administration or public administration will substitute for the Bachelor's degree requirement on a year-to-year basis. Related technical or vocational training will substitute for the Bachelor's degree requirement on a year-to-year basis. A master's degree in computer science, business or public administration will substitute for one year of the experience requirement. (Appellant's Exhibit 1.)

3. The description of the job duties for the position of RMA II, as stated in the job posting, was to: "maintain the eMars training software, provide backup for the Pro-card administrator and develop training materials for new and existing functional processes." (Appellant's Exhibit 1.)

4. The position of RMA II became vacant on April 30, 2014, when Jamie Breeze resigned from the position. Ed Ross, State Controller, submitted a "Request for Hire" to the Personnel Cabinet sometime in May, 2014. The job was posted approximately two months later.

5. Barbara Aldridge Montfort, Division Director of the Consumer Resource Center, received 90 applications for the RMA II position. She offered interviews to 9 applicants, 6 of whom accepted: two veterans, three employees of the Office of the Controller, and Appellant. Montfort conducted the interviews between August 12 and 15, 2014. Ultimately, Jacob Hicks was chosen for the position, effective September, 15, 2014. (Appellee's Exhibit 3.)

6. Appellant is an Administrative Assistant III in the Office of Administrative Services in the Finance and Administrative Cabinet. Appellant earned a Bachelor's degree in General Studies from Union College in May, 2005. She had 97 months of state service with the Cabinet—first as a Purchasing Associate (Grade 11) from January, 2007 until May, 2009; then as an Administrative Assistant II (Grade 10) from May, 2009 until August, 2011. On August 16, 2011, Appellant was promoted to Administrative Assistant III (Grade 12). Appellant's job performance evaluations for 2012 and 2013 were "Outstanding" (453 and 451 points respectively). She had no history of prior disciplinary actions. (Appellant's Exhibit 8.)

7. According to her state application, Appellant's job duties as an Administrative Assistant III include: Reviewing invoices to determine compliance with regulation and policy; auditing invoices for accuracy; being responsible for daily eMars processing of utility payments; sending vendor invoices for approval, and processing payments for a variety of vendors; processing and evaluating travel reimbursement documents within eMars. Appellant is also a Pro-card holder, and processes all payments within the guidelines of the Pro-card user agreement. (Appellant's Exhibit 8.)

8. Jacob Hicks earned a Bachelor's degree in Finance from the University of Kentucky in May, 2012. Hicks had 26 months of state service—first as a Revenue Program officer (Grade 11) from June, 2012 until October, 2013, then as a Resource Management Analyst I (Grade 12) with the Finance and Revenue Cabinet. His 10/16/2013 to 12/31/13 job evaluation (he began working for Appellee Cabinet on October 16, 2013) was "Highly Effective" (354 points). Hicks had no history of prior disciplinary actions. (Appellant's Exhibit 6.)

9. According to his state application, Hicks' job duties as a Resource Management Analyst I included: Providing eMars assistance to state government agencies and external vendors; assisting in the eMars Info Advantage software upgrade; facilitating eMars training to state government workers. (Appellant's Exhibit 9.)

10. By Montfort's own admission, the job duties listed in the job description of the RMA II position posted by the Personnel Cabinet in July, 2014, were significantly different from the duties Hicks assumed after he was promoted. The job that was posted was essentially a description of the job vacated by Jamie Breeze. Hicks' new position, however, reflected the staffing changes that had occurred since Breeze's resignation, and the impending eMars upgrade.

11. Montfort explained the discrepancy between the job posting and the actual RMA II position as being a casualty of the “lag time” between the submission by Controller Ed Ross of the “Request for Hire,” and the time that the Personnel Cabinet actually posted the job. Montfort also cited her division’s desire to hire new employees, and to redefine their roles as another reason for the change in duties. Montfort stated that she explained the potential discrepancy to the applicants during the interview process: “Normally, I would describe the job duties of the position in the interview, but in this situation, we were not entirely sure what the duties would be. We knew we needed individual employees to specialize in different areas for the upgrade, and we knew reporting would be a big piece of it.”

12. Essentially there were two RMA II positions in regard to the promotion of Jacob Hicks: the one that was posted, and which Appellant felt she was particularly suited for, and the one that Hicks assumed after his promotion. In regard to the job posting, Montfort stated that she would have made the following changes to it if she had created it: she would not have included “assisting the Pro-card administrator” in the description of job duties; and she would have included instead “manning the help desk,” and “re-evaluating other duties based on the eMars update.” The end result of those changes was the creation of a position very different from the one that was posted. As Appellant stated in her closing argument: “They changed the position mid-stream. The job posting said one thing, and it turned out to be something else.”

13. In choosing Hicks as the successful candidate, Montfort testified that she considered the candidates’ applications, evaluations, seniority, job performance, and the applicants’ answers to the interview questions. As for the criterion of “seniority,” Montfort stated: “I do look at seniority, but it is not high on my consideration list. We look at the application, resume’, the work ethic as reflected in evaluations.”

14. While Montfort stated that she considered the statutory and regulatory criteria of KRS 18A.0751(4)(f) and 101 KAR 1:400 in selecting Hicks to be promoted to RMA II, the evidence does not support that contention. Montfort stated that she used the interview process to assess the candidates, and then discussed these applicants with Donald Sweasy and Ed Ross. But by Montfort’s own admission, the exact duties of the RMA II position had not been determined at the time the interviews were held. While Montfort envisioned the position as involving “reporting,” and assisting with the eMars upgrade, the specific duties had not been finalized.

15. Montfort blamed the loss of staff and the impending eMars “upgrade” for the indeterminate nature of the position’s duties, but this self-described “change of direction” regarding the RMA II position was, in the final analysis, a violation of KRS 18A.0751 and 101 KAR 1:400. Common sense dictates that without knowing the specific duties a job entails, it is impossible for the interview panel to determine which applicant is most qualified to perform them.

16. The evidence shows that the interview panel did not give appropriate consideration to the applicants’ qualifications.

### CONCLUSIONS OF LAW

1. The Kentucky Personnel Board shall promulgate comprehensive administrative regulations for the classified service governing promotions. KRS 18A.0751(4)(f). Such administrative regulations dealing with promotions shall give appropriate consideration to the applicant's Qualifications, Record of Performance, Conduct, and Seniority. KRS 18A.0751(4)(f). Agencies are required to consider an applicant's Qualifications, Record of Performance, Conduct, Seniority and Performance Evaluations in the selection of an employee for promotion. 101 KAR 1:400, Section (1).

2. "Qualifications" is defined as "[A]ny quality, knowledge, ability, experience, or acquirement that fits a person for a position, office, profession, etc." *Cabinet for Human Resources v. Kentucky State Personnel Bd. et al.*, 846 S.W.2d 711, 715 (Ky. App. 1992). In this interview process, the qualities that rendered a candidate as the best fit for the position of RMA II could not be determined because the specific job duties of the RMA II position were essentially not settled until *after* the successful applicant was chosen.

3. The Appellee did not give "appropriate consideration" to the qualifications of the applicants.

4. The Appellant satisfied her burden of proof to show that not all the promotional factors were given appropriate consideration pursuant to KRS 18.0751 and 101 KAR 1:400.

### RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **MEGAN F. MAYNARD V. FINANCE AND ADMINISTRATION CABINET, (APPEAL NO. 2014-240)** be **SUSTAINED to the extent** that the promotion of Jacob Hicks should be vacated and held for naught and the promotion process begun anew with the Appellee giving appropriate consideration to the statutory and regulatory requirements set forth at KRS 18A.0751(4)(f) and 101 KAR 1:400. **FURTHER**, the Appellee shall reimburse the Appellant for any leave time she used attending the hearing and any pre-hearing conferences at the Board. [KRS 18A.095(25).].

### 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 11<sup>th</sup> day of May, 2015.

**KENTUCKY PERSONNEL BOARD**



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

A copy hereof this day mailed to:

Hon. ~~Gary Bishop~~ *Katherine Fitzpatrick*  
Ms. Megan F. Maynard