

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2017-157

JOE MILLER

APPELLANT

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

**JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF CORRECTIONS  
DIVISION OF PROBATION AND PAROLE**

APPELLEE

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The Board, at its regular May 2019 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 13, 2019, Appellant's Exceptions, Appellee's Exceptions, Board-Ordered 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 altered as follows:

A.     **Delete** Findings of Fact paragraphs 3, 4, and 5, and substitute the following:

3.     On June 19, 2017, the Appellant, who was serving as a Probation and Parole Officer I, requested he receive any and all salary improvements to which he is entitled under KRS 196.076. The Appellant stated he had in excess of 15 years' experience as a Probation and Parole Officer, and his last four performance evaluations indicated a favorable performance rating. He also requested he be reclassified as a Probation and Parole Officer III. He requested that all amendments to his salary be retroactive to his starting date of June 16, 2016.

4. In making this determination, the Appellant was given credit for his pre-retirement service as a Probation and Parole Officer. The Appellant's request was denied because he had received his 5-year career ladder on August 1, 1994; his 10-year career ladder on August 1, 1999; and his 15-year career ladder on August 1, 2004. Therefore, it was determined that he was not eligible for the Probation and Parole Career Ladder again.

5. Appellant submitted a timely appeal, which was received on July 24, 2017.

**B. Delete Conclusions of Law and substitute the following:**

1. The Hearing Officer concludes as a matter of law that the plain reading of KRS 196.076 simply refers to service and does not differentiate between service that occurred pre-retirement or post-retirement.

2. The Board concludes as a matter of law that the Appellant is not entitled to a salary increase based on the Probation and Parole Officer's salary improvement program, as outlined in KRS 196.076. At the time of his request, the Appellant had 20 years of service as a Probation and Parole Officer and was a Probation and Parole Officer I. He was seeking to be reclassified as a Probation and Parole Officer III. Only a Probation and Parole Officer IV is entitled to a salary increase under this program with 15 or more years of service.

3. In addition, the Appellant had already received his 5-year, 10-year, and 15-year career ladder salary increases. There is nothing in the statute which allows for an employee to receive any of these increases a second time.

4. This conclusion is consistent with the Board's decision in *Richard A. Gray v. Justice and Public Safety Cabinet, Department of Corrections and Personnel Cabinet*, Appeal No. 2015-024. In the *Gray* case, the Board held that KRS 196.076 refers to service and includes service that occurs pre-retirement and post-retirement. Nothing in the *Gray* decision allows an individual to receive any of the career ladder increases a second time.

C. **Delete** the Recommended Order and substitute the following:


**IT IS HEREBY ORDERED** that the appeal of **JOE MILLER V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, DIVISION OF PROBATION AND PAROLE (APPEAL NO. 2017-157)** is **DISMISSED**.

**IT IS FURTHER ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as Altered be, and they are approved, adopted, and incorporated herein by reference as a part of this Order, and Appellant's appeal is **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 7<sup>th</sup> day of May, 2019.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
**SECRETARY**

A copy hereof this day mailed to:  
Hon. Angela Cordery  
Hon. David Fuller  
Mr. Rodney E. Moore

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2017-157**

**JOE MILLER**

**APPELLANT**

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

**JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF CORRECTIONS  
DIVISION OF PROBATION AND PAROLE**

**APPELLEE**

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This matter came on for an evidentiary hearing on September 28, 2018, at 9:30 a.m., E.T. at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky before the Hon. Darren L. Embry, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Joe Miller, was present at the evidentiary hearing and was represented by the Hon. David Fuller. Appellee, Justice and Public Safety Cabinet, Department of Corrections, Division of Probation and Parole, was present at the evidentiary hearing and represented by the Hon. Angela Cordery. The representative for Department of Corrections, Division of Probation and Parole, Director, Jonathan Hall, was present.

The Hearing Officer notes this appeal was filed with the Personnel Board on July 24, 2017. At issue is Appellant's claim that he was penalized when he was denied a raise and reclassification pursuant to KRS 196.076. The Appellant was assigned the burden of proof, which is by a preponderance of the evidence, on all issues.

The Post Hearing Order, dated October 5, 2018, ordered the parties to submit closing briefs on or before November 12, 2018, and submit response briefs on or before December 23, 2018. Appellee submitted a timely closing brief. Appellant submitted his closing brief one day late on November 13, 2018. Both parties submitted timely reply briefs.

**BACKGROUND**

1. The Appellant was employed by the Department of Corrections, Division of Probation and Parole, from July 16, 1989, to November 30, 2008. Appellant began his career as a Probation and Parole Officer I and retired as a Branch Manager. (Appellee's Exhibit 2)
2. On June 16, 2016, the Department of Corrections, Division of Probation and Parole, reemployed Appellant as a Probation and Parole Officer I. (Appellee's Exhibit 4)
3. On July 21, 2017, Appellant appealed the Division of Probation and Parole's decision to deny his request for a salary adjustment and promotion to Probation and Parole Officer III. (Appellant's Exhibit 4)

4. After the Appellee's opening statement<sup>1</sup> the Appellant was sworn in to testify. Appellant's Counsel called the Appellant, **Joe Miller**, as the first witness. Appellant's start date was June 16, 2016. He was previously employed with the Department from July 16, 1989, to November 30, 2008. During his previous employment, he progressed through the KRS 196.976 Salary Improvement Program and was further promoted to Supervisor. Appellant was reemployed with the Department in 2016 as a Probation and Parole Officer I.

5. Exhibits 1-12 were identified by the Appellant and admitted into evidence in the same order. Exhibit 1 was identified by Appellant as KRS 196.976. Exhibit 2 was identified by Appellant as the initial email recording his grievance. Appellant identified Exhibit 3 as an email from Diana Eads stating that Appellant was not entitled to career ladder or any salary enhancements. Appellant identified Exhibit 4 as the Kentucky Personnel Board appeal form dated July 21, 2017, submitted to the Department of Corrections, referencing his denied request. Appellant's Exhibit 5 was identified by the Appellant as a copy of the Personnel Board's decision in *Richard A. Gray vs. Justice and Public Safety Cabinet, Department of Corrections, and Personnel Cabinet*, (2015 WL 9685970, KY PB) Appellant identified Exhibit 6 as a self-created document listing his current annual and monthly salaries and the annual and monthly salary he would receive if the ladder described in KRS 196.076 were applied. Appellant identified Exhibit 7 as the Personnel Action Notification reflecting his June 16, 2016 reemployment date with Probation and Parole. Appellant identified Exhibit 8 as the Personnel Action Notification reflecting an increase in his hours per work week from 37 to 40. Appellant identified Exhibit 9 as the Personnel Action Notification reflecting an initial probationary increase. Appellant identified Exhibits 10, 11, and 12 as the Job Class Specifications for Probation and Parole Officer I, II, and III, respectively.

6. Appellant testified that he progressed all the way through the KRS 196.076 salary improvement program while employed by the Department from 1989-2008. Throughout that period, he was employed in each position described in Appellant's Exhibits 10-12. Prior to retirement he was promoted further to Supervisor. Upon reemployment in 2016 he was classified as a Probation and Parole Officer I.

7. Appellant then read positions from *Richard A. Gray vs. Justice and Public Safety Cabinet, Department of Corrections, and Personnel Cabinet* into the record:

The Hearing Officer finds that Appellant's pre-retirement service as a Probation and Parole Officer should be combined in the calculation of when he would be eligible to secure the 10 percent salary increase per KRS 196.076(3).

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<sup>1</sup> Counsel for Appellee made a brief opening statement where she stated her argument would include application of KRS 196.76, 101 KAR 2:034, 101 KAR 2:102, and the *Richard Gray* case. Appellee's witnesses were identified as Diana Eads, Rodney Moore, and potentially John Hall.

The Hearing Officer concludes as a matter of law that the plain reading of KRS 196.076 does not differentiate between service as a Probation and Parole Officer that occurred pre-retirement or post-retirement; it only references the service.

The Hearing Officer concludes as a matter of law that the Appellee Personnel Cabinet's denial of Appellant's pre-retirement service as a Probation and Parole Officer for purposes of calculating whether or not he is entitled to the salary increase per KRS 196.076(3) amounts to a penalization, and has no basis in law.

The Hearing Officer concludes that no manifest injustice or absurd result will occur by merely including in its calculation Appellant's pre-retirement service as a Probation and Parole Officer to determine whether he is entitled to the 10 percent salary increase per KRS 196.076. The hypotheticals proposed by Counsel for the Appellee in her surreply brief also do not aid the Appellee's argument that following this Appellant's pre-retirement service time to be calculated for purposes of KRS 196.076 would result in manifest injustice. The statute says what it says; it does not make reference to pre- or post-retirement service, only to service as a Probation and Parole Officer as being considered in the calculations of whether an employee meeting those time and service requirements is entitled to the salary increase.

The Hearing Officer recommends to the Personnel Board that the appeal of Richard A. Gray v. Justice and Public Safety Cabinet, Department of Corrections, and Personnel Cabinet (Appeal No. 2015-024) be sustained to the extent that the Appellees properly give consideration to Appellant's pre-retirement service as a Probation and Parole Officer, which occurred (as stated in the Stipulated Facts) from November 16, 1998 until October 1, 2002, for purposes of calculating whether Appellant is entitled to the 10 percent salary increase per KRS 196.076(3). Should such consideration of Appellant's pre-retirement Probation and Parole service indicate he is entitled to such 10 percent pay increase, such should be retroactive to the date it would have initially been effective, that is, on or about January 1, 2015. The Appellant should also receive credit for any time spent attending pre-hearing conferences at the Personnel Board, and other benefits due to him, and otherwise be made whole.

8. Appellant ended his testimony stating that, even if he is denied salary enhancements outlined in KRS 196.076, he is at least entitled to the salary of a Probation and Parole Officer III. Appellant cited experience requirements and the fact that the salary increases are honored when an Officer moves from one district to another upon a vacancy. He further argued his experience adds value to the Department and should be compensated to reflect that.

9. Appellee then questioned Appellant. Appellant began working for the state October 1, 1988, and retired November 30, 2008. He reiterated that he held positions with the Department as Probation Parole Officer I-IV, as well as positions as Supervisor and Administrative Branch Manager. Upon retirement, Appellant worked for the Louisville Metro Public Defender's Office as a Certified Defense Investigator, where he investigated crime scenes and testified in court. During this time, he received retirement benefits from the State and was paid by Louisville Metro. His job duties as a Certified Defense Investigator included serving subpoenas. While serving a subpoena to the Assistant Supervisor of District 17, Griffin Brown, he was approached by the District Supervisor, Evan Roach, who expressed interest in Appellant returning to work for him as a Probation and Parole Officer. Mr. Roach stated that the State was in need of Probation and Parole Officers with experience. Appellant stated that he would return if he could maintain health insurance. Appellant contacted Diana Eads, who advised that he could maintain health coverage.

10. Appellant applied for the Probation and Parole Officer I position with Districts 16 and 17. He spoke with Tara Vincent with District 16 who expressed interest in his application. There was an error with the District 16 posting and the position could not be filled. Mr. Roach called Appellant to interview for the Probation and Parole Officer I position with District 17. A coworker, Dereck Jeffers, told Appellant that he requested the salary enhancement and received it. He also mentioned that Rick Brey had done the same and recommended that Appellant do the same. Appellant served in the Probation and Parole Officer I position for 12 months and he is still receiving retirement benefits.

11. On redirect examination, Appellant testified that during his initial tenure in the Supervisor position he performed additional duties beyond those of Probation and Parole Officer I, II, and III. Appellant waited until the end of his probationary period to file the grievance at issue because the Department was entitled to fire him without cause during the probationary period and he feared this grievance would lead to termination.

12. The Appellee called **Diana Eads**, Department of Corrections, Division of Personnel, Human Resource Branch Manager of the Personnel Branch, as its first witness. She testified to her duties and responsibilities, which include: overseeing recommendations for hiring, terminations, transfers, promotions; monitoring the evaluation system; providing technical support for Human Resources; and a host of other things. Institutions and Probation and Parole send recommendations for hiring to her office where they thoroughly audit and review each candidate, then write approvals for executive staff. Ms. Eads stated that, upon request, her office advertises through the Personnel Cabinet's website. After the position has been open for ten days, they set a screening criteria and schedule interviews based on initial review. After this process is completed, the top three candidates are submitted to the Personnel Cabinet. The Personnel Cabinet performs background checks and reviews minimum qualifications. Upon receipt of the Personnel Cabinet's report, the applicants are further processed until the issuance of a Personnel Action Notice.

13. Ms. Eads identified KRS 18A.110, entered as Appellee's Exhibit 1, and further described the process by which the Department of Corrections and Personnel Cabinet process potential candidates. Ms. Eads identified the P-1 forms from the personnel file of Appellant, which were admitted into evidence as Appellee's Exhibit 2. Ms. Eads testified regarding the tabs of Appellee's Exhibit 2. Tab 1 is comprised of records reflecting the original appointment hire date as October 1, 1988, as a Family Services Worker with the Department of Health and Family Services. Tab 2 reflects a transfer and promotion to Probation and Parole Officer I in July of 1989. Tab 3 reflects a reallocation on August 1, 1994, where Appellant's salary was increased 5% pursuant to KRS 196.076. Tab 4 reflects a salary increase and promotion from Probation and Parole Officer II to III on July 1, 1999, pursuant to the 10-year career ladder per KRS 196.076. Tab 5 reflects a promotion from Probation and Parole Officer III to IV (Probation and Parole Assistant Supervisor) on September 16, 1999. Tab 6 reflects a promotion from Probation and Parole Assistant Supervisor to District Supervisor on February 16, 2002. Tab 7 reflects a salary adjustment pursuant to the 15-year career ladder, a promotion from District Supervisor to Branch Manager effective August 1, 2004. Tab 8 reflects a demotion from Branch Manager to District Supervisor due to overlap in positions. The demotion did not include a reduction in salary. Tab 9 reflects Appellant's last date of paid employment as November 30, 2008.

14. Ms. Eads identified the internal recommendation form referred to as "DPS", entitled Request for Personnel Action, reflecting Appellant's appointment, dated May 13, 2016, which was admitted as Appellee's Exhibit 3. She then identified Appellee's Exhibit 4, a Personnel Action Notification ("PAN") reflecting Appellant's reemployment date as a Probation and Parole Officer I with District 17, with a June 16, 2016, start date and a minimum starting salary of \$2,427.44. Ms. Eads identified an internal memorandum from District 17 to the Human Resource Liaison of Probation and Parole, noting Appellant's recommendation for appointment with a description of the interview process and a list of 19 applicants, which was admitted as Appellee's Exhibit 5. Ms. Eads identified Appellee's Exhibit 6, a PAN reflecting the Department of Corrections' increase in hours per work week from 37.5 to 40 effective September 11, 2016. Ms. Eads identified a PAN reflecting Appellant's increase in pay due to the completion of a probationary period effective July 1, 2017, which was admitted into evidence as Appellee's Exhibit 7. Appellant is now a classified state employee with status.

15. Appellant's counsel cross-examined Ms. Eads. She testified that after the issuance of the PAN, identified as Appellee's Exhibit 7, Appellant could only be terminated for cause. KRS 18A.110 provides the framework for how the various entities in state government work together in the formation and parameters of state positions. Counsel for the Appellee had no further questions and the witness was excused.

16. Counsel for the Appellee called **Rodney Moore**, Director of the Division of Personnel within the Department of Corrections. Mr. Moore described his jobs duties and responsibilities as direct oversight of the three branches within the division of personnel (Personnel Services, the Payroll Branch, and the Recruitment and Staff Development Branch), and indirect oversight of 12 Human Resource offices. He identified Appellant's Exhibit 1, which he described as defining the career ladder for the Probation and Parole Officer series. He described the career ladder as a



salary improvement program based on years of service.

17. Mr. Moore testified to the requirements of Probation and Parole Officers I, II, and III, reflected in Appellant's Exhibits 10-12 and sections (1), (2), and (3) of KRS 196.076. He identified the Commonwealth of Kentucky Job Class Specification for Probation and Parole Officer IV, which was admitted into evidence as Appellee's Exhibit 8. This position is referenced in KRS 196.076(4) and is internally described as Assistant District Supervisor. He stated that the only requirement for this position is two years of experience in Probation and Parole work. He referenced KRS 196.076 and stated that, if this condition is not met, it is possible for a person to stay in the Probation and Parole Officer I position for ten years.

18. Mr. Moore identified the Commonwealth of Kentucky Job Class Specification for Probation and Parole District Supervisor and Regional Manager, which were admitted into evidence and marked as Appellee's Exhibit 9. This position includes oversight of the district appointed to and the position can be considered part of the career ladder and is reflected in KRS 196.076(8). He then identified the Commonwealth of Kentucky Job Class Specification for Probation and Parole Regional Manager, which was admitted and marked as Appellee's Exhibit 10. This job was described as having greater responsibility than District Supervisor and is not referenced in KRS 196.076. He stated "once you have reached this position, you have advanced outside of the career ladder." He explained KRS 196.076(7) stating, "For example, a Probation and Parole Officer I that has met five years of service in the position would automatically go to the II Officer series with the 5% increase in salary." When the statute was implemented, any employee that fit that description would be promoted. When a person "comes in," they start the ladder again as a Probation and Parole Officer I.

19. Mr. Moore testified that he is familiar with 101 KAR 2:102, the administrative regulation used to effectuate KRS 18A.110, which was admitted into evidence and marked as Appellee's Exhibit 11. He described this regulation, specifically sections 1(f) and 2(i), as providing guidance in determining the appropriate class specification for Appellant upon reemployment. When an employee retires and is later reemployed they are treated as a new employee with zero months of service. Those employees who do not retire return with unused sick leave and months of service.

20. Mr. Moore identified 101 KAR 2:034, which was later admitted into evidence and marked as Appellee's Exhibit 12. He read 101 KAR 2:034, Section 2(1), Returning retirees, into the record:

An employee who was formerly employed under KRS Chapter 18A and who is appointed to a position covered by the provisions of KRS Chapter 18A while receiving retirement payments through the Kentucky Retirement Systems or Kentucky Teachers Retirement System shall be appointed in accordance with the provisions for new appointments in this administrative regulation.

He testified that the regulations dictate that retirees later reemployed return with zero service

time. Once Appellant reached the Regional Manager stage, he had climbed the career ladder and it is appropriate for him to begin that career ladder again.

21. Counsel for Appellant cross-examined Mr. Moore. He stated KRS 196.076(9) requires the department make administrative regulations necessary for the administration of the section and he recognized the statute's failure to distinguish between original service and returning retiree service. When he testified regarding Appellant's Exhibits 10-12, each time his first word was experience. A Probation and Parole Officer becomes more valuable with experience. He would not opine to the legislator's intent when asked if the statutes and regulations recognize value added with experience. The statute only references years of service and requires the promulgation of regulations regarding its use. Appellee's Exhibit 11 states, immediately under the title, "relates to," which means it relates to all statutes listed, not including KRS 196.076. 101 KAR 2:102, Section 1(f), applies to annual leave. 101 KAR 2:102, Section 2(i), dictates that any returning employee, other than a retiree, receives credit for unused sick time. 101 KAR 2:034, Section (2), Appellee's Exhibit 12, dictates that returning retirees come back in with no service time or leave time when accepting positions with salaries in the minimum to midpoint range. He stated 101 KAR 2:034 applies to KRS 18A.100 and KRS 18A.165 and does not apply to KRS 196.076, but directly relates to the compensation of a merit system employee.

22. On re-direct examination, Mr. Moore stated that it is possible to have years of service without having service time. Experience is a requirement to move to the next level, but the statute refers to service time and months of service dictate the career ladder and salary advancement of the positions. The advancements require a certain level of performance evaluation and an employee could work for several years longer than required without advancement.

23. Counsel for Appellee called **Jonathan Hall**, Division Director of the Division of Probation and Parole, Kentucky Department of Corrections. Mr. Hall has over 17 years of experience with the department and has held his current position since November 1, 2016. In this position, he is the appointing authority for the Division of Probation and Parole, and he oversees all operations, including all staffing, personnel, and policy decisions. In situations where a statute requires interpretation beyond the plain meaning, it is incumbent on public servants to do what is right and fair. He stated that Appellant's Exhibit 10 references minimum requirements rather than maximum requirements. Appellant applied for and was hired for a position as Probation and Parole Officer I at an agreed upon salary and to go back and change that, after the fact, is somewhat unjust to the rest of the officers throughout the state who do not have that same benefit. He stated Appellant is a good employee, who has had a great career within the division, who he respects. However, Appellant is receiving retirement salary based on the career ladder and previous service. Appellant is receiving credit for previous years of service through retirement. If he is awarded credit again for the same years of service, he will receive the benefit of the years of service in two salaries.

24. Counsel for Appellant cross-examined Mr. Hall. Mr. Hall stated neither the statute nor regulations definitively state that a returning retiree is, or is not, entitled to the career ladder. He believes that he must consider the policy implications and the impact across the state. He does not know Governor Bevin personally and made no statement regarding his policy making decisions; but in furtherance of previous statements, he believes it is incumbent on every state employee to act as frugally and fiscally conservative as possible with tax dollars.
25. Counsel for Appellant made a brief closing statement.

### **FINDINGS OF FACT**

1. Appellant, Joe Miller, was employed by the Department of Corrections, Division of Probation and Parole, from July 16, 1989, to November 30, 2008. Appellant began his career as a Probation and Parole Officer I and retired as a Branch Manager.
2. Appellant was reemployed by the Department of Corrections, Division of Probation and Parole, as a Probation and Parole Officer I on June 16, 2016.
3. Appellant's request for application of pre-retirement service as a Probation and Parole Officer for purposes of calculating salary improvements under KRS 196.076 was denied.
4. Appellant submitted a timely appeal which was received on July 24, 2017.
5. The Kentucky Personnel Board affirmed the opinion of Hearing Officer Boyce A. Crocker in *Richard A. Gray vs. Justice and Public Safety Cabinet Department of Corrections and Personnel Cabinet*. Therefore, this Hearing Officer is bound by the opinion in that matter so far as it relates to the issue at hand.

### **CONCLUSIONS OF LAW**

1. The Hearing Officer concludes as a matter of law that the plain reading of KRS 196.076 simply refers to service and does not differentiate between service that occurred pre-retirement or post-retirement.
2. The Hearing Officer concludes as a matter of law that the denial of Appellant's pre-retirement service as a Probation and Parole Officer for purposes of calculating the salary improvements under KRS 196.076 amounts to penalization and has no basis in the law.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **JOE MILLER V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, DIVISION OF PROBATION AND PAROLE, (APPEAL NO. 2017-157)** be **SUSTAINED to the extent** that the Appellee properly consider Appellant's pre-retirement service as a Probation and Parole Officer for the purpose of calculating salary improvements under KRS 196.076. Such calculation should be retroactive to the date it would have been initially effective. Appellant should receive credit for any leave time spent attending hearings or conferences at the Personnel Board, any other benefits due to him, and should otherwise be made whole. [KRS 18A.105, KRS 18A.095(25), and 200 KAR 12:030.]

**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 part raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

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 Darren L. Embry** this 13<sup>th</sup> day of February, 2019.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day mailed to:

Hon. Angela E. Cordery  
Hon. David Fuller