

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2012-013

MALISSA J. MOLLETT

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES,  
J. P. HAMM, APPOINTING AUTHORITY

APPELLEE

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This matter came on for an evidentiary hearing on January 4, 2013, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Malissa J. Mollett, was present at the evidentiary hearing and was represented by the Hon. Robert W. Miller. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Carrie Cotton. Also appearing as agency representative was Joy Fitzgerald.

**BACKGROUND**

1. The Appellant, **Malissa J. Mollett**, filed this appeal with the Personnel Board on January 20, 2012. The Appellant alleged Other Penalization, specifically, "Excluded from salary adjustment." The Appellant further stated in the appeal that "I have been unfairly excluded from a salary adjustment that was awarded to CSE KASES modernization staff."

2. Following several pre-hearing conferences, the issues for the evidentiary hearing were listed as being the Appellant's claim she is entitled to compensation for work performed and also to a permanent upgrade in pay due to the duties she has performed. The burden of proof was assigned to the Appellant by a preponderance of the evidence.

3. The **Appellant** called herself as her first witness. She testified she has been an employee with the Commonwealth for in excess of 24 years. She began

employment as a Secretary, and through the years progressed to the positions of Case Worker, Program Specialist, then as a Field Service Supervisor (Pay Grade 15). Following 10 years in this position, the Appellant was promoted to Internal Policy Analyst III (IPA) in June 2010 (Pay Grade 15). Next she was a Resource Manager III (Pay Grade 15) and after that she reclaimed again the position of IPA III (Pay Grade 15).

4. The Appellant testified that sometime in June 2009, Deputy Commissioner Steve Veno asked her to get involved with various aspects of a case modernization system. This was commonly known as KASES, and she worked from June 2009 through February 2010 doing some work gathering the on-going resources for this project. She then became an IPA III in July 2010 and continued in that position until August 2011, during which time she gathered resources and collaborated with vendors for the project.

5. During this period of time up through July 2011, the Appellant's workstation was Boyd County; however she was required to work in both Boyd County and Franklin County pursuing this project. The Appellant clarified the claim to which she feels she is entitled by stating that she wants pay which she should have received for detail to special duty from either October 2011 through September 2012 or that same pay from January 2012 through December 2012. What she is actually seeking is a 10% raise in pay for one of those periods for the work she performed.

6. The Appellant explained that sometime in early July 2011, the contract of an outside vendor who had been performing document management services was not renewed. As a result, she and an employee named Maria Lewis began doing the previous work done by the vendor. In July 12, 2011, Deputy Commissioner Veno asked the Appellant to take a position known commonly as "the business lead." The Appellant claims that following her discussions with Veno, she stated she would need an upgraded salary to take on these duties, and Veno replied that he would attempt to equalize her salary with others on the project who had either been promoted or detailed to special duty, which actions gave them raises. It appears from further testimony that the above-named actions for these employees were done because they were each lower than a Pay Grade 15, but nevertheless, did result in raises in salary for those employees on the project.

7. Mollett testified Veno told her that it would be harder to give her a detail to special duty since she was already a Pay Grade 15. He confirmed to her that the others who received the detail to special duty had pay grades lower than a Pay Grade 15.

8. After considering the "business lead" employment offer, the Appellant declined to accept this. Her stated reasons were that she had already been spending too

much time in Frankfort, and wanted to spend more time with her children at home and also felt that without being able to spend the necessary time in Frankfort on the project, she would be doing a disservice to the project.

9. The Appellant concluded by saying that her complaint about her salary is that every existing or subsequently hired employee of the State who was assigned to the KASES project was given a pay increase except for her.

10. On cross-examination, the Appellee introduced its Exhibit 1, an employment application from the Appellant. The Appellant confirmed that the application showed she had been employed as a FSS from February 1, 2001, through June 22, 2010, drawing a salary of \$3715 monthly. She also confirmed the application showed she was employed as an IPA III from June 1, 2010 through the current time, again drawing a salary of \$3715 per month.

11. The Appellant also confirmed that she had been properly classified as an IPA III according to the State Class Specifications.

12. The Appellant explained that during the time from 2009 through 2012, when she traveled from Boyd County to Frankfort on a frequent basis to work on the modernization project, that she enjoyed reimbursement for gas mileage, lodging, food per diem, and was paid time and a half.

13. The Appellant was then directed to Appellee's Exhibit 4, the Class Specification for SYSTEMS CONSULTANT IT (Pay Grade 17). The Appellant admitted that this position is the same as the "Business Lead" which she had been offered by Veno in July 2012. This document, through its salary range, confirms that the Appellant would have received a salary increase had she accepted this position.

14. On re-direct, the Appellant testified that the "Business Lead" offer from Veno was never tied to an action of detail to special duty. She also admitted that she was told by Veno that accepting that offer would have led to a salary increase.

15. On re-cross, the Appellant then introduced Appellant's Exhibit 1, a July 12, 2011 memorandum from her to Branch Manager Joy Fitzgerald. This exhibit references the Appellant's knowledge that others on the project were getting pay raises and a supposed conversation with Veno advising that her pay was to be "equalized." She stated that after July 12, 2011, wherein she had declined the "Business Lead" position, that Veno called her and told her he wanted to equalize her pay with others, if possible.

16. Appellant's next witness was **Joy Fitzgerald**. She has been a Child Support Enforcement Branch Manager for approximately 1 year and has worked for several years on the modernization project. She detailed actions taken for other team members on the project. Specifically, she stated that an employee named Epperson was promoted, that Devine and Clark were reclassified, and that Holt, Collins and Smith were all detailed to special duty, resulting in raises of 20%, 15%, and 15% respectively for these latter three employees.

17. Ms. Fitzgerald explained that employee Pat Gaines, a team member, was given a detail to special duty from Pay Grade 15 to Pay Grade 17 for a one year period from September 16, 2011 through May 12, 2012. She also stated that Doris Moore, a team member, was given a detail to special duty from a Pay Grade 15 to a Pay Grade 17 for a one year period from September 16, 2011, after which time she reverted to a Pay Grade 15 Section Supervisor. These detail to special duty assignments resulted in 10% pay raises for these two employees.

18. On cross-examination, Fitzgerald testified that the Appellant filed a Grievance on or about January 11, 2012, with the agency concerning the failure to receive a salary increase. Following this, this witness talked with Appointing Authority Jay Klein and others in Human Resources in an attempt to get the Appellant detailed to special duty. In this process, Fitzgerald learned that the only way for the Appellant to have received a salary increase was for her to accept a detail to special duty to a Systems Consultant IT (Pay Grade 17) in Franklin County. No such position existed in Boyd County. Fitzgerald further explained that had the Appellant accepted the detail to this position, because she would then be based in Franklin County, she would have lost reimbursement for mileage, per diem, and pay at the rate of time and a half.

19. The next witness to be called by Appellant was **Maria Lewis**. She has been the Branch Manager over the Field Services Branch in the Child Support Enforcement Program for approximately 7 years. She is the Appellant's supervisor and has worked together with her on the modernization project for the past 2-3 years in various capacities. She stated that since August 2011, the Appellant has been involved in the decision-making process with this project, and with reviewing deliverable documents. She emphasized that at all times she has worked with the Appellant, she has been an excellent employee.

20. On cross-examination, Lewis reiterated that the Appellant has been involved in training and policies and procedures concerning the Child Support Program. She testified that she is aware that the Appellant was offered a detail to special duty assignment to the Systems Consultant IT position, albeit in Franklin County.

21. The Appellant's next witness was **Steve Veno**. He is the Deputy Commissioner of the Department for Income Support, and has been employed by the Commonwealth for in excess of 30 years.

22. Veno explained he was aware of the Appellant's desire for an increase in salary for her work on the modernization project, and he did offer her a detail to special duty for the Systems Consultant IT position, commonly known the "Business Lead" position. After she declined this offer, he explained that he would explore ways of trying to get her extra pay. However, he found there was no other way other than the IT position. As a result, the Appellant then reassumed her position in Boyd County as an IPA III in August 2011. Veno also stated that the Appellant voluntarily continued to work on the project from Boyd County after she declined the Business Lead position.

23. On cross-examination, Veno reaffirmed that he offered the Appellant the only position which would give her a salary increase, that being the offer of detailing her to special duty for the Systems Consultant IT position; however, she declined, and in his view, the Appellant was glad to be going back to the IPA III position in Boyd County for it meant less travel for her and more time with her family. He concluded by saying that in each of the positions she has held, the Appellant has been properly classified. With this, the Appellant closed.

24. The Appellee called as its first witness **Jay Klein**. He has been a long-time Appointing Authority for the agency. He is aware of the Grievance filed by the Appellant and his staff investigated it and presented their findings to him for response to the Appellant.

25. He introduced Appellee's Exhibit 6, a March 9, 2012 response to the Appellant's Grievance. The essential findings in this response were that other employees assigned to the project had either been promoted, reclassified or properly detailed to special duty for a period not to exceed one year. The effective date of these special detail assignments began October 16, 2011.

26. The Grievance response also found that at all pertinent times, the Appellant had been properly classified as an IPA III, a Resource Management Analyst III (RMA), and an IPA III, all of which were Pay Grade 15 classifications. The response concluded by explaining to the Appellant that her only opportunity for a salary increase during her work on the modernization project would have been for her to accept the special detail assignment to the Systems Consultant IT (Pay Grade 17) position offered to her by Veno on July 8, 2011.

27. Klein then summarized that all of her movements between the various positions were voluntary and stated that, in his opinion, he did not believe that her

claim for a salary increase fell within the definition of "penalization" as found in KRS 18A.095.

28. The Appellee's next witness is **Kimberly Tucker**. She is a Human Resource Administrator in the office directed by Jay Klein. She investigated the Grievance filed by the Appellant and drafted the response (Appellee's Exhibit 6) for Klein's signature.

29. She testified that she had looked at the personnel histories of not only the Appellant, but all others on the modernization project team. In her opinion, at no time during this project had the Appellant been improperly classified. She also confirmed that the Appellant had been offered the detail to special duty for the Systems Consultant IT position in 2011 and had declined.

30. On cross-examination, Tucker offered Appellee's Exhibit 8. This is a listing of all mileage, food, and lodging reimbursement paid to the Appellant from June 23, 2009, through December 8, 2011. She pointed out that of the total reimbursement paid to the Appellant, all but 2 sums were paid to her prior to the implementation of any detail to special duty assignments for other employees, all of which began on October 16, 2011.

31. Tucker confirmed the Appellant told her that at the beginning of July 2011 she had been offered a detail to special duty for the System Consultant IT position and had declined it.

32. Appellee's next witness was **Melony Stephenson**. She is a Human Resource Branch Manager in the agency directed by Jay Klein. She also helped with the investigation of the Appellant's Grievance. Stephenson testified that others on the modernization team were situated with the Appellant, but were treated differently, in that some were reclassified or promoted.

33. Stephenson stated that the Appellant could not be reclassified from her Pay Grade 15 position because there was nowhere to be reclassified to. She stated that an IPA IV position was not available for reclassification, since it was used strictly for persons dealing with budgetary matters.

34. As to other team members on the modernization project, Stephenson stated that Pat Gaines was detailed to special duty from a Pay Grade 15 to a Pay Grade 17 and then reverted; the same for Judy Smith, who only was detailed from October 16, 2011, through June 1, 2012; the same for Elizabeth Collins, and the same for Doris Moore.

35. Stephenson explained that one could not be involuntarily detailed to special duty, but rather, must accept the detail. She also confirmed that the Appellant had been properly classified in every position she held.

36. Stephenson explained she was aware the Appellant had been offered a detail to special duty to the Systems Consultant IT position, and this would have been a 10% increase in pay. Based upon the Appellant's then-salary, acceptance of this detail would have resulted in an approximate \$370 per month increase in salary. She also confirmed that had the Appellant accepted the detail to special duty position offered, she would have had to be stationed in Franklin County, and would have lost all the perquisites which she had previously enjoyed in traveling from Boyd County to Franklin County.

37. The Appellee then closed.

#### APPLICABLE LAW

KRS 18A.005(24). Penalization.

"Penalization" means demotion, dismissal, suspension, fines, and other disciplinary actions; involuntary transfers; salary adjustments; any action that increases or diminishes the level, rank, discretion, or responsibility of an employee without proper cause or authority, including a reclassification or reallocation to a lower grade or rate of pay; and the abridgment or denial of other rights granted to state employees;

#### FINDINGS OF FACT

1. The Appellant worked on the KASES modernization project from June 2009 through July or August 2011. During this period, she held the position of Field Service Supervisor (Pay Grade 15); Internal Policy Analyst III (Pay Grade 15); and Resource Manager III (Pay Grade 15).

2. Ample testimony and the Appellant's own admission shows she was properly classified while holding these positions, all of which were in Boyd County.

3. In July 2011, Commissioner Veno asked Appellant to take a position commonly known as the "business lead." This would have required the Appellant to spend even more time in Franklin County working on the project.

4. The formal class specification for the "business lead" position is Systems Consultant IT (Pay Grade 17). No such position existed in Boyd County, the Appellant's home county.

5. The Hearing Officer finds the offer made to the Appellant by Veno of the Systems Consultant IT position was in the form of a detail to special duty. This would have resulted in a salary increase of approximately \$370/mo., but would have caused the Appellant's work station to be in Franklin County. The Appellant declined to take the offer.

6. Other employees on the modernization project team with the Appellant were at times promoted, reclassified, or detailed to special duty (and later reverted), resulting in some pay increases.

7. The testimony of Fitzgerald, Veno, Klein, and Tucker is persuasive, and the Hearing Officer so finds that the only available mechanism to grant the Appellant a pay raise was a detail to special duty to Systems Consultant IT position (Pay Grade 17) in Franklin County.

8. The Hearing Officer finds the failure of the Agency to grant a salary increase to the Appellant is not a penalization under KRS 18A.005(24).

#### CONCLUSIONS OF LAW

The Hearing Officer concludes, as a matter of law, the Appellant failed to carry her burden of proof by a preponderance of the evidence to show she was entitled to additional compensation for work performed during the pertinent period, nor is she entitled to a permanent upgrade in pay.

#### RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **MALISSA J. MOLLETT V. CABINET FOR HEALTH AND FAMILY SERVICES**, (APPEAL NO. 2012-013), be **DISMISSED**.

#### NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the



Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

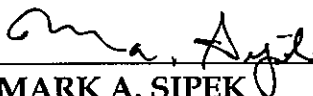
**Any document filed with the Personnel Board shall be served on the opposing party.**

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

**ISSUED** at the direction of **Hearing Officer R. Hanson Williams** this 14<sup>th</sup> day of February, 2013.

**KENTUCKY PERSONNEL BOARD**



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

A copy hereof this day mailed to:

Hon. Carrie Cotton

Hon. Robert W. Miller