

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-110**

MAUREEN MORRISTON

APPELLANT

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

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

APPELLEE

**** ** ***

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 1, 2015, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 24th day of June, 2015.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Carrie Cotton
Hon. David H. Stevenson
J. P. Hamm

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This matter came on for an evidentiary hearing on March 31, 2015, 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.

Appellant, Maureen Morriston, was present at the hearing, and represented by the Hon. David H. Stevenson. Appellee, Cabinet for Health and Family Services, was present and was represented by the Hon. Carrie Cotton. Appearing as Agency representative was Lisa Pruitt.

This matter involves the Appellant's contention she was penalized pursuant to KRS 18A.005(24), when in approximately February 2013 additional duties were assigned to her, but which did not include any additional compensation. This has previously been referred to as the "beeper or pager" issue, in which the Appellant is required to wear a beeper or pager and is not compensated for same. The burden of proof was placed upon the Appellant by a preponderance of the evidence to demonstrate that the additional duties constituted a penalization, and as such was done without cause.

Prior to the beginning of the hearing, counsel for Appellant clarified that the claim of demotion was based upon a "*de facto*" demotion and not one incurred through the use of paperwork. Additionally, the Appellant is claiming that at some point during her career she was involuntarily transferred.

At the outset, counsel for Appellee made a Motion In Limine to restrict the proof to the time period from 2013 forward, and also made a Motion for Summary Judgment based upon the untimeliness of the Appellant's appeal. Both motions were denied by the Hearing Officer.

Following the presentation of testimony by the Appellant and her only witness, Donna Hurt, the Appellee moved for a directed verdict. This motion was granted by the Hearing Officer.

BACKGROUND

1. The Appellant, **Maureen Morriston**, testified that sometime in 1991 she was appointed as a Social Worker I on the Boone County, Kentucky, Team. In 1999 she was promoted to a Family Services Area Specialist, grade 12, which she referred to as a "master clinician." In that position she was temporarily assigned to the Family Support team, where her duties included assisting families with self-sufficiency problems. At that time she was assigned to the Protection and Permanency (P&P) staff.

2. Appellant testified that this Area Specialist position was in the Regional office in Boone County. The Appellant then signed a Voluntary Transfer form in January 2002 wherein she was transferred permanently to the Family Support and P&P staff. This transfer involved the taking on of duties in the "safety net" program, which was intended to help families who were going off welfare after the five-year limitation period. She testified that although she was again attached to the Boone County team for payroll purposes, she was still doing the safety net program issues.

3. The Appellant then claimed that in October 2006, she signed a Voluntary Transfer form from her position as Social Service Specialist, grade 14, to Social Service Clinician I, grade 14. She attributes this change to a reorganization in which the position of Specialist was abolished. She admits that the duties and the pay remained the same after the change in position. She emphasized that she still performs duties under the Safety Net program, and also did home evaluations alongside a Family Support worker.

4. She again emphasized that although she was assigned to the Boone County intake team in 2006, she had no ongoing caseload and that the Safety Net program was her primary duty. (Appellant's Exhibit 3.)

5. Appellant then explained that in February 2013, she signed a Voluntary Transfer and Salary Retention Agreement form moving her from her Social Service Clinician I position, grade 14, to a Social Service Clinician I position, grade 14. The only actual change was that she was moved from the Boone County Regional Direct Services Unit to the individual Boone County unit. Appellant considered this move a demotion.

6. The Appellant testified that following this move in February 2013, she did only ongoing casework and was required to carry a beeper on a rotational basis with other workers. The Appellant made clear that she did not wish to do ongoing casework. She added that she had wanted to stay in the Regional Services Unit so as to continue doing her Safety Net program duties. She added that while in the Regional Services Unit she was not required to wear a beeper. Appellant introduced Appellant's Exhibit 6, an August 31, 2004 interim meeting documentation which showed that although her primary duties in the Specialist position at that time involved the Safety Net program, she was also responsible for investigating neglect reports as needed. Appellant's Exhibit 9, her Employee Performance Documentation Form, from

January 2006 indicates she was the Safety Net Specialist for the Northern Kentucky Region and also completed backup for intake investigation cases in Boone County. She added that in 2006, she was the only worker performing Safety Net duties, whereas there were formerly three workers.

7. Appellant's Exhibit 10, an Interim Meeting Documentation for April 2007, again indicates she performed one-half of her duties in the Safety Net program and one-half conducting investigations and assessments on the Intake and Investigation team in Boone County.

8. Interim Meeting Documentation for dates in 2008, 2009 and 2010 continue to show that the Appellant performed Safety Net program duties as well as investigations with the Intake and Investigation team (Appellant's Exhibits 15-18).

9. Interim Meeting Documentation from 2011 through September 2012 continues to show that the Appellant was not only responsible for the Safety Net program, but also took on duties involving Kinship Care. In addition, she continued to be responsible for the Interstate Compact on the Placement of Children (ICPC) home studies.

10. As previously stated, in February 2013 the Appellant signed a Voluntary Transfer Form to be transferred from Social Service Clinician I, grade 14, to this same position, grade 14. The transfer allowed her to remain in Boone County at the same salary. Appellant claims that this transfer in February 2013 resulted in her having to again do ongoing casework, which she had done when first employed in that position in 1999. She added that she was required to go through six months of training at the academy so as to brush up on the work which she had not done for several years. The ongoing casework which she was assigned began again in February 2013 and continued to grow.

11. Appellant's Exhibit 21, a January 24, 2013 Interim Meeting Documentation review showed that the Appellant had been told that the Kinship team was being disbanded due to a management decision and that she would be transferred to the Boone County Ongoing unit and this did occur in February 2013.

12. Appellant stated that once transferred in February 2013, she was still responsible for the Safety Net program for the Boone County Region, but also was assigned "beeper" duty. This involved her wearing a beeper in a rotation approximately three to four times a month so as to be available for calls. Appellant explained she feels the various transfers, although without loss of pay or grade, had resulted in a *de facto* demotion in that she is back in the same position as when first appointed in 1999. She feels that because she is performing the original duties she had, plus additional duties, that thus has suffered a penalization. She claims that she still works on approximately eight cases involving the Safety Net program in her Region.

13. On cross-examination, Appellant admitted that her present classification is that of a Social Worker Clinician I in which she does social worker duties. She admitted that a desk audit had been performed at her request by Jim Lambert in the Personnel Cabinet. She testified that she does not remember much of the conversation between she and Lambert, but does admit that she does far fewer duties associated with Safety Net program. She blames this on her ongoing caseload. She further admitted that the only duties she actually performs regarding the Safety Net program is to send letters and there have been no home visits associated with this program since 2009.

14. Appellant also admitted that she did not read the Voluntary Transfer forms which she signed in 2006 and 2009. She claimed she merely looked these over and waived the right of appeal associated with those.

15. The witness also testified that she is not now classified as a Specialist because of a reorganization which occurred in 2006. Appellant also admitted she does receive compensation for travel and overtime associated with her current duties and again stated that her Kinship Care duties ended in 2013 when that program was defunded.

16. Appellant was then directed to KRS 18A.005(11) the definition of "Demotion." This reads as follows:

'Demotion' means a change in the rank of an employee from a position in one (1) class to a position in another class having a lower minimum salary range and less discretion or responsibility

17. Appellant stated that she has not suffered a change in classification or decrease in salary. However, she did add that she finds her current duties stressful and again emphasized that although she likes assisting clients, she feels she is doing the same thing she did when she first began employment with the Agency.

18. The Appellant was then directed to Appellee's Exhibit 1, a January 28, 2015 e-mail from her to Paula Brun, in which she asked for an employee named "Benny" to do the Safety Net letters again. The Agency's point was that the Appellant's involvement in the Safety Net program does not even require her to prepare the letters.

19. In conclusion, the Appellant admitted that since 2006 her classification has been as a Social Services Clinician I until the current time. The only change has been in the assignment of different duties.

20. The Appellant's next witness was **Donna Hurt**. She testified that she worked for the Agency from 1977 until 2004. From 2001 through 2004, she worked alongside the Appellant. At some point over the years, the witness testified that the Appellant has told her that she has been transferred back to Boone County as a caseworker. This witness perceives this

action as a demotion for the Appellant, since she was transferred from a Regional office to a County office.

21. On cross-examination, this witness admitted that she worked in Family Support and was never a part of the Permanency and Protection Program. Additionally, she has never worked as a Social Worker.

Applicable Law:

22. KRS 18A.005(24) "Penalization" states:

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

23. KRS 13B.090(2) states:

All testimony shall be made under oath or affirmation. Any part of the evidence may be received in written form if doing so will expedite the hearing without substantial prejudice to the interests of any party. The hearing officer may make a recommended order in an administrative hearing submitted in written form if the hearing officer determines there are no genuine issues of material fact in dispute and judgment is appropriate as a matter of law.

FINDINGS OF FACT

1. The Appellant signed voluntary transfer forms in 2002, 2006 and 2013. In none of these did she suffer a loss of salary or reclassification to a lower grade. In addition, in each of the transfers she waived the right of appeal, except for that in February 2013. Therefore, these cannot be considered involuntary transfers.

2. One of the position changes resulted from a reorganization in which the Appellant's previous position was abolished; the elimination of her Kinship Care duties in 2013 was the result of the program being defunded; the extreme reduction in Safety Net program duties has actually been occurring since 2009 and she has extremely minimal responsibilities in that program. The Hearing Officer finds none of the changes listed were taken without proper cause or authority.

3. The Hearing Officer finds the Appellant has not suffered a demotion within the meaning of KRS 18A.005(11) in that she has not suffered a change in rank from a position in one class to a position in another class having a lower minimum salary.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes as a matter of law the Appellant has suffered neither a demotion nor a penalization under the applicable statutes.

2. As such, the Hearing Officer concludes that Appellant has failed to carry her burden of proof by a preponderance of the evidence.

3. The Hearing Officer further concludes as a matter of law there are no genuine issues of material fact in dispute and judgment is appropriate as a matter of law.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **MAUREEN MORRISTON VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2013-110)** 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).

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 1st day of May, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof mailed this date to:

Hon. Carrie Cotton

Hon. David H. Stevenson