

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-234**

AMANDA PARMLEY

APPELLANT

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

TRANSPORTATION CABINET

APPELLEE

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The Board, at its regular May 2024 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order on Remand of the Hearing Officer dated February 29, 2024, Appellant's Exceptions, Appellant's Request for Oral Argument, Appellee's Response to Exceptions, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order on Remand of the Hearing Officer be altered as follows:

A. **Delete** Background paragraph 5 and substitute the following:

5. As previously stated, Hearing Officer Stephen T. McMurtry conducted a two (2) - day evidentiary hearing and issued Findings of Fact, Conclusions of Law, and Recommended Order on July 12, 2019, **DISMISSING** the appeal because it was not filed under the time constraints of KRS 18A.095(29). During the evidentiary hearing, the Appellant admitted forty-five (45) exhibits. The Exhibits are attached hereto as **Recommended Order Attachment B**.

B. **Delete** Finding of Fact paragraphs 1 and 2 and substitute the following:

1. The Appellant, Amanda Parmley, was employed as a Scholarship Trainee from June 16, 2007, to May 15, 2009. While employed as a Scholarship Trainee, she signed a contract with the Appellee agreeing to work for the Transportation Cabinet after she completed her studies in exchange for employment as a Scholarship Trainee. (Testimony of the Appellant and Appellant's Exhibit B).

1. 2. Appellant's official personnel record includes Personnel Action Forms, known as P-1's, that reflect the following:

- a. That she was considered a salaried employee by the designation "S" in Item 23.
- b. That she was considered non-merit by the designation "M" in Item 28. She could have been listed as "Q" for Interim but was not.
- c. That she was considered full time by the designation "F" in Item 29. She could have been listed as "I" for Interim but was not.
- d. That she was listed as no retirement by the designation "O" in Item 22B.
- e. That there are no references to "Interim," "Seasonal," or "Stipend" on any of her P-1s.
- f. That she was appointed as a Scholarship Trainee on June 16, 2007.
- g. That she resigned her position as a Scholarship Trainee on August 15, 2007.
- h. That she was appointed as a Scholarship Trainee (with the same position number) on September 1, 2007.
- i. That she resigned her position as a Scholarship Trainee on May 15, 2008.
- j. That she was appointed as a Scholarship Trainee (with the same position number) on May 16, 2008.
- k. That, as a result of reorganization, she was assigned a new position number on June 16, 2008. There were no changes to any codes on the P-1 reporting this action.
- l. That she resigned her position as a Scholarship Trainee on August 15, 2008.

- m. That she was appointed as a Scholarship Trainee (with the same position number assigned in June 2008) on August 16, 2008.
- n. That she resigned her position as a Scholarship Trainee on May 15, 2009.
- o. That she did not accrue any annual leave.
- p. That her income was listed as “wages” on her W-2s.
- q. That she worked at District 8 during the summer months.
- r. She went to the University of Kentucky the rest of the year.
- s. That she earned a Bachelor’s degree in 2008.
- t. That she earned a Master’s degree in 2009.
- u. The Appellant’s official personnel record reflects that she was on educational leave (without a Nature of Action Code designating it as “Educational Leave Without Pay” or Educational Leave with Pay”). (Appellant’s Exhibits 5, 6, 7, 8, 10, and 36 and Appellant’s testimony)

C. Delete Finding of Fact paragraphs 8 and 9 and substitute the following:

8. The Appellant began an unsuccessful three (3) -year effort to change the decision of the Kentucky Retirement Systems. As Hearing Officer Stephen T. McMurtry described, she faced the “bureaucratic wall” in these attempts, as the following emails illustrate:

Parmley to Wooldridge, 10/28/14, “I was wondering if you had heard anything back. It has been almost a month since I have heard anything. Is everything been cleared with the Personnel Cabinet and Retirement?”

Wooldridge to Parmley, 10/29/14, “Let me review your question and respond to you shortly.”

Wooldridge to Parmley, 2/2/15, “Are you available...for a conference call?”; Parmley to Wooldridge, 3/17/15, “Just checking in. Last we spoke, the beginning

to middle of March, was the anticipated completion for KYTC Engineer review of retirement items. How are things going?”

Wooldridge to Parmley, 3/17/15, “We have handed your project to Chiffon Robinson.”

Parmley to Robinson, 9/24/15, “Ms. Robinson, it has now been awhile...but I was wondering what the status was on the retirement issue I had been working with Emily on.”

Robinson to Parmley, 9/24/15, “I actually completed that project back in April. You will need to speak with Tracy Young as to the status of this request.”

Parmley to Young, 9/24/15, “Ms. Robinson has informed me that the project regarding the retirement question had been completed. It has been awhile, so I am just checking in.”

Young to Parmley, 9/25/15, “I have been in touch with KRS regarding this and they needed further clarification from our office. We are working on this now.”

Parmley to Young, 11/23/15, “Was wondering if I will be hearing from Personnel or KRS on this matter. Am I now eligible for Tier 1 retirement?”

Young to Parmley, 11/24/15, “I haven’t received a reply yet; hopefully, I will soon.”

Parmley to Young, 12/11/15, “Has KRS responded?”

Young to Parmley, 12/11/15, “I have not. I will try to see if I can reach one of them by phone today.”

Young to Parmley, 12/18/15, “I want to touch base with you to let you know I am still waiting on a response.”

Parmley to Young, 12/18/15, “Where do things stand now with retirement?”

Young to Parmley, 12/21/15, “To be quite honest, I’m not sure where we are in the process.”

9. In response to a request from the Kentucky Retirement Systems, the Transportation Cabinet provided additional information to KRS, including the following:

- a. A list of all scholarship Trainees since 2003 (Appellant's Exhibit 27)
- b. An email dated September 30, 2015, from Tracy Young to Shawna Miller clarifying that Scholarship Trainees "...are classified as full-time interim positions." (Appellant's Exhibit 30)
- c. A verification of past employment, Form 4225, dated November 13, 2017. (Appellant's Exhibit 11)
- d. A verification of past employment, Form 4225, dated March 25, 2014. (Appellant's Exhibit 12)

D. **Delete** Finding of Fact paragraph 15 and substitute the following:

15. Based on the evidentiary record, the Appellee and the Personnel Cabinet have maintained an accurate personnel file for the Appellant. (The Appellee has maintained an accurate personnel file with the exception of the Form 4225 from 2014 and 2017, if they are contained in her personnel file.)

E. **Delete** Conclusion of Law paragraph 2 and substitute the following:

2. Since May 16, 2009, the Appellant has been employed as a classified employee and she gained status sometime in 2009.

F. **Delete the following paragraphs from Recommended Order Attachment B** and substitute the following (language to be added shown in bold italics text; text to be deleted shown with double strikethrough):

- 2. November 2, 2017 Letter from Shawn Miller to Amanda Parmley, re: Cost to purchase Interim Service Credit with attachments, ***Omitted Service purchase denial***

6. Amanda Corder (Paystubs) 08/15/2007 - 08/30/2007; 09/15/2007 - 09/28/2007; 12/31/2008 - 01/15/2009; 05/31/2009 - 06/15/2009; **06/15/2009 -- 06/30/2009**
8. Copy of KRS 18A.195, Compensatory Time - Payment upon leaving state, service, effective April 13, 2010 and effective July 14, 2000
9. Quarterly Employee History File, report date 12/20/2007, **12/25/2008, and 12/22/2009**, for Amanda Corder (Parmley) for 2007, 2008, 2009; **and Quarterly Leave Balance Summary, report date 12/26/2007, 12/24/2008, 12/28/2009**
11. Verification of Past Employment Form 4225 for Amanda Parmley, signed by Matthew Mobley, Transportation Cabinet, on 11/13/~~2017~~ **2007**
12. Various emails exchanged between Amanda Parmley, Michelle Barnes, Tracy Young, others, Matthew Mobley (Transportation Cabinet) 11/13/**2017** ~~2007~~ through 11/16/**2017** ~~2007~~ **re: Completed 4225 and designation "Interim"**
13. Various emails regarding Amanda Parmley's status as Scholarship Trainee, dated from ~~2011~~ 2014, 2016, 2017, & 2015, **includes internal general email from 2011**
16. A copy of KRS 61.552, effective **July 1, 2013** ~~June 21, 2004~~
29. Various emails in **2015** ~~2013~~
34. Personnel Cabinet Employee Handbook **with** Log of Changes since November 2007
42. Kentucky Retirement Systems memo to Amanda Parmley, re: Cost to purchase approved Educational Leave Service Credit, dated 05/**19** ~~12~~/2014
45. Kentucky Retirement systems secure emails between Leigh Jordan and JoEllen McComb, dated March **6**, 2019, with attachments.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order on Remand of the Hearing Officer, as Altered, are approved, adopted and incorporated herein by reference as a part of this Order, and Appellant's appeal is **SUSTAINED to the extent:**

1. That the Appellant was penalized by the Appellee providing incorrect information to the KRS referring to the Appellant's employment as "Interim,"

2. That the Appellee is **ORDERED** to provide the KPPA with accurate information regarding the Appellant's employment as a "Scholarship Trainee" consistent with her official personnel file, and
3. That the Appellant shall be restored any leave time she used for attending any pre-hearing conferences, evidentiary hearings, or post-hearing conferences before the Board. KRS 18A.095(25).

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 17th day of May, 2024.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE
SECRETARY

A copy hereof this day emailed and mailed to:

Hon. William Fogle
Hon. JoEllen S. McComb
J.R. Dobner
Hon. Rosemary Holbrook (Personnel Cabinet)

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-234**

AMANDA PARMLEY

APPELLANT

VS.

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

TRANSPORTATION CABINET

APPELLEE

** ** *

This matter came on for an evidentiary hearing on March 5 and 6, 2019, at 9:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stephen T. McMurtry, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Amanda Parmley, was present at the evidentiary hearing and was represented by the Hon. JoEllen S. McComb. The Appellee, Transportation Cabinet, was present and represented by the Hon. William H. Fogle.

BACKGROUND

1. This appeal was filed with the Personnel Board on December 7, 2017. On the Appeal Form, the Appellant, a classified employee with status, indicated she was otherwise penalized; specifically, denial of full and accurate service characterization, recognition, and credit. The Appellant further explained her claims in the narrative portion of the Appeal Form wherein she states, in full:

I have been penalized by my employer, Kentucky Transportation Cabinet ("KYTC"), when it determined in a Verification of Past Employment, Form 4225, dated 11/13/17, provided to the Kentucky Retirement Systems ("the Systems"), that my past employment from 6/16/2007 to 05/15/2009 was actually only five months of "Interim" employment, when my personnel records reflect or evidence that I was in a "Regular full-time position" during the period and while on compensated educational leave. I have also been penalized when KYTC furnished additional related information to the Systems, all of which alone or in combination, has prevented me from purchasing omitted services per KRS 61.552(23)(a), and from receiving other benefits to which I may have been entitled.

2. Before this matter came on for an evidentiary hearing, the Hearing Officer denied the Transportation Cabinet's Motion to Dismiss. The Motion to Dismiss addressed two issues: The timeliness of the appeal, and whether the Personnel Board had jurisdiction over this matter. The Hearing Officer addressed both of these issues:

- 1) First, as to timeliness, the Hearing Officer concludes that the Appellant's claims are not barred by the statute of limitations set out by KRS 18A.095(29). This is because the alleged penalization underlying the instant appeal is the Agency submitting inaccurate information to Retirement Systems, which then relied upon that inaccurate information to deny the Appellant rights afforded other similarly situated employees. As it currently stands, there is nothing in the record that would contradict the Appellant's assertion that she had no knowledge of the Agency's designation of her prior employment as interim service, at any time from her initial request to purchase omitted service credit in 2014 until Retirement System's denial of said request in 2017. Accordingly, the Hearing Officer relies on the Appellant's uncontradicted assertion and concludes that she learned of the Agency's position in November 2017. Therefore, because the Appellant filed her appeal with the Board within one year of becoming aware of the Agency considering her an interim employee, the Appellant's appeal was timely filed.
- 2) Further, the Hearing Officer concludes as a matter of law that the Personnel Board does not have jurisdiction over any topic expressly reserved to Retirement Systems by the provisions of KRS Chapter 61. However, the Hearing Officer also concludes that the Personnel Board does have jurisdiction to enforce the provisions of KRS Chapter 18A. Similarly, the Hearing Officer concludes that the Board has jurisdiction to remedy **ANY** penalization of an employee taken without just cause and has the jurisdiction to determine if any penalization is excessive or erroneous. See KRS 18A.005(24). In addition, pursuant to KRS 18A020(2)(a), the Hearing Officer concludes that the Board has the jurisdiction to ensure that state agencies maintain an accurate personnel file for each employee in state service.
- 3) Here, the Appellant alleges the Agency has failed to maintain an accurate personnel file and that Retirement Systems relied upon the Agency inaccuracies. The Agency asserts that they maintained

an accurate personnel file. Such claims present questions of fact that the Board is empowered to adjudicate and must be resolved at an evidentiary hearing.

3. Thereafter, the Transportation Cabinet filed a Motion for Summary Judgment, and the Appellant filed a response. Hearing Officer McMurtry denied the Transportation Cabinet's Motion. In his Interim Order denying the Motion, Hearing Officer McMurtry stated in part as follows:

The Hearing Officer recommends to the Personnel Board that the Motion for Summary Judgment be **DENIED**. The appeal is replete with factual issues and controversies as to whether or not the Appellee (sic) knew or should have known she had been wrongfully considered an interim employee of the Transportation Cabinet by the Kentucky Retirement Systems based on false information given to it by the Transportation Cabinet. The trier of facts of this appeal must decide, based on direct testimony and cross-examination, whether the Appellant knew or should have known that the Appellee passed incorrect information to the Kentucky Retirement Systems that misled Retirement to consider Appellant an interim employee.

4. Before the evidentiary hearing, the parties entered into extensive agreed stipulations, which were filed with the Personnel Board on February 22, 2019. These stipulations are attached hereto as **Recommended Order Attachment A**.

5. As previously stated, Hearing Officer McMurtry conducted a two (2) -day evidentiary hearing and issued Findings of Fact, Conclusions of Law, and Recommended Order on July 12, 2019, recommending dismissal of the appeal because it was not filed under the time constraints of KRS 19A.095(29). During the evidentiary hearing, the Appellant admitted forty-five (45) exhibits. A list of the Exhibits are attached hereto as **Recommended Order Attachment B**.

6. Following the filing of exceptions, response to exceptions, and hearing oral arguments, the Board entered a Board Order Rejecting and Remanding to Hearing Officer on October 16, 2019, rejecting and remanding the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommend Order. The Board's Order included the following language:

- 1) The Board rejects the Hearing Officer's current determination that this matter was untimely filed. As set out in the August 28, 2018 Interim Order, the "alleged penalization underlying the instant appeal is the Agency submitting inaccurate information to

Retirement Systems, which then relied upon that inaccurate information to deny the Appellant rights afforded other similarly situated employees.” The underlying Recommended Order appears to begin the statute of limitations analysis mandated by KRS 18A.095(29) with KRS’ issuance of a letter on June 7, 2014, informing the Appellant that there was no service purchase available under the applicable statutes for Scholarship employment. The Hearing Officer determined that the Appellant should have known that she was penalized by the Agency as of that date. However, the evidence of record establishes that the Agency had not yet identified the Appellant as an interim employee in June 2014, so any determination that the Appellant knew or should have known that the Agency identified her as an interim employee by that date is not supported by substantial evidence and is erroneous as a matter of law. While the evidence of record may still support a finding that the instant appeal was filed untimely, such a determination is rejected as currently set out in the July 12, 2019 Recommended Order.

- 2) **IT IS FURTHER ORDERED** that the additional proceedings shall, at a minimum, develop the factual record as to when the Appellant received actual or constructive knowledge that the Agency submitted records to KRS identifying the Appellant as an interim employee. Moreover, the Board encourages the parties and the Hearing Officer to obtain the testimony of the Personnel Cabinet as to their involvement in this matter, their perspective on the Appellant’s employment, and their knowledge as to when the Agency’s records were amended.

7. Following the Remand Order, a pre-hearing conference was held on November 13, 2019. The parties were to confer about the possibility of additional testimony.

8. An additional pre-hearing conference was held on October 22, 2020. At that time, the parties indicated that they would not need any further testimony. The parties agreed to enter into further written stipulations followed by briefing.

9. On December 16, 2020, the parties entered into the following six (6) written stipulations:

- 1) The evidence of record from the hearing in this matter, March 5-6, 2019, established that Ms. Parmley first learned of Appellee

Transportation Cabinet's representation to the Kentucky Retirement Systems ("Retirement" or "KRS") that her employment as a Scholarship Trainee was "interim," was when she received an email from Shauna Miller on November 3, 2017 (Appellant's Exhibit 22).

- 2) Regarding the Personnel Cabinet's involvement in this matter, an interview was conducted by Appellant's counsel on December 17, 2019, with Larry Gillis, former Assistant Director of Employee Management for Personnel Cabinet, whom the parties recognized as being the most knowledgeable Personnel staff to address the Personnel Board's directive.² [Footnote omitted.]
- 3) The interview established that Personnel Cabinet's involvement in this matter was limited to responding to several emails from KRS and Transportation Cabinet ("KYTC"). Mr. Gillis recalled being asked to respond on behalf of the Personnel Commissioner Bailey in April 2017, to an inquiry from Retirement on March 24, 2017, to Commissioner Bailey regarding service purchase requests from former Scholarship Trainees at KYTC, specifying Amanda Parmley's request and status (Exhibit 33, copy attached and marked "Attachment #1"). Mr. Gillis identified his response to the inquiry from Retirement as being the email of April 11, 2017 (copy attached and marked "Attachment #2").
- 4) Based upon the forgoing, the Personnel Cabinet had very limited involvement in this matter and did not take a position on Ms. Parmley's Scholarship Trainee employment, although Personnel was expressly asked by Retirement to do so in March 2017 (Exhibit 33).
- 5) Regarding the question of whether and when Ms. Parmley's Personnel Action forms or records ("P-1s") as a Scholarship Trainee from June 2007 through May 2009 were ever amended, there is no evidence of record, or evidence to be presented, that Amanda Parmley's P-1s were ever amended. All of KYTC's personnel action records, or P-1s, for Appellant are in evidence at Exhibit 5, all of Personnel Cabinet's personnel actions records, or P-1s, for Appellant are in evidence at Exhibit 7.

- 6) Mr. Gillis recalled researching and looking at Ms. Parmley's electronic personnel records in connection with responding to Retirement as referenced in paragraph 2 above. Rosemary Holbrook, as records custodian for the Personnel Cabinet, provided Ms. Parmley's P-1s in response to her Open Records Request. Both Mr. Gillis and Ms. Holbrook found no changes to Amanda Parmley's P-1s as a Scholarship Trainee.

10. An additional pre-hearing conference was held on November 17, 2021. At that time, counsel for both parties were informed that Hearing Officer McMurtry was no longer a contract Hearing Officer with the Personnel Board. This case would be reassigned, and the recommended order would be issued by a new Hearing Officer.

11. This matter has been reassigned to Hearing Officer Mark A. Sipek for Finding of Fact, Conclusions of law and recommended Order on Remand.

12. A pre-hearing conference was held on October 20, 2023. As a result, the Appellant's Motion to Submit Proposed Finding of Fact, Conclusion of Law and Recommended Order was **GRANTED** and same were to be considered by the Hearing Officer in deciding this appeal. The parties were allowed additional responses and were asked to address specific issues as specified in an Interim Order dated October 24, 2023. This Interim Order is attached hereto as **Recommended Order Attachment C**.

FINDINGS OF FACT

1. The Appellant, Amanda Parmley, was employed as a Scholarship Trainee from June 16, 2007, to May 15, 2009. While attending school, she signed a contract with the Appellee agreeing to work for the Transportation Cabinet after she completed her studies in exchange for employment as a Scholarship Trainee. (Testimony of the Appellant and Appellant's Exhibit 3)

2. The Appellant's official personnel record includes Personnel Action Forms, known as P-1s, that reflect the following:

- a. That she was considered a salaried employee by the designation "S" in Item 23.
- b. That she was considered non-merit by the designation "M" in Item 28. She could have been listed as "Q" for Interim but was not.

- c. That she was considered full time by the designation "F" in Item 29. She could have been listed as "I" for Interim but was not.
- d. That she was listed as no retirement by the designation "O" in Item 22B.
- e. That there are no references to "Interim," "Seasonal," or "Stipend" on any of her P-1s.
- f. That she was appointed as a Scholarship Trainee on June 16, 2007.
- g. That she resigned her position as a Scholarship Trainee on August 15, 2007.
- h. That she was appointed as a Scholarship Trainee (with the same position number) on September 1, 2007.
- i. That she resigned her position as a Scholarship Trainee on May 15, 2008.
- j. That she was appointed as a Scholarship Trainee (with the same position number) on May 16, 2008.
- k. That, as a result of reorganization, she was assigned a new position number on June 16, 2008. There were no changes to any codes on the P-1 reporting this action.
- l. That she resigned her position as a Scholarship Trainee on August 15, 2008.
- m. That she was appointed as a Scholarship Trainee (with the same position number assigned in June 2008) on August 16, 2008.
- n. That she resigned her position as a Scholarship Trainee on May 15, 2009.
- o. That she did not accrue any annual leave.
- p. That her income was listed as "wages" on her W-2s.
- q. That she worked at District 8 during the summer months.

- r. She went to the University of Kentucky the rest of the year.
- s. That she earned a Bachelor's degree in 2008.
- t. That she earned a Master's degree in 2009.
- u. That she was on educational leave.
(Appellant's Exhibits 5 and 7)

3. According to the Job Class Specification for Scholarship Trainee, the characteristics of the job are listed as follows:

Participates in a formal scholarship program approved by the Secretary of Personnel and administered by a state agency; and performs other duties as required.

The examples of duties or responsibilities for the Job Classification are listed as follows:

Attends classes at a college or university, related to the degree requirements of the approved scholarship field. Performs duties relating to the scholarship field to provide support to the administering agency and obtain practical experience in support of academic teachings. Signs a contract to come to work for the state agency after graduation.
(Testimony of the Appellant and Appellant's Exhibit 1)

4. The Appellant performed these work-related duties by attending classes with a full course load while working on her engineering degrees. She signed a contract to work for the Transportation Cabinet upon graduation. By attending classes leading to her engineering degrees and then keeping her commitment to work for the Cabinet upon graduation, she was performing services for the Cabinet. Based on the class specification, the Appellant was performing work for the Transportation Cabinet when she attended the University of Kentucky. Thus, the Appellant was never an Interim Employee while she was a Scholarship Trainee. According to her Personnel Records, the Appellant was a full-time employee serving in a full-time position. (Testimony of the Appellant, Tracy Young and Appellant's Exhibits 1, 5 and 7)

5. After the Appellant received her Master's degree, she was hired by the Appellee into a merit position as an Engineer In-Training, effective May 16, 2009. At the time of the evidentiary hearing, the Appellant was employed as a Transportation Engineer Supervisor for the Division of Traffic in the Department of Highways, District 8 office. (Testimony of the Appellant)

6. The Appellant submitted a letter dated April 7, 2014, to the Kentucky Retirement Systems applying for an “omitted service credit purchase.” As previously stated, the Appellant’s time as a Scholarship Trainee was not covered under retirement. Through her research, the Appellant became aware she could move her date in the Kentucky Retirement Systems back to June 16, 2007, if she qualified for an omitted service credit purchase. This would effectively move her from Tier 2 to Tier 1 for retirement purposes. According to retirement rules, there is no deadline for making an omitted service purchase. Purchase can even be made after an employee has retired. (Testimony of the Appellant, Shawna Miller, and Appellant’s Exhibit 3)

7. On June 7, 2014, the Kentucky Retirement Systems notified the Appellant there was no service purchase available under the applicable statutes for Scholarship Employment. In the original Recommended Order, the Hearing Officer determined that the Appellant should have known she was penalized by the Appellee on that date. The evidence establishes, however, that the Appellee had not identified the Appellant as an Interim Employee as of that date. The Appellant is not appealing to the Personnel Board from any determination made by the Kentucky Retirement Systems (KRS). The Appellant has an appeal pending with KRS, now known as the Kentucky Public Pensions Authority (KPPA), which is being held in abeyance pending a decision on this Personnel Board Appeal. The Appellant’s Appeal to the Personnel Board is based on an alleged penalization by the Transportation Cabinet, who characterized her as an Interim Employee in communications with the Kentucky Retirement Systems. (Testimony of the Appellant, Shawna Miller, and Appellant’s Exhibit 11)

8. The Appellant began an unsuccessful three (3) -year effort to change the decision of the Kentucky Retirement Systems. As Hearing Officer McMurtry described, she faced the “bureaucratic wall” in these attempts, as the following emails illustrate:

Parmley to Wooldridge, 10/28/14, “I was wondering if you had heard anything back. It has been almost a month since I have heard anything. Is everything been cleared with the Personnel Cabinet and Retirement?”

Wooldridge to Parmley, 10/29/14, “Let me review your question and respond to you shortly.”

Wooldridge to Parmley, 2/2/15, “Are you available. Last we spoke, the beginning to middle of March, was the anticipated completion for KYTC Engineer review of retirement items. How are things going.” (sic)

Wooldridge to Parmley, 3/17/15, “We have handed your project to Chiffon Robinson.”

Parmley to Robinson, 9/24/15, "Ms. Robinson, it has now been awhile...but I was wondering what the status was on the retirement issue I had been working with Emily on."

Robinson to Parmley, 9/24/15, "I actually completed that project back in April. You will need to speak with Tracy Young as to the status of this request."

Parmley to Young, 9/24/15, "Ms. Robinson has informed me that the project regarding the retirement question had been completed. It has been awhile, so I am just checking in."

Young to Parmley, 9/25/15, "I have been in touch with KRS regarding this and they needed further clarification from our office. We are working on this now."

Parmley to Young, 11/23/15, "Was wondering if I will be hearing from Personnel or KRS on this matter. Am I now eligible for Tier 1 retirement?"

Young to Parmley, 11/24/15, "I haven't received a reply yet; hopefully, I will soon."

Parmley to Young, 12/11/15, "Has KRS responded?"

Young to Parmley, 12/11/15, "I have not. I will try to see if I can reach one of them by phone today."

Young to Parmley, 12/18/15, "I want to touch base with you to let you know I am still waiting on a response."

Parmley to Young, 12/18/15, "Where do things stand now with retirement?"

Young to Parmley, 12/21/15, "To be quite honest, I'm not sure where we are in the process."

9. In response to a request from the Kentucky Retirement Systems, the Transportation Cabinet provided additional information to KRS, including the following:

- a. A list of all scholarship Trainees since 2003 (Appellant's Exhibit 27)
- b. An email dated September 20, 2015, from Tracy Young to Shawna Miller clarifying that Scholarship Trainees "...are classified as full-time interim positions." (Appellant's Exhibit 30)
- c. A verification of past employment, Form 4225, dated November 13, 2017. (Appellant's Exhibit 11)
- d. A verification of past employment, Form 4225, dated March 25, 2014. (Appellant's Exhibit 12)

10. Young, the employee for the Transportation Cabinet who identified the Appellant as being in an Interim position, stated that she probably looked at the Appellant's P-1s after she sent the September 30, 2015 email to Shawna Miller. (Testimony of Tracy Young)

11. The Appellant first learned of the Appellee's representation to the Kentucky Retirement Systems that her employment as a Scholarship Trainee was Interim was when she received an email from Shauna Miller on November 3, 2017. (Stipulation 1 dated December 16, 2020, testimony of the Appellant, and Appellant's Exhibit 22)

12. The Personnel Cabinet had very limited involvement in this matter and did not take a position on the Appellant's Scholarship Trainee employment, although the Personnel Cabinet was expressly asked by the Kentucky Retirement Systems to do so in March of 2017. (Stipulation 4 dated December 16, 2020, and Appellant's Exhibit 33)

13. Transportation Cabinet employees discussed the fact that changing the P-1s for the Scholarship Trainees would be a 'beast.' The P-1s, including the Appellant's P-1s, were never changed. (Testimony of Tracy Young, Stipulations 5 and 6 dated December 16, 2020, and Appellant's Exhibits 5 and 7)

14. The Appellant filed her appeal with the Personnel Board on December 7, 2017, which was less than one (1) year after she knew or should have known she had been penalized by being identified as an Interim employee of the Transportation Cabinet to the Kentucky Retirement Systems in response to her attempts to make an omitted service credit purchase.

15. Based on the evidentiary record, the Appellee and the Personnel Cabinet have maintained an accurate personnel file for the Appellant.

16. The Appellee provided inaccurate information to the Kentucky Retirement Systems when it identified the Appellant as having Interim employment as a Scholarship Trainee contrary to information in the Appellant's official personnel file.

CONCLUSIONS OF LAW

1. As stated in the Findings of Fact, the Appellant was employed as a Scholarship Trainee from the following dates:

- a. June 16, 2007 through August 15, 2007
- b. September 1, 2007 through May 15, 2008
- c. May 16, 2008 through August 15, 2008
- d. August 16, 2008 through May 15, 2009

According to her official personnel records maintained by the Personnel Cabinet, the Appellant was a full-time, non-merit salaried employee. The copy of her personnel records maintained by the Transportation Cabinet also identify her as a full-time, non-merit salaried employee. (Appellant's Exhibits 5 and 7). See also KRS 18A.020.

2. Since May 16, 2010, the Appellant has been employed as a classified employee and she gained status sometime in 2010.

3. The Appellant alleges she was penalized when the Transportation Cabinet provided inaccurate information to the Kentucky Retirement Systems.

4. KRS Chapter 18A.095(1), in effect at the time the Appellant filed her appeal, reads as follows:

A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.

5. KRS Chapter 18A.005(24) defined penalization as follows:

"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;

6. The Appellant was not an Interim employee serving in an Interim position. These terms were defined at KRS Chapter 18A.005 (20) and (21) as follows:

- (20) “Interim employee” means an unclassified employee without status who has been appointed to an interim position that shall be less than nine (9) months duration;
- (21) “Interim position” means a position established to address a one-time or recurring need of less than nine (9) months duration and exempt from the classified service under KRS 18A.115;

The Appellant was employed in her position for more than nine (9) months. There was no indication that her employment was going to end after nine (9) months and, thus, she was not an Interim employee serving in an Interim position.

7. The Appellant’s P-1s referred to her as a full-time employee. Full-time employee and full-time position are also defined as KRS Chapter 18A.005(17) and (18) as follows:

- (17) “Full-time employee” means an employee in a full-time position;
- (18) “Full-time position” means a position, other than an interim position, requiring an employee to work at least thirty-seven and one-half (37.5) hours in a work week, except for the following:
 - a) Positions in the state parks, where the work assigned is dependent upon fluctuation in tourism, may be assigned work hours from twenty-five (25) hours per week during the off seasons and remain in full-time positions; and
 - b) Positions in health care facilities, which regularly involve three (3) consecutive days of twelve (12) hour shifts to cover weekends, shall be considered full-time;

It is unclear if the Appellant was serving in a full-time position according to the statutory definition. However, her official personnel file identifies her employment as full-time.

8. It is clear that the Transportation Cabinet provided inaccurate information to the Kentucky Retirement Systems when they identified the Appellant’s employment as Interim

employment. There were no contemporaneous documents identifying her employment as a Scholarship Trainee as "Interim." More importantly, her employment did not meet the statutory definition of either "Interim Employee" or "Interim Position."

9. The Appellant first knew or should have known that she had been penalized on November 3, 2017, when she received an email from Shauna Miller. In that email, the Appellant first learned that the Appellee had identified her employment as a Scholarship Trainee as "Interim." As a result, the Appellant timely filed her appeal on December 7, 2017. KRS 18A.095(29)

10. KRS 18A.020 reads in part as follows:

1. The records of the cabinet shall be public records and shall be open to public inspection, as provided in KRS 61.870 to 61.884.
2.
 - (a) A personnel file shall be maintained by the cabinet and the appointing authority for each employee. The file maintained by the cabinet shall be the official personnel file for the employee. Upon transfer, the personnel file maintained by the appointing authority from which the employee transfers shall be forwarded to the new appointing authority;
 - (b) Each file shall include, but not be limited to, for each employee, his name, address, title of position held, classification, rates of compensation, all changes in status including evaluations, promotions, demotions, lay-offs, transfers, disciplinary actions, commendations, awards, and preliminary and other supporting documentation for each action. Each file shall contain the complete record and supporting documentation for each personnel action;

11. The Appellant was penalized when the Appellee provided information to the KPPA which was inconsistent with the official personnel file maintained by the Personnel Cabinet and the personnel file maintained by the Appellee. The Appellant was not an "Interim Employee" when she held the positions of Scholarship Trainee. KRS 18A.095(1), 18A.005(24) and 18A.020(2)(a)

12. The appropriate remedy in this case is for the Appellee to provide accurate information consistent with her official personnel file to the KPPA regarding the Appellant.

Obviously, the Appellant should not be identified as an "Interim Employee" or that she was serving in an "Interim Position." KRS 18A.095(22)(d)

13. The Appellant is not appealing to the Personnel Board from any determination made by the Kentucky Retirement Systems (KRS). The Appellant has an appeal pending against KRS, now known as the Kentucky Public Pensions Authority (KPPA), which is being held in abeyance pending a decision on this Personnel Board Appeal. The Appellant's Appeal to the Personnel Board is based on an alleged penalization by the Transportation Cabinet, who characterized her as an Interim Employee in communications with the Kentucky Retirement Systems.

14. The Appellant was not an employee described in KRS 18A.115(1)(s).

15. Because all the events underlying this Appeal occurred before the effective date of Senate Bill 153, all references to KRS Chapter 18A are to the sections in effect at the time of the events associated with this Appeal.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **AMANDA PARMLEY VS. TRANSPORTATION CABINET (APPEAL NO. 2017-234)** be **SUSTAINED to the extent:**

- 1) That the Appellant was penalized by the Appellee providing incorrect information to the KRS referring to the Appellant's employment as "Interim,"
- 2) That the Appellee is **ORDERED** to provide the KPPA with accurate information regarding the Appellant's employment as a "Scholarship Trainee" consistent with her official personnel file, and
- 3) That the Appellant shall be restored any leave time she used for attending any pre-hearing conferences, evidentiary hearings, or post-hearing conferences before the Board. KRS 18A.095(25).

NOTICE OF EXCEPTION AND APPEAL RIGHTS

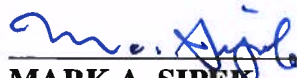
Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within fifteen (15) 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 Mark A. Sipek** this 29th day of February, 2024.

KENTUCKY PERSONNEL BOARD



MARK A. SIPER
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. William Fogle
Hon. JoEllen S. McComb
J.R. Dobner
Hon. Rosemary Holbrook (Personnel Cabinet)