

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NOs. 2015-296 and 2016-043

THADDEOUS PRICE

APPELLANT

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

APPELLEE

*** **

The Board, at its regular February 2018 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated November 30, 2017, Appellant's Exceptions and Request for Oral Argument, Appellee's Response to Exceptions, 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** Background paragraph 1, and substitute the following:

1. The **Appellant, Thaddeous Price**, called himself as his first witness. He testified that he has received a Bachelor's Degree in criminal justice from Kentucky State University and, in 2002, a Master's Degree of Public Administration, with a concentration in human resources.

B. **Delete** Background paragraph 21, and substitute the following:

21. On cross-examination, the Appellant was first directed to address his claims of discrimination. He stated that the claims of race, color, and ethnic origin discrimination noted on the appeal form were not actually issues in this appeal. He did state he felt his gender might have been an issue in the denial of his reclassification, by explaining that he felt that his supervisor, Donna Stratton, treated females differently

than himself. No concrete incidents or examples were provided. The Appellant also mentioned a vague claim of hostility, which is not a covered discriminatory factor. He explained this by stating that he was told by some superiors to process a drawdown in September 2017 for the Bluegrass Unit, but the next day he was told not to by his supervisor because of a potential problem with their request. The Appellant also addressed his claim of political discrimination by stating he felt the hiring process, which involved Ann Culbertson being promoted to IPA II, was the result of favoritism. However, he stated this was not based on any political affiliation of his.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as Altered, be and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order, and Appellant's appeals are **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 15th day of February, 2018.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Tess Russell
Hon. Mark Bringelman

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NOs. 2015-296 and 2016-043**

THADDEOUS PRICE

APPELLANT

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

APPELLEE

** ** * * *

This matter came on for evidentiary hearing on October 25, 2017, at 9:30 a.m., EST, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Thaddeous Price, was present at the evidentiary hearing and was represented by the Hon. Mark R. Brengelman. The Appellee, Education and Workforce Development Cabinet, was present and represented by the Hon. Maria "Tess" Russell. Appearing as Agency representative was Beth Steinle.

At issue in the hearing was whether the Appellant was penalized when he was not reclassified from an Internal Policy Analyst I (IPA I), Pay Grade 12, to an Internal Policy Analyst II (IPA II), Pay Grade 14. An additional claim was whether the Appellant was subjected to ethnic origin, sex or political discrimination in the decision not to reclassify him.

The Appellant was assigned the burden of proof by a preponderance of the evidence.

BACKGROUND

1. The **Appellant, Thaddeous Price**, called himself as his first witness. He testified that he has received a Bachelor's Degree in political science from Kentucky State University and, in 2002, a Master's Degree in Education from that same institution in public administration, with a concentration in human resources.

2. He testified that, at the current time, he is classified as an IPA I (Grade 12), with an approximate salary of \$30,000 annually. Prior to the current time, he was employed in 2003 with the Department of Agriculture. At that time, he was a Grade 12 with an approximate salary of \$39,000.

3. After leaving the Department of Agriculture, he was out of state government for a few years. He later reapplied and was hired with the Cabinet in mid-April 2014.

4. Appellant testified that in his current position, he is involved in what is called "infrastructure work." This primarily involves the "drawdown" of federal funds, which are then distributed to local units, usually involving Area Development Districts. He stated that while involved in this process, he works with ten local units. These include both unemployment, training and retraining centers.

5. The Appellant then stated that his job involves the review and processing of federal grants, which he says total "millions of dollars." He states he is required to review and process detailed information, which he receives from local vendors seeking grant money.

6. Appellant stated that as a part of his duties, he matches the program contracts with the contract numbers, a weekly task. He then must reconcile the disbursed funds with the grant requests.

7. In essence, the Appellant testified that he oversees the proper use and disbursement of federal funds to local units. He also stated that he must sometimes process and disburse these grants within a time period of three days to one week. He also stated that his name solely is on grant approvals.

8. The witness then added that one of the forms he uses is a JV2E, a form which ensures that the grant money is placed in the correct area and which requires correct coding.

9. The Appellant claims that he began to take on extra duties when a coworker, Ann Culbertson, went on maternity leave. Culbertson was also an IPA I. The witness stated that part of the extra duties he incurred included creating a tracking list for the grant money to be disbursed to each local unit. He also added that he had assisted temporary workers working at his direction.

10. The witness then introduced Appellant's Exhibit I, the Job Class Specification for IPA I. He stated he agreed with the job characteristics and added that he was performing all of those duties and more, primarily including reconciliation of funds. These duties include, but are not limited to:

Identifies and analyzes major policy issues requiring resolution prior to an agency's budget request. Reviews court decisions, legal opinions, administrative regulations, statutes or proposed legislation to identify the impact of agency programs and activities. Defines program objectives and identifies beneficiaries and funding sources to assure agency adherence to budget and planning policies. Reviews requests for program deviations and budgetary shifts and recommends solutions. Designs projection models to perform ongoing analysis of receipts and expenditures to ensure compliance with budgetary guidelines. Assists in the

formulation of agency policies. Participates in the development of budget requests and advises agency management on program and financial issues.

11. He then introduced Appellant's Exhibit 2, the Job Class Specification for IPA II. The duties for the IPA II include, but are not limited to:

Identifies and analyzes major policy issues requiring resolution prior to formulating an agency's budget request. Coordinates the utilization of information developed by others in developing a comprehensive view of agency management policies. Reviews court decisions, legal opinions, administrative regulations, statutes or proposed legislation to identify the impact of agency programs and activities. Defines program objectives and identifies beneficiaries and funding sources to assure agency adherence to budget and planning policies. Reviews requests for program deviations and budgetary shifts and recommends solutions. Contacts management officials within programs to secure data on program policies and fiscal resources. Designs projection models to perform ongoing analysis of receipts and expenditures to ensure compliance with budgetary guidelines. Assists in the formulation of agency policies. Participates in the development of budget requests and advises agency management on program and financial issues.

12. The Appellant commented on these job duties by stating that his duties involve the outsourcing of funds more than previously while he was doing infrastructure work. He defines infrastructure work as primarily working internally.

13. The Appellant did not state that he reviewed any court decisions, but rather, when a legal issue is identified, he sees it is referred to the Office of Legal Services.

14. He also stated that he does review some policies and regulations and helps interpret them when local units have questions. He also stated that he does not work with many budgetary shifts.

15. The witness then stated that he designs projection models to ensure compliance with funding requests and sometimes assists in formulating agency policies. He does this by identifying the people to be involved in various tasks. He also explained that he is involved in the budget requests received from the ten local units he assists and is tasked with approving the types of costs which are allowable.

16. Appellant testified that upon requesting to be reclassified to an IPA II, the Personnel Cabinet was asked to do a desk audit. The result of that desk audit was their recommendation that he be properly reclassified to a Grants Specialist (Grade 12). (Appellant's Exhibit 3).

17. Appellant's Exhibit 3 is the Job Class Specification for a Grants Specialist. The duties for the Grants Specialist include, but are not limited to:

Performs beginning level review of grant requests for compliance with program requirements. Participates in conferences with grantees and potential grantees to provide advice on the satisfaction of grant requirements. Monitors compliance with grant provisions by collecting documentary evidence, analyzing such evidence, and preparing reports thereon. Assists in the development of procedures involving the application and administration process. Works with third parties in the development of contractual agreements for the provision of services. Reviews and makes recommendation for modification of existing grants or contracts. Reviews changes in laws or regulations which affect grants/contracts.

18. The Appellant disagreed with this recommendation, stating that he deals more with the disbursement of money rather than creating reports.

19. The Appellant was then asked about any disciplinary actions involving him in the past several years. He stated that in 2015, he had received a written reprimand from Donna Stratton, which followed a verbal altercation with Ann Culbertson. (**Hearing Officer Note:** This later turned out to be only a notation on his 2015 Interim Evaluation.)

20. The Appellant also stated that, in 2017, he was put on paid leave to investigate a matter, but, after its resolution, was returned to work.

21. On cross-examination, the Appellant was first directed to address his claims of discrimination. He stated that the claims of race, color, discrimination, and ethnic origin noted on the appeal form were not actually issues in this appeal. He did state he felt his gender might have been an issue in the denial of his reclassification, by explaining that he felt that his supervisor, Donna Stratton, treated females differently than himself. No concrete incidents or examples were provided. The Appellant also mentioned a vague claim of hostility, which is not a covered discriminatory factor. He explained this by stating that he was told by some superiors to process a drawdown in September 2017 for the Bluegrass Unit, but the next day he was told not to by his supervisor because of a potential problem with their requests. The Appellant also addressed his claim of political discrimination by stating he felt the hiring process, which involved Ann Culbertson being promoted to IPA II, was the result of favoritism. However, he stated this was not based on any political affiliation of his.

22. Appellant then addressed the situation when the IPA II position became available. He stated that Jennifer Morrison, who formerly held that position, had left the office and created a vacancy. However, he stated he did not apply for the position because he was told not to by Donna Stratton. He then denied he ever told anyone that Shane Smith, a member of the interview panel, had told him not to apply because someone else was already selected.

23. The witness then again confirmed that after Ann Culbertson went on maternity leave, he took over her duties. However, she was an IPA I. While continuing her duties, he did also continue to do his own drawdown duties. He stated the previous IPA II, Morrison, had already trained Culbertson on how to perform the drawdown duties.

24. The witness then identified Appellee's Exhibit 5, an August 21, 2009 letter of dismissal from the Department of Agriculture where the Appellant formerly worked. The basic reasons stated in this letter for the dismissal were lack of good behavior and threats of workplace violence. The Appellant did not indicate he had appealed this dismissal.

25. The Appellant was then redirected to Appellant's Exhibit 1, the Job Class Specification for IPA I. The Appellant confirmed that there is no mention of this in the duties for "overseeing" or "being solely responsible for." As noted, the Appellant has previously testified he oversaw or was solely responsible for certain duties.

26. The witness was then directed to Appellee's Exhibit 2, the IPA II Job Class Specification form. He also confirmed that there was no mention in these duties and responsibilities of "sole responsibly" or "sole responsibility for." Neither was there a mention of "oversight of disbursement of millions of dollars."

27. The witness was then asked how he analyzed major policy issues, as noted in the Job Class Specification of IPA II. He replied that he and Supervisor Mike Harmon performed a breakdown for the local units of money they deserved. Asked about how he coordinated the utilization of information developed by others, he answered that he did not actually develop the comprehensive view, but only provided his input.

28. Asked how he defines program objectives so as to assure agency adherence to policies, the Appellant answered that the Cabinet is merely a "pass through" for federal money to be disbursed to local units. Asked how he reviews requests for program deviations and budgetary shifts for local units, the witness answered that he compares the local requests with the state financial system to see if they have the necessary money. If there is a question involving the laws or requests, Appellant stated he must go to his supervisor, Mike Harmon, for ultimate approval.

29. The Appellant was then asked how he participates in the development of budget requests involving the local units. He stated that he does not actually develop the budgets, but is involved to the extent that he must approve drawdown requests.

30. The witness also stated that there are agency monitors who work with the local area development districts regarding their requests and expenditures. He works with the monitors, but does not actually perform any monitoring duties.

31. On re-direct, the witness stated that after Ann Culbertson was promoted to an IPA II, she also had drawdown responsibilities. However, he stated he actually does the work. He explained that he participates in the development of budget requests by advising the intra-agency and local units as to their permissibility.

32. The Appellant closed his case-in-chief.

33. The Appellee's first witness was **Shane Smith**. He does not currently work for the Agency, but did so from 2006 through 2015. He testified that he did briefly talk with the Appellant about interviewing for the IPA II position. He stated that he never told the Appellant not to apply for the position, nor did he tell him that anyone was pre-selected.

34. The Appellee's next witness was **Becky Pittman**. She has been employed by the Personnel Cabinet as a Personnel Program Consultant for the past three years. In addition, she has several years of personnel experience with other state agencies. Her job duties involve reviewing job descriptions, job classifications, and performing desk audits. She performed the audit herein. She introduced Appellee's Exhibit 6, a desk audit dated September 26, 2016, of the Appellant's request to be reclassified. She testified that this audit was performed by her and coworker Jim Lambert.

35. The witness testified that she looked at the job duties and responsibilities of an IPA I, which position the Appellant held. In addition, she met with the Appellant and his supervisor and obtained responses to various questions. She added that the Appellant had provided her with some of his work product, which primarily involved the "drawdown" process he performed. She ended by saying the result of the desk audit was that the Appellant should be reclassified as a Grant Specialist, Grade 12.

36. Pittman felt that the statement given by the Appellant relating to his main function was not accurate. Pittman found that the statement the Appellant gave was taken directly from the characteristics of the Job Class Specifications for the IPA I and, according to Supervisor Stratton, was not really descriptive of the Appellant's particular function. The primary distinction was that the Appellant conducts no studies of operational policies and procedures.

37. There are six (6) primary tasks in the IPA I job description. The witness addressed these.

38. Regarding Task 2 outlined in the desk audit, the Appellant stated that he works with Supervisor Mike Harmon to reconcile and ensure accuracy of payments. Supervisor Stratton would decrease the percentage of time to 10 percent by saying that Appellant must get approval from Harmon for any changes.

39. Regarding Task 3, both the Appellant and the supervisor agreed that he does not develop projection models as called for in the Position Description.

40. Regarding Task 4, the desk audit found that the Appellant does not really participate in the development of budget requests. He merely takes requests and processes the "drawdown" request for money to be disbursed.

41. Regarding Task 5 in the desk audit, both the Appellant and Supervisor Stratton agreed that he does not draft any documents, and although Supervisor Stratton insists he should be performing some duties relating to review of legislation and regulations, he does not. Therefore, the audit found he was not actually performing Task 5.

42. The witness then addressed the desk audit's recommendation that the Appellant be classified as a Grant Specialist. She stated that the primary duty of the Appellant is to work with third parties in the development of contractual agreements for the provisions of service. She stated that although the Appellant told her that his "drawdown" duties were new, she stated it more accurately fit into the Grant Specialist position.

43. The Appellee's next witness was **Ann Culbertson**. She is employed with the Office of Employment and Training within the Agency, and has been classified as an IPA II since September 2014. She was previously an IPA I.

44. She testified that she, in fact, trained the Appellant in his IPA I duties. She gave him her notes for the drawdown process and taught him how to use the spreadsheets. She also stated she had trained the Appellant on how to use the "Access" system, which is the database for everything connected with his job.

45. She described the work of an IPA I as primarily creating supporting documentation for upper management. That position also receives information from upper management and creates documentation for use by the local units.

46. The witness stated that, as an IPA II, she does the programming for budget amounts, she works with the individual programs, tests the systems, and then sees that funds are sent to the local units.

47. She stated that she also performs the expenditure side for the ten local units she works with, and also receives reports and generates reports for the federal government and upper management within the Agency. Also, as an IPA II, she deals with the auditors in preparing the quarterly reports.

48. She contrasted her duties with that of the Appellant by saying that he primarily does "drawdowns" to see that funds are disbursed, while she does the programming regarding the payments.

49. The witness also added that in March 2014, when the previous IPA II, Jennifer Morrison, left, the position was advertised. She stated that she is aware through conversations with the Appellant that he did not apply for the position at that time, as the time for filing an application had already closed.

50. The witness further added that while the Appellant claims he performed her duties while she was on maternity leave, she was actually an IPA I at that time and those duties are what he performed.

51. The witness also cited an incident in which she felt the Appellant had gone beyond the scope of his duties. She identified Appellee's Exhibit 7, an April 6, 2016 email sent from the Appellant to one of the Cabinet programmers located in Michigan. In this email, the Appellant took it upon himself to request a change to the Agency's system. The witness stated

that the programmer then replied that same day that such change could cause potential problems and result in a loss of information. The witness stated that she had been working with the programmer and this request was made without her knowledge or consent by the Appellant.

52. The witness closed by stating that at no time did she tell the Appellant not to apply for the IPA II position.

53. The Appellee's next witness was **Donna Stratton**. She has been Branch Manager over the Office of Employment and Training since 2014. She confirmed that the Appellant had begun employment sometime in mid-April 2014 as an IPA I. She added that he had started out well and was eager to learn. She stated, however, when he came off probation, he had begun to complain about her on several matters. She added that he received a good evaluation review in 2015.

54. The witness confirmed that after IPA II Jennifer Morrison left in 2015, she had posted that position for applications. She stated that she sent emails to everyone in her office, but that the Appellant was not on the register of those applying. After interviews, Ann Culbertson was chosen for the IPA II position.

55. This witness also denies ever telling the Appellant not to apply for the IPA II position.

56. The witness then testified that she did not feel the Appellant was performing the IPA II duties. She stated those duties were more analytical and were done to give information to upper management. She also stated that the Appellant was not solely responsible for the "drawdown" process. She stated that the local units were divided among four or five staff, and the ten units which he works with give him their work products, which the Appellant then sends on to be processed.

57. The witness closed by saying that she was unaware of any retaliation or discrimination against the Appellant and has no information that anyone had ever told him not to apply for the IPA II position.

58. The Cabinet closed.

59. The **Appellant, Thaddeous Price**, then recalled himself. Addressing Appellee's Exhibit 8, he stated the Cabinet had volunteered him for a brief monitoring period in Northern Kentucky. This email, dated January 20, 2015, shows that after being asked if he would do so, the Appellant responded he would welcome the opportunity.

60. The Appellant then reiterated that he was told by Supervisor Stratton not to apply for the IPA II position because Ann Culbertson was more suitable to replace Jennifer Morrison. He stated he did not apply for the position because he wanted to get along with the organization.

FINDINGS OF FACT

1. An IPA II position became vacant in 2015, and although widely advertised, the Appellant did not apply.

2. A desk audit of the Appellant's current position of IPA I was performed by the Personnel Cabinet, dated June 28, 2016. The result of this was a recommendation that the Appellant was more properly performing the duties of a Grant Specialist (Grade 12), and should be so reclassified.

3. The Appellant's main duties involve the "drawdown" process of distributing grant money to ten local units, usually area development districts.

4. There is no evidence the Appellant had "sole responsibility" or "oversight" for disbursement of millions of dollars, although he is a part of the process. The Appellant does not develop the budgets of any local units, and if there are questions involving laws or grant requests, he must get answers or approvals from Supervisor Mike Harmon, an IPA II.

5. The IPA II position has more responsibilities in analyzing data and generating reports for upper management than does an IPA I.

6. In total, the Hearing Officer finds the results of the desk audit are a more realistic assessment of the Appellant's current job duties, and finds no reason to dispute its conclusions.

7. The Appellant admitted there are no viable issues of race, color or ethnic origin in the appeal. He offered no credible evidence as to claims of hostility or gender discrimination.

8. There is no credible evidence that anyone told the Appellant not to apply for the vacant IPA II position, nor that there was already a pre-selected candidate.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that the Appellant failed to carry his burden of proof by a preponderance of the evidence.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeals of **THADDEOUS PRICE V. EDUCATION AND WORKFORCE DEVELOPMENT CABINET, (APPEAL NOS. 2015-296 and 2016-043)** 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 30th day of November, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Tess Russell
Hon. Mark R. Brengelman