

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD

BRITTANY A. ROSS (APPEAL NO. 2015-092)
MARCI L. ADKINS-FRANKLIN (APPEAL NO. 2015-094)
MELISSA D. BROWN (APPEAL NO. 2015-095)
JOHN R. CLEMENS (APPEAL NO. 2015-096)
BRIDGET C. HOLBROOK (APPEAL NO. 2015-097)
ELWOOD D. MCCANN (APPEAL NO. 2015-098)
SHANNON B. PHELPS (APPEAL NO. 2015-101)
ALISON L. TUNSTILL (APPEAL NO. 2015-099) AND
SUSAN ROBINSON (APPEAL NO. 2015-162)

APPELLANTS

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

VS.

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

*** **

The Board, at its regular January 2018 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated November 28, 2017, Appellants' Exceptions, Appellee's Response to Exceptions, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellants' appeals are 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 18th day of January, 2018.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:
Hon. Heather Wagers/ Hon. Graham Gray
Hon. Paul Fauri
Hon. Jennifer Hatcher Schuster
Lt. Col. Chad White/Ms. Amanda Cloyd

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APPELLANTS

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

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF STATE POLICE**

APPELLEE

** ** * * *

These consolidated appeals came on for evidentiary hearing on July 24 and 25, 2017, each day at 9:30 a.m., EST, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. John C. Ryan, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by KRS Chapter 18A.

Appellant, Susan Robinson, was present and represented by the Hon. Jennifer Hatcher Schuster. The remaining eight Appellants represented by the Hon. Paul Fauri, six of whom were present on the first day. Appellee, Justice and Public Safety Cabinet, Department of State Police, was represented by the Hon. Heather Wagers and the Hon. Graham Gray.

These appeals were the subject of various pre-hearing conferences and several motions and counter-motions, including discovery. A motion by Appellee to dismiss the appeals following extensive arguments, was overruled. By Interim Order of July 13, 2015, the nine cases were consolidated without objection. At that time, Appellants were assigned the burden of proof by a preponderance of the evidence.

BACKGROUND

1. At all times germane to these proceedings, each of the nine Appellants herein held the position of Forensic Scientist Specialist II (FSS II), Grade 17, in the Central Laboratory of the Kentucky State Police (KSP), job station Franklin County, Kentucky. Another analyst, Amy K. Smith, had been a Forensic Biologist I in the same Laboratory from January 16, 2006 through August 31, 2007, receiving a promotion while there on February 1, 2007, to Forensic Biologist

II. She left the employ of the Commonwealth to accompany her husband to Seattle, Washington, where she was employed by the Washington State Patrol in its Central Laboratory. Ms. Smith returned to Kentucky and attained reinstatement in the KSP laboratory in November 2013 as a Forensic Biologist II, Grade 15, the same position she held when she left, new annual salary \$45,072. She served a required one-year probation and, upon successful completion thereof, on December 1, 2014, received a five percent “bump” as afforded under the relevant regulations, going to \$47,325 annually. Effective December 16, 2014, at the request of her supervisor, she was reclassified to Forensic Scientist Specialist II, receiving a 10 percent promotional increase (five percent for each grade) with new salary amounting to \$52,058.16 annually.

2. Ms. Smith’s fellow FSS II analysts became aware of the foregoing in March 2015, and at least one of them, Brittany Ross, initiated a grievance complaining that Smith, although holding less seniority than they, was receiving greater compensation than at least 28 of the other 31 FSS II staff in the Laboratory. That grievance, initiated April 15, 2015, appears to accurately summarize the position of all of the Appellants and is attached as **Recommended Order Attachment A**. Rodney Brewer, Commissioner of the Kentucky State Police, ultimately responded thereto on May 13, 2015, and his letter, which appears to accurately summarize the then-position of the Agency, is attached as **Recommended Order Attachment B**. The eight personnel referenced in the grievance thereupon initiated these appeals, as did a ninth FSS II, Susan Robinson.

THE TESTIMONY

3. Upon convening the evidentiary hearing, following filing of perceived background materials by agreement, commensurate with their assigned burden of proof, Appellants offered the testimony of **Susan Robinson**. She confirmed her current position of Forensic Scientist Specialist II (FSS II) in the Central Laboratory of the Kentucky State Police. She summarized her career history with the Laboratory, beginning as an intern without salary in 2001. Following her college graduation in January 2002, she came on as a FSS I and attained reclassification in January 2008 to FSS II. At that time, her salary was approximately \$48,276 annually. Since that time, now going into her 15th year with the Laboratory, she has received raises totaling \$163 monthly and now earns \$50,232, the same since at least 2014.

4. The witness explained that the KSP Central Laboratory is composed of several sections. Her assignment is in the Drug Chemistry Section, whereas her co-Appellants work in the Forensic Biology Section, the same as that of coworker Amy Smith. All nine Appellants and Ms. Smith currently hold the same title of FSS II. She presented her own P-1 Request for Personnel – Position Action form as part of her testimony.

5. Under very brief cross-examination, Ms. Robinson reported that she did not file a grievance upon learning of the handling of Smith’s salary. She confirmed her awareness of and ability to have obtained all salary information through an Open Records Request.

6. **Elwood D. McCann** is an FSS II in the Forensic Biology Section of the KSP Central Laboratory. He has served as informal spokesperson for the Appellants to this point in time. He commenced at the Laboratory in August 2005 as a Forensic Biologist I and, following a one-year probation, was promoted to Forensic Biologist II and so served for two years. Sometime during the interval, the position was reclassified. He thereupon fulfilled the requirements and on October 1, 2008, was elevated to FSS I. He served the requisite three years and finally attained his current position in August 2011, at a salary of \$47,124. Thereupon, with one or two merit raises through August 2014, the witness was earning \$48,072 annually, his current rate.

7. The witness discussed the method of advancement within the lab, explaining that the duties between Forensic Biologist I and II are similar in nature, increasing under the latter. Upon obtaining the required experience, the employee must complete a specific project in order to attain FSS I. Following additional seniority, he/she moves on to the FSS II-level which, in turn, entails a heavier workload. All of this is monitored or supervised by a technical leader, not an official title within the hierarchy, but a fellow FSS II.

8. The witness confirmed that Ms. Smith was in his Forensic Biology Section in 2006 until she departed in 2007. Upon reinstatement, she returned to the Section in 2013; he was not aware of her salary at that time. However, in early 2015, he and his fellow analysts learned of it, whereupon the Division Director, Laura Sudkamp, convened a meeting of the Section's 18 FSS II staff to discuss their unhappiness with the asserted disparity in salaries. The witness recalled that at that meeting, Sudkamp admitted that Smith's salary had been incorrectly calculated and should have been just under that of McCann, given their relative seniority status. He pressed the Director at the time to explain the mistake, whereupon she related that she had initially submitted the proposed reinstatement of Smith at an FSS I level and salary. KSP Human Resources had declined to approve this, advising the Director at the time that Smith must return to the same title which she held when she departed, i.e., Forensic Biologist II. Her intent, as explained to the staff in the meeting, was that Smith would reassume her ongoing salary as if she had never left. The mistake occurred when the Director then orchestrated the reinstatement under the correct title of Forensic Biologist II, but failed to correct the salary to match. The result has been, with her promotional raises since, the reinstated employee now earns \$52,058 annually, compared to that of approximately \$48,000 received by this witness.

9. The witness continued that, soon after the meeting, he and other analysts discussed initiating a grievance with the Director and did file such. The demand was that all FSS II salaries within the Section be increased to match that of Smith. He recalled that the Director informed them that any grievance would likely be denied, particularly as to himself, since he does not hold a Master's Degree nor any specific specialty, whereas Smith does possess a Master's, as well as experience in robotics, gained while working for the Washington State Patrol. He acknowledged that a Master's Degree equates to one year of experience for seniority purposes. The grievance was, in fact, denied. He submitted that Smith is not directly involved with any robotics for the Kentucky State Police notwithstanding her prior training.

10. Under very brief cross-examination, McCann further discussed the standard career path within the KSP Central Laboratory. He acknowledged awareness of the availability of salary information through an Open Records Request and availability of the Courier-Journal website also reflecting salary information.

11. **Melissa (Duncan) Brown**, is an FSS II with the KSP Central Laboratory. She discussed the contents of her Request for Personnel – Position Action (P-1) form information for the record. She commenced in December 1997 as a Microbiologist with the Commonwealth, but not the Central Laboratory where she is employed currently. She became a Microbiologist Senior through reclassification in December 1999, but thereafter accepted a demotion with a five percent decrease in order to become a Serologist I. Starting in July 2002, her position underwent at least three reclassifications with corresponding increases in salary. In addition, she received two increments, one in 2009 and another in 2014, attaining a salary of \$51,982.08 annually. Accordingly, she holds 14 years' service toward seniority compared to seven years held by Smith, but receives an annual salary that is less than \$100 under that of coworker Smith.

12. Under brief cross-examination, Ms. Brown acknowledged awareness of the availability of salary information through Open Records Requests. She was also familiar with the Courier-Journal website available for this purpose and the OpenDoor.ky.gov (Transparency.ky.gov) source. She was actually made aware of the salary disparity while attending the meeting discussed by the prior witness.

13. **Katrina Featherston** is the Quality Supervisor for the Kentucky State Police Central Laboratory, a position she has held for eight of her 23 years with the Commonwealth. Her current position is one of several supervisory roles in which she has served during her career. She described her current duties to be maintaining the overall quality control requirements of the Laboratory, essentially the "Keeper of the Records."

14. The witness explained that the Central Laboratory is required to conduct and/or participate in several audits annually, to enable it to verify that its analyst staff meet and comply with certain prescribed requirements. These audits are performed in order to preserve its accreditation, which she described in detail. As part of the procedure, she reviews staff qualifications to assure proper compliance as demanded by the internal audit, and then serves as the liaison between KSP and its accrediting body. Certain basic policies must always be in place and maintained, with prescribed procedures required to be consistent among staff.

15. The witness discussed the educational and training levels ordinarily required of staff to assure that they perform the services required of them. She presented and identified a portion of the internal policy, entitled "Laboratory Administrative Protocols." This policy, which she explained to be a blueprint for career advancement with the laboratory, outlines the job titles, qualifications, and basic responsibilities of a Forensic Scientist at the KSP Central Laboratory. She explained the various elements and requisites to attain the level of FSS I and, ultimately FSS II, in this particular laboratory.

16. The witness continued, by way of further explanation of the protocols blueprint, that any candidate for the FSS position must complete a technical project under specified requirements. These specifications are outlined in the printed internal policy and, among other factors, must be pre-approved by the candidate's supervisor and the technical leader of the particular project area. They are thereupon reviewed by the technical leader, with a copy forwarded to this witness as the Quality Assurance Supervisor/records person.

17. Featherston identified and discussed a memorandum from Margaret Sanger, DNA technical leader, to herself of July 31, 2015 upon the subject of "Validation of analytical and stochastic thresholds, RMP statistics *via* ARMEDXpert software, and DNA mixture interpretation by Amy K. Smith." She recalled that this notice undertook to certify that Ms. Smith was "...now deemed qualified and authorized to interpret STR DNA data..." using certain criteria outlined in the memo and, further, "...to perform technical review of such interpretations."

18. Under further inquiry, the witness continued her explanation of the requisites to achieve the FSS I and the FSS II levels. She discussed the ramifications ordinarily encountered should the policy not be followed or complied with, and the procedure utilized if this failure is discovered in the course of the audit. She noted that a "corrective action" would be initiated to determine how the failure occurred and what might be implemented to prevent a future breach. While such a policy violation would not necessarily impact the accreditation of the Laboratory, the requirement that it follow and comply with its own policies, and so certify, is inherent in maintaining the accreditation.

19. The witness does not supervise Amy Smith nor any of the Appellants herein. There is no requirement that she be officially informed whether any of the personnel has completed the requisite project for advancement, since this process is conducted under the authority of others, must be approved through that authority, and might or might not include her office in the sequence. In response to inquiry, the witness discussed the availability of, and access to, training files, such as those of Smith, noting that only she and Laura Sudkamp have access thereto.

20. **Whitney Collins-Fouts** is the Forensic Biology Laboratory Supervisor for the Kentucky State Police Central Laboratory, a position she has held since August 2006. She commenced with the KSP in 2001 in its Central Laboratory in an Analyst I position and progressed through the ranks to reach Forensic Scientist Specialist I, attained in 2006. She was thereupon promoted to the supervisory position, actually while Smith was employed there before departing for Washington State in 2007. She was then and is now Smith's supervisor.

21. The witness became aware that Smith was returning from Washington and desired to resume with KSP. She viewed her work as acceptable from before and was amenable to her returning. She was also familiar with portions of her background, having attended at least one class at the University of Kentucky with her while obtaining her Master's Degree. She also supervises three of the Appellants, whom she named for the record.

22. The witness was directed to the previously discussed "Laboratory Administrative Protocols" utilized by management to measure professional advancement and expertise of its technicians, including that required to attain the FSS I rating. Appellants' counsel pressed the witness at some length concerning Smith's qualifications for promotion or reclassification under the protocol. She was also quizzed at some length concerning the extent of her knowledge of Smith's training and experience, her method of verifying those aspects, and the nature and amount of any written documentation relied upon from the State of Washington that was utilized in advancing Smith to her current level of FSS II.

23. Appellants pressed the witness extensively concerning whether Analyst Smith completed the requisite "project" set forth in the advancement policy. The witness agreed that in May 2014, such a project was underway with KSP, but not yet completed for purposes of FSS II policy requirements. On the other hand, she noted, Smith had made progress in that regard while employed with the Washington State Patrol. She explained that the project aspect, which is quite technical, is designed to establish expertise in a specific field and might or might not be utilized in any practical application. She insisted that, as supervisor, she was sufficiently satisfied with Smith's progress toward completing this project to recommend her reclassification in November 2014. Accordingly, after detailing the ongoing assignments and work in which Smith was engaged at the time, she advised the Human Resource Commander that "Ms. Smith has more than five (5) years of forensic experience along with her M.S. degree which would qualify her as a candidate for reclassification. I would like to recommend that Ms. Amy Smith be reclassified from Forensic Biologist II to Forensic Scientist Specialist II effective December 1, 2014."

24. As her supervisor, the witness prepared Smith's Annual Employee Performance Evaluation for the 2015 calendar year. She discussed its contents, confirming that the duties set forth accurately portrayed that which the employee was performing. Functioning in her relatively new (then) position of Forensic Scientist Specialist II, the employee attained a score of 457, equating to "Outstanding" at year end 2015. The witness acknowledged that her awareness of some achievement or performance factors attributable to the employee had come by word-of-mouth through conversations with management at the Washington State Police or others. She agreed that some of the information is documented and other portions might not be. She emphasized that her recommendation for reclassification was based primarily upon her own observations; utilizing her own experience and knowledge as to what the work product should look like. Matters of salary, which do not fall within her job duties, were never part of her analysis of Smith's work product, nor was salary considered in any recommendation for advancement.

25. Under relatively brief examination by the Agency, Collins-Fouts expanded upon the contents of certain of the materials previously discussed. She commented that, in retrospect, one or another additional factor which would have supported her recommendation that Smith should be reclassified to her current position was inadvertently omitted, pointing out that much of the information utilized was routine in nature and standard procedure. She ordinarily attempts to include all important information and intended to do so in the immediate instance, since the

steps or accomplishments occurred whether or not expressly referenced, and failure to detail them was mere oversight.

26. **Amy Smith** held the position of Forensic Scientist Specialist II at the time of hearing. Her initial employment with KSP was January 16, 2006 through August 31, 2007, with starting salary of \$30,232.80 annually, confirmed by her P-1 form. She received one or more raises prior to leaving, such as when reclassified from Forensic Biologist I to Forensic Biologist II, receiving \$40,708.80. She and her spouse moved to the State of Washington to enable him to pursue further education, where she commenced with the Washington State Patrol Crime Lab on September 10, 2007 as a Forensic Scientist I.

27. Smith left the Washington position on April 15, 2011, she and her family returning to Kentucky in mid-May of that year. She was then not publicly employed for approximately two years, attending to the needs of her small children. She did not attend any classes or seminars during that interval. At some point in the hiatus, she made known, through contact with Whitney Collins, her desire to return to the KSP laboratory. Upon a position becoming available in 2012, she advised Collins of her interest therein. She recalled no contact with Laura Sudkamp until approximately one week before actually returning to work at KSP. She identified one or more emails among herself, Collins and Sudkamp addressing her ultimate return and the level at which she would resume work. She had no specific salary level expectations at that time, recalled to be November 2012.

28. Smith viewed that, at the time of her departure from Washington, her credentials qualified her at the Forensic Scientist Specialist II level. However, upon broaching the subject, she was informed by Collins that she could not be reinstated at this higher level and retain her pre-existing benefits, including retirement and unused sick leave. To retain these benefits, she would be required to be reinstated at the same level she held when she departed, namely Forensic Biologist II, serve probation, and then possibly be reclassified to the FSS level. It was unclear at the time whether probation would be six months or one year. After her return and working at the Forensic Biologist II level for the first six months, she made inquiry and learned the requisite was one year before she could apply for the change. There were communications among herself, Collins, and Sudkamp concerning this in May 2014. She recalled a concern with daycare expenses, leading to specific salary inquiries. She was informed that upon reclass to the FSS II level, the salary would be \$50,000 plus. She was unfamiliar, at the time, with whether such amount would equate to that of her coworkers.

29. The witness identified two Personnel Action Notifications (PANs); one referenced an effective date of December 1, 2014, coming off probation and affording her a raise to \$47,325.60 and another, shortly thereafter, with an effective date of December 16, 2014, evidencing her reclassification from Forensic Biologist II to the Forensic Scientist Specialist II, new salary \$52,058.16. She acknowledged that her salary at the time of her reinstatement in mid-November 2013 had been \$45,072, in keeping with having returned as a Forensic Biologist II.

30. Appellants quizzed the witness concerning the duties which she was performing during the term following her reinstatement through her reclassification date. She described these briefly, acknowledging that she performed essentially the same tasks throughout the referenced period. She had also begun a project, said to be "...validation work for determining a stochastic threshold for the DNA Amplification kits..." This project was coming along beginning with reinstatement and completed as of the time of her reclassification. She explained that it was essentially part one of a two-part program, with each part being a separate project, although closely connected. She had routinely prepared a written summary thereof and presented it to Margaret Sanger, her technical leader. She recalled that the summary, essentially raw notes, was not edited as a finalized workup until mid-2015. She did not view the delayed workup as an impediment to her advancement, since her part of it was completed in November 2014.

31. The witness discussed her duties and work history while employed with the Washington State Patrol. She explained that she had similarly completed a project for that entity before departing there and supplied supporting documentation to Collins sometime before returning to Kentucky. This was done through one or more emailed memoranda and, she urged, everything worthy of note was supplied before the return. She was not requested to and did not supply any further such materials at the time she sought to be reclassified. She viewed that, based upon her credentials to that point, she would have been eligible at the time of reinstatement with KSP for the FSS II level.

32. Further addressing her employment status at the time she left Washington to move back to Kentucky, Smith explained that she had progressed from the Forensic Scientist I to Forensic Scientist III position while employed in Washington. She felt the FS III level there equates to Forensic Scientist Specialist II with KSP. She calculated that at the time of her reclassification in mid-December 2014, she possessed in excess of 6 years' service time in addition to a Master's Degree.

33. Appellants, through counsel, pressed the witness relative to her perceived status among her coworkers. She had been made aware of a meeting which Sudkamp convened with the other FSS II staff, purportedly to quell unhappiness among them due to her supposedly rapid ascent in salary ahead of them. She was concerned and "hurt" that the coworkers were complaining about her, and she was informed that Sudkamp informed the others that her salary computation was "a mistake." She became more fully informed of many of the concerns and/or issues surrounding her current status by way of a case file, which was forwarded to her by KSP legal in May 2016.

34. Further discussing the requisite project or projects set forth in the announced KSP policy for advancement, the witness elaborated upon two such items she had been bringing along in tandem, reiterating that they were very closely related. She reviewed the memorandum in support of her reclassification from Forensic Biologist II to Forensic Scientist Specialist II, issued by Supervisor Collins in November 2014. She explained that the portion thereof which cites that she has been assisting with "validation work" in connection with the project, confirms

its existence and completion, whether or not expressly stated. She acknowledged that this work would not appear in her personnel file, but is logged and maintained in appropriate laboratory records.

35. (**Hearing Officer Note:** Upon completion of questioning of this witness by Appellants, the Agency, through counsel, tendered a series of documents, including Job Specifications for Forensic Scientist Specialist I, Forensic Scientist Specialist II, and Forensic Biologist II, by way of Affidavit of the Kentucky Personnel Cabinet custodian. These were made a part of the record without objection. The Agency also offered, through the witness, a set of four Washington State Patrol Crime Laboratory Division forms entitled "Court Testimony Performance Evaluation." These covered four separate dates/appearances purportedly by Smith. The Agency further tendered a series of Washington State Patrol Crime Laboratory Performance and Development Plan (evaluations) prepared for Smith by the Washington State Patrol Crime Laboratory Manager. Appellants, through counsel, objected to their introduction, urging that, notwithstanding discovery requests served sometime previously, none of these materials; nor any cover email documents to which the witness had alluded, were supplied at the time. They acknowledged recently receiving the copies, but without any emails. Agency counsel reacted that she was not counsel in the case when the discovery requests were made and could not comment thereon, urging that there was no intent to withhold anything. The Hearing Officer ruled that formal filing and consideration of the proposed exhibits would be held in abeyance pending further testimony.)

36. **Laura Sudkamp** is the KSP Forensic Laboratory Manager, which position she assumed in 2004. She holds a total of nearly 28 years with the Agency, having progressed through the Laboratory operational ranks to this level. She serves in two distinct but separate roles. On the one hand, she is the second-level supervisor of the Frankfort-based Central Laboratory analysts and, in that capacity, is responsible for the day-to-day operations there. All first-level supervisors answer to her. Her other role is broader, which she depicted to be system-wide, managing other labs in which she is responsible for maintaining a reasonable balance of caseloads among staff.

37. The witness acknowledged familiarity with the previously introduced Laboratory Administrative Protocols, already identified as the "policy" or blueprint for advancement from basic Forensic Biologist I to Forensic Scientist Specialist II (FSS II) level. She depicted it to be the "career ladder" within the operation. She confirmed that an absolute requirement for advancement to the FSS level by any analyst in the lab is completion of a project. She provided a somewhat technical explanation thereof, defining the intent and effort to be qualifying the individual performing the work to become an in-house expert upon the chosen subject.

38. The witness continued that as the analyst brings the project along, it is monitored by a technical leader, who is not necessarily a supervisor, but nonetheless possessing expertise at some level in the area being researched. A technical leader might be a peer of the individual performing the project, but assigned the additional duty. Relating this requirement to the protocol and to current requirements, she noted that the intent is to now require such a project as

part of all relevant job specifications to render analysts eligible for reclassification to the FSS level.

39. The witness confirmed that she was analyst Smith's second-line supervisor during her previous stint at the lab, and remains so at this time. Notwithstanding this, she did not and has never personally observed her day-to-day performance of duties, since she has no opportunity to "reach down to that level" due to the demands of her position. She was, however, familiar with Smith's performance previously by virtue of the representations thereof by Supervisor Collins. It was Collins who informed her that Smith was returning to Kentucky from Washington and desired to resume with the KSP.

40. The witness acknowledged issuing at least two memoranda by date of June 21, 2013 to the Agency's Human Resource Commander, detailing a need to hire additional Forensic Biologists, including Ms. Smith specifically. She had therein briefly outlined Smith's background and prior history with KSP, urging that she be reinstated at the level she held when she departed, i.e. Forensic Biologist II, salary \$45,072 annually. She acknowledged that her information supporting the rehire was a combination of her personal knowledge and that related to her by Collins. She recalled that Collins had obtained Smith's Washington State Patrol history by telephone from an official there. She did not actually review the written evaluations and other documents concerning Smith's Washington history until after Appellants initiated grievances over the salary issue. She insisted that she wanted Smith back, based essentially upon her prior performance while at KSP.

41. Sudkamp continued that, in her view, Smith would have qualified for FSS I or FSS II at the time of her reinstatement. However, no analyst has ever been hired in at that level during her time with the Agency. Also, she urged, certain training would be required, intimating that it would be less if she reinstated as a FB II. She recognized that Smith was unemployed for two years between Washington and the KSP reinstatement while caring for her children, thus the need for some training to reorient to KSP protocols.

42. Further addressing salaries, the witness explained that her intent was to review the seniority levels of representative currently employed analysts, determine an average figure based upon their salaries, and allot that amount to Smith upon her return. She did not factor in the two-year absence, relying instead upon the extensive training already held and her Master's Degree in biology. She conceded that in making her computations, the five percent increment which Smith had received coming off probation was not factored in. The result was, upon reclassification to FSS II, she commenced receiving a higher salary than other FSS II analysts with more seniority. She insisted that her focus was upon obtaining an already qualified, prepared, seasoned employee who would require minimal orientation and who was experienced in the increasingly state-of-the-art robotics. Her attention was not on the relative salaries, insisting that she never intended to slight the other staff in the process. Other than seeking the average previously referenced, she made no overall review of the salaries.

43. Sudkamp expanded upon laboratory hiring practices in general and, specifically, as applied to analyst Smith. She explained that the preference is always to initially engage new personnel at a lower level, ordinarily Forensic Biologist I or II, and then bring them along commensurate with the specific needs of the operation. She pointed out that KSP salaries for analysts are not sufficiently competitive to attract individuals who are already highly trained. She did not consider advertising the higher position and having Smith apply from a competitive register, reiterating that the Laboratory routinely does not bring in new analysts at the higher level, regardless of their background. Further addressing her recitation of Smith's qualifications in her reinstatement memoranda in June 2013, the witness admitted that she was in error concerning one or more details, primarily having inaccurately represented that Smith had testified in court, whereas she had not, although she did confer with prosecutors variously.

44. The witness scheduled a meeting following reclassification of Smith at the urging of Supervisor Collins. Specifically, Collins informed her that "we had some very upset analysts" and she viewed the need to gather everyone promptly and explain the action. She outlined her calculations to reach the sum now paid Smith. (**Hearing Officer Note:** The testimony was unclear as to exactly when Sudkamp came to realize she miscalculated what Smith's salary would be upon her reclassification to FSS II.) She acknowledged in the meeting that a mistake was made, apparently connected to the five percent increment coming off probation, which triggered an incorrect multiple thereafter. She so informed the staff at the meeting, advising that she was thinking or assuming the new salary would be around \$50,000 or slightly less, whereas it was approximately \$52,000.

45. The witness continued that when she became aware of the miscalculation, she immediately approached upper management to determine whether it might be rectified. She was informed that no changes could be implemented by her office, and further requests on the subject received no response. Moreover, Smith had been performing duties at the FSS I or II level almost from the time she was reinstated. She asserted that all of the KSP analysts, most specifically Appellants herein, are excellent employees, agreeing that most or all of them possess more seniority than Smith. She agreed that seniority factors into salaries.

46. The witness summarized her thought process in the matter to have been that Smith, having completed the requisite project while with the Washington State Patrol, technically qualified for the FSS II level at the time of her return. However, the witness wanted her to also complete a project for KSP as "only fair" and to train for a sufficient time to again completely understand the protocol. She perceived that Smith had qualified for reclassification as of mid-2014 and, since her probation was one year, she was quite comfortable in supporting the reclassification in December 2014, particularly in light of the fact that Smith had already been performing FSS duties throughout the time.

47. Upon resumption of testimony on July 25, 2017, Appellants having announced closed-in-chief, the Agency recalled **Laura Sudkamp**, KSP Forensic Laboratory Manager. She confirmed her chain of command for the record. She discussed the previously tendered Performance Development Plans and court testimony performance evaluation materials

pertaining to Ms. Smith's work for the Washington State Patrol. She recalled reviewing the documents "a couple of months ago," having requested copies from Collins after receiving the grievances from FSS II staff. She had then delivered them to Agency counsel "a couple of weeks ago." Appellants previously objected to their introduction (see Hearing Officer Note above) and now withdrew their objection as to their filing, but challenged their relevancy upon the basis that the witness did not possess the materials at the time she sought to reinstate Smith or to reclassify her. The documents were allowed with the objection noted.

48. The witness asserted that the Laboratory suffers a chronic backlog in completed analyses and in a variety of other areas, which she described. She attributed this status in part to a shortage of qualified analysts, pointing to her June 2013 memorandum seeking consent to hire five forensic biologists to fill staff vacancies at that time.

49. The witness continued that due in part to recent media scrutiny generated by a severe backlog of rape kit analyses and an auditor's report, the legislature allocated 4.5 million dollars to the laboratory. This money was earmarked for space needs, equipment and additional personnel, but, expressly, not for existing salaries. Accordingly, the Agency was unable to increase the salaries of staff, notwithstanding their deserving same.

50. Still again directed to the circumstances surrounding the reinstatement of analyst Smith, the witness ratified her role therein, referencing the memoranda previously discussed. More specifically, she recalled, Supervisor Collins prepared the request for her reclassification, which the witness approved and forwarded through channels to the Appointing Authority. She expanded upon the contents of the memorandum, including further discussion of the project and its place in the overall career path of the analyst to reach the FSS II level. She emphasized that the anticipation underlying project assignments is that the performer will develop expertise and become the "go-to" person upon that subject in the lab. She noted that projects can be simultaneously ongoing and considered completed for purposes of advancement, even as the analyst continues the particular research and study.

51. Sudkamp explained that she was not involved with responding to or seeking to resolve the grievances concerning the handling of Smith's advancement, since they challenged her action. They were sent on to her superiors, the report back being that no favorable resolution could be offered in the present circumstances. She emphasized that the basic complaint, that KSP analysts are under-compensated, is accurate, particularly as compared to surrounding states. She noted that one FSS II analyst receiving \$50,000 with KSP recently went to West Virginia and started there at \$74,000. Similar rates are available in all other adjacent states and, given this, she has regularly applied with management for additional funding to bring local salaries more in line with competitors. She reiterated that this circumstance is among the underlying reasons she routinely brings in new analysts, including the five whom she sought authorization to hire in 2013, at the lower biologist level, since starting salaries are a factor.

52. Under further inquiry by Appellants, through counsel, Sudkamp was again pressed to discuss her decision to reinstate analyst Smith at the Forensic Biologist II level rather

than FSS II for which the witness had deemed her eligible. Specifically, Appellants posed whether it would have been appropriate to have Smith apply and be hired at the higher level, provide her the salary commensurate therewith, and thereupon utilize that as the basis under the relevant regulation to raise her fellow FSS II analysts. She reacted that, while no rule prohibited that option, the process requires utilizing the register and advertising, with its attendant timeline, resulting in several months' delay bringing the employee online. In addition, she reiterated, the basic orientation into KSP protocol is engaged at the Forensic Biologist level, and her view was that Smith should earn the higher position as had her counterparts, commensurate with the stated policy.

53. The Agency recalled **Whitney Collins-Fouts**, Central Forensic Laboratory Supervisor, who answers to Laura Sudkamp. She expanded briefly upon her role in attaining analyst Smith's reinstatement, reminding that she had been quite familiar with her performance previously with the lab. She had welcomed her return and participated in packaging the requisite information and materials to support it.

54. The witness continued that since Smith was already trained as an analyst, her orientation was anticipated to be, and was, much quicker than a new hire. Smith had previously done well and learned quickly in her original orientation in 2006. Smith was and is able to carry multiple tasks simultaneously and completes what is expected of her quite promptly. In summary, Smith came back to Kentucky already equipped and trained to the level of Forensic Scientist Specialist II, having fulfilled the project requirements in Washington.

55. Under brief inquiry by Appellants, Collins-Fouts recalled that upon returning in 2013, Smith almost immediately commenced the requisite KSP project while simultaneously assuming additional duties, which she described. She was not involved in the decision process relative to whether Smith should be reinstated or apply as a new hire. She reiterated that her wording of "validation" in supporting the reclassification of Smith referred to the satisfactory status of the project. She acknowledged that in recommending various other analysts, including Appellants, for reclassification to the FSS II level, her memoranda ordinarily referenced their projects more specifically than she had that of Smith.

56. **Amanda Cloyd** holds the position of Executive Advisor and Human Resource Commander with the KSP. She counts 18 years in Human Resources, with four years thereof with KSP. She recited the protocol required to reinstate a merit employee with the Commonwealth. She was familiar with the procedure utilized in the reinstatement of analyst Smith and found it to have been correctly engaged and implemented.

57. Turning to matters of salary, the witness explained that at the time of the Smith reinstatement, the KSP Laboratory employed no other Forensic Biologist II staff. Under the relevant regulation, had there been personnel holding this position and had Smith returned at a higher salary than she was receiving when she departed, all other similarly situated personnel would have been required to be upgraded to match which, in her case, was \$45,072 annually.

58. The witness continued that, under the reinstatement statute, Smith would not have been permitted to return at the Forensic Scientist Specialist II level, and no procedure exists to allow such return at a higher grade than the employee held when they departed. Consequently, Smith was required, under the procedure selected, to re-enter at the same grade and title which she held previously. Since her absence exceeded 12 months, she was obligated to serve a one-year employment probation, which was accomplished. No discretionary action by either employee or employer may be exercised during the probationary term, except termination by the agency if the employee be deemed unacceptable.

59. Turning to the matter of reclassification, the witness explained that once the employee successfully completes probation and it is determined that the job duties being performed support the action, a reclassification may be implemented to a position that matches the duties actually in progress. Upon accomplishing this, the salary increment generated thereby is automatic and not discretionary.

60. Under relatively brief cross-examination, Cloyd further discussed the reclassification aspect and the elements thereof, confirming that the Appointing Authority must approve the action. She was not familiar with the specific duties being performed by Smith either at the time of her reinstatement or when her position was reclassified. She noted that ordinarily in a reclassification circumstance no review of the duties being performed by others already in the class is conducted.

61. The witness reviewed the procedures of bringing a former merit employee in as a “new hire” as compared to a reinstatement. Pressed to discuss the impact of each approach upon salaries, she explained their variables. The sworn testimony was thereupon concluded. By agreement of the parties, closing arguments by way of written memorandum were filed and served simultaneously, on or before August 25, 2017, at which time these consolidated appeals stood submitted for recommended order.

62. KRS 18A.095(1) requires that “a classified employee with status shall not be dismissed, demoted, suspended or otherwise penalized except for cause.”

63. KRS 18A.005(33) defines “reinstatement” as “...the restoration of an employee who has resigned in good standing...to a position in his former class, or to a position of like status and pay.”

64. KRS 18A.005(29) defines “reclassification” as “...the change in the classification of an employee when a material and permanent change in the duties or responsibilities of that employee occurs.”

65. KRS 18A.010(1) provides for the general basis for establishment of KRS Chapter 18A, i.e., the intent of the legislation. It asserts, among other things, that it is “...to establish for the state a system of personnel administration based on merit principles and scientific methods governing the recruitment, examination, appointment, promotion, transfer, layoff, removal,

discipline, and welfare of its classified employees and other incidents of state employment. All appointments and promotions to positions in the state classified service shall be made solely on the basis of merit and fitness, to be ascertained by competitive examination, except as hereinafter specified.”

66. 101 KAR 2:102, Section 2(1)(i), provides that “a former employee who is appointed, reinstated, or reemployed, other than a former employee receiving benefits under a state retirement system, shall be credited with the unused sick leave balance credited to them upon separation.”

67. 101 KAR 2:034 is the regulation pertaining to compensation in the classified system. Section 1 thereof deals with new appointments and requires that:

- (1) An appointing authority shall appoint a new employee at a salary not to exceed the midpoint of the pay grade.
- (2) The appointing authority shall adjust to that salary an employee who is earning less than the new appointee’s salary, if the appointing authority determines that the incumbent employee:
 - (a) Is in the same class;
 - (b) Is in the same work county; and
 - (c) Has a similar combination of education and experience relating to the job classification.

Section 2 details the protocol for reentrance to the classified service. As applied herein, subsection (2)(a) dictates that for former classified employees, “an appointing authority shall set the salary of a former classified employee, other than a returning retiree, who is being reemployed, reinstated, or probationarily appointed in one (1) of the following ways:

1. In accordance with the standards used for making new appointments; or
2. Up to the same salary as that paid at the time of separation from the classified service, if that salary does not exceed the midpoint salary plus the difference, in dollars, between the entry-level salary and the midpoint salary.

68. 101 KAR 2:034, Section 2(3) relates to probationary increments upon reentrance to state service. Subsection (a) thereof requires that “a former employee who is probationarily appointed at a salary below the midpoint of the pay grade shall receive a probationary increment upon successful completion of the probationary period. Subsection (b) prescribes that “a former

employee who is probationarily appointed at a salary that equals or exceeds the midpoint of the pay grade may, at the discretion of the appointing authority, receive a probationary increment at the time of successful completion of the probationary period. If the employee is not granted a probationary increment at the time of completion of the probationary period, an increment shall be awarded at the beginning of the month following completion of twelve (12) months of service from the date of appointment.”

69. 101 KAR 2:034, Section 3, relates to salary adjustments. Subsection (3) deals with reclassification and sub-subsection (a) thereof dictates that “an employee who is advanced to a higher pay grade through reclassification shall receive the greater of five percent for each grade or the new grade minimum...”

FINDINGS OF FACT

1. For purposes of these consolidated appeals, at all times germane herein, all Appellants and their coworker, Amy Smith, were classified employees with status of the Justice and Public Safety Cabinet, Department of State Police (KSP), each holding the position of Forensic Scientist Specialist II (FSS II) and serving in the Central Laboratory of the Agency at Frankfort, Kentucky. Through March 2015, the nine Appellants had been employed with the Laboratory for varying terms, ranging from eight years at the time for John Clemens through 15 years for Susan Robinson and Marci Adkins-Franklin, with the others ranging between those terms. At that time, Clemens was receiving \$46,907.28 annually, while Melissa Brown was earning \$51,982.08 with 14 years’ experience. It is undisputed that these salaries, in light of the services performed and the high level of training and skill required, are modest by comparison to that afforded analysts similarly situated in most or all surrounding states. A chronic shortage exists of experienced and sufficiently-trained staff.

2. KSP Laboratory policy, or protocol, in place affords forensic personnel a blueprint for advancement from entry level through attainment of the top level within the laboratory, the FSS II rank. Achieving this level, with its requisite duties and expertise, requires at least a Bachelor’s degree and no less than six years of professional laboratory experience, including performing work in a specialty area. A Master’s degree in the appropriate subject substitutes for one year of experience. At least one technical project must also have been completed to the satisfaction of a mentor, tending to establish the analyst as an expert in the particular field.

3. Amy Smith initially came to work in the KSP Lab in early 2006, commencing at the lowest rank of Forensic Biologist I and gaining one promotion, to Forensic Biologist II, after one year. She performed her duties quite competently, according to her supervisor, for nearly 20 months. She then left the position in good standing and assumed a similar job in Seattle, Washington with the Washington State Patrol, performing essentially similar duties. After approximately four and one-half years there, she returned to Kentucky and, following a two-year interval dedicated to the needs of her children, she sought and received reinstatement to her former rank of Forensic Biologist II. She served a requisite one-year probation and was afforded

a routine five percent raise at its conclusion. Very shortly thereafter, actually within two weeks, she was reclassified to the FSS II level upon the strong recommendation of her supervisor, an elevation of two grades. The series of moves placed her at a salary of slightly more than \$52,000 annually. As of that time, in mid-December 2014, she was credited with just over seven years' service for purposes of seniority, including one year for her Master's degree. Smith thereupon possessed less seniority than any Appellant herein, but was afforded a greater salary than each of them, the range being in excess of \$5,000 annually to less than \$100 per annum as to those with the greatest service time.

4. It is undisputed that Smith returned from her stint with the Washington State Patrol possessing the qualifications for the FSS II rating under the prescribed protocols of the KSP Laboratory. The proof is adequate that she performed the requisite "project" while there to establish the higher credentials. However, upon reinstating her in Kentucky, management elected to have her return to her prior title, in order to afford her an opportunity to reorient to local procedure, serve the mandatory probation, and thereupon proceed through the reclassification process. Both her performance and the assigned duties supported, or perhaps even dictated, that she be reclassified. In summary, the evidence is that Smith was qualified in every way for each upward step in her career path as of the date each step occurred.

5. To summarize, the proof and exhibits detail Smith's KSP salary history as follows:

ACTION	DATE	SALARY	STATUS
Started	1/16/06	\$30,232.80	Forensic Biologist I
Left	8/31/07	\$40,708.80	Forensic Biologist II
Reinstated	11/16/13	\$45,072.00*	Forensic Biologist II
Off Probation	12/1/14	\$47,325.60	5% Increment
Reclassified	12/16/14	\$52,058.16	10% Increment

*Grade 15, 7/07 salary schedule, Entry Level = \$38,770.08 (37.5 hr. week)
Mid-point = \$51,361.20
Range to mid-point = \$6,295.56
($\$40,708.80 + \$6,295.56 = \$47,004.36$)

6. The Hearing Officer finds the testimony of all witness to be credible.

CONCLUSIONS OF LAW

1. The core issue raised by these consolidated appeals is whether any action on the part of KSP management, in providing for the reinstatement and eventual reclassification of a qualified employee, violated the statutory or regulatory process applicable thereto. In play are at least three aspects or actions:

A. When Analyst Smith sought to return, the Agency had available two options under existing authority. Either she could be brought back as a "new appointee," undergo the protocol therefor, and start

at the higher FSS II salary, or she could be reinstated at her previous level of Forensic Biologist II and work forward. Appellants logically argue for the former, since that election would have generated bringing their various salaries into line with that of Smith under 101 KAR 2:034, Section 2(2)(a)(1). However, management was under no obligation to choose this approach. To the contrary, its standing policy is the latter, i.e. to bring in staff at the lower level and orient/train the individual in keeping with its particular procedures. Thus, reinstating Smith at the same rank she held when she departed, with salary as adjusted to approximately mid-point, complied both with policy and with KRS 18A.005(33) and 101 KAR 2:034, Section 2(2)(a)(2).

- B. Smith was required to serve a one-year probation upon reinstatement. This was fulfilled in mid-November 2014. 101 KAR 2:034, Section 2(3)(b), mandates that the Agency grant a probationary increment upon successful completion, so accomplished at five percent.
- C. Smith returned from Washington already qualified at the FSS II level for KSP purposes. She commenced immediately performing the higher FSS duties, which continued throughout her one-year probation and afterward. It was logical, therefore, and actually required that she be properly classified to match the duties and the Appointing Authority did so effective December 16, 2014, rendering her eligible for a ten percent raise under 101 KAR 2:034, Section 3.

2. There is neither claim nor proof that Smith was overcompensated due to lack of ability or underperformance. Rather, the complaint is that her seniority does not support her end salary and that management mishandled her advancement. However, seniority is but one of several factors impacting the career path and movement of personnel within state government. While each Appellant in these proceedings is without doubt deserving of advancement based upon the performance and achievement of the particular individual, with salary increase commensurate therewith, comparison thereof to that of Smith based solely upon seniority falls short. Appellants have not met their burden to establish that management either deliberately or inadvertently violated any relevant statutory or regulatory provision in the treatment of Smith or as to them.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeals of **BRITTANY A. ROSS (APPEAL NO. 2015-092)**, **MARCI L. ADKINS-FRANKLIN (APPEAL NO. 2015-094)**, **MELISSA D. BROWN (APPEAL NO. 2015-095)**, **JOHN R. CLEMENS (APPEAL NO. 2015-096)**, **BRIDGET C. HOLBROOK (APPEAL NO. 2015-097)**, **ELWOOD D.**

McCANN (APPEAL NO. 2015-098), SHANNON B. PHELPS (APPEAL NO. 2015-101), ALISON L. TUNSTILL (APPEAL NO. 2015-099), AND SUSAN ROBINSON (APPEAL NO. 2015-162) V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF STATE POLICE, 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 John C. Ryan** this 28th day of November, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Heather Wagers
Hon. Graham Gray
Hon. Paul Fauri
Hon. Jennifer Hatcher Schuster



GRIEVANCE FORM

A GRIEVANCE IS A COMPLAINT CONCERNING A TERM OR CONDITION OF EMPLOYMENT OVER WHICH THE EMPLOYEE'S AGENCY HAS CONTROL. A GRIEVANCE MUST BE FILED WITHIN THIRTY (30) DAYS OF THE OCCURRENCE OR DISCOVERY OF THE EVENT. IF THIS GRIEVANCE CONCERNS AN ACTION APPEALABLE DIRECTLY TO THE PERSONNEL BOARD PURSUANT TO KRS 18A.095, YOUR RIGHT TO FILE AN APPEAL WITH THE PERSONNEL BOARD IS NOT EXTENDED BEYOND THE SIXTY (60) DAY APPEAL PERIOD OR OTHERWISE AFFECTED BY THE FILING OF A GRIEVANCE.

[Please type or print]

Name: Brittany A. Ross

Pernr: _____

Job Title/Classification: Forensic Scientist Specialist II

Cabinet: Justice

Department: Kentucky State Police

Work Phone: 502-564-5230

Division: Services

Branch: Central Laboratory

Work Location: Frankfort, KY

WHAT IS YOUR GRIEVANCE? (Please state facts and be specific as to the date, place and individual(s) involved. Attach additional pages if necessary.)

On March 24, 2015 I was made aware it was discovered through the open records website that a forensic biologist classified as a Forensic Scientist Specialist II (FSSII) with approximately 3 years of experience with KSP (under 7 years total forensic experience) was making more in salary than other FSSII employees in the same county with more years of experience. Amy K. Smith was initially hired by Kentucky State Police in January 2006, left the system in August 2007, and was reinstated in November 2013. There are 31 other FSSII employees in Franklin County; Amy Smith's salary is greater than 28 of them and yet she has less experience than most if not all of those 28 individuals. A table is enclosed:

Name	Title	Work address	Salary	Years experience
Melissa D Brown	FSSII	Frankfort, KY	51,982.08	14
Marci L Adkins-Franklin	FSSII	Frankfort, KY	51,467.28	16
Shannon L Phelps	FSSII	Frankfort, KY	50,233.68	14
Alison L Tunstill	FSSII	Frankfort, KY	50,233.68	11
Bridget C Holbrook	FSSII	Frankfort, KY	50,233.68	11
Elwood D McCann	FSSII	Frankfort, KY	48,076.32	9
Brittany A Ross	FSSII	Frankfort, KY	48,076.32	9
John R Clemens	FSSII	Frankfort, KY	46,907.28	8
Amy K Smith	FSSII	Frankfort, KY	52,058.16	3 KSP, <7 total

It is believed that the salary Amy Smith was reinstated at is in violation of Regulation 101 KAR 2:034(2)(2)(a) which states that the reinstated employee's salary shall be set "up to the same salary as that paid at the time of separation." Regulation 101 KAR 2:034(1)(2) also states that the incumbent employee(s) salary shall be adjusted if that employee is in the same class, work county, and has a similar combination of education and experience. Additionally the job description for FSSII states that "Master's degree in chemistry, forensic science, biology, microbiology, biochemistry, medical technology, engineering, mathematics or a closely related field will substitute for one year of experience."

On March 25, 2015, a meeting was conducted to include individuals from the Forensic Biology Casework section, the biology casework supervisor and the lab director. The section employees were told that the intention was to reinstate Amy Smith at the salary she would be earning if she had never left. This logic was in error because it did not take into account the fact that she was unemployed for 2.5 years in the interim. The section employees were also told that Amy Smith's disproportionate salary was an inadvertent mistake but that it can be justified by her advanced degree and her experience using robotic equipment for the examination of DNA.

However, historically no additional monetary value has been offered to any other individuals holding a Masters degree. Rather, as indicated above, this degree is written into the FSSII job specification as substituting for one year of experience. There are

Recommended Order
Attachment A

numerous people in the lab system with Masters who have received no additional compensation outside of the re classification system. In fact, Amy Smith was offered no additional compensation for said degree when she was initially hired by KSP.

As for the argument concerning her robotic DNA experience, the technology in this field is constantly changing. In the past decade we have seen numerous equipment and chemistry (DNA kit) changes. Currently all biology casework FSSII's are qualified in robotic examination of DNA, and all (including Amy Smith) went through the same training to become qualified.

WHAT SPECIFIC SOLUTION DO YOU RECOMMEND TO RESOLVE YOUR GRIEVANCE?

Since it is written into the FSSII job classification that a Master's degree will substitute for one year of experience, Amy Smith has comparable education and experience to the lowest paid FSSII in Franklin Co. The difference in salary is \$5150.88. In light of the fact that salaries have remained stagnant for years and increments have not kept up with the rate of inflation, I respectfully request that the agency give this matter serious consideration. I ask that my annual salary be increased by \$5150.88, or that a percent increase that is both fair and equitable be calculated and applied to my salary to account for my years of experience in the field.

In accordance with 101 KAR 1:375, Section 3, I choose to file this grievance with my second line supervisor.

Bethany L. Orr
Employee's Signature

4/15/15
Date

FIRST LEVEL REVIEW- FINDINGS AND DECISION OF SUPERVISOR: (Must be completed within ten (10) work days of receipt of grievance.)

SEE ATTACHED PAGE. —

M. MAYES
Supervisor's Printed Name

M. Mayes
Supervisor's signature

04/21/15
Date

Employee chooses to: Accept this decision
 Appeal this decision to the next level. (Must be requested within five (5) work days of receipt of supervisor's decision.)

Bethany L. Orr
Employee's Signature

4/27/15
Date

SECOND LEVEL REVIEW- FINDINGS AND DECISION (Must be completed within five (5) days):

I concur with Lt. MAYES

EL JOHNSON
Printed Name

MAJOR
Printed Title

Major El Johnson
Signature

4-28-15
Date

Employee Accept this decision

chooses to: Appeal this decision to the next level (Must be filed within five (5) days)

Buttam
Employee's Signature

4/29/15
Date

THIRD LEVEL REVIEW- FINDINGS AND DECISION (Must be completed within five (5) days): REC - 5/4/15 MSG MAIL

I CONCUR WITH LT. MAYES.

LTC. BRAD ZATES
Printed Name

DIV. DIR.
Printed Title

LTC. BRAD ZATES
Signature

5/4/15
Date

Employee chooses to: Accept this decision
 Appeal this decision to the next level (Must be filed within five (5) days)

Buttam
Employee's Signature

5/05/15
Date

FINAL SUPERVISORY REVIEW- FINDINGS AND DECISION (Must be completed within five (5) days):

CONCUR w/ LT. MAYES. SEE ATTACHED LETTER

RODNEY BREWER
Printed Name

COMMISSIONER
Printed Title

Rodney Brewer
Signature

5-11-15
Date

Employee chooses to: Concur with this decision
 Appeal this decision to the appointing authority for final determination. (Must be filed within five (5) work days of final line supervisor's response.)

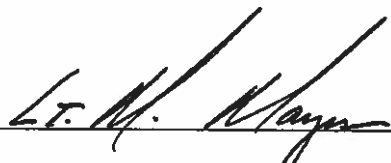
Employee's Signature

Date

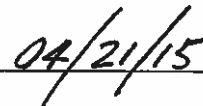
IF YOUR GRIEVANCE IS NOT APPEALABLE TO THE PERSONNEL BOARD UNDER THE PROVISIONS OF KRS 18A.095, THE DETERMINATION OF YOUR AGENCY'S APPOINTING AUTHORITY IS FINAL.

Brittany A. Ross

I have read your grievance and solution to resolve your grievance. I reviewed 101 KAR 2:034, specifically Sections 1 and 2 and find that Ms. Amy Smith was reinstated as a Forensic Biologist II in accordance of both sections. Because she was reinstated in accordance to 101 KAR 2:034, I do not believe there should be any salary adjustments.



Lieutenant M. Mayes



Date



KENTUCKY STATE POLICE

Steven L. Beshear
Governor

919 Versailles Road
Frankfort, Kentucky 40601
www.kentuckystatepolice.org

J. Michael Brown
Secretary

Rodney Brewer
Commissioner

May 13, 2015

not recd until 5/21/15

Ms. Brittany A. Ross

Dear Ms. Ross:

I have received your grievance concerning the reinstatement of Ms. Amy Smith, claiming that the agency violated 101 KAR 2:034 Section 2 (2)(a) by not raising your salary at the time of her reinstatement. After reviewing the personnel action and the facts below, I have concluded that the regulation was not violated.

- Ms. Smith was reinstated on November 16, 2013, to the job classification of Forensic Biologist II, her former job classification.
- Ms. Smith's salary was set in accordance with 101 KAR 2:034 Section (2)(a)(1): "In accordance with the standards used for making new appointments."
- Per 101 KAR 2:034 Section 1 (2)(a), other employee's salaries could not be adjusted because no other employee was classified as a Forensic Biologist II. *(All three criteria of 101 KAR 2:034 Section 1 (2)(a) must be met in order to establish the regulatory authority to adjust salaries).*

Thank you for your service to the agency, especially during these challenging budgetary times. As stated on the grievance form, you may file an appeal with the Personnel Board if you so choose.

Sincerely,

Commissioner Rodney Brewer

cc: Major Eddie Johnson, Forensic Laboratory Troop
Amanda Cloyd, HR Branch Manager

Recommended Order
Attachment B