

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NOS. 2016-299 and 2017-127

CARRIE SEARCY

APPELLANT

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

ENERGY AND ENVIRONMENT CABINET

APPELLEE

*** **

The Board, at its regular March 2018 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 7, 2018, 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 Appellant's 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 14th day of March, 2018.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Leesa B. Moorman
Ms. Carrie Searcy
Mr. David Dooley

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

ENERGY AND ENVIRONMENT CABINET

APPELLEE

** ** * * * **

This matter came on for an evidentiary hearing on November 13, 2017, at 9:30 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Roland P. Merkel, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Carrie Searcy, was present *pro se*. The Appellee, Energy and Environment Cabinet, was present and represented by the Hon. Leesa Moorman. Appearing as Agency representative was Mr. John Mura.

The issues were: (1) the reclassification of the Appellant from Graphic Designer Coordinator, Grade 14, to Information Officer III, Grade 13, with no reduction in salary, effective December 1, 2016. The burden of proof was on the Appellee to establish by a preponderance of the evidence the propriety of this reclassification; (2) whether Appellant should be classified as an Executive Staff Advisor, Grade 16. The burden of proof was on the Appellant to establish by a preponderance of the evidence that this is her appropriate classification; and (3) Appellant's claims of harassment and bullying. The burden of proof was on the Appellant to support this claim by a preponderance of the evidence.

The parties waived presentation of opening statements. The rule separating witnesses was invoked and employed throughout the course of the hearing.

BACKGROUND

1. The first witness for the Appellee was **Amanda Cook**. For the past four years, Ms. Cook has been employed by the Energy and Environment Cabinet (EEC), Department for Energy Development and Independence (DEDI), as a Staff Assistant. She has been employed in the Department for the past 13 years. She serves as the Human Resource liaison for DEDI and handles all Department Human Resource functions, including reclassification, timesheets, disciplinary actions, and new hires.

2. John Mura is the Executive Advisor of the Communications Office, which office has been located in DEDI since early 2016. Previously, the Communications Office was in the Public Protection Cabinet (PPC). Appellant Carrie Searcy had been a PPC employee, but is currently an employee of EEC.

3. She identified Appellee's Exhibit 1 as the Personnel Action Notification (PAN) of July 16, 2015, which evidences Appellant's hiring to the position of Graphic Design Coordinator, Grade 14, in PPC. Her salary was \$3,025.32 per month, which was a hiring up to the midpoint of that grade. She identified Appellee's Exhibit 2 as the PAN of February 1, 2016, which evidences Appellant having completed a six-month probationary period and receiving a five percent salary increase to \$3,176.60 per month.

4. On March 16, 2016, Appellant was transferred to EEC. Thereafter, Ms. Cook became aware that Appellant had not been performing the duties described of a Graphic Designer Coordinator. John Mura spoke with her about Appellant's job duties. Mura felt the Appellant was not performing the job duties described on the Job Class Specifications and Position Description for the Graphic Designer Coordinator. He related to Cook the job duties Appellant performed. Cook had numerous conversations with Mura and gave closer scrutiny to the facts.

5. Ms. Cook thereafter examined the Personnel Cabinet website and the different class specifications listed therein, including that of a Graphic Designer Coordinator, to determine what classification was closest to the duties performed by Appellant. She found the Information Officer series: I, II, and Supervisor. Based on what Mr. Mura had told her about Appellant's duties, Ms. Cook recommended Appellant be reclassified to an Information Officer.

6. She identified Appellee's Exhibit 3 as the PAN dated March 16, 2016, evidencing Appellant's transfer to DEDI at EEC. She identified Appellee's Exhibit 4 as the Position Description for Appellant's position of Graphic Designer Coordinator, effective March 15, 2016. The statement of duties are: "Coordinates the production of Cabinet magazine, Land, Air & Water. Coordinates and oversees the work of others in the creation of graphics materials and the Cabinet web site." She also read the tasks listed on this Position Description.

7. She identified Appellee's Exhibit 5 as the Job Class Specification for Graphic Designer Coordinator, established January 16, 2006. She testified the matters stated in this document were consistent with the Position Description that applied to Appellant while she was employed at Grade 14 with the PPC.

8. She identified Appellee's Exhibit 6 as the Job Class Specification for Information Officer III, Grade 13. The characteristics of the job were: "Coordinates the work of employees and performs professional journalistic functions in the development, implementation and distribution of informational programs and materials to the public; and performs other duties as required." A Graphic Designer Coordinator is more involved in performing the graphic design piece, while the Information Officer performs journalistic functions in the development,

implementation and distribution of informational programs. Based on the job duties description provided by Mr. Mura, Appellant's work duties were more in line with an Information Officer than a Graphic Designer Coordinator.

9. Ms. Cook sent an email to Lynn Gillis of General Administration and Program Support (GAPS), informing she believed Appellant was performing the duties of a class specification other than her current classification of Graphic Designer Coordinator. She provided Ms. Gillis the information she had and recommended reclassification to an Information Officer III.

10. Subsequently, Ms. Cook was requested to put together the Personnel Action Request Form and draft an updated Position Description to accompany the request. She did so and submitted these documents. She had no further involvement in the process.

11. She identified Appellee's Exhibit 7 as the Personnel Action Request she put together for Appellant's reclassification to Information Officer III, at a salary of \$3,176.60 per month. There was no change in Appellant's salary from her position as Graphic Designer Coordinator, although her pay grade would be Grade 13. Cook filled in the printed tasks shown on page 4 of the document. She believes Appellant may have handwritten the additional information in Task 3, which she then signed at the bottom of the page on November 17, 2016. Ms. Cook recalled that a discussion was held about these tasks in a meeting with Appellant and Mr. Mura.

12. Ms. Cook helped prepare a new Position Description for the Information Officer III reclassification, which became effective December 1, 2016 (Appellee's Exhibit 8). The general duties of the position were: "Coordinates the work of employees and performs professional journalistic functions in the development, implementation and distribution of informational programs and materials to the public."

13. The parties stipulated that John Mura began his employment as Executive Advisor on March 1, 2016.

14. John Mura had conducted a 2016 Annual Employee Performance Evaluation of the Appellant in January 2017. That evaluation had been conducted erroneously and was removed from Appellant's personnel file. Appellant did not have status in that Cabinet as of January 1, 2016, and, therefore, could not be evaluated by the Cabinet. There was no adverse effect on Appellant's employment. Performance of the evaluation had been a Human Resource error.

15. Ms. Cook was present at the January 30, 2017 Annual Employee Performance Evaluation meeting. She recalled Appellant had argued and used profanity during the meeting. Mr. Mura did not use abusive language. He tried to calm her down. Appellant said Mura had "little man syndrome" and had raised her voice throughout.

16. Cook agreed Appellant had “a material change of duties” from the job she performed as Graphic Designer Coordinator to the duties she performed when she was reclassified to an Information Officer III.

17. She identified Joint Exhibit 1 as the Annual Employee Performance Evaluation for 2017 pertaining to Appellant’s position with DEDI as an Information Officer III. Attached to this document is the Mid-Year Interim Review Meeting Documentation for Appellant for the period of January 1 through June 30, 2017. From the Interim Evaluation, Ms. Cook opined a future Annual Employee Performance Evaluation might show warranted scores of one or two on matters pertaining to the sending of weekly memos due each Friday. That duty is a job expectation which, at the time of the Interim Evaluation, Appellant had stopped performing. Furthermore, it recorded that Appellant had made zero posts in recent months.

18. Cook testified Appellant’s current duties did not fit those of an Executive Staff Advisor. She identified Joint Exhibit 2 as the Job Class Specification for Executive Staff Advisor. Based on what Mr. Mura told her, Cook did not examine this particular classification or its duties when she made her reclassification recommendation. Examining the document currently, she opined these duties do not fit Appellant’s duties or have duties that are close to what it is Appellant does as an Information Officer III. Appellant had been performing journalistic and informational services. Although some duties may overlap a number of job class specifications, the duties most closely resembling what Appellant did were those in the Job Class Specification for Information Officer III. Appellant could not have qualified for the Executive Staff Assistant, as she did not report to nor work for a department head, cabinet head, or executive director.

19. The next witness was **Sherry Butler**. Since November 1, 2017, Ms. Butler has been employed by the Kentucky Labor Cabinet as Deputy Executive Director. Previously, and since October 2014, she was employed as a Staff Assistant with GAPS. GAPS provides personnel services to EEC and maintained Appellant’s personnel file. In late fall 2016, Amanda Cook contacted GAPS with a classification concern pertaining to Appellant.

20. Ms. Butler was present at a meeting on October 5, 2016, between EEC and GAPS management. They discussed Ms. Cook’s contact with GAPS pertaining to Appellant’s classification issue. Ms. Searcy had come to EEC from PPC, and there was a concern whether she was properly classified as a Graphic Designer Coordinator, as opposed to an Information Officer III. Ms. Lynn Gillis, who was the Human Resource Director for GAPS and a designated Appointing Authority for EEC, was in charge of examining that issue.

21. She identified Appellee’s Exhibit 9 as the November 17, 2016 letter from designated Appointing Authority Lynn Keeling Gillis to the Appellant, notifying Ms. Searcy that effective December 1, 2016, she would be reclassified to the position of Information Officer III, Grade 13, with no reduction in salary.

22. After Ms. Gillis left her position, Ms. Butler assisted the Director with some personnel matters. A desk audit of Appellant's position was conducted, pursuant to an Interim Order of the Kentucky Personnel Board in the current appeal, and by agreement of the parties. Ms. Butler was asked to be the point of contact following conclusion of the desk audit.

23. Ms. Butler received a copy of the desk audit, and thereafter worked with Amanda Cook to facilitate the recommended changes. She identified Appellee's Exhibit 10 as the Desk Audit of March 2017. The Personnel Cabinet had determined Appellant's classification as Information Officer III was appropriate. It recommended a change to one of the job tasks (Task 4) to include a "learns to" or "with guidance" capacity. Ms. Searcy and Mr. Mura also agreed to change the percentage of time devoted to one of the job duties. All these changes were made in an updated Position Description (Appellee's Exhibit 11). That Position Description shows the percentage changes made to Tasks 2 and 3, with substantive word edits within Task 4.

24. On approximately January 10, 2017, Tiffany Yeast and Ms. Butler met with Appellant to place her on Agency-Directed Sick Leave. This leave was based on comments Appellant had made regarding a threat to "hurt herself" and "jump out a window." They discussed Appellant's comments. Appellant explained that at that time she had several ongoing issues in her life, both at work and at home, and she was frustrated with her supervisor, Mr. Mura. She was in a major custody battle for her child; she had, herself, been dealing with her own mental health and physical issues. Following the meeting, Ms. Butler escorted Ms. Searcy out of the building. Appellant provided a completed Fitness for Duty Form on January 11, 2017, and returned to work on January 12, 2017. She had been given her Annual Employee Performance Evaluation (erroneously generated) on January 23, 2017, after she had returned from Agency-Directed Sick Leave.

25. At some point, Appellant contacted Ms. Butler with questions about the evaluation process. From that inquiry, it was determined Appellant was not eligible to have undergone an Annual Employee Performance Evaluation. Notice of this went to her supervisor and to Amanda Cook; that the evaluation needed to be pulled and sent to Ms. Butler, so it would not become a part of Appellant's personnel records. Until that time, there had been no action taken to process any disciplinary action in regard to the evaluation.

26. As Appellant is currently a Grade 13, but had retained the salary she had received in her previous position at Grade 14, the only way she can receive an increase in pay is if she is employed in a position at Grade 15 or above.

27. For the past six years, **Jamie Caldwell** has been employed by the Personnel Cabinet's Classification and Compensation Branch, and became its Personnel Program Manager in February 2017. Between 2013 and February 2017, she was a Personnel Program Consultant. She currently prepares desk audits as part of her duties. A desk audit request may be made by an agency's central Human Resource Office or by the Kentucky Personnel Board. A desk audit was requested by the Personnel Board for Ms. Searcy's position.

28. In the audit process, separate, individual interviews are conducted with the affected employee and that employee's immediate supervisor. The interviews assist in obtaining information on an employee's position responsibilities. The employee's Position Description and current year's Performance Plan are reviewed. She reviewed Appellant's Position Description (Appellee's Exhibit 8) and Job Class Specification for an Information Officer III. In late March 2017, she interviewed Appellant, and then separately interviewed John Mura. She thereafter prepared her written report (Appellee's Exhibit 10).

29. During the audit interviews, the witness was present along with two of her support staff, Becky Pittman and a trainee observer, Tiffany Brophy. They met with Ms. Searcy on March 21, 2017, and reviewed the Position Description with her. This same process was repeated subsequently during the interview of Mr. Mura. Ms. Searcy recommended additional information be added to the Statement of Duties: that program layout as "formatting" be added. Mr. Mura had agreed with the Statement of Duties and provided information on the 2016 move by the Agency to a webzine and Appellant's involvement in that process.

30. In a review of the percentage of time spent on certain tasks, as set out in the Position Description, Appellant and Mura agreed that Task 1 comprised of 40 percent of the time. Appellant believed Task 2 should be incorporated into Task 1 as part of 40 percent of her time, however, she recommended Task 2 be decreased to 20 percent. On Task 3, she agreed it comprised 10 percent, whereas Mura believed that should be increased to 15 percent. Appellant believed, with reference to Task 4, she did not write blogs or press releases. Mura agreed with the task and the time involved as it was written. He elaborated that Appellant had not yet written either a blog or a press release, but he planned to assign these tasks to her as her writing skills improved. Appellant believed the percentage of time in Task 5 should be increased to 40 percent, as she developed graphic content on a weekly basis and performed this task as often as she did Task 1. Mr. Mura agreed with the 10 percent time and agreed with the description of the task. He stated Appellant was not spending 40 percent of her time on this item. Both parties agreed Appellant devoted five percent of her time to "other duties," as described in Task 6.

31. Ms. Searcy requested she be reclassified to Executive Staff Advisor, Grade 16. Mr. Mura disagreed and explained that although some of the duties of the positions overlap, the duties described for an Information Officer III are more appropriate to what Ms. Searcy actually did.

32. Ms. Caldwell testified they did a lot of independent research in an attempt to ~~determine what constituted graphic design.~~ She determined the ~~2017 Annual Employee Performance Plan for Information Officer III~~ was consistent with the Position Description. She also considered the additional examples of work the Appellant had provided to her. She concluded Appellant had been properly reclassified as an Information Officer III, as her duties were very journalistic in nature. Although there were some graphic design-related duties, such did not constitute the majority of the duties Appellant performed. In this process, the witness had not considered the duties of an Executive Staff Advisor. There were no technical management duties or direct administrative support to any of the individuals specified in the

Position Description for Executive Staff Advisor. Mr. Mura, as Executive Advisor, did not hold one of the positions identified in the Position Description for Executive Staff Advisor. He merely had a "working title" as a Director, which is not his official job title.

33. The Desk Audit Report recommended some amendments be made to the Position Description and Appellant's Performance Plan.

34. The next witness was **John Mura**. Since March 1, 2016, Mr. Mura has been employed as an Executive Staff Advisor attached to DEDI. Prior to that time, he had been employed in the private sector for two newspapers and had been a professional journalist for 36 years. He spent 10 of those years as a reporter and 26 years as an editor. He had been an editor at two newspapers, including the Louisville Courier-Journal, where he served as Assistant Managing Editor of News. For a period of seven years, he had been the number three person at that paper, and oversaw Section Editors and the work of 80 reporters. During the last seven years there, he had oversight of website development and placement of content, as well as having worked with photographic and video content.

35. As an editor, he supervised employees and coordinated their work. He worked closely with graphic designers on photography and graphic content. He also oversaw digital content when employed by the Courier-Journal.

36. He edited two projects that were Pulitzer Prize finalists (where the winner is determined from one of three finalists); he also won a Polk Award.

37. As Executive Advisor, he oversees all the internal and external communication for the Cabinet, as well as all communications with the media. He supervises work on the webzine and works with every division of the Cabinet, including DEDI. He does not receive job assignments from any superior. He is expected to perform his job duties as described. Occasionally he is asked to assist the Secretary, as well as various commissioners to review proposed external communications. He coordinates all media outreach of the Governor's office.

38. In his position, he supervises one employee, Carrie Searcy. She began working for Mura in the spring of 2016. Mr. Mura has received state supervisory training, as well as performance evaluation training.

39. He gradually became aware of what Ms. Searcy did when she worked for PPC. ~~When she began to work for Mura, he was required to fill out a Position Description. When he did so, he was told by Amanda Cook that the duties described therein did not match Appellant's job title. Cook advised that they needed to write a new Position Description and she would determine if the Appellant was properly classified.~~

40. He had many conversations with the Appellant about her business and personnel matters. He was sympathetic to her needs to make more money. He was hopeful the reclassification would accomplish that.

41. Cook advised Mura that Appellant's duties closely matched that of an Information Officer III, but that it was one pay grade lower than her current position. The reclassification would not result in a decrease in her pay. Mura told Cook that Appellant would be furious because she was expecting a raise from this situation. He asked Cook to review the matter again to see if anything else was possible. After Cook conferred with Lynn Gillis, she advised Mura that Ms. Gillis had certified that the Information Officer III classification was correct and nothing else could be done.

42. Shortly after Mura began his employment, Amanda Cook told him that he needed to start evaluating the Appellant. At the First Interim Review, he had not yet been certified to perform evaluations. The Secretary of the Cabinet sat in on that session and the evaluation was completed.

43. He performed the 2016 Annual Employee Performance Evaluation with Appellant and Ms. Cook present. About one week thereafter, he was told GAPS had made an error and Appellant was not eligible for that review. He then so advised the Appellant.

44. He participated in the desk audit of Appellant's position. As a result, the Position Description was amended and, currently, accurately describes her duties. He prepared a Performance Plan corresponding to the amended Position Description.

45. He met with Appellant in mid-2017 to review her interim performance for the period of January through June 2017. She met expectations for some of her job duties, and had not met expectations for other duties.

46. Mura testified he has never yelled at Appellant or ordered her to walk with him while giving her assignments. He had invited her to walk with him while they discussed assignments. Appellant had requested her office be moved so she could be away from the witness. He did not object to that request. He has never denied Appellant's requests for time off. He had no objection to Appellant's request for a flexible work schedule, or that she not be required to sign in and out at work. She agreed to send emails to signify when she reported to and signed off from work.

47. Appellant has used abusive language during meetings with Mura. On one occasion she shouted from outside his office, in full hearing of others, during a disagreement. She yelled that she was so tired of him "screwing with her."

48. When he delivered the 2016 Annual Employee Performance Evaluation to her, (which evaluation was later disallowed), she was "extremely abusive," having stated, "Are you kidding me?"... "You are trying to break me, but when you are gone, I will still be here"... "I built a fucking website, but I gave myself a bad review"... "This is why I can't stand you, you have 'little man' syndrome"... "You have made this a hostile work environment"... "I make \$33,000 to put up with this shit." Mura asked her to lower her voice and to just talk. Appellant was not receptive to that request.

A disciplinary action had been drafted, based on insubordination from this meeting. Mura thereafter decided not to issue it. He was sympathetic to her situation and her desire to make more money. He did not want to place a negative mark on her personnel record. Appellant made it very clear she was looking for work both inside and outside state government.

49. The parties stipulated John Mura's working title was "Director of Communications." The Cabinet then rested its case.

50. The first witness for the Appellant was the Appellant, Carrie Searcy. Since mid-December 2016, Ms. Searcy has been employed by EEC as an Information Officer III. In July 2015, she had been hired as a Graphic Designer Coordinator to produce the Land, Air & Water magazine. At the time of her hire, she worked for both PPC and EEC. She had been hired to edit and not to write.

51. Along with her position as Graphic Designer Coordinator, there was another employee who was an Information Officer. Because that other employee had more seniority, she could choose where she wanted to go. The other employee chose PPC, which left Appellant to work for EEC. As part of her work for EEC, she coordinated the production of the Land, Air & Water magazine (Appellant's Exhibit 1), which later became a webzine. She also had duties pertaining to Sharepoint web pages, all internet pages for the Cabinet, and the WordPress site for the webzine.

52. When Mura first became her supervisor, she was excited about that, although she did not like him. He had "a ton of experience." "It has been an absolute nightmare for me." Her first task was to create the website. She figured out how to do it. At one point, she had problems and approached Mr. Mura for help. At times he would say that if he were still at the Courier-Journal, all he had to say was "Just do it."

53. Appellant testified her job always changes and it never seems to stay the same. She has no one who wants to submit articles for the webzine, as their submissions are heavily edited. She now does most of the writing, even though she was not hired to write. She admits she has the training to write. "But if you treat me like crap, I am going to stand up for myself..." "That is exactly how I have been treated." She stated Mura also treated her as his own secretary. She took her complaint to Secretary Snavely, but the Secretary had no response.

54. It was not about money. She just felt she had been "screwed over." She has ~~looked for other jobs. Sherry Butler and Tiffany Yeast told her she just needed to find a new job.~~ "I do not want to be there." She states she has suffered tremendously from depression.

55. She believes she should be classified as an Executive Staff Advisor because, in title, Mr. Mura is the Director of Communications and she takes care of all the Cabinet communications.

56. When Appellee's counsel presented her at the hearing with a copy of the disallowed 2016 Annual Employee Performance Evaluation, Appellant acknowledged that the overall score at that point was in the "Needs Improvement" category.

57. There were no further witnesses for the Appellant and she closed her case. Appellee did not offer any rebuttal testimony. The parties waived closing arguments.

FINDINGS OF FACT

1. Appellant, Carrie Searcy, is a classified employee with status. She was hired to the position of Graphic Designer Coordinator in the Office of Communications and Public Outreach, in the Public Protection Cabinet (PPC), at pay grade 14, effective July 16, 2015 (Appellee's Exhibit 1). She successfully completed a six-month probationary period and received a five (5) percent salary increase to \$3,176.60 per month, effective February 1, 2016 (Appellee's Exhibit 2).

2. On March 16, 2016, Appellant was transferred in her same position to the Energy and Environment Cabinet (EEC), Department for Energy Development and Independence (DEDI), under the supervision of Executive Staff Advisor, John Mura (Appellee's Exhibit 3). Part of her duties included production of the Land, Air & Water magazine (Appellant's Exhibit 1), which later was converted to a webzine.

3. Once Appellant transferred, Mura was required to complete her Position Description. The document was reviewed by Amanda Cook, Staff Assistant for DEDI. It is unclear who first determined Appellant's job duties did not match her job title. Nevertheless, Mura was directed to write a new Position Description, which he did, and which was submitted to Cook for her review and consideration.

4. Ms. Cook examined a number of resources and, based on information provided to her by Mura, recommended Appellant be reclassified to an Information Officer. She so advised Lynn Keeling Gillis, designated Appointing Authority and Human Resource Director for the General Administration and Program Support (GAPS).

5. Cook drafted and provided a Personnel Action Request to reclassify Appellant to the position of Information Officer III (a lower pay grade), with no reduction in salary (Appellee's Exhibit 7).

6. On November 17, 2016, Lynn Keeling Gillis, as designated Appointing Authority, notified Appellant by letter that, effective December 1, 2016, she would be reclassified to Information Officer III, pay grade 13, with no reduction in salary (Appellee's Exhibit 9).

7. Appellant timely filed her original appeal (Appeal No. 2016-299) and, thereafter, timely amended her appeal (Appeal No. 2017-127). The two appeals were consolidated.

8. The Kentucky Personnel Board ordered the Kentucky Personnel Cabinet to conduct a position audit (“desk audit”) of Appellant’s employment position. That desk audit was conducted by Jamie Caldwell who, in May 2017, was the Department of Human Resource Administration’s Classification and Compensation Manager.

9. Ms. Caldwell separately interviewed Appellant and John Mura (as employee and immediate supervisor) about the duties performed by Ms. Searcy and the percentage of time devoted to such tasks. She reviewed Appellant’s Position Description (Appellee’s Exhibit 8) and current year’s Performance Plan, as well as the Job Class Specification for Information Officer III.

In her report (Appellee’s Exhibit 10), Caldwell concluded Appellant was properly classified as an Information Officer III, and recommended some changes be made to the Position Description and Appellant’s Performance Plan.

10. Caldwell testified that while the duties of some positions may overlap two or more Position Descriptions, the Appellant’s job duties were very journalistic in nature and were closer to the duties of an Information Officer III. At the hearing, when she was asked whether Appellant’s duties might more closely match the duties of an Executive Staff Advisor, she responded they did not. She opined Appellant had no technical management duties, nor did she provide direct administrative support to any of the specified positions identified in the Position Description of the Executive Staff Advisor. Furthermore, although John Mura’s “working title” was Director, his official job title was Executive Staff Advisor.

11. The preponderance of evidence shows Appellant was properly classified as an Information Officer III, pay grade 13, with no reduction in salary.

12. The preponderance of evidence does not show that Appellant should have been reclassified to Executive Staff Advisor, pay grade 16.

13. In support of her allegations of harassment and bullying, Ms. Searcy offered her own testimony as sole witness. She testified that when she asked for John Mura’s help, he would often tell her to “just do it,” a phrase he had uttered when he supervised staff at the Louisville Courier-Journal. She stated her job duties were always changing; that she could not, under her own required duties, secure articles from others for the magazine as those contributors had complained their submissions were heavily edited. She stated she now has to write most of the articles herself. ~~However, one of the last produced editions of the Land, Air & Water magazine~~ hardcopy (Volume 27 No. 3 – Summer 2016, Appellant’s Exhibit 1), shows that of the 11 articles published therein, none were written by Appellant.

Ms. Searcy also testified the 2016 Annual Employee Performance Evaluation showed the bias Mr. Mura held against her. However, the evidence demonstrated that Human Resource staff had erroneously directed the Cabinet to conduct such evaluation. The evaluation was withdrawn,

was not made a part of Appellant's personnel record, and had no adverse effect on her employment.

14. The preponderance of evidence does not show Appellant to have been subject to harassment or bullying.

CONCLUSIONS OF LAW

1. The first two issues presented on appeal were: (A) whether the reclassification of the Appellant from Graphic Designer Coordinator, Grade 14, to Information Officer III, Grade 13, with no reduction in salary, was proper; and (B) whether Appellant should have been reclassified to the position of Executive Staff Advisor, Grade 16.

2. "Class" means a group of positions sufficiently similar as to duties performed, scope of discretion and responsibility, minimum requirements of training, experience, or skill, and such other characteristics that the same title, the same tests of fitness and the same schedule of compensation have been or may be applied to each position in the group. KRS 18A.005(6).

3. A "reclassification" means a change in the classification of an employee when a material and permanent change in the duties or responsibilities of that employee occurs. KRS 18A.005(29).

4. "If the duties and responsibilities assigned to a position are to be changed in a material and permanent way, the supervisor making the recommendation shall timely submit to the appointing authority for the agency a position description, stating the duties and responsibilities to be assigned. If the appointing authority approves the material and permanent assignment of the duties and responsibilities, the new position description shall be forwarded to the Secretary with the appointing authority's recommendation for reclassification." 101 KAR 2:020, Section 1(6).

5. When Mr. Mura became Ms. Searcy's supervisor, he was required to complete her Position Description. He completed the Position Description, which was reviewed by Amanda Cook, Staff Assistant for DEDI. After examining same, Ms. Cook determined that the duties performed by the Appellant, as described by Mr. Mura, did not match Appellant's then-current classification as a Graphic Designer Coordinator. The evidence has shown that Ms. Cook took the proper steps to re-evaluate Appellant's position, properly determined Appellant's ~~current job duties constituted a material and permanent change in her duties and responsibilities,~~ and processed properly the reclassification to Information Officer III. This was supported by the desk audit performed by Jamie Caldwell, who examined all the pertinent documentation and interviewed both Ms. Searcy and Mr. Mura. Furthermore, the evidence did not support Appellant's assertion that she was entitled to be reclassified to the position of Executive Staff Advisor, pay grade 16.

6. Appellee has met the burden of proving, by a preponderance of the evidence, that Appellant was properly reclassified to the position of Information Officer III, Grade 13, with no reduction in salary.

7. Appellant failed to prove by a preponderance of the evidence that she was entitled to be reclassified to the position of Executive Staff Advisor, Grade 16.

8. The final issue was Appellant's allegation that she had been harassed and bullied on the job.

9. A classified employee with status shall not be dismissed, demoted, suspended or otherwise penalized except for cause. KRS 18A.095(2). As defined by the Kentucky Revised Statute, a "penalization" includes: "...any action that diminishes the level, rank, discretion, or responsibility of an employee without proper cause..." KRS 18A.005(22).

10. A "penalization" includes, but is not limited to, a demotion, dismissal, suspension, fines and other disciplinary actions,...; any action that diminishes the level, rank, discretion, or responsibility of an employee without proper cause...; and the abridgement or denial of other rights granted to other state employees. KRS 18A.005(24).

11. The sole evidence pertaining to the allegation of harassment and bullying would have been through the testimony of the Appellant herself. She testified: there were times when she requested Mr. Mura's help, but was told to do it on her own; that she experienced frustration at not being able to enlist the help of others to write articles for the webzine, particularly as those articles are "heavily edited". It was implied that the editing was done by Mr. Mura; that Mura treated her as his own secretary; that the disallowed 2016 Annual Employee Performance Evaluation, scored by Mr. Mura, gave her an overall score in the "Needs Improvement" category.

12. The 2016 Annual Employee Performance Evaluation was erroneously conducted at the direction of Human Resources, and was nullified. The evidence has shown that such evaluation had no effect on Appellant's employment, as it was nullified and not to be made a part of her personnel file. The remainder of the testimony of the Appellant, cited above, falls short of establishing a preponderance of evidence in support of Appellant's allegation. Appellant has failed to prove by a preponderance of the evidence that she was subject to harassment and/or bullying.

RECOMMENDED ORDER

The Hearing Officer recommends to the Kentucky Personnel Board that the appeals of **CARRIE SEARCY V. ENERGY AND ENVIRONMENT CABINET (APPEAL NOs. 2016-299 and 2017-127)** 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 Roland P. Merkel** this 17th day of February, 2018.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Leesa Moorman
Ms. Carrie Searcy