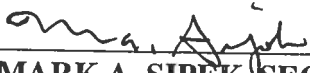


CERTIFICATION OF PERSONNEL BOARD RECORDS

I certify that attached hereto is a true and correct copy of the Findings of Fact, Conclusions of Law and Recommended Order and Final Order in the case of **DENISE STURGIS V. CABINET FOR HEALTH AND FAMILY SERVICES AND PERSONNEL CABINET (APPEAL NO. 2019-152)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 14th day of December, 2022.



MARK A. SIPEK, SECRETARY
KENTUCKY PERSONNEL BOARD

Copy to Secretary, Personnel Cabinet

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-152**

DENISE STURGIS

APPELLANT

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

VS.

**CABINET FOR HEALTH AND FAMILY SERVICES
and
PERSONNEL CABINET**

APPELLEES

* * * * *

The Board, at its regular December 2022 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 11, 2022, Appellee Personnel Cabinet's Exceptions and Request for Oral Argument, Appellee Cabinet for Health and Family Services' Exceptions and Request for Oral Argument, oral arguments, and being duly advised,

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

A. **Delete** Conclusions of Law 8 and 9 and substitute the following:

8. In determining the appropriate remedy in this appeal, the Board is swayed by the Appellee's Exceptions and Oral Arguments to the extent that the Board now deems that placement of the Appellant on the reemployment register may not be appropriate relief in this case.

9. KRS 18A.095(22)(d) reads as follows:

In all other cases, the board shall direct the appointing authority to rescind the action taken or otherwise grant specific relief or dismiss the appeal.

After additional review, the Board concludes this is an appropriate case for the Board to utilize its discretion to “grant specific relief,” as authorized by KRS 18A.095(22)(d). The Board concludes that the use of “specific relief” is appropriate in this case because of the unique set of circumstances underlying this appeal, including, but not limited to, the fact that:

1. The Appellant’s Internal Policy Analyst III job classification was abolished,
2. The Appellant was penalized by not receiving the notice of her reclassification as required by KRS Chapter 18A in a timely manner and,
3. The Appellant missed out on exploring other job opportunities as a direct result of the Agency’s lack of adequate notice.

Given these facts, the Board concludes that the appropriate remedy to make the Appellant whole for the Agency’s violation of her KRS Chapter 18A rights is for the Cabinet for Health and Family Services to pay the Appellant a one-time lump sum equivalent to one month’s pay, which would be **\$3,683.26** based on the Appellant’s rate of pay as of June 16, 2019, the date of the Appellant’s reclassification.

B. **Delete** the Recommended Order and substitute the following:

IT IS HEREBY ORDERED that the appeal of **DENISE STURGIS V. CABINET FOR HEALTH AND FAMILY SERVICES AND PERSONNEL CABINET (APPEAL NO. 2019-152)**, be **SUSTAINED**, and the Cabinet for Health and Family Services shall pay the Appellant a lump sum of **\$3,683.26**. KRS 18A.095(22)(d). Additionally, the Cabinet for Health and Family Services is ordered to reimburse the Appellant for any leave time she used to attend the evidentiary hearing, prehearing conferences, and oral arguments before the Board and to otherwise make the Appellant whole. KRS 18A.105, 18A.095(25), and 200 KAR 12:030.

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

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 December, 2022.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
SECRETARY

A copy hereof this day mailed to:

Hon. Kimberly Hawthorne
Hon. Catherine Stevens
Denise Sturgis
Hon. Rosemary Holbrook (Personnel Cabinet)
Jay Klein

COMMONWEALTH OF KENTUCKY
PERSONEL BOARD
APPEAL NO. 2019-152

DENISE STURGIS

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

and

PERSONNEL CABINET

APPELLEES

** ** * ** * ** * ** * **

This matter came on for an evidentiary hearing on January 13, 2022, at 9:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A. This hearing was conducted using Amazon Chime video conferencing.

The Appellant, Denise Sturgis, was present and was not represented by legal counsel. The Appellee Cabinet for Health and Family Services was present and was represented by the Hon. Kimberly Hawthorne. The Appellee Personnel Cabinet was present and was represented by the Hon. Catherine Stevens.

BACKGROUND

1. The Appellant filed her appeal with the Personnel Board on July 22, 2019, appealing her reclassification. The Appellant had been an Internal Policy Analyst III and was reclassified to an Administrative Specialist III. She stated that she received verbal notification of this reclassification on July 3, 2019. She stated that the effective date of the reclassification was June 16, 2019, and she never received written notice. The Appellant advised that she did not lose money in the reclassification but was reclassified to a lower graded position.

2. Effective October 1, 2019, the Appellant applied for and received a position as a Case Management Specialist I, which was a grade 13.¹

3. At the first pre-hearing conference on October 1, 2019, the Appellant and the Cabinet for Health and Family Services (CHFS) agreed to mediation. Shortly thereafter, the

¹This classification has since been changed to a Grade 14.

Personnel Cabinet filed a Petition for Intervention and requested to hold the mediation referral in abeyance. In the factual background portion of its motion, the Personnel Cabinet wrote as follows:

FACTUAL BACKGROUND

The Appellant, an employee of the Cabinet for Health and Family Services, was reclassified effective June 16, 2019 from Internal Policy Analyst III (Grade 15) to Administrative Specialist III (Grade 12), with no loss in pay. The Internal Policy Analyst series is set to be abolished. The Personnel Cabinet, in consultation with the agencies, is moving all employees with classifications in that series to other appropriate job classifications through either the reclassification process or reallocation process, depending on the specifics of each situation. Subsequent to her reclassification, on October 1, 2019, Appellant was promoted to Case Management Specialist I (Grade 13), with no pay increase. **In her Appeal Form, Appellant claims she did not receive written notice of her reclassification.** By Interim Order dated November 13, 2019, the Personnel Board referred this matter to be mediated through the Kentucky Employee Mediation Program. (emphasis added)

4. In its Petition to Intervene, the Personnel Cabinet stated that it is responsible for maintaining the classification and compensation plan for state government and it made the determination that the Appellant should be reclassified to an Administrative Specialist III.

5. The Personnel Cabinet's Petition for Intervention was granted on February 21, 2020, and it was added as a party to this appeal.

6. At a pre-hearing conference on February 13, 2020, the Hearing Officer summarized the discussion as follows:

Following significant discussion, the Appellees acknowledged that the Appellant had valid frustrations with the way the Appellant was notified about her reclassification, with Appellee Cabinet for Health and Family Services indicating that, going forward, it would be modifying its processes for informing an employee that they would be reclassified downward. Nonetheless, the Appellees maintain that the method by which they informed the Appellant of her reclassification and the method by which they subsequently processed that reclassification complied with all applicable statutes and regulations. Accordingly, the Appellees requested an opportunity to file a dispositive motion.

7. The Personnel Cabinet filed a Motion to Dismiss the appeal as moot. The Appellant's reclassification was the result of the Personnel Cabinet's abolishment of the Internal Policy Analyst series. As a result, the Appellant was reclassified from an Internal Policy III (Grade 15) to an Administrative Specialist III (Grade 12) with no loss of pay on June 16, 2019. On October 1, 2019, the Appellant was promoted from an Administrative Specialist III to a Case Management

Specialist I (Grade 13) with no increase in pay, pursuant to 101 KAR 2:034, Section 3(3)(b). In its motion, the Personnel Cabinet argued that the Appellant cannot go back to her Internal Policy Analyst III position because it has been abolished. They also pointed out that she did not lose any salary due to her reclassification. Lastly, they point out that the Appellant no longer occupies the Administrative Specialist III position as a result of her promotion. The Personnel Cabinet argued that the Board cannot offer her relief, that the Appellant is not entitled to a change in classification or salary grade, and that the Appellant is not due any back pay.

8. The Cabinet for Health and Family Services filed its own Motion to Dismiss as moot. In its motion, they argue that there was no relief that could be granted to the Appellant because, if she prevailed on her appeal, she would be sent back to her Administrative Specialist III position, which is a demotion from her current position. Also, CHFS argued that they only followed the direction of the Personnel Cabinet, and they acted appropriately in this matter.

9. In an Interim Order dated September 3, 2021, the Appellee's Motion to Dismiss and the Intervenor's Motion to Dismiss were denied. The Hearing Officer found that the appeal was not moot and that, although the elimination of the Internal Policy Analyst series and the Appellant's promotion might impact the remedy, it does not render the Appellant's appeal moot. A copy of the Interim Order of September 3, 2021, is attached to this Order and incorporated herein as **Recommended Order Attachment A**.

10. Thereafter, this matter was scheduled for an evidentiary hearing to be held on January 13, 2022. In an Order dated October 18, 2021, the Hearing Officer stated the tentative issue for the hearing as follows:

At this time, the Hearing Officer identifies a tentative issue as the Appellant's appeal from her reclassification. The Appellees shall have the burden of proof to establish just cause for the reclassification. The burden of proof shall be by a preponderance of the evidence. The Appellees shall proceed first in the presentation of proof. This issue and burden of proof is subject to change following the Hearing Officer reviewing briefs and responses from the parties.

11. Prior to the hearing, the Appellees filed a joint brief on issues and burden of proof. The Appellees stated that they have the burden of proof to establish that the Appellant's position was reclassified to the Administrative Specialist III job classification with just cause. They contended that the Appellant should have the burden of proof to establish that the job duties she was performing as an Internal Policy Analyst III justified reclassification to another specific job classification. They argued that the two (2) relevant statutes are KRS 18A.095(22)(b) and KRS 13B.090(7). Relying on the language in KRS 13B.090(7), the Appellees argued that the Personnel Cabinet "has the burden to show the propriety of a penalty imposed." In other words, they agreed that they should have the burden of proof to establish just cause for the reclassification of the Appellant. They contended that the Appellant should have the burden of proof to establish that she should have been reclassified to some other position, citing the language of the statute. The Appellees contended that the Appellant was the "party proposing that the agency take action" and,

thus, she had the burden to show entitlement to the benefit sought. The parties relied on the case of *Carrie Searcy v. Energy and Environment Cabinet*, 2018 WL 4037912 (KY PB Appeal Nos. 2016-299 and 2017-127). In *Searcy*, the Appellant was reclassified from a Graphic Designer Coordinator to an Information Officer III, and she argued she should have been reclassified as an Executive Staff Advisor. The burden of proof was placed on EEC to establish the propriety of the Information Officer III classification and the burden of proof to establish a particular entitlement to the Executive Staff Advisor classification was placed on the Appellant. The Appellees further argued that the language of KRS 18A.095(22)(b) referencing "reinstatement" does not fit as a remedy in this context. They pointed out that a reclassification did not remove the Appellant from her position as she remained in the same position. Her position just changed from an Internal Policy III to an Administrative Specialist III. They also pointed out that the Appellant voluntarily vacated this position when she took a promotion. The Appellees argued that it is the Appellant's burden to establish the appropriate classification for her position. They contended that, before the hearing, the Appellant should specify the exact job classification or classifications to which she intends to claim entitlement.

12. The Appellant sent an email providing a list of Grade 15 positions. She listed Citizen Assist Specialist, Resource Management Analyst III, Medicaid Specialist III, Policy and Budget Analyst II, Public Assistance Program Specialist, and Social Service Specialist.

13. At the start of the evidentiary hearing, the Hearing Officer announced that he agreed with the Appellees regarding the burden of proof. Thus, the Appellees would have the burden to establish just cause for the reclassification of the Appellant, and the Appellant would have the burden of proof to establish she was entitled to be reclassified to any particular position.

14. Following opening statements from the parties, it became clear that the Appellant was not going to introduce any evidence regarding entitlement to any particular classification. In fact, she did not dispute that her job duties changed and that she was doing the duties of an Administrative Specialist III after the reclassification. It was clear that the only dispute was whether or not the Appellant received proper notice of the reclassification.

15. Counsel for the Personnel Cabinet was taken aback that this was an issue at the evidentiary hearing. The Hearing Officer offered counsel for the Appellees time to discuss this matter off the record. The Hearing Officer also stated he would entertain a Motion to Continue the hearing, if the Appellees were so inclined.

16. After a short break, the Appellees announced they were ready to go back on the record. The Appellant affirmed that she still wanted to continue with the hearing. The Personnel Cabinet then called the Appellant as its first and only witness.

17. The Appellant, **Denise Sturgis**, testified that there was a significant change in her job duties when the child care contracts she had been working with were taken in-house. She was working on the Registered Child Care Provider Program. The Appellant described this as a "total reassignment." The Appellant stated it was nothing like the work she had been doing before.

18. The Appellant testified she was not disputing that the reclassification for the work she was doing was Administrative Specialist III.

19. Admitted into evidence as **Appellees' Exhibit 1** during the Appellant's testimony was the Personnel Action Notification (PAN) showing that she was reclassified to a lower grade on June 16, 2019, from an Internal Policy Analyst III, Grade 15, to an Administrative Specialist III, Grade 12. Appellant's salary remained the same. The Appellant testified that she was told verbally about her reclassification on or about July 3, 2019.

20. The Appellant testified that the first time she received anything in writing regarding her reclassification was ten (10) days to two (2) weeks after July 4, 2019, when she found the PAN on her chair. The Appellant's appeal form was admitted into evidence as **Appellees' Exhibit 2**. This form, which was signed on July 12, 2019, included the following statement as the action she was appealing:

Reclassified from an Internal Policy Analyst III to an Administrative Specialist III with verbal notification only on 7/3. The IPA III position had been held for almost 15 or 20 years. The Child Care Contract was brought in-house and the assignment given to me to oversee the Register Provider program/application process, as the only IPA III/staff responsible to take action on a case; to approve, to deny, and to withdraw an application. My assignments were redistributed to allow the 2 person team to accomplish what the contracted 5 member team had accomplished for many years. The other team member is an Admin Specialist III. No written notice.

21. The Appellant described the reclassification as a "retro." She stated this referred to the fact that she was told for the first time about her reclassification on July 3, 2019, however, it was effective on June 16, 2019. The Appellant stated she never received a letter telling her that she was going to be reclassified from an Internal Policy Analyst III, and that she had the right to file an appeal from this action.

22. The Appellant stated that, by not being given notice regarding this action, she did not have the opportunity to apply for other jobs and decide where she would want to work.

23. No additional evidence was introduced by any party.

FINDINGS OF FACT

1. At all times relevant to this appeal, the Appellant, **Denise Sturgis**, was a classified employee with status. On June 16, 2019, the Appellant was reclassified from an Internal Policy Analyst (IPA) III (Grade 15) to an Administrative Specialist III (Grade 12). The Appellant's pay remained the same. (Testimony of the Appellant and the Appellees' Exhibit 1).

2. The Appellant does not dispute that her duties were significantly changed as a result of the Children Assistance Program having been brought in-house. The Appellant agreed that her new duties were consistent with the Administrative Specialist III classification. (Testimony of the Appellant.)

3. The Appellant was verbally notified of her reclassification on July 3, 2019. (Testimony of the Appellant).

4. The Appellant received written notification of her reclassification when a Personnel Action Notification (PAN) was left on her office chair sometime between July 3, 2019, and July 12, 2019. (Testimony of the Appellant and the Appellee's Exhibit 1).

5. The Appellant never received a written notification explaining why she was being reclassified to a classification three (3) grades lower or that she had a right to appeal her reclassification to the Personnel Board. (Testimony of the Appellant).

6. It was not in dispute that around June 16, 2019, the Internal Policy Analyst (IPA) series, including the IPA III classification, was abolished.

7. It was not in dispute that the Appellant was promoted from her Administrative Specialist III position (Grade 12) to a Case Management Specialist I position (Grade 13) on October 1, 2019, with no change in pay.

8. The Hearing Officer finds the Appellant's testimony credible that the lack of timely notice of the Appellant's reclassification prevented the Appellant from exploring other job openings around the time of the reclassification. (Testimony of the Appellant).

9. Throughout the pendency of this appeal, the Appellant has alleged that she did not receive timely written notice of the reclassification. Both Appellees acknowledged that this was part of the Appellant's appeal. (Testimony of the Appellant, the Appellee's Exhibit 2, the Interim Order of the Hearing Officer issued November 13, 2019, Kentucky Personnel Cabinet's Petition for Intervention, the Interim Order of the Hearing Officer issued February 21, 2020, and the Cabinet for Health and Family Services' Motion to Dismiss Appeal as Moot).

10. The Appellant was not provided any written notification of her reclassification other than the PAN introduced into evidence as the Appellee's Exhibit 1.

CONCLUSIONS OF LAW

1. As a classified employee with status, the Appellant could only be penalized for cause. KRS 18A.095(1).

2. A reclassification to a lower pay grade is a penalization. KRS 18A.005(24). The Appellant was penalized when she was reclassified on June 16, 2019, to a classification three (3) pay grades lower.

3. Because the Appellant's reclassification constituted a penalization, the Appellant was entitled to notice that complied with KRS 18A.095(8), which reads as follows:

A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:

- (a) The demotion, suspension, or other penalization;
- (b) The effective date of the demotion, suspension, or other penalization;
- (c) The specific reason for the action including:
 - 1. The statutory or regulatory violation;
 - 2. The specific action or activity on which the demotion, suspension, or other penalization is based;
 - 3. The date, time, and place of the action or activity; and
 - 4. The name of the parties involved; and
- (d) That he or she has the right to appeal to the board within sixty (60) days, excluding the day that he or she received notification of the personnel action.

4. The Appellees did not provide the Appellant with written notice that even attempted to comply with the requirements of KRS 18A.095(8). The Hearing Officer specifically notes:

- a) The Appellant was not provided with notice of penalization **PRIOR TO** the effective date of her reclassification. In order to comply with KRS 18A.095(8), the Appellant was entitled to notice before her reclassification. *Debra Rattliff v. Transportation Cabinet*, 2010 WL 2936017 (KY PB Appeal No. 2008-291). *John Holloway v. Transportation Cabinet*, 2010 WL 677198 (KY PB Appeal No. 2008-296).
- b) When the Appellant received notice of her reclassification, it was a verbal notice on July 3, 2019. KRS 18A.095(8) explicitly requires **WRITTEN NOTICE**.
- c) The only written document the Appellant received about her reclassification was the PAN introduced into evidence as Appellees' Exhibit 1. This document clearly does not comply with the requirements of KRS 18A.095(8). PAN documents are not intended to comply as notice under this statute. The PAN did not provide the

Appellant with the specific reason for the reclassification, in violation of KRS 18A.095(8)(c), or that she had a right to appeal this action to the Personnel Board, pursuant to KRS 18A.095(8)(d).

5. Thus, the Hearing Officer finds that the Appellant was penalized when she was reclassified without proper notice on June 16, 2019. Accordingly, the primary remaining issue in this appeal is what relief is the Appellant entitled to.

6. KRS 18A.095(22) sets forth the remedies available in Personnel Board appeals. The two (2) subsections that could apply in this case are (b) and (d).

7. KRS 18A.095(22)(b) reads as follows:

If the board finds that the action complained of was taken without just cause, the board shall order the immediate reinstatement of the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal.

The Hearing Officer finds that the Board should not order the immediate reinstatement of the Appellant to her former position in this case because the Internal Policy Analyst series has been abolished. The Hearing Officer notes that, if the Appellant were returned to "a position of like pay and status, without loss of pay," the Appellee CHFS could keep the Appellant in her current position. She would have the same pay and status. (See KRS 18A.005(37) that defines "status"). Another, more ambiguous, option under KRS 18A.095(22)(b) is to "otherwise make the employee whole." There is no evidence in the record of any specific remedy that would make the Appellant whole in this case since she missed out on the opportunity to look for other job openings when she ultimately received an inadequate notice of her reclassification in this case. After consideration, the Hearing Officer concludes KRS 18A.095(22)(b) is not the best subsection to identify the appropriate remedy in this case.

8. KRS 18A.095(22)(d) reads as follows:

In all other cases, the board shall direct the appointing authority to rescind the action taken or otherwise grant specific relief or dismiss the appeal.

The Hearing Officer concludes this is an appropriate case for the Board to "grant specific relief," pursuant to KRS 18A.095(22)(d). Because 1) the Appellant's IPA III job classification was abolished, 2) she was penalized by not receiving adequate and timely notice, and 3) the Appellant missed out on exploring other job opportunities as a direct result of the Agency's lack of adequate notice, the Hearing Officer concludes that the appropriate remedy given these facts is to place the Appellant on reemployment registers for any job openings for which she is qualified for a period of three (3) years and three (3) months, the time frame roughly matching the period

the Appellant was without any relief following her penalization (June 16, 2019) until the Board's issuance of a Final Order.

9. The Hearing Officer recommends this remedy acknowledging that the Appellant is not entitled to be placed on reemployment registers by the strict application of statutes and regulations. (See KRS 18A.005(32), KRS 18A.110, KRS 18A.103, KRS 18A.135, and 101 KAR 2:056, Section 5.) Nonetheless, the Hearing Officer concludes that this rare remedy is appropriate herein because of the specific facts of this case, including the abolishment of the Appellant's former classification, the manner of the penalization, and the length of time between the penalization and the issuance of a Final Order by the Personnel Board. KRS 18A.095(22)(d).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **DENISE STURGIS V. CABINET FOR HEALTH AND FAMILY SERVICES AND PERSONNEL CABINET (APPEAL NO. 2019-152)** be **SUSTAINED**, and that the Appellees shall place the Appellant on any reemployment registers that she qualifies for and is interested in for a period of **THREE (3) YEARS AND THREE (3) MONTHS** from the date of the issuance of the Personnel Board's Final Order in this appeal. KRS 18A.095(22)(d). Additionally, the Cabinet for Health and Family Services is **ORDERED** to reimburse the Appellant for any leave time she used to attend the evidentiary hearing and pre-hearing conferences before the Personnel Board and otherwise make the Appellant whole. KRS 18A.105, KRS 18A.095(25), and 200 KAR 12.030.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within fifteen (15) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

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 Mark A. Sipek this 11 day of August, 2022.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day e-mailed and mailed to:

Denise Sturgis
Hon. Kimberly Hawthorne
Hon. Catherine Stevens
Hon. Rosemary Holbrook (Personnel Cabinet)

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-152

DENISE STURGIS

APPELLANT

V.

INTERIM ORDER

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

AND

PERSONNEL CABINET

INTERVENOR

*** **

This matter is before the Hearing Officer, Mark A. Sipek, for a ruling on the Appellee's Motion to Dismiss and Intervenor's Motion to Dismiss. The Hearing Officer having reviewed the file, having listened to the statements of the parties, and being duly advised, **HEREBY ORDERS** as follows:

1. The Appellee's Motion to Dismiss is hereby **DENIED**.
2. The Intervenor's Motion to Dismiss is hereby **DENIED**.
3. Both Appellee and Intervenor argue that this Appeal is moot because the Appellant, after having been reclassified from an Internal Policy Analyst III (grade 15) to an Administrative Specialist III (grade 12), was promoted to a Case Management Specialist (grade 13). The Appellant did not lose or gain pay through any of these actions. The Appellee and Intervenor argue that these appeals are moot because the Appellant cannot go back to her Internal Policy Analyst III position, and because she no longer occupies the Administrative Specialist III position she was reclassified to. The Appellee's and Intervenor's arguments are misplaced. The Appellant filed an appeal from a reclassification. This is a penalization as defined in KRS 18A.005(24). The fact that the Internal Policy Analyst III position no longer exists, and the fact that the Appellant has been promoted since her initial reclassification down two pay grades, may impact the remedy. It does not moot the Appellant's original appeal from her reclassification. KRS 18A.095(22).
4. The parties shall contact the Personnel Board's scheduling clerk so that this matter may be scheduled for an additional pre-hearing conference.

[Hearing Officer Note: Any document filed with the Personnel Board shall also be served on the opposing party.]

SO ORDERED, at the direction of the Hearing Officer this 3 day of September, 2021.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Kimberly J. Hawthorne
Hon. Catherine Stevens
Denise Sturgis