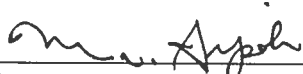


CERTIFICATION OF PERSONNEL BOARD RECORDS

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 **LAKEESHA TISDALE V. EDUCATION AND WORKFORCE DEVELOPMENT CABINET (APPEAL NO. 2019-126)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 13th day of September, 2021.



**MARK A. SIPEK, SECRETARY
KENTUCKY PERSONNEL BOARD**

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-126

LAKEESHA TISDALE

APPELLANT

VS.

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

APPELLEE

* * * * *

The Board, at its regular September 2021 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 24, 2021, Appellee's Exceptions and Request for Oral Argument, Appellant's Exceptions, Appellee's response, 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** Item 2 from the Recommended Order (page 29) and substitute the following:

2. The Appellant has met her burden of proof that she was penalized, and her job duties were expanded during the period of time from October 31, 2017 to July 15, 2018, and from April 1, 2019 to April 30, 2019, without additional compensation. The Appellant shall be compensated for the duties she performed has a grade 18 Regional Program Manager by receiving a ten percent (10%) pay increase from October 31, 2017 to July 15, 2018, and from April 1, 2019 to April 30, 2019, together with all other related benefits and that she otherwise be made whole.


IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as Altered, be and they hereby are, approved,

adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **SUSTAINED to the extent** therein.

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 13th day of September, 2021.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
SECRETARY

A copy hereof this day mailed to:

- Hon. Joshua Hurley
- Hon. Stefanie Ebbens Kingsley
- Hon. Edward E. Dove
- Hon. Rosemary Holbrook

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-126

LAKEESHA TISDALE

APPELLANT

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

APPELLEE

* * * * *

This matter came on for an evidentiary hearing on October 14 and 16, 2020, at 9:30 a.m., ET each day, at the office of the Kentucky Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Roland P. Merkel, Hearing Officer. The proceedings were recorded by audio/video equipment as authorized by KRS Chapter 18A. The evidentiary hearing was conducted by video teleconference using Amazon Chime. The parties had previously consented to a video teleconference hearing in compliance with KRS 13B.080(7).

The Appellant, Lakeesha Tisdale, was present and represented by the Hon. Edward Dove. The Appellee, Education and Workforce Development Cabinet, was present and represented by the Hon. Joshua Hurley and the Hon. Stefanie Kingsley, accompanied by Kimberly Tucker, the Agency representative.

The issue is the Appellant's claim that she was penalized and that her job duties were expanded during the period of time from September 2017 until April 30, 2019, without additional compensation. She has also alleged that she was subjected to retaliation. The burden was on the Appellant to prove her claims by a preponderance of the evidence. KRS 13B.090(7).

The rule separating witnesses was invoked and employed throughout the course of the hearing. The Appellant presented an opening statement. The Appellee waived presentation of an opening statement.

BACKGROUND

1. The first witness for the Appellant was the **Appellant, Lakeesha Tisdale**. On March 19, 2003, the Appellant began employment with the Office of Education in a temporary position through the Adecco agency. She then transitioned to working with trades. In May 2005, she became a fulltime state employee in the position of Workforce Specialist II. She then became a Disputed Claims Investigator. Throughout the years, the Cabinet changed names a number of times. It is now the Education and Workforce Development Cabinet, however, the Appellant has continued to work within the same state agency.

2. Tisdale was hired as an Office Administrator. She then became a Workforce Development Manager in May 2013 and retained that official title up to the date she left employment.

3. She identified Appellant's Exhibit 1 as a map showing Kentucky's Local Workforce Areas with Career Centers. At the time, the South Central Workforce Area and the Cumberlands Workforce Area combined to create the South Central Region.

4. She identified Appellant's Exhibit 2 as the Job Class Specification for Workforce Development Manager (WDM). She had been promoted to this position and performed the duties and responsibilities as required. In this position, she supervised approximately 10 employees in the Bowling Green office. She received annual evaluations on her own performance as a WDM (Appellee's Exhibit 1). As WDM, she was supervised for a while by her Regional Program Manager (RPM), who, at that time, was Vickie Wade.

5. She identified Appellant's Exhibit 3 as the Job Class Specification for Regional Program Manager. Vickie Wade retired on October 30, 2017, and the RPM position for that region remained vacant until July 15, 2018. John Pallasch, Executive Director, started sending emails directly to the Appellant, directing her to attend certain meetings and perform certain RPM duties. In addition to her WDM duties, she began to perform duties that were not part of her job class. She started to attend board meetings, as well as other meetings, and provided reports of same to the Executive Director. The Veterans Programs in the region began to report to her. She became the main contact for the office in her region. She was not compensated for the additional RPM job duties she performed.

6. In reviewing the examples of duties and responsibilities of the RPM Job Classification, the Appellant testified she assigned and evaluated the work of personnel; was familiar with pertinent statutes and regulations; recommended and submitted personnel actions; answered inquiries and resolved complaints from clients, community partners, employers, and staff. She worked with the Frankfort Industrial Authority and answered questions about those matters from her Board, and visited employers to highlight and market services offered by the Department for Workforce Investment (for example, she worked a program that involved Western Kentucky University students and staff. She testified she would not have done this solely as a WDM.). At the request of Rick Schad and John Pallasch, the Appellant attended various meetings and represented the Agency in public forums; she submitted quarterly reports to Frankfort regarding the Veterans Programs.

She also recommended and submitted personnel actions. This included hiring recommendations and participation in the interview process of LVERS and DVOPS.¹ She had

¹ LVERS are employees who promote services to potential employers and the hiring of veterans. DVOPS are employees who work in the Disabled Veterans Outreach Program.

been asked to draft and review various Memoranda of Understanding. She also worked with a consultant on various projects regarding office relocation, as directed by Mr. Schad.

7. She traveled to all counties in her region. She also traveled to Owensboro. Owensboro had a reduction in personnel. Mr. Schad asked her to assist them with a certain program. Appellant worked with the Owensboro office manager and provided staff to assist in that region.

8. She participated in the development of a strategy plan for the Education and Workforce Development Cabinet.

9. She performed all those RPM duties until about July 2018, when a new RPM, Gina Triplett (Johnson) was hired. She was never compensated for performing those extra duties, which began sometime in 2017.

10. She identified Appellant's Exhibit 4 as a January 2, 2018 email she had sent to Lori Strump. The South Central Region created a Dashboard to monitor certain employer activities. It obtained real time information as it occurred within the region. Normally, an RPM would have participated in this training. Changes were implemented that designated the Appellant as the "primary" contact for the Dashboard. A WDM would not have performed these duties. Most of the individuals listed on the email were RPMs. John Pallasch, the Cabinet Director, was aware of this email and the Appellant's participation.

11. She identified Appellant's Exhibit 5 as the January 7, 2019 email she had sent to Rick Schad, her second-line supervisor. Schad requested the Appellant provide assistance to the Owensboro office. This was not a job assignment done by a WDM. Importantly, Owensboro was a part of the Western Kentucky Region and not the South Central Region.

12. She identified Appellant's Exhibit 6 as the January 7, 2019 email she sent to Rick Schad where she confirmed what she had put in place for Owensboro. He agreed. Prior to this time, when she solely performed WDM duties, she was never asked to work outside her region.

13. She identified Appellant's Exhibit 7 as the January 7, 2019 email she sent to Roger Phillips. It was her follow-up to Phillips recapping the process put in place for upcoming RESEA classes. Facilitating these classes were a part of the duties of an RPM.

14. She identified Appellant's Exhibit 8 as an email from Rick Schad to individuals, including Appellant, pertaining to the Office of Employment Training. Mr. Schad clarified that all veterans field staff were to report to RPMs, that the RPMs would review the timesheets of such staff, and that RPMs would initiate performance plans and performance evaluations. The Appellant was included in the receipt of this email. Most of the recipients were RPMs, with the exception of Jonathan Pendergrass.

15. She identified Appellant's Exhibit 9 as an email reminder she sent out of a January 17, 2018 meeting on the issue of customer flow. She sent this in the role of an RPM, as she was the contact person for all trainings. She would not have done this as a WDM.

16. She identified Appellant's Exhibit 10 as a January 18, 2018 email she had sent to Stanley Hill, the Interim RPM appointed in May 2019. Lisa Link was an administrator that worked in the Cumberland Area. In 2017, there was a communication about an opening for an RPM position. An offer had been made to Lisa Link for that position in the South Central Region. That offer was later rescinded by Mr. Schad. Lisa Link had inquired who the individual was who would conduct performance appraisals for the DVOPS.

17. She identified Appellant's Exhibit 11 as a series of emails on or about January 29, 2018. Appellant sent these emails to John Pallasch, inquiring how they would work with employers in the region. Pallasch had made inquiry about the matter. Emails were sent back to Appellant because she was acting in the role of RPM. An RPM facilitates the workflow of how this would run. There was no other individual in the chain of contact between Appellant and Mr. Pallasch.²

18. She identified Appellant's Exhibit 12 as emails in which she was involved and communicated with John Pallasch. Pallasch contacted Appellant to confirm that certain job openings were in the Focus system.

19. She identified Appellant's Exhibit 13 as follow-up emails where she confirmed the job openings were in the Focus system. RPMs were in direct contact with the Executive Director and no one was in the chain-of-command or communication between her and the Executive Director.

20. She identified Appellant's Exhibit 14 as a January 26, 2018 email she sent to John Pallasch, cc to Rick Schad, advising that all Bowling Green evaluations would be completed by January 29, 2018. She asked whether Pallasch wanted her to mail them to him for his signature.

21. She identified Appellant's Exhibit 15 as a series of emails from late January 2018. A transition to a new telecommunications service provider required they have access to the Cabinet's database. The Appellant was the contact person who made sure they had all the information they required. Communications such as this were done normally by an RPM.

22. The Appellant had been contacted by the Simpson County Industrial Authority. The Authority requested LMI information for the automotive manufacturing industry. Obtaining and providing that information was the responsibility of an RPM. Appellant's Exhibit 16 is a

² Admission of Appellant's Exhibit 11 was deferred at the time of its presentation during the evidentiary hearing. The Hearing Officer, after having examined the document and the testimony, admitted the exhibit as part of the administrative record.

January 31, 2019 email the Appellant sent to Kristina L. Slattery asking whether it was possible to pull some LMI information as requested. This email was cc'd to Rick Schad.

23. She identified Appellant's Exhibit 17 as a February 1, 2019 series of emails in which she was involved. The subject matter pertained to a H2A conference. She had gone to the training in Glasgow as a representative of the Agency. A WDM would not have facilitated this. RPMs facilitated and dictated who would attend. She testified these emails show her Assistant Director and Executive Director were both aware of the duties she had been performing.

24. Appellant's Exhibit 18 was identified as emails of February 11, 2019, regarding the Glasgow conference. There were issues in the Glasgow office; they were not able to reach certain staff members. Had the Appellant not been performing the duties of an RPM, she would not have been involved in this type of communication.

25. She identified Appellant's Exhibit 19 as a February 6, 2018 email from Stephanie R. Belt. Gary Underwood was responsible for the operation of the telephone system in Glasgow. He and the Appellant worked together to complete that project. They had to determine how telephone calls meant for the Bowling Green office went to Bowling Green and those meant for Glasgow went to Glasgow.

26. She identified Appellant's Exhibit 20 as additional emails pertaining to the telephone system. Anything regarding billing information was an RPM duty. She handled this for the South Central Region.

27. She identified Appellant's Exhibit 21 as a February 11, 2019 email she had sent to Candice Rinehart of the Education Cabinet. The Appellant had been contacted to verify updated floor plans for the Glasgow and Bowling Green offices. Prior to performing RPM duties, the Appellant had never been contacted to perform this duty.

28. Tess Russell performed legal duties for the Cabinet. An incident occurred in the Glasgow office with a customer. The Appellant had been contacted. She then contacted John Pallasch and Tess Russell. An RPM would deal with this situation. WDMs were not involved in these situations, nor had the Appellant been called on for such situations when she solely performed WDM duties. She was required to contact Frankfort regarding this altercation. There was no other person in her region to whom she could report the matter. Her next line of communication was the Assistant Director or the Executive Director. She identified Appellant's Exhibit 22 as communications pertaining to the incident.

29. She identified Appellant's Exhibit 23 as a February 13, 2019 email she had sent to Rick Schad, with minutes from a South Central Workforce Development Board meeting she had attended. She always provided Schad or Pallasch with information on what was going on in her

area. She contacted them several times a week. She never did this when she solely performed WDM duties. This was an RPM responsibility.

30. She identified Appellant's Exhibit 24 as a February 18, 2019 email she received from John Pallasch. Mr. Pallasch requested information on how they were providing services for the SNAP E&T program. During February, Mr. Schad called a meeting for all RPMs in Kentucky. Each of the RPMs and the Appellant provided a recap of what they each had done over a certain period of time.

31. She identified Appellant's Exhibit 25 as a February 18, 2019 email from John Pallasch following up discussions of SNAP services. She identified OCD as the Office of Career Development and KCC partners as the Kentucky Career Center partners. She was the main and top level of communication for the South Central Region. All procedures, protocols, and standards of services provided by that region went solely through the Appellant.

32. She identified Appellant's Exhibit 26 as a February 20, 2018 email she received from Brandy H. Groves of the Education Cabinet. Ms. Groves provided information that a vacant DVOP position in Bowling Green would soon be posted. Mr. Schad had identified the Appellant to Ms. Groves as the contact person on that position vacancy. It is the duty of an RPM who is identified on the register as the contact person to coordinate the hiring interviews.

33. She identified Appellant's Exhibit 27 as a February 21, 2019 email she received from David Kuhn, asking if there was any information on the LVR for Bowling Green.

34. She identified Appellant's Exhibit 28 as a February 21, 2019 email from Dr. Robert Boone, President and CEO of the South Central Workforce Development Board (Board), to the Appellant. The Board was comprised of individuals from different entities. The Appellant attended prior Board meetings before this date and worked with Dr. Boone and other Board members. When she solely performed WDM duties, she attended one or two meetings, but did not make any presentations or give any detailed information; her status as a WDM at those meetings was as a visitor.

35. She identified Appellant's Exhibit 29 as a February 26, 2019 email she sent to Rick Schad. Mr. Schad had asked her to represent the Cabinet Office of Career Development during a walk-thru of new facilities. Prior to this time, she had never been asked by Schad to represent the Cabinet in such a capacity.

36. The parties stipulated the Appellant was never assigned the title of Regional Program Manager.

37. She identified Appellant's Exhibit 30 as an email of February 25, 2019, from Dr. Robert Boone to Brian Easton. Mr. Easton oversaw facilities for the Cabinet. Dr. Boone

checked in to make sure everyone was available to conduct the facility walk-thru in Bowling Green.

38. She identified Appellant's Exhibit 31 as an email from Brandy Groves, Acting HR Branch Manager, asking about the recent employment interviews the Appellant had conducted. When she worked solely as a WDM, the Appellant was never involved in interviews or in the hiring of office staff. That was done through an RPM. An RPM is listed as the contact person on the requisition and is identified as the individual who sets up interviews and communicates hiring recommendations to the Cabinet. Prior to this date, she had not performed such duties.

39. She identified Appellant's Exhibit 32 as emails dated March 2, 2018, she had sent to Mr. Schad. The subject was the administration of weekly workshops in the region. This was a communication an RPM would make.

40. She identified Appellant's Exhibit 33 as a March 4, 2019 email from Dr. Boone, who requested additional information on the new site location.

41. She identified Appellant's Exhibit 34 as a March 5, 2019 email from Jeannie Stratton, Internal Policy Analyst III, to Rick Schad, cc'd to the Appellant. Inquiry was made about a timesheet of an employee named "Vernetta." Mr. Schad did not have access to that timesheet and asked the Appellant to take care of the matter. The timesheet was then approved by the Appellant, a duty performed by an RPM.

42. She identified Appellant's Exhibit 35 as a March 8, 2019 email she sent to Rachel Adams, Staff Assistant at the Kentucky Career Center. The Appellant asked Ms. Adams to pull a report for her for that region. The Appellant then reported these numbers to her Board. These were not duties she performed when solely a WDM.

43. The South Central Workforce Board held an event for the Allen County School System. The school system was within the South Central Region. The Appellant gave an update to the Education Cabinet about how the Agency had partnered with the school system. She identified Appellant's Exhibit 36 as communications regarding the event. The Appellant had not previously worked in this capacity with her Board.

44. She identified Appellant's Exhibit 37 as a March 12, 2018 email sent by the South Central Workforce Development Board reminding a group of people of an upcoming Board meeting. The email included the Appellant as a recipient.

45. She identified Appellant's Exhibit 38 as emails of April 9, 2019, pertaining to the aforementioned telephone system. This communication involved the system's charges and billing. Only an RPM would be in contact with Stephanie Belt about the matter.

46. She identified Appellant's Exhibit 39 as a May 30, 2018 email sent by Lori Strump to the Appellant. Ms. Strump asked about the approximate amount of a lease for a new vendor. The Appellant was the only one in her office who was in the line of communication with the Assistant Director or Executive Director and who had access to that information.

47. She identified Appellant's Exhibit 40 as a series of emails from May 30, 2018, regarding an upcoming Workforce Partner meeting. She attended the meeting in her role as an RPM.

48. She identified Appellant's Exhibit 41 as a June 13, 2018 email between the Appellant and Rick Schad. They were trying to determine whether they were going to use the 211 system and how that would work within their career centers. The Appellant sent this information to Mr. Schad and cc'd Rachel Adams. She testified this was an RPM duty.

49. When performing RPM duties, the Appellant had never been told she was overstepping her duties or doing what she should not. Mr. Schad or Mr. Pallasch were always cc'd on all activities she performed in the office. A lot of communications involved how they were going to implement policies and procedures. Many email requests were made to her to represent the Cabinet. The Commissioner, Executive Director, and Assistant Director were all aware of the duties she performed. She never took on activities she was not asked to perform.

50. She identified Appellant's Exhibit 42 as a series of emails of August 6, 2018. Mr. Schad was not aware that OET staff were supposed to provide SNAP benefits. The Appellant responded as she was the only one in her region that properly conducted SNAP benefits the way they were supposed to be done. It was an RPM who would be the point of contact for this matter.

51. After John Pallasch left his position, Jim Beyea became the Executive Director. Stanley Hill, at one time, was the Office Manager in Hopkinsville. For a few months, Hill served as RPM for the South Central Region, up until the time he retired. Mr. Beyea then sent out paperwork to fill the RPM position, not as a full-time position, but as a Federally Funded Time Limited (FFTL) position, to be located in Bowling Green. The position remained vacant up through the time the Appellant left employment.

52. She identified Appellant's Exhibit 43 as Mr. Beyea's email to a series of individuals, cc'd to the Appellant, as an update on the transition in South Central and Western Kentucky due to Mr. Hill's departure.

53. In 2017, Appellant discussed with Schad the RPM position that was made an FFTL position in 2019. She was later told that it had been offered to someone else. The position was subsequently posted in 2019 and offered to someone. That person did not meet the educational requirements and, therefore, was not hired.

54. An FFTL position was a time-limited position where the employee would not have certain rights and would not be a merit employee while holding that position.

55. She identified Appellant's Exhibit 44 as a document showing certain position vacancies in the Cabinet at that time.

56. She identified Appellant's Exhibit 45 as a December 19, 2017 email from the Workforce Board to various individuals, including the Appellant. The email described how funds for the SNAP E&T were to be used. The Appellant would not have been involved or a part of this conversation in the role of a WDM. She was involved as an RPM.

57. Lisa Link was an office administrator with the title of Workforce Development Manager. She had been told by Mr. Schad that a vacant RPM position was to be hers. The Appellant would continue duties in the Bluegrass office, but Link was going to be reclassified.

58. After a Board meeting in December, Mr. Schad told the Appellant in her office that they were going to let the Appellant keep her duties, but give Lisa Link the job title of RPM.

59. She identified Appellant's Exhibit 46 as email communications she had with Lisa Link in December 2017. Ms. Link was not familiar with the Area or the Board, and asked the Appellant for advice and direction. Subsequently, the paperwork for Ms. Link was never completed, and Ms. Link was not hired to the RPM position.

60. Appellant testified that, on one occasion, Executive Director Jim Beyea directed her not to attend a Board meeting. That directive was later rescinded. That action, in conjunction with the way she started being treated, resulted in her leaving employment when she did.

61. She identified Appellant's Exhibit 47 as emails of December 5, 2018, evidencing she and some of her staff had, on several occasions from October 2018 through May 2019, traveled and provided services to the Owensboro office.

62. In her position as WDM, Ms. Tisdale earned \$44,500 per year. The salaries of RPMs varied. Ms. Rebel made about \$70,000 per year. Ms. Triplett earned about \$58,000 per year and was given an additional \$15,000 to perform duties in the Appellant's region.

63. She identified Appellant's Exhibit 48 as a printout showing the various Regional Program Managers and the salaries they earned on the date of printout. Appellant claimed she had performed the same duties as other RPMs but was certainly not making their salary.

64. Ms. Tisdale offered testimony pertaining to her claim of retaliation. She stated the Cabinet changed her region without explanation or putting anything in writing. She became involved in a prior Personnel Board action with the Cabinet.

65. Gina Triplett (Johnson) was set to retire in July 2018. Triplett rescinded her resignation, as the Cabinet gave her additional money to take on the Appellant's region.

66. After Triplett left, the Cabinet kept the Appellant in the Western Kentucky Region. She testified she was with the South Central Area and there was no reason to put her with Western Kentucky. After she participated in a mediation in the prior year, the Cabinet fixed the situation. The written strategic plan included South Central and Cumberland Areas. There was no strategic plan written for South Central and Western Kentucky Areas. They changed it back after the mediation.

67. In December 2019, there was a regional meeting. The Cabinet gave John Pendergrass the RPM position for Western Kentucky. They posted the South Central RPM position and did not offer the Appellant anything. The Appellant had not applied for the South Central position because there was communication between Yates and Stillman that the position was promised to Amanda Pettigrew. They interviewed Pettigrew and offered her the job. Later, they found out she did not have the minimum education requirements, so they pulled the position.

68. Following the lunch recess, the attorneys for the Cabinet claimed there had been no amendment made to the issues and, therefore, no discovery had been conducted on the issue of retaliation. The Appellant's counsel responded that the orders "say what they say," and that the Appellant wished to proceed with retaliation as her second claim. The Hearing Officer stated that prior Hearing Officers in the case appear to have proceeded with two issues, including retaliation, and that the lead-in statement provided to Hearing Officer Merkel included both issues. The objection of the Cabinet was **OVERRULED**.

69. The Appellant identified Appellee's Exhibit 1 as a series of her Annual Employee Performance Evaluations for the period of January 1, 2017, through December 31, 2019. She testified these were accurate copies and she did not object to any statements made in those evaluations. Each of the evaluations described her as performing duties of a WDM.

70. She identified Appellee's Exhibit 2 as her written Response to Appellee's First Set of Interrogatories and Requests for Production of Documents. She provided such responses on February 13, 2020. Interrogatory No. 20 inquired, "Are you claiming you have been penalized by the Cabinet? If so, state any facts that support your claim." The Appellant responded, "No." She admitted at the hearing that her testimony this day differs from her previously provided interrogatory answer.

71. She identified Appellee's Exhibit 3 as the December 14, 2017 South Central Workforce Development Board Meeting Minutes. She identified Appellee's Exhibit 4 as the March 15, 2018 Board Meeting Minutes. She identified Appellee's Exhibit 5 as the May 17, 2018 Board Meeting Minutes. She identified Appellee's Exhibit 6 as the July 19, 2018 Board Meeting Minutes. Her attendance is recorded in all these meeting minutes. Such meetings had, early on, been held on a monthly basis, but were subsequently changed to quarterly meetings.

72. She identified Appellee's Exhibit 7 as a true and correct copy of a Position Description for her classification as a Workforce Development Manager. She was listed in that classification from September 2017 through April 2019 and performed all the listed duties as a part of that job. Many duties were subsequently added to her position, which are not listed on this document.

73. The Appellant wishes to be compensated and made whole for the wages she did not receive that others received for performing the same job duties as RPM. She also seeks compensation for retaliation against her by the Agency. The retaliation is based on her having filed a prior Personnel Board appeal. That appeal was fully concluded in January 2017.

74. She identified Appellant's Exhibit 48 (also admitted as Appellee's Exhibit 10) as the Position Description for Regional Program Manager. She testified that the following tasks from this Position Description were ones that she performed:

Works with internal & external partners to carry out the OET's goals including increased job placement, greater collaboration, and to promote & improve functional alignment in career centers. Engages in community involvement; exchanges information with community organizations about programs. Works with One Stop Operators to coordinate career center activities to attain optimum service delivery. Recommends & implements ideas for process improvement & new service delivery methods. Assists with complaint resolution. Provides technical assistance related to Workforce Innovations & Opportunities Act & Wagner Peyser requirements & operational policy as set by Division. Participates in monitoring and compliance review process; implements central office recommendations. Evaluate staff. Identifies training needs & performance deficiencies for staff. Monitors/approves leave and overtime.

75. The Appellant identified Appellant's Exhibit 50 as Minutes from the Board meeting at the Barren County Career and Technical Center, Glasgow, Kentucky, of November 15, 2018. She attended this meeting.

76. She identified Appellant's Exhibit 51 as the September 21, 2018 Agenda and Board Meeting Minutes. The Appellant did not attend that meeting. Gina (Triplett) Johnson, RPM for the South Central Region, attended in that capacity.

77. The Appellant had never asked for a desk audit during the time in question, nor did she object to her Annual Employee Performance Evaluations.

78. The next witness for the Appellant was **Stanley Hill**. Appellant requested Mr. Hill be allowed to testify by telephone. The Appellee had no objection. Therefore, under KRS 13B.080(7), Mr. Hill's testimony could be elicited via telephone.

79. From 2001 through 2009, Mr. Hill was employed by the Workforce Development Cabinet. At the end of his employment, he retired. He had been the Workforce Operations Manager in Hopkinsville for approximately three years and then held that same position in Madisonville for seven years.

80. Commissioner Ray Lanham contacted Mr. Hill. Hill accepted a position as Interim Regional Program Manager for the South Central Region. Gina Triplett (Johnson) had been his predecessor. Vickie Wade had been Ms. Triplett's predecessor. Between the tenure of Wade and Triplett, the position was vacant. Ms. Tisdale had performed some of the RPM duties during the time of vacancy.

81. Ms. Tisdale took Mr. Hill around and introduced him to people on the Board, as she had been there on several occasions representing the South Central Region. He also learned she had been sending staff to Owensboro on a regular basis to conduct classes.

82. As Interim Regional Program Manager, Mr. Hill supervised the Appellant and believed "she was great." She gave him information on how things were going, who to contact, and what programs were in place. She was instrumental in getting him onboard.

83. The Appellant sat on some of the community boards as the South Central Region representative. She "most definitely" had been doing the job of South Central Regional Program Manager without having the title. At Board meetings she reported the activities that had taken place in her region for the previous quarters and what was planned for the next quarter. He believed the Appellant was capable of performing the duties of South Central Regional Program Manager. There were times he would ask her, "What do you need me for?"

84. The next witness for the Appellant was **Vernetta Douglas**. Ms. Douglas has been employed twelve years with the Commonwealth in various Cabinets. She was employed for two and a half years with Workforce Development and has been special detailed as Interim Claims Adjudication Assistant in Bowling Green at the Kentucky Career Center. When she worked with the Appellant, she was the Disabled Veterans representative (DVOP). In that position, Douglas

assisted in employment, food banks, housing, outreach, and referrals to various veterans' programs.

85. Currently, there is no supervisor at the Bowling Green office. Prior to COVID-19, about May 2018, the Appellant was the supervisor or office manager and the Regional Program Manager was Jim Beyea.

86. When Ms. Douglas started in 2018, it was the Appellant who did her "onboarding." Ms. Douglas submitted her timesheets, travel expense reports, and JBSG quarterly reports to the Appellant. The Appellant had been on the interview team that interviewed Ms. Douglas prior to her being hired for the position.

87. The next witness for the Appellant was **Bobbi Steelman**. For the past month, Ms. Steelman, who resides in Bowling Green, has been employed as a Business Development Representative for the American National University. Her previous employment was with the Kentucky Career Center for the South Central Workforce Development Board and Executive Director of the Career Team. She worked with the Workforce Development Board to make sure federal dollars were used appropriately in trainings and partnered with various boards in the community. The Career Team had offices at the Kentucky Career Center and worked collaboratively with the Kentucky Education and Workforce Development Cabinet. She was there about two years and had worked closely with the Appellant.

88. As the Center Director, Ms. Steelman knew the Appellant. There were periods of time when there was a vacancy in the RPM, and she saw the Appellant then perform those duties. She was familiar with that job and, at one time, had applied for the position herself. The Appellant would step in and do whatever was needed.

89. The Appellant tried to fill a void between RPMs Gina Triplett and Stan Hill. She performed the same duties as Hill did when he arrived. The Appellant gave presentations and Steelman and her staff would be "in the know." The Appellant had been assigned a seat on the Workforce Development Board.

90. In the interim between Day One and Day Two of testimony, Ms. Steelman had the opportunity to review the description of job duties of an RPM (Appellant Exhibit 3). She testified that the Appellant did perform the duties of an RPM. She coordinated activities from managers and staff; and saw to the delivery of client services. She performed all these duties up to the time Stan Hill assumed the position. She recommended training to management and staff and was always relaying information and training "to us." She reviewed and took action on equipment and supplies. "If we had issues on equipment or supplies, we would always go to her." The Appellant appeared before civic groups and officials to explain the progress of her area. She performed that duty and attended the Workforce Development Board meetings. She

was a leader in a project that was partnered with Goodwill and community groups. Ms. Steelman found the Appellant to be knowledgeable and professional.

91. The Appellant's case-in-chief was closed. The Appellee began presentation of its case.

92. The first witness for the Appellee was **Brandy Groves**. Ms. Groves has been employed by the Commonwealth for twenty-one years, nineteen of which have been in Human Resources. For the past year and a half, she has been employed as Human Resource Branch Manager for the Education and Workforce Development Cabinet.

93. Within the Education and Workforce Development Cabinet, there are several offices, including the Office of Career Development. She identified Appellee's Exhibit 8 as the organizational chart for the Office of Career Development. That chart shows Lakeesha Tisdale as the WFD Manager in the Bowling Green Area Section.

94. She identified Appellee's Exhibit 9 as a map showing Kentucky's Local Workforce Areas (LWAs) with Career Centers, Postsecondary Institutions, and Skills U Locations. The map shows ten areas served by the main career centers throughout the state. The Appellant worked from the Bowling Green section in the South Central Area.

95. A workforce region oversees two to three workforce areas, and multiple full-service career centers and their satellite offices. A workforce area contains one main full-service office and could have satellite offices.

96. She identified the counties in the South Central Region, South Central Area as: Logan, Butler, Edmonson, Warren, Simpson, Allen, Barren, Metcalfe, Monroe, and Hart. She identified the counties in the Cumberlands Area as: Cumberland, Adair, Green, Taylor, Casey, Russell, Wayne, Clinton, Whitley, Pulaski, Rockcastle, Laurel, and McCreary.

97. Regions are managed by a Regional Program Manager (RPM). The South Central Area is shown on the map in blue. The South Central Area and the Cumberlands together comprise the South Central Region.

98. The Cabinet's chain-of-command consisted of: Cabinet Secretary, Deputy Secretary, Commissioner, Executive Director, Division Director, RPMs, and WDMs.

99. Owensboro is outside the South Central Region and is part of the Western Kentucky Region. If some areas need assistance, employees from outside the area can give assistance, if directed by a supervisor.

100. She identified Appellee's Exhibit 10 (also marked as Appellant's Exhibit 48) as the Position Description for RPM. In approximately November 16, 2017, such positions were converted to a FFTL positions.

101. She identified Appellee's Exhibit 11 as a Memorandum directed to HR Executives from Mary Elizabeth Bailey, Commissioner. That memorandum directed that, "Effective immediately, all positions deemed to be 100% federally funded, regardless of contract/funding length, shall be set-up as unclassified federally funded time limited positions (FFTL)." The memo further advised that positions that were currently filled would not be changed, however, should the position be vacated in the future, it would be corrected and made a FFTL before it was posted and filled.

102. An FFTL position is an unclassified position that is 100 percent funded by one or more federal grants. When federal funding ends, the position is terminated.

103. To her knowledge, the last position held by the Appellant was WDM. The Appellant oversaw a full-service office and any satellite offices within her area.

104. Having reviewed the Appellant's Responses to Interrogatories regarding duties she performed that were alleged to be those of an RPM, the witness testified that a WDM would perform those duties in their assigned area. Approving employee timesheets in Owensboro would be a duty of the Owensboro office WDM.

105. When Ms. Triplett, who was already an RPM, was given additional duties to oversee the South Central Area, she was given an increase in pay. The increase was justified as she was still overseeing the West Kentucky Region. It was possible that an employee could be special detailed to an RPM position and not lose classified status, even though that position was FFTL.

106. Part of WDM job duties include attendance at meetings as directed, including board meetings. It could be a continuous requirement if that was the need of the agency. Not every single duty of an employment position physically fits on a Position Description. Many of those duties are included in duties "as assigned."

107. The Appellant did not at any time present any claims of retaliation to the Human Resources office, nor any claims of discrimination.

108. **Kimberly Tucker** was the next witness. Ms. Tucker has been employed by the Commonwealth since 1995. She has spent most of her time in Human Resources. In 2015, she began employment with the Education and Workforce Development Cabinet, and is currently the Assistant Director of the Division of Human Resources for the Cabinet. Part of her duties

include handling reclassifications for state employees. On an annual basis, she reviews fifty to eighty reclassification requests each year.

109. Desk audits may be performed. The Personnel Cabinet comes to an employee's workstation and observes what the employee does on a daily basis. They also solicit information from the supervisor and others in the chain-of-command. A determination is then made whether the employee is in the proper classification.

110. In this case, an RPM would oversee the South Central Region of the South Central Area and the Cumberland Area. A WDM would manage an Area and in addition to overseeing an Area Section – here, either the Somerset Section or the Bowling Green Section. An RPM manages a Region and has oversight over all Area Sections in that Region.

111. The witness confirmed that there was never an upper management EWDC request to place the Appellant on detail to special duty from WDM to RPM. As a result, it would not have been proper to reclassify the Appellant if the Cabinet was not ready to fill the vacant RPM position. Further, she had never been contacted or advised that there was a change in the Appellant's duties.

112. After the RPM position was vacated by Vickie Wade, in November 2017, the position was made FFTL.

113. Staff helping out in Owensboro would not be unusual, nor would that action have required oversight by an RPM.

114. The Appellant had communicated with Ms. Tucker and provided her a list of duties she claimed she performed that were those of an RPM. Ms. Tucker requested verification that the Appellant performed each of these duties for the ten counties and the Bowling Green Area Section. Ms. Tucker confirmed the Appellant performed those duties in the South Central Area. With regard to the Cumberland Area, however, Ms. Tucker said the Appellant did not perform such duties for those counties.

115. It was clear to Ms. Tucker that the Appellant performed managerial duties for the Bowling Green Area Section but not the Somerset Area Section. In order to be an RPM, one would need to perform those duties for both Area Sections and oversee the WDM for both Sections. Appellant performed WDM duties for the Bowling Green Area Section alone. She performed no managerial duties over the Somerset Area Section.

116. There is a great deal of overlap between the duties of WDM and RPM. A WDM performs all managerial duties for their Area Section and funnels the information and work product to the RPM, who is over multiple Area Sections.

117. Through September 2017, the RPM position in the South Central Region was a classified position. When it was vacated by Vickie Wade, it was made an FFTL position. The Cabinet had asked Gina Triplett (Johnson) who was, at the time, RPM for the Western Kentucky Region, to add the oversight of the South Central Area to her RPM duties in the last half of 2018. She did not change her position and her job duties did not change. Stan Hill was then detailed to special duty as RPM on May 1, 2019, to his retirement date of August 31, 2019.

118. Normally, it is the Executive Director, Director, or Commissioner who make the request for a person to be detailed to special duty. The Appointing Authority or their designee then has approval authority.

119. **Rick Schad** was the next witness. Mr. Schad is currently employed as Staff Advisor for the Kentucky Department of Military Affairs. In November 2017, he had been hired as the Director of Office Workforce Development with the Education and Workforce Development Cabinet; he held that position until March 2019.

120. In that Workforce position, he reported directly to Executive Director John Pallasch. Pallasch reported to Commissioner Beth Kuhn. The RPMs all reported directly to Schad. Several WDMs also reported to Schad, as one of the Regions had been done away with.

121. At the time the Cabinet hired Schad, Gina Triplett was RPM for the Western Kentucky Region, which consisted of the Western Kentucky Area and the Green River Area. There were no RPMs in the East, Central, or South. Schad worked with Pallasch to organize the state into Sections. The South Central Region was the South Central Area and the Cumberlands Area. The Appellant was a WDM in Bowling Green and Lisa Wilson was WDM in Somerset. At that time, Josh Pierce was the only FFTL RPM, and he was in Northern Kentucky.

122. WDMs are responsible for a workforce area of several counties. All employees in that area report directly to the WDM. The RPM is a step above the WDM and usually has oversight of two to three WDMs who report directly to the RPM. RPM duties are more administrative in nature. They examine metrics for the region and attend meetings in Frankfort to discuss matters pertinent to their region. RPMs have more contact with Schad and Pallasch and are less hands-on with area staff. It is the WDM who interacts daily with area staff and customers.

123. The WDM is responsible for timesheets of their office staff and perform staff evaluations. Both the RPM and the WDM are capable of reviewing contracts, but most often that duty is delegated to WDMs because they are more familiar with their area.

124. When Schad first was hired into his Workforce position, he was concerned about having the right people in place. He wanted to set up WDMs for success. He obtained an exception that allowed WDMs to attend the workforce area meetings. Previously, only RPMs

could attend and this, Schad felt, tied his hands. He believed allowing WDMs fell into the category of "other duties as assigned." From that time forward, he had WDMs, including the Appellant, attend their respective area meetings.

125. He knew the Appellant had traveled back and forth to Owensboro over a six-month period. He did not witness the Appellant supervising staff outside the Bowling Green Area. He had never taken any corrective or disciplinary action against the Appellant. She was a well above average employee and a good WDM.

126. During his first week of employment, the Appellant asked him if he could re-establish a region. He told her he could not do that, as the area had low numbers. He could not assign the Appellant to special detail as he would have had to have been able to re-establish the region to justify a temporary RPM. He had redesigned the regions, making the Bowling Green Area in the South Central Region a part of the Western Kentucky Region under RPM Gina Triplett.

127. Appellant did not supervise anyone outside her Bowling Green Area. An RPM supervises employees in several areas.

128. Under "other duties as assigned," he would hand down certain RPM tasks to WDMs who exhibited the skill set to perform the tasks. He would also do this to set them up for success once they had the opportunity to become an RPM.

129. **Jim Beyea** was the next witness. Mr. Beyea is currently employed by the Education and Workforce Development Cabinet, Department of Workforce Investment, as the Compliance Branch Manager. His prior position from July 2019 through June 2020 was as Executive Director of the Office of Career Development.

130. During his first quarter, the South Central Area was aligned with the Cumberland Area. There are ten workforce areas throughout the state and a region will typically have two workforce areas. At that time, the RPMs were Trina Allen, Stan Hill, Jennifer Carman, and Connie Schnell. Stan Hill was RPM of the South Central Region (South Central/Bowling Green Area and Cumberland/Somerset Area) and retired in August 2019. He was also, simultaneously, the RPM for the West Kentucky Region.

131. The Appellant had never expressed to him a desire to be an RPM because those positions were FFTL. The Appellant thought it should have been properly a merit position. He told her he had no ability to make it a merit position. In his employment, he was not aware that anyone held RPM as a merit position.

132. The Appellant did not perform RPM duties as an office manager. She did not supervise any staff outside the South Central Area. Some of her staff had gone outside the area

for coverage purposes to a satellite office. He never directed her to perform duties outside the South Central Area. At the time of his hire, he had no idea that the Appellant had any Personnel Board history.

133. The Appellee concluded presentation of its evidence. The Appellant presented a single witness on rebuttal.

134. Appellant's rebuttal witness was **Stan Hill**. Mr. Hill had been RPM for the Western Kentucky Region and the South Central Area. He had no responsibilities for the Cumberlands Area. The Appellant would have had no reason to go to the Cumberlands Area, even if she were the RPM for the South Central Region.

135. In February 2019, he was present at a meeting in Frankfort, where Rick Schad, in front of the group of attendees, apologized to the Appellant. He said, "Lakeesha, I apologize." Hill did not know specifically what Schad was referring to.

136. No further witnesses were presented by either party.

FINDINGS OF FACT

1. The Appellant, Lakeesha Tisdale, had been employed at the Bowling Green Career Center in Warren County, Kentucky, as a Workforce Development Manager (WDM) by the Education and Workforce Development Cabinet from May 2013 until the end of her employment, April 30, 2019. She was a classified employee with status.

2. As a WDM in Bowling Green, the Appellant had oversight duties over Cabinet employees in the South Central Area. The counties in the South Central Area included Logan, Butler, Edmonson, Warren, Simpson, Allen, Barren, Metcalfe, Monroe, and Hart. The South Central Area, together with the Cumberlands Area, combined, comprised the South Central Region. The counties in the Cumberlands Area included Cumberland, Adair, Green, Taylor, Casey, Russell, Wayne, Clinton, Whitley, Pulaski, Rockcastle, Laurel, and McCreary.

3. The duties, responsibilities, and work tasks for a WDM are set out in the Job Class Specification for Workforce Development Manager (Appellant's Exhibit 2) and the Personnel Cabinet Position Description (Appellee's Exhibit 7). The duties and responsibilities for a Regional Program Manager (RPM) are set out in the Job Class Specification for Regional Program Manager (Appellant's Exhibit 3) and the Personnel Cabinet Position Description (Jointly – Appellant's Exhibit 48 and Appellee's Exhibit 10).

4. The Appellant's direct chain-of-command and supervisor was the RPM for the South Central Region, Vickie Wade, until Ms. Wade retired from that position on October 30,

2017. At that time, the South Central Region included the service areas of Bowling Green and Glasgow, and local affiliate sites.

5. On March 13, 2017, the Personnel Cabinet directed that all employment positions that were 100 percent federally funded would be set up as unclassified Federally Funded Time Limited (FFTL) positions (Appellee's Exhibit 11). When Vickie Wade retired as RPM, the vacant position was then converted to FFTL.

6. The following individuals have served as Regional Program Manager (RPM) over the region that included the South Central/Bowling Green Area where Appellant's Bowling Green workstation was located:

- A. Vickie Wade: Begin date unknown. End date October 30, 2017.
- B. Gina (Triplett) Johnson: Begin date July 16, 2018. End date November 1, 2018.

Ms. Triplett, who was RPM for the Western Region, was "Detailed to Special Duty" to oversee the South Central Area, which, at that time, had been made a part of the Western Region.

- C. Rick Schad. He retained his title as Director of the Career Development Office, but assumed RPM duties over the South Central Area from about November 2, 2018, through March 2019.
- D. The RPM position for the South Central Region remained vacant from April 2019 through May 1, 2019.
- E. Stanley Hill: Detailed to Special Duty as Interim RPM for the South Central Region with a start date of May 1, 2019 (his end date, if any, is unknown).

7. Although the Appellant claims she performed RPM duties in the South Central Area from September 2017 until April 30, 2019, Vickie Wade served as RPM until her retirement on October 30, 2017. Gina (Triplett) Johnson was "Detailed to Special Duty" as RPM over the South Central Area from July 16, 2018, to November 1, 2018. Rick Schad assumed RPM duties for the South Central Area from November 2, 2018, through March 2019. The position was vacant from April 1, 2019 to May 1, 2019.

The Appellant had performed some of the duties of an RPM in the South Central Area during the times no other person had been (a) "Detailed to Special Duty" as RPM, (b) appointed

to include RPM duties as part of their own region, or (c) Rick Schad assumed such duties.³ This means that for the time period the Appellant alleged she performed RPM duties, the following are the actual periods when her area was without an official RPM:

- A. October 31, 2017, to July 15, 2018;
- B. April 1 through 30, 2019.

8. During the time in question, the Appellee had detailed two separate individuals to special duty as the RPM, and Rick Schad “assumed” the duties for a while. The evidence shows the two individuals “Detailed to Special Duty” received additional compensation. It is unclear whether Mr. Schad received additional compensation for assuming such duties. Nevertheless, during the times identified in Finding of Fact paragraph 7, no one performed the RPM duties under the FFTL requirements.

9. From April 1 through 30, 2019, when the RPM for the South Central Region position was vacant, the Appellant reported to the Executive Director, John Pallasch, or the Director of Career Development, Rick Schad.

10. In the presentation of evidence, the Appellant claimed she performed several of the duties of an RPM from September 2017 through April 2019. She testified that she played a role in interviewing and recommending the hire of Stephen Cordona in DVOP; participated in the hiring committee and later approved the timesheets for Vernetta Douglas, DVOP;⁴ was involved in training for the South Central Workforce Development Board (SCWDB), including Dashboard, SNAP benefits, CQI, and ET; travel; and provided assistance to the Owensboro office, which was outside the South Central Region; participated as an active member of the SCWDB, where she attended several of the Board’s meetings; was requested to find workspace to lease for the Cabinet; engaged in negotiations of Memoranda of Understanding between community partners; organized job fairs in the South Central Region; was notified when a new business was coming into the region; purchased supplies; and met with officials to discuss the workforce program.

11. Stanley Hill was appointed Interim RPM for the South Central Region on May 1, 2019. He was placed into this position through a “Detail to Special Duty.” It was possible for an employee to be detailed to special duty in an RPM position and not lose classified status, even though such position was designated FFTL. (Testimony of Brandy Groves.) This was also done with Gina Triplett.

³ The RPM duties performed by the Appellant were for the South Central Area rather than a region, as the evidence shows she did not perform RPM duties for areas outside the South Central Area. The evidence also shows RPM duties were performed by Gina Triplett for the South Central Area, which had been made a part of her Western Region, and not over the Cumberland Area; Stanley Hill performed RPM duties for the South Central Area and not the Cumberland Area.

⁴ The DVOP agency was not under the direction of a WDM.

12. The Appellant, on June 10, 2019, filed an appeal with the Kentucky Personnel Board appealing “Other Penalization:” that her job duties expanded from September 2017 through April 2019 without additional compensation. At the October 1, 2019 pre-hearing conference, the Hearing Officer recorded:

An additional issue shall be the Appellant’s claim of retaliation.⁵

13. The Appellant provided her sworn response to Appellee’s First Set of Interrogatories and Requests for Production of Documents on February 13, 2020 (Appellee’s Exhibit 2). While the Appellant answered “No” to Interrogatory #20 (Are you claiming you have been penalized by the Cabinet? If so, state any facts that support your claim.), she made clear in previous interrogatory answers the following:

Interrogatory #16. Based on the allegations in your appeal, identify any statute or regulations that supports your allegations.

Answer: KRS 344.040, et seq. and applicable Personnel regulations.

Interrogatory #18. Describe with specificity the facts that support your claim the Cabinet has retaliated against you.

Answer: The Appellant has submitted documents and the allegations of discrimination are included in her appeal request to the Personnel Board.

14. A WDM “manages the overall operation of a designated service office providing workforce/employment and unemployment services OR manages a workforce/employment service or unemployment insurance branch which oversees the implementation, development and/or monitoring and evaluation of one or more workforce, employment service or unemployment insurance programs; and performs other duties as required.” (Appellant’s Exhibit 2.) Such Job Class Specification document also states, “[T]hese are not intended to be an exhaustive list” regarding its general statements of the level of responsibility.

15. An RPM “Serves as the channel of communications and line of authority between the division director or an executive director and all program offices in a multi-county region; and performs other duties as required.” (Appellant’s Exhibit 3.) This Job Class Specification also stated that it was not intended to be an exhaustive list indicating the level of responsibility.

16. Stanley Hill, who at one point served as Interim RPM for the South Central Region, acknowledged the Appellant had performed some RPM duties when that position was vacant after Vickie Wade left; that the Appellant performed those duties without having the title.

⁵ See the October 14, 2019 Interim Order.

17. Bobbi Steelman testified she saw the Appellant perform the same duties performed by Interim RPM Stanley Hill. After having examined the document pertaining to the job duties and tasks of an RPM (Appellant's Exhibit 3), Ms. Steelman testified that, according to that document, the Appellant had performed job duties of an RPM.

18. Some of the job duties of the WDM and the RPM overlapped. The job duties performed by the Appellant, from October 31, 2017 to July 15, 2018, and from April 1, 2019 to April 30, 2019, which are attributable to the expectations of an RPM, that do not overlap with the job duties of a WDM, include the following:

- Served as a channel of communications and line of authority between the Office of Employment and Training (OET), One Stop Operator, local Workforce Development Board, partners, and the Program Office in Bowling Green, Kentucky, for all the counties in the South Central/Bowling Green Area.
- Worked with internal and external partners to carry out OET's goals.
- Engaged in community involvement.
- Assisted with complaint resolution.
- Participated in monitoring and compliance review process.
- Implemented Central Office recommendations.
- Identified training needs and performance deficiencies for staff.
- Monitored and approved leave and overtime.
- Monitored expenditures for her multi-county South Central/Bowling Green Area and monitored contact with local Workforce Development Board, other partners, and Central Office as appropriate regarding leased and owned facility needs.
- Prepared for, attended, and gave reports at a number of local Workforce Development Board meetings on behalf of the South Central/Bowling Green Area.
- Provided leadership in the selection and hiring process.
- Represented the Agency in public forums.

19. A document submitted by the Appellant (Appellant's Exhibit 48) was represented by her to be an online listing by the Commonwealth of salaries received by certain Regional Program Managers. Such document shows RPMs for the Department of Workforce Investment (and not those listed for the Office of Inspector General) were Rebel B. Chreste at \$70,597.68 per year; Joshua Pierce at \$59,980.08 per year; and Gina T. Johnson at \$58,511.76 per year. The Job Class Specification for Regional Program Manager (Appellant's Exhibit 3) shows a salary range at pay grade 18 of \$4,300.08 - \$6,880.26 for employees working 37.5 hours per week; and \$4,586.76 - \$7,338.94 for employees working 40 hours per week. The evidence did not show why the compensation to Rebel B. Chreste was \$10,000 more per year than either Joshua Pierce

or Gina T. Johnson. While Gina T. Johnson had been Detailed to Special Duty to oversee the South Central Area as part of the Western Region, in her position as RPM for the Western Region, it is unclear whether the compensation shown for her was her compensation as RPM for the Western Region including the South Central Area or whether she received additional compensation for having been Detailed to Special Duty over that area.⁶

20. The RPM duties performed by the Appellant, which the Appellee claims were WDM duties, including “other duties as required;” were the same duties performed by other RPMs who received additional compensation for performing such duties in their oversight of the South Central Area. When a WDM Position Description or a WDM Job Class Specification identifies “other duties as required,” this means such other duties that would normally be performed by a WDM.

CONCLUSIONS OF LAW

1. The Appellant, Lakeesha Tisdale, presented two issues on appeal: (1) a claim of penalization and entitlement to additional compensation for the period of September 2017 through April 2019 as a result of additional duties she performed without additional compensation; and (2) subsection to retaliation by her employer. The burden of proof on both issues was on the Appellant to prove her allegations by a preponderance of the evidence. KRS 13B.090(7).

2. An act of retaliation may properly be consideration as a “penalization.”

3. A classified employee with status shall not be otherwise penalized, except for cause. KRS 18A.095(2). A “penalization” includes ... any action that diminishes the level, rank, discretion, or responsibility of an employee without proper cause...” KRS 18A.005(24). It also includes “...the abridgement or denial of other rights granted to state employees.” KRS 18A.005(24).

4. With regard to the compensation issue, the question is whether the Appellant, during the subject time period, performed only the duties of a Workforce Development Manager (WDM) including “other duties as required,” or whether, in addition to her duties as a WDM, she was required to perform duties that only a Regional Program Manager (RPM) would perform. It is undisputed that during this same time period, her official job title was “Workforce

⁶ When the Education and Workforce Development Cabinet advertised the vacant Regional Program Manager position in Bowling Green, Kentucky, with an advertisement closing date of September 26, 2019, it advertised the pay grade as grade 18 with a salary range of \$51,600.96 - \$82,563.12 at 37.5 hours per week. The position, as advertised, was a FFTL position with the employee filling the position designated as an unclassified, non-merit employee. However, while there is value that should be assigned to the status of a classified employee, it was also noted in the advertisement that the FFTL employee is eligible to receive benefits at the same level as classified employees in a permanent position. (Appellant’s Exhibit 44.)

Development Manager” and she was compensated for such classification the sum of \$44,500 per year.

5. Appellant has alleged that, during the subject time period, she performed several duties that only an RPM would perform:

A. Assigns and evaluates employees. The Appellant admitted there was no evidence she performed these tasks.⁷ She did interview and recommend hiring Stephen Cordona. She also approved timesheets for Vernetta Douglas, DVOP. The DVOP Program was not under the supervision of any WDM.

Examination of the Kentucky Personnel Cabinet Position Description for the WDM specifically sets out in Task #3 the duty of “Assigns & Evaluates the Work of Employees.” (Appellee’s Exhibit 7.) While the Personnel Cabinet Position Description (Appellee’s Exhibit 7) and Job Class Specification for the WDM (Appellant’s Exhibit 2) both assign to the WDM the duty to conduct performance appraisals for staff as well as recommendations for disciplinary actions, they do not empower the WDM to be involved in the interview or hiring process. The Job Class Specification for RPM (Appellant’s Exhibit 3) specifically provides for such individual to “provide leadership in the selection and hiring process.” Therefore, the duty of interviewing job applicants and making recommendations for hiring are the duties of an RPM.

B. Provides technical assistance to subordinates and employees. Rick Schad directed the Appellant to take the lead on policy training (Testimony of Rick Schad.) She was involved in and provided training for Community Board partners and Cabinet staff. She was involved in and provided training for the South Central Workforce Development Board (Dashboard; SNAP benefits; CQI; and ET.) The Appellant had also been directed to go to the Owensboro office, which was outside her region, to assist its personnel and operations.

The Position Description for WDM, under Task #3, assigns to that individual the duty to assess the training needs of employees and to seek and provide training opportunities (Appellee’s Exhibit 7.) In the Job Class Specification, that duty is clarified in that the WDM “recommends training to management staff” emphasis based on notices of training opportunities for employees within a region. Therefore, the WDM assesses the training needs of employees in her area and notifies those employees of applicable training opportunities.

The Job Class Specification for an RPM likewise requires such an individual to assess training needs. However, the RPM “... provides on-the-job training and recommends outside training and/or development of additional internal training programs.” (Appellant’s Exhibit 3.)

⁷ See Appellant’s Closing Arguments, page 3.

The Appellant provided evidence that she participated actively in the training sessions and made presentations in a number of trainings. Such active participation is considered by the Commonwealth as a duty of an RPM.

C. Recommend and submit personnel actions. The evidence shows that the Appellant participated in the interview process and recommended the hire of Stephen Cordona in the Veterans Program. For the reasons stated above, that activity is one assigned to an RPM.

Disciplinary actions taken against employees, however, are duties of both the WDM and the RPM. (Appellant's Exhibits 2 and 3.)

D. Community activities. The Appellant took the position that she was a participating member of the South Central Workforce Development Board; she was requested to take the lead by Rick Schad in finding new office space and, in doing so, conducted site visits; she negotiated Memoranda of Understanding between community partners; organized job fairs in the South Central Region, particularly at the Allen County, Scottsville High School; and was the contact person who was notified whenever a new business plan to locate within her region.

It appears clear that among the tasks and duties of a WDM such an individual "meets with employers & community organizations to promote & provide information about services. Represents office at meetings, on work groups and task forces." (Appellee's Exhibit 7, Task #3.) Such individual also "meets with civic groups, public officials and the public to explain program policies and regulations and to answer questions of field operations within the region." (Appellant's Exhibit 2.)

The Appellant's participation on the South Central Workforce Development Board, and her organization of job fairs in the South Central Region appear from the evidence to be tasks and duties assigned to a WDM. Although the RPM is tasked with representing the agency in public forums (Appellant's Exhibit 3), such task is not exclusive to that position and is defined as an overlapping duty of a WDM.

E. Channel of Communications. It is clear from the evidence that the Appellant served as a direct line channel of communication from the Central Office to the South Central Area. She received and communicated directly with both John Pallasch and Rick Schad. She was also the top person of contact in the South Central Area between that area and One Stop Operators, the local Workforce Development Board, and other partners. She was also responsible for the implementation of Central Office recommendations in her area.

All of these duties appear to be those assigned to an RPM.

6. The Appellant has shown by a preponderance of the evidence that she was penalized, as that term is defined at KRS 18A.005(24), when she was asked to perform duties outside of her classification and of a higher classification without additional compensation. In this instance, the Appellant, who was a grade 16 Workforce Development Manager, was asked to perform the duties of a grade 18 Region Program Manager during certain times of her employment.

7. These actions constituted a penalization because the action increased the level, rank, discretion, or responsibility of an employee without proper cause or authority. KRS 18A.005(24). The actions also constituted a penalization by denying the Appellant a salary adjustment, and by failing to properly compensate her under the classification and compensation system.

8. Pursuant to KRS 18A.110, the Personnel Cabinet Secretary shall promulgate administrative regulations for the classified service, governing classification and compensation plans. The Secretary has done so by promulgating 101 KAR 2:020 and 101 KAR 2:034 with respect to classified employees.

9. When the Appellant worked duties outside her classification, she was entitled to additional compensation. Pursuant to regulation, this would be five percent per grade. 101 KAR 2:034, Section 3. Thus, during the times she was performing the duties of the grade 18 Regional Program Manager position, the Appellant was entitled to a ten percent (10%) pay increase.

10. The fact that other Regional Program Managers might have received a different salary does not establish what the Appellant is entitled to in this case. The Appellant is entitled to what the statutes and regulations allow under these circumstances.

11. Because the Appellant was entitled to a ten percent (10%) increase, beginning October 31, 2017, through July 15, 2018, and from April 1, 2019, through April 30, 2019, her salary should be increased ten percent (10%) during those effective dates.

12. Agencies can utilize transfers, appointments, and reinstatements to fill vacant positions. KRS 18A.005; KRS 18A.0751(1). The Cabinet had assigned extra RPM duties to others who were either RPMs for other regions, detailed to special duty as an RPM in the subject region, or hired as an Interim RPM. The Cabinet found a way to meet its needs for an RPM in the Appellant's region by, in some instances, utilizing means to secure an individual while avoiding the application of FFTL restrictions on that position. Not one of the individuals who took over RPM duties for the South Central Area after Vickie Wade retired lost their classified employee status or was required to assume FFTL status of that position.

13. The evidence is clear that Vickie Wade served as RPM for the Appellant's region until October 30, 2017. Therefore, as there was an assigned RPM, consideration cannot be given to the Appellant's claim for additional compensation for the period from September 2017 through October 30, 2017. Likewise, consideration for additional compensation cannot be given for the period of July 16, 2018, through November 1, 2018, as Gina (Triplett) Johnson, RPM for the Western Region, was Detailed to Special Duty during that time to oversee the South Central Area as part of the Western Region. Consideration has been given to, and the Appellant should be appropriately compensated for performing RPM duties for the period of October 31, 2017 through July 15, 2018, and from April 1, 2019 through April 30, 2019. The addition of certain RPM duties placed upon the Appellant by the Appellee for the modified time period identified by the Hearing Officer, diminished the level and rank of the Appellant without proper cause while other state employees were granted rights that were not granted to the Appellant.

14. With regard to the issue of retaliation, the Appellant based such claim on: (1) her prior Personnel Board activity⁸; (2) the appointment by the Cabinet of John Pettigrew, a white male, as RPM; (3) she was told not to attend a Workforce Development Board meeting by Mr. Beyea, who later rescinded that directive and allowed her to attend; and (4) the Appellee failed to consider the Appellant for a position as RPM.⁹

15. In order to establish a *prima facie* cause of action for retaliation, the Appellant must show the modified elements of the McDonnell-Douglas scheme: (1) that she was engaged in a protected activity; (2) she was disadvantaged by an act of her employer; (3) there was a causal connection between the activity engaged in and the employer's act. A.C. v. Shelby Cty. Bd. Of Educ., 711 Fed.3d 687 (6th Cir. 2013); Kentucky Ctr. for the Arts v. Handley, 827 S.W.2d 697, 701 (Ky. App. 1991).

16. Should a *prima facie* case be established, the employer may provide a "legitimate, non-retaliatory reason for the decision." Handley, at 701C, citing DeAnda v. St. Joseph Hospital, 671 Fed.2d 850 (5th Cir. 1982). Such reason may also include a "business justification" for the action. The burden of proof then shifts back to the employee to show that the employer's reasons for its action is unworthy of belief or constitutes a pretext. Tex. Dep. of Cmty. Affairs v. Burdine, 450 U.S. 248 (1981). "In other words, a Plaintiff is required to produce sufficient evidence which a jury [could] reasonably reject the employer's explanation." Manzer v. Diamond Shamrock Coal Co., 39 Fed.3d 1078, 1083 (6th Cir. 1984).

17. The Appellant has shown by a preponderance of evidence that she was engaged in a protected activity, to wit: The previous filing of a Personnel Board appeal against the Appellee. She has also proven she was disadvantaged by an act of her employer in that the employer placed upon her certain duties of an RPM without additional compensation. However, there was a failure of proof to connect the protected activity with a failure to provide additional

⁸ Lakeesha Tisdale v. Education and Workforce Development Cabinet, PB Appeal 2015-130 (March 15, 2017).

⁹ See Appellant's Closing Arguments, page 8.

compensation to the Appellant for additional services required of an RPM. Therefore, the Appellant failed to establish a *prima facie* cause of action for her retaliation claim.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **LAKEESHA TISDALE V. EDUCATION AND WORKFORCE DEVELOPMENT CABINET (APPEAL NO. 2019-126)** be **DENIED in part** and **SUSTAINED to the extent** as follows:

1. As the Appellant has failed to meet her burden of proof on the issue of retaliation, that claim is **DISMISSED**.
2. The Appellant has met her burden of proof that she was penalized and her job duties were expanded during the period of time from October 31, 2017 to July 15, 2018, and from April 1, 2019 to April 30, 2019, without additional compensation. The Appellant shall be compensated for the duties she performed as a grade 18 Regional Program Manager by receiving a ten percent (10%) pay increase from October 31, 2017 to July 15, 2018, and from April 1, 2019 to April 30, 2019, together with all other related benefits, and that she otherwise be made whole.
3. The Appellee shall also reimburse the Appellant for any leave time she used attending the hearing and any pre-hearing conferences at the Board. 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 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 25th day of May, 2021.

KENTUCKY PERSONNEL BOARD



MARK A. SIPER
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Joshua Hurley
Hon. Stefanie Kingsley
Hon. Edward Dove
Hon. Rosemary Holbrook (Personnel Cabinet)