

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-313**

ERIC VIDONI

APPELLANT

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

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

APPELLEES

*** **

The Board, at its regular March 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated February 8, 2024, and being duly advised,

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

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 4th day of March, 2024.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

Copies hereof this day emailed and mailed to:

Eric Vidoni
Hon. Olivia Peterson
Hon. Catherine Stevens
Hon. Rosemary Holbrook (Personnel Cabinet)
Jay Klein

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
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**FINDINGS OF FACT, CONCLUSIONS OF LAW
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APPELLEES

*** **

This matter came on for an evidentiary hearing on October 25, 2021, at 9:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before Stafford Easterling, Hearing Officer. The hearing was conducted by video teleconferencing using Amazon Chime and all parties appeared remotely. The proceedings were recorded using audio/video equipment and were authorized by KRS Chapter 18A.

The Appellant, Eric Vidoni, 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. Olivia Peterson. The Appellee Personnel Cabinet was present and was represented by the Hon. Catherine Stevens. Also present for the Personnel Cabinet was Agency representative Rebecca Ogden.

BACKGROUND AND FINDINGS OF FACT

1. The Hearing Officer notes this appeal was filed with the Personnel Board on December 30, 2019. On the Appeal Form and during the pre-hearing conference, the Appellant, a classified employee with status, indicated he was appealing a reallocation in addition to advancing a claim that he has been performing duties above his pay grade since May 2015 and a claim that he improperly makes less money than people he trained. The Appellant further explained his claims in the narrative portion of the Appeal Form wherein he states, in full:

Please reconsider my request as Program Investigative Officer II as I have personally trained new investigative staff to be Program Investigative Officers I, and I also provide continuing guidance to them. I am also responsible to monitor the dashboard and referrals while supervisor is out or unavailable and assign tasks to other staff accordingly. I am now earning

a lower salary than a less experienced staff that I helped train to be a PIO I six months ago.

2. Following multiple pre-hearing conferences and the exchange of discovery, the parties determined that this matter needed to be resolved through an evidentiary hearing.

3. The issues and burdens of proof for the evidentiary hearing were set out as follows:

The issues were the Appellant's claim that he should have been reallocated to a Program Investigative Officer II, that he should have been reallocated to a Program Investigative Officer I before July 1, 2019, and that he should have received additional compensation for his current work as a Program Investigative Officer I. The Appellant had the burden of proof on all issues.

4. The Appellant was the only witness to testify at the hearing. No exhibits were introduced into evidence.

5. The Hearing Officer would note that Appellant failed to submit a witness and exhibit list and did not attempt to introduce any written evidence in support of his claims. The Personnel Cabinet provided Bates-stamped copies of relevant documents to all parties and to the Board, however, these documents were not moved into the evidentiary record by any of the parties. The Appellant did testify about some of those documents, so the Hearing Officer will rely upon the Appellant's testimony to establish certain details. Additionally, the Appellant's Appeal Form is in the record and provided some additional detail about the Appellant's claims.

6. From review of the Appellant's Appeal Form and after consideration of the Appellant's testimony, the Hearing Officer finds that the Appellant was reallocated from Family Support Specialist III (Grade 13) to Program Investigative Officer I (Grade 14) on July 1, 2019.

7. The Appellant began his employment as a Family Support Specialist on May 16, 2015.

8. The Appellant testified without challenge that his duties have been the same since May 16, 2015.

9. During his testimony and during prior pre-hearing conferences, the Appellant contended:

- a. He should have been reallocated to Program Investigative Officer II when he was reallocated in 2019. The Hearing Officer would note that the Appellant explicitly abandoned this claim during the hearing.

- b. Because he was reallocated to a Program Investigative Officer I classification in 2019, he should have been classified as a Program Investigative Officer I since May 16, 2015. The Appellant advanced this claim because he argues that his duties had not changed since 2015.
- c. He should have received an additional five percent (5%) increase when he was reallocated in 2019. He alleged that others who were reallocated received the additional increase while he did not.

10. The Appellant acknowledged that, when he was reallocated on July 1, 2019, his monthly salary increased from \$2,715.30 per month as a Family Support Specialist III (Grade 13) to \$2,937.20 per month as a Program Investigative Officer I (Grade 14). The Appellant also acknowledged that the raise he received due to the reallocation amounted to an 8.17% increase over his previous salary and that his salary was raised to the minimum for Grade 14.

11. The Appellant could not identify any statute or regulation that would have entitled him to an additional five percent (5%) salary increase when he was reallocated.

12. The Appellant acknowledged that he had never raised any issue regarding his classification as a Family Support Specialist III before his reallocation.

13. The Appellant argued that he should be eligible for additional compensation because the Cabinet for Health and Family Services settled with another employee, Sydney Ewing, and she received some unspecified salary increase.

14. After review of all the evidence of record, primarily including the Appellant's testimony, the Hearing Officer finds the Appellant is properly classified as a Program Investigative Officer I and has been properly classified since his 2019 reallocation.

15. The Hearing Officer also finds that the Appellant was not entitled to any additional salary increase when he was reallocated in 2019.

16. Finally, the Hearing Officer finds that the evidence does not establish that the Appellant should have been reallocated or that he was entitled to any additional compensation prior to July 1, 2019. The Hearing Officer would note that the specifications for neither the Family Support Specialist III nor the Program Investigative Officer I classifications were entered into evidence for consideration. As a result, it is not clear these classifications remained the same during the relevant period from 2015 to 2019. In addition, no evidence was introduced when the Appellant knew or should have known of the alleged penalization by being assigned to the wrong classification.

CONCLUSIONS OF LAW

1. Reallocation is defined at KRS 18A.005(29) as follows:

“Reallocation” means the correction of the classification of an existing position by placement of the position into the classification that is appropriate for the duties the employee has been and shall continue to perform.
2. The Appellant failed to carry his burden of proof that he was entitled to be reallocated before July 1, 2019. KRS 13B.090(7).
 - a. The only proof offered by the Appellant was his testimony that his duties had not changed since 2015.
 - b. The Appellant failed to introduce into evidence the Job Class Specifications for either the Family Support Specialist III or Program Investigative Officer I job classifications. Thus, he failed to establish the minimum qualifications, examples of duties, or the characteristics of the class for these two (2) positions. He further failed to establish whether the Job Class Specifications for these two (2) positions changed or remained the same between 2015 and 2019. Without this crucial information, the Appellant is unable to establish he was entitled to be reallocated before July 1, 2019. 101 KAR 2:020, Section 1.
 - c. The Appellant also failed to prove whether the grade levels of Family Support Specialist III and Program Investigative Officer I changed or remained the same from 2015 to 2019. Without this information, there is no way to determine if the Appellant was entitled to a salary increase or what the increase might have been if he had been able to prove he was entitled to an earlier reallocation. 101 KAR 2:034, Section 3(4).
 - d. The Appellant did not establish when he knew or should have known he had been penalized in the setting of his salary and, thus, he cannot establish that key portions of his appeal, including his allegations that he was entitled to retroactive pay from 2015 until 2019, were timely filed. KRS 18A.095(29).
3. The Appellant failed to carry his burden of proof that he was entitled to an additional salary increase when he was reallocated from Family Support Specialist III (Grade 13) to Program Specialist I (Grade 14) on July 1, 2019. KRS 13B.090(7).

- a. 101 KAR 2:034, Section 3(4)(a) reads as follows:

Reallocation.

An employee who is advanced to a higher pay grade through reallocation shall receive the greater of five (5) percent for each grade or the new grade minimum except as provided under subsections (2)(b) and (3)(b) of this section, and paragraph (b) of this subsection.

An employee who is placed in a lower pay grade through reallocation shall receive the same salary received prior to reallocation but shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty, reallocation, pay grade change, or successful completion of promotional probation until he or she is moved to a job classification with a higher pay grade than that from which he or she was reallocated. If a promotion, reclassification, detail to special duty, reallocation, or pay grade change occurs, it shall be deemed as having been made from the grade from which the employee had been reallocated.

- b. The Appellant admitted he received a salary increase of over eight percent (8.17%) at the time of his reallocation, which brought him up to the minimum for Grade 14.
- c. Applying 101 KAR 2:034, Section 3(4)(a) to the facts of this appeal, the Hearing Officer finds the Appellant was not entitled to any further increase.
- d. The Appellant did not offer any proof that would have mandated or justified an additional salary increase.
- e. The Hearing Officer finds that the Appellant's testimony that other employees received different raises when they were reallocated did not include sufficient details or evidence to allow comparison to the Appellant's situation.
- f. The Hearing Officer granted a directed decision on this claim at the close of the Appellant's case. KRS 13B.090(7).

4. The Appellant explicitly abandoned his claim that he should have been reallocated to Program Investigative Officer II when he was reallocated in 2019. Accordingly, the Appellant failed to carry his burden of proof that he was entitled to be reallocated to a Program Investigative Officer II before July 1, 2019. KRS 13B.090(7).

5. Because all the events underlying this Appeal occurred before the effective date of Senate Bill 153, all references to KRS Chapter 18A are to the sections in effect at the time of the events associated with this Appeal.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **ERIC VIDONI VS. CABINET FOR HEALTH AND FAMILY SERVICES AND PERSONNEL CABINET (APPEAL NO. 2019-313)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within 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).

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.

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

SO ORDERED at the direction of Hearing Officer Stafford Easterling this 8th day of February, 2024.

KENTUCKY PERSONNEL BOARD


MARK A. SIPER
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:
Eric Vidoni
Hon. Olivia Peterson
Hon. Catherine Stevens
Hon. Rosemary Holbrook (Personnel Cabinet)