



**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2018-098**

**RALPH CRAWFORD**

**APPELLANT**

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

**ENERGY AND ENVIRONMENT CABINET**

**APPELLEE**

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This matter last came on for a pre-hearing conference on June 20, 2018, at 10:30 a.m. EST, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Ralph Crawford, was present by telephone and was not represented by legal counsel. The Agency/Appellee, Energy and Environment Cabinet, was present and represented by the Hon. Erritt Griggs.

This matter is before Hearing Officer Stafford Easterling for a ruling on the Agency's Motion to Dismiss filed with the Personnel Board on July 26, 2018, arguing that the Appellant failed to properly submit his appeal in a timely fashion and that the Appellant has not been penalized as defined by KRS 18A. The Appellant has had an opportunity to file a response and has done so. The Agency then submitted a reply. This matter now stands submitted to the Hearing Officer for a ruling on the Agency's Motion to Dismiss.

**BACKGROUND/ FINDINGS OF FACT**

The Hearing Officer notes that the facts underlying this appeal are substantially similar to the facts underlying the tangentially related case of Emerson Adkins, et al. v. EEC, 2017 WL 6731509 (KY PB). Therefore, as it applies to the instant appeal, the Hearing Officer will summarize the facts underlying that prior Personnel Board decision and hereby incorporates those findings herein:

1. In the 2014 legislative session, the Kentucky General Assembly slashed the budget of the Energy and Environment Cabinet, and presumably that of other Cabinets as well. The action was taken, at least as it impacted EEC according to the testimony, without conduct of hearings or other in-depth review of the ripple effects. To comply with the reduction mandate, the Agency set about trimming costs where it could, thus bringing its Office of Mine Safety and

Licensing (OMSL) into the reduction crosshairs. That office, charged with the overall regulation of underground mining of coal, had presumably commenced to experience a notable decrease in need for its services due to the decline of active underground mines still operating throughout the Commonwealth. The mandate included abolishment of the office and dispersal of its personnel however might be done within the law.

2. Many or all of the experienced OMSL staff were at a rare grade 25+ salary level, with average mid-point for those at grade 25 approximating \$58,600 and those at grade 26 receiving nearly \$71,000 annually. These salary levels were grounded in one or more provisions implemented several years previously, presumably in better times budget-wise, to "reward" the workers of this particular division due to the dangerous and difficult nature of their duties. These included working at risk daily in deep mines and, upon those occasions of tragic explosions and collapses, dealing with the needs of the injured, the dead, and their families. There was thereby established, by virtue of this higher grade, base salaries notably higher than that of most other entry level staff in other divisions. Many of these deep mine regulators enjoyed seniority and accumulated increases as afforded all personnel, likewise from better financial times. Although the proof does not specify the exact number of OMSL personnel either below or above the divisional median, it is clear that most or all of those ultimately demoted into the divisions staffed by Appellants were below the median but still above, considerably in some cases, their counterparts in the surface mining regulatory divisions.

3. Under the approach elected to accommodate the budget cut, deemed a form of reorganization, downsizing this office required that its workers must be either laid off or transferred to other jobs. Lay-offs in such circumstances are a last resort for a variety of reasons, both legal and economical, and the transfer/demotion option was chosen. This, in turn, brought to the fore a sub-option afforded management under the relevant regulation, which was to either reduce the salary of the transferred workers by five percent per grade reduction, or transfer the employee with salary intact. The proof is abundantly clear that established policy mandates that no reassigned merit employee in state government is forced to accept a salary reduction where the position is abolished through no fault of the holder thereof.

4. Given the foregoing scenario, management charged with designing and implementing the downsizing/reorganization set about locating alternate positions for those displaced, still in the mining field. The inevitable result was that, in utilizing existing vacancies within the Agency, a number of these transferees were placed alongside personnel possessing differing levels of seniority who had followed their own unique career paths just as had those being displaced, but almost uniformly receiving less salary than their deep mine regulator counterparts.

5. The experienced authorities charged with implementing the transfers conducted a thorough, extensive analysis of the qualifications of the OMSL personnel being detailed to other divisions. The screening conclusively established that these individuals possessed the requisite minimum qualifications for the positions in which they were ultimately placed. Commensurate with the overall policy, whether or not these individuals were competent to perform was not a

controlling factor, but left to management through other well established mechanisms in place, namely the use of Performance Improvement Plans and the Annual Employee Performance Evaluation system.

6. As to this specific Appellant, prior to the reorganization, he was employed as a Mine Inspector III, grade 27. After the reorganization, the Appellant was placed into a Mine Safety Specialist position, with a grade range of 14 -17.

7. When the Agency effectuated the reorganization, pursuant to 101 KAR 2:034, Section 3, the Appellant was essentially given the option of either 1) voluntarily demoting to the lower graded Mine Safety series and keeping his grade 27 salary or 2) involuntarily demoting to the Mine Safety series and losing 5% of his salary per grade. Assuming the Appellant would have been involuntarily demoted to the same Mine Safety Specialist II position he demoted to voluntarily, the Appellant would have gone from a grade 27 position to a grade 15 position, a 12-grade demotion. At 5% per grade, if he would have been involuntarily demoted, the Appellant would have lost 60% of his pre-reorganization salary.

8. The Appellant wisely decided to voluntarily demote and retain his grade 27 salary. In choosing to voluntarily demote, the Appellant executed a Voluntary Transfer/Demotion/Salary Retention Agreement on July 21, 2014. Importantly, conveying the mandates of 101 KAR 2:034, Section 3(2)(b), that Agreement provided, "an employee whose salary is not reduced by five (5) percent per grade upon demotion shall not be eligible for a salary increase upon promotion, reclassification, detail to special duty, reallocation, or pay grade change until he has moved to a job classification with a higher pay grade than that from which he was demoted." Moreover, the Appellant specifically agreed that he had "read the terms set forth in 101 KAR 2:034 and as described in this document." Further, the Appellant stated that "I understand that if I retain the salary received prior to demotion, I forfeit claims to a salary adjustment as a result of promotions, reclassifications, and detail to special duty assignments and reallocations until such time that promotions, reclassifications, detail to special duty assignments and reallocations exceed the pay grade from which I demoted."

9. On April 1, 2018, the Appellant promoted from a Mine Safety Specialist II, grade 15, to a Mine Safety Specialist Branch Manager position, grade 17. However, unfortunately for him, the Appellant's salary stayed the same after the promotion. The instant appeal followed. Thus, underlying this appeal is the Appellant's attempt to gain a salary increase in contravention of the Voluntary Demotion Agreement and the provisions of 101 KAR 2:034. The Appellant argues that he should be eligible for a salary increase because: 1) he signed the Voluntary Demotion Agreement under threat of involuntary demotion and 2) pay grades above grade 22 existed when he signed the Voluntary Demotion Agreement but do not exist now, making the receipt of a pay increase impossible. The parties also argue that the other has breached the Voluntary Demotion Agreement.

10. 101 KAR 2:034, Section 3, relates to salary adjustments. Subsection (2), impacting demotion, provides that:

- (a) If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:
1. The employee's salary shall be reduced by five (5) percent for each grade the employee is reduced; or
  2. The employee shall retain the salary received prior to demotion. If the employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

Further provisions under the regulations require that an employee retaining his or her salary upon demotion will not be entitled to increases regardless of performance unless the employee attains a grade higher than that from which he or she was demoted.

#### CONCLUSIONS OF LAW

1. The basic issue herein is whether the Appellant has been penalized within the definition of KRS 18A.005(24) and/or as implemented under KRS 18A.095(1) as a result of the actions of either his Agency or the Personnel Cabinet.

2. The voluntary demotion agreed to by the Appellant does not amount to a penalization. Agencies are afforded discretion and flexibility to allocate their personnel to serve in their best interest. Here, the Agency complied with the relevant provisions in effectuating a reorganization in 2015, including filling the certain vacancies through demotion, which does not require a register or advertising. No right afforded the Appellant was violated thereby. Neither the fact that the Appellant might have been subject to an involuntary demotion had he not chosen to demote voluntarily nor the fact that pay grades above the grade 27 position the Appellant left are rare serve to vitiate the Voluntary Demotion Agreement entered by the Appellant. Entering into that agreement was knowing, intelligent, and voluntary. Thus, the Appellant's voluntary demotion does not constitute a penalization as defined by KRS Chapter 18A.

3. As to the Appellant's salary, salaries and benefits in state government are basically creatures of statute and any realignment thereof is subject to quite limited discretion of management. The career path of each employee is unique, tending to result in potentially broad disparities of income among staff, even those alongside one another in some instances. In the immediate instance, before his voluntary demotion, the Appellant was properly classified as a Mine Inspector III, grade 27, receiving a salary of \$5,833.04 per month. After the voluntary demotion, the Appellant was properly classified as a Mine Safety Specialist II, grade 15, receiving a salary of \$5,833.04 per month. Then, after his April 2018 promotion, the Appellant was properly classified as a Mine Safety Specialist Branch Manager, grade 17, receiving a salary of \$5,833.04 per month. The Appellant's career path led to him receiving a monthly salary

significantly higher than the vast majority of grade 15 or 17 employees; nonetheless, because the Appellant's salary was set in accordance with the applicable statutes and regulations, the Appellant received the salary he was due, both before and after his recent promotion.

4. Ultimately, the Appellant's complaint is not a procedural one, but, instead, one of fairness: that it is unfair that he received a two-grade promotion, yet will not receive any more money for the additional duties he will perform. However, the Appellant is unable to identify any applicable statute or regulation that would entitle him to the pay increase he seeks. Instead, those statutes and regulations specifically establish that the Appellant is not entitled to an increase in pay "regardless of performance unless the employee attains a grade higher than that from which he or she was demoted." 101 KAR 2:034, Section 3.

5. In light of the foregoing, the Appellant has not met his burden of proof of establishing a penalization and this appeal must fail.

#### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **RALPH CRAWFORD V. ENERGY AND ENVIRONMENT CABINET (APPEAL NO. 2018-098)** be **DISMISSED**.

#### **NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See Rapier v. Philpot, 130 S.W.3d 560 (Ky. 2004).

**Any document filed with the Personnel Board shall be served on the opposing party.**

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

**ISSUED** at the direction of **Hearing Officer Stafford Easterling** this 16<sup>th</sup> day of January, 2019.

**KENTUCKY PERSONNEL BOARD**

A handwritten signature in blue ink, appearing to read "Mark A. Sipek / MAS", written over a horizontal line.

**Mark A. Sipek  
Executive Director**

A copy hereof this day mailed to:

Hon. Erritt Griggs  
Ralph Crawford  
Nina Hockensmith