

**KENTUCKY PERSONNEL BOARD
MINUTES OF FEBRUARY 9, 2024**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chair Gillis on February 9, 2024, at approximately 9:30 a.m., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky.

Board Personnel Present:

Larry Gillis, Chair
Yvette Gentry, Member
Morgan Ward, Member
Rick Reeves, Member
Mitchel Denham, Member
Michael Eaves, Member

Mark A. Sipek, Executive Director and Secretary
Stafford Easterling, General Counsel
Gwen McDonald, Administrative Section Supervisor
Mickey Goff, Administrative Specialist

Board Personnel Absent: Marc Farris, Member, who resigned effective February 7, 2024.

2. **READING OF THE MINUTES OF THE REGULAR MEETING HELD JANUARY 12, 2024.**

The minutes of the last Board meeting had been previously circulated among the members. Chair Gillis asked for any additions or corrections. Mr. Ward moved to approve the minutes as submitted. Mr. Reeves seconded, and the motion carried 4-0, with Mr. Denham abstaining. The Board members signed the minutes.

(NOTE: Chair Gillis did not vote unless specifically noted.)

3. **EXECUTIVE DIRECTOR AND SECRETARY'S REPORT**

Mr. Sipek announced that Marc Farris resigned as Board Member on February 7, 2024. Mr. Farris was thanked for his good work with the Board and will miss him going forward. Noting Mr. Farris' departure, Mr. Sipek asked that the Board notify staff if they will be unable to attend future Board meetings, so that the Board would have a quorum. Upon notice that Mr. Denham

had a conflict with the March 8, 2024 Board meeting, the date of the next Board meeting was changed to March 1, 2024.

Annual Employee Performance Evaluations have been completed for calendar year 2023, and performance planning for calendar year 2024 has also been completed.

Mickey Goff and Connie Lashbrook attended eMars training regarding the 2024 eMars upgrade.

Mr. Sipek noted that House Bill 6, which contains a raise for state employees, also contains an increase in funding for the Personnel Board for: (1) contract hearing officers, (2) allowing an increase to the hourly rate for contract hearing officers, (3) a video equipment upgrade for Hearing Room 1, and (4) soundproofing the Boardroom and two (2) hearing rooms. The bill has passed the House, and now is in committee in the Senate.

Mr. Sipek reported that Brandy Lawrence requested Oral Argument in her appeal following the Recommended Order, which moved that appeal to the Board's March Agenda. Mr. Denham questioned whether oral arguments were always allowed to be heard. Mr. Sipek stated that, in the past, oral arguments have been scheduled whenever a party has requested it; otherwise, it would become a two (2) -step process, if the Board chose whether to hear oral arguments then it would delay the appeal for a month, possibly putting the Board in danger of not complying with KRS Chapter 13B, because there are requirements pertaining to final orders following recommended orders. Mr. Denham proposed that if a party requests oral argument, then the Board should take into consideration whether or not it desires to hear oral arguments when deciding the case; if the Board decides it wishes to hear oral arguments, then those could be scheduled for the following month. After further discussion, Mr. Ward stated that oral arguments in a matter where oral argument is not needed can contribute to a general backlog and delay, thus, the issue was worthy of further consideration, and no formal motion should be made on policy yet.

4. REPORT OF THE PERSONNEL CABINET

Mary Elizabeth Bailey, Secretary for the Personnel Cabinet, and the Hon. Rosemary Holbrook, General Counsel and Executive Director of the Office of Legal Services, presented for the Cabinet.

Secretary Bailey informed the Board that Robert Long, the former Deputy Secretary for the Personnel Cabinet, has accepted an opportunity with the Finance and Administration Cabinet. Ms. Holbrook has accepted the position of General Counsel and Executive Director of the Office of Legal Services for the Cabinet. Ms. Holbrook was congratulated on her achievement.

Ms. Holbrook stated the Cabinet was actively monitoring the bills before the General Assembly, including House Bill 6, which includes a proposed four percent (4%) raise for state employees in Fiscal Year 2025 and a proposed two percent (2%) raise for state employees in Fiscal Year 2026.

Nominations for the Governor's Ambassador Awards are open. This award recognizes public employees who have gone above and beyond. Winners receive, in addition to a recognition ceremony, a personalized brick added to the walkway at the Kentucky History Center. Employees and past employees who have served within the past twelve (12) months are eligible to be nominated. Nominations end March 29.

The Personnel Cabinet has incorporated the Omniaalert System to simultaneously alert state employees, based upon their work location and work county, of real time emergency notices of pending weather issues such as storms or tornados, fire emergencies, state office closings, bomb threats, or an active shooter event. The alerts will arrive by email and/or text to each employee and by pop-ups on an employee's computer screen. This system is in addition to the voice prompts, flashing lights, and notices in the building that are already in place. Secretary Bailey thanked Stephanie Carpenter, Staff Assistant for the Department of Human Resource Administration in the Personnel Cabinet for her hard work to implement this alert system.

The Cabinet has rolled out the 2024 Executive Branch annual training for employees and managers. The training includes security awareness, employee handbook, executive branch ethics, and prevention of employee burnout. The training must be completed by May 3, 2024.

As Mr. Sipek mentioned, the 2023 Annual Employee Performance Evaluations and 2024 performance planning were due to be completed by January 31, 2024. Secretary Bailey stated that approximately twenty-four thousand (24,000) received their year-end performance evaluations and/or their performance planning. She thanked Jennifer Sanford for her assistance in helping agencies with getting the performance evaluations and plannings completed.

5. ORAL ARGUMENTS

- A. **Lawrence, Brandy v. Administrative Office of the Courts (2023-154)**
(Appellant's Request)
Moved to March Board

- B. **Yearego, Andrea v. Cabinet for Health and Family Services (2021-002)**
(Appellant's Request)
Moved From January Board

Present for oral arguments were counsel for the Appellant, Andrea Yearego, the Hon. Brandon Music, and counsel for Appellee, Cabinet for Health and Family Services, the Hon. Olivia Peterson. After presenting oral arguments, the parties answered questions from the Board. Chair Gillis and Mr. Denham abstained from the oral argument; Mr. Ward conducted the oral arguments for the Board.

6. CLOSED SESSION/RETURN TO OPEN SESSION

Mr. Denham moved to amend the closed session language that the Board go into Executive Session for the purposes of discussions and deliberations regarding individual adjudications and to include discussions of KRS 61.810(1)(f), which authorizes discussions that might lead to the appointment, discipline, or dismissal of employees, that the Board discuss dismissal or removal of staff, and asked that the Hon. Rosemary Holbrook, General Counsel for the Personnel Cabinet, be allowed to attend the session as an advisor on KRS 18A, personnel matters. Mr. Eaves seconded. Chair Gillis stated that a motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. [Pursuant to KRS 61.810(1)(c) and (f), the Kentucky Open Meetings Act, the Board retired into closed Executive Session and the attendees were required to leave the video conference, pursuant to KRS 61.826. Specific justification under the Kentucky Open Meetings Act for this action were as follows, because there were deliberations regarding individual adjudications as listed on the Board's Agenda for the February 9, 2024 meeting and discussions of personnel actions as stated above.](10:26 a.m.)

Mr. Denham moved to return to open session. Mr. Eaves seconded, and the motion carried 5-0. (12:21 p.m.)

7. CASES TO BE DECIDED

The Board reviewed the following cases. At that time, the Board considered the record including the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments, where applicable.

A. Allen, Amanda v. Justice and Public Safety Cabinet, Department of Juvenile Justice and Personnel Cabinet (2023-070)

Ms. Gentry, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, moved to accept the recommended order dismissing the appeal. Mr. Reeves seconded, and the motion carried 4-0, with Mr. Denham abstaining.

B. Bouiti, Jean Paul v. Justice and Public Safety Cabinet, Department of Corrections (2023-042)

Mr. Ward, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, moved to accept the recommended order dismissing the appeal. Mr. Eaves seconded, and the motion carried 4-0, with Mr. Denham abstaining.

C. Bunfill, Darla v. Justice and Public Safety Cabinet, Department of Juvenile Justice (2022-020)

Mr. Eaves, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, moved to accept the recommended order dismissing the appeal. Mr. Ward seconded, and the motion carried 4-0, with Mr. Denham abstaining.

D. Colvis, Robert v. Department of Fish and Wildlife Resources (2022-166)

Ms. Gentry, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, moved to defer this matter. Mr. Reeves seconded, and the motion carried 5-0.

**E. Lawrence, Brandy v. Administrative Office of the Courts (2023-154)
Moved to March Board**

**F. Mitchell McCloskey, Michelle v. Energy and Environment Cabinet and Personnel Cabinet (2019-236)
Deferred from January Board**

Mr. Denham, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, and Appellee's exceptions and request for oral argument, Appellant's response to exceptions and request for oral argument, and oral arguments, moved to accept the Final Order of the Board rejecting the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommended Order, as attached to the minutes, sustaining the appeal to the extent therein. Ms. Gentry seconded, and the motion carried 5-0, with Chair Gillis abstaining.

G. Mullins, Stephen v. Justice and Public Safety Cabinet, Department of Corrections (2022-057)

Mr. Eaves, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, moved to accept the recommended order

dismissing the appeal. Mr. Reeves seconded, and the motion carried 4-0, with Mr. Denham abstaining.

H. Peek, Marshall v. Justice and Public Safety Cabinet, Department of Corrections and Robin McCalister (2020-169 and 2021-134)(2 appeals)

Ms. Gentry, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, moved to accept the recommended order dismissing the appeal. Mr. Eaves seconded, and the motion carried 4-0, with Mr. Denham abstaining.

I. Trimble, Andrew v. Justice and Public Safety Cabinet, Department of Corrections (2022-161)

Ms. Gentry, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, moved to accept the recommended order dismissing the appeal. Mr. Reeves seconded, and the motion carried 4-0, with Mr. Denham abstaining.

J. Wright, Sonya (2021-151), Mark Noble (2022-006) and Anthony Wheeler (2022-008) v. Justice and Public Safety Cabinet, Department of Corrections (3 appeals)

Mr. Ward, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, Appellants' exceptions, and Appellee's response to exceptions, moved to accept the recommended order dismissing the appeals. Mr. Eaves seconded, and the motion carried 4-0, with Mr. Denham abstaining.

**K. Yearego, Andrea v. Cabinet for Health and Family Services (2021-002)
Moved to February Board**

Mr. Ward, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order, Appellant's exceptions, request for oral argument, and brief in opposition of termination of employment, and oral arguments, moved to accept the recommended order dismissing the appeal. Ms. Gentry seconded, and the motion carried 4-0, with Chair Gillis and Mr. Denham abstaining.

Show Cause Order – No Response Filed – Appeal Dismissed

L. Geary, Anthony v. Justice and Public Safety Cabinet, Department of Juvenile Justice (2022-106)

Ms. Gentry moved to find that the Appellant has not responded to the show cause order and that the recommended order be accepted dismissing the appeal for failure to timely prosecute the appeal. Mr. Ward seconded, and the motion carried 4-0, with Mr. Denham abstaining.

8. WITHDRAWALS

Mr. Ward moved to accept the following withdrawals and to dismiss the appeals. Mr. Reeves seconded, and the motion carried 4-0, with Mr. Denham abstaining on Items A, B, D, E, F, G, and the motion carried 5-0 on Item C.

- A. Cook, Brian v. Finance and Administration Cabinet (2023-161)
- B. Dean, Breanna v. Cabinet for Health and Family Services and Personnel Cabinet (2023-085)
- C. Harmon, Charlee v. Morehead State University (2024-014)
- D. Haynes, Catherine v. Cabinet for Health and Family Services (2023-115)
- E. Jamie Alan Phelps v. Justice and Public Safety Cabinet, Department of Juvenile Justice (2023-056)
- F. Spurling, Kenneth v. Justice and Public Safety Cabinet, Department of Corrections (2023-159)
- G. Taulbee, Anthony v. Justice and Public Safety Cabinet, Department of Corrections (2023-119)

9. SETTLEMENTS

Ms. Gentry moved to issue settlement orders and to sustain the appeals to the extent set forth in the settlements as submitted by the parties. Mr. Eaves seconded, and the motion carried 4-0, with Mr. Denham abstaining.

- A. Berry, Deborah v. Cabinet for Health and Family Services (2023-098)
- B. Vore, Laura v. Justice and Public Safety Cabinet, Department of Corrections (2022-179)
- C. Wilson, David v. Cabinet for Health and Family Services (2022-100)

10. OTHER

- A. Case Load Reduction

1. Backlog, status of appeals, plan of action

Mr. Gillis stated the Board had received the report and plan from staff on the previous day and wanted to review it further.

B. Hearing Officers

Discussed above.

C. Election of Chair and Vice Chair

Chair Gillis submitted his verbal resignation as Chair of the Personnel Board. Mr. Denham moved to accept Chair Gillis' resignation as Board Chair effective February 9, 2024, and to add Board Chair to the officer elections listed as Item 10(c). Mr. Ward seconded, and the motion passed 6-0.

Mr. Denham moved to elect Michael Eaves as Board Chair. Ms. Gentry seconded, and the motion passed 5-0, with Mr. Eaves abstaining. Chair Gillis submitted delegation authority forms to Mr. Eaves and Mr. Sipek.

Mr. Ward moved to elect Mitchel Denham as Board Vice Chair. Mr. Reeves seconded, and the motion passed 5-0, with Mr. Denham abstaining.

D. Next Board Meeting: **March 1, 2024**

11. SECOND CLOSED SESSION/SECOND RETURN TO OPEN SESSION


Mr. Denham moved that, pursuant to KRS 61.810(1)(f), which authorizes the discussion of appointment, discipline, or dismissal of employees, the Board go into closed Executive Session for the purposes of discussions and deliberations regarding the dismissal or removal of staff, and asked that the Hon. Rosemary Holbrook, General Counsel for the Personnel Cabinet, be allowed to attend the session as an advisor on KRS 18A, personnel matters. Mr. Eaves seconded. Chair Gillis stated that a motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. [Pursuant to KRS 61.810(1)(f), the Kentucky Open Meetings Act, and (8)(j) and 7(f), the Board retired into closed Executive Session and the attendees were required to leave the video conference, pursuant to KRS 61.826. Specific justification under the Kentucky Open Meetings Act for this action were as follows, because there were deliberations regarding individual adjudications as listed on the Board's Agenda for the February 9, 2024 meeting and discussions of personnel.](12:31 p.m.)

Mr. Denham moved to return to open session. Mr. Eaves seconded, and the motion carried 6-0. (10:31 a.m.)

Mr. Denham moved to accept the resignation of Executive Director Mark Sipek effective March 31, 2024. Mr. Ward seconded, and the motion passed 5-0, with Chair Gillis abstaining.

Mr. Ward moved to accept the resignation of General Counsel Stafford Easterling effective February 9, 2024. Ms. Gentry seconded, and the motion passed 4-0, with Chair Gillis and Mr. Reeves abstaining.

There being no further business, the meeting was adjourned by acclamation. (1:05 p.m.)




Larry Gillis, Chair

Morgan Ward, Member

Mitchel Denham, Member

Yvette Gentry, Member



Rick Reeves, Member



Michael Eaves, Member

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Larry Gillis, Chair



Yvette Gentry, Member

Morgan Ward, Member

Rick Reeves, Member

Mitchel Denham, Member

Michael Eaves, Member

FEB 2024

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Yvette Gentry, Member

Morgan Ward, Member

Rick Reeves, Member



Mitchel Denham, Member

Michael Eaves, Member

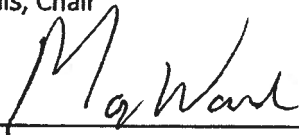
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Larry Gillis, Chair



Morgan Ward, Member

Mitchel Denham, Member

Yvette Gentry, Member

Rick Reeves, Member

Michael Eaves, Member

CERTIFICATION OF PERSONNEL BOARD RECORDS

I certify that attached hereto is a true and correct copy of the Personnel Board's Final Order in the case of **MICHELLE MITCHELL MCCLOSKEY V. ENERGY AND ENVIRONMENT CABINET AND PERSONNEL CABINET (APPEAL NO. 2019-236)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 14th day of February, 2024.



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

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-236

MICHELLE MITCHELL MCCLOSKEY

APPELLANT

V. FINAL ORDER REJECTING THE HEARING OFFICER'S
FINDINGS OF FACT AND CONCLUSION OF LAW
AND RECOMMENDED ORDER

ENERGY AND ENVIRONMENT CABINET

AND

PERSONNEL CABINET

APPELLEES

** ** * ** *

The Board, at its regular February 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated October 27, 2023, Appellee's Exceptions and Request for Oral Argument, Appellant's Response to Exceptions and Request for Oral Argument, oral arguments, and being duly advised, **HEREBY ORDERS AS FOLLOWS:**

The Board **REJECTS** the Hearing Officer's Findings of Fact, Conclusions of Law, and Recommended Order, largely adopts the arguments contained in the Appellee's Exceptions and enters its own Findings of Fact, Conclusions of Law, and Final Order.

FINDINGS OF FACT

1. This matter came on for an evidentiary hearing using Amazon Chime video teleconferencing software on February 23, 2021, at approximately 9:30 a.m., EDT, 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.

2. The Appellant, Michelle Mitchell, was present and was not represented by legal counsel. The Agency/Appellee Energy and Environment Cabinet (EEC) was present and represented by the Hon. Erritt Griggs. The Agency/Appellee Personnel Cabinet was present and represented by the Hon. Catherine Stevens. Also present as Agency representatives were Nina Hockensmith for EEC and Department of Human Resources Administration Commissioner Mary Elizabeth Bailey for the Personnel Cabinet. All appeared by Amazon Chime.

3. At issue in the evidentiary hearing was the following:
 - A. Whether the Appellees properly reallocated the Appellant. The **Appellees** had the burden of proof on this issue, which was by a preponderance of the evidence.
 - B. An additional issue was whether the Appellant was properly classified as a Procedures Development Specialist II. She contended that she should be classified in the Environmental Control Scientist series. The **Appellant** had the burden of proof on this issue, which was by a preponderance of the evidence.
4. The Appellees presented the testimony of four witnesses:
 - A. Department of Human Resources Administration (DHRA) **Commissioner Mary Elizabeth Bailey**, who testified about the reasons for the abolishment of the Internal Policy Analyst (IPA) series;
 - B. **Heather Alexander**, Environmental Control Supervisor with the Energy and Environment Cabinet's Division of Waste Management, who was the Appellant's first-line supervisor;
 - C. **Debbie Hatfield**, who works in the Personnel Cabinet's Classification, Compensation, and Organizational Management Branch, and reviewed all of the IPA series' reallocations for the Transportation, Public Protection, and Energy and Environment Cabinets and performed the reallocation assessment that resulted in the Appellant being reallocated to a Procedures Development Specialist II; and
 - D. **Rebecca Ogden**, a Personnel Program Manager in the Personnel Cabinet's Classification, Compensation, and Organizational Management Branch, and Debbie Hatfield's first-line supervisor, who was directly involved in the reconsideration of the Appellant's reallocation.

The Appellee also submitted two hundred twenty-three (223) pages of exhibits. The **Appellant, Michelle Mitchell McCloskey**, testified and offered nine (9) exhibits.

5. In 2019, the Personnel Cabinet completed a years' long review of the Internal Policy Analyst (IPA) series, a job classification created in the 1980s. This review included a working group with representatives from all major Cabinets in state government. The result of this review was the abolishment of the IPA series because the job classifications had become so vague and unwieldy that there was insufficient commonality between the job duties performed by employees in the series. Some of the employees within the IPA classification who were assigned to different Cabinets had radically different duties and responsibilities, even though they were in the same job classification. The inconsistent application and definitions of the IPA series were repeatedly causing conflict between: (1) various state agencies, (2) various state agencies and the Personnel Cabinet and, (3) the Personnel Cabinet with itself at various points in time, depending on whom was filling key policy interpreting positions within the Cabinet over the years.

6. The Appellant had served twenty-two (22) years with EEC including serving as an Internal Policy Analyst until her reallocation in 2019. She received outstanding evaluations as an IPA and helped fill any administrative/leadership vacuum whenever her next line supervisor was out of the office. The parties all agreed that the Appellant's work performance was not a factor in her reallocation. The decision on the Appellant's reallocation was made by the Agencies in consultation with each other, and by comparing the Appellant's Position Description to other classifications within the EEC. After considering several options, including the Environmental Control Scientist series which the Appellant argued, the Agencies determined the Appellant should be reallocated as a Procedures Development Specialist II.

7. On March 28, 2019, following a conversation within EEC about the looming reallocation process, the Appellant submitted an updated Position Description (PD) to her first-line supervisor, which was then forwarded up the chain of command to EEC's Office of Administrative Services (OAS). On April 12, 2019, the Appellant spoke in detail with OAS about the PD that was going to be used by the Agencies during the reallocation process to determine where to reallocate the Appellant. On April 15, 2019, the Appellant and OAS had a follow-up discussion about the Appellant's request to have the phrase "oversee" to either remain or be re-inserted in her PD after OAS previously removed the phrase. Following discussion, the Appellant and EEC agreed that her job duties justified the inclusion of the word "oversee" and that the Appellant could submit an updated PD that included the word "oversee" and a couple other tweaks in language that the Appellant believed more accurately reflected her actual job duties. The Appellant timely submitted her version of her PD to EEC in May 2019 and, by no later than May 24, 2019, the PD submitted by the Appellant was then submitted to the Personnel Cabinet for their review during the reallocation process.

8. The Appellant received notice that she was reallocated on Monday, June 17, 2019, when she was presented with a form entitled "Notice of Reallocation." This document informed

the Appellant that she was reallocated effective Sunday, June 16, 2019 (a non-working day), to a Procedures Development Specialist (Grade 14). The Appellant refused to assign the acknowledgement because she did not receive a Personnel Action Notification (PAN) with her Notice of Reallocation.

9. There was no further communication about the reallocation until EEC reissued the Appellant a Notification of Reallocation on August 14, 2019, officially informing her that she had been reallocated on June 16, 2019, from Internal Policy Analyst (IPA) III (Grade 15) to Procedures Development Specialist II (Grade 14). The Appellant disagreed with the reallocation, noting especially that the PD included for her in the state's HR system was still outdated and was not the one she had submitted in May 2019. So, by no later than August 27, 2019, she requested that the Agencies reconsider her reallocation as a Procedures Development Specialist, specifically given the previously agreed-upon addition of the phrase "oversees" into her previous IPA III position description. However, largely as a result of procedural/communication bottlenecks in the Agencies caused by processing approximately 360 reallocations to various IPAs across the state – and then having to handle approximately ninety (90) requests for reconsideration from IPAs displeased with their reallocations, the Personnel Cabinet failed to respond to the Appellant's request for reconsideration in the sixty (60) – day window mandated by KRS 18A.095(10)(c)¹. There was no further communication between the parties about the Appellant's request for reconsideration until the Appellant reached out to the Personnel Cabinet on October 29, 2019. During that conversation, the Personnel Cabinet acknowledged that their response was overdue, but the Appellant was not given a specific date that she could expect the reconsideration to be completed. The Appellant then filed the underlying Personnel Board appeal on November 1, 2019.² Thereafter, on November 12, 2019, the Personnel Cabinet issued their response to the request for reconsideration again concluding that the Appellant was properly reallocated as a Procedures Development Specialist II. The propriety of the reallocation, the timeliness of the Personnel Cabinet's response to the Appellant's request for reconsideration, and the fitfulness of the Appellant's reallocation were issues to be resolved though evidentiary hearing.

10. The Board makes these Findings with respect to the reallocation of the Appellant:
- A. The Appellant receiving initial notice of reallocation on Monday, June 17, 2019, when the reallocation was retroactively effective

¹ The version of KRS 18A.095(10)(c) in effect during the relevant period of time provides, in pertinent part, that "the employee shall file a written request for reconsideration of the reallocation of his position with the secretary in a manner and form prescribed by the secretary and shall be given a reasonable opportunity to be heard thereon by the secretary. The secretary shall make a determination within sixty (60) days after the request has been filed by an employee."

² Although the appeal filed by the Appellant originally challenged only the Personnel Cabinet's failure to respond to her request for reconsideration in a timely manner, by agreement of the parties at a subsequent pre-hearing conference, the appeal was later amended/expanded to incorporate the merits of the underlying reallocation in addition to the Appellant's procedural arguments.

Sunday, June 16, 2019 (a non-working day), was a *de minimus* violation of the Appellant's KRS Chapter 18A rights.

- B. The Personnel Cabinet also was fourteen (14) days late in deciding the Appellant's appeal from her reallocation.
- C. The record does not establish the Appellant suffered any harm as a result of either of these violations.
- D. The Agencies' decision to reallocate the Appellant to a Procedures Development Specialist II was supported by the evidence presented at the hearing.

11. As discussed in detail, the primary issue in controversy about the procedural processing of the Appellant's reallocation was the Personnel Cabinet's determination that the Appellant did not qualify for the Environmental Control Scientist series because her prior IPA duties were not "technical, scientific" in nature. The Appellant's duties involved, among other things, helping to draft administrative regulations that translate/operationalize state and federal requirements that pertain to the Division of Waste Management in addition to analyzing data provided by EEC's field scientists. The parties agree that the Appellant's duties were technical in nature, however, the key dispute between the parties is whether the Appellant's duties constitute "scientific" duties. To broadly paraphrase, the Personnel Cabinet argued that an employee is required to actually perform the scientific experiments/collection/analysis in order for their duties to qualify as "scientific" in nature while the Appellant argued that performing technical work in a scientific field means her duties are both "technical" and "scientific" in nature and should qualify her for the Environmental Control Scientist series. The Agencies' witnesses provided slightly differing definitions of the terms "technical" and "scientific" as is included in the position description for most of the Environmental Control Scientist series, but, on the whole, the witnesses consistently testified that the Appellant performed technical duties but did not perform any scientific duties.

12. After consideration of the evidence of record, including the Appellant's job duties and the various available job classifications, the Hearing Officer finds that the Appellant did not establish that she was misclassified as a Procedures Development Specialist II, did not establish that she was entitled to another job classification, and did not establish that another job classification series would have been a better fit for her job duties. The Appellant's claims that she was entitled to be reclassified into a classification other than Procedures Development Specialist II must fail as a matter of fact and as a matter of law.

CONCLUSIONS OF LAW

1. The General Assembly has delegated to the Personnel Cabinet the discretion to prepare, maintain, review, evaluate, and revise the merit system of job classification and to allocate positions in the classified service to the appropriate job classification. KRS 18A.025(3)(b)1c; KRS 18A.110(1)(c) and (7)(a); and 101 KAR 2:020.
2. In 2019, the Personnel Cabinet properly performed these functions when it determined that it was in the best interest of the classified service to abolish the Internal Policy Analyst series.
3. The Appellees committed a *de minimus* violation of KRS 18A.095(8) and (10) when they notified the Appellant of her reallocation on June 17, 2019, instead of when it became effective on June 16, 2019. To be effective, statutorily required notice should be given before a personnel action is taken. Debra Ratliff v. Transportation Cabinet, 2010 WL 2936017 (KY PB Appeal No. 2008-291) and John Holloway v. Transportation Cabinet, 2010 WL 677198 (KY PB Appeal No. 2008-296).
4. The Appellant was also penalized when she received notice of the decision on her appeal of her reallocation from the Personnel Cabinet fourteen (14) days beyond the statutory deadline. KRS 18A.095(10).
5. Despite these two penalizations, the proof shows that the Appellant did not suffer any harm as a result.
6. The Appellees carried their burden of proof that the Appellant was properly reallocated as a Procedures Development Specialist II. KRS 13B.090(7).
7. The Appellant failed to carry her burden of proof that she was not properly classified as a Procedures Development Specialist II and that she should have been classified in the Environmental Control Scientist series. KRS 13B.090(7).
8. Because the proof establishes that the Appellant was not harmed by any of the actions of the Appellees, she is not entitled to any relief from these appeals except for the restoration of her leave time used to attend the pre-hearing conferences, the evidentiary hearing, and the oral argument before the Board. KRS 18A.095(22) and (25).

IT IS FURTHER ORDERED that the appeal of appeal of **MICHELLE MITCHELL MCCLOSKEY V. ENERGY AND ENVIRONMENT CABINET AND PERSONNEL CABINET (APPEAL NO. 2019-236)** be **SUSTAINED to the extent** that the Appellant was

penalized as set forth above and the Agencies shall reimburse the Appellant for any leave time she used to attend pre-hearing conferences, the evidentiary hearing, and oral arguments in this matter before the Personnel Board. KRS 18A.095(25).

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

SO ORDERED this 14th day of February, 2024.

KENTUCKY PERSONNEL BOARD



**MARK A. SIPEK
SECRETARY**

A copy hereof this day emailed and mailed to:

Michelle Mitchell
Hon. Jessica Robles
Hon. Catherine Stevens
Hon. Rosemary Holbrook (Personnel Cabinet)
Stacy Perry
David Dooley