COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-007

KENDRAH A. SANDERS **APPELLANT**

VS.

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS **APPELLEE**

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

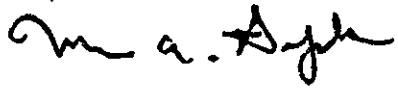
The Board at its regular April 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 10, 2016, and having considered Appellant's exceptions, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer 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 **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 20th day of April, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Edward Baylous
Ms. Kendrah A. Sanders
Mr. Rodney E. Moore

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-007

KENDRAH SANDERS **APPELLANT**

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

JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF CORRECTIONS **APPELLEE**

** ** ** ** **

This matter came on for a pre-hearing conference on January 20, 2016, at 10:00 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Kendrah Sanders, was present by telephone and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Edward Baylous.

Since the time of the last pre-hearing conference in Appeal No. 2015-262, Appellant has filed a new appeal, which has been designated as Appeal No. 2016-007, filed with the Personnel Board on January 13, 2016. The Appellant is appealing discrimination, and states in the narrative portion of the appeal "violation of equal pay act."

On a separate document attached to the Appeal No. 2016-007, titled RE: "Racial Discrimination/Violations of Equal Pay Act" Ms. Sanders stated as follows:

> To whom it may concern, I am filing this grievance thru the personal board due to the salary discrimination that I faced within the Kentucky Department of Corrections. I filed a complaint with the Federal EEOC office and was granted a right to sue letter. The case number for my case 474-2015-00645. In addition to the right to sue letter I have been provided with additional information about Social Service Clinician Nicole Lowry that further supports my argument that the Kentucky Dept. of Corrections willingly and knowingly payed Nicole Lowry at the rate of a clinical psychologist. A rate that she is not qualified at receiving based on her credentials as a professional.

> The information that I recently obtained on (1-9-15) is further proof that the Department of Corrections has systemic issues within the Division of Substance abuse that allows persons of color to face racial discrimination.
>
> To date Kevin and Mylea Pangburn continue to foster a racially biased culture within the department of corrections that shows favor to white women whom "they" personally feel should be protected and promoted. I will also present recently obtained information to validate this claim.
>
> As a professional I could not stomach the discrimination that I faced daily but plan to pursue this and other pending litigation to the end. As a professional the career path that I choose for myself has been forever altered due to the racial disicirimation that I faced. I feel belittled as a person and suffer emotional consequences daily. This matter needs to resolved by the personal board at the earliest date. (sic)

At the pre-hearing, Ms. Sanders gave further amplification that Ms. Nicole Lowry made approximately $52,000 per year at the Psychologist rate even though she is not qualified to sit for the exam. Ms. Sanders stated she did the same work duties as Ms. Lowry and made significantly less, approximately $37,000 to $38,000 per year. Ms. Sanders stated this issue of allowing Ms. Lowry to earn more money at a rate she was not qualified for is further proof of racial discrimination by the head of the Substance Abuse program, and further contended that other personal relationships count for more than qualifications in determining who receives promotions and favorable assignments in the Division of Substance Abuse.

Appellant stated she now works for Louisville Metro Government as a supervisor, but had wanted to continue working for state government. She felt she had to leave due to the systemic discrimination she experienced.

Counsel for the Appellee indicated he would be filing a Motion to Dismiss and asked for two weeks from the date of this pre-hearing conference in which to do so.

Appellee submitted a Motion to Dismiss and Appellant responded. The matter is now ready for a ruling on Appellee's Motion to Dismiss.

BACKGROUND

1. The Appellant, Kendrah Sanders, had previously been a classified employee with status prior to the filing of this appeal.

2. In its Motion to Dismiss, counsel for the Appellee Department of Corrections contends the matters raised in this appeal and the appeal itself must be dismissed as the matters are *res judicata*. Counsel notes two previous appeals, Appeal Nos. 2015-163 and 2015-164, had been dismissed following an evidentiary hearing on October 7, 2015, at which Appellant did not appear. The Personnel Board, noted in the documents attached to the Appellee's Motion to Dismiss, adopted the Recommend Order of the Hearing Officer dismissing those two appeals by Final Order dated November 24, 2015. Counsel contends that Appellant is barred from presenting these claims later and this matter should be dismissed.

3. Appellant filed responses to the Appellee's Motions to Dismiss on Appeal No. 2016-007 including a primary response and an addendum with documents attached and also another addendum with further documents attached. Appellant stated that "I filed an appeal claiming salary discrimination between myself and Nicole Lowry initially in the month of July, 2015. (Exhibit A). That appeal was scheduled for an evidentiary hearing on October 7, 2015, at which time I failed to appear due to extreme emotional distress due to discrimination that I have faced while employed by the Kentucky Department of Corrections/ Substance Abuse Division. Furthermore, affiant had just begun a new job and did not have the time to take off to attend a hearing on the matter."

4. The Appellant then went on to detail the issues related to her complaint regarding the salary of Nicole Lowry *vis-a-vis* Appellant's salary while employed at the Department of Corrections. Appellant also cited another employee who, according to Appellant, received salaries greater than she and based on faulty reasoning or erroneous reasoning, as the Hearing Officer surmises. Appellant closed with regards to this appeal stating that "in addition the continued practice of allowing Nicole Lowry and Ernesto Nilar-Fonse to receive financial compensation as a Clinical Phycologist is salary discrimination to all men and women who hold the position of Social Service Clinician."

5. As noted, Appellant also filed addenda with documents attached. In the first addendum Appellant again disputed qualifications of Nicole Lowry to receive the compensation she is paid, again disputing her qualifications. Appellant went on to say "affiant again affirms that the environment the Department of Corrections/Kevin Pangburn allows to exists within the Department of Corrections does significant harm to persons of color and limits their professional growth. Affiant's professional Criminal Justice career path has been permanently altered by this racist and discriminatory environment. Affiant continues to seek resolution through the only body that is able to address the system and discrimination that she faced while employed by the Kentucky Department of Corrections."

6. 18A.095 (18)(a) Rights of executive branch employees, states:

The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.

FINDINGS OF FACTS

The Hearing Officer makes the following findings by a preponderance of the evidence:

1. The Appellant had previously been a classified employee with status prior to the filing of this appeal.

2. The Hearing Officer has reviewed the claims made in Appeal No. 2015-163 and Appeal No. 2015-164. Especially as it relates to Appeal No. 2015-163, the Hearing Officer believes the matters raised in Appeal No. 2016-007 are essentially the same as those raised in Appeal No. 2015-163 which has been finally resolved by the Personnel Board.

3. The Hearing Officer finds it to be unfortunate the Appellant was not able to attend the October 7, 2015, evidentiary hearing scheduled for Appeal Nos. 2015-163 and 2015-164. It is inescapable though, that Appellant did not attend, and that the Personnel Board dismissed the appeals.

4. The Hearing Officer believes that Appellee has filed a well stated motion regarding the effect of *res judicata* on Appellant's claims herein on Appeal No. 2016-007.

CONCLUSIONS OF LAW

The Hearing Officer concludes therefor as a matter of law that he is left with no choice but to recommend dismissal of Appellants Appeal No. 2016-007 as the matters raised therein, while no doubt of supreme importance to Appellant, were the subject of previously adjudicated matters before the Personnel Board, and are final. Pursuant to KRS 18A.095 (18)(a) and also in accordance with the doctrine of *res Judicata*, the Hearing Officer must recommend to the Personnel Board that this appeal be dismissed.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **KENDRAH SANDERS VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2016-007)** be **DISMISSED.**

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13.B.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).

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 Boyce A. Crocker** this 10th day of March, 2016.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Edward Baylous
Ms. Kendrah A. Sanders