

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2021-139

CHRISTINE BOWE-CEPEDA

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**

AND

PERSONNEL CABINET

APPELLEES

*** * * * * *

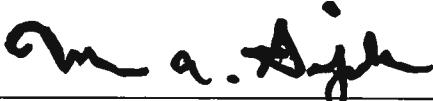
The Board, at its regular October 2023 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated September 5, 2023, and being duly advised,

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 17th day of October, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Ned Pillersdorf

Hon. Peter Dooley

Hon. Zachary Mowen

Hon. Rosemary Holbrook (Personnel Cabinet)

Rodney Moore

COMMONWEALTH OF KENTUCKY
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This matter came on for an evidentiary hearing on August 23, 2023, at 11:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before Mark A. Sipek Hearing Officer. The proceedings were recorded by audio video equipment and were authorized the virtue of KRS Chapter 18A.

The Appellant Christine Bowe-Cepeda was not present but was represented by the Hon. Ned Pillersdorf. The Appellee Justice and Public Safety Cabinet, Department of Corrections was present and represented by the Hon. Peter Dooley. Also present for the Justice and Public Safety Cabinet, Department of Corrections, was Agency representative Warden James Green. The Appellee Personnel Cabinet was present and represented by the Hon. Zachary Mowen. Also present for the Personnel Cabinet was Agency representative Teresa Harris.

BACKGROUND

1. The Hearing Officer notes this appeal was filed with the Personnel Board on November 16, 2021. On the appeal form and during the pre-hearing conference, the Appellant, a classified employee with status, indicated she was appealing an applicant rejection. The Appellant further explained her claims in an attachment to the narrative portion of the appeal form wherein she states, in pertinent part:

I was told that my Case Manager time with DCBS was not going to count for work experience towards Social Service Clinician I. I am appealing this because in my job duties – I counseled my client's when they was in their most vulnerable state. As Case Manager my job was to ensure not only the Federal and state compliance but, ensure that each individual was accounted for. I have attached the most recent job description that is posted for Case Manager I and the requirements of that job. (sic)

2. During a pre-hearing conference on January 20, 2023, the parties agreed that the Appellant met the minimum qualifications for Social Service Clinician I and was appointed to such a position with the Justice and Public Safety Cabinet, Department of Corrections, on October 26, 2022. Thus, the remaining issue was whether she met the minimum qualifications when she first applied for the Social Service Clinician I and if she was entitled to any backpay.

3. **WITNESSES**

A. Appellee Personnel Cabinet

Tameka Crittendon, Personnel Program Analyst, Division of Career Opportunities, Department of Human Resources Administration, Kentucky Personnel Cabinet.

B. Appellee Justice and Public Safety Cabinet, Department of Corrections

Regina Setters, Human Resource Administrator, Eastern Kentucky Correctional Complex, Justice and Public Safety Cabinet, Department of Corrections.

C. Appellant

Christine Bowe-Cepeda, the Appellant, Social Service Clinician I, Eastern Kentucky Correctional Complex, Justice and Public Safety Cabinet, Department of Corrections.

4. **EXHIBITS**

All exhibits were introduced by the Appellee Personnel Cabinet.

1. The Appellant's Appeal Form with attachments. (**PC JPSC 001-008**)
2. Commonwealth of Kentucky, Job Class Specification, Social Service Clinician I. (**PC JPSC 009-010**)
3. Commonwealth of Kentucky, Job Class Specification, Case Management Specialist I. (**PC JPSC 011-012**)
4. Commonwealth of Kentucky, Job Class Specification, Case Management Specialist II. (**PC JPSC 013-014**)
- 9) The Appellant's application for Social Service Clinician I at the Eastern Kentucky Correctional Complex (**PC JPSC 020-033**).

- 10) The Appellant's resume. (**PC JPSC 034-038**)
- 12) Kentucky Personnel Cabinet, Position Description, Case Management Specialist I. (**PC JPSC 044-045**)
- 13) Kentucky Personnel Cabinet, Position Description, Case Management Specialist II. (**PC JPSC 046-047**)
- 15) Kentucky Personnel Board Final Order and Findings of Fact, Conclusions of Law, and Recommended Order. *Mercer v. Justice Cabinet, et.al.*, 2001 WL 36147190 (KY PB). (**PC JPSC 050-055**)

1) The issue for the evidentiary hearing was whether or not the Appellant met the minimum qualifications as a Social Service Clinician I at the time of her initial application. The burden of proof was upon the Appellee Personnel Cabinet and was by a preponderance of the evidence. The Appellee Personnel Cabinet proceeded first in the presentation of proof.

FINDINGS OF FACT

1. The Appellant was employed as a Classification and Treatment Officer I at the Eastern Kentucky Correctional Complex, Justice and Public Safety Cabinet, Department of Corrections. When she applied for a Social Service Clinician I position. The Appellant was interviewed by a Justice and Public Safety Cabinet, Department of Corrections interview panel who determined she was the most qualified candidate for the position. (Testimony of the Appellant and Regina Setters).

2. The Appellant's application was submitted to the Personnel Cabinet for minimum qualifications review. The Personnel Cabinet is the only Agency in state government that can determine whether or not an applicant meets the minimum qualifications for Job Class Specifications. The Appellant's application was reviewed by Tameka Crittendon to see if the Appellant met the minimum qualifications for Social Service Clinician I. (Testimony of Tameka Crittendon, Regina Setters, and **Appellees' Exhibits 1, 9, and 10**).

3. The pertinent minimum requirements for a Social Service Clinician I are as follows:

Education: A master's degree in social work, sociology, psychology, marriage and family therapy or a related field.

Experience, Training, or Skills: Must have one year of professional social work experience.

Substitute Education for Experience: None.

Substitute Experience for Education: A bachelor's degree supplemented by three years of professional social work experience will substitute for the primary education and experience requirements.

4. The Appellant has a bachelor's degree but not a master's degree. According to the substitution clause in the class specification for a Social Service Clinician I, the Appellant was required to have three (3) years of professional social work experience. In order to determine if the Appellant met the minimum requirements, Crittendon carefully reviewed her application. (Testimony of Temeka Crittendon and **Appellees' Exhibits 1 and 2**).

5. The Appellant's relevant work history, as stated on her application, consisted of the following:

- a) Classification and Treatment Officer, Eastern Kentucky Correctional Complex. Start date: September 3, 2019

Job Duties: Counsels inmates with situations that might arise. Classify inmates to ensure safety of the Public and Institution. Create and update KYRAS and Case Management plans – creating goals for each individual inmate. Researches, prepares and submits reports and recommendations for Institutional committees, furlough and parole requests, transfers and case records. Assists with security of the Institution on a daily basis. Currently involved in the B-Mod program of the institution. This consists of teaching inmates of an Evidence Based program within the RHU setting. Assisting in training new Classification and Treatment Officers.

- b) Case Manager II, Department of Community Based Services. Employed June 16, 2013 through August 31, 2019. (**Hearing Officer Note – Actual start date March 1, 2017**).

Job Duties: Application for KTAP/KWP and Payee Cases, as well as medical, SNAP and childcare assistance. Interviews clients/applicants for KTAP and related programs directed towards family self-sufficiency including eligibility determination. This includes but, not limited to working the prior offenders in achieving their goals in self-sufficiency. Referrals for school, jobs, mental health evaluations as well as SAP and other programs as needed. Maintain contact with each participant to monitor and evaluate effectiveness of progress toward goals, supervised participants in the development of problem solving skills. Scheduled and conduct needs assessment based on client's history and current situations while screen for risk factors and barriers..(sic) Solicit information and develop client's Transitional Assistance Plans for Families based upon their needs and capabilities. Respond to participant/provider questions regarding policy and procedures. Encourage and assist clients with the exploration of work opportunities, make referrals to agencies and employers for job readiness, job development and job placement. Worked with all

aspects of clients including backgrounds that had previous felonies/Misd. This included contacting job coordinator and counties to work with clients past records being expunged. Worked with past offenders in regards to over coming their past history. Counseled and referred to programs as needed such as SAP and NA/AA. Was responsible for delivery of Kentucky Works Program related services to KWP individuals. Was responsible of the individual's employability potential by review of the information obtained in the assessment process. Completion of the KTAP Transitional Assistance Agreement (TAA) at application which consisted of steps needed to realize short and long term goals and anuy (sic) accommodation indicated to address identified barriers. Monitoring participant progress monthly and tracking activities. Conducting conciliation at the individual's request or when probgblems (sic) with participation are identified. Counseling, providing feedback and encouraging individuals to complete steps on the Transitional Assistant Agreement. Monitoring and evaluating statewide data to identify trends and ensure compliance with program requirements. Assessments included were general health, mental health and learning needs. At application, discussed with the individual the outcome he/she wants to achieve. The individual and I jointly developed a plan that included employment goals, actions identified to reach the goal as well as any special limitations. Recently assisted with other counties during times they had vacancies with case manager. While balancing own case load, with up to 5 others. Currently serving as E&T case manager for Carter County. (sic)

- c) Case Manager I, Department of Community Based Services. Employed June 16, 2013 through March 1, 2017.

Job Duties: Application for KTAP/KWP and payee cases, as well as medical, SNAP and Childcare Assistance. Interviews clients/applicants for KTAP and related programs directed towards family self-sufficiency including eligibility determination. This includes but, not limited to working with prior offenders in achieving their goals in self sufficiency. Referrals for school, jobs, mental health evaluations as well as SAP and other programs as needed. Maintain contact with each participant to monitor and evaluate effectiveness of progress toward goals, supervised participants in the development of problem solving skills. Scheduled and conduct needs assessment based on client's history and current situations while screen for risk factors and barriers. Solicit information and develop client's Transitional Assistance Plans for Families based upon their needs and capabilities. Respond to participant/provider questions regarding policy and procedures.

Encourage and assist client's with the exploration of work opportunities, make referrals to agencies and employers for job readiness, job development and job placement. Worked with all aspects of clients including backgrounds that had previous Felonies/Misd. This included contacting job coordinator and counties to work with clients past records being expunged. Worked with past offenders in regards to over coming their past history. counseled and referred to programs as needed such as SAP and NA/AA. Was responsible for delivery of Kentucky Works Program related services to KWP individuals. Was responsible of the individual's employability potential by review of the information obtained in the assessment process. Completion of the KTAP, Transitional Assistance Agreement (TAA) at application which consisted of steps needed to realize short and long term goals and any accommodation indicated to address identified barriers. Monitoring participant progress monthly and tracking activities. Conducting conciliation at the individual's request for when problems (sic) with participation are identified. Counseling, providing feedback and encouraging individuals to complete steps on the Transitional Assistance Agreement. Monitoring and evaluating statewide data to identify trends and ensure compliance with program requirements. Assessments included were general health, mental health and learning needs. At application, discussed with the individual the outcome he/she wants to achieve. The individual and I jointly developed a plan that included employment goals, actions identified to reach the goal as well as any special limitations. Recently assisted with other counties during times they had vacancies with case manager. While balancing own case load, with up to 5 others. Currently serving as E&T case manager for Carter County. Generic Food Stamp, family related medical as well as adult basic medical knowledge. Call services experience, typing, and computer knowledge. Assisting supervisor as well as acting supervisory role in their absence.

(Testimony of the Appellant and **Appellees' Exhibits 9 and 10**).

6. Crittendon determined that the Appellant did not meet the minimum qualifications for Social Service Clinician I and notified her by e-mail. Crittendon stated in part, "specifically, your most recent application does not indicate the following: a bachelor's degree supplemented by 3 years of professional social work experience will substitute for the primary education and experience requirements." (Testimony of Crittendon and **Appellees' Exhibit 1**).

7. The Appellant had a bachelor's degree and her experience as a Classification and Treatment Officer for the Department of Corrections was counted as professional social work experience. The Appellant's work experience as a Case Management Specialist I and II was not credited as professional social work experience. (Testimony of Crittendon and **Appellees' Exhibits 1, 9, and 10**).

8. The Appellant believed her experience as a Case Management Specialist should count as social work experience and she believed she met the minimum qualifications when she first applied for a Social Service Clinician I. She testified she counseled clients and worked to keep families together. She helped individuals during their most vulnerable time. She assisted clients with substance abuse and domestic violence issues. The Appellant stated she performed the same duties as a Classification and Treatment Officer and as a Case Management Specialist with different populations. (Testimony of the Appellant).

9. The Hearing Officer finds the Appellant did not meet the minimum qualifications for the Social Service Clinician I classification when she first applied in 2021. She had a bachelor's degree but she did not have three (3) years' experience in professional social work. The Appellant's experience as a Classification and Treatment Officer for the Department of Corrections was correctly counted as social work experience. Her experience while employed in Case Management I and II positions with the Cabinet for Health and Family Services was correctly determined not to meet the definition of professional social work experience. The Hearing Officer makes this finding based on the following:

- a) The Personnel Cabinet, the Agency authorized by statute to establish job classification minimum qualifications and to determine if applicants meet those minimum qualifications, determined that the Appellant did not meet the minimum requirements for Social Service Clinician I.
- b) Case Management classifications are in the "public assistance" job group. The Social Service Clinician I classification is in the "human services" job group.
- c) The Position Description for the Appellant's Case Management I and II positions demonstrated the main function of her job duties as described as follows:

Performs beginning level duties in services directed toward family self-sufficiency and determining eligibility for public assistance for the Kentucky Transitional Assistance Program (KTAP). **(For Case Management Specialist I).**

Performs duties in services directed toward family sufficiency and determining eligibility for public assistance for the Kentucky Transitional Assistance programs (KTAP). **(For Case Management Specialist II).**

- d) While the Appellant's work as a Case Management Specialist I and II was extremely important for her clients and, by all accounts she performed these duties very well, the focus was on benefit eligibility. The Personnel Cabinet made a reasonable determination that these duties did not qualify as professional social work.

e) The Appellant's opinion that she met the minimum qualifications is not enough to overcome the reasonable determination made by the Personnel Cabinet that she did not.

f) Any determination by officials of the Justice and Public Safety Cabinet, Department of Corrections that she was the best candidate for the Social Service Clinician I position is irrelevant regarding whether or not she met the minimum qualifications.

10. The Personnel Cabinet did not act arbitrarily in determining that the Appellant did not meet the minimum qualifications for a Social Service Clinician I position when she first applied in 2021. The Personnel Cabinet properly exercised its discretion in determining how many years of professional social work experience the Appellant had.

CONCLUSIONS OF LAW

1. When examining applicants for positions, the General Assembly clearly expressed its intent that the Personnel Cabinet "be free to use any investigation of education and experience and any test of capacity, knowledge, manual skill, character, personal traits, or physical fitness, which in [its] judgment, serves the need to discover the relative fitness of applicants." KRS 18A.110(7)(c) (Emphasis supplied). Based upon this authority, the Personnel Cabinet has implemented a method to review an individual's application in concert with a Job Class Specification to determine if the applicant meets the minimum qualifications of a position assigned to a certain job classification.

2. The Personnel Board has previously held that "[t]he legislature has given the Personnel Cabinet the authority to set Job Class Specifications and to review the qualifications of applicants and eligibles. Absent some clear abuse of discretion or arbitrary action, the discretion of the Personnel Cabinet over this area should not be disturbed." *Mercer v. Justice Cabinet, et al.*, 2001 WL 36147190, Appeal No. 2000-378 (Ky. Pers. Board 2001); See also *Klatt v. Justice & Public Safety Cabinet, et al.*, 2019 WL 6050251, Appeal Nos. 2017-210 and 2017-240 (Ky. Pers. Board 2019).

3. The Personnel Cabinet's determination that the Appellant's work experience did not satisfy the requirement of three (3) years of professional social work experience is consistent with KRS Chapter 18A and is not arbitrary or capricious.

4. The Personnel Cabinet has met its burden of proof in establishing just cause for its determination that the Appellant did not meet the minimum qualifications for a Social Service Clinician I. As a result, the Appellant is not entitled to any relief. 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

Based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Personnel Board that the appeal of **CHRISTINE BOWE-CEPEDA V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS AND PERSONNEL CABINET (APPEAL NO. 2021-139)** 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.

SO ORDERED at the direction of the Hearing Officer this 5 day of September, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Ned Pillersdorf
Hon. Peter Dooley
Hon. Zachary Mowen
Hon. Rosemary Holbrook (Personnel Cabinet)