

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2022-020**

DARLA BUNFILL

APPELLANT

vs

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

**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF JUVENILE JUSTICE**

APPELLEE

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

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 January 22, 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 14 day of February, 2024.

KENTUCKY PERSONNEL BOARD

Mark A. Sipek
MARK A. SIPEK, SECRETARY

Copies hereof this day emailed and mailed to:

Darla Bunfill
Hon. Edward Baylous
Hon. Rosemary Holbrook (Personnel Cabinet)
Melanie Jenkins

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2022-020

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V.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

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APPELLEE

** * * * *

This matter came on for an evidentiary hearing on July 17, 2023, at 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.

The Appellant, Darla Bunfill, was present in person and was not represented by legal counsel. The Agency/Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and represented by the Hon. Edward Baylous. Also present as Agency representative was Rodney Moore.

At issue during the evidentiary hearing was the Appellant's claim that her salary was lower than her male counterparts due to gender/sex discrimination. The burden of proof was with the Appellant and was by a preponderance of the evidence. The Appellant previously explained her claims in an attachment to the narrative portion of the Appeal Form wherein she stated, in pertinent part:

My salary/compensation (\$56,495) is substantially less annually than my male counterparts who have the same job title and classification of myself, education (graduate level), training, job duties, and years of service (over 20). My male counterparts are paid more for working the same hours a day (7.5) performing the same tasks (Community Services), and meeting the same or similar goals. I have substantially equal skill, effort, and responsibility and perform my job under similar working conditions within the Department of Juvenile Justice.

BACKGROUND AND FINDINGS OF FACT

1. Following a discussion of the burden of proof and an attempt to determine whether the stipulation of certain facts was feasible, the Appellant called **Stephanie Hamilton** as her first witness. Hamilton is an employee of DJJ and testified to various aspects of her employment and experience with the Justice and Public Safety Cabinet, Department of Juvenile Justice (DJJ). Hamilton had no relevant knowledge of how the Appellant's compensation was

set and had no knowledge of anything related to gender/sex discrimination toward the Appellant relating to her compensation.

2. The Appellant next called **Myra Melton (Melton)** as a witness. Melton is an employee of DJJ and testified to various aspects of her employment and experience with DJJ. Melton had no relevant knowledge of how the Appellant's compensation was set and had no knowledge of anything related to gender/sex discrimination toward the Appellant relating to her compensation.

3. The Appellant next called **Lindell Blackwell (Blackwell)** as a witness. Blackwell is a retired employee of DJJ and testified to various aspects of his prior employment and experience with DJJ. Blackwell had no relevant knowledge of how the Appellant's compensation was set and had no knowledge of anything related to gender/sex discrimination toward the Appellant relating to her compensation.

4. The Appellant next called **Jacqueline Bonner (Bonner)** as a witness. Bonner is an employee of DJJ and testified to various aspects of her employment and experience with DJJ. Bonner testified about some of the unpleasant experiences that she and the Appellant encountered in the office over the years while working together, including Bonner overhearing other employees speaking poorly about the Appellant behind her back. However, Bonner testified that the employees were talking about some of the Appellant's attitudes, mannerisms, and behaviors (Bonner said that two (2) or three (3) of the Appellant's male subordinates called the Appellant a "know-it-all," among other things). The Appellant failed to establish that the comments Bonner overheard were about the Appellant's sex or gender. Bonner had no relevant knowledge of how the Appellant's compensation was set and had no knowledge of anything related to gender/sex discrimination toward the Appellant relating to her compensation.

5. The Appellant next called **Kendra Chapman (Chapman)** as a witness. Chapman is an employee of DJJ and testified to various aspects of her employment and experience with DJJ, including her own salary history and certain frustrating situations in her time with the Agency like some of her recommendations not being followed by Agency leadership. Chapman had no relevant knowledge of how the Appellant's compensation was set and had no knowledge of anything related to gender/sex discrimination toward the Appellant relating to her compensation.

6. Finally, the **Appellant** next called herself as a witness. The Appellant is employed with DJJ as a Psychological Associate and began her employment with DJJ in February of 2001. The Appellant testified to various aspects of her employment and experience with DJJ, including her salary history, her qualifications, her work achievements, and her outstanding annual performance evaluations. The Appellant testified about experiences that she endured in her time with the Agency, including an incident early in her career when a male supervisor followed her to her hotel room without invitation after she was trapped at work by a winter storm. After responding to prior testimony about her attitude and mannerisms, the Appellant primarily challenged her salary being lower than particular male colleagues who were employed in different positions than the Appellant in addition to repeatedly commenting on many employees' lack of knowledge about discretionary salary adjustments like ACE awards

and on how she deemed the prior award of those discretionary salary adjustments to be arbitrary and discriminatory. However, the Appellant had no relevant knowledge of how her compensation was set and had no knowledge of anything related to gender/sex discrimination relating to her compensation.

7. After review of the evidence of record, the Hearing Officer finds that the Appellant established that she has been an excellent highly qualified DJJ employee for years and made a strong argument that she deserved a pay raise to acknowledge her contributions to the Commonwealth. However, the Appellant failed to carry her burden of proof to establish that she was subjected to gender/sex discrimination in the setting of her salary, that she was subjected to discrimination in the Agency's award of discretionary salary adjustments like ACE awards, or that the Agency failed to follow any of the applicable statutes and regulations in setting the Appellant's salary, including 101 KAR 2:034.

CONCLUSIONS OF LAW

1. Here, the Appellant argues that her salary was lower than her male counterparts due to gender/sex discrimination. The burden of proof was with the Appellant and was by a preponderance of the evidence. The Hearing Officer finds that the Appellant failed to carry her burden of proof to establish she was subjected to sex or gender discrimination. The Appellant introduced evidence that she was a member of a protected class, female, and introduced some evidence of pay disparities between DJJ employees. The Appellant failed to establish that any of those differences in pay were the result of discrimination or violated the applicable statutes or regulations in any way. Instead, the Appellant advanced her subjective expectation of uniform pay among employees she deemed to be similar, regardless of the provisions of the statutes and regulations, and advanced several arguments based on fairness. However, subjective expectations of compensation that are not clearly based on a statute or regulation are not actionable. In *Board of Regents of State Colleges vs. Roth*, 408 US 564, 577, 92 S.Ct. 2701 (1972), the Supreme Court stated:

To have a property interest in a benefit, a person clearly must have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must, instead, have a legitimate claim of entitlement to it.

The Appellant does not cite to any legal entitlement to a salary adjustment in this case and argues that the Agency should have used its discretion in the interest of fairness to award her a salary adjustment.

2. The Appellant does not have a legitimate claim of entitlement to a discretionary decision. *Richardson vs. Township of Brady*, 218 F.3d 508 (6th Cir. 2000). Kentucky's public employees are limited in their property rights by the rules created by the General Assembly, therefore, an Agency's discretionary decision to not grant to some employees additional compensation that has been given to other employees does not constitute a penalization nor does it amount to discrimination. KRS 18A.005(24), KRS 18A.095(14), (18). Because the Appellant failed to establish that she was subjected to sex or gender discrimination and failed to establish

that the Agency violated the applicable statutes or regulations for setting her compensation, the Appellant's claims in this appeal must fail as a matter of law.

3. Because all of 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 **DARLA BUNFILL V. JUSTICE AND PUBLIC CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2022-020)** 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).

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 **Mark A. Sipek** this 21nd day of January, 2024.

KENTUCKY PERSONNEL BOARD


**MARK A. SIPEK,
EXECUTIVE DIRECTOR**

A copy hereof this day emailed and mailed to:

Darla Bunfill

Hon. Edward Baylous

Hon. Rosemary Holbrook (Personnel Cabinet)