

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2022-019

KRISTY CAMPBELL

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 August 2023 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated June 22, 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 August, 2023.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Richard Walter
Hon. William Codell
Hon. Rosemary Holbrook (Personnel Cabinet)
Cynthia Watson

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2022-019**

KRISTY CAMPBELL

APPELLANT

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

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

APPELLEE

** ** ** ** **

This matter came on for a pre-hearing conference on September 8, 2022, at 11:00 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Kristy Campbell, was present and was represented by the Hon. Richard Walter. The Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and represented by the Hon. Jamhal Woolridge. All parties appeared by telephone. At the time of this Order, the Justice and Public Safety Cabinet, Department of Juvenile Justice is being represented by the Hon. William Codell.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by Appellant, to determine the specific section of KRS 18A which authorizes this appeal, to determine the relief sought by Appellant, to define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

FINDINGS OF FACT

1. The Hearing Officer notes the Appellant filed her appeal with the Personnel Board on February 23, 2022. She alleged she had suffered sex discrimination based on her pay as a Psychologist Licensed Program Administrator. She alleged that, although she has comparable professional experience, professional credentials (a doctoral degree), job title, and pay grade, she earns an annual salary of \$16,174.32 less when compared to two (2) comparable, similarly situated males. She also alleged that her position requires significantly more job responsibilities than do the positions occupied by her male counterparts.

2. The Appellee filed a Motion to Dismiss, the Appellant filed a response, and the Appellee filed a reply. This matter is before the Hearing Officer for a ruling on the Appellee's Motion to Dismiss.

3. The Appellant became employed with the Justice and Public Safety Cabinet, Department of Juvenile Justice (DJJ) in 2016 as a Psychologist Licensed Program Administrator (PLPA) assigned to West Mental Health Services, within the Division of Mental Health and Community Services. The Appellant agreed upon the scope of duties and rate of pay for the PLPA position and her work county is McCracken County.

4. In October 2021, the Appellant received an ACE Award, and her salary was adjusted.

5. In January 2022, the Appellant filed an EEO Complaint because her salary was lower than the salary of two (2) allegedly similarly situated male coworkers. DJJ responded to this complaint noting that the two (2) male comparators that have higher salaries were employed by different state government agencies and had different appointing authorities. Accordingly, DJJ argued that 101 KAR 2:034 does not give the Agency the authority to adjust her salary.

6. Specifically, the Appellant compared her salary to two (2) male PLPAs - Russell Williams who works for the Department of Corrections and Edward Marshall who works for the Department of Veterans Affairs. At the time she filed her appeal, the Appellant earned \$76,296.40, and both of her male counterparts earned \$92,470.80. The Appellant alleged this discrepancy was the result of sex discrimination.

7. As a necessary step for a 101 KAR 2:034 analysis, the Hearing Officer finds that DJJ, the Department of Corrections, and the Department of Veterans Affairs are all separate state agencies with different appointing authorities.

8. Accordingly, there are no genuine issues of material fact and this case can be decided as a matter of law based on the appeal form, statements of the parties at the pre-hearing conference, the Motion to Dismiss, the response, the reply, and attachments.

CONCLUSIONS OF LAW

1. Because the Appellee relies on matters outside of the pleadings, their Motion to Dismiss should be treated as a Motion for Summary Judgment and the prevailing case law to determine a motion for summary judgment is *Steelvest, Inc. v. Scansteel Service Center, Inc.*, 807 S.W.2d 476 (Ky. 1991), which holds that any doubts in a motion for summary judgment must be resolved in favor of the non-moving party. *Steelvest, Inc.*, states that in order for a summary judgment motion to succeed, there must be no genuine issue of material fact.

2. The Hearing Officer finds that the Appellant is not entitled to a salary increase pursuant to 101 KAR 2:034, Section 1. This regulation explicitly only allows for a salary

adjustment based on a comparison between employees subject to the same appointing authority. In this case, the Appellant attempts to compare her salary to employees who work for two (2) different state government agencies and two (2) different appointing authorities.

3. Specific to the Appellant's gender discrimination claim, the Hearing Officer finds that an agency does not abridge or deny rights of state employees by compensating an employee at a rate different from an employee in a separate, different state government agency. Furthermore, to survive a motion to dismiss on a discrimination claim, a plaintiff bears the burden of establishing *prima facie* proof that: 1) she was a member of a protected class or group; 2) she was subjected to an adverse employment action; 3) she was qualified for the position; and 4) similarly situated non-protected individuals were treated more favorably. Bd. of Regents of N. Kentucky Univ. v. Weickgenannt, 485 S.W.3d 299, 306 (Ky. 2016). When assuming all facts in favor of the Appellant, her claim of gender discrimination simply fails to assert any evidence that could satisfy either the second or fourth prong of the Weickgenannt analysis.

4. The Appellant also does not present any factual indication that she was subjected to any adverse employment action(s). Similar to the earlier analysis of the Appellant's pay discrimination claim, there is simply no evidence that DJJ, throughout the course of the Appellant's employment, has subjected the Appellant to any adverse employment action within the context of her employment and her case must fail as a matter of law. Nonetheless, to provide some additional clarity, the Hearing Officer will briefly address the fourth prong of the Weickgenannt analysis.

5. The Appellant fails to present any evidence that the two (2) male coworkers to which she repeatedly compared herself were similarly situated. Weickgenannt states, "In identifying suitable comparators, we must select individuals who are *similarly situated in all relevant aspects*." 485 S.W.3d at 308. Thus, applying this framework to this appeal, the two (2) male comparators are not similarly situated because they were hired into two (2) state government agencies that are totally separate and distinct from DJJ. The Appellant and the two (2) coworkers had different appointing authorities, were subjected to different salary schemes, and the other aspects of employment at these two (2) different state government agencies are not identical to the Appellant. A non-movant satisfies their burden to survive a motion to dismiss when evidence exists that "all relevant aspects of [her] employment situation is nearly identical to those of the employees who [s]he alleges were treated more favorably." Weickgenannt citing to Pierce v. Commonwealth Life Ins. Co., 40 F.3d. 796, 802 (6th Cir. 1994). Therefore, the Appellant has not established *prima facie* evidence that her male comparators at the Department of Corrections and the Department of Veterans Affairs are similarly situated and, thus, a claim of gender discrimination has not been articulated.

6. KRS 18A.095(29) states that the employee shall file the appeal within one (1) year "from the date of the penalization or from the date that the employee reasonably should have known of the penalization." It should be noted that the Appellant filed a previous appeal alleging that her salary was too low due to sex discrimination with the Personnel Board. She filed her appeal, Appeal No. 2020-240, on December 8, 2020. That appeal was voluntarily withdrawn by

the Appellant and was dismissed by Final Order on January 19, 2022. There are no new facts alleged in this present appeal that were not present in Appeal No. 2020-240 and, thus, the claims in this appeal are time-barred.

7. In her response to the Motion for Summary Judgment, the Appellant contends that the male employees are employed by the Justice and Public Safety Cabinet, under which DJJ and the Department of Corrections both fall. Both parties agree that at least one (1) of her male comparators (Russell Williams) is employed by the Department of Corrections; nonetheless, the Appellant makes no argument that Russell Williams is similarly situated in all other relevant aspects, so the Appellant's claims based on the application of 101 KAR 2:034 still must fail as a matter of law.

8. Because no genuine issues of material fact remain outstanding, this appeal may be dismissed as a matter of law. KRS 13B.090 (2) and KRS 18A.095(18)(a).

RECOMMENDED ORDER

The Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **KRISTY CAMPBELL V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2022-019)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

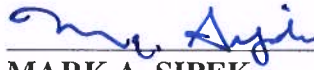
Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are 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 22 day of June, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Richard Walter
Hon. William Codell
Hon Rosemary Holbrook (Personnel Cabinet)