

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-030**

JONATHAN CREEKMORE

APPELLANT

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

PUBLIC PROTECTION CABINET

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

M. A. Agha

MARK A. SIPEK, SECRETARY

Copies hereof this day sent to:

Jonathan Creekmore

Hon. T. Chad Thompson

Hon. Catherine Stevens

Hon. Rosemary Holbrook (Personnel Cabinet)

Sabrina Sandoval

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-030

JONATHAN CREEKMORE

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v.

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PUBLIC PROTECTION CABINET
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***** ***** ***** ***** ***** *****

This matter first came on for a pre-hearing conference on May 11, 2023, 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, Jonathan Creekmore, was present by telephone and was not represented by legal counsel. The Appellee, Public Protection Cabinet (“PPC”), was present by telephone and represented by Hon. Chad Thompson. The Appellee, Personnel Cabinet, was present by telephone and was represented by the Hon. Catherine Stevens.

The Appellant filed his appeal with the Personnel Board on March 8, 2023, identifying the issue as “applicant rejection.” The Appellant stated that his application for Manufactured Housing Inspector Supervisor was rejected because his high school diploma was not accepted. The Appellant discussed various college courses he had taken. During the first pre-hearing conference, counsel for the Personnel Cabinet agreed to discuss this matter with experts from her agency to see if any such college courses could be substituted for a high school diploma.

The parties agreed to return for an additional pre-hearing conference on May 18, 2023, at 10:00 a.m., ET. All parties were present by telephone. Counsel for the Personnel Cabinet reported that twenty-eight (28) college semester hours can be considered equal to a high school diploma. The Appellant stated that he had taken several college courses but did not attain any semester hours credit. The Appellant stated he wished to pursue this appeal.

In the May 18, 2023 Interim Order, a schedule was set for the filing of a dispositive motion. The Personnel Cabinet had until June 23, 2023, to file a dispositive motion; the Appellant and the Appellee PPC, had until August 1, 2023, to file its response; and the Personnel Cabinet then had until August 11, 2023, to file any reply. After the expiration of the briefing schedule, this matter was to stand submitted to the Hearing Officer for a ruling on the dispositive motion.

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Upon review of the file and after the expiration of the established briefing schedule, the Hearing Officer notes that the Personnel Cabinet filed its Motion for Summary Judgment on June 22, 2023. The Appellee, PPC did not file a response. The Appellant failed to file his response to the Personnel Cabinet's Motion for Summary Judgment by the due date of August 1, 2023. The Appellant did, however, send an e-mail to the Hearing Officer and all parties on August 10, 2023. This e-mail will be considered by the Hearing Officer as the Appellant's response to the Personnel Cabinet's Motion for Summary Judgment.

The Personnel Cabinet is entitled to summary judgment in its favor and dismissal of this appeal pursuant to KRS 13B.090(2) because there are no genuine issues of material fact in dispute and judgment is appropriate as a matter of law. This appeal comes down to a narrow issue of legal interpretation. The Appellant applied for a vacant position with the Public Protection Cabinet, Department of Housing, Buildings, and Construction as a Manufactured Housing Inspection Supervisor. The Personnel Cabinet's Division of Career Opportunities, Human Resources Certification Branch, determined that Appellant did not meet the minimum qualifications for the Job Class Specifications. Specifically, the Personnel Cabinet determined that the Appellant did not present the necessary credentials to be considered a high school graduate. At issue is whether the Personnel Cabinet had just cause for that determination.

BACKGROUND

1. In December 2022, the Appellant applied for a vacant position with PPC, Department of Housing, Buildings, and Construction, as a Manufactured Housing Inspection Supervisor. The Manufactured Housing Inspection Supervisor Job Class Specifications set forth the minimum educational requirement that the applicant be a "high school graduate." There is no provision to substitute experience for the educational requirement.

2. The Personnel Cabinet Division of Career Opportunities performed a minimum qualifications review of the Appellant's application. On March 7, 2023, the Personnel Cabinet's Division of Career Opportunities determined that the Appellant did not meet the minimum qualifications for the Manufactured Housing Inspection Supervisor position. The Personnel Cabinet's Division of Career Opportunities determination is the subject of this appeal, which was filed by the Appellant on March 8, 2023.

3. In support of its Motion for Summary Judgment, the Personnel Cabinet attached the sworn Affidavit of Teresa Harris, Personnel Program Manager, Kentucky Personnel Cabinet's Division of Career Opportunities, Human Resource (HR) Certification Branch. Harris has been the Personnel Program Manager of the HR Certification Branch since September 2020. Additionally, she has been employed by state government in the field of human resources for almost twenty (20) years. One of the responsibilities of the HR Certification Branch is to review the minimum qualifications of applicants before they are appointed to a classified position in an agency. Harris is familiar with KRS Chapter 18A and the regulations pertaining to personnel matters within the Executive Branch of Kentucky state government.

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4. As the Personnel Program Manager of the HR Certification Branch, Harris supervises the Personnel Program Analysts and Personnel Program Consultants, including Personnel Program Analyst Tameka Crittendon. In March 2023, upon the request of the Appellee PPC, Crittendon performed the minimum qualifications review of the Appellant's application for employment in a vacant Manufactured Housing Inspection Supervisor position. A true copy of the application submitted by the Appellant for the Manufactured Housing Inspection Supervisor position and reviewed by Crittendon was attached to Harris' Affidavit as Exhibit B.

5. A true copy of the Job Class Specification for Manufactured Housing Inspection Supervisor was attached to Harris' Affidavit as Exhibit C. The minimum qualifications for the Manufactured Housing Inspection Supervisor are that the applicant be a high school graduate with "Five years of experience in manufactured/commercial/residential housing inspection, mechanical trades inspection or installation of manufactured homes." The Job Class Specification does not allow for substitution of experience for the educational requirement of a high school diploma.

6. On March 7, 2023, Crittendon communicated with the Appellant and requested a copy of his high school diploma and transcript from "Cornerstone Christian Academy," as the name of the school was listed on his application. The Appellant explained that the name of the school should have been listed as "Cornerstone Christian Correspondence School" of Townsend, Georgia. He provided his diploma, but no transcript. A true copy of the e-mail exchange between Crittendon and the Appellant was attached to Harris' Affidavit as Exhibit A. A true copy of the diploma provided by the Appellant was attached to Harris' Affidavit as Exhibit D.

7. Crittendon replied to the Appellant that "Unfortunately, Cornerstone Christian Correspondence School is not recognized as being a school we can accept for employment purposes." Accordingly, Crittendon informed the Appellant that he did not meet the minimum qualifications of Manufactured Housing Inspection Supervisor. As Harris explained in her Affidavit, for purposes of determining minimum qualifications, "recognition of a high school graduate does not extend to 'credentials' such as those issued by organizations which provide high school diplomas for a fee, but with little or no pretext of delivering or evaluating learning."

8. A true copy of information from Cornerstone's website was attached to Harris' Affidavit as Exhibit E. On its website, Cornerstone explains how its high school diploma program works: There is an enrollment fee of \$75.00 and a testing fee of \$75.00, for a total of \$150.00. A student orders:

...the series of five tests that cover the main courses of study, take the test under the supervision of a family member or friend, 21 years of age or older, who can monitor your testing, and send the tests to us for grading, and wait a few short days for your results. The tests are on the subjects of Language Arts, Writing Skills, Social Studies, Science, and Mathematics. If you pass all of the tests with a grade of 70 or better, we will send your high school diploma to you in the mail. ... If there are any of the five tests that you did not pass, you will receive a study guide on the subject that you

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need additional time to study on. After you have refreshed your memory on that subject, simply retake that particular test. After you have passed any retest, you may graduate.

Additionally on its website, Cornerstone gives the following advisory to prospective customers/students:

If you are interested in entering the military or going to college or technical school, be advised that some branches of the military and some colleges (usually state funded colleges or universities) do not accept correspondence school diplomas. It is your responsibility to determine the suitability of this program for your needs.

9. After Crittendon's determination, Harris also reviewed the Appellant's qualifications and the Job Class Specification for Manufactured Housing Inspection Supervisor. Based on her years of experience in reviewing applications for minimum qualifications, Harris determined, as did Crittendon, that the Appellant did not meet the minimum qualifications required for a Manufactured Housing Inspection Supervisor because he failed to establish that he was a high school graduate.

10. In his response to the Personnel Cabinet's Motion for Summary Judgment, the Appellant stated in part, as follows:

At Cornerstone Christian Correspondence School, I was required to pay a fee and complete/pass a test over five main subjects (Math, English, Science, Reading, and History). I was required to obtain a passing score of seventy-five percent or higher in each subject listed above to be eligible to obtain a High School Diploma. As for the GED, I would have had to implement the same process to obtain a GED. Therefore, both the GED and the High School Diploma I received are no different. Both would require a payment to test, a proctor while testing, and a passing score.

I would also like to ask the board to recognize, honor, and consider my five and a half years of commitment and employment with the State. In addition, to make note, I have two years of previous supervisor experience in a strict/demanding factory setting. During that time, I supervised twenty-seven employees. Prior to my supervisor position, I held a team leader position in another strict/demanding factory environment for five years. Therefore, the job duties and responsibilities I would be carrying out on a day-to-day basis as a supervisor in the Manufactured Housing Department would be no issue for me to succeed at in any way.

FINDINGS OF FACT

FINDINGS OF FACT

1. Upon review of the documents and the submissions, the Hearing Officer finds that there are no genuine issues of material fact. This appeal can be decided based on the Appeal Form, the Personnel Cabinet's Motion for Summary Judgment with attachments, including the Affidavit of Teresa Harris, and the Appellant's response to the Personnel Cabinet's Motion for Summary Judgment.

2. The Appellant was an applicant for a vacant position at PPC as a Manufactured Housing Inspection Supervisor and was informed by the Personnel Cabinet that he did not meet the minimum qualifications required of the position.

3. The Personnel Cabinet's Human Resources Certification Branch determined that the Appellant did not meet the minimum qualifications for the Manufactured Housing Inspection Supervisor position consisting of being a high school graduate plus five (5) years' experience in manufactured/commercial/residential housing inspection, mechanical trades inspection, or installation of manufactured homes. The Personnel Cabinet determined that it could not accept the diploma submitted by the Appellant from Cornerstone Christian Correspondence School to establish that he was a high school graduate. The requirements of the Job Class Specifications for Manufactured Housing Inspection Supervisor made no provision to substitute experience for the required education.

4. The Hearing Officer finds that the Appellant did not submit credentials sufficient to allow the Personnel Cabinet to determine he was a high school graduate. Although the Appellant has a great deal of relevant experience, he does not meet the minimum qualifications because his correspondence school diploma is not recognized by the Personnel Cabinet.

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). 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 minimum qualifications for a position.

2. The Personnel Board has previously held that "[t]he legislature has given the Personnel Cabinet the authority to set 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 (KY PB 2000-378); See also *Klatt v. Justice & Public Safety Cabinet, et al.*, 2019 WL 6050251 (KY PB 2017-210 and 2017-240).

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3. The Legislature put the creation and interpretation of Job Class Specifications squarely under the Personnel Cabinet's authority. KRS 18A.025; KRS 18A.110. The Personnel Cabinet's decision that a high school diploma is required for a supervisory position is well within its discretion:

There may be broad disagreement, for instance, regarding the amount of education required to accomplish a given employment function; nevertheless, the Legislature has said that the Commissioner shall have the final say on the matter. This is the essence of discretion.

Deborah Goin, et al, Appellants v. Department of Personnel, Appellee, 1983 WL 820921, at *22 (KY PB 1983-024), (Final Order, 1983 WL 820938 (KY PB 1983-024, 11/18/1983).

4. The Personnel Cabinet's determination that the diploma submitted by the Appellant did not satisfy the minimum requirement of being a high school graduate is consistent with KRS Chapter 18A and was not arbitrary or capricious.

5. The Personnel Cabinet has met its burden of establishing just cause for its determination that the Appellant did not meet the minimum qualifications for a Manufactured Housing Inspection Supervisor position. As a result, there is no relief the Personnel Board can grant the Appellant and there is no need for an evidentiary hearing. KRS 18A.095(18)(a).

6. There are no genuine issues of material fact in dispute in this appeal and judgment is appropriate as a matter of law based on the Appeal form, including attachments, the statements of the parties at the pre-hearing conference, the Personnel Cabinet's Motion for Summary Judgment, including attachments, as well as the Appellant's response to the Personnel Cabinet's Motion of Summary Judgment. KRS 13B.090(2) and KRS 18A.095(18)(a).

7. 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

The Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **JONATHAN CREEKMORE V. PUBLIC PROTECTION CABINET and PERSONNEL CABINET (APPEAL NO. 2023-030)** 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

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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, the 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.

Any document filed with the Personnel Board shall be served on the opposing party.

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:

Jonathan Creekmore
Hon. T. Chad Thompson
Hon. Catherine M. Stevens
Hon. Rosemary Holbrook (Personnel Cabinet)