

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-199 and 2018-016

GHADA EL-DABBAGH

APPELLANT

VS.

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

OFFICE OF THE STATE BUDGET DIRECTOR

APPELLEE

*** **

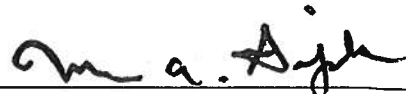
The Board, at its regular February 2020 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 15, 2020, Appellant's Exceptions, Appellee's Response to Appellant's Exceptions, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeals are 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 12th day of February, 2020.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Cary Bishop
Hon. Kembra Sexton Taylor
Ms. Stacy Perry

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NOS. 2017-0199 and 2018-0016

GHADA EL-DABBAGH

APPELLANT

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

OFFICE OF THE STATE BUDGET DIRECTOR

APPELLEE

This matter came on for evidentiary hearing on January 28, 29, 30, March 12, April 18, July 10, 11, 25, 26 and August 8, 2019, at various times between the hours of 8:30 and 10:00 a.m., at 1025 Capital Center Drive, Suite 105, Frankfort Kentucky, before Brenda D. Allen, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Ghada El-Dabbagh, was present at the evidentiary hearing and was represented by the Honorable Kembra Sexton Taylor. The Appellee, Office of the State Budget Director, was present and was represented by the Honorable Cary Bishop. Also present was Agency representative, Dr. Michael Jones.

At issue before the Hearing Officer was the demotion and alleged involuntary transfer of Appellant in addition to Appellant's claims of denial, abridgment, and impediment of her right to inspect or copy records, her claims of race, religion, ethnic origin, and sex discrimination as well as a hostile work environment, harassment, and her claims of the failure of the Human Resources Department to investigate her claims. The burden of proof was by a preponderance of the evidence with the Appellee having the burden on all other claims. The Appellee proceeded first in the presentation of evidence.

BACKGROUND

1. On October 9, 2017, Ghada El-Dabbagh filed an appeal (2017-199) with the Personnel Board listing that she was appealing a demotion and an involuntary transfer in addition to her claims that she was denied, abridged, or impeded the right to inspect or copy records, that she was discriminated against because of her religion, ethnic origin, sex, and age over forty, and that she was otherwise penalized by a hostile work environment. She named her manager, Michael Jones, Executive Director of the Governor's Office of Economic Analysis, as responsible for the hostile work environment. In support of these claims, Ms. El-Dabbagh, in addition to the form, provided a two-page narrative where she provided, "In (*sic*) July 28, 2017, I was forced,

coerced to sign a form that I did not get a chance to read, nor did I get a copy." She provided that she was told there would be no change in job duties and no demotion. She then listed several items that she stated constitute harassment and discrimination because of her "religion, national origin, and gender."

2. A prehearing conference was held on November 30, 2017, to determine the specific penalizations alleged by the Appellant and to determine the relief sought. The Appellant, who was not yet represented by counsel, attended and outlined that she sought the following outcomes: 1) revert back to her old first-line supervisor, 2) be allowed to transfer back to her old division, 3) void the involuntary transfer form she signed, 4) salary increase, 5) be treated fairly, 6) be in an environment where she feels safe, 7) be afforded additional training opportunities, and 8) not be subjected to retaliation for her claims. The parties agreed to attempt mediation.

3. On February 2, 2018, the Appellant filed a second appeal (2018-016) with the Personnel Board alleging claims identical to her previous appeal. In the narrative, she added that she had been retaliated against for filing her prior appeal with the Personnel Board and that it had manifested itself through her annual evaluation, discriminatory treatment in the office, and that Human Resources retaliated against her by failing to adequately investigate her claims.

4. A second prehearing was scheduled for March 21, 2018, and upon agreement of the parties, the appeals were consolidated. The hearing was set for August 14 and 15, 2018. Orders for discovery requests were entered in July 2018. Additional continuances were granted and ultimately the first of ten days of hearings over a period of eight months ensued.

5. The first day of the Hearing was January 28, 2019. As a preliminary matter, the Appellant moved to amend the style of the case from listing the Finance and Administration Cabinet as the Appellee to listing the Office of the State Budget Director, as that was the Agency for which the Appellant worked. There was no objection, and after initially reserving ruling on the matter, the Hearing Officer **SUSTAINED** the Motion. The Appellee noted the Appellant's claim for attorney's fees as outlined in her responses to discovery, and the Appellant noted that it was listed relative to an appeal, but not the matter before the Hearing Officer.

6. The Appellant reserved opening until her case-in-chief. The Appellee made an opening statement and proceeded to call the Appellant as its first witness over objection of the Appellant, which was **OVERRULED**.

7. The Appellant, **Ghada El-Dabbagh**, testified, as if on cross examination, that she has worked for the Commonwealth for 22 years and in the Office of the State

Budget Director serving as a Financial Analyst for nine years. She stated she formerly worked in the Governor's Office of Economic Analysis (GOEA), which was overseen by Greg Harkenrider and that, in 2017, shortly after its creation, she was transferred to the Governor's Office of Policy Research (GOPR), which is overseen by Dr. Michael Jones.

8. She identified Appellee's Exhibit 1, her Voluntary Transfer/Demotion/Salary Retention Agreement Form, and acknowledged her signature on the document dated July 19, 2017. It was entered without objection. She testified that Dr. Michael Jones came into her office, stood over her, and forced her to sign the document with his hand over the form. She testified that he said he would be her Director, that she asked if any duties would change, and that she asked if she would be treated as a new employee, and he responded no to each question. She stated he made her aware the transfer would become effective August 1. She stated that she never asked him to give her the form, for time to review it, or to remove his hand and that he never threatened discipline. Specifically, she stated during the conversation he said, "Look, there is nothing changed. Same title, everything, Nothing will be changed. Sign...sign." She stated that he had indicated her coworker Sara had already signed her form.

9. She admitted that immediately after signing the form she never went to Human Resources (HR) or her current supervisor to complain that she was forced to sign the form by Dr. Michael Jones. The Appellant stated that, after working for Dr. Michael Jones for several weeks, he started mistreating her and involving her coworker Sara Aiken in every duty. So, in late August or early September, she went to HR and asked for a copy of the form, saw the waiver of the right to appeal or grieve her voluntary transfer, and realized she was "in big trouble." She stated that when Dr. Michael Jones told her that her duties would not change, she took that to mean for the rest of her career while working for him.

10. She stated that, after leaving HR, she went to her former Director, Greg Harkenrider, to ask to be transferred back, and then met with Mr. Harkenrider, Budget Director Chilton, and Dr. Michael Jones and was denied the opportunity to return to her former Division, GOEA. The Appellant stated that she filed her appeal with the Personnel Board on October 9, 2017, and conceded that this occurred after Dr. Michael Jones raised concerns regarding the quality of her work.

11. The Appellant stated that her position before and after the transfer was a Program Specialist, grade 16, and that her title, salary, and location never changed. She stated that she did not have employees reporting to her before or after the transfer, but that the changes in duties constitute the demotion. She testified, specifically, that she was the Manager of the Tax Expenditure Report for the last four years as is outlined in her evaluations for the last four years. She testified she had oversight over the project,

which included state and federal statutes, forecasting five sections in the report, working with each analyst in forecasting the taxes assigned to them, and working with the Department of Revenue to go through updates, edits, or changes that affect the report. She testified that sometime after the move she was relegated only to attending meetings and taking notes regarding this project. She stated that it is a task that is performed only in odd number years and that, in even number years, there is no work to be performed on this task.

12. She stated that she asked why she was no longer overseeing the whole report and Dr. Michael Jones told her that he did not trust her work and cited two November 2017 errors that were discovered on the report. She testified that one was a forecasting error made by her coworker, Dr. Thomas Jones, and the second was a change made to headings by her former Director, Greg Harkenrider. She stated that she was marked down to a 3 on her 2017 evaluation for these errors, that she asked for reconsideration, that she put her basis for reconsideration in writing, and that Mr. Harkenrider and Dr. Michael Jones agreed to revise the evaluation, and provide her with a 4 on that task. Appellee's Exhibits 2A through 2I, Appellant's Annual Employee Performance Evaluations from 2013 through 2017, were entered into the record (subject to authentication by a HR witness later in the proceeding), without objection.

13. The Appellant testified that she believed the task in summarizing the State Tax Notes Newsletter is a clerical assignment that is beneath her, and that the newsletter she summarizes is not useful. She stated that she asked Dr. Michael Jones to share with her his work on Unemployment Insurance Fund forecasting; he advised that it was very complex, and that to be able to understand it, she would need training and that he would provide it for her. She stated that sometime in 2018, after she complained about her duties being taken away, she was given the task of UI forecasting and was not provided training. She stated she believed Dr. Michael Jones was setting her up for failure. She acknowledged that the performance of these "clerical" duties is not time-consuming and does not keep her from performing her other assigned work.

14. As it pertains to her claims of discrimination, the Appellant testified that she has been denied promotions and that only men in the organization are promoted. She stated that Dr. Thomas Jones and Gene Zaparanick-Brown were promoted, but she had nothing to indicate that these promotions were not merit-based.

15. The Appellant testified that she wears a hijab daily and, during her interview, discussed with Greg Harkenrider that she was a Muslim. She testified there were never any direct negative comments made to her regarding her religion, national origin, or gender. She testified that she worries for her life coming to work. As it pertains to her claims of harassment and retaliation, she testified to the following incidents:

- She had heard from two coworkers, who heard from others, that Dr. Michael Jones asked others to “spy” on the Appellant and tell him when she left and arrived at the office.
- Dr. Michael Jones was upset and yelled at her when he realized that she left the office and failed to attend a 3 p.m. meeting called by another Deputy Executive Director the day prior and did not advise Dr. Michael Jones that she would miss the meeting
- Dr. Michael Jones required her to give explicit detail regarding her daughter’s health condition. (Although she acknowledges she was never denied sick leave or required to bring a doctor’s note for absences related to this.)
- Dr. Michael Jones asked others if they wanted to use the Appellant’s shared parking space. (Although she acknowledges that she offered to share the space with Dr. Michael Jones, he declined and never took the space away from her.)
- Dr. Michael Jones threatened her when he told her that her failure to use a specific software for forecasting was “way below Greg’s [Harkenrider’s] expectations.”
- A coworker, Gene Zaparanick-Brown, refused to open the window in his office when she complaint about it being excessively hot in her adjacent office, telling her, “It is all in your head.” The Appellant testified that this was a discriminatory reference to her national origin and her wearing of a hijab.
- Her complaint to Dr. Michael Jones about the aforementioned comment was not taken seriously, as Dr. Jones told her that she misunderstood the expression and she should look it up on the internet.
- She was asked at a bi-weekly meeting when she would retire.
- A coworker, Marty Miller, refused to give her an office mat from a vacant office, telling her that she could not have it, because it was meant for a human being who would be moving into the office. She testified that she felt Ms. Miller was saying that, as a Muslim, she was not a human being. She testified that she reported this to Greg Harkenrider and, after an investigation, he told her there was no derogatory intent with the use of the

phrase "human being." She acknowledged that he provided her with an office mat.

- She was forced to attend office meetings at restaurants where alcohol was served and Dr. Michael Jones consumed it. She testified that alcohol is one of the top seven sins of the Muslim faith, that touching it is no different than drinking it in her faith, and that she cannot be around it. At Christmastime, blind gift exchanges included gifts of alcohol.
- Dr. Michael Jones brought a Christmas cake to a gathering that said, "Happy Birthday Jesus" and he said, "Wonder what Ghada will think of this. Isn't it funny?" She testified that she was not present for the gathering, did not see the cake, but heard this from Traci.
- When discussing who would remain in the office during the holidays while the Budget Director was off, Dr. Michael Jones stated, "When the cat's away, the mice will play." She testified that this was referring to her as a mouse since she would be the one remaining in the office at this time.
- On the day after President Trump was elected, her coworker, Gene Zaparanick-Brown, sarcastically told her, "If you need a place to hide, I can hide you."
- Dr. Michael Jones told her, in front of others, that her grammar was horrible and she needed to work on it.

16. On January 19, 2018, while her first Personnel Board case was pending, the Appellant described an incident between her and Dr. Michael Jones, which she testified was retaliation for filing her first appeal. She testified that he had sent her an email regarding an error in one of her calculations and that she corrected the error. She then went to his office to discuss it. During the meeting, he became upset with her, told her that she was a liar, and she was not being truthful. She testified that he stated that he was not going to continue to meet with her without a witness and ran from the office down the hall, yelling for Greg Harkenrider. She stated she left the office because she did not feel safe. She then saw Dr. Michael Jones running back toward her with Greg behind, telling her to get back to his office and that Greg was coming. She testified that she feared for her life, and refused his and Greg's orders to go back to the office to talk, stating that she was going to HR. She stated that, on his return back toward her, Dr. Michael Jones was so close that she could feel his breath and she believed he was going to hit her. She testified, "My life was in danger." She stated that a coworker, Andrew McNeil, came out of his office and grabbed Dr. Michael Jones, who was resisting. She

told Greg Harkenrider that she was not going back in and that she went to HR in tears to report the matter.

17. As for her claim relating to the denial, abridgement, or impediment of her access to records, she testified that she verbally asked Budget Director Chilton for the salary of others during a meeting and he refused to provide it. She then made a written open records request and received them within 2 or 3 weeks after being told they were initially withheld by order of OSBD. She made another request for historical data for unemployment from the shared drive, which was not an open records request, and this was not given to her.

18. She testified that two witnesses in this proceeding, specifically Traci and Michaela, had provided her with a copy of the questions from Appellee's counsel, and that they had discussed the issue of testimony and witness prep with her several times. She contended that Budget Director Chilton threatened Ms. Giles with discipline if she did not tell what she will testify to in the hearing.

19. Questioning of the Appellant on direct was reserved until the Appellant's case-in-chief. The next witness to testify was **Dr. Thomas Jones**, who holds the position of Financial Investigation Forecasting Programming Analyst II, in the Governor's Office of Economic Analysis (GOEA). He has been employed for 17 years. He has a Ph.D in Economics, a Masters in Political Science, and Bachelor Degrees in Math, Political Science, and Public Administration. He works in GOEA and was promoted in 2016. He monitors and tracks the U.S. and Kentucky economy and forecasts various taxes in addition to writing those sections of the Miscellaneous Tax Report.

20. He testified that GOEA forecasts taxes for the state as it goes into the budget process and performs bill reviews related to them. Greg Harkenrider oversees the department. The roles of GOEA and Governor's Office of Policy and Research (GOPR) have changed over the years. Now GOEA handles tax revenue-type measures and GOPR handles expenditures, but there was some overlap at times. The Tax Expenditure Report is due in odd numbered years.

21. In early 2018, he was called into the HR Director's Office to meet with the Director. He was told there was a dispute between Ghada El-Dabbagh and Dr. Michael Jones and he was asked some econometrics questions; specifically, whether it was appropriate to use a regression model or a specific kind of forecasting over time. He responded that a regression model was not appropriate and, through the use of a white board, explained to the HR Director how this would lead to inaccurate results. That brought his involvement to an end.

22. Dr. Thomas Jones testified that there have never been office "meetings" held at restaurants, only birthday celebrations over the lunch hour, and that he has seen Dr. Michael Jones order one beer with the meal. He has never seen him impaired, nor ever heard any discriminatory comments or actions relative to Ms. El-Dabbagh.

23. On the issue of promotions, he testified they are handled a bit differently in some of the departments. In GOPM, for example, promotions come based upon the number of budget cycles the employee has participated in and completed, along with consideration on whether the economy is in a recession. That one is more of a tenure-based, as opposed to a merit-based process. In GOEA, the department used to be approximately 50 people and now it was around 24, so promotions come from assuming more duties as people leave. He received a promotion in 2016 after beginning 7 or 8 years ago to take on the duties of several coworkers, which increased his responsibility significantly. Appellant's Exhibit 1 was entered into the record without objection.

24. The next witness to testify was **Michaela Giles**. On direct and cross-examination and upon questioning from the Hearing Officer, she testified that she has worked for the state for 23 years. She currently works in the Office of State Budget Director in the Governor's Office of Policy Management (GOPM). Her co-supervisors are Kevin Cardwell and Janice Tomes. She stated that she worked with Ms. El-Dabbagh for about 18 to 20 hours in total from May to July and began working with Dr. Michael Jones when he assumed his current role. (**Hearing Officer Note:** At this point in the testimony, the Hearing Officer noticed that Ms. Giles was reading her answers from a prepared sheet and admonished her not to read her answers, but to testify from her memory, unless she needed to refresh her memory. She complied.) Appellant's Exhibit 2 was entered over objection of the Appellee.

25. On direct, Ms. Giles was asked if she had ever witnessed Dr. Michael Jones discriminate against Ms. El-Dabbagh or otherwise mistreat her. She testified that she had witnessed an encounter between Dr. Michael Jones and Ms. El-Dabbagh on August 30, 2017, the day after Ms. El-Dabbagh had left the office and missed a meeting called by Ms. Giles' supervisor, Kevin Cardwell.

26. Ms. Giles testified that the discussion she had witnessed occurred in the hall and that Dr. Michael Jones had raised his voice to Ms. El-Dabbagh and, while the witness could not hear what was being said, she feared for Ms. El-Dabbagh's safety because Dr. Michael Jones was agitated. She stated that, despite fearing for Ms. El-Dabbagh's safety, she never reported this issue to HR or anyone in management immediately after it occurred because she wanted to get along with her coworkers and because prior issues she had reported were not addressed. She stated that she did

mention this incident to her supervisor six months later, just after she was subpoenaed by Ms. El-Dabbagh's attorney for this proceeding.

27. Ms. Giles also testified that she had heard Dr. Michael Jones make comments that Ms. El-Dabbagh's grammar needed improvement and that her forecasting methodologies, and those of his predecessor, were not up to par. She also stated that Dr. Michael Jones had offered her Ms. El-Dabbagh's parking space and she declined.

28. Ms. Giles denied ever telling Ms. El-Dabbagh that she (Ms. Giles), as an African American woman, felt that she would be next to be targeted after Ms. El-Dabbagh. She testified that in that office, everyone was "fair game."

29. She admitted to discussing with Ms. El-Dabbagh her upcoming testimony and witness preparation, despite an admonishment from Mr. Bishop, counsel for Appellee, that she should not discuss her testimony with others. She testified that she could not remember whether she had had several conversations with Ms. El-Dabbagh about her (Ms. Giles) upcoming testimony in this proceeding, or what they discussed. Upon direct and cross-examination, the witness recounted in detail her reluctance (1) to meet with Mr. Bishop (citing her busy work schedule with the start of the legislative session) during the first of two witness prep meetings, and (2) to answer his question regarding whether she had ever witnessed discriminatory treatment of Ms. El-Dabbagh. She was also able to recount, in detail, what she and Mr. Bishop discussed.

30. Ms. Giles also admitted to forwarding to Ms. El-Dabbagh the email Mr. Bishop had sent her regarding a meeting for her witness preparation along with the attached questions he had prepared for her testimony. She testified that she was not "entirely sure" that the questions were not from Ms. El-Dabbagh's attorney; the attachment did not detail who the author was. Mr. Bishop had not marked the email "confidential" or stated that she could not share it with anyone, so she forwarded it to Ms. El-Dabbagh and inquired if it was from her attorney. She stated that since Mr. Bishop had hand-delivered the subpoena on behalf of Ms. El-Dabbagh's counsel to her, that this could have been a similar delivery by Mr. Bishop on behalf of Ms. El-Dabbagh's counsel, via email. She stated that, as an auditor, her training was always to verify sources of documents and that is what she was attempting to do by providing Ms. El-Dabbagh the questions provided to her by the opposing party.

31. Ms. Giles testified that she was threatened with discipline by Mr. Bishop and by Budget Director Chilton if she did not respond to the questions.

32. The third day of the hearing was held on January 30, 2019. The Hearing Officer continued questioning Ms. Giles regarding her testimony the prior day. Ms.

Giles clarified her previous testimony, stating that she did *not* fear for Ms. El-Dabbagh's safety during Ms. El-Dabbagh's encounter with Dr. Michael Jones; that she spoke with Ms. El-Dabbagh the day after Ms. El-Dabbagh's encounter with Dr. Michael Jones and Ms. El-Dabbagh did not mention feeling unsafe during her discussion with Dr. Michael Jones either.

33. Ms. Giles stated that she "probably" realized the questions she forwarded to Ms. El-Dabbagh were from Mr. Bishop during her meeting with Mr. Bishop when they were going over them. She does not recall what, if anything, she and Ms. El-Dabbagh discussed after giving her the Appellee's witness prep questions.

34. The Hearing Officer ordered Ms. Giles to provide to the Personnel Board, with copies to both parties, (1) all emails relating to this case between Ms. Giles and Ms. El-Dabbagh, (2) any emails to/from Mr. Bishop, as counsel for the Appellee, and (3) all emails to/from Budget Director Chilton. Upon being provided by Ms. Giles after she was excused from the hearing, the emails were entered as Personnel Board Exhibit 1, without objection.

35. On direct, Ms. Giles admitted that she never disclosed to Mr. Bishop that she had given his questions to Ms. El-Dabbagh in either of the two meetings she had with him prior to the hearing.

36. Testimony was next provided by **Traci Hedrick**. She testified that, during one Christmas two years ago, someone brought in a cake that said, "Happy Birthday Baby Jesus" and Dr. Michael Jones jokingly remarked to her that he wondered how Ms. El-Dabbagh would feel about this. She stated she did not know who brought in the cake and Ms. El-Dabbagh was not present.

37. Testimony was provided by **Christina Gormley** and **Ethan Williams**.

38. The next witness to testify was **Kim Mitchell**, who serves as HR Administrator for the Cabinet's Office of Administrative Services. She testified that she is not assigned to handle Human Resources matters for OSBD, but, in late August or early September of 2017, Ms. El-Dabbagh came to HR and she and Mitchell Adair met with her because the HR administrator assigned to support OSBD was out. She testified that typically one person on the team will interact with the person and the other person will take notes. During her meeting with Ms. El-Dabbagh, Ms. El-Dabbagh was upset with her transfer to a different supervisor and that someone else was being given her duties. The witness testified that she relayed to Ms. El-Dabbagh that, in order to investigate her concerns, she needed to speak with her supervisor or chain-of-command. She testified that Ms. El-Dabbagh did not want them to investigate these

concerns and the witness stated that she got the impression that Ms. El-Dabbagh feared retaliation.

39. She testified that Ms. El-Dabbagh expressed being harassed or intimidated, and they told her that she needed to report that matter to the Equal Employment Opportunity (EEO) office. The witness testified that she was not aware if Ms. El-Dabbagh did report it to EEO. The witness testified that Ms. El-Dabbagh stated that she been forced to sign the voluntary transfer form; that the form was put in front of her and the person said, "Here, sign this." She stated that now that she was transferred, someone else was being given her duties. She recalled showing the form to Ms. El-Dabbagh during the meeting, but could not recall if they provided her a copy. The witness stated that she recalls meeting with Ms. El-Dabbagh both that morning and that afternoon.

40. She testified that, during a meeting on a different day with Ms. El-Dabbagh, Ms. El-Dabbagh mentioned an issue with being hot and wanting the window open. During a third meeting in early 2018, Ms. El-Dabbagh was so upset and crying that the witness allowed her director to handle interacting with her. The Hearing Officer ordered the witness to produce the notes of her meetings with Ms. El-Dabbagh, which were marked and entered, without objection, as Personnel Board Exhibit 2.

41. **Mitchell Adair** testified that he is a Human Resources Administrator for the Finance and Administration Cabinet. He testified that he and Kim Mitchell met with Ms. El-Dabbagh in late August or early September of 2017, because the HR administrator that typically supports that office was out on medical leave. He testified that, during the meetings with Ms. El-Dabbagh, she stated that she did not like her current supervisor, Dr. Michael Jones, and did not want to work for him. He testified that she stated that Dr. Michael Jones had parked in her parking spot and her coworker Sara Aiken was getting her job duties. He recalls that she stated that her supervisor made her sign the voluntary transfer form.

42. He testified that when she stated she was being discriminated against, based on her race, gender, and religion, they referred her to EEO to report a discrimination complaint.

43. He testified that Ms. El-Dabbagh did not want them to investigate the concerns she brought to them because she was going to be meeting with her first- and second-line supervisors. Instead, she wanted them to attend the meeting with her. He testified that they advised her that they could not be present.

44. The witness testified that, during a third meeting with Ms. El-Dabbagh, she mentioned her supervisor was running down the hall calling her a liar. He does not

recall any mention of him flailing his arms, but she was so upset that the HR Director, Stacy Perry, took her to the restroom and then went up to talk to Ms. El-Dabbagh's supervisors. The Hearing Officer ordered the witness to provide notes of meetings with Ms. El-Dabbagh, which were provided after the witness was excused and were entered as Personnel Board Exhibits 3A and 3B.

45. The next witness for the Appellee was **Marty Miller**, who testified that she was responsible for preparing the office for a new employee and was told by Deputy Director Janice Tomes to make it as nice as possible, although it was formerly a storage catch-all. She stated that in November 2016, Ms. El-Dabbagh wanted the floor mat from that office and she advised her that a new employee would be moving to the office. She stated that Ms. El-Dabbagh inquired who was going to move into the office and whether they were male or female. She told Ms. El-Dabbagh, she could not have the floor mat and that a human being was going to be moving into the office and that they could get with Greg Harkenrider to order her a new mat if that was not satisfactory. She stated that Ms. El-Dabbagh began yelling at her, "Are you saying I am not a human being?" She denied ever witnessing or making any comments that could be considered discriminatory.

46. **Martha Armstrong** testified.

47. On March 12, 2019, at 9:30 a.m., **Teresa Sanders** testified that it was rumored that Dr. Michael Jones had asked her to spy on Ms. El-Dabbagh. She stated this never happened; she does not really know Ms. El-Dabbagh, and she never discussed this case or her testimony with anyone but counsel for the Appellee in preparation for the hearing.

48. **Kara Smotherman** testified that she was never asked to spy on Ms. El-Dabbagh. She admitted that she discussed this issue with other witnesses only because it seemed absurd.

49. **Kevin Cardwell**, Deputy Director of GOPM, testified that he has very limited interaction with Ms. El-Dabbagh. He testified to his approach to promoting his staff and stated that he does not know how promotions are handled in GOEA or GOPR. Appellant's Exhibit 3 was entered.

50. **Janice Tomes** testified that she is Deputy Director of GOPM, along with Kevin Cardwell. She testified that her office is next to Dr. Michael Jones' and that she has overheard voices through the wall. On one particular day several months ago, she heard a loud discussion between Dr. Michael Jones and Ms. El-Dabbagh and that both voices were loud. She testified that she saw Dr. Michael Jones afterward and he recommended that she have a third party present when meeting with Ms. El-Dabbagh.

51. She recounted an issue between Ms. El-Dabbagh and Marty Miller approximately two years ago. Ms. Miller had come to this witness, her supervisor at the time, and stated she did not want to be misinterpreted, so was reporting her interaction with Ms. El-Dabbagh about the floor mat and her reference to a human being who was going to use the floor mat in their office. She stated that Ms. Miller is assigned to handle inventory and happened to be in that employee's office preparing it when Ms. El-Dabbagh went to the office to try to obtain the floor mat. She advised Ms. El-Dabbagh that there is a general rule that you do not take items from vacant offices. After Ms. Miller reported this incident to her, she went to Greg Harkenrider, Ms. El-Dabbagh's supervisor, to resolve. She stated she felt it was appropriate to order Ms. El-Dabbagh a new mat.

52. **Sara Aiken** testified that she was the second employee, along with the Appellant, transferred under Dr. Michael Jones via a voluntary transfer form that she signed. She stated that she holds a Bachelor's Degree in General Business and an MBA with an emphasis in Economics and Finance Management. She said this transfer to work in GOEA from GOPR was discussed with her when she was interviewed before coming to the Office of the State Budget Director. She identified Appellee's Exhibit 3 as her voluntary transfer form, which she signed when it was provided to her in a staff meeting, told to review, and asked if there were any questions.

53. She testified that she was not aware that any of her duties were formerly assigned to Ms. El-Dabbagh and that there was no difference in her duties once she transferred to work for Dr. Michael Jones. She stated that she had been given additional training in a forecasting software called R. Studio, which provides a more sophisticated forecasting. Trainings were held two to three times per week and Ms. El-Dabbagh missed two or three classes. She witnessed Dr. Michael Jones offering Ms. El-Dabbagh the opportunity to make up the trainings.

54. **Stacy Perry** testified she is Director of HR for the Finance and Administration Cabinet, the Appointing Authority, and the custodian of personnel records. She is responsible for Human Resources investigations other than EEO. She testified that Yvette Smith in the EEO office handles those.

55. Ms. Perry testified by providing information relative to reclassification, promotion, salary increases, and desk audits. She stated there is no tool to simply give someone a promotion and that a reclassification requires permanent material changes in the duties of the position. It is tied to the position and not the employee. As it pertains to a promotion, it requires a register be posted for ten days, which ensures proper hiring and selection process. She stated there are competitive registers, which are open to the public, and internal mobility registers, which are open only to merit employees who are not on probation. She denied that there is always a strong internal candidate

already in line for the position and indicated that some internal mobility registers are filled by candidates from outside the posting department. Appellee's Exhibit 4 was identified as a portion of the document she created in response to the Open Records Request that Ms. El-Dabbagh made. The two-page document constitutes the salaries and personnel actions for all employees in GOEA and GOPR, the two departments Ms. El-Dabbagh has been assigned to in the Office of the State Budget Director. The exhibit was entered over the objection of the Appellant. The witness also authenticated Appellee's Exhibits 2A through 2I, so they were formally admitted to the record.

56. Demotion is a reduction in grade, salary, or a reduction in responsibilities. Here, there was no reduction in grade or salary. She does not know if there was a reduction in responsibility.

57. She was consulted regarding OSBD's desire to transfer Ms. Aiken and Ms. El-Dabbagh to GOEA under Dr. Michael Jones. She testified that she was advised this was done because the work of those employees was better suited in Dr. Michael Jones' department. In order to accomplish the transfers, she explained that they needed two vacant positions in GOEA and to then transfer the employees by way of having them sign a voluntary transfer form. She said her office created the form provided to GOEA, that the employees signed and returned to HR. She stated that both employees signed and submitted the forms to HR.

58. She testified that, approximately two months after signing the form, the Appellant came to HR and met with her, Mitchell Adair, and Kim Mitchell. The Appellant said that she was forced to sign the form. She voiced other concerns, but told the HR staff that she did not want the matters investigated.

59. She stated that, about a month later Ms. El-Dabbagh returned again, and upset regarding the transfer form. The Appellant stated that she had lost her job duties and was forced to sign the form. Ms. Perry said that she spoke with Ms. El-Dabbagh regarding this and investigated her complaint by discussing with Dr. Michael Jones how he had handled giving Ms. El-Dabbagh the form to sign. Ms. Perry relayed that he stated he went to Ms. El-Dabbagh's office to schedule a meeting; Ms. El-Dabbagh asked if he had the form with him and signed it. In investigating this, Ms. El-Dabbagh never relayed any action that indicated force was used regarding her signing the form. Ms. Perry testified that she concluded the form was signed voluntarily. She testified that Ms. El-Dabbagh never alleged to her that Dr. Michael Jones put his hand over a portion of the form to prevent her from reading it.

60. In January 2018, Ms. El-Dabbagh returned to HR visibly upset, crying and stating that she was afraid. She stated that Dr. Michael Jones yelled at her in the hallway, screamed at her, intimidated her, and that Greg Harkenrider was a witness.

Ms. Perry immediately went upstairs to speak with Dr. Michael Jones and Mr. Harkenrider. Dr. Michael Jones admitted to the incident. Mr. Harkenrider confirmed that he witnessed the incident, but stated that Ms. El-Dabbagh was loud as well. She went back down to speak to Ms. El-Dabbagh and said that both parties appeared to be at fault for raised voices. She does not recall Ms. El-Dabbagh's response to the results of her investigation. She reported her findings to Director Chilton and told him that Dr. Michael Jones should apologize for raising his voice at Ms. El-Dabbagh as it was inappropriate.

61. On January 23, 2018, Ms. El-Dabbagh came back to HR and brought up the following issues. Ms. Perry testified that she investigated and concluded as follows, utilizing her notes to refresh her memory:

- Issue: Deputy Director Jones drank alcohol at work and Ms. El-Dabbagh was afraid he would hurt her while intoxicated. Conclusion: Interviews were conducted with Chilton, Harkenrider, and Dr. Thomas Jones. On a special occasion, Dr. Michael Jones did have a beer out of the office at lunch. No indication that he was intoxicated, unable to function, and no indication he was a danger to himself or others.
- Issue: Discriminatory comments were made to her regarding a floor mat. Conclusion: Interviews were conducted. The incident occurred more than a year and half earlier and it had already been resolved. The comment was a misunderstanding.
- Issue: The office was too hot and she had asked to open a window. A coworker told her, as it pertains to the heat, it was "all in her head" and that was a discriminatory statement in reference to her hijab. Conclusion: The boiler was broken and it was uncomfortable in their office. The witness knows that firsthand. Dr. Michael Jones had looked into the complaint at the time and the employee did not mean the comment to be offensive. He was meaning, "Mind over matter."
- Issue: Dr. Michael Jones took her duties assigning legislative bill reviews to others. Conclusion: That was a decision made by Budget Director Chilton.
- Issue: Dr. Michael Jones had scheduled training when she was out of the office. Conclusion: Dr. Michael Jones was not aware that she was going to be out of the office since the leave request was approved when

she was under her prior deputy director. Once he realized it, he rescheduled for her.

62. Neither Ms. El-Dabbagh nor Ms. Giles ever reported a second incident in the hall where Dr. Michael Jones raised his voice at Ms. El-Dabbagh. Ms. Perry followed up with Ms. El-Dabbagh regarding recent issues, but not those that had already been resolved prior to Ms. El-Dabbagh's reporting them to her.

63. She was aware of a lot of emails between Ms. El-Dabbagh and Dr. Michael Jones as to what method to use for performing forecasting. In the emails between them, Ms. El-Dabbagh was asked to do certain tasks using a certain methodology, but she was resistant to performing them and argued with Dr. Michael Jones regarding this. Ms. Perry stated that for this issue, she consulted with Dr. Thomas Jones regarding appropriate methodologies for the tasks Dr. Michael Jones was assigning Ms. El-Dabbagh and he agreed with Dr. Michael Jones. She advised Ms. El-Dabbagh to perform the work tasks as assigned by her boss.

64. Ms. Perry testified that Ms. El-Dabbagh had reported that Dr. Michael Jones was harassing her regarding her parking spot. Upon investigation, Dr. Michael Jones told her that he parked in her spot because he thought she was out of the office that day. Appellant's Exhibits 4 and 5 were identified and entered.

65. Upon questioning from the Hearing Officer, the witness testified that Ms. El-Dabbagh never raised a concern that she felt she was going to be struck by Dr. Michael Jones.

66. Both **Melissa Highfield Smith** and **Alex Kelly** testified.

67. The fifth day of the hearing was held on March 13, 2019. **Phillip Rosell** and **Gene Zaparanick-Brown** testified. Mr. Zaparanick-Brown testified that, until he retired in November 2018, he had worked for 27 years in the Office of the State Budget Director. He testified that he never had a conversation with Ms. El-Dabbagh when President Trump was elected offering to hide her as a result of his proposed Muslim ban. He testified that she did come to him and request that he open the window when she said it was hot. He stated he refused because it was winter, it was cold outside, and it would result in his office being cold with little relief for her office, which was farther away. He said that Ms. El-Dabbagh and Dr. Thomas Jones were outside of his office and kept "going on and on and on" complaining about the heat and he told them something to the effect of "continuing to dwell on the heat will not improve things."

68. The witness testified that he did overhear Ms. El-Dabbagh and Dr. Michael Jones in heated discussions on occasions and that Ms. El-Dabbagh would

occasionally get loud and become accusatory, saying, "You are calling me stupid, you are saying I am not smart." Dr. Michael Jones would say that is not what he was saying. She would also tell him, "That's not in my job description" or "I'm not going to do that." He testified he would consider that more than an unwillingness, it was a refusal. He has worked with Dr. Michael Jones for 17 years, never saw him lose his temper or take any action based on race, ethnic origin, or religion. He was aware that Dr. Michael Jones had set up trainings to improve the forecasting skills of his staff, including Ms. El-Dabbagh.

69. **Carla Wright** testified.

70. **Greg Harkenrider** testified that he is Deputy Director of GOEA. He was also formerly the Acting Director of GOPR until Dr. Michael Jones moved into the position. He hired Ms. El-Dabbagh in 2009, was on the interview panel, and was the deciding factor in her hiring. Since then, he has worked closely with her on projects.

71. He stated he has witnessed interaction with Dr. Michael Jones and the Appellant since she transferred. He had never witnessed her being treated badly because of her race, sex, or national origin. He stated that, on the day of the incident in the hall, he was at the opposite end of the hall and overheard Dr. Michael Jones say, "You are getting this wrong. That is not what I said." She was visibly upset, shaking her head, and walking away from the conversation. It was not overly loud, but Dr. Michael Jones' voice was raised. The Appellant's part of conversation was not as loud. He saw no physical contact and did not see Dr. Michael Jones getting close to her. They were about five feet apart. He never saw either of them running.

72. The witness stated that Andrew McNeil did not pull them apart. Instead, Mr. McNeil said this should be discussed behind closed doors and positioned himself between the two. Ms. El-Dabbagh was upset and excited. He did not see Dr. Michael Jones flailing his arms. The witness spoke with Dr. Michael Jones afterward; Dr. Michael Jones said he felt Ms. El-Dabbagh put words in his mouth as he was explaining his position. Not aware of any other incident or of Dr. Michael Jones losing his temper before or after. He has worked with Dr. Michael Jones for 17 years.

73. As to promotions, he stated that in GOPR the lowest position is a grade 16. There are grades 18 and 19 and one can advance from a 16 to an 18. Promotion is based upon taking on new assignments, mastery of the skills, and carry-through to the end with little involvement or oversight from him.

74. He testified as to the promotions in GOEA. During evaluations, he would recommend what the employee could do for the next year to position themselves for a promotion. Yet, he noted that the State Budget Director would ultimately decide.

There were two people with Ph.Ds in economics working in GOEA. Those people and credentials gave the office more credibility with providing testimony. As a result, they would be highly considered for promotion.

75. When he was named Deputy Director in 2008, Gene Zaparanick-Brown and Dr. Thomas Jones received promotions at the same time. He was not involved in those decisions because he was just coming on board as Deputy Director. He recommended Dr. Thomas Jones in 2017, when he took over as editor of the Quarterly Tax Reports, which are required by statute. Dr. Thomas Jones' work level was increasing, so he was appropriate for a promotion. He had recommended two other white males who were formerly employed, Robin Ray and Justin Tapp, for a promotion and they were denied by the State Budget Director. He was able to get promotions for Mr. Zaparanick-Brown, who went from a grade 18 to a grade 19, and Dr. Thomas Jones, who went from a grade 16 to a grade 18.

76. At the end of Ms. El-Dabbagh's evaluation in 2013-14, she told him it was time for a promotion. He said that word "time" was odd to him since promotions were given based upon accepting new duties and mastery of skills, not based on time. He promised to put her in the best position for success. He did recommend Ms. El-Dabbagh for a promotion to Budget Director Mary Lassiter at the end of 2015. As a basis, he outlined her heightened role on the Tax Expenditure Report and that he was integrating her into the SEEK assignment. Budget Director Lassiter asked what she was doing on the SEEK assignment and, after the conversation, she said she would not promote the Appellant at this time. He followed up with Ms. El-Dabbagh at the next performance evaluation and apologized that that she did not get the promotion. He testified that her mastery of the new skill set was lacking as opposed to just taking on the new task.

77. The witness testified that he has had concerns with the quality of Ms. El-Dabbagh's work when she worked for him. Some duties were performed quite well and on others she was not as effective. She did the tax expenditure report well, but it still required oversight on his part. He still had to do a lot of writing and statutory references were wrong as reported to him by LRC, so he had to verify them. Most importantly, the numbers submitted by other analysts still required his involvement to check for accuracy. Also SEEK forecasting was not her strong suit, but spreadsheets were. She did not excel at written presentations and he had to perform fair amount of editing of her writing and grammar.

78. The witness reviewed the Appellant's evaluations (Appellee's Exhibits 2A to 2I) that he completed as her supervisor and discussed them over the Appellant's objection. He stated that when she was transitioning to Dr. Michael Jones, they had a

conversation on her strengths and weaknesses. He acknowledged he had typically scored Ms. El-Dabbagh well over the years, but her performance was slipping.

79. On the issue of the floor mat, in 2016, when he discussed the matter with Ms. El-Dabbagh, she refused to accept that the reference that "a human being" was going to use the mat was a misunderstanding. He got her a new floor mat the day of the incident.

80. Regarding the voluntary transfer form, he was with Dr. Michael Jones just before he went to Ms. El-Dabbagh's office to set up a meeting to discuss the transfer. Dr. Michael Jones returned to the witness' office pleasantly surprised that it went well; she said she did not want a meeting and had signed the form. Ms. El-Dabbagh contacted him months later and expressed concern regarding the job duties. She never mentioned being pressured to sign the form or alleged that Dr. Michael Jones had covered a part of the form so she could not read it.

81. **Dr. Michael Jones**, Agency representative, began testifying on April 18, 2019, resumed his testimony on July 10, 2019, and completed his testimony on July 25, 2019. He serves as Deputy Director of GOPR in the Office of State Budget Director. He obtained this position because, for some time, Mr. Harkenrider was Acting Deputy Director of GOPR in addition to his Deputy Director role with GOEA. The witness testified that he proposed, first to Jane Driscoll, then to Budget Director Chilton, that he become the Deputy Director so that he could have lower level staff under him begin to be trained in forecasting to allow the work to move forward. Once Budget Director Chilton agreed, they went to HR and began discussing how to effectuate this with the least disruption possible. Ms. El-Dabbagh and Ms. Aiken, because of their duties, were appropriate to be assigned to the newly created division, but they needed to wait for Ms. Aiken to finish her probationary period and did so. An August 1, 2017 target date was suggested. Before the transfers were effectuated, he began to work with Ms. El-Dabbagh on statistical training classes.

82. Regarding the hallway incident, the witness stated that he was in his office discussing an error Ms. El-Dabbagh had made and she accused him of performing all of the work for Sara Aiken. He told her that was not true and that he was going to find a witness for their conversation. He said she became upset and said, "You are calling me a liar! No sir, no sir!" He said he went to get Greg Harkenrider to be a witness, when Andrew McNeal came into the hall and said, "This is not how you settle things, let's go down to your office." He admitted to raising his voice and said he regrets it. He stated that Ms. El-Dabbagh was the aggressor, following him as he left the office, getting in his face and saying, "No sir, no sir!" He was wanting Mr. Harkenrider to be a witness because it had been suggested by Janice Tomes in an earlier conversation. He does not know where Ms. El-Dabbagh departed to, but she left after that and would not meet

with the witness and Mr. Harkenrider. Regarding the issue that Ms. Giles testified to regarding another "hall incident," he does not recall the conversation ever being heated. He never knew it was an "incident" and no one ever discussed it with him.

83. As it pertains to the allegation that he forced Ms. El-Dabbagh to sign her voluntary transfer form, he testified that did not occur. He stated he was concerned that she would want a meeting to discuss the transfer since the word "demotion" was included with "transfer" at the top of the Personnel Cabinet form. He discussed the issue with Mr. Harkenrider just before going into her office to determine his availability in case she wanted to meet immediately.

84. He testified that once in her office, he told her he wanted to set up a meeting to discuss the transfer from GOPM to GOEA. He told her no job duties would change that year and the transfer would be effective August 1, 2017. He stated he never covered up a part of the form. He told Ms. El-Dabbagh that her duties would remain the same for the rest of the year. During his testimony, he explained to the Hearing Officer that his basis for telling her that it would not change for the rest of the year was because her evaluation planning meeting was already completed and the evaluation period and tasks were assigned through December 31. In January, a new planning meeting would be held where her duties would be assigned. After he met with her, Mr. Harkenrider congratulated him because he now had two employees in his department.

85. The witness testified to the tasks assigned to Ms. El-Dabbagh before and after the transfer. He identified Appellee's Exhibit 5, a task list that he created along with Mr. Harkenrider at the request of Budget Director Chilton, to show a snapshot of tasks between GOEA and GOPR for the upcoming transition. She did not want a meeting and signed it. Appellee's Exhibit 5 was entered over objection. The list included the Tax Expenditure Report and other expenditure-related tasks, like SEEK, which were historically in GOEA, but were going to be transitioned over to GOPR. This document was a work in progress created over time from separate spreadsheets that he and Mr. Harkenrider created.

86. He testified the main difference in the Appellant's job duties was a task she was given in GOEA for forecasting miscellaneous tax receipts. Mr. Harkenrider expressly did not want her to keep that duty and wanted it to remain in his [Harkenrider's] department. Mr. Harkenrider did, however, want her to continue to complete a monthly spreadsheet and she did. All other duties remained with her and transitioned with her to GOEA with the exception of the assignment of bill reviews. He stated that did not stay with her because of a larger discussion of having one sole source responsible for reviewing bills as opposed to having several people doing reviews for the same bills. One of Ms. Aiken's duties was given to Ms. El-Dabbagh. Her duties have not declined; rather, the duties he assigned to her aligned with her skill sets and

were suitable for her accounting and the spreadsheet expertise. The Tobacco Master Settlement Agreement is one of the most high profile assignments and she has it.

87. He testified there is constant pushback from Ms. El-Dabbagh on assignments and she disputes whether their office should perform certain tasks. She challenged him on the specific methodologies he instructed her to use for econometric forecasting. He stated he never discriminated against her because of race, gender, or national origin. She has never expressed interest in a desk audit, only a promotion. He does not feel she has the ability, attitude, or performs high enough quality work to be qualified for a grade 17 or 18 in his office. The way to get promoted is to take on new tasks and perform them with high quality.

88. Dr. Michael Jones stated he has issues with the quality of her work. He found that numerous times she plagiarized an online resource as her own for a bill review, yet a bill review should always be her own work. There are errors in other aspects of her work as detailed in the various documents entered into the record. Appellee's Exhibits 6, 7, 8, 12, 13, 14, 15, 16, 17, and 18 were entered without objection. Appellee's Exhibits 9, 10, 11, 19, 20, 21, 22, and 23 were entered over objection of the Appellant. Appellant's Exhibit 6, 7, 8, 9, 10 and 11 were entered without objection.

89. **Larissa Taylor** testified and **Greg Harkenrider, Christina Gormley, and Traci Hedrick** were recalled by the Appellant on rebuttal.

90. **John Chilton** testified he is the State Budget Director and the first-line supervisor of Greg Harkenrider and Dr. Michael Jones. He discussed the plan to transfer Ms. Aiken and Ms. El-Dabbagh to GOEA to align their duties with the department. He stated that Dr. Michael Jones was a good teacher and a better coach than Mr. Harkenrider and that he felt both employees would get good training under Dr. Michael Jones. After the transfer, Ms. El-Dabbagh requested to return to her old job at GOPR. He denied her request because the duties she was performing were appropriate for the department she was in. He testified he was aware of a loud discussion between the Appellant and Dr. Michael Jones in the hall and that Andrew McNeil intervened to disrupt it. He did not recommend disciplining either Dr. Michael Jones or Ms. El-Dabbagh for the incident. He stated he did bring the "Happy Birthday Jesus" cake, but could not recall what year.

91. **Dr. Thomas Jones** was recalled.

92. **Ms. El-Dabbagh** testified on direct and re-cross on August 8, 2019. She testified she was born in Kuwait, came to Kentucky 24 years ago, and began working for the state 22 years ago. She has degrees in accounting and computer science, she is a Muslim, and wears a hijab headscarf every day. She discussed her Muslim faith with

Mr. Harkenrider in her second interview for the position. They discussed aspects of the religion and he asked her if she had a problem working with old men because it was a small division. She testified regarding her duties under GOEA and GOPR. Appellant's Exhibits 12, 13, 14, 15, 16, 17, and 18 were entered.

93. On cross-examination, the Agency explored Ms. El-Dabbagh's testimony that Dr. Michael Jones covered the Voluntary Transfer form to prevent her from reading it. She admitted that, in her Responses to Interrogatories (see Appellant's Exhibit 4, Interrogatory 7, page 9), the detailed explanation she provided said nothing about his hand being over a portion of the form. She was unable to locate a claim of his hand covering anything on the voluntary transfer form on either of her two Personnel Board appeal forms, stating that she was told by the Personnel Board to be brief.

94. Her two Personnel Board appeal forms were reviewed and she was questioned regarding them. To the first, she attached five pages of a narrative statement and, to the second, she attached 14 typewritten pages. She admitted that she never mentioned in either of those documents that his hand covered the form.

95. She was asked why she did not disclose the fact that his hand was covering the form since it was such an important fact. She stated she disclosed it to HR.

96. When asked on direct what caused her to question her transfer, she responded unequal treatment; specifically, that Dr. Michael Jones started including Ms. Aiken in all meetings, taking away assignments, miscellaneous tax reports, and was involving her in all meetings regarding SEEK.

RULING ON MOTION FOR DIRECTED VERDICT

1. At the conclusion of the proceedings, the Appellee moved for a directed verdict for which the Hearing Officer reserved ruling. The parties provided closing briefs and the Appellee filed a renewed motion for a directed verdict, which the Appellant filed a response thereto. The Hearing Officer has considered the entire administrative record.

2. In its Renewed Motion for a Directed Verdict, the Appellee contends it is entitled to judgment as a matter of law even if evidentiary inferences are resolved in favor of the Appellant. The Hearing Officer finds that in light of her claims that Dr. Michael Jones covered a portion of the form to prevent her from reading it, the voluntariness of the Appellant's signature on the form remains a fact in dispute between the parties.

3. KRS 18A.005 (24) provides that:

'Penalization' means demotion, dismissal, suspension, fines, and other disciplinary actions; involuntary transfers; salary adjustments; any action that increases or diminishes the level, rank, discretion, or responsibility of an employee without proper cause or authority, including a reclassification or reallocation to a lower grade or rate of pay; and the abridgment or denial of other rights granted to state employees;

4. Based upon the above statute and the record of these proceedings, whether the Appellant's duties were diminished after the transfer to the extent that it became a penalization (i.e. the diminishment of her discretion or responsibility without proper cause or authority) remains at issue and a disputed fact.

5. The Appellee contends the fact that the Appellant failed to present affirmative evidence of discrimination requires a directed verdict in favor of the Agency. This too, along with her claims of a denial, abridgement, or impediment of her right to inspect records, is a fact in dispute between the parties. The Hearing Officer must weigh the evidence along with the credibility of the witnesses to determine whether a *prima facie* case of discrimination exists and whether or not such conduct constitutes an "impediment or denial of other rights granted to state employees" or a "penalization" as outlined in 18A.005(24).

6. Accordingly, the Motion for a Directed Verdict is **OVERRULED**.

FINDINGS OF FACT

1. The Appellant, Ghada El-Dabbagh, was employed as a Finance Investment & Forecasting Program Specialist in the Office of the State Budget Director, GOPR. (Appellee's Exhibit 1.)

2. She was born in Kuwait and is a member of the Muslim faith, wearing a hijab headscarf every day, including in her two interviews for the position. During her second interview, she and the interviewer who ultimately chose to hire her, Greg Harkenrider, discussed her Muslim faith and he asked if she would be okay working with men in a small office. She stated that she was fine with it and he was the deciding vote in her 2009 hiring. (Testimony Harkenrider, El-Dabbagh.)

3. In 2016, there was a decision to promote Dr. Michael Jones to the position of Deputy Director of GOPR, a position that Greg Harkenrider had been performing for

quite some time on an "acting" basis along with his own duties as Deputy Director of GOEA. (Testimony Harkenrider, Dr. Michael Jones, and Chilton.)

4. With the promotion came the decisions (1) to transfer Sara Aiken and the Appellant to Dr. Michael Jones' department (GOPR) to align the duties of the department relating to forecasting revenues and expenditures, (2) to allow Dr. Michael Jones to develop and train the employees in economics in that department, and (3) to move the agency forward. (Testimony Chilton, Dr. Michael Jones, Harkenrider, Appellee's Exhibit 1.)

5. Voluntary transfer forms were prepared by HR and provided to Dr. Michael Jones to obtain the signatures of both employees. (Testimony Dr. Michael Jones, Perry.)

6. Ms. Aiken and Ms. El-Dabbagh each separately signed the forms as presented to them by Dr. Michael Jones, and the forms were submitted to HR. (Testimony Dr. Michael Jones, Perry.)

7. Ms. El-Dabbagh now contends the form was not voluntarily signed; that Dr. Michael Jones kept telling her to sign, stood over her, and placed his hand over the form to prevent her from reading the waiver of appeal that it contained. The Hearing Officer does not find Ms. El-Dabbagh credible on this claim, particularly because this significant allegation was absent from (1) the approximately nineteen pages of handwritten attachments she filed with her two Personnel Board appeals in October 2017 and February 2018, (2) her Responses to Interrogatories providing detail of her claim, and (3) the testimony and contemporaneous notes taken by HR administrators as they met with her multiple times over several months regarding her claim that she was forced to sign the form. Likewise, even in her direct testimony, Ms. El-Dabbagh testified that she started to question the transfer when Dr. Michael Jones began to involve her coworker Ms. Aiken in her work and meetings after the transfer. The Hearing Officer finds that if the signing of the form were indeed forced or coerced, that coercion would not manifest only weeks later when she became dissatisfied with the work. The Hearing Officer finds the transfer to have been voluntary and consistent with state law. (Personnel Board Exhibits 2, 3A, and 3B, Testimony of Perry, El-Dabbagh, Adair, and Mitchell.)

8. After the transfer, Ms. El-Dabbagh maintained the same salary, title, and grade. KRS 18A.005(24) provides:

'Demotion' means a change in the rank of an employee from a position in one (1) class to a position in another class having a lower minimum salary range and less discretion or responsibility;

9. The Hearing Officer finds that the Appellant did not suffer a demotion because there was no change in rank, salary, discretion, or responsibility.

10. KRS 18A.095(11) provides:

Any state employee, applicant for employment, or eligible on a register may appeal to the board on the grounds that his right to inspect or copy records, including preliminary and other supporting documentation, relating to him has been denied, abridged, or impeded by a public agency.

Ms. El-Dabbagh was provided records relating to her through an open records request. (Testimony Perry, El-Dabbagh.) Accordingly, the Hearing Officer finds that there was no denial, abridgement, or impediment of her right to inspect or copy records relating to Ms. El-Dabbagh.

11. The Hearing Officer finds that (1) Ms. Miller's remark to Ms. El-Dabbagh that a floor mat was to be used by a human being, (2) Mr. Zaparanick-Brown's statement that the excessive temperature in the office was "all in her head," (3) her raised voice discussions with Dr. Michael Jones and his criticism of her work, and (4) Dr. Michael Jones' remark that "when the cat's away, the mice will play" were not discriminatory comments. Likewise, Dr. Michael Jones' occasional beer during special occasion lunches out of the office, the blind Christmas gift exchanges that may include alcohol, a Christmas cake saying "Happy Birthday Jesus," or her failure to be promoted (or any other allegation made in this proceeding) do not constitute retaliation, discriminatory acts, or a hostile work environment based upon Ms. El-Dabbagh's protected class status - religion, national origin, gender, and/or race. The credibility of Ms. El-Dabbagh and Ms. Giles is lacking. The Hearing Officer finds that it is not reasonable under the circumstances to conclude that certain statements such as, "when the cat is away, the mice will play," or "it's all in your head," or "a human being will be using this floor mat" that have no rational relation to her protected class status, are discriminatory in nature. Moreover, the Appellee has put forth a legitimate, nondiscriminatory reason for their actions and the Appellant has failed to show that they are pre-textual in accordance with prevailing case law. McDonnell Douglas Corp v. Green, 411 U.S 792 (1973).

12. As it pertains to the claim that a coworker offered to hide her once President Trump was elected, the Hearing Officer does not find this claim by Ms. El-Dabbagh to be credible.

13. The Hearing Officer finds Ms. El-Dabbagh reported concerns to Human Resources, then asked them not to address them because she had an upcoming meeting

with her superiors and wanted to try that process first. She was referred to EEO to report her discrimination claims. The Hearing Officer finds the testimony of Mitchell Adair and Ms. Kim Mitchell credible. (Testimony Adair, Mitchell, Perry.)

14. The Hearing Officer finds that Human Resources Director Stacy Perry properly investigated claims brought to her by Ms. El-Dabbagh. The Hearing Officer finds Ms. Perry's testimony credible. (Testimony Perry, Dr. Thomas Jones.)

15. The Hearing Officer finds that Ms. El-Dabbagh's declining evaluations, failure to promote, and/or discussions and other interactions with Dr. Michael Jones do not constitute retaliation for filing a Personnel Board appeal as the Hearing Officer finds the Appellant lacks credibility on these matters.

16. The testimony of witnesses Christina Gormley, Ethan Williams, Martha Armstrong, Melissa Highfield Smith, Alex Kelly, Phillip Rosell, Carla Wright, and Larissa Taylor was considered by the Hearing Officer. This testimony was not necessary for a determination of the issues raised in these appeals.

CONCLUSIONS OF LAW

1. Based upon the evidence of record, the Appellant, Ghada El-Dabbagh, was not demoted, involuntarily transferred, forced to sign a voluntary transfer form, or otherwise penalized by the Appellee through the diminishment of her duties. She was not subjected to harassment or discrimination based on her national origin, race, gender, age or religion, nor was she denied, impeded, or abridged in her right to inspect or copy records. Likewise, she was not subjected to retaliation for filing a Personnel Board appeal.

2. The Hearing Officer concludes that the Office of the State Budget Director has met its burden of proof and that the Appellant has failed to meet her burden of proof.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the case of **GHADA EL-DABBAGH V. OFFICE OF THE STATE BUDGET DIRECTOR (Appeal Nos. 2017-199 AND 2018-016)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen 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 exception 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 the 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).

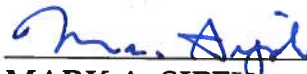
Any document filed with the Personnel Board shall be served on the opposing party.

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 Brenda D. Allen this 15th day of January 2020.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy this day mailed to:

Hon. Kembra Sexton Taylor
Hon. Cary Bishop