

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NOS. 2015-285 and 2015-286

KIMBERLY G. GOODWIN

APPELLANT

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

PUBLIC PROTECTION CABINET

APPELLEE

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The Board, at its regular June 2017 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated April 28, 2017, Appellant's Exceptions and Request for Oral Argument, Appellee's Response to Goodwin's Exceptions and Request for Oral Argument 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 15<sup>th</sup> day of June, 2017.

KENTUCKY PERSONNEL BOARD

  
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MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Kate Bennett  
Hon. Paul Fauri  
Ms. Sherry Butler

**COMMONWEALTH OF KENTUCKY  
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**V. FINDINGS OF FACT, CONCLUSION OF LAW  
AND RECOMMENDED ORDER**

**PUBLIC PROTECTION CABINET**

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This matter came on for an evidentiary hearing on December 12 and 13, 2016, at 9:30 a.m. each day, and January 18, 2017, at 10:00 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Stephen McMurtry, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Kimberly Goodwin, was present at the evidentiary hearing and was represented by the Hon. Paul Fauri. The Appellee, Public Protection Cabinet, was present and represented by the Hon. Katherine Bennett.

At the conclusion of the evidentiary hearing, each attorney submitted summaries of evidence, findings of fact, and recommended orders in lieu of oral arguments.

**BACKGROUND**

1. These two appeals concern the regularity and legality of promotions in the Department of Financial Institutions (DFI), within the Public Protection Cabinet, to the positions of Financial Institutions Examiner District Manager (District Manager) in the Louisville office and the Bowling Green office.

2. The District Manager supervises DFI employees who examine and investigate financial institutions and security entities to ensure compliance with state and federal statutes and regulations and departmental policies and procedures. The District Manager is the "examiner-in-charge" and may assist in conducting examinations and investigations. He or she reviews examinations/investigation reports and other findings and evaluates the work product and performance of the examiner supervised. In addition to management functions such as approving timesheets, travel vouchers and training requests, the District Manager "keeps abreast of industry trends and regulatory changes, and maintains high visibility with the regulated industries...and with counterparts in other state financial institutions and security regulatory agencies." [Taken from Job Class Specifications, Examples of Duties.] The relevant law is KRS

18A.0751(4)(f), which provides that the Personnel Board shall promulgate administrative regulations for promotions which shall give appropriate consideration to the applicant's qualifications, record of performance, conduct, and seniority, and 101 KAR 1:400, Section 1, Promotion. (1) Agencies shall consider an applicant's qualifications, record of performance, conduct, seniority and performance evaluations in the selection of an employee for a promotion.

3. On October 3, 2014, Kimberly Goodwin filed Appeal No. 2014-226 with the Kentucky Personnel Board against the Public Protection Cabinet protesting the appointment of Milton Wickles to the position of Financial Institution Examiner District Manager at the Bowling Green office. Goodwin had participated unsuccessfully in the promotion process for that position. On June 1, 2015, Mark Sipek, Executive Director and Secretary of the Kentucky Personnel Board, on behalf of the Board, signed a Recommended Order that Goodwin's appeal be sustained. On July 14, 2015, the Personnel Board implemented a Settlement Agreement between Goodwin and the Public Protection Cabinet to set aside the appointment of Wickles and commence a new selection process in accordance with KRS 18A.0751(4)(f) and 101 KAR 1:400.

4. The Public Protection Cabinet, through the Department of Financial Institutions (DFI), conducted a second selection process in which Goodwin and Wickles participated as candidates. A different selection panel chose Wickles to be appointed to the position of Financial Institution Examiner District Manager to the Bowling Green office. On November 16, 2015, Goodwin filed Appeal No. 2015-285, protesting the selection panel's promotion of Wickles. At the same time, Goodwin filed Appeal No. 2015-286, objecting to the promotion of William Milberger to the position of Financial Institution Examiner District Manager to the Louisville office by a separate selection panel. Goodwin had been a candidate for that position as well.

5. In Appeal No. 2015-285, Goodwin alleged she was penalized by the DFI's failure to promote, reclassification (sic) and sex discrimination. She alleged, "The person promoted to District Manager of Louisville Field office is a male with only 5 years of service with the Commonwealth. The reasons (sic) given was his familiarity with the institutions and staff located in Louisville. In addition, he was Acting District Manager for the past year and 1/2 although he did not qualify for the position until June 1, 2015."

6. In Appeal No. 2015-286, Goodwin alleged DFI penalized her by its failure to promote, reclassification (sic) and sex and age discrimination. She alleged:

The person promoted to District Manager of the Bowling Green field office is a male with less than 1 year of service with the Commonwealth. No reason was given for denying me this position. In addition, the reasons given for denying me the Louisville's District Managers position were applied to this position. I would have more experience. The reason for denying me the Louisville's District Managers position was more familiarity of the institutions and staff. (sic)

7. On May 21, 2015, and August 3, 2015, Charles Vice, Commissioner of the DFI, requested an Internal Mobility Process and a competitive register to fill, respectively, the positions of District Manager in the Division of Depository Institutions at the Louisville and Bowling Green offices. Vice asserted that filling the positions was critical to ensure the safety and soundness of banks in Kentucky. He said funds were available to support the positions. Kimberly Goodwin, James Adkins and Milton Wickles passed the initial selection process for the Bowling Green office, having met all the requisite qualifications. Eight candidates were rejected as having not met the requisite qualifications. Kimberly Goodwin and William Milberger, along with two other candidates, met the qualifications for the Louisville office position.

8. The Louisville promotion panel, Marty Hammons, Brian Raley and Holly Ross, interviewed Milberger and Goodwin on September 1, 2015, along with other candidates who had not appealed. The interviewers asked each candidate prepared questions designed to demonstrate analytical thinking, communication ability, decision-making ability, employee development, scheduling and teamwork abilities. The assessment scale included choices of Excellent, Very Good, Good and Fair. The questions asked to each candidate and evaluated simultaneously by each panelist, were:

- a. (For analytical skills.) "Tell me about a time when you had to analyze information and make a recommendation. What kind of thought process did you go through? What was your reasoning behind your decision?"
- b. (For communication skills.) "Have you ever had to 'sell' an idea to your co-workers or group? How did you do it? Did they 'buy it'?"
- c. (For decision-making ability.) "Tell me about a tough decision that you made. What steps, thought processes and considerations did you take to make an objective decision?"
- d. (For employment development.) "Give an example of a time in which you felt you were able to build motivation in your co-workers or subordinates at work."
- e. (For scheduling ability.) "Describe a situation that required you to do a number of things at the same time. How did you handle it? What was the result?"
- f. (For teamwork ability.) "Describe your leadership style and give an example of a situation when you successfully led a group."

9. Panel member Marty Hammons gave Milberger evaluation scores of "Very Good," "Excellent," "Excellent," "Excellent," "Very Good," and "Excellent." He gave Goodwin "Fair," "Very Good," "Good," "Very Good," "Very Good," and "Good" for her responses to the same questions.

10. Brian Raley gave Milberger evaluation scores of "Excellent," "Very Good," "Excellent," "Very Good," "Excellent," and "Very Good." He gave Goodwin "Good," "Good," "Very Good," "Good," "Very Good," and "Good" to the same questions.

11. Holly Ross gave Milberger evaluation scores of "Excellent," "Very Good," "Excellent," "Very Good," "Excellent," and "Excellent." She gave Goodwin "Good," "Very Good," "Good," "Very Good," "Very Good," and "Good" to the same questions.

12. The promotions panel for the Bowling Green District Manager, Marty Hammons, Brian Raley and T. Scruggs, interviewed Milton Wickles on September 24, 2015, and Kimberly Goodwin on September 22, 2015. The questions asked were designed to assess decision-making abilities, leadership, teamwork abilities, time management abilities and planning and organization skills. Correspondingly, the questions were:

- a. (For decision-making skills.) "Discuss an important decision you have made regarding a task or project at work. What factors influenced your decision?"
- b. (For leadership ability.) "Have you ever had difficulty getting others to accept your ideas? What was your approach? Did it work?"
- c. (For teamwork ability.) "Describe your leadership style and give an example of a situation when you successfully led a group."
- d. (For time management skills.) "Of your current assignments, which do you consider to have required the greatest amount of effort with regard to planning/organization? How have you accomplished this assignment? How would you assess your effectiveness?"
- e. (For planning and organization skills.) "Please provide a specific example where you used time management skills to complete a project ahead of schedule. What was the project and how did you prioritize tasks?"

13. Marty Hammons evaluated Goodwin's responses as "Very Good," "Fair," "Fair," "Good," and "Fair." He evaluated Wickles' responses as "Very Good," "Very Good," "Excellent," "Excellent," and "Excellent" to the same questions.

14. Brian Raley evaluated Goodwin's responses as "Good," "Fair," "Fair," "Fair," and "Fair." He evaluated Wickles' responses as "Very Good," "Very Good," "Very Good," "Excellent" and "Excellent" to the same questions.

15. T. Scruggs evaluated Goodwin's responses as "Good," "Good," "Very Good," "Good," and "Fair" to the same questions. She evaluated Wickles' responses as "Excellent," "Excellent," "Very Good," "Very Good," and "Very Good."

16. Goodwin's application and the Selection Summary Form provided to the panel explicated that she had 17 years, or 205 months, of seniority with the Commonwealth, and 9 years' experience in another state. Within the Cabinet, she had been a Graduate Accountant for the Division of Accounts, Fiscal Officer for the Kentucky Arts Council, Acting District Manager for DFI for three and a half months. She had earned her certification as a Certified Public Accountant from the Kentucky State Board of Accountancy; she was a Certified Financial Institutions Examiner from 1995 to the present. She indicated she had attended extensive seminar and conference training. Her performance evaluations were 2014 – Good; 2013 – Highly Effective; and 2012 – Highly Effective. She had a Bachelor of Science degree in Accounting from Western Kentucky University

17. Milton Wickles had accumulated no seniority within the Executive Department of the Commonwealth. He had earned a Bachelor of Science in Business Administration from Florida State University and had completed FDIC Examiners school. His experience and professional qualifications included Regional Instructor for the Conference of State Bank Supervisors; Owner and Non-Owner Occupied Real Estate Training at Robert Morris Associates; and Commercial Lending School of the Tennessee Bankers Association. He had been Kentucky Department of Financial Institutions District Manager at Bowling Green, a Loan Review Specialist for the Federal Deposit Insurance Corporation, Vice President and Commercial Relations Manager at Renasant Bank; Vice President and Commercial Relationship Manager, National Bank of Commerce; and Vice President of Residential and Commercial Construction at the AmSouth Bank/First American National Bank.

18. Milberger had five years' seniority with the Commonwealth. During those years, he was a Financial Institutions Examiner I, Examiner II, Examiner III, Examiner IV and Financial Institutions District Manager at the Louisville office. Prior to his DFI experience, he worked in "Maintenance Utility" for UPS and as an Assistant Manager of a Papa John's pizza restaurant. Milberger was a graduate in Finance from the University of Louisville and a Certified Financial Institutions Examiner. He attended the Indiana Department of Financial Institutions Trust School and completed courses at Federal Deposit Insurance Corporation schools.

19. Holly Ross, Financial Institutions Examination Bank Branch Manager, Department of Financial Institutions, testified she was a member of the interview panel for the Louisville District Manager position. Ross completed an Interview Panelist Conflict of Interest Statement. She acknowledged her duty to remain neutral, and choose the best candidate. She certified that she had no knowledge of pre-selection. Ross testified she knew and understood the five factors in 101 KAR 1:400 used during the hiring process, and that she considered all five factors for each candidate. Ross further testified that she considered each candidate's application for employment, resumé, writing samples and Internal Mobility Form as part of the interview

process. Ross reaffirmed her recommendation of William Milberger to the Louisville office. (From the Cabinet's summary of testimony adopted by the Hearing Officer.)

20. Tammy Scruggs, Division Director of Non-Depository Institutions, testified she was a member of the interview panel for the Bowling Green District Manager position. Scruggs testified that she had been a part of five to ten interview panels in the past. Scruggs testified that her branch is "fairly segregated" from Goodwin's branch at DFI and, therefore, she had little, if any, familiarity with any of the candidates applying for the job. Scruggs completed an Interview Panelist Conflict of Interest Statement acknowledging her duty to remain neutral, choosing the best candidate and certifying that she had no knowledge of preselection. Scruggs testified she knew and understood the five factors in 101 KAR 1:400 used during the hiring process and testified she considered all factors for each candidate. Scruggs further testified that she considered each candidate's application for employment, resumé, writing samples and Internal Mobility Form as part of the interview process. Scruggs reaffirmed her recommendation of Milton Wickles for the Bowling Green District Manager position. (From the Cabinet's summary of testimony adopted by the Hearing Officer.)

21. Marty Hammons, former Deputy Commissioner of DFI, testified he was on the interview panel for both the Louisville and Bowling Green District Manager positions. Hammons testified he had been a part of numerous interview panels in the past. Hammons testified that DFI Commissioner Charles Vice asked him to participate in the interviews because he had "a large amount of experience in state government," knew none of the applicants personally, and had no day-to-day interaction with any of the candidates. Hammons completed an Interview Panelist Conflict of Interest Statement for the Louisville and Bowling Green positions, acknowledged his duty to remain neutral, choose the best candidate and certified he had no knowledge of pre-selection. Hammons testified he knew and understood the five factors in 101 KAR 1:400 used during the hiring process, and testified he considered all factors for each candidate. Hammons further testified that he considered each candidate's application for employment, resumé, writing samples and Internal Mobility Form as part of the interview process. Hammons reaffirmed his recommendation of Milberger and Wickles for the Louisville and Bowling Green positions. (From the Cabinet's summary of testimony adopted by the Hearing Officer.)

22. Brian Raley, current Deputy Commissioner of DFI, testified he was on the interview panel for both the Louisville and Bowling Green District Manager positions. Raley testified he had been a part of numerous interview panels in the past, and that his goal as a Deputy Commission is to "maintain a consistent pattern of interviewing throughout DFI." Raley completed an Interview Panelist Conflict of Interest Statement for both the Louisville and Bowling Green positions, acknowledged his duty to remain neutral, choose the best candidate and certified that he had no knowledge of preselection. Raley testified he knew and understood the five factors in 101 KAR 1:400 used during the hiring process, and testified he considered all factors for each candidate during the interviews for both positions. Raley further testified that he considered each candidate's application for employment, resumé, writing samples and Internal Mobility Form as part of the interview process. Raley reaffirmed his recommendation of

Milberger and Wickles for the Louisville and Bowling Green positions. (From the Cabinet's summary of testimony adopted by the Hearing Officer.)

23. "Mr. Milberger was placed into the District Manager position on two occasions through detail to special duty (101 KAR 2:076, Section 2). Mr. Milberger started working for the Department on May 16, 2010, and, at the time of his first detail, he had a little over three years of experience, being detailed on November 1, 2013. In November 2014, he was reverted to his position of Financial Institutions Examiner IV, and then was detailed again on 12/1/14 to the District Manager position. The record reflects that Milberger was detailed for 21 months and, during all of this time, he was ineligible to be District Manager because he did not meet the minimum requirements of five years experience." (From a summary of evidence given by Kimberly Goodwin and adopted by the Hearing Officer.) 101 KAR 2:076 allows for filling a vacancy in the classified service with a person who does not meet the minimum qualifications if the position needs to be filled and with approval by the Secretary of Personnel, but only for a year.

24. In a prior appeal before the Kentucky Personnel Board, *Goodwin v. Public Protection Cabinet*, Appeal No. 2014-226, Kimberly Goodwin successfully achieved a revocation of the Cabinet's promotion of Milton Wickles to the DFI District Manager position in the Bowling Green office. By agreement approved by the Personnel Board, Goodwin dismissed her appeal on the assurance that the promotion process would be conducted anew. Wickles was not a merit employee with status. By using the "competitive register" rather than the "internal mobility" method, Wickles was able to apply again for the Bowling Green District Manager position. During this appeal and these negotiations, Wickles remained the District Manager at Bowling Green; then was appointed to a higher position within DFI as the Division Director, only to compete again for the position as District Manager at the Bowling Green office.

25. Holly Ross, Bank Branch Manager, who oversees the District Managers, testified she did not know why the "internal mobility" process was used to choose the next District Manager at the Louisville office. She said the normal practice was to use the "competitive register" promotion process. She said the "internal mobility" process gave stability to the Department of Financial Institutions as there was a "lack of qualified, certified bank examiners." Brian Raley, DFI Deputy Commissioner, testified that it was rare to have applicants outside of the Department apply for a position such as District Manager.

### **FINDINGS OF FACT**

1. The Louisville promotion panel, Holly Ross, Marty Hammons and Brian Raley, in recommending that Milberger be appointed DFI District Manager at the Louisville office, gave due and appropriate consideration to the applicants' qualifications, records of performance, conduct, seniority and performance evaluations. Similarly, the Bowling Green promotion panel, Marty Hammons, Brian Raley and Tammy Scruggs, gave due and appropriate consideration to the same statutory and regulatory factors required by KRS 18A.0751 and 101 KAR 1:400 in appointing Milton Wickles as DFI District Manager at the Bowling Green office.



2. The Louisville and Bowling Green panels gave the statutory and regulatory factor of "qualifications" the most importance and used the applicants' interviews as a tool to identify the applicants' leadership abilities to control and coordinate the work of the Bank Examiners as set forth in the Job Class Specifications. (See Appellee's Exhibit B.) The questions asked each applicant tested his/her ability to "think on your feet," "quickly and cogently organize and articulate your thoughts," and "recount experiences in your work life when you have done this." The promotion panels were not looking for qualified Examiners, but Managers with leadership, verbal and organizational skills. Milberger and Wickles were demonstrably superior to Goodwin in these skills, as found by the members of the promotion panels. On the other hand, Goodwin was far superior in seniority and equal, if not superior, in education and accreditation. But the panelists were looking for leadership and organizational skills, not depth and breadth of knowledge in banking examinations. As the adage goes, "The person who best understands the British financial system is found somewhere of the basement of the Bank of England. But a politician heads the Court of Exchequer." Each has an invaluable job.

3. Unmistakably, Vice, Ross and Raley ushered Milberger and Wickles into positions which enabled them to compete with Goodwin for DFI District Manager positions, and they gave Goodwin a fair opportunity to compete against Milberger and Wickles to get the promotion. The Legislature designed a promotion process whereby seniority, degrees and certifications mattered and, perhaps for some state positions were controlling, but not for a position in which leadership and organizational skills were indispensable. Milberger and Wickles demonstrated these skills much better than Goodwin during the "prepared questions" interview.

4. Goodwin abandoned her allegations of improper reclassification and discrimination claimed in her two statements of reasons for penalization that commenced the two appeals.

### **CONCLUSION OF LAW**

It is concluded as a matter of law that the promotion panels which recommended Milberger for the DFI District Manager of the Louisville office and Milton Wickles for the DFI District Manager of the Bowling Green office gave due and appropriate consideration to the five factors of KRS 18A.0751(4)(f) and the five factors of 101 KAR 1:400 pertaining to promotions.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeals of **KIMBERLY G. GOODWIN V. PUBLIC PROTECTION CABINET, (APPEAL NOS. 2015-285 and APPEAL NO. 2015-286)** 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 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 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 Stephen McMurtry** this 28<sup>th</sup> day of April, 2017.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPER**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Katherine Bennett  
Hon. Paul Fauri