



**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-161**

**NICOLE B. HUNT**

**APPELLANT**

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

**CABINET FOR HEALTH & FAMILY SERVICES  
J.P. HAMM, APPOINTING AUTHORITY**

**APPELLEE**

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This matter came on for an evidentiary hearing on July 3, 2014, at the offices of the Kentucky Personnel Board, Frankfort, Kentucky, before Hon. E. Patrick Moores, Hearing Officer. The proceedings were recorded by audio-video equipment pursuant to the authority found at KRS Chapter 18A.

The Appellant, Nicole B. Hunt, was present and was not represented by legal counsel. The Appellee, the Kentucky Cabinet for Health and Family Services, was represented by the Hon. Carrie Cotton, Assistant Counsel of the Cabinet's Office of Legal Services.

**I. STATEMENT OF THE CASE**

1.     **Nicole Hunt** appeals the Cabinet's decision of June 21, 2013, to promote another employee of the Department for Community Based Services to the position of Family Services Office Supervisor in the Salt River Trail Service Region in Hardin County. Ms. Hunt filed an appeal with the Personnel Board on June 27, 2013, alleging that pursuant to 101 KAR 1:400, Section 1, concerning promotion, she was the better candidate in terms of seniority, qualifications, record of performance, conduct and performance evaluations.

2.     Included with the letter giving her notice of the promotion decision, dated June 21, 2013, from Tony Helm, the Region's Administrator Associate, was an electronic mail communicated to the regional office's employees, including Ms. Hunt, giving them notice of the promotion decision that the position was being given to Andrea House. The letter stated that Ms. House "brings a wealth of knowledge, skills and experience, worked for the DCBS for 7 years and has a great reputation with community partners, the court system, and possess an MSSW (Master's Degree in Social Work)."

3. A Pre-Hearing Conference was held before the Kentucky Personnel Board on August 29, 2013, at which matters concerning discovery requests were discussed. A second pre-hearing conference was held December 9, 2013, and the matter was scheduled for an evidentiary hearing to be held before the Board on May 13, 2014. Pursuant to a motion for a continuance filed by the Appellant, the matter of the evidentiary hearing was continued to July 3, 2014.

4. The issue presented in this appeal was whether the Cabinet followed the statutory requirement set forth in KRS 18A.0751(4)(f) and the regulatory requirements set forth at 101 KAR 1:400, when it chose an applicant other than the Appellant for the position of Family Services Office Supervisor. The Appellant alleges that the Cabinet failed to give appropriate consideration to her qualifications, record of performance, performance evaluations, seniority and conduct in selecting Andrea House for the Family Services Office Supervisor position sought by the Appellant. The Appellant had the burden of proof, which is by a preponderance of the evidence.

5. The Evidentiary Hearing was conducted on July 3, 2014. Opening Statements were made by the Appellant and by counsel for the Appellee. At the conclusion of the presentation of the evidence, closing statements were made by counsel on behalf of the Appellee and by the Appellant.

## **II. STATEMENT OF FACTUAL EVIDENCE PRESENTED**

1. The first witness was the Appellant, **Nicole Hunt**. She started her employment with the Cabinet in 2001, and in June 2013 applied for the position of Family Services Office Supervisor in the Salt River Trail Service Region in Hardin County. She introduced a "Selection Worksheet" from the interview process held with her and two other employees on June 3, 2013. She discussed the notations made by panel members, which she believed showed she was more qualified for the position than Ms. Andrea House, whom the interviewers recommended for the promotion.

2. The Selection Worksheet revealed the fact that Ms. Hunt had twice the "experience relevant to the position" (12 years, 11 months for Hunt, to only 6 years 7 months for House). Additionally, Hunt has 115 months "seniority" compared to 79 months for Ms. House. However, in the remarks concerning the overall assessments of the applicants during the "interview," Hunt was assessed as giving a "poor" interview, giving "poor responses to questions related to motivation, teamwork, conflict resolution and dependability." On the other hand, House's interview was rated as "good." Referring to the "Interview Questionnaire Worksheets," Hunt questioned how the interview of House could be classified as good, when the matter of handling conflicts discussed in the interview with House reflected on a matter involving a verbal confrontation House had with a supervisor that Hunt believed involved insubordination. Hunt also questioned how House's interview was rated superior to hers when the notes in the "Dependability" section of the "Interview Questionnaire Worksheet" on Ms. House showed that when she first started working she had a "difficult time making it to work on time," which Hunt stated showed "poor time management."

3. Hunt produced a letter prepared the day following the interviews, on June 4, 2013, by Nelson Wright, the Service Region Administrator, addressed to J.P. Hamm, the Appointing Authority, requesting permission to promote Ms. House to the Supervisory position. Knight reported that House had the "strongest interview," and that although she had less seniority than Hunt, House had more experience working in the field for the past five years. Hunt questioned this consideration, stating that with the position she was assigned, she would never be able to do field work and thus was being denied opportunities to obtain the experience apparently necessary for a promotion.

4. Hunt produced a document titled "Selection Process" published by the Cabinet, which described the "best practices" for selecting candidates under 101 KAR 1:400. The document recommends that the Selection Process Checklist be used to track all steps completed during the process of considering the applicants, ensuring accurate completion of the documentation. Hunt testified that Mr. Knight never picked up a pen nor did he take any notes during her interview, although she acknowledged that he had brief notes reflected on his Interview Questionnaire Worksheet. Hunt questioned the basis of the "fair" and "poor" ratings shown on the Interview Questionnaire Worksheets from her interview. She testified that the interviews are subjective, while the Annual Employee Performance Evaluations produced in her Internal Mobility Applicant Interview Form showed that she was consistently rated "outstanding." Referring to the annual evaluations and the documentation of the extent of her training, Hunt questioned why she would strive to have an outstanding performance rating with her work performance and be rated poor in the interview process.

5. Ms. Hunt pointed out Ms. House's Internal Mobility Applicant Interview Form had the same rating as was done on the Selection Worksheet completed by the interview panel, leading Ms. Hunt to assume they just copied over this information on the Applicant Interview Form. Hunt said she considered it ironic that the interviewers included the exact same information as provided by Ms. House.

6. Ms. Hunt pointed out that where Ms. House had stated on her Internal Mobility Application Interview Form that she had over 300 hours of training, Hunt has 529.50 hours reflected on her Training Record. However, Hunt subsequently acknowledged that she had not undergone any training for qualifications for the position applied for since 2005, and that House had training in specialized interviewing and forensic investigation which Hunt lacked. Hunt further acknowledged that she had not done any Child Protective Service (CPS) work during the past ten years, and that Ms. House had the most CPS experience.

7. Ms. Hunt disputed that Ms. House was the best selection under the statutory criteria set forth in KRS 18A.0751(4)(f), stating that she had a higher overall rating in all the selection criteria except for the interview, on which she was rated poor. Based on the statutory criteria, Hunt felt she was the more qualified applicant. Hunt said she had an issue with the rating she received in the interview, and the fact that her lack of experience in the field was used against her, as there was no indication provided in the application solicitation that was a necessary criterion for the position. Ms. Hunt admitted that during a Pre-Hearing Conference of

this appeal, she stated that she would no longer accept the position if it was offered to her today and that was still her position.

8. **Nelson Knight** has been the Cabinet's Family Service Region Administrator for the Salt River Region for the past five years. He served on the panel considering the applications for the supervisory position, which included the collection of the documentation on each applicant. He testified that what stood out to him from his review of the Internal Mobility Applicant Forms submitted by the applicants for the position was that Ms. House had a master's degree in social work, which was important to the agency's accreditation standards, and she had recent experience in the Child Protective Services as a front line worker. Also, she had previously served as an acting supervisor in her previous position. When he reviewed the Internal Mobility Applicant Form of Ms. Hunt and her resume therein, her last social service CPS work was in 2003.

9. Knight testified that he reviewed Hunt's packet contemporaneously with her interview. His notes on the Questionnaire Worksheet were written simultaneously with the interview. He testified that after each interview of a candidate, the panel discussed the applicant's responses and tried to reach a consensus on each question assessment, stating that he was comfortable with his ratings. He said he has conducted dozens of interviews and that he stood by his rating of Ms. Hunt's interview as "poor."

10. Knight testified that he considered "dependability" as very important in an applicant and responded to the situation of House's difficulty reporting to work early in her tenure and how she corrected the problem, which he considered as an example of professional growth and showing improvement. To the issue concerning House's response to the conflicts question that Hunt believed showed insubordination, Knight said he believed House acknowledged that she was wrong, apologized to her supervisor for what he considered an isolated incident, and developed an excellent relationship with her supervisor.

11. Knight testified that the Selection Worksheet was just one document considered in the hiring decision process, as he considered the entire application documentation and would never make a decision off of one document. He further testified that the regulation guidelines for promotion set forth in 101 KAR 1:400 was followed in this decision process. Further, he was not aware of any particular criteria being given greater weight in the decision process. However, he acknowledged that the fact that Ms. House had obtained a master's degree in social work and her experience in CPS did influence his decision.

12. Knight testified that during the interview he did take notes and that at the conclusion of each interview the panel members discussed the answers, the strengths and weaknesses disclosed in the answers, and reached a consensus assessment on each item of the interview, and wrote the rating. Knight said he did not disagree with any of the assessment or ratings, but went on to say that the interview process was just one piece of the puzzle in their consideration of the candidates.

13. **Tony Helm** is the Cabinet's Service Region Administrator Associate and has served on many interview panels for twenty years. He referred to the job classification specifications, which covers all the criteria of responsibilities for office supervisors, but added there were more specific criteria that were not included on the list. He said that a candidate for a supervisor's position must demonstrate great organizational skills and have demonstrated experience in Child Protective Service. He said the experience was necessary because the Cabinet's policies frequently change. Helm further testified that education was also important, plus a showing of good working relationships with community partners, such as schools and courts, as the supervisor in Hardin County is in court every week.

14. Helm stated that he was the lead panel member of the interviews, and was present in the interviews of all three candidates. He said the candidates in the interview had to meet certain criteria described in the Selection Process Checklist. He testified that he considered each of the candidate's answers to the questions and came to an assessment consensus with the other panel members, and that he was comfortable with the assessments. He stated that the one thing that stood out for him was Ms. House's experience in CPS.

15. Helm testified that the failure to select Hunt was not due to the interview, but was based on consideration of all the criteria. Helm observed that Hunt had more overall experience and seniority, but noted that House had more CPS experience plus some supervisory experience. Helm testified that he considered the experience of Ms. House relative to the position being applied for; stating that he considered that one of the biggest tasks of a CPS supervisor is attending court.

16. **Dorcas Peach** is the Human Resources Branch Manager, and said she requested that the Personnel Cabinet provide a list of applicants with the qualifications for the position being offered. She and her staff reviewed the Minimum Qualifications Review (MQR) and the Selection Worksheets of the candidates to make sure the best qualified applicants were chosen for consideration. The documents compiled and provided to the committee making the selection included a checklist to lead the interview panel in making sure they consider the candidates by following the specific regulation "five factors" criteria, and added that it was a part of the process that the panel should reach a consensus in its analysis of the candidates' interviews.

17. Ms. Peach said that according to the Regulation, 101 KAR 1:400, there are five criteria to be followed in considering the applicant, by examining the applicant's qualifications, record of performance, conduct, seniority and performance evaluation. However, she said that no one criterion has more influence on the decision, and that other criteria are also considered. Ms. Peach testified that in this case, Ms. House was selected, despite having less seniority, due to her having more CPS experience.

18. **Marian Brooks** is the Services Regional Administrator Associate, performing the duties of managing personnel in the 17-county region. She testified that Mr. Knight contacted her to pull a requisition form to obtain applicants for the open position of Family Services Office Supervisor. The requisition was posted for ten days, from which she received a Certified Requisition Report from the Personnel Cabinet, informing her that six applications had been

received. She discussed with Mr. Knight and Mr. Helm, who would be serving with her on the selection panel, the screening criteria they were looking for. The MQR was prepared, based upon the Class Specification for the position, which is prepared by the Personnel Cabinet. Brooks acknowledged that the specification was a very vague description of the position of Family Services Office Supervisor, as they screened the applicants for the position based on criteria of having ongoing experience in CPS work, which was not stated in the specification. She said the criteria are based on the needs of the position.

19. Ms. Brooks then created the Selection Worksheet based on the interviews and the other criteria the panel reviewed under the required regulatory guidelines, and they determined that Ms. House was the best candidate for the position. Ms. Brooks stated that she made a mistake on the Selection Worksheet by including the total social work experience of the candidates instead of limiting it to the amount of experience "relevant to the position," which was needed in Child Protective Services. The panel also favorably considered House's activities in client relationships and working with the schools, the court judges and the county attorneys, and her ability to train other staff. She said Ms. House was very prepared and presented a "great package" to the selection panel. She said she stood by their decision.

20. Ms. Brooks said the reason that Ms. Hunt's application was accepted and submitted for consideration by the Personnel Cabinet was due to her experience ten years earlier in CPS, but did not include any recent activities in CPS. She described Ms. Hunt as a great R&C worker and a valued member of the agency's team and that she hoped that Ms. Hunt would apply for other openings.

### **III. CONCLUSIONS OF LAW**

1. The promotion to the open position at issue in this appeal required the Cabinet to consider each applicant in accordance with 101 KAR 1:400. The regulation provides, in pertinent part, that "Agencies shall consider an applicant's qualifications, record of performance, conduct, seniority, and performance evaluations in the selection of an employee for a promotion."

2. The foregoing regulation complies with the statutory requirement of KRS 18A.0751(4)(f), which lists the required criteria to be considered, and that vacancies are to be filled "in the best interest of the service."

3. The Kentucky Court of Appeals has defined "qualification" as meaning "education and experience, and we take the view that these should be the guideposts for every step in our merit system including but not limited to entry classification, promotion, salary grade establishment, etc., for to do otherwise would be to attain nothing more than some degree of mediocrity. To argue that state government should not consider education and experience in personnel policies of any nature whatsoever is to say that we do not seek the best possible people to serve the Commonwealth." *Cabinet for Human Resources v. Kentucky State Personnel Board*, 846 S.W.2d 711, 715 (Ky. App. 1992).

4. This appeal was brought by Hunt on the grounds that under the regulatory criteria, she believed that she had more seniority and experience and was better qualified for the position. Upon first glance at the Selection Worksheet, it is understandable how she reached that conclusion. Ms. Brooks, who handles the regional personnel matters for the Cabinet, acknowledged her mistake in providing the summaries of the candidates for the promotion on the Selection Worksheet by including the total service of the candidate as opposed to failing to limit the classification to the total experience "relevant to the position." The primary experience that was being sought for the promotion involved dealing in Child Protection Services (CPS), and the experience in dealing with the schools and the court system officials the office dealt with.

5. Hunt's belief her qualifications favored her for the promotion was further enhanced due to the fact that the Class Specification for the position, which was prepared by the Personnel Cabinet, was described by Brooks as a very vague description of the position of Family Services Office Supervisor, and did not include the required ongoing experience in CPS. The criteria actually being screened among the applicants was based on the Cabinet's need for someone having ongoing experience in CPS work. Unfortunately for Ms. Hunt, she was not aware of that criteria requirement, as it had been over ten years since she had done any field work in CPS.

6. The evidence of record establishes that the "five factors" were given appropriate consideration for the promotion. While the Cabinet representatives involved in the process of determining the appropriate candidate for the position gave the required consideration to each factor, it is clear on the record that in seeking the candidate that best meets the needs of the Cabinet's position that was the person who had current ongoing experience in CPS. Each of the persons involved in the selection process believed that Ms. House was the best candidate for the position.

7. Even Ms. Hunt acknowledged that she did not have the ongoing experience in CPS, and complained that given her current position she would never be able to attain that experience.

8. The statutory provision at KRS 18A.0751(4)(f), which lists the required criteria to be considered, mandates that vacancies are to be filled by meeting the needs "in the best interest of the service." The weight of the testimony made it clear on the record that Ms. House met the experience requirement sought for the position that met the needs of the Service's open position.

9. After considering the record and the evidence presented, the Hearing Officer finds that the Cabinet followed the statutory requirement set forth in KRS 18A.0751(4)(f) and the regulatory requirements set forth at 101 KAR 1:400, when it chose an applicant other than the Appellant for filling the needs of the position of Family Services Office Supervisor in the best interest of the service. That judgment lies in the sole authority and discretion of the Cabinet. *Faust v. Commonwealth*, 142 S.W.3d 89 (Ky. 2004); *Cook v. Popplewell*, 394 S.W.3d 323 (Ky. 2011).



10. While the Hearing Officer finds merit in the Appellant's argument that she was not provided full disclosure of the qualification criteria sought for the promotion, the information provided was accurate and legally sufficient. The only issue before this tribunal for consideration was whether the Cabinet followed the statutory and regulatory requirements in making the promotion. Based on the record as a whole, the Appellant failed to meet her burden of proof by a preponderance of the evidence that the Cabinet failed to meet that standard.

#### **IV. RECOMMENDED ORDER**

The Hearing Officer recommends to the Kentucky Personnel Board, based on the foregoing Findings of Fact and Conclusions of Law, that the appeal of **NICOLE B. HUNT V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2013-161)** 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 items 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 the **Hearing Officer E. Patrick Moores**, this 7<sup>th</sup> day of October, 2014.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
Executive Director

Copies the above date mailed to:

Hon. Carrie Cotton  
Ms. Nicole B. Hunt