

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-195

BEVERLY G. JONES

APPELLANT

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

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

AND

PERSONNEL CABINET
TIM LONGMEYER, SECRETARY

APPELLEES

** ** *

The Board at its regular April 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 28, 2014, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 16th day of April, 2014.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Carrie Cotton
Hon. Whitney Meagher
Beverly G. Jones
J. P. Hamm

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**** ** ***

This matter came on for a pre-hearing conference on September 12, 2013, at 11:00 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Beverly Jones, was present by telephone and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services (CHFS), was present and represented by the Hon. Carrie Cotton. The Appellee, Personnel Cabinet, was present and represented by the Hon. Whitney Meagher.

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

The Hearing Officer notes this appeal was filed with the Personnel Board on August 8, 2013. The Appellant indicated Applicant Rejection as a reason for her appeal. Appellant had been determined by the Personnel Cabinet not to meet the MQR for the Service Regional Administrator Associate/Personnel position. As such, Appellant's name was not one of those certified by the Personnel Cabinet to the Cabinet for Health and Family Services. Thus, Appellant was not allowed to interview for the position, or be further considered.

Appellant stated that the position has not been filled, but that interviews had been conducted, and a name recommended for selection, although not finally acted on.

Counsel for the Appellee Personnel Cabinet stated she had spoken with the Appellant earlier on the day of the pre-hearing conference, and it appeared that a meeting with Appellant and Scottie Barker with the Personnel Cabinet could be held for the purpose of determining whether there is additional information regarding Appellant's qualification for the position in MQR.

Counsel for Appellee CHFS stated she may be filing a motion, but would also discuss with her client whether the Cabinet would be willing to (if Appellant was determined to meet the MQR for certification to the Cabinet for this position) hold up the selection process and consider Appellant. Counsel stated she would file a status report as soon as an answer was known.

Counsel for the Appellee Personnel Cabinet will also file a status report as soon as an answer is known following the meeting of Scottie Barker and Appellant, whether Appellant meets the MQR for the position.

At the second pre-hearing conference, a briefing schedule was set. The Appellee, Personnel Cabinet, filed a Motion to Dismiss, to which Appellant filed a response. The Appellee, Personnel Cabinet, filed a reply, and the Appellee, Cabinet for Health and Family Services, joined in the Appellee Personnel Cabinet's Motion to Dismiss. This matter now stands submitted to the Hearing Officer for a ruling on the Motion to Dismiss.

BACKGROUND

1. During the relevant times, Appellant, Beverly G. Jones, was a classified employee with status.

2. In its Motion to Dismiss, the Appellee, Personnel Cabinet ("Personnel Cabinet"), contends the Personnel Board lacks jurisdiction to consider the substance of this appeal, that is, the Board is without authority to "declare that a current job's specifications minimum requirements are inapplicable to a particular position." The Personnel Cabinet cites at least two Personnel Board cases from several years ago, holding that the Personnel Board will not intervene with the Personnel Cabinet's authority to set class specifications and to review the qualifications of applicants and eligibles absent some clear abuse of discretion or arbitrary action. The Personnel Cabinet argues "Holding that the minimum requirements of a job specification are

inapplicable to a particular position would constitute an unauthorized infringement on the Personnel Cabinet's authority to set the minimum requirements for classifications."

3. Appellant filed a response, which was very detailed. In her response, the Appellant contends the manner in which the Personnel Cabinet established the minimum requirements for the SRAA Personnel position was arbitrary. Appellant contends, "The Personnel Cabinet chose a 'one-size fits all' approach, and imposed the same minimum requirements as those of FS and P&P. The minimum requirements are well aligned with the FS and P&P SRAA position duties, but are woefully inadequate when applied to the Personnel SRAA position." The Appellant is referring to Family Support (FS) and Protection and Permanency (P&P).

4. The Hearing Officer wishes to clarify one mistake made by the Appellant, where she repeatedly refers to the Personnel Board as having filed a Motion to Dismiss, or maintain arguments, which is incorrect, as obviously the Personnel Cabinet filed the Motion to Dismiss, and is a party to this action. The Hearing Officer understands this might be a common mistake, but does want to re-emphasize to all concerned that the Personnel Board is an independent agency, and though it has a similar name, it is not a part of, nor answerable to, the Personnel Cabinet.

5. The Appellant discusses in some detail the various details of the SRAA positions, and contrasts those with the position description for SRAA Personnel, and then the minimum requirements listed. The Appellant also details her experience, which is not insignificant, and involves performing duties which might be relevant to the SRAA Personnel position. The Appellant closes her response by stating: "This appeal is not about trying to obtain a position I am not qualified to perform. It is about being given due credit for experience directly related to the performance of the position being sought. Had I been given the credit for my personnel-related experience, as was stated by a representative from the Division of Career Opportunities, I would have easily surpassed the minimum requirements for the SRAA for Personnel."

6. The Appellee Personnel Cabinet filed a response. The Personnel Cabinet reiterates its earlier argument that the Board is without jurisdiction "to waive the minimum requirements of job specification as the creation and maintenance of job specifications is within the purview of the Personnel Cabinet." The Personnel Cabinet states: "The hiring agency, in this case CHFS, is best suited to determine the job classification that will serve its needs. Neither the Personnel Board nor the Personnel Cabinet can require a hiring agency to post a vacancy in an alternate job classification."

7. The last pleading filed was from the Appellee Cabinet for Health and Family Services ("CHFS"), which joined with the Personnel Cabinet's Motion to Dismiss, and also filed an Affidavit from Director of Service Regions Bruce Linder, attesting that the SRAA Personnel position as advertised was appropriate.

8. KRS 18A.110(7) states:

The administrative regulations shall provide:

(a) For the preparation, maintenance, and revision of a position classification plan for all positions in the classified service, based upon similarity of duties performed and responsibilities assumed, so that the same qualifications may reasonably be required for, and the same schedule of pay may be equitably applied to, all positions in the same class. The secretary shall allocate the position of every employee in the classified service to one (1) of the classes in the plan. The secretary shall reallocate existing positions, after consultation with appointing authorities, when it is determined that they are incorrectly allocated, and there has been no substantial change in duties from those in effect when such positions were last classified. The occupant of a position being reallocated shall continue to serve in the reallocated position with no reduction in salary;

...

(d) As provided by this chapter, for the establishment of eligible lists for appointment, upon which lists shall be placed the names of successful candidates in the order of their relative excellence in the respective examinations. Except as provided by this chapter, an eligible's score shall expire automatically one (1) year from the date of testing, unless the life of the score is extended by action of the secretary for a period not to exceed one (1) additional year. Except for those individuals exercising reemployment rights, all eligibles may be removed from the register when a new examination is established;

(e) For the rejection of candidates or eligibles who fail to comply with reasonable requirements of the secretary in regard to such factors as age, physical condition, training, and experience, or who have attempted any deception or fraud in connection with an examination;

FINDINGS OF FACT

1. During the relevant times, Appellant, Beverly G. Jones, was a classified employee with status.

2. The Hearing Officer finds that the Appellant did not qualify for the SRAA Personnel position as posted.

3. The Hearing Officer finds that the Appellee Personnel Cabinet established the minimum class specifications for the Service Region Administrator Associate Personnel position for which Appellant was determined not to meet the minimum qualifications.

4. The Hearing Officer finds Appellant does not challenge being determined not to have met the minimum qualifications, but rather challenges the minimum qualifications as set forth for that SRAA position, in that it is for a personnel position. The Appellant believes the requirements should be different for the SRAA Personnel position when contrasted with SRAA positions for other areas.

5. The Hearing Officer finds that pursuant to KRS 18A.110(7), the Personnel Cabinet has authority to create class specifications and maintain such, including determination of minimum requirements. The Hearing Officer finds, in agreement with Personnel Cabinet's contention that the Board is without jurisdiction to waive or alter minimum requirements for a job specification, as such is the province of the Personnel Cabinet.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes as a matter of law that pursuant to KRS 18A.095(18)(a), the Personnel Board is without jurisdiction to further consider this appeal, as it does not have the authority to waive or alter minimum requirements for job specifications as determined by the Personnel Cabinet.

2. The Hearing Officer concludes this is especially true in light of Appellant's interpretation of what those minimum requirements should be. The Hearing Officer concludes the law is clear that the Personnel Cabinet has authority over such decisions, and that should not be disturbed.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **BEVERLY G. JONES V. CABINET FOR HEALTH AND FAMILY SERVICES AND PERSONNEL CABINET, (APPEAL NO. 2013-195)** 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 Boyce A. Crocker this 28th day of February, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Carrie Cotton
Hon. Whitney Meagher
Ms. Beverly G. Jones