

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2015-305**

**JUNIOR R. MONDIE**

**APPELLANT**

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

**CABINET FOR HEALTH AND FAMILY SERVICES**

**APPELLEE**

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The Board, at its regular September 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated July 28, 2016, Appellee'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 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 13<sup>th</sup> day of September, 2016.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. Kathleen Hines  
Mr. Junior R. Mondie  
Mr. Jay Klein

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2015-305**

**JUNIOR R. MONDIE**

**APPELLANT**

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

**CABINET FOR HEALTH AND FAMILY SERVICES**

**APPELLEE**

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This matter came on for an evidentiary hearing on May 25, 2016, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. E. Patrick Moores, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Junior R. Mondie, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Kathleen Hines.

**I. STATEMENT OF THE CASE**

1. The Appellant, Junior Mondie, filed this appeal on December 14, 2015, alleging he was improperly denied a promotion as Program Administrator of the Department for Behavioral Health, Developmental and Intellectual Disabilities (hereinafter referred to as BHDID) at the Hazelwood Center in Louisville, Kentucky, which is a state-operated intermediate care facility for the mentally handicapped. Mondie alleged in his appeal he was the most qualified in terms of education, training, experience and knowledge of the staffing problems. He alleged that the person selected for the position, Angelia Paul, was less qualified. Mondie was notified of the selection on November 16, 2015.

2. A pre-hearing conference was conducted before the Personnel Board on February 18, 2016. The Hearing Officer addressed the issues on appeal and discussed the process of obtaining discovery and subpoenaing witnesses for an evidentiary hearing set to take place on May 5, 2016. The appeal was brought on for another pre-hearing conference on April 26, 2016, to discuss a discovery issue concerning Appellant's request for documents and Appellee's inability to understand the extent or scope of the documentation sought by the Appellant. Appellant Mondie had requested documentation of all correspondence and communications pertaining to the 34 applicants for the position, which the Hearing Officer denied as being too broad a request, but he did allow the request for the documentation as it related to the five candidates who were actually interviewed for the position. A new evidentiary hearing date was

scheduled for May 25, 2016, and the witnesses already served with subpoena were to be notified of the revised hearing date and that they were still under subpoena.

3. The hearing was conducted at the office of the Kentucky Personnel Board on the May 25, 2016. It was recorded by audio-video as authorized under KRS 18A. Ms. Paul did not enter an appearance as an Intervenor. The issue on appeal was whether the Cabinet followed the guidelines set forth in 101 KAR 1:400 and KRS 18A.0751(4)(f) when it selected Ms. Paul for the BHDID Program Administrator position that was sought by Mondie. Appellant Mondie had the burden of proof, by a preponderance of the evidence, to establish that the Cabinet failed to follow the regulation and statute in the selection process. In his opening statement, Mondie raised an additional allegation that an ethical violation occurred in the interview process, as the Director of the BHDID Program, Suellen White, was alleged by Mondie to have had a close personal friendship with Ms. Paul, which created a conflict of interest. At the conclusion of the presentation of the evidence, the matter was placed under submission to the Hearing Officer for his findings of fact and conclusions of law.

## **II. SUMMARY OF EVIDENCE PRESENTED**

1. **Junior Ray Mondie** testified that on August 20, 2015, interviews were conducted by the interview panel for the position of BHDID Program Administrator. He noted that the work experience and the duties listed by Ms. Paul on her application showed she did not have the experience required for the position of BHDID Program Administrator. Mondie introduced several hundred pages of documents which he testified were produced in response to his discovery requests. Among these, he noted that the Register Review prepared by Marcy Brotzge, the person leading the selection process, listed dates Ms. Paul worked in various areas, which he challenged as not showing sufficient experience. He noted that all Ms. Paul's prior work experience was in the State of Missouri, and noted she provided no certification of her qualifications in assisted living principles. Mondie also challenged the Screening Criteria Worksheet which was prepared for the interview process. The worksheet compared the work experience of each applicant, and showed Ms. Paul with the highest score, which was double the scoring given to Mondie.

2. Mondie referenced a memoranda submitted by the members of the interview committee on September 10, 2015, to Georgianne McCain, Staff Assistant. The memoranda described the completion of the interview process and outlined the basis for their conclusion that Ms. Paul had the most relevant experience for this particular position. He testified that as a result of their recommendation, a letter was submitted to J.P. Hamm, the Cabinet's Appointing Authority, on September 15, 2015, from Mary Reinle Begley, Commissioner of the Department for BHDID, requesting that Ms. Paul be appointed the BHDID Program Administrator at Hazelwood. Notice of the appointment of Ms. Paul to the position was issued on November 16, 2015.

3. **Tarron Ray** is the Director of Personnel Services for the Hazelwood Center. He testified that the documentation he was shown from the interview process appeared to have been created and filled out by Marcy Brotzge to aid her in conducting the interviews. He testified he

also served on the interview panel, and that his role was to serve as a member and to ask appropriate questions. Ray said the interview panel was led by Mary Thompson, because the manager or supervisor of the department for whom the position is being considered for selection is the proper person to lead the interview process. He testified that Ms. Brotzge was very aware of what was needed as to the relevant experience for the position, and Ms. Paul's education was appropriately added for consideration by the panel to the experience of the applicant. He testified that every consideration is made of the qualifications of each applicant for a side-by-side comparison. Ray testified that the Interview Questionnaire Worksheets covered the items considered for each applicant interviewed in order to arrive at an appropriate recommendation for the position.

4. When he was shown the September 10, 2015 memo (Appellant's Exhibit 6) alleged to be from all the members of the interview panel, Ray noted the memo had the word "draft" handwritten on it. He stated he did not know if it was actually officially accepted as the panel's formal recommendation and tendered to the Department Director. Ray testified that following the interview, each applicant was assessed by the panel and scored according to their review of the answers to the questions. Ray testified that Mondie's answers were mostly scored from "fair" to "poor," whereas Paul's overall assessment was scored as "good." Ray testified their decision was collectively based on the panel's overall analysis of the applicants.

5. **Tina Marie Ashley**, the BHDID Facility Supervisor, previously worked in the Department's Human Resources facility. She served on the interview panel and testified that she considered experience as important for promoting someone to a supervisory position. She added, however, she did not consider an applicant's experience supervising mentally-challenged residents to be significantly important for determining the applicant's qualifications for an administrative supervisory position. She added that she has previously considered someone from out-of-state for a position, and always scored them the same way as someone seeking to move up from within the ranks.

6. **Suellen White-Lawson** is the Facility Director of the Hazelwood Center. Responding to the inquiry about her alleged friendship with Ms. Paul, she testified she was just a professional coworker, but that they were not friends. She denied informing Ms. Paul of the administration opening, but acknowledged she did inform a coworker of hers about the position opening. She testified her knowledge of Ms. Paul had no bearing on her decision, as she believes in maintaining her objectivity and integrity in any decision making process. She testified that all five factors required to be reviewed for making promotions were discussed and considered in the selection process.

7. **Mary M. Thompson** is the Assistant Facility Director at the Hazelwood Center. Her role in the selection process was to serve as the lead interview panel member. She described the selection process as a fairly lengthy involvement. She testified the final selection came down to two applicants, Lynnese Bowman and Angelia Paul. She testified that they considered each candidate's answers to the questions in the interviews, their qualifications, character and conduct, experience, job performance and seniority. She said that each factor is considered equally, and none are weighted over another. She testified that for her personally, the position is

to be given to the applicant who meets these factors and offers the best choice for the position. She added that the best indicators generally come from the candidate's answers to the questions during the interviews.

8. Thompson testified she was not swayed by the responses of the other panel members when they were analyzing the responses of the candidates following their interview. She said that the assessment scale was an average of all the scores given by the panel members. Thompson testified that from her viewpoint, Ms. Paul also demonstrated in all aspects the best personality and demeanor the Department needed.

9. Thompson responded to Mondie's inquiry concerning the score he was given to an interview question about "correcting an employee under your supervision." She stated he gave a negative response and the interview panel members were looking for a more positive response, which was scored against him.

### **III. FINDINGS OF FACT**

1. The Cabinet opened up for application the position of Program Administrator of the Department for Behavioral Health, Developmental and Intellectual Disabilities (BHDID) at the Hazelwood Center in Louisville, Kentucky, which is a state-operated intermediate care facility for the mentally handicapped.

2. The Appellant, Junior R. Mondie, was one of 34 applicants for the position. Five applicants were given an interview for the position. Three members of the interview panel: Tarron Ray, Tina Ashley and Mary Thompson, all testified as to the considerations given to the various factors required to be considered in the promotion process, and the factors were all weighted equally. They also described the scoring the panel gave each candidate in analyzing their individual answers to the panel members' questions. Eventually, the decision was narrowed to the two candidates who met the qualifications and scored the highest in the interview process: Lynnese Bowman and Angelia Paul.

3. Mondie alleged he had the most qualifications and experience for the position and that Angelia Paul did not have the experience. However, Mondie failed to provide evidence that she was not duly qualified for the promotion. The evidence established the panel considered Paul's education and previous involvement in working with regulation compliance to be a valuable part of her experience. The testimony of the interview panel members also clearly established that, in their viewpoint, Ms. Paul provided the best responses to their situational inquiries, whereas Mondie's responses were scored from fair to poor.

4. Mondie's argument that a conflict of interest existed out of an alleged friendship between the Hazelwood Facility Director, Suellen White-Lawson, and Ms. Paul, was lacking in evidence and without merit. Mondie produced a copy of a photograph from Facebook purporting to show the Director in a group photo with Angelia Paul and other co-workers at an unidentified social function. He alleged the photograph showed they were friends and that the Director allowed this alleged friendship to unduly influence the decision process concerning the

promotion. Ms. White-Lawson denied the allegation, stating that although she knew Ms. Paul in a professional coworker capacity, it had no influence on her concerning the promotion of Ms. Paul. Mondie produced no evidence to establish his inference from the photograph.

5. Mondie produced hundreds of pages of documentation provided to him by the Cabinet in response to his discovery requests pertaining to the interview process. However, his insinuations of wrongful consideration of his application in the promotion process were not supported by the documents. Additionally, not a single witness who was involved in the selection of Ms. Paul gave any testimony supporting the implications Mondie attempted to make concerning improper conduct in the selection of Ms. Paul for the promotion.

#### IV. CONCLUSIONS OF LAW

1. The Kentucky Administration Regulations, at 101 KAR 1:400(1), requires for all promotions 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. KRS 18A.0751(4)(f) provides that state agencies "shall give appropriate consideration to the applicant's qualifications, record of performance, conduct, and seniority. Except as provided by this chapter, vacancies shall be filled by promotion whenever practicable and in the best interest of the service."

3. Each of the witnesses involved in the selection process testified that they gave appropriate consideration for each of the "five factors," and they analyzed and concurred in scoring each candidate's answers to the inquiries made during their interview. Mary Thompson, who was the supervisor of the Department to which the promotion was being made, and who served as the lead member of the interview panel, testified that, from her viewpoint, the consideration given to each of the candidates' overall qualifications demonstrated in all aspects that Ms. Paul had the best qualifications, personality and demeanor that the department needed. She further stated Ms. Paul was the most qualified in the best interests of the department.

4. The Appellant, Junior Mondie, failed to meet his burden of proof, as there was no probative evidence introduced to establish the Cabinet failed to follow the requirements imposed by law in considering the person it selected to fill the position as BHDID Program Administrator.

#### V. RECOMMENDED ORDER

Having considered and weighed all the evidence and the laws of the Commonwealth of Kentucky, and based upon the foregoing findings of fact and conclusions of law, it is the recommendation of the Hearing Officer that the appeal of **JUNIOR R. MONDIE V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2015-305)** 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).

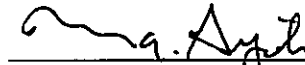
**Any document filed with the Personnel Board shall be served on the opposing party.**

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 E. Patrick Moores** this 20<sup>th</sup> day of July, 2016.

**KENTUCKY PERSONNEL BOARD**



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

A copy hereof this day mailed to:

Hon. Kathleen Hines  
Mr. Junior R. Mondie