

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2022-165

MARGARET REBECCA ROBINSON

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

and

PERSONNEL CABINET

APPELLEES

*** **

The Board, at its regular July 2023 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer (undated), the Corrected Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated June 6, 2023, 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 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 18th day of July, 2023.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

Copies hereof this day sent to:
Margaret Rebecca Robinson
Hon. Olivia Peterson
Hon. Catherine Stevens
Hon. Rosemary Holbrook (Personnel Cabinet)
Jay Klein

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2022-165**

MARGARET REBECCA ROBINSON

APPELLANT

**V. CORRECTED FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER
(Adding Issuance Date)**

CABINET FOR HEALTH AND FAMILY SERVICES

AND

PERSONNEL CABINET

APPELLEES

***** ****

This matter came on for a pre-hearing conference on March 20, 2023, at 10:00 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Margaret Rebecca Robinson, was present by telephone and was not represented by legal counsel. The Appellee Cabinet for Health and Family Services (“CHFS”) was present and was represented by the Hon. Olivia Peterson, who appeared by telephone. The Appellee Personnel Cabinet was present and was represented by the Hon. Catherine Stevens, who also appeared by telephone.

The purposes of the pre-hearing conference were to determine the relief sought by the Appellant, to define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

As noted by the appeal form, after the Appellant applied for a position with CHFS as a Budget Support Specialist, the Personnel Cabinet’s Division of Career Opportunities, Human Resources Certification Branch, determined that she did not meet the minimum qualifications for the job classification. At issue in this appeal is whether the Personnel Cabinet had just cause for that determination.

A schedule was set for the Appellees to file a dispositive motion. All parties were encouraged to attach any relevant documents to their filing. As established by the briefing schedule entered after the March 20, 2023 pre-hearing conference, the Appellees had until April 14, 2023, to file a dispositive motion; the Appellant had until May 15, 2023, to file a response; and the Appellees then had until May 30, 2023, to file any replies. After the expiration of the briefing

schedule, this matter was to stand submitted to the Hearing Officer for a ruling on the dispositive motion.

Upon review of the file after the expiration of the established briefing schedule, the Hearing Officer notes that the Personnel Cabinet filed the Personnel Cabinet's Motion for Summary Judgment on April 12, 2023, and the Appellant did not file a response to the Personnel Cabinet's Motion for Summary Judgment.

BACKGROUND

1. The documents attached to the Agencies' Motion for Summary Judgment establish the following as the material facts underlying this appeal. In November 2022, the Appellant, Margaret Rebecca Robinson, applied for a position with CHFS as a Budget Support Specialist. The Budget Support Specialist Job Class Specification sets forth the minimum requirements for the job classification as follows:

MINIMUM REQUIREMENTS:

EDUCATION:

Graduate of a college or university with a bachelor's degree.

EXPERIENCE, TRAINING, OR SKILLS:

One year of professional experience in statistical analysis, accounting, auditing, planning or a related field.

Substitute EDUCATION for EXPERIENCE:

NONE.

Substitute EXPERIENCE for EDUCATION:

Professional experience in statistical analysis, accounting, auditing, planning, or a related field will substitute for the required education on a year-for-year basis.

2. The Personnel Cabinet's Division of Career Opportunities performed their procedurally mandated minimum qualifications review of the Appellant's application. On November 28, 2022, the Division of Career Opportunities determined that the Appellant did not meet the minimum qualifications for the Budget Support Specialist position. The Personnel Cabinet's determination is the subject of this appeal, which was filed by Appellant on December 1, 2022.

3. In support of its Motion for Summary Judgment, the Personnel Cabinet attached the sworn Affidavit of Teresa Harris, Personnel Program Manager, Kentucky Personnel Cabinet, Division of Career Opportunities, Human Resource Certification Branch. Harris has been the Personnel Program Manager of the Human Resource Certification Branch since September 2020.

Additionally, she has been employed by state government in the field of human resources for almost twenty (20) years. One of the responsibilities of the Human Resource Certification Branch is to review the minimum qualifications of applicants before the applicants are appointed to a classified position in an Agency. Harris is familiar with KRS Chapter 18A and the regulations pertaining to personnel matters within the Executive Branch of Kentucky state government.

4. As the Personnel Program Manager of the Human Resource Certification Branch, Harris supervises Personnel Cabinet's Program Analysts and Personnel Program Consultants, including Personnel Program Consultant Craig Johnson. In November 2022, upon the request of CHFS, Johnson performed a minimum qualification review of the Appellant's application for employment as a Budget Support Specialist. A true copy of the application submitted by the Appellant for the Budget Support Specialist position and reviewed by Johnson was attached to Harris' Affidavit as Exhibit B. A true copy of the Job Class Specification for Budget Support Specialist was attached to Harris' Affidavit as Exhibit C.

5. On November 28, 2022, Johnson communicated to the Appellant the Human Resource Certification Branch's determination that she did not meet the minimum qualifications for the Budget Support Specialist position. A true copy of Johnson's email exchange with the Appellant was attached to Harris' Affidavit as Exhibit A.

Review of the Job Class Specification for Budget Support Specialist position reveals that the minimum qualifications for position are a bachelor's degree and "one year of professional experience in statistical analysis, accounting, auditing, planning, or related field." In lieu of the bachelor's degree, "professional experience in statistical analysis, accounting, auditing, planning, or a related field will substitute for the required education on a year-for-year basis."

6. The Appellant's application indicates she earned a high school diploma from Anderson County High School in 2015, and no college credits. Therefore, in her Affidavit, Harris explained that, to meet the minimum qualifications for the Budget Support Specialist position, the Appellant was required to demonstrate a total of five (5) years "professional experience in statistical analysis, accounting, auditing, planning, or related field." The Appellant's application indicated that she had past work experience as a Front Office Administrator in a dental office; a Teller I at two (2) different banks; and a Cashier/Customer Service employee at a grocery store. In her application, the Appellant provided considerable detail regarding the duties involved in performing her previous employment positions. A copy of the Appellant's listed "work experience" from her application is attached to this order as **Recommended Order Attachment A**.

7. After Johnson's initial determination that the Appellant's work experience did not meet the minimum qualifications for the position, Harris then re-reviewed the Appellant's application and the Job Class Specification for Budget Support Specialist. Based on her years of experience in reviewing applications for minimum qualifications and her understanding of the type of job experience required to qualify for the Budget Support Specialist job classification, Harris

determined, as did Johnson, that the Appellant did not meet the minimum qualifications required to be appointed to a position as a Budget Support Specialist.

8. In her Affidavit, Harris explained that the type of work experience required for a Budget Support Specialist is stated very specifically in the Job Class Specification: “professional experience in statistical analysis, accounting, auditing, planning, or related field.” The work experience described by the Appellant on her application in her previous jobs as a Front Office Administrator, Teller I, and Cashier/Customer Service does not fit the requirements of “professional experience in statistical analysis, accounting, auditing, planning, or related field.”

9. Based upon Harris’ review of the application and Job Class Specification, coupled with her experience and expertise in performing and overseeing employees performing minimum qualifications reviews, she determined that Johnson was correct on November 28, 2022, when he concluded that the Appellant did not meet the minimum qualifications of a Budget Support Specialist.

FINDINGS OF FACT

1. Upon review of the documents and the submissions, the Hearing Officer finds that there are no genuine issues of material fact. This appeal can be decided based on the appeal form and the Motion for Summary Judgment and attachments, including the Affidavit of Harris.

2. The Appellant was an applicant for a vacant position at CHFS as a Budget Support Specialist and was informed by the Personnel Cabinet that she did not meet the minimum qualifications required of the position.

3. The Personnel Cabinet’s Human Resource Certification Branch determined that the Appellant did not meet the minimum qualifications for Budget Support Specialist position consisting of a bachelor’s degree and “one year of professional experience in statistical analysis, accounting, auditing, planning, or related field.” In addition, even given the maximum authorized substitution of work experience for the educational requirements, the Personnel Cabinet further determined that the Appellant did not demonstrate she had the required five (5) years of work experience in the form of “professional experience in statistical analysis, accounting, auditing, planning, or a related field” in order to substitute for the bachelor’s degree plus one (1) year of similar work experience.

4. The Hearing Officer also finds that the Appellant had a high school diploma but failed to demonstrate with her past work experience that she had the requisite five (5) years of professional experience in statistical analysis, accounting, auditing, planning, or a related field. The Appellant’s listed work experience on her application demonstrates she did not have the necessary experience.

CONCLUSIONS OF LAW

1. When examining applicants for positions, the General Assembly clearly expressed its intent that the Personnel Cabinet “be free to use any investigation of education and experience and any test of capacity, knowledge, manual skill, character, personal traits, or physical fitness, which in [its] judgment, serves the need to discover the relative fitness of applicants.” KRS 18A.110(7)(c). Based upon this authority, the Personnel Cabinet has implemented a method to review an individual’s application in concert with a Job Class Specification to determine if the applicant meets the minimum qualifications of a position assigned to a certain job classification.

2. The Personnel Board has previously held that “[t]he legislature has given the Personnel Cabinet the authority to set class specifications and to review the qualifications of applicants and eligibles. Absent some clear abuse of discretion or arbitrary action, the discretion of the Personnel Cabinet over this area should not be disturbed.” *Mercer v. Justice Cabinet, et al.*, 2001 WL 36147190 (KY PB 2000-378). See also *Klatt v. Justice & Public Safety Cabinet, et al.*, 2019 WL 6050251 (KY PB 2017-210 and 2017-240).

3. The Personnel Cabinet’s determination that the Appellant’s demonstrated work experience did not satisfy the requirement of five (5) years of professional experience in statistical analysis, accounting, auditing, planning, or related field is consistent with KRS Chapter 18A and is not arbitrary or capricious.

4. The Personnel Cabinet has met its burden of establishing just cause for its determination that the Appellant did not meet the minimum qualifications for a Budget Support Specialist position. As a result, there is no relief the Personnel Board can grant the Appellant and there is no need for an evidentiary hearing. KRS 18A.095(18)(a).

5. There are no genuine issues of material fact in dispute in this appeal and judgment is appropriate as a matter of law based on the appeal form, including attachments, the statements of the parties at the pre-hearing conference, and the Personnel Cabinet’s Motion for Summary Judgement, including attachments. KRS 13B.090(2) and KRS 18A.095(18)(a).

RECOMMENDED ORDER

The Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **MARGARET REBECCA ROBINSON V. CABINET FOR HEALTH AND FAMILY SERVICES AND PERSONNEL CABINET (APPEAL NO. 2022-165)** 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 fifteen (15) 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 Mark A. Sipek** this 6 day of June, 2023.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK,
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Margaret Rebecca Robinson
Hon. Olivia Peterson
Hon. Catherine Stevens
Hon. Rosemary Holbrook (Personnel Cabinet)

Structured Resume

Work Experience

Job Title	Company	Job Duties	Start Date	End Date	Reason For Leaving
Cashier/Customer Service	Save a Lot Food Stores	<ul style="list-style-type: none"> * Receive payment by cash, check, credit cards, vouchers, or automatic debits. * Issue receipts, refunds, credits, or change due to customers. * Count money in cash drawers at the beginning of shifts to ensure that amounts are correct and that there is adequate change. * Greet customers entering establishment. * Maintain clean and orderly checkout areas. * Resolve customer complaints. * Answer customers questions, and provided information on procedures or policies. * Weigh items sold by weight in order to determine prices. * Process merchandise returns and exchanges. * Request information and assistance using paging systems. * Stock shelves, and mark prices on shelves and items. * Offer customers carry-out service at the completion of transactions. 	2/1/2015	9/1/2015	N/A
Teller	Century Bank of Kentucky	<ul style="list-style-type: none"> * Provide account services to customers by receiving deposits and loan payments. * Cashing checks; issuing savings withdrawals; recording night and mail deposits; selling cashier's checks, traveler's checks, and series e bonds. * Answering questions in person or on telephone; referring to other bank services. * Records transactions by logging cashier's checks, traveler's checks, and other special services. * Preparing currency transaction reports. * Cross-sells bank products by answering inquiries. * Informing customers of new services and product promotions; ascertaining customers' needs; directing customers to a branch representative. * Reconciles cash drawer by proving cash transactions. * Counting and packaging currency and coins. * Reconciling loan coupons and other transactions. * Maintains customer confidence and protects bank operations by keeping information confidential. * Contributes to team effort by accomplishing related results as needed. 	9/1/2015	9/1/2016	N/A
Teller	Whitaker Bank	<ul style="list-style-type: none"> * Provide account services to customers by receiving deposits and loan payments. * Cashing checks; issuing savings withdrawals; recording night and mail deposits; selling cashier's checks, traveler's checks, and series e bonds. * Answering questions in person or on telephone; referring to other bank services. * Records transactions by logging cashier's checks, traveler's checks, and other special services. * Preparing currency transaction reports. * Cross-sells bank products by answering inquiries. * Informing customers of new services and product promotions; ascertaining customers' needs; directing customers to a branch representative. * Reconciles cash drawer by proving cash transactions. * Counting and packaging currency and coins. * Reconciling loan coupons and other transactions. * Maintains customer confidence and protects bank operations by keeping information confidential. * Contributes to team effort by accomplishing related results as needed. 	6/1/2017	6/1/2019	N/A
Front Office Administrator	Family Dental Center	<ul style="list-style-type: none"> * Greet all patients entering and leaving. * Answering phone calls in professional manner. * Scheduling and canceling appointments. * Read dental charting and treatment plans. * Filing insurance claims/forms. * Coding for billing. * Experience with Dentrix, Dexis, and Romexis. * Manage office supplies inventory. * Coordinate and communicate with coworkers, assistants, and doctors. * Filing/scanning documents. * Creating new Microsoft Word and spread sheet documents. * Organizing charts, insurance paperwork & in-office paperwork. * Orthodontics insurance filling. * Basic understanding of orthodontic treatment and insurance. * Basic understanding of dental procedures, treatment plans, and insurance. * Record checks, create daily deposit, and care for all petty cash. * Assisted in reconciling direct deposits/records/payments 	6/1/2019	6/12/2022	Added duties without pay, poor management, inflexible schedule, etc.

Rebecca Robinson
Budget Support Specialist (22-09231)

**RECOMMENDED ORDER
ATTACHMENT A**