

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NOS. 2014-079 AND 2014-107

RAY SANDY

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF CORRECTIONS
J. MICHAEL BROWN, APPOINTING AUTHORITY; AND

APPELLEE

HOBERT HUDDLESTON

INTERVENOR

** ** *

The Board at its regular October 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 26, 2015, 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 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 14th day of October, 2015.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Angela Cordery
Ray Sandy
Hobert Huddleston
Bobbie Underwood

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This matter came on for evidentiary hearing on March 24 and 25, 2015, at 9:00 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Geoffrey B. Greenawalt, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Ray Sandy, was present and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Angela Cordery. The Intervenor, Hobert Huddleston, was present and was not represented by legal counsel.

The issues at the evidentiary hearing were whether the selection of Hobert Huddleston to the position of Corrections Unit Administrator II at the Blackburn Correctional Complex complied with the requirements set forth at KRS 18A.0751(4)(f) and 101 KAR 1:400; and whether the Appellant was performing duties outside his classification, and should be compensated for the same, from January 1, 2014, until the present. The burden of proof on all issues was upon the Appellant and was to be by a preponderance of the evidence.

BACKGROUND

1. The Appellant, Ray Sandy, timely filed his appeal in Appeal No. 2014-079, on April 17, 2014, and Appeal No. 2014-107, on May 16, 2014, each alleging in one form or another, the presence of bias, nepotism, impropriety and/or retaliation during and/or following the interview process in which the Intervenor, Hobert Huddleston, was promoted to Corrections Unit Administrator (UA) II.

2. The first to testify was **Tiffany Taylor**. Ms. Taylor is the Human Resource Administrator at the Blackburn Correctional Complex (BCC). A portion of Ms. Taylor's duties at BCC include setting up interviews. Ms. Taylor stated that the Warden typically defines the interview criteria. She explained that in early March of 2014 the criteria for interviewing at BCC had been established in written memo form per former Deputy Warden Dale Martin. According to the criteria, in order to be eligible to be interviewed a candidate could not have had any time and attendance or discipline issues within the previous twelve months.

3. Ms. Taylor stated that Goble Cantrell wanted to interview for the subject UA II position opening at BCC. However, based upon a conversation she had with Deputy Warden Martin, she knew Mr. Cantrell was not to be interviewed for the position due to a suspension within the previous twelve months. As such, Cantrell was not initially included on the list of candidates to be interviewed. However, Warden Haney stepped in and instructed Deputy Warden Martin to allow Goble Cantrell to be interviewed for the UA II position. Mr. Cantrell's application was sent to the Personnel Cabinet who determined that he met the minimum criteria for being interviewed. As a result, Mr. Cantrell ended up being interviewed for the position. Appellant's Exhibit 1 was introduced into the record through the witness and is a copy of Mr. Cantrell's suspension letter dated February 25, 2013.

4. Ms. Taylor testified that in July of 2014, while she was on vacation, the Appellant made an open records request seeking a copy of the memorandum prepared by Deputy Warden Martin which set forth the interview criteria. When Ms. Taylor looked for it, it was not there. She prepared an Occurrence Report concerning the same and new locks and a camera were subsequently installed in her office.

5. Whenever called upon to fill an open position, Ms. Taylor stated she would first obtain a register of qualified candidates from the Personnel Cabinet. From that list, the candidates to be interviewed would be chosen.

6. Ms. Taylor also testified that in January 2015 Warden Haney changed the evaluation structure to where UA IIs would evaluate UA Is and UA Is would evaluate CTOs.

7. Appellant's Exhibit 3 was introduced into the record and is an e-mail from Deputy Warden Martin to the Appellant instructing him to assume the duties at both Dorm 4 and Dorm 5. Ms. Taylor considered this a direct order.

8. On cross-examination, Ms. Taylor summed up the interview process. She is first notified by central office that a register is available to download from the internet and deliver to the department head seeking to fill a position. The persons on the register who the department head wishes to interview are highlighted and sent up to the Personnel Cabinet to see if they meet the minimum qualifications of the job. Appellee's Exhibit 1 was introduced into the record and is a copy of the Job Specification for the UA II position. The job specifications are obtained from the Personnel Cabinet's website and are what the Personnel Cabinet uses to determine if a candidate meets the minimum qualifications of the job. Once the list of candidates is compiled, Ms. Taylor begins setting up interviews. Appellee's Exhibit 2 was introduced into the record and is a copy of the candidates interviewed for the subject UA II position on March 13, 2014.

9. Ms. Taylor testified that the interview panel in this particular case was made up of Deputy Warden Dale Martin and Deputy Warden Brandy Harm. A three member panel is preferred, however, a two member panel suffices. At the interview candidates bring their Internal Mobility Form and copies of their last three performance evaluations. If they are internal candidates, Ms. Taylor will make copies of the evaluations and provide them to the panel. Candidates from outside of state government do not have to bring evaluations or internal mobility sheets to the interview as they typically do not possess the same.

10. Appellee's Exhibit 3 was introduced into the record through the witness. It is a chart prepared by Deputy Warden Martin containing information procured directly from the candidates' Internal Mobility Forms. The Intervenor's name is highlighted, which indicates the interview panel selected him as the most qualified candidate for the subject UA II position. The form also contains the handwritten notation "ok" with Warden Haney's initials which were dated March 13, 2014. The notation indicates Warden Haney approved the interview panel's determination that the Intervenor was the best candidate to fill the subject UA II position. Appellee's Exhibit 4 was introduced into the record and are copies of the Internal Mobility forms reviewed by the interview panel during the subject interview process. Once Warden Haney approved the interview panel's choice of the Intervenor, Ms. Taylor sent it on to the Personnel Cabinet for final approval.

11. Ms. Taylor explained that prior to conducting the interviews, Deputy Warden Martin was given a list of questions from which to choose. The questions chosen were then asked of each candidate during the interview process and the panel members made contemporaneous notes reflecting each candidate's responses to the questions along with their own reactions to the same. Appellee's Exhibit 5 was introduced into the record through the witness and is a copy of the interview questions asked each candidate and along with each interview panel member's notes.

12. On redirect, the Appellant noted, and Ms. Taylor confirmed, that Warden Haney signed off on the Intervenor's selection on the same day the interviews took place. She stated that she logged the Intervenor's selection into the computer all before 4:00 p.m. on March 13, 2014.

13. The next to testify was **Nathan Aseltine**. Mr. Aseltine is a Sergeant at BCC. Sgt. Aseltine testified that he prepared an Occurrence Report concerning UA Sorenson bringing contraband into BCC. Appellant's Exhibit 4 was introduced into the record and is a copy of said Occurrence Report. Sgt. Aseltine also testified that he had once been allowed to interview for an open position even though he had a time and attendance/disciplinary issue within the previous twelve months from the date of the interview. He stated that although he was chosen as the successful candidate on that occasion, because someone filed a grievance concerning the proximity of the disciplinary actions taken against him, the whole interview process was re-done.

14. The next to testify was **LaDonna Thompson**. Ms. Thompson has been the Commissioner for the Department of Corrections since 2008. She testified that she has a Facebook account and is friends with various BCC employees, including Goble Cantrell. Ms. Thompson testified that Mr. Cantrell contacted her on Facebook and asked if she would care to go to dinner to discuss the interview process for the subject UA II position. Ms. Thompson stated that she never went to dinner with Goble Cantrell. Ms. Thompson further testified that she never called anyone on behalf of Mr. Cantrell to make sure he was interviewed for the subject UA II position. Her only response to Cantrell's Facebook contact was to wish him good luck. Ms. Thompson also stated that she never spoke with Warden Haney about who to hire for the subject UA II position at BCC. Appellee's Exhibit 6 was introduced into the record through the witness and is a copy of her response to the Appellant's grievance dated April 7, 2014.

15. On re-direct examination, Ms. Thompson testified she never spoke to Mr. Cantrell via Facebook or e-mail about the actual interview. She explained that Mr. Cantrell had just told her he was having an interview and later told her how it went.

16. Ms. Thompson stated that she did not think nepotism was a problem in the Department of Corrections. She also did not consider a member of an interview panel interviewing a relative as constituting nepotism. She stated that it may not be the best practice, but that it was not necessary to recuse oneself as a panel member in such instance, especially if the candidate is going to be working for that panel member. In Ms. Thompson's opinion, nepotism is defined as giving a job to someone strictly due to his or her relationship to somebody.

17. The next to testify was **Betty Sorenson**, who is the UA I over Dorm 1 at BCC. Appellant's Exhibit 5 was introduced through the witness and is a definition of the word "nepotism." According to Ms. Sorenson, nepotism means hiring people who are related to you. This could also include promoting someone due to their relation to you.

18. Ms. Sorenson testified that Deputy Warden Harm and Deputy Warden Martin were on the interview panel when she was hired as a UA I. She stated she owns rental property and that Deputy Warden Martin and his wife, who is her niece, are tenants of hers. She testified she never promised cheaper rent if she was promoted to the position of UA I. In fact, she gave no thought that Deputy Warden Martin was on the interview panel.

19. Ms. Sorenson testified she never saw the Occurrence Report made against her by Sgt. Aseltine, marked as Appellant's Exhibit 4. Deputy Warden Martin did talk to her about letting inmates have leftover coffee. She has since stopped that practice and does not recall ever giving an inmate candy.

20. Ms. Sorenson was asked to review Appellant's Exhibit 3. She testified that Mr. Harless had been over Dorms 4 and 5 before the Appellant was instructed to take them over. She considered the e-mail from Deputy Warden Martin to be a direct order. She testified that UA II Hockensmith performs the same exact duties as she does in Dorm 1 except he does them in Dorms 2 and 3.

21. The next to testify was **Jim Erwin**, who has been the Deputy Commissioner for the Department of Corrections since 2011. Mr. Erwin testified he has never worked at BCC. He is over twelve correctional facilities in Kentucky, including BCC. Each have the same basic staff structure but different missions. He states that he goes to each facility at least two times per year, sometimes even more.

22. Mr. Erwin testified that on January 17, 2015, he was interviewed over the phone by Jim Lambert in connection with the Appellant's desk audit. The interview concerned the Unit Management Structure at BCC and all the other state facilities. Appellant's Exhibit 6 was introduced into the record and is a copy of the Appellant's Position Audit performed by the Personnel Cabinet. The purpose of the audit was to determine whether the Appellant, who is a UA I, was performing the job duties of a UA II.

23. Mr. Erwin testified that a UA I does everything that a UA II does, if a UA II is not present at the job. In other words, a UA I is a backup to a UA II.

24. Mr. Erwin explained that during his interview with Mr. Lambert, he became aware that performance evaluations were not being performed at BCC in accordance with the traditional chain of command. As a result, he spoke to Warden Haney and told him he wanted BCC to return to a more traditional chain of command structure where a UA II performed the evaluations for a UA I and a UA I performed the evaluations for a CTO. The changes were not made in order to affect the Appellant's duties or retaliate against him for filing grievances. Instead, they were made simply to return to the more traditional chain of command structure.

25. On cross-examination, Appellee's Exhibit 7 was introduced into the record and is a copy of the Job Specification for a Corrections Unit Administrator (UA I). Mr. Erwin testified that he knows Mr. Sandy and is aware that he filed some grievances with regard to the subject promotion. Appellee's Exhibit 8 was introduced into the record through the witness and is a copy of Mr. Erwin's response to Mr. Sandy's grievance dated March 27, 2014.

26. On re-direct, Mr. Erwin again testified he was aware the Appellant had filed two grievances regarding the subject promotion and alleged nepotism at BCC and stated he responded to both grievances in kind.

27. The next to testify was **Goble Cantrell** who has worked for the Department of Corrections for twenty plus years and has been at BCC since 2005. Mr. Cantrell is a Training Coordinator. Mr. Cantrell testified that Policy 3.1, Code of Ethics, is reviewed every other year with all the employees. He testified that bringing contraband into the facility is a violation of Policy 3.1 that can, and has, resulted in an employee's termination. If a Correctional Officer writes an Occurrence Report against another staff member it is generally investigated. He stated that eventually the report will reach the Warden.

28. Mr. Cantrell testified he was suspended in 2014 for five days. He also testified he is friends on Facebook with Commissioner LaDonna Thompson. He testified he asked Ms. Thompson to go to lunch with him sometime in February or March of 2014. He never mentioned anything about the UA II position being open at BCC on Facebook. He also testified he did not consider that particular communication to be in violation of the Code of Ethics.

29. The next to testify was **James Lambert**, Staff Assistant with the Personnel Cabinet, Department of Human Resources Administration. He testified he has been assigned to do Personnel Cabinet desk audits. He testified he performed the Appellant's desk audit, marked as Appellant's Exhibit 6, and admitted this was the first one he had performed involving an employee of a Correctional institution.

30. He stated that on December 4, 2014, he performed the desk audit on the UA I and UA II positions occupied by the Appellant and the Intervenor, Hobert Huddleston. He spent approximately an hour and a half with the Appellant and an hour with Mr. Huddleston. He also conducted phone interviews with Deputy Warden Dale Martin for approximately 15 minutes and Deputy Commissioner Jim Erwin for approximately 20-25 minutes. According to Mr. Lambert, phone interviews are permitted while doing a desk audit and he was of the opinion that this particular desk audit resulted from a thorough investigation.

31. Mr. Lambert testified he was not made aware that both Deputy Warden Martin and Mr. Erwin had a role in responding to the Appellant's most recent grievances stemming from filling the subject UA II position at BCC. He further testified that Appellant's Exhibit 6 is his entire desk audit report.

32. Mr. Lambert testified that Deputy Warden Martin never told him that the Appellant performed Brian Evans' evaluation. Deputy Warden Martin also did not inform Mr. Lambert that he had ordered the Appellant via e-mail to be over both Dorm 4 and Dorm 5. Appellant's Exhibit 7 was introduced into the record and is a copy of an e-mail communication between Mr. Lambert and the Appellant. Mr. Lambert stated he never talked with Mr. Erwin about the Appellant doing multiple evaluations on CTOs. He was also not aware that the evaluation system changed shortly after his conversation with Mr. Erwin. He also stated that Mr. Erwin did not tell him he had not been in a prison setting for years, or that he had only been to BCC two times in 2014. Mr. Lambert did state that Mr. Huddleston told him his job was identical to the Appellant's with the exception that he performed the Appellant's evaluation and approved his vacation time. In the end, Mr. Lambert testified that in all honesty his desk audit remains accurate and that even though he might have asked more questions had he known then what he knows now, nothing would have changed.

33. On cross-examination, Mr. Lambert testified there are two units at BCC. Unit 1 included Dorms 1, 2 and 3, while Unit 2 included Dorms 4 and 5. He also testified that Mr. Huddleston and the Appellant's job duties were not totally identical given that Mr. Huddleston performed the Appellant's evaluation, approved his leave time and signed his timesheet. He testified that this distinction was the "linchpin" of his decision.

34. The next to testify was **Warden Steve Haney**. Mr. Haney has been the Warden at BCC since September of 2000. According to Mr. Haney, the definition of nepotism is when there is obvious favoritism towards a relative. According to Warden Haney, there is no issue with nepotism at BCC. Warden Haney admitted that three of his relatives, a nephew and two cousins, have worked at BCC at some point. He noted that his nephew did not work at BCC while he was the Warden there.

35. Appellant's Exhibit 8 was introduced into the record and is a copy of Kentucky Corrections Policy and Procedure No. 3.1, Code of Ethics. Warden Haney testified that whether something like bringing contraband into a facility is a violation of policy 3.1 depends on the circumstance and that he has discretion in those matters. Regarding Sgt. Aseltine's report against UA I Sorenson, Warden Haney simply instructed Deputy Warden Martin to look into the situation. He found out that a previous supervisor had allowed Ms. Sorenson to bring in candy. Mr. Haney simply decided to tell Ms. Sorenson to stop that practice.

36. Warden Haney testified he is aware certain criteria had been established at BCC regarding who could be interviewed for a job opening. He was also aware that Goble Cantrell was close to being barred from interviewing based on the criteria that a candidate was not to be interviewed if he/she had time and attendance or disciplinary issues during the twelve months prior to the interview. Again, Warden Haney stated he had discretion to waive this criteria if the circumstances called for it.

37. Regarding the subject UA II position at BCC, Warden Haney stated he approved the interview panel's recommendation to hire the Intervenor within 15 minutes of receiving the panel's recommendation. He stated he does not review the interview questions or any of the candidate's responses. He states he simply relies on the two Deputy Wardens on the interview panel to do their job. Warden Haney also stated he did not tell anyone on the interview panel who to choose as the successful candidate. Warden Haney testified that Ms. Harm did not try to recuse herself from the interview panel due to her history with the Appellant. Warden Haney was aware of the grievance filed by the Appellant against Ms. Harm. Appellant's Exhibit 9 was introduced into the record and is a copy of the Appellant's first grievance and the official responses thereto.

38. Warden Haney was asked to review Appellant's Exhibit 3 and stated that in his opinion it constituted a direct order, with no time limit, that was to remain in effect until the open position had been filled.

39. Warden Haney stated that the evaluation system was changed after Mr. Erwin called him to discuss it. At that point, he realized that although the evaluations at BCC had been performed a particular way for awhile, it was probably the better practice to follow the regular chain of command. Prior to the change, both UA Is and UA IIs would evaluate CTOs.

40. Warden Haney also testified that he did meet the Intervenor at a PREA conference and did discuss the subject UA II opening at BCC. He went on to testify that he did not give any guarantees to the interview at the PREA conference but told him he would be happy to give him the opportunity.

41. The next to testify was the Appellant, **Ray Sandy**. Mr. Sandy testified he believed there was nepotism at BCC. As an example, he stated that a cousin of Warden Haney, Joel Helmberg, was promoted two times while Mr. Haney was the Warden. He also felt the interviews for the subject UA II opening at BCC were not fair because 1) the Intervenor and Warden Haney talked about the opening prior to the interviews at the PREA conference, 2) because Commissioner Thompson and Goble Cantrell had a Facebook conversation regarding the subject opening prior to the interview, and 3) because Ms. Harm was on the interview panel despite her past history with the Appellant. Appellant's Exhibit 10 was introduced into the record and is a copy of the second grievance filed by the Appellant.

42. Appellant's Exhibit 11 was introduced into the record and is a copy of Warden Haney's response to the Appellant's grievance filed in September of 2013. Apparently this response stems from a felonious accusation prompted by Deputy Warden Harm. Mr. Sandy stated that he and Ms. Harm get along professionally, but have not spoken cordially with one another since May of 2012. According to Mr. Sandy, having Ms. Harm on the interview panel was unfair and that because of the same, he had no legitimate chance at the job.

43. According to Mr. Sandy, he effectively stopped performing all the duties of a UA II when the evaluation system was changed in January 2015. According to Mr. Sandy, the evaluation system was changed in order to retaliate against him for filing his various grievances over the way the subject interview process was handled. According to Mr. Sandy, he performed all of the duties of a UA II between the dates of March 26, 2014, when Deputy Warden Martin ordered him to take over both Dorms 4 and 5 (See Appellant's Exhibit 3) and January 2015, when the evaluation system was changed at BCC.

44. Mr. Sandy testified that up until Mr. Harless retired in December of 2013, he was over a single dorm, Dorm 3, with one caseworker, for whom he performed a performance evaluation. After Mr. Harless retired he was over Dorms 3, 4 and 5 until March 26, 2014, when Deputy Warden Martin ordered him to take over supervision of Dorms 4 and 5 [see Appellant's Exhibit 3] and Mr. Hockensmith picked up Dorm 3. After March 26, 2014, the Appellant was no longer over Dorm 3, but he picked up Dorms 4 and 5; Brian Evans was the CTO at Dorm 4 and Ms. Lauth was the CTO over Dorm 5 and the Appellant performed their evaluations.

45. Finally, Mr. Sandy testified he believed the Intervenor was the superior candidate for the subject position.

46. The next to testify was the Intervenor, **Hobert Huddleston**. Mr. Huddleston testified he has been with the Department of Corrections for over twenty years. Mr. Huddleston testified he and the Appellant share common job duties. However, at the end of the day, he has the final say and is the Appellant's supervisor. He did, however, note that the Appellant is able to approve vacation time for CTOs.

47. Mr. Huddleston's testimony marked the end of the Appellant's case in chief. The Appellee's Motion for Directed Verdict was denied.

48. The next to testify was **Brandy Harm**, who has been with the Department of Corrections for over ten years. Ms. Harm is presently a Deputy Warden of Security at BCC. She is also presently filling in for Deputy Warden Martin, who recently retired, as the Deputy Warden for Programs.

49. According to Ms. Harm, Warden Haney appointed her and Deputy Warden Martin to the subject interview panel due to their rank. She referred to Appellee's Exhibits 3, 4 and 5 and testified that these were the documents she and Deputy Warden Martin utilized during the subject interviews. She stated the interview process begins by going through the applicants' evaluations and Internal Mobility Sheets. They then call each candidate in and ask them all the same questions. After each interview, she and Deputy Warden Martin discussed the interviewee's responses and their impressions of that candidate. This routine continues until all candidates had been interviewed.

50. Deputy Warden Harm stated that she and Deputy Warden Martin chose the Intervenor, Hobert Huddleston, as the successful candidate for the subject UA II job based upon his evaluations, his experience and his answers to the interview questions. In addition, Mr. Huddleston was already a UA II at another facility and had experience in a higher security facility. As the Intervenor had a great deal of training and experience, he was clearly the best candidate for the position. Finally, Ms. Harm stated she was in no way related to the Intervenor.

51. On cross-examination, Deputy Warden Harm admitted the Appellant had filed a grievance against her based on an investigation she had conducted. Also, she testified she never tried to recuse herself from the subject interview panel because she had no personal feelings against the Appellant and felt she could make an unbiased decision.

52. The next to testify was former **Deputy Warden Dale Martin**. Deputy Warden Martin testified that he had previously been the Deputy Warden at BCC over programs and that he was now retired. He testified he was on the subject interview panel with Deputy Warden Harm.

53. Deputy Warden Martin reviewed Appellee's Exhibits 3, 4 and 5, and stated that the Appointing Authority is the person who puts the interview panel together. Mr. Martin wanted another panel member on the board, but could not find anyone else who would do it. According to former Deputy Warden Martin, he reviewed each candidate's evaluations and Internal Mobility sheets before, during and after each interview. He testified he prepared Appellee's Exhibit 3 and that the information contained thereon was taken directly from each candidate's Internal Mobility sheet. He prepared this document because it helped him keep up with each candidate and because even before the interviews were held, he had heard from three people who told him they would be filing a grievance if they did not get the job. So he was especially careful with this interview process.

54. The Intervenor, Hobert Huddleston, was chosen as the successful candidate because he aced all the criteria. His record of performance was especially important. He also demonstrated he was a well-rounded candidate and his record of performance was outstanding. Finally, he testified that he compiled and utilized the chart marked as Appellee's Exhibit 3 because it is a very good way of adhering to the statutory hiring requirements while interviewing each candidate. Deputy Warden Martin testified he had no idea that the Intervenor had already been a UA II at the time of the interview. He only learned about that toward the end of his interview.

55. Deputy Warden Martin highlighted the Intervenor as the successful candidate on Appellee's Exhibit 3 after talking it over with Deputy Warden Harm. He then received Warden Haney's approval and took it straight to Tiffany Taylor to process the hire.

56. On cross-examination, Mr. Martin testified he e-mailed the Appellant on March 26, 2014, directing him to supervise both Dorms 4 and 5 because the day before the Appellant started in on him with a profanity-laced tirade regarding the UA II interviews and Mr. Martin did not want any more insubordination from him. In essence, the Appellant told him, "If I'm not going to get the job, I'm not going to do the job." So, the e-mail marked as Appellant's Exhibit 3 was meant to be a direct order. Finally, Mr. Martin stated he never heard Deputy Warden Harm say she wanted to recuse herself from the interview panel and reiterated that he had never met the Intervenor before the subject interviews took place.

57. This matter is governed by KSR 18A.0751(4)(f) which states:

For promotions which 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.

58. This matter is also governed by 101 KAR 1:400, Section 1(1) which states:

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.

59. The Hearing Officer has considered the entire administrative record, including the testimony and statements therein.

FINDINGS OF FACT

1. The Appellant, Ray Sandy, timely filed Appeal No. 2014-079 on April 17, 2014, and Appeal No. 2014-107 on May 16, 2014.

2. The issue on Appeal No. 2014-079 was the Appellant's challenge of the selection of Hobert Huddleston to the UA II position at the Blackburn Correctional Complex (BCC) in April 2014. Thereafter, it was determined that an additional issue was the Appellant's claim that he had been performing the duties outside his classification and that he should be compensated for the same.

3. The Appointing Authority for BCC is Warden Steve Haney. The register was requested seeking qualified candidates to interview for the position of UA II at BCC. From the register containing the names of candidates approved by the Personnel Cabinet, several people were interviewed, for the subject position, including the Appellant and the Intervenor. A list of the applicants interviewed on March 13, 2014, is found on Appellee's Exhibit 3. The interview panel for the subject interview was chosen by Warden Haney and consisted of Deputy Warden Dale Martin and Deputy Warden Brandy Harm. According to the testimony, these two were chosen to be on the interview panel due to their rank and because Deputy Warden Martin was to be the immediate supervisor for the successful candidate.

4. The interviews were held on March 13, 2014. Each candidate with previous state government experience filled out Internal Mobility sheets and brought three years' worth of performance evaluations to the interview. From the Internal Mobility sheets, Deputy Warden Martin prepared Appellee's Exhibit 3. Deputy Warden Martin also chose various questions which were asked of each candidate during the interviews. The questions and the responses from each candidate noted by both Deputy Warden Martin and Deputy Warden Harm are found in Appellee's Exhibit 5. Immediately following the interviews, and after having a discussion amongst themselves, Deputy Warden Martin and Deputy Warden Harm chose the Intervenor, Hobert Huddleston, as the successful candidate for the subject UA II position at BCC.

5. Mr. Huddleston's name was highlighted on the form marked as Appellee's Exhibit 3 and presented to Warden Haney. Warden Haney relied upon the interview panel to perform their duty and did not question the same. He immediately approved the interview panel's choice and Tiffany Taylor, BCC's Human Resource Administrator, began processing the new hire.

6. As a result of a perceived injustice, the Appellant filed a grievance regarding the interview process on March 20, 2014, and a separate grievance regarding the interview process on April 17, 2014. [See Appellant's Exhibits 9 and 10.] In the end, it was concluded by the Department of Corrections Commissioner, LaDonna Thompson, that the interview process was properly performed and Mr. Huddleston was properly chosen as the successful candidate for the subject UA II position at BCC. [See Appellee's Exhibits 6 and 8.]

7. The testimony from all the members of the interview panel clearly demonstrates that each applicant's qualifications, record of performance, conduct, seniority and performance evaluations were properly considered during the interview process which resulted in the selection of the Intervenor for the position of UA II at BCC. The Appellant himself testified that the Intervenor was the best candidate for the position, and that he essentially filed his grievances and his appeals with the Personnel Board in order to expose what he perceived to be nepotism and unfairness within BCC.

8. As a result of the filing of Personnel Board Appeal No. 2014-107, a desk audit was performed to determine whether or not the Appellant had been performing the job of a UA II between March 26, 2014, and January of 2015. The desk audit was performed by James Lambert who determined that the Appellant had not been performing the job duties of a UA II. [See Appellant's Exhibit 6.] The testimony and evidence of record clearly indicates that the Appellant and a UA II perform nearly identical job duties. However, the major distinction between the two positions is that the UA II supervises the UA I, performs the UA I's evaluations and signs his timesheets. Also, the proverbial buck stops with the UA II and not the UA I.

9. The evidence demonstrates that after January 2015, shortly after speaking with Mr. Lambert in connection with the Appellant's desk audit, Deputy Commissioner Erwin ordered that job performance evaluations at BCC adhere to the traditional chain of command structure rather than the way it had been performed up to that time. Mr. Sandy alleges that this order was entered in an effort to retaliate against him. However, the evidence of record does not support this allegation.

10. There is absolutely no evidence of record that the Appellant was the victim of nepotism at BCC.

CONCLUSIONS OF LAW

1. The Appellant, Ray Sandy, timely filed Appeal No. 2014-079 with the Personnel Board on April 17, 2014, and timely filed Appeal No. 2014-107 with the Personnel Board on May 16, 2014, appealing from the promotion of the Intervenor to the UA II position at BCC on or about March 13, 2014.

2. As admitted to by the Appellant, and as testified to by Deputy Warden Martin and Deputy Warden Harm, the Intervenor, Hobert Huddleston, was the best candidate for the subject position of UA II at BCC and his ultimate recommendation for that position was justified. In addition, the interview panel, and thus the Appellee, properly considered each candidate's qualifications, record of performance, conduct, seniority, and performance evaluations prior to selecting the Intervenor for the subject position.

3. The Appellant has failed to demonstrate by a preponderance of the evidence that the Appellee failed to comply with the requirements set forth at KRS 18A.0751(4)(f) and 101 KAR 1:400.

4. The Appellant has failed to demonstrate by a preponderance of the evidence that the Appellee retaliated against him for filing grievances over the subject interview process. Further, the Appellant has failed to demonstrate by a preponderance of the evidence that he was the victim of retaliation or nepotism as a result of the recommendation to fill the subject position of UA II at BCC by Intervenor, Hobert Huddleston.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeals of **RAY SANDY VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORECTIONS, AND HOBERT HUDDLESTON (APPEAL NOS. 2014-079 AND 2014-107)** 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 Geoffrey B. Greenawalt** this 26th day of August, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Angela Cordery
Ray Sandy
Hobert Huddleston