

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2021-081

EDITH TAYLOR

APPELLANT

VS.

FINAL ORDER DISMISSING APPEAL

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

*** * * * * *

The Board, at its regular April 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated February 20, 2024, 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 17th day of April, 2024.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

Copies hereof this day emailed and mailed to:

Hon. Paul Fauri
Hon. Carmen Ross
Hon. Rosemary Holbrook (Personnel Cabinet)
Jay Klein

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
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EDITH TAYLOR

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V.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

**** * * * * * * *

This matter came on for evidentiary hearing on December 2, 2021 and December 17, 2021, at approximately 9:30 a.m., EST, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by KRS Chapter 18A.

The Appellant, Edith Taylor, was present and was represented by the Hon. Paul Fauri. The Appellee, Cabinet for Health and Family Services, was present and was represented by the Hon. Carmen Ross.

This appeal is now assigned to Hearing Officer, Mark A. Sipek, for Findings of Fact, Conclusions of Law, and Recommended Order.

BACKGROUND

1. On July 1, 2021, the Appellant filed a timely appeal (Appeal No. 2021-081) with the Board appealing a Cabinet for Health and Family Services (CHFS) hiring selection for a Charge Nurse where the Appellant was not selected for the position. The Appellant alleged age discrimination and stated the following:

My rights as a merit system employee have been denied by the Cabinet and the Commission since I was an internal mobility applicant with clearly superior qualifications in all of the categories and there is no basis to hire/appoint a younger person for this position who does not have the experience in nursing.

2. By Interim Order dated October 3, 2021, the burden of proof was established as follows:

At issue for the evidentiary hearing shall be the Appellant's challenge to the filling of the Charge Nurse position in addition to her claim of age discrimination. The burden of proof is by a preponderance of the evidence. The Appellant shall have the burden of proof on all issues. As the party having the burden of proof on the disciplinary action, the Appellant shall proceed first in the presentation of evidence.

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3. At the start of the evidentiary hearing, the parties stipulated Joint Exhibits 1 through 23 into evidence. These exhibits consist of the following:

- 1) Kentucky Personnel Position Description for Charge Nurse, pp 1-2.
- 2) Selection Panelist Conflict of Interest Statements (three forms), pp 3-5.
- 3) Edith "Arlene" Taylor Application Packet, pp 6-19.
- 4) Edith Arlene Taylor Internal Mobility Applicant Form, p 20.
- 5) Edith Taylor Annual Employee Performance Evaluation Year 2019, pp 21-23.
- 6) Edith Taylor Final Interim Review Meeting Documentation for Year 2019, p 24.
- 7) Edith Taylor Mid-Year Performance4 Evaluation, Year 2019, p 25.
- 8) Edith Taylor 2020 Year-End Interim/Final Performance Evaluation, pp 26-42.
- 9) Edith Taylor Interview Questionnaire Worksheets (three sets), pp 43-58.
- 10) Edith Taylor Reference Check Forms (three forms), pp 59-61.
- 11) Jena Wilson Application Packet, pp 62-76.
- 12) Jenna Wilson 2020 Employee Development Discussion, Baptist Health, pp 77-79.
- 13) Jenna Wilson Baptist Health Certifications, p 80.
- 14) Executive Branch Hiring and Selection Process Certification signed by Dinah Wall on 4/20/21, p 81.
- 15) CHFS Register Report, p 82.
- 16) Jenna Wilson Interview Questionnaire Worksheets (three sets), pp 83-97.
- 17) Jenna Wilson Reference Check Forms (three forms), pp 98-100
- 18) Jenna Wilson Hiring Appointment Memorandum dated April 21, 2021, pp 101-102.
- 19) Mary Compston Application Packet, pp 103-128.
- 20) Mary Compston Interview Questionnaire Worksheets (three sets), pp 129-144.
- 21) Mary Compston Reference Check Forms (three forms), pp 145-147.
- 22) Screen criteria worksheet, pp 148-149.
- 23) Executive Branch classified hiring and selection procedure, pp 150-156.

4. The Appellant called her first witness. **Dinah Wall** (Wall) is a Nurse Manager for the Office for Children with Special Health Care Needs (OCSHCN) and was the hiring manager for the Charge Nurse vacancy.

5. The OCSHCN has care clinics that provide specialty healthcare. Wall is familiar with the tasks required of a Charge Nurse and serves as the first-line supervisor for this position.

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6. Wall has served on two (2) hiring panels for her office. The last panel was approximately two (2) years ago. The process she followed two (2) years ago was the same process she followed for this appointment.

7. Wall testified that she utilized a screening criteria worksheet to select candidates to interview. The Appellant, Jenna Wilson (Wilson), and Mary Compston (Compston) were all selected for interview. **Exhibit 22, pp 148-149.**

8. Compston met all eight (8) of the screening criteria. The other candidates met six (6) of the screening criteria. All of the screening criteria were weighed equally.

9. Wall utilized Interview Questionnaire Worksheets from a prior occasion when her office hired a Charge Nurse. The worksheets were approved by the Personnel Cabinet.

10. The Appellant was asked to submit an Internal Mobility Form. She was the only Internal Mobility applicant. **Exhibit 4, p 20.**

11. Everyone on the hiring panel received a copy of the applications, evaluations, and Internal Mobility Form, as applicable.

12. The interviews were all conducted using Zoom video teleconferencing. Each interviewer on the hiring panel took turns asking questions.

13. Initially all the interviews were scheduled to take place on the same day, however, the Appellant had to reschedule her interview.

14. After the interviews, each panel member scored each candidate individually. Then, the panel discussed the scores collectively. Each applicant then received a total overall rating.

15. Wall submitted a memorandum summarizing the selection process and recommendation. The memorandum requested that Wilson be hired at a higher starting salary. **Exhibit 18, pp 101-102.** The memorandum did not include information about the other applicants or a comparison of Wilson to the other applicants.

16. Wilson was under the age of forty (40) at the time she was hired. Compston was over the age of forty (40). Wall could not recall the ages of any of the other applicants that were not interviewed. According to the stipulated exhibits, the Appellant was fifty-four (54) years old. **Exhibit 3, p 13.** At the time of the applicant selection process, Wilson was twenty-nine (29) years old, **Exhibit 11, p 70,** and Compston was fifty (50) years old, **Exhibit 19, p 110.**

17. All interviewed candidates submitted performance evaluations and all the candidates had overall proficient evaluations. The Appellant had two (2) "Outstanding" evaluations as a Nurse Consultant/Inspector for Office of the Inspector General (OIG). **Exhibits 5, 6, 7, and 8, pp 21-42.** Wilson submitted a document entitled "2020 Employee Development

Discussion" from Baptist Health. Wilson was rated as "Advanced" by her manager for her "Overall Evaluation." **Exhibit 12, pp 77-79.**

18. Wilson presented with patient care experience on her resume. She also presented with patient care coordination experience. Wilson also had nursing care management experience based on her role as a PRN Charge Nurse on her resume. She supervised a five (5) person team in that role. She also listed experience working on a multidisciplinary team. Wilson had experience working in community outreach based on her role with the Barbourville Health and Rehabilitation Center, scheduling outside appointments and follow-up. **Exhibit 11, pp 65-66.**

19. The Appellant received a score of "Excellent" in response to her first interview question by Wall. **Exhibit 9, p 49.**

20. Wilson also received a score of "Excellent" in response to Wall's first interview question. She provided a broad overview of her career. She had experience working with patients with autism. All of the clients within the OCSHCN have some form of special healthcare needs, including autism. Wilson also had experience in cardiology, and some clients of the OCSHCN have cardiology health needs. **Exhibit 16, p 89.**

21. The Appellant received a score of "Good" in response to Wall's second interview question. **Exhibit 9, p 49.**

22. Wilson received a score of "Very Good" in response to Wall's second interview question about family-centered practices. Wilson provided a specific example of a patient who was going to be placed in a nursing home with a family that disagreed. Ultimately, Wilson had to acquiesce to the wishes of the family with the patient returning home. **Exhibit 16, p 89.**

23. The Appellant received a score of "Good" in response to Wall's third interview question. She did not provide a specific example in response to the question regarding the use of the family-centered process. **Exhibit 9, p 49.**

24. Wilson received a score of "Very Good" in response to Wall's third interview question regarding communication skills. Her response was stronger than the Appellant's. Again, Wilson provided a specific example regarding a specific patient. She had to explain to the patient why she was becoming a ward of the state. **Exhibit 9, p 89.**

25. The Appellant received a score of "Good" in response to Wall's fifth interview question. She described a process utilized by OIG but did not specify her role and the outcome in her response to the question. **Exhibit 9, p 50.**

26. Wilson received a score of "Excellent" in response to Wall's fifth interview question. Wilson explained how she worked with the team to reach a resolution. **Exhibit 9 and 16, p 90.**

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27. The Appellant received a score of "Excellent" in response to Wall's eighth interview question. She demonstrated nursing care coordination, arranging follow-up appointment, referrals, and follow up appointments. **Exhibit 5, pp 90-91.**

28. Wilson received a score of "excellent" in response to Wall's eighth interview question. In her answer to the question, she demonstrated competence in patient care coordination, including making referrals and follow up appointments. She planned arrangements for home health care and ensured that doctors' orders were followed. **Exhibit 16, pp 90-91.**

29. Wall called all of the Appellant's references and there were no concerns from the references. **Exhibit 10, pp 59-61.**

30. Wall called all of Wilson's references and there were no concerns from the references. **Exhibit 98, p 100.**

31. Wall testified that Wilson's experience as Charge Nurse, care coordination experience, cardiology, and neurology experience all weighed in her favor as the Charge Nurse candidate, was going to work at a cardiology and neurology clinic. Her specialized experience was not a requirement for the position, but it was considered a "bonus" that she happened to have relevant, specific experience. Her age was not a factor in her selection.

32. Wall testified that Wilson had seven (7) years' experience as a nurse. The hiring memorandum submitted by Wall summarized her experience and all of the reasons why she was being selected for the job. Wall submitted the memorandum to her supervisor, Richard Price, and received no indication that it was incomplete in any way. **Exhibit 18, pp 101-102.**

33. Wall submitted a certification form attesting that she followed the Personnel Cabinet's hiring procedures. That form was submitted with her hiring/salary increase memorandum. **Exhibit 14, p 81.**

34. Wall was aware that the Appellant was employed with the OIG at the time of her interview. She was a Nurse/Consultant Inspector. Wall was not required to give the Appellant preferential treatment by virtue of her status as a CHFS employee. The Appellant had worked for OIG for five (5) years. A Nurse/Consultant Inspector is not a direct-care nursing role. Wall previously worked as a Nurse/Consultant Inspector for OIG. Prior to her position with OIG, the Appellant worked as a clinical coder. She last worked in a direct-care nursing role in March 2015, six (6) years prior to her application.

35. The evaluations submitted by the Appellant were as her role as an inspector. The evaluations did not evaluate her performance as a direct-care nurse. **Exhibits 5, 6, 7, and 8, pp 21-42.**

36. Wilson submitted a 2020 work evaluation from Baptist Health, which reflected her skillset as a floor nurse. Her overall rating was "Advanced" with a comment that she is an amazing

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nurse that cares deeply for her patients and coworkers. She worked part-time as a lead RN and was considered a valuable member of her team. **Exhibit 12, pp 77-79.**

37. Wilson also provided her nursing certifications as part of her application, which included advanced cardiac health support, basic and advanced cardiac life support, and national institute of health stroke scale. The scale is used to rate the severity of a stroke. In utero patients can experience strokes and present with aftereffects as babies and children. Those certifications were taken into consideration as part of the overall hiring decision. **Exhibit 13, p 80.**

38. Wall testified that she had to submit a packet as part of the recommendation to hire. The appointment memorandum explains the reasoning for selecting Wilson and to request a higher starting salary. **Exhibit 18, pp 101-102. (Attached as Recommended Order, Attachment A).**

39. **Maria Martinez** was called as the Appellant's second witness. She is employed with the OCSHCN where she works as a Nurse Service Administrator in the Louisville office.

40. Martinez has been employed with the CHFS since March 1, 2020. She supervises Wall and the rest of the Nurse Service Administrators for the Commonwealth of Kentucky, which covers ten (10) districts. Prior to March 1, 2020, Martinez worked for OIG for five (5) years as a Nurse Consultant Inspector or Surveyor.

41. Martinez has prior experience as a member of a hiring panel. She had experience as a lead hiring manager with the CHFS. She hired six (6) individuals previously. Martinez reviewed the screening criteria with Wall.

42. The hiring panel alternated by taking turns asking questions of the applicants during the interview writing down the applicants' responses on the Interview Questionnaire Worksheets.

43. At the end of each interview, the panelists individually scored each candidate's responses to the interview questions.

44. When all of the interviews and scoring were completed, the panelists discussed the interviews and reviewed all of the application materials together. All of the panelists read the applications and resumes and all other supporting documents, including evaluations.

45. The Appellant's evaluations were as her role as a Nurse/Consultant Inspector and not as a direct-care nurse. Wilson's evaluations rated her work as a direct-care nurse. However, the panel considered that the Appellant had good evaluations as did Wilson.

46. Martinez testified that pediatric experience is valuable for the role of Charge Nurse, but it was not the only valuable criteria. The Appellant had pediatric experience many years ago but did not have specialized experience. Whereas Wilson had cardiac experience and was currently working in an active nursing role. Compston was also working as a direct-care nurse.

47. Martinez relied on her own background as a nurse to evaluate the needs of her office. Current work in a direct-care nursing role was considered valuable although not required for the position. However, a candidate who was already working as a direct-care nurse would be better able to transition into the Charge Nurse position more easily than someone who had not been working in that role for a number of years. Martinez testified that the goal is to hire the candidate who best suit the needs of the organization and could interact well with patients and physicians. They were looking for a candidate who had competency understanding orders and working in a clinic or hospital environment.

48. Martinez testified that her clinics perform echocardiograms, and that there is often a process to get those exams pre-approved by insurance. She explained that it makes on the job training easier when a new hire comes into the position with prior experience in cardiology. The Barbourville office holds cardiology and neurology clinics. The panel seeks to hire the candidate that has the best qualifications for the specific job.

49. The Position Description for Charge Nurse is a general description for any Charge Nurse in the state of Kentucky and is not clinic specific. However, certain clinics provide certain specialized care. The panel understands that not all applicants will present with specialized experience. The state Charge Nurse positions do not pay as much as in the private sector. Therefore, the candidates may not be as competitive or may not have specialized experience. However, it is ideal if a candidate does present with specialized and relevant experience.

50. Insurance pre-authorizations and medical coding is also relevant for the Charge Nurse position. The Appellant had coding experience and her experience was considered, however, coding is an office job and not a nursing job.

51. During Wilson's interview, she responded that she worked with sixteen (16) -year old patients who had special needs. Thus, she presented with pediatric care experience and experience with special healthcare needs. She had been working in a hospital for seven (7) years.

52. Martinez testified that seniority for a state open register position is not a criterion for hiring, however, seniority can be considered in the context of one's overall experience and qualifications.

53. When asked by the Hearing Officer whether Wilson was hired based solely on her interview performance, Martinez said no. Martinez explained she had the overall qualifications as evidenced by her application and resume, and she also had a good interview. She had cardiac experience as well as pediatric experience. She had been also working toward a higher degree, demonstrating an interest in improving her skills and knowledge. She presented herself as a very positive and engaged person. She had a depth of interest in the position.

54. The hiring manager completed the hiring memorandum. Martinez reviewed the hiring memorandum that Wall drafted in support of Wilson. The memorandum highlighted Wilson's care coordination experience and multidisciplinary approach. She also had supervision

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experience which demonstrated her ability to handle matters independently. These qualifications were noted in the hiring memorandum. **Exhibit 18, pp 101-102.**

55. **Devenna Bales** was called as Appellant's third witness. She is employed as a Nurse Program Administrator in the Somerset office. She has worked in that role for over nine (9) years. A Nurse Program Administrator is the supervisor for the office and maintains a clinic caseload.

56. Bales believes she was asked to sit on the hiring panel because her office is in closest geographical proximity with the Barbourville office. Bales has sat on separate interview panels with Wall and Martinez before.

57. Bales testified that each member of the panel individually scored the responses to interview questions, and that the panel collectively discussed the interviews after individual scores were made. The interviews were conducted using Zoom teleconferencing, and each panelist was in a separate location.

58. Bales gave Wilson a score of "Excellent" in response to Wall's first interview question because she really liked that she had experience in cardiology. She also liked her experience with teens. Wilson had experience making referrals and in discharge planning. **Exhibit 16, p 84.**

59. Bales noted that the screening criteria worksheet did not indicate that Wilson had pediatric experience, but that the panel learned she in fact did during the interview. Thus, Wilson met seven (7) of the screening criteria, whereas the Appellant met six (6). **Exhibit 22, p 148.**

60. The Appellant had several "Excellent" responses and several "Good" responses. Wilson had several "Excellent" responses and several "Very Good" responses. Thus, Wilson's final interview score was "Excellent" and the Appellant's final interview score was "Very Good." **Exhibits 9 and 16.**

61. The entire panel reviewed a synopsis of each candidate, including reviewing performance evaluations. The panel considered the recent experience of each candidate because the field of nursing and pediatrics changes so much. For example, Bales testified that when she first joined the office, autism was not considered a special healthcare need. It is now. The panel weighs the relevant experience of each candidate. The interview score is definitely an important and major factor.

62. The panel considered the Appellant's previous pediatric experience. The Appellant received a score of "Excellent" in response to the first question regarding experience. **Exhibit 9, p 44.**

63. Bales testified that Compston did not interview well. The interview questions were behavioral-style questions and the panel looks for specific examples that demonstrate a candidate's critical thinking skills. Compston had good experience but struggled to answer the interview

questions. Bales was looking for a candidate who could follow directions and answer questions well. **Exhibit 20, pp 129-133.**

64. Bales considered all the evaluations. Wilson's evaluations reflected her work as a direct-care nurse. Both the Appellant and Wilson had excellent work evaluations. **Exhibit 12, pp 77-79.**

65. Bales testified that, as far as a second or third choice, she did not recall how the Appellant and Compston ranked.

66. Wilson had a strong interview providing specific examples to questions. She had recent direct-care patient experience with specialized cardiology experience. She had pediatric experience in a clinical setting. Bales considered the interview to be very important because it allowed the candidate to show their nursing process and demonstrate critical thinking skills, as well as display their communication skills in general. Effective communication was very important to the position.

67. Bales explained that a hiring memorandum contains all the same information as the hiring memorandum/salary adjustment request that was used in this case, except that, in the past, she had never requested a higher starting salary as part of a hiring memorandum. A hiring memorandum is a synopsis of the candidate's experience and why the panel has selected them for the position.

68. **Edith Taylor, the Appellant**, testified on her own behalf. The Appellant is employed as a Nurse Consultant Inspector with OIG and has held that role for the past five (5) years. As a Nurse Consultant Inspector, she reviews complaints against facilities, such as nursing homes, hospitals, personal care homes, group homes, etc.

69. During investigations, she observes nurses and patient care. She reviews records and interviews doctors.

70. The Appellant also performs certification and recertification surveys of facilities that receive Medicaid funding. She works with a team to complete those. She observes residents and resident care to see whether the care they receive is up to standard. The Appellant has received extensive training for her position. She had to take an exam required by Center for Medicaid Services in order to perform certification surveys. The exam has one hundred (100) questions. The exam covers a wide variety of items.

71. The Appellant must renew her nursing license every year and receive fourteen (14) Continuing Education Credits (CEU's) for her position with OIG.

72. Before working with OIG, the Appellant worked at Appalachian Regional Hospital as a coder. She reviewed physician records to assign codes for billing. To become a coder, she had to take classes and pass an exam. That is how she became a Certified Clinical Coder. She

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coded for cardiology and orthopedic clinics. She strictly worked in an office. She would message physicians to ask for missing items required for coding.

73. Prior to that, the Appellant worked for the Cumberland Valley Health Department (CVHD). She started in November 1996. Before that she worked at a hospital for a year. She obtained her nursing license in 1995.

74. At CVHD, the Appellant administered immunizations. She performed assessments and physicals. She performed a certification on childhood screenings. This certification is required by Medicaid. The Appellant also performed pediatric screenings and physicals as an EPPS provider.

75. The Appellant performed extensive training on adult physical exams at the University of Kentucky. She also did a training on women's health screens at the University of Louisville. At CVHD, she saw children with disabilities. She made referrals to CHFS if a child had an abnormality.

76. CVHD also placed nurses in schools. The Appellant had been employed as nurse at a middle school and at a high school. She saw sick children at schools and administered insulin. The Appellant worked with a child who had a tracheotomy. She administered medication at the schools. She worked with children who had heart defects. She performed a physical on a girl who played basketball at school and suspected a heart defect, which was confirmed after the girl had a follow-up with a doctor.

77. The Appellant worked for the CVHD for eighteen (18) years. She also worked for home healthcare on the weekends. She had pediatric home healthcare patients. She administered chemotherapy. She did this work for six (6) years on the weekends and during the summers.

78. With OIG, she traveled across the state. She wanted to change jobs because she wanted to travel less. She also missed working at the CVHD with children.

79. The Appellant recalled that the Charge Nurse position she applied for called for an active nursing license with a minimum of two (2) years' experience. She received and applied to an invitation to interview from Wall.

80. The Charge Nurse position was less pay and a lower pay grade than the Nurse/Consultant Inspector position the Appellant held with OIG at the time of the evidentiary hearing. Thus, it would be considered a demotion. The Appellant indicated she understood and was willing to accept the demotion for the position.

81. The Appellant testified that she had patient care coordination experience and case management experience although she did not use those words on her application or resume.

82. At the end of the interview, the Appellant was given an opportunity to tell the panel anything additional that she wished for them to know. The Appellant told the panel that she loves

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working with children and has good work attendance. She reiterated that she was very interested in the position and thanked the panel for the interview.

83. The Appellant reviewed the Interview Questionnaire Worksheets filled out by the panel and agreed that the comments written were an accurate reflection of what she said during her interview. **Exhibit 9, pp 43-58.**

84. On cross-examination, the Appellant testified that, during the COVID pandemic, her office was limited on the types of surveys they performed. For a while, they were only investigating severe allegations. There was at least a six (6) month period where her office was not performing certification surveys, which is a large part of what the Appellant's job duties entailed.

85. The Appellant testified that she had never been a witness for OIG, meaning she had never had to defend her work product in an adverse hearing.

86. The Appellant explained that her work product, or statement of deficiency as they are referred to in OIG, goes through a quality assurance protocol. That means that sometimes she is asked to correct her work.

87. The Appellant testified that she has worked as a Charge Nurse before but that she did not include that information on her resume. She indicated that experience was approximately twenty (20) years ago.

88. The Appellant conceded that she did not tell the interview panel she had prior Charge Nurse experience.

89. The Appellant conceded that her specific experience as a Women's Health Provider is not indicated on her resume. She agreed that she did not tell the interview panel about that experience.

90. The Appellant conceded that her resume did not indicate she worked specifically with children with disabilities. She testified that her resume stated she worked as a school nurse and one should assume that would include working with children with disabilities.

91. When asked why the Appellant, on her resume, did not highlight any past experience working with children with disabilities, she agreed that she could have expanded that information.

92. The Appellant conceded that her resume does not identify tracheotomy experience with children. When asked why she did not include that information, the Appellant testified that "it's part of nursing; every nurse should be able to do that."

93. The Appellant testified that, as a school nurse, she worked specifically with a child who had a heart defect and shared an anecdote from her experience. She conceded that she did

not share this story or any other story working specifically with children with disabilities during her interview.

94. The Appellant conceded that she did not share the story of when she helped a child and her family discover a heart defect during her interview. Instead she said she highlighted her experience performing screenings.

95. The Appellant conceded that her resume does not indicate she has experience working with children who have peripheral lines in home health settings. She did state during her interview, however, that she worked with children in a home health setting.

96. The Appellant agreed that "Veterans Preference" status in the state employment system means that she was entitled to a job interview. Her husband is a Veteran.

97. The Appellant testified that she wished the interview panel would have asked her more specific questions that would have allowed her to talk about her experience more. She agreed that she understood she was applying for the Charge Nurse position for the OCSHCN.

98. The Appellant conceded that her resume did not indicate her experience developing patient plans of care, however, she said during her interview that she talked about her experience working home health and believes the panel understood that to include case management.

99. The Appellant conceded that her resume did not indicate her experience teaching families about wound care, drainage, disease treatment plans, etc., however, she testified that is the nature of home healthcare and any nurse would understand that. Therefore, she did not believe she needed to specify her experience beyond that of identifying her past jobs.

100. On questioning by the Hearing Officer, the Appellant clarified that, as a Nurse/Consultant Inspector with OIG, she investigated facilities and not necessarily people. Facilities are cited for regulatory violations. However, only Nurse/Consultant Inspectors are allowed to observe care and cite for regulatory violations related to nursing care. The Appellant testified that for her first two (2) years with OIG, ninety-eight percent (98%) of her time was spent working with a team conducting surveys. A team may be composed of a social worker, dietician, nurse, etc. After that, OIG allowed the Nurse/Consultant Inspector to do complaint investigations on his or her own. The Appellant reiterated that, during the COVID pandemic, complaint investigations were limited to only severe allegations. During the peaks of the pandemic, no investigations were allowed.

101. After a solo investigation, she reviewed her work with a supervisor. Her supervisor might assign additional tasks to perform, such as gathering additional records or conducting additional interviews. The supervisor made the ultimate decision regarding which regulatory violations will be cited.

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102. As a survey team, conversely, the team collectively reviews potential citations. If a major issue arises, the team contacts the supervisor. The team discusses potential citations with the supervisor. There is always a Team Leader. Sometimes the team does not find any violations.

103. The Appellant testified that the resume she submitted is her default resume and that she did not tailor it to suit the Charge Nurse position with the OCSHCN.

104. The Appellant agreed that direct-care nursing means hands-on nursing with a patient. As an OIG Charge/Nurse Inspector, she never touched a patient. She agreed that she did not provide direct-care nursing to any patient at any facility that she investigated.

105. At the end of her testimony, the Appellant rested her case-in-chief. The Appellee made a motion for directed decision that was denied.

106. The Appellee began presentation of its case and called **Lynn Gillis** as its witness.

107. Gillis is the Assistant Director for Office of Human Resource Management (OHRM) at the Personnel Cabinet. She has oversight over personnel, payroll, and other human resource matters. She has served in this role for three (3) years.

108. Gillis has worked for the state for twenty (20) years in the field of human resources.

109. Gillis testified that the Appellant was not entitled to preference as an internal mobility applicant. She also was not entitled to a lateral transfer from OIG to the OCSHCN.

110. Veterans' preference means the candidate is entitled to an interview as a competitive candidate.

111. Gillis testified that there are five (5) criteria by regulation that must be considered when looking at an internal mobility candidate. The five (5) criteria must be considered but do not have to be weighted more heavily than anything else.

112. The job advertisement included a small summary of the type of candidate that the employer was seeking.

113. Gillis testified that hiring managers use a certification form in conjunction with the hiring memorandum. The form certified that the hiring manager followed all of the hiring criteria set forth by Personnel Cabinet regulation.

114. OHRM checked for a hiring memorandum, also called a justification memo, which can include a request for a higher salary. OHRM also checked to see that the certification form had been submitted. The Cabinet employs over seven thousand (7,000) employees. If both documents are submitted, OHRM will accept the recommendation. Gillis testified that this process complied with 101 KAR 1:400. No further memorandum or documentation was required to comply with the regulation.

115. On cross-examination, Gillis testified that the certification form summarizes the selection process. (Exhibit 14, p 81) The signatory attests to complying with the process set forth in 101 KAR 1:400.

116. When the panel is preparing for the interviews, they use the Screening Criteria Worksheet to identify applicants who may fit the skills and qualifications that they are looking for.

117. Gillis did not believe that the Personnel Cabinet utilizes "Summary Selection Forms" anymore.

118. Gillis was asked to review 101 KAR 2:056. Gillis testified that she is familiar with that regulation. Internal mobility is a way by which an employee can move to a different position within the agency. However, if the register is an Open Competitive register, the employee must still compete with other candidates for the position. Some registers might be Internal Mobility only registers where the only candidates would be internal candidates. This register was Open Competitive.

119. Gillis' office performs the background check on the recommended candidate and checks to make sure the compensation being awarded is within the parameters set forth by regulation. KHRIS is the web platform that the agency uses to transmit the hiring documents to the Personnel Cabinet.

120. In response to questioning by the Hearing Officer, Gillis explained that there is no guidance as to whether a position should be Open Competitive or restricted to Internal Mobility candidates only. Generally speaking, the agency posts more Open Competitive registers than Internal Mobility registers because the agency benefits by having a larger candidate pool to draw from.

121. Hiring managers are instructed to rely on 101 KAR 1:400. The regulation gives hiring panels flexibility when reviewing all available information, such as evaluations, past experience, etc. The panel is not required to weigh any one thing more than another but is supposed to take everything in totality to decide. There is discretion, but within the regulatory parameters.

122. If Gillis has any reason to believe 101 KAR 1:400 is not followed, she will stop the hiring process. Gillis provided a past example when she learned that evaluations were not considered, and as a result she did not permit the hiring to move forward. Another example is discovering a conflict of interest on the panel. That requires the hiring process to re-start.

123. Gillis testified that there were no additional documents required to support the appointment of Wilson.

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124. 101 KAR 1:400 (1) states:

Each agency shall consider an applicant's qualifications, record of performance, conduct, seniority, and performance evaluations in the selection of an employee for a promotion.

125. 101 KAR 2:056, Section 4 states:

Internal Mobility Program. The internal mobility program shall facilitate the movement of a qualified classified employee to a different position in the state personnel system. (1) The secretary shall certify a full-time or part-time register that shall include:

- (a) The names of eligibles for reemployment and appointment, in accordance with 101 KAR 2:066; and
- (b) The names of interested employees with internal mobility full-time or internal mobility part-time status who:

1. Meet the minimum requirements;
2. Seek promotion, demotion, or transfer to a different position; and
3. Have applied for a posted vacancy.

(2) An appointing authority may request a register consisting of exclusively internal mobility candidates for a time period specified by the appointing authority of at least ten (10) calendar days

126. Wilson was notified of her right to intervene as a party in this appeal. She did not intervene.

FINDINGS OF FACT

1. The Appellant failed to prove that the Appellee did not appropriately consider the candidates' qualifications, seniority, record of performance, performance evaluations, and conduct in selecting Jenna Wilson for the Charge Nurse position over the Appellant.

- a. The Appellant, Wilson, and eight (8) other individuals applied for the open Charge Nurse position in Barbourville with the Office for Children with Special Health Care Needs.
- b. Dinah Wall developed screening criteria based on the knowledge skills and abilities associated with the Charge Nurse position. Based on her review she selected five (5) of the ten (10) candidates for

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interviews. Two (2) candidates declined to interview. (Testimony of Wall and Gillis, **Exhibit 22 pages 148-9**).

- c. The Appellant, Wilson, and Compston were interviewed. (Testimony of Wall).
- d. Wall was the hiring manager. She selected Maria Martinez and Devenna Bales to serve with her on the interview panel. (Testimony of Wall).
- e. The Appellant submitted a resume, application, Internal Mobility Form, and her two (2) most recent Performance Evaluations from her position as a Nurse Consultant/Inspector with the Office of Inspector General. (Testimony of Wall, Martinez and Bales, **Exhibits 3, 4, 5, 6, 7 and 8**).
- f. Wilson submitted a resume, application and her most recent evaluation from her position as a Registered Nurse with Baptist Health Corbin. She also submitted her Baptist Health Certifications. (Testimony of Wall, Martinez and Bales, **Exhibits 11, 12 and 13**).
- g. Compston submitted similar documentation. (Testimony of Wall and **Exhibit 19**).
- h. All three (3) candidates were interviewed and asked the same questions. The interview questions were based on the knowledge, skills and abilities related to the Charge Nurse position. The candidates were asked about their education and relevant work experience. They were asked behavioral questions about Family Centered Care, communication skills, problem solving, care coordination, and case management. (Testimony of Wall, Martinez and Bales, **Exhibits 9, 16 and 20**).
- i. The interview panelists considered the applicants' qualifications, seniority, record of performance, performance evaluations, and conduct by reviewing all the documents submitted and evaluating the answers to the interview questions. They also considered the reference checks for the Appellant and Wilson. (Testimony of Walls, Martinez and Bales, **All Exhibits**).
- j. Based on appropriate consideration of the five (5) selection criteria, the interview panelists recommended Wilson for the Charge Nurse position. They selected Wilson based on her current experience as a direct care nurse, her experience in cardiology, care coordination, autism and pediatrics. The panelists also based their

recommendation on Wilson's experience as a Charge Nurse. (Testimony of Walls, Martinez and Bales, **Exhibits 14 and 18**).

- k. The Hearing Officer finds the testimony of Walls, Martinez, and Bales credible that they gave appropriate consideration to the candidates' qualifications, seniority, record of performance, performance evaluations, and conduct.
 - l. The Appellee appointed Wilson to the Charge Nurse position.
2. The Appellant was not discriminated against because of her age when she was not selected as Charge Nurse.
 - a. At the time they applied for the Charge Nurse position, the Appellant was fifty-four (54) years old and Wilson was twenty-nine (29) years old. **Exhibits 3 and 11.**
 - b. The Appellee selected Wilson over the Appellant.
 - c. The Appellant was qualified for the Charge Nurse position.
 - d. The Appellee selected Wilson for the position because of her current direct care nursing experience as well as her cardiology experience. The interview panelists felt Wilson was the best candidate for the position through a process that provided appropriate consideration to the candidates' qualifications, seniority, record of performance, performance evaluations, and conduct. The Appellee articulated legitimate non-discriminatory reasons for selecting Wilson.
 - e. The Appellant failed to prove the stated reasons were not the real reasons the Appellant was not selected and failed to prove discrimination was the real reason.

CONCLUSIONS OF LAW

1. In the hiring process, Agencies are required to provide appropriate consideration to the applicants' qualifications, seniority, record of performance, performance evaluations, and conduct when filling positions by promotion. The Appellee correctly followed this process, even though, the Charge Nurse position would have been a demotion for the Appellant and an initial appointment for the other two (2) candidates. KRS 18A.0751(4)(f) and 101 KAR 1:400.

2. "Qualifications" are defined as "[A]ny quality, knowledge, ability, experience, or acquirement that fits a person for a position, office, profession, etc." *Cabinet for Human Resources vs. Kentucky State Personnel Board, et al.*, 846 S.W.2d 711, 715 (Ky. App. 1992). "Qualifications" are not limited to "minimum qualifications."

3. "Seniority" means the total number of months of state service." KRS 18A.005(36).

4. Interviews are a tool that agencies use in the promotion process. In this case, the evidence demonstrates that interviews were used in an effort to give appropriate consideration to the five (5) factors. *Adams v Commonwealth Health and Family Services*, 2014 WL 505910 (Ky. App. 2014).

5. The Appellee appropriately considered the candidates' qualifications, seniority, record of performance, performance evaluations, and conduct in selecting Wilson for appointment to Charge Nurse over the Appellant. The Appellant failed to carry her burden of proof on this issue. KRS 13B.090(7).

6. The Appellant failed to carry her burden of proof that she was discriminated based on her age in not being selected for the Charge Nurse position. KRS 13B.090(7).

7. The Cabinet for Health and Family Services selected Wilson for appointment and was the proper Appellee in this appeal. *Bowling v. Natural Resources and Environment Protection Cabinet*, 891 S.W.2d 406. (Ky. App. 1994).

8. Because all the events underlying this Appeal occurred before the effective date of Senate Bill 153, all references to KRS Chapter 18A are to the sections in effect at the time of the events associated with this Appeal.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **EDITH TAYLOR VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2021-081)** 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)

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).

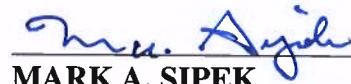
The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov

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.

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

SO ORDERED at the direction of **Hearing Officer Mark A. Sipek** on the 20 day of February 2024.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Paul Fauri
Hon. Carmen M. Ross
Hon. Rosemary Holbrook (Personnel Cabinet)



CABINET FOR HEALTH AND FAMILY SERVICES
Office for Children with Special Health Care Needs

Andy Beshear
Governor

110 Johnson Lane
Barbourville, KY 40906
Phone: (606) 546-5109
Toll Free: (800) 348-4279
Fax: (606) 546-4199
<https://chfs.ky.gov/agencies/ccshcn>

Eric C. Friedlander
Secretary

Ivanora O. Alexander
Executive Director

MEMORANDUM

TO: Appointing Authority, Office of Human Resources

THROUGH: Ivanora Alexander
Executive Director
Office for Children with Special Health Care Needs

FROM: Dinah Wall
Nurse Administrator, Barbourville Office
Office for Children with Special Health Care Needs (OCSHCN)

DATE: April 21, 2021

SUBJECT: Salary Appointment Request, Jenna Wilson

Position Number (30034650) Requisition Number (21-00997)

Under the provisions of 101 KAR 2:034, Section I, we respectfully request your approval to appoint Jenna Wilson to a position of Charge Nurse at the salary level of \$42,295.68 annually.

Jenna Wilson obtained an Associate Degree at Southeast Kentucky Community and Technical College in 2014 and will receive a Bachelor Degree at Lincoln Memorial University in 2022. She has 7 years of experience working as a Nurse. She has a background in care coordination/care management. Her experience includes RN Case manager in health and rehab setting at Barbourville Health and Rehab. She has also been the PRN charge nurse at Baptist Health Hospital.

As case manager, Jenna Wilson implemented assessments, and followed up on doctors orders. She developed a plan of treatment for each client she cared for. She coordinated the care of the clients as predetermined by the nurse practitioner, physician assistant and providers according to the plan of treatment. She prepared the plan of treatment for review by various insurance companies.

She was responsible for direct Care and procedures as she functioned as a floor nurse. She also followed through on therapies, appointments and other needs with her clients. She participated in multidisciplinary meetings to address patient's needs (related to SSW, PT, OT, ST, Specialists) for a multidisciplinary approach while at Baptist Health.

Currently Jenna Wilson's role at Baptist Health is floor nurse, however she also fills the role of charge nurse as needed. During which time she is responsible for the supervision, of nursing staff, and care of patients on the floor.

During the interview Jenna Wilson successfully demonstrated her knowledge and decision making process which is a critical component of her future role as charge nurse. The interview revealed an upbeat, positive, individual who established her competence in patient/family/care giver education and coordination of resources of services. She showed flexibility in adjusting for expected and

**TEAM
KENTU**

Recommended Order - Attachment A

unforeseen changes on a daily basis, while working with a diverse patient population. The interview clearly revealed Jenna Wilson's qualifications, past performance insight, and her abilities to be a leader in her profession. She presented as a very positive person, a team player and critical thinker. With her background and experience, she would be an asset to our team, the Office for Children with Special Health Care Needs and the Cabinet for Health and Family Services.

The salary above reflects a 20% increase from the entry-level salary of \$35,246.40 and is necessary to secure an offer of employment for this qualified nurse, who can work with medically complex children and families. The average annual salary of registered nurses with comparable experience ranges from \$53,000.00 to \$68,000.00. If the monthly salary of \$3,524.64 is approved, this candidate will be at an annual salary \$42,295.68, which is roughly 20% under the lowest range for a Charge Nurse. This is important for retention as well. Therefore, we are requesting approval to appoint Jenna Wilson this charge nurse position as a grade 14. Thank you for your consideration.

Dinah Wall, RN
Nurse Administrator
OCSHCN
Barbourville