

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-189**

**KATRISHA WALDRIDGE**

**APPELLANT**

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

**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
THOMAS O. ZAWACKI, APPOINTING AUTHORITY**

**APPELLEE**

**\*\* \*\* \***

The Board at its regular July 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated June 15, 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 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 14<sup>th</sup> day of July, 2015.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. James Maxson  
Katrisha Waldrige

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-189**

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**VS.**

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
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**EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
THOMAS O. ZAWACKI, APPOINTING AUTHORITY**

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This matter came on for evidentiary hearing on March 10, 2015, at 9:30 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, Katrisha Waldrige, was present and was not represented by legal counsel. The Appellee, Education and Workforce Development Cabinet, was present and was represented by the Hon. Rosemary Holbrook.

The issue at the evidentiary hearing was the Appellant's claim that she was discriminated against because of her race and gender when she was terminated from her non-merit position as an Administrative Assistant with the Early Childhood Advisory Council. The burden of proof was upon the Appellant to demonstrate by a preponderance of the evidence that she had been discriminated against.

**BACKGROUND**

1. The Appellant, Katrisha Waldrige, was terminated from her position as an Administrative Assistant with the Early Childhood Advisory Council effective the close of business July 30, 2014.

2. The Appellant timely filed her appeal with the Personnel Board on August 28, 2014, alleging that she had been discriminated against when she was terminated from her position as an Administrative Assistant with the Early Childhood Advisory Council.

3. The first to testify at the hearing was the Appellant, **Katrisha Waldrige**. Ms. Waldrige testified that she was appointed as the Race to the Top Coordinator with the Early Childhood Advisory Council on June 9, 2014. She stated that her P-1 reflected that her official title was Administrative Assistant. She testified that she was also known as the Family Coordinator and that her goal was to prepare children for kindergarten. At the time of her termination she was putting together a comprehensive outline for daycare facilities intended to help prepare children for school.

4. Ms. Waldrige testified that in April 2014 she was contacted by Terry Tolan, who told her she had come highly recommended by certain people in the Governor's office. She was told there were several positions available and after meeting with Ms. Tolan, she was presented with four positions from which to choose. After informing Ms. Tolan of her choice of positions, she was told it could be awhile before she was officially hired. However, prior to her official start date, Ms. Waldrige was introduced to various people in the Council's office and was allowed to attend their Monday meetings during the month of May 2014.

5. Prior to being officially hired, Ms. Tolan informed the Appellant that she needed to update her state application and post it on the Personnel Cabinet website. Ms. Tolan told the Appellant she had already basically been hired but her application needed to be updated to make it official. Once she had updated her application, she emailed a copy to Ms. Tolan who then indicated everything looked fine. [See Appellant's Exhibit 1.] The Appellant's official appointment date was June 9, 2014.

6. Once on the job, Ms. Waldrige would stay late and arrive early. She received praise for the job she was doing and loved her position. She had just started preparing for a huge meeting when on July 30, 2014, around 2:30 p.m., she received an e-mail from Ms. Tolan instructing her to meet with Ms. Steinle, with Human Resources. Shortly thereafter she, Ms. Tolan and Ms. Steinle met at which time Ms. Steinle handed her a short dismissal letter which contained no reason for her termination. [See Appellant's Exhibits 2 and 3.]

7. According to Ms. Waldrige, after receiving her termination letter, Ms. Steinle volunteered "off the record" that the reason she had been terminated was because her stint with the Commonwealth Office of Technology (hereinafter "COT") had been omitted from her updated state application. She told Ms. Waldrige that in order to avoid similar problems in the future and if she ever wanted to be re-employed by the State, she needed to be sure her work at COT was included on her application. The fact the Appellant's stint with COT ended with her termination and was not reflected on her application gave the impression that it had been intentionally omitted. [See Appellant's Exhibit 1.] Ms. Steinle also told her that when working so closely with the Governor's office, there could not be any such discrepancies on an application for employment. According to Ms. Waldrige, following the termination meeting, Ms. Tolan told her "just so she knew" someone had been digging into her file.

8. Ms. Walldridge testified she remembered placing her work with COT on her updated application. She stated that even if for some reason it was left off her application, her stint with COT was certainly contained on her résumé which was attached to her updated application. Ms. Walldridge stated she never intended to leave her COT experience off her application and that had the experience been a negative one then she could understand why its omission would be considered bad. However, she stated her work at COT was not negative and that she had simply been terminated as a non-merit employee after the Democratic administration took over the Governor's office from the former Republican Governor, Ernie Fletcher.

9. Ms. Walldridge testified she was the only African-American in the Race to the Top office and noted there were not many African-Americans in the field of education. She also noted the Council was in the process of hiring an African applicant at the same time she was let go. She indicated that this could be construed as replacing one black token with another. Ms. Walldridge indicated she thought she was eventually replaced by a Caucasian.

10. Ms. Walldridge reflected that she was working at the beauty counter for Walgreens when a customer, who was a secretary in Republican Governor Ernie Fletcher's office, gave her a piece of paper and asked her to call and e-mail a certain person. Ms. Walldridge contacted the person and noted that it was odd because it was not like a real interview, yet she was hired almost immediately with the EPPC assisting with the media and working on the Governor's constituency. While with the EPPC Ms. Walldridge was required to go to every single event and even though she felt like a token, she was fine with it.

11. Later, Ms. Walldridge was moved into the position of Director of Diversity for all of Kentucky. Four days later she was told to go to COT. Initially, she was placed at a desk situated in a hallway that had no phone or computer. Eventually they brought her a computer and told her to help with Human Resources. Later they brought in a Caucasian girl to replace her and her last day with COT was on June 5, 2009.

12. Regarding the discrepancy on her application, Ms. Walldridge noted that the dates she worked for the Fletcher administration (both for the EPPC and COT) were contained thereon, but for reasons unknown, her work with COT was not set forth separately on her updated application. She also pointed out that for reasons unknown, her most recent employment with the University of Kentucky was saved on her application out of order date-wise and shown to be her tenth job. The Appellant acknowledged she may have done something wrong when she updated her application that caused it not to save correctly but she recalled putting her work with COT on the application. She was certain of this because she specifically remembered writing down Jim Barnhart as a reference without a contact telephone number because she was not sure Mr. Barnhart still worked for the state.

13. On cross-examination, Ms. Walldridge testified she did not know that the information connected to her work at COT had not saved on her application until the day she was terminated. She stated she worked for the EPPC and went straight to COT without a break in her state employment. When she was terminated from COT she received a one-sentence termination letter.

14. Ms. Walldridge further admitted she could not produce any witnesses to outright acts of discrimination and only became concerned that it had occurred when Ms. Tolan took it upon herself to inform her someone had been digging into her records.

15. On re-direct, Ms. Walldridge testified she did not experience any discrimination within the Early Childhood Advisory Council itself, but was of the opinion that it must have come from higher up. In the end, Ms. Walldridge testified she could not have been fired due to job performance.

16. The next to testify was **Ms. Terry Tolan**, who has been the Executive Director of the Governor's Office of Early Childhood Advisory Council since July 16, 2011. Ms. Tolan testified that the Appellant was not fired due to her work ethic, etc. Instead it was an at-will dismissal.

17. Ms. Tolan testified that when in the process of hiring the Appellant, she gave Ms. Walldridge four different positions from which to choose. She informed Ms. Walldridge that although she could recommend her for a position, the final decision to hire was not hers. She also told the Appellant to go ahead and update her state employment application on-line. Ms. Tolan received the Appellant's application via e-mail on May 5, 2014. She was not aware of any omission or discrepancy on the application until July 30, 2014. Ms. Tolan testified she did not recall saying anything to the Appellant about someone digging in her file and stated she would never have done so.

18. Ms. Tolan informed that there are currently ten staff members on the Advisory Council, two of which are black. One is an African and the other is an African-American.

19. Ms. Tolan stated that the Appellant was still growing into her job when she was terminated. She noted she had been there less than two months and the job was very challenging. Ms. Walldridge was making progress and Ms. Tolan was not dissatisfied with her work. However, she was a bit concerned with her absenteeism.

20. Ms. Tolan testified she received a call in late July from Larry Bond, the Governor's Chief of Staff, in charge of recommending non-merit employee hires. She was asked to meet him. No reason for the meeting was given. During the meeting, Mr. Bond asked her if the Appellant had falsified her application. Ms. Tolan stated that she had not. However, Mr. Bond indicated that falsifying an application was grounds for termination and that she should go ahead and do that. Immediately following this meeting Ms. Tolan contacted Beth Steinle, who is with Human Resources, and met with her that afternoon. It was at this point she found out there was a problem involving some previous state employment that was not set forth on the Appellant's application. From there, Ms. Tolan simply waited for Ms. Steinle to direct her and that was the end of her involvement in this matter until July 30, 2014, when the termination letter marked as Appellant's Exhibit 3 was delivered to the Appellant.

21. On cross-examination, Ms. Tolan stated she was the Appellant's supervisor. The only résumé from the Appellant she received came from the Governor's office. Ms. Tolan did not notice any gaps in employment on the Appellant's application, but did find that her most recent employment was in a very strange location on the application. Ms. Tolan noted the Appellant's position with COT was a non-merit position. She also noted that her termination from COT was left off the Appellant's application and opined that the omission was significant.

22. Ms. Tolan noted that the Appellant was clearly surprised by her termination. She also verified that Ms. Steinle told the Appellant the reason why she had been terminated so she could avoid making the same mistake in the future. Ms. Tolan testified that Appellant was not terminated due to her race or gender. She also acknowledged that she never emphasized the importance of updating the application and simply told the Appellant it was a requirement for state employment.

23. Ms. Tolan testified that the woman who replaced the Appellant had previously interviewed for a head-start job two weeks before the Appellant's termination. This particular woman continued to interview for the head-start position and was among the two finalists for the job. However, after the Appellant's termination, Ms. Tolan thought she would be a good fit for the new opening. As such, she was given the choice of taking the job with Head-Start or filling the Appellant's vacated position with the Early Childhood Advisory Council.

24. Finally, Ms. Tolan again admitted she thought updating the state employment application was a mere formality and was not critical in any way to the hiring of the Appellant. She also acknowledged that the Appellant's résumé contained her time with COT, but was oddly included within her employment with the EPPC. She stated that her review was cursory and that she did not notice the discrepancy or ask the Appellant any questions about it.

25. On rebuttal, the **Appellant** stated that her application and résumé were printed out at the same time of her “so-called” interview. She also stated that Larry Bond knew her personally and was well aware that she is African-American. She was also certain Ms. Tolan was aware of her work at COT because she remembers telling her Jim Barnhart was her last known supervisor, but could not provide a telephone number for him because she did not know if he was still working for the state. According to Ms. Walldridge her “so-called” interview could be described as informal and was “short and sweet.” In fact, she and Ms. Tolan joked about her being hired back into state government by the same Democratic administration that fired her from her previous Republican administration non-merit employment. Finally, Ms. Walldridge stated she was never given a chance to correct the discrepancy apparently on her application.

26. The Appellant’s rebuttal concluded her case in chief.

27. The next to testify on behalf of the Appellee was **Elizabeth “Beth” Steinle**, who is the Director of Human Resources for the Education and Workforce Development Cabinet. It was Ms. Steinle’s duty to oversee all the personnel functions for the Cabinet. She is also the Cabinet’s Appointing Authority.

28. Ms. Steinle testified that the Appellant’s working title was different from her official title which was Administrative Assistant. She also stated that it was an ungraded, non-merit position funded by the Race to the Top grant.

29. Appellee’s Exhibit 1 was introduced in to the record and is Appellant’s P-1 which indicates she was appointed to the subject position on June 9, 2014. Ms. Steinle testified the Appellant filled out her application on-line and that she did receive the same. She noted the subject position was non-merit. She stated that a résumé is not an official document but that it can be attached to the application. Upon review of Appellant’s Exhibit 1, Ms. Steinle noted that it plainly states at the top of the front page of the application that a résumé is not an official document. [See Appellant’s Exhibit 1, p. 1.] Ms. Steinle went on to state she never received a résumé with Appellant’s application and did not send it to the Governor’s office at any point.

30. Ms. Steinle stated that in late July 2014 she received a call from Ms. Tolan following her meeting with Larry Bond. She was told the meeting centered around a problem with the Appellant’s application. Ms. Tolan came right over to her office with a copy of the Appellant’s personnel file, which included her application. Ms. Steinle looked over the Appellant’s application and confirmed that her stint with COT was not mentioned anywhere thereon. The Appellant’s P-1 demonstrating her appointment with COT was made a part of the record and marked as Appellee’s Exhibit 2. The Appellant’s termination from her employment with COT was made a part of the record and was marked as Appellee’s Exhibit 3.

31. Ms. Steinle testified the subject omission was significant because by not including her stint at COT, which resulted in her termination, it precluded the Appellee from inquiring about the reason for her termination. Ms. Steinle described the omission as being either deceptive or having the appearance of being deceptive. Ms. Steinle agreed it is not uncommon for applications to lack certain information, but when the Appellant signed her application, as stated on page 7 of the same, she certified the information contained thereon was both accurate and complete. [See Appellant's Exhibit 1.] As such, by failing to include her stint with COT there was clearly an omission on the Appellant's application and, whether or not it was intended to be deceptive, it at least had the appearance of being deceptive.

32. Ms. Steinle testified that because the Appellant was a non-merit employee, the Appellee was not required to state the cause of her termination. She noted that after she received her termination letter the Appellant was adamant about having included her COT information on her application; so adamant that Ms. Steinle went back and double checked the application just to be sure. However, as before, the Appellant's stint with COT was not contained upon her application.

33. Ms. Steinle testified in reality, there was always a reason to terminate somebody, but since the Appellant was a non-merit employee, the Appellee was not required to share that information with her. However, after handing her the termination letter, Ms. Steinle went on to tell the Appellant the reason for her termination so that going forward, she would not make the same mistake. In the end, Ms. Steinle stated the Appellant was not terminated due to her race or gender. Rather, she was terminated because there was an omission contained on her application regarding a job from which she was terminated and that such omission constitutes good grounds for her termination.

34. On cross-examination, Ms. Steinle noted the Appellant's application did not require a higher level of scrutiny just because she was to be hired at higher level, non-merit, position. In fact, if anything, the opposite was true because the only requirement for the position was that the Appellant had the experience they were looking for. So her application received less scrutiny than it would have had there been minimum requirements for the job. Ms. Steinle also testified that the fact the Appellant was replaced by an African was just a matter of timing and just the way it worked out. It was not intended to be changing one token for another and had more to do with the new girl's past employment and concern with benefits.

35. This matter is governed by KRS 18A.095(14)(a) which states:

Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board.



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

### **FINDINGS OF FACT**

1. The Appellant, Katrisha Waldrige, was terminated from her non-merit position as an Administrative Assistant with the Early Childhood Advisory Council effective close of business July 30, 2014. [See Appellant's Exhibits 2, 3 and 4.] The Appellant's termination constituted an "at will" employment action and being a non-merit, executive branch employee, the Appellant was not entitled to receive a statement of cause for her termination.

2. The Appellant, an unclassified employee, timely filed her appeal with the Personnel Board on August 28, 2014, claiming she was discriminated against based on her race or gender when she was terminated from her position as an Administrative Assistant with the Early Childhood Advisory Council.

3. The record reflects that the Appellant is an African-American female and that her hiring and interview process in to the position with the Early Childhood Advisory Council was informal at best. The only requirement for such employment was that her application for employment with the Commonwealth of Kentucky be updated and filed with the Personnel Cabinet on-line. Whether or not the Appellant's résumé was attached to her application is irrelevant as the same is not considered an official document. By electronically signing the subject application, the Appellant certified the information contained thereon was not only accurate, but was complete.

4. The record plainly demonstrates that the Appellant was appointed as an Executive Secretary II at the Commonwealth Office of Technology (COT) on October 1, 2008, and was terminated from said position on June 5, 2009. Such information is not contained on her application marked as Appellant's Exhibit 1. [See Appellee's Exhibits 2 and 3.]

5. The omission of the Appellant's stint of employment with COT does not appear to have been deliberate or meant to be an act of deception intended to deprive the Appellant from the opportunity to question her about her termination from the same.

6. The evidence reflects that the Appellant was not given an official reason for her termination. The record does reflect that Ms. Steinle took it upon herself to inform the Appellant of the reason for her termination. The record further reflects that this information was given to the Appellant by Ms. Steinle in an effort to help her going forward and in order to allow the Appellant to avoid making the same mistake in the future.

7. The Appellant admits she experienced no direct or overt discrimination from within the Early Childhood Advisory Council. The Appellant could only intimate that someone higher up the chain discriminated against her on the basis of her race and gender when she was terminated.

8. According to the testimony of Ms. Tolan and Ms. Steinle, the Appellant's former position was filled by an African female due mainly to a simple matter of timing and was not intended to be an act of replacing one token employee for another.

9. Unclassified, non-merit employees may be terminated "at will" for any non-discriminatory reason. Although the Appellant is an African-American who suffered an adverse employment action, there is no evidence demonstrating there was disparate treatment between her and someone outside of her class. There is also no direct or *prima facie* evidence that the Appellant was the victim of discrimination on the basis of her race or gender. Rather, the evidence clearly demonstrates the Appellant was terminated for omitting her stint of employment with COT, from which she was terminated, on her official state employment application and that when working closely with the Governor's office, even the most trivial of mistakes must be taken seriously and cannot be tolerated.

#### **CONCLUSION OF LAW**

The Appellant has failed to offer any evidence, direct or indirect, that her gender or race was the basis for her termination and has failed to demonstrate by a preponderance of the evidence that she was discriminated against when she was terminated from her position as an Administrative Assistant with the Early Childhood Advisory Council.

#### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **KATRISHA WALDRIDGE VS. EDUCATION AND WORKFORCE DEVELOPMENT CABINET (APPEAL NO. 2014-189)** 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 15<sup>th</sup> day of June, 2015.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Rosemary Holbrook  
Katrisha Walldridge