

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NOs. 2015-291 and 2015-292

WALTER IVEY

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

AND

KARLA R. KUHN

INTERVENOR

*** **

The Board, at its regular May 2017 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 31, 2017, 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 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 18th day of May, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Mona Womack
Mr. Walter Ivey
Ms. Karla R. Kuhn
Mr. Jay Klein

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NOS. 2015-291 and 2015-292**

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

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This matter came on for an evidentiary hearing on January 27, 2017, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Geoffrey Greenawalt, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Walter Ivey, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Mona Womack. The Intervenor, Karla R. Kuhn, was present at the evidentiary hearing, and was not represented by legal counsel.

By Interim Order dated March 3, 2016, the two appeals (Appeal No. 2015-291 and Appeal No. 2015-292) were consolidated. By Interim Order dated November 22, 2016, the issues for the evidentiary hearing were the Appellant's claims of discrimination based on race, color, ethnic origin, sex, politics and veteran's status. The burden of proof was upon the Appellant to establish, by a preponderance of the evidence, the existence of the alleged discrimination.

BACKGROUND

1. The Appellant, Walter Ivey, filed Appeal No. 2015-291 with the Personnel Board on November 23, 2015, alleging his application for employment was rejected on the basis of discrimination.

2. The Appellant, Walter Ivey, filed Appeal No. 2015-292 with the Personnel Board on November 23, 2015, alleging his application for employment was rejected on the basis of race, color, ethnic origin, sex and political discrimination.

3. By Interim Order dated August 16, 2016, the Intervenor, Karla R. Kuhn, was made a party to the proceeding.

4. The Appellant, **Walter Ivey**, testified that he holds a Bachelor of Arts degree in Sociology from North Carolina Central and a Bachelor of Science degree in Math from the University of Arizona. He also obtained his Master's degree in Marketing and Human Resource Management from Webster University, and a Master's degree in Statistics and Sociology from Clark University. The Appellant states that he also holds a Ph.D. from Emory in Environmental, Sociology and Statistics.

5. The Appellant testified that his work background included working for the Center for Disease Control (CDC), investigating and trying to determine which groups of people were more susceptible to contracting various diseases. He also worked for the Veterans Administration Hospital, in Admitting, and stated he helped veterans get placed. Finally, he stated he worked with the U.S. Census Bureau as a statistician. He is currently working as a Marketing Representative for Marriott Corporation in Indiana.

6. The Appellant testified he served in the United States Air Force between approximately 1980 and 1984, when he was honorably discharged. According to the Appellant, he had reached the rank of First Lieutenant.

7. On cross-examination, the Appellant admitted he did not know the Intervenor, Karla R. Kuhn. Appellant stated he was aware the Intervenor had obtained her Master's degree from the University of Kentucky, but knew nothing else about her work history, certifications or additional education she may have obtained. The Appellant also admitted he was not present when Ms. Kuhn was interviewed for the subject position. Despite acknowledging he knew nothing about the Intervenor's education, background, etc., and had no way to judge her qualifications, the Appellant insisted he was better qualified than any other candidate for the position or positions he applied for on the basis of his education level.

8. The Appellant appears to be an African American male over the age of 40.

9. The Appellant could not, and did not, provide any credible evidence that he was more qualified than the Intervenor for the position of Resource Management Analyst III. Instead, the Appellant admitted he had no credible evidence by which to prove his allegations of discrimination, or upon which he could compare objectively his qualifications versus those of the Intervenor for the subject position.

10. Upon the closing of the Appellant's case in chief, the Appellee made its motion for a directed verdict. In so doing, the Appellee acknowledged the Appellant had a *prima facie* claim to assert his appeal before the Personnel Board on the basis of discrimination, but failed to present any evidence that he had been discriminated against.

11. The Hearing Officer, having considered the entire administrative record, including the testimony and statements therein, **GRANTED** the Appellee's, Cabinet for Health and Family Services, Motion for Directed Verdict and dismissed the Appellant's appeals.

FINDINGS OF FACT

1. The Appellant, Walter Ivey, an applicant for employment, filed Appeal No. 2015-291 and Appeal No. 2015-292 on November 23, 2015, alleging in each that his application for employment was rejected due to discrimination based on his race, color, ethnic origin, sex, political affiliation (Republican, as stated on his appeal form) and veteran's status.

2. Pursuant to Interim Order dated November 22, 2016, the issue before the Personnel Board was whether the Appellant's application for employment was rejected on the basis of race, color, ethnic origin, sex, politics and veteran's status discrimination.

3. The Hearing Officer finds the Appellant was a member of a protected class of persons. However, there is no credible proof of record that he had been subjected to unequal treatment.

4. The Hearing Officer finds there is no credible evidence of record which demonstrates the Appellant was treated unfairly over another person, according to factors unrelated to his ability or potential.

5. The record consists solely of the Appellant's unsubstantiated allegations and accusations, and is devoid of any credible evidence upon which a comparison of qualifications, background or work history between the Appellant and the Intervenor, or any other applicant for the subject position for that matter, could be made.

CONCLUSIONS OF LAW

1. Upon conclusion of the Appellant's case-in-chief, the Appellee's Motion for Directed Verdict was granted as a matter of law. The record consists only of the Appellant's unsubstantiated opinions, accusations and allegations, and is completely devoid of credible evidence upon which his claims for discrimination on the basis of race, color, ethnic origin, sex, political affiliation and veteran's status could be proven.

2. As such, the Appellant has failed to demonstrate, by a preponderance of the evidence, that he was discriminated against when his application for employment with the Appellee, Cabinet for Health and Family Services, was rejected.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeals of **WALTER IVEY V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NOS. 2015-291 and 2015-292)** be **DISMISSED**, and the Appellee's Motion for a Directed Verdict be **UPHELD**.

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 Greenawalt** this 31st day of March, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Mona Womack
Mr. Walter Ivey
Ms. Karla R. Kuhn