

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NOs. 2017-210 and 2017-240

THOMAS KLATT

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**

AND

PERSONNEL CABINET

APPELLEES

*** **

The Board, at its regular October 2019 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 30, 2019, and being duly advised,

IT IS FURTHER 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 16th day of October, 2019.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:
Hon. Angela Cordery
Hon. Catherine Stevens
Mr. Thomas Klatt
Mr. Rodney Moore

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These matters came on for a pre-hearing conference on February 14 2018, at 10:00 a.m., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Thomas Klatt, was present by telephone and was not represented by legal counsel. The Appellee Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Alex Mattingly. The Appellee Personnel Cabinet was present and represented by the Hon. Catherine Stevens.

The purposes of this pre-hearing conference were to determine the specific penalizations(s) alleged by Appellant, to determine the specific section of KRS 18A which authorizes this appeal, to determine the relief sought by the Appellant, to define the issues, address any other matters relating to this appeal and to discuss the option of mediation.

BACKGROUND

1. The Appellant filed two appeals regarding “applicant rejection” and “removal from register.” The Appellant stated that he applied for a position as a Chaplain at the Kentucky State Penitentiary and was denied. The Appellant has been employed for five years as a Correctional Officer. He has four years experience as an ordained minister and ten years experience as a minister, though not ordained. He served as a Chaplain for Marshall County and

on occasion filled in for the Chaplain at the Kentucky State Penitentiary. At the time of the pre-hearing conference, he believed the Chaplain position was still vacant at the Kentucky State Penitentiary.

2. The dispute in this case is that it is Appellant's contention that he should be allowed to use his Associates degree plus his years of experience to meet the requirements of a bachelor's degree in divinity or theology or related field. The Personnel Cabinet takes the position that an applicant must have at least a bachelor's degree and then use additional experience to substitute for the required education level of a master's degree.

3. The parties agreed that this dispute was well defined and that they could brief this matter rather than hold an evidentiary hearing.

4. The Personnel Cabinet moved to dismiss these appeals. The Cabinet alleged that material facts were not in dispute. After Appellant applied for a position of Chaplain the Personnel Cabinet, through its Division of Career Opportunities, determined that he did not meet the minimum educational qualification for this job classification.

5. In 2017, the Appellant applied twice for the position of Chaplain and on both occasions, the Personnel Cabinet determined he did not meet the minimum qualifications for the Chaplain classification. At that time the specified minimum requirements for the job class of Chaplain were as follows:

Minimum Requirements:

Education:

Graduate of a theological or divinity school with a master's or doctorate degree in divinity, theology or a related field that must include, or be supplemented by, three months of clinical pastoral training.

Experience:

None.

Substitute Education for Experience:

None.

Substitute Experience for Education:

Experience as an ordained minister will substitute for the required education on a year-for-year basis excluding the three months of clinical pastoral training.

The Personnel Cabinet determined that the Appellant did not meet the minimum qualifications for the Chaplain classification on October 12, 2017, and on November 28, 2017. The Cabinet determined that Mr. Klatt did not meet the minimum educational requirement because he did not have a master's or doctorate degree in divinity, theology or a related field.

6. With its motion, the Cabinet included an Affidavit of Earlene Scott Barker, the Assistant Director of the Personnel Cabinet's Division of Career Opportunity. She described the minimum qualifications review process. She noted that the highest level of education the Appellant obtained was an Associate degree. He had not earned a bachelor's degree or a master's degree. She also referenced a long-standing historical interpretation of the Division of Career Opportunities, within the Personnel Cabinet, that experience may substitute only for the required level of education specified in the classification. In other words, "experience as an ordained minister would only be allowed to substitute for the master's degree not the bachelor's degree. In order to substitute experience for education, the Appellant would need to have at least a bachelor's degree, one year's experience as an Ordained Minister, three months of clinical pastoral training and a certificate or ordination or denominational / ecclesiastical approval."

7. In her affidavit, Ms. Barker stated that this interpretation applied to all minimum requirements and not just the Chaplain position. She gave the following example:

- 11) For example, if the primary education on a job specification was high school and the specification had a substitution clause for education, the lowest level of education that would be acceptable is 8th grade; if the primary education is a bachelor's degree, the lowest level of education that would be acceptable is high school/GED; if the primary education is a master's degree, the lowest level of education that would be acceptable is a bachelor's degree.
- 12) The Division of Career Opportunities has consistently interpreted the substitution clause in the same manner for many years.

8. In support of its motion, the Personnel Cabinet cited KRS 18A.110(7)(c) which gives the Personnel Cabinet the discretion to investigate education and experience and use its judgement in determining the relative fitness of applicants for merit positions. The cabinet also argued that its long-standing interpretation of the class specification should be given deference if it is consistent with the law and is not arbitrary or capricious. In fact, the Personnel Cabinet argued that to break from this interpretation would lead to an arbitrary, inconsistent and capricious result.

9. In her affidavit, Ms. Barker pointed out that the class specification changed on December 16, 2017, to indicate that a bachelor's degree would be required going further.

10. In his response to the Personnel Cabinet's motion, the Appellant first requested that he be exempted from the change in the class specification, if it is determined that he met the minimum requirements, at the time of his application. He also asked that if he does not win his appeal, he be reimbursed for expenses he incurred by following the Personnel Cabinet's erroneous published information on their Job Specification Sheet for the position of Chaplain.

11. The Appellant alleged that since 2012 he has been following the job detail sheet posted at the Kentucky State Penitentiary as a checklist to prepare to be qualified as a Chaplain. He stated that in the fall of 2017 when the position became open he was in the process of completing the last stage of his qualification. The Appellant alleged that he was turned down due to secretive interpretations.

12. The Appellant also stated that he missed the certification requirement by twelve days, and was told this disqualified him from the position. He later learned that the individual selected missed this by 52 days and was appointed to the position.

13. The Appellant argues that principals of statutory construction require that words be interpreted as taking their ordinary, contemporary, common meaning. He also alleges that the actions of the Personnel Cabinet violate KRS 13A.130 by modifying a statute or administrative regulation by internal policy. The Appellant argues that a plain reading of the class specification would allow him to substitute his years of experience for additional education beyond his Associates degree. He alleges that nothing in the written materials from the Personnel Cabinet explicitly requires that experience can only be substituted for one level of education.

14. In its reply, the Personnel Cabinet states that the plain language of its substitution clause is consistent with the result in this case. They stated that the substitution clause reads that experience as an ordained minister will substitute for the required education on a year-for-year basis. Thus, the Personnel Cabinet argues that experience can substitute for a master's degree or doctorate but not for a bachelor's degree.

15. Lastly, the Cabinet addresses the Appellant's complaint about the successful candidate completing his clinical pastoral education 52 days after the job was announced. The Personnel Cabinet's position is the successful candidate met the minimum requirements for the position, which only called for a three-month clinical pastoral training component. The successful candidate met this requirement.

FINDINGS OF FACT

1. There are no genuine issues of fact. This appeal can be decided based on the appeal form, the motion to dismiss, response, reply, attachments and statements of the parties at the pre-hearing conference.

2. The Appellant, Thomas Klatt, was a classified employee with status employed as a Correctional Officer. On two occasions in 2017 he applied for positions as a Chaplain and was informed by the Personnel Cabinet that he did not meet the minimum qualifications for the position.

3. It was determined that the Appellant did not meet the minimum educational requirement for Chaplain because he did not have a “master’s or doctorate degree in divinity, theology or related field ...”

4. The Appellant had an associate’s degree but had not attained a bachelor’s degree or a master’s degree.

5. The job specification for the Chaplain position includes a provision that “experience as an ordained minister will substitute for the required education on a year-for-year basis ...”

6. The Personnel Cabinet has long held that experience may only substitute for the required level of education specified in the classification. Thus, experience could substitute for a master’s degree if an individual had a bachelor’s degree. The Appellant with only an associate’s degree could not include years of experience to meet the education requirement.

7. The Personnel Cabinet’s application of the language in the Job Class Specification for Chaplain did not constitute a “secret interpretation.”

8. The successful candidate for the Chaplain position meet all the requirements of the job class specification.

CONCLUSIONS OF LAW

1. Pursuant to KRS 18A.110(7)(c) Personnel Cabinet determines whether individuals meet the minimum qualifications for various job classifications. In performing this function, the Personnel Cabinet is “free to use any investigation of education and experience and any test of capacity, knowledge, manual skill, character, personal traits, or physical fitness,

which in its judgement, serves the need to discover the relative fitness of applicants.”

2. The Personnel Cabinet’s determination that the language in its class specification allows for experience to substitute for a required level of education but not a lower of education is a reasonable determination given its statutory authority. The Personnel Cabinet’s interpretation is consistent with the statute and is not arbitrary or capricious. *Commonwealth, Cabinet for Health Services vs Family Home Health Care Inc.*, 98 S.W.3d 524, 527 (Ky. App. 2003).

3. There are no genuine issues of material fact in dispute in this appeal and judgement is appropriate as a Matter of law [KRS 13B.090(2).]

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **THOMAS KLATT VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS AND PERSONNEL CABINET (APPEAL NOS. 2017-210 AND 2017-240)** 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).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each Party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer Mark A. Sipek** this 30th day of August, 2019.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Angela Cordery
Hon. Catherine Stevens
Mr. Thomas Klatt