COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-045

MEGAN F. MAYNARD **APPELLANT**

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

FINANCE AND ADMINISTRATION CABINET **APPELLEE**

* * * * * * * *

The Board, at its regular July 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated June 9, 2016, Appellant's Motion to Seal, Appellee's Response to Appellant's Motion to Seal and being duly advised,

IT IS HEREBY ORDERED that the Appellant's Motion to Seal is **DENIED** pursuant to KRS 18A.095(27).

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

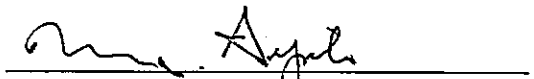
A. **Delete** Conclusions of Law paragraph 3.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as altered, be and they hereby are approved, adopted and incorporated herein by reference as a part of this Order and that the Appellant's appeal is **DISMISSED**.

The parties shall take notice that is Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 13th day of July, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
SECRETARY

A copy hereof this day mailed to:

Hon. Stephen G. Dickerson
Hon. Katherine Fitzpatrick
Ms. Megan F. Maynard
Ms. Honor Barker

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-045

MEGAN F. MAYNARD **APPELLANT**

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

FINANCE AND ADMINISTRATION CABINET **APPELLEE**

** ** ** ** **

This matter came on for an evidentiary hearing on March 7, 2016, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Geoffrey B. Greenawalt, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Megan F. Maynard, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Finance and Administration Cabinet, was present and represented by the Hon. Stephen Dickerson and the Hon. Katherine Fitzpatrick.

As noted in the pre-hearing Interim Order dated January 6, 2016, the issue at the evidentiary hearing was whether or not the Appellant was discriminated against or harassed during her employment with the Appellee. The burden of proof was upon the Appellant to demonstrate by a preponderance of the evidence the existence of discrimination and/or harassment.

BACKGROUND

1. The Appellant, Megan F. Maynard, filed her appeal with the Personnel Board on March 10, 2015, alleging harassment and a hostile work environment.

2. The first witness to testify was **Mr. Scott Parritt**, who testified he is employed as a Human Resources Administrator. Mr. Parritt testified he was made aware by Megan Maynard that she had been harassed at her workplace. Specifically, according to the Appellant, her Branch Manager and immediate supervisor, Barbara Beward, called her a whore and a prostitute and questioned whether the Appellant's expectant baby was Mr. Parritt's.

3. Mr. Parritt testified the typical process for dealing with harassment would be to take it to the Executive Director. If harassment is actually found, the harasser

would typically be suspended or transferred. In this instance, Mr. Parritt went to Executive Director, Troy Robinson and told him people were asking Ms. Maynard if her baby was Mr. Parritt's. Mr. Robinson told Mr. Parritt to just "let it go" and did nothing about it.

4. Mr. Parritt also testified that Honor Barker, who had been promoted by Mr. Robinson to Executive Director, once called him into her office and told him that Barbara Beward had a problem with him visiting the Appellant during the workday. According to Mr. Parritt, this was not a surprise, and he told Ms. Barker that Beward had gone so far as to question the paternity of Ms. Maynard's baby. Mr. Parritt also testified about a trip he took to Pikeville with Ms. Barker, at which time he was told that Ms. Beward had a problem with he and the Appellant walking together during work. According to Mr. Parritt, nothing was ever done about the alleged harassment of the Appellant by Human Resources. In addition, Mr. Parritt also told Paula Weglarz with the Office of EEO everything, including that Barbara Beward allegedly called the Appellant a whore for not having her wedding band on. Mr. Parritt also testified that Yvette Smith called him shortly after speaking with Ms. Weglarz and asked if he had anything he wanted to say about the conversation he had had with Ms. Weglarz. Mr. Parritt told her to call the Appellant.

5. Mr. Parritt believed he had been harassed during the course of his suspension (for improperly pulling the applications of all the candidates seeking a promotion to a position for which Ms. Maynard also (unsuccessfully) applied for). Mr. Parritt's suspension letter alleged he had pulled these applications improperly because he had a "close friend" with someone in the Finance and Administration Cabinet which resulted in his "personal gain". The close friend alluded to was Ms. Maynard. Specifically, Mr. Parritt complained that during a pre-hearing conference held during his suspension appeal at the Personnel Board, Cary Bishop, the attorney representing the Finance Cabinet, asked Mr. Parritt to admit he and the Appellant were in a dating boyfriend-girlfriend sexual relationship, and further stated that if Mr. Parritt would not so admit, he intended to prove it during the actual hearing. Mr. Parritt then contacted Yvette Smith because he felt Mr. Bishop's comments were made in order to harass him into settling his appeal. Apparently this caused Ms. Smith to seek the guidance of Singer Buchanan, the State EEO Coordinator, who advised her that since the statement was made during the course of Mr. Parritt's appeal, there was nothing they could do about it.

6. On cross-examination, Mr. Parritt stated that all this harassing activity began after he and Ms. Maynard started walking, going to lunch and spending breaks together during the workday. He also often visited Ms. Maynard's work cubicle during the workday.

7. The next witness to testify was the **Appellant, Megan F. Maynard**. Ms. Maynard introduced Appellant's Exhibit 1 into the record, the Policy Statement on Harassment Prevention and Finance and Administration Cabinet's Standard Procedure #3.3, Sexual Harassment. The point Ms. Maynard wanted to make was that according to the Cabinet's policy, any supervisor receiving a complaint on harassment was to report the same to the EEO and the complaint was to be promptly investigated. According to Procedure #3.3, the law does not prohibit simple teasing, offhand comments, or isolated incidents that are not very serious. However, harassment is illegal when it is so frequent or severe that it creates a hostile or offensive work environment, or when it results in an adverse employment decision (such as the victim being fired or demoted). The policy lists examples of sexual harassment as including, but not limited to, commenting about a person's personal romantic relationships, spreading rumors about a person's personal relationships, making sexually charged jokes or innuendos, and/or making offensive remarks about a person's sex, sexual orientation or gender identity.

8. According to Ms. Maynard, her harassment began in October and November 2012, about the time she and Scott Parritt began walking together during work breaks. At that point, Mr. Parritt worked at the Finance Cabinet in Human Resources and his workstation was located across the hall from Ms. Maynard, who at the time, was employed by the Finance Cabinet as an Administrative Specialist III.

9. Appellant's Exhibit 2 was introduced into the record, and is an email Ms. Maynard sent to her immediate supervisor, Barbara Beward, on February 26, 2014, complaining about certain comments that had been made by Ms. Beward and other perceived or alleged offenses and requesting that she discontinue the same. Ms. Maynard also threatened to report the incidents to EEO if the comments, etc., did not stop. Ms. Maynard also advised Ms. Beward to keep the contents of the email between themselves. According to Ms. Maynard, Ms. Beward did not respond to the email, but from that date forward she did not make any other offensive comments to her.

10. Appellant's Exhibit 3 was introduced into the record, and is an email communication regarding the appropriate protocol for a third party potential EEO complaint made outside the scope of work. Ms. Maynard admitted that, when asked by Yvette Smith if she was being harassed at work, she told her she was not being harassed because by this time, Ms. Beward had stopped her previous offensive conduct. Appellant's Exhibit 4 was introduced into the record and is a copy of Scott Parritt's Personnel Board Appeal filed in connection with his seven-day suspension from duty and pay (for improperly pulling applications). The point Ms. Maynard wanted to make was that she found the allegations that Mr. Parritt inappropriately used his access as a

Human Resources professional to help a "close friend" (Ms. Maynard) for "personal gain" to be offensive. According to Ms. Maynard, this is when the harassment began again. The only difference was that rather than coming from her own supervisor, the harassment was now coming from the Office of Human Resources.

11. Appellant's Exhibit 5 was introduced into the record and is a compilation of emails concerning the comments made by Cary Bishop during Mr. Parritt's Personnel Board pre-hearing conference. Appellant's Exhibit 6 was introduced into the record, and was Ms. Maynard's attempt to inform Geri Grisby, the Executive Director of the Office of General Counsel, of Mr. Bishop's conduct during Mr. Parritt's Personnel Board pre-hearing conference. Appellant's Exhibit 7 was introduced into the record and is further email communication from Ms. Maynard to Dinah Bevington regarding Ms. Maynard's alleged discomfort with Troy Robinson having or carrying a concealed weapon while at work. According to Ms. Maynard, she felt threatened by Mr. Robinson. Appellant's Exhibit 8 was introduced into the record and is an email from Ms. Maynard to Dinah Bevington, informing Ms. Bevington that Maynard had transferred to the Transportation Cabinet.

12. Appellant's Exhibit 9 was introduced into the record over the Finance and Administration Cabinet's objection. This particular email contained Ms. Maynard's reasoning for feeling retaliated against through her 2014 Job Performance Evaluation.

13. Appellant's Exhibit 10 was introduced into the record and is a copy of the Finance and Administration Cabinet's Summary of Investigative Findings into Allegations of Harassment and Hostile Work Environment made by the Appellant. It should be noted that the investigation and report was made by the Personnel Cabinet's Office of Diversity and Equality rather than the Finance Cabinet's Human Resources department, in an effort to remain impartial. The report speaks for itself with regard to Ms. Beward, and finds that she was aware the Appellant's coworkers were discussing the Appellant's relationship with Scott Parritt, including the paternity of her child, that Ms. Beward had also discussed Mr. Parritt and the Appellant's relationship in the workplace, and that there was a lot of conversation among the Appellant's coworkers, including Ms. Beward, regarding the paternity of Ms. Maynard's child. It further found that Ms. Beward did not take any action to stop the employees from discussing the Appellant and Mr. Parritt's relationship in the workplace. Rather, the only action she took was to caution the Appellant about her relationship with Mr. Parritt. In essence, the report concludes that management had been made aware of alleged harassment and hostile work environment and did little or nothing to follow-up.

14. Appellant's Exhibit 11 was introduced into the record and is a class roster for Mandated Sexual Harassment and Anti-Harassment Training conducted on October

6, 2015. Appellant's Exhibit 12 was introduced into the record and is a copy of the EEO Complaint made by Cary Bishop against the Appellant.

15. Appellant's Exhibit 13 was introduced into the record and is a copy of the Finance and Administration Cabinet's EEO Investigation Report involving alleged inappropriate behavior and/or sexual harassment. Much of this report is redacted, and only touches on the Appellant's current appeal. On page 8 of the report, it appears that "As an executive, manager and supervisor, [redacted] failed to exercise due diligence by notifying the Office of EEO and Contract Compliance about a potential EEO issue" involving the Appellant. Again, these conclusions only have to do with a supervisor's alleged failure to properly report certain allegations which appear to have been made in connection with Appellant's pregnancy. It does not shed light on whether the Appellant was actually discriminated against or sexually harassed.

16. Appellant's Exhibit 14 was introduced into the record and is the Appellant's response to Yvette Smith regarding the Finance and Administration Cabinet's investigation marked as Appellant's Exhibit 13. Appellant's Exhibit 15 was introduced into the record and is a letter that has to do with an Open Records Request made by the Appellant.

17. The conclusion of Ms. Maynard's testimony marked the end of the Appellant's case-in-chief. Upon said conclusion, the Appellee moved for a directed verdict, which motion was taken under consideration by the Hearing Officer.

18. The first to testify on behalf of the Appellee was **Mr. Singer Buchanan**. Mr. Buchanan is with the Personnel Cabinet and is the state EEO Coordinator. Mr. Buchanan testified he is familiar with the facts of Ms. Maynard's allegations. Mr. Buchanan testified he had been contacted to assist with an investigation at the same time the Appellant was being considered for a position within the Office of EEO (Yvette Smith's office). Mr. Buchanan met with the Appellant and went over the facts of the case on May 4 - 8, 2015. At that time, the present appeal was already before the Personnel Board. Ms. Maynard's allegations involved a lot of people within the Finance and Administration Cabinet's Office of Human Resources, Administration and Fleet Management, and involved a potentially pervasive hostile work environment within the Cabinet.

19. While performing the investigation, the Office of the EEO was attempting to focus only upon the incidents related to the Appellant's allegations and any information regarding other potential offenses were to be noted and turned over to the Finance and Administration Cabinet for further investigation, if necessary.

20. Mr. Buchanan testified that he relied upon the Appellant for a list of names that would help him in the investigation. He took statements from these people, and looked to see whether or not any of the allegations could be substantiated. According to Mr. Buchanan, the Office of EEO acted only as fact finders, and was attempting to be unbiased.

21. Mr. Buchanan noted that Ms. Maynard's email to Ms. Beward, marked as Appellant's Exhibit 2, instructed Ms. Beward to keep the email confidential, but oddly, the Appellant continued to complain that Ms. Beward failed to report these incidents up the line. Mr. Buchanan testified that no one was able to corroborate the Appellant's allegations, and that most of what they heard came directly from the Appellant.

22. During his investigation, Mr. Buchanan also spoke with Scott Parritt. Mr. Parritt was obviously protective of Appellant, and believed the Appellant had been mistreated. However, since he was under a confidentiality agreement with the Finance and Administration Cabinet, he could not comment further.

23. Mr. Buchanan testified he heard Mr. Parritt and Ms. Maynard spent a lot of time together and had a close personal relationship. He also heard that both of their immediate supervisors had concerns about the amount of time they were spending together. According to Mr. Buchanan, he believed it was an area those supervisors could have handled better, and that Sandy Bain, Mr. Parritt's immediate supervisor, and Barbara Beward, the Appellant's immediate supervisor, chose to be nice rather than formally following up on any potential problems.

24. The allegations involving the actions of Barbara Beward contained in Complaint One, starting on page 4 of the report, stopped after Ms. Beward received the Appellant's email dated February 26, 2014, and marked as Appellant's Exhibit 2. Mr. Buchanan sensed that Barbara Beward was being maternalistic and was trying to help the Appellant with regard to her relationship with Mr. Parritt (and the perception thereof), but the Appellant did not feel the same way or invite the help.

25. Complaint Two, beginning on page 8 of the report marked as Appellant's Exhibit 10, involved the allegation that in June 2013, Ms. Bain overheard a portion of the Appellant's telephone conversation she was having with Mr. Parritt and told her to "tell Scott I said hello" in passing. The Appellant believed Ms. Bain was ease-dropping on her conversation, but Mr. Buchanan was of the opinion that the comment was not meant to be harassing or hostile. Ms. Bain emailed the Appellant the following day and apologized for her comment and indicated she did not intend to hurt anyone. Mr. Buchanan did not believe the occurrence constituted a hostile work environment or harassment because it was an isolated incident and that, by definition, a hostile work

environment required a number of incidents to occur over a period of time in which a reasonable person would be offended by.

26. Complaint Three, beginning on page 10 of the report marked as Appellant's Exhibit 10, had to do with the comments made by the attorney for the Finance and Administration Cabinet, Cary Bishop, during Scott Parritt's Personnel Board appeal. As a non-attorney, Mr. Buchanan thought the commentary was a bit much, but when considering his role as an attorney, it was apparent these types of comments and questions were allowed.

27. Complaint Four, beginning on page 17 of the report marked as Appellant's Exhibit 10, had only to do with Troy Robinson and Scott Parritt, and had nothing to do with the Appellant. Also, everyone interviewed (with the exception of Mr. Parritt) denied witnessing the incident. Complaint Five, beginning on page 19 of the report marked as Appellant's Exhibit 10, dealt with allegations made against Troy Robinson and had nothing to do with actions made or taken against the Appellant. In addition, according to Mr. Buchanan, these allegations were too general, and everyone interviewed denied anything like that occurred.

28. Complaint Six, set forth on page 23 of the report marked as Appellant's Exhibit 10, had to do with a general allegation that individuals in positions of authority failed to take action to address the Appellant's concerns regarding a hostile work environment. Again, Mr. Buchanan found that Ms. Beward admitted she did not take any action to stop commentary being made within the Cabinet between November 2012 and July 2013. In addition, the Appellant's general allegation that "other people were talking about her" came with no names and, as such, could not be verified.

29. According to Mr. Buchanan, the Appellant made an EEO Complaint in April 2015, some two years after the alleged harassing comments had been made by Ms. Beward. According to Mr. Buchanan, other than the comments made by Barbara Beward in 2013, he could find no other incident that would rise to the level of harassment or a hostile work environment.

30. The next witness to testify was **Colene Elridge**, who is in the Personnel Cabinet's Office of Diversity and Equality. Ms. Elridge has investigated harassment claims for over 10 years, and was familiar with the Appellant's incident.

31. Ms. Elridge was the co-author, along with Singer Buchanan, of the Summary of Investigative Findings into Allegations of Harassment and Hostile Work Environment marked as Appellant's Exhibit 10. According to Ms. Elridge, she was

tasked with fact finding based on the Appellant's Complaint. She was not tasked with concluding whether harassment or a hostile work environment existed.

32. Ms. Elridge testified she teaches harassment and hostile work environment classes two times per month per state and federal law. According to Ms. Elridge, a hostile work environment must involve incidents which are severe or pervasive based upon a reasonable person's standard. Ms. Elridge stated that her own personal thoughts were, in this instance, there was no evidence of a hostile work environment or harassment. Further, the offending behavior stopped after Ms. Barbara Beward received the Appellant's email marked as Appellant's Exhibit 2.

33. The next witness to testify was **Yvette Smith**, who is the Executive Director of the Finance and Administration Cabinet's Office of EEO and Contract Compliance. Ms. Smith was very aware of Ms. Maynard's allegations. Ms. Smith testified she only skimmed the report marked as Appellant's Exhibit 10, but it indicated to her that none of the Appellant's allegations could be substantiated.

34. Ms. Smith testified that on April 25, 2014, she was informed by Paula Weglarz about a chance meeting Ms. Weglarz had with Scott Parritt at a local hardware store. During that chance meeting, Mr. Parritt told Ms. Weglarz that the Appellant was being harassed at work. Apparently Ms. Weglarz immediately reported the same to Ms. Smith who in turn immediately called Arthur Lucas and Singer Buchanan for advice on how to handle this third party meeting which occurred after hours. Mr. Lucas, the Executive Director of the Personnel Cabinet's Office of Diversity and Equality, instructed Ms. Smith to look into the situation, so she spoke with Scott Parritt and the Appellant. The Appellant told her she was not being harassed, and that there were no ongoing problems. Ms. Smith advised the Appellant to call her if anything changed. The emails marked as Appellant's Exhibit 3 were written to the file.

35. According to Ms. Smith, everything remained quiet until after Scott Parritt's Personnel Board pre-hearing conference had been held. Ms. Smith called Singer Buchanan, who advised her that the Personnel Board was the proper place to address this particular situation.

36. When Ms. Smith spoke to Scott Parritt about the situation, she was told there was something hurting the Appellant to her soul or "eating up her soul," and that she was obsessed with it. However, Ms. Smith never received any indication from the Personnel Cabinet that Appellant's complaints could be substantiated.

37. The next to testify was the **Appellant, Megan F. Maynard**, who appeared on re-call. Appellee's Exhibit 1, which is the same as Appellant's Exhibit 2, was

introduced into the record. According to Ms. Maynard, all Barbara Beward said about her relationship with Mr. Parritt was that it did not look good to hang out with him. Ms. Maynard admitted to the following timeline: that comments made about her paternity began in November 2012; the comment involving her not wearing her wedding ring was made on January 29, 2014; the comment made by Ms. Beward that it looked like the Appellant was hanging out to be picked up was made on January 30, 2014; and her email to Barbara Beward asking her to stop making her offensive remarks was sent on February 24, 2014. According to Ms. Maynard, everything having to do with harassment or a hostile work environment stopped with Barbara Beward at that juncture and did not start up again until Scott Parritt's Personnel Board appeal incident with Cary Bishop occurred. Appellee's Exhibit 2 was introduced into the record, and is the same as Appellant's Exhibit 3. Appellee's Exhibit 3 was introduced into the record, and is the letter from Yvette Smith regarding Ms. Maynard's potential EEO complaint. According to Ms. Maynard, she did not follow up on this complaint, because Cary Bishop withdrew from Scott Parritt's Personnel Board appeal and did not use the offensive interrogatories in her own pre-selection appeal.

38. Ms. Maynard admitted that in November 2014, Scott Parritt filed his Personnel Board appeal, and was subsequently transferred to Fleet in January, 2015. The Appellant believed Troy Robinson was behind the transfer. Appellee's Exhibit 4 was introduced into the record, and is the same as Appellant's Exhibit 6. Appellee's Exhibit 5 was introduced into the record, and explains why the Finance and Administration Cabinet felt it was best that the Personnel Cabinet handle the Appellant's sexual harassment complaint. Again, it should be noted that this EEO Complaint had to do with Cary Bishop's remark in Scott Parritt's Personnel Board appeal, and had nothing to do the alleged harassing comments made by Barbara Beward.

39. On March 10, 2015, the Appellant filed her appeal. Appellee's Exhibit 6 was introduced into the record, and is a copy of an email from Ms. Maynard to Honor Barker.

40. Appellee's Exhibit 7 was introduced into the record, and is the Appellant's rehash of both perceived and alleged harassment against her and Scott Parritt, addressed to Dinah Bevington, the Executive Director for the Personnel Cabinet Office of Legal Services. According to Ms. Maynard, she wanted to know what the Finance Cabinet was doing to protect Troy Robinson.

41. Appellee's Exhibit 8 was introduced into the record, and constitutes the entirety of the Appellant's evidence that she had been retaliated against in the form of a lower Performance Evaluation rating. Appellee's Exhibit 9 was introduced into the

record, and is a copy of an email from the Appellant to former Secretary Mary Lassiter. Appellee's Exhibit 10 was introduced into the record, and is a copy of documentation presented to Yvette Smith by the Appellant, demonstrating that Stacy Perry was parking in Troy Robinson's reserved parking spot. The telephone records, marked and entered as Appellee's Exhibit 11, allegedly demonstrate that Troy Robinson made various telephone calls to female coworkers. According to the Appellant, she intended to send these records to Troy Robinson's wife to get back at him for instructing Cary Bishop to raise the issue about the nature of the Appellant's relationship with Scott Parritt during Scott Parritt's Personnel Board suspension appeal. Appellee's Exhibit 12 was introduced into the record. It should be noted that within this email, the Appellant admits that the Appellant's present appeal before the Personnel Board would not have been prosecuted had Cary Bishop not been instructed to bring her into Scott Parritt's Personnel Board appeal, in an effort to slander her.

42. Appellee's Exhibit 13 was introduced into the record, and is a copy of a Facebook post made on current Governor Bevin's Facebook account by the Appellant. Finally, Appellee's Exhibit 14 was introduced into the record, and is Ms. Maynard's response to Cary Bishop's EEO Complaint.

43. The Appellant has alleged the Appellee violated Finance and Administration Cabinet's Standard Procedure #3.3, Sexual Harassment. As defined by Procedure #3.3: "'Discrimination' means unequal treatment of a class of persons. Further, discrimination involves treating one (1) person unfairly over another according to factors unrelated to his/her ability or potential."

44. As defined by Finance and Administration Cabinet's Standard Procedure #3.3, a "'Hostile Work Environment' means any discriminatory actions, communications or conduct that are 'so severe or pervasive, that it creates a work environment that a reasonable person would consider intimidating, hostile or abusive.'"

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

FINDINGS OF FACT

1. The Appellant, Megan F. Maynard, a classified employee with status, filed her appeal with the Personnel Board on March 10, 2015, appealing from the penalization alleged to be harassment and a hostile work environment.

2. Pursuant to Interim Order dated January 6, 2016, the issue before the Personnel Board was whether or not the Appellant was discriminated against or harassed during her employment with the Appellee.

3. There is no evidence of record demonstrating the Appellant was a member of a class of persons that was subjected to unequal treatment.

4. There is no evidence of record demonstrating the Appellant was a victim of an adverse employment action.

5. There is no evidence of record demonstrating the Appellant was treated unfairly over another person, according to factors unrelated to her ability or potential.

6. The record, including the Appellant's own testimony and exhibits, establishes the Appellant suffered from three instances or occurrences which constitute examples of sexual harassment not to be tolerated within the workplace as defined by Finance and Administration Cabinet's Standard Procedure #3.3. These instances or occurrences were isolated and each involves the actions of the Appellant's immediate supervisor, Barbara Beward. These three instances are specifically addressed in the Appellant's email to Barbara Beward dated February 26, 2014, and marked as Appellant's Exhibit 2. These specific instances are also succinctly set forth in Complaint One found in the Summary of Investigative Findings into Allegations of Harassment and Hostile Work Environment, performed by the Personnel Cabinet's Office of Diversity and Equality, and marked as Appellant's Exhibit 10. Specifically, on or about April or May 2013, Ms. Beward told the Appellant that her coworkers were questioning the paternity of her unborn child, and asked Ms. Maynard if the child belonged to Scott Parritt. Ms. Beward appears to have been guilty of participating in the same type conversations. On or about January 29, 2014, Ms. Beward asked Appellant where her wedding ring and engagement ring were, and after being told they were being cleaned, she laughed and told Appellant that she did not want to look like a whore walking around without her rings on. On January 30, 2014, while standing in a hallway and speaking with Stacy Perry, Ms. Beward walked out of the bathroom, and not realizing the Appellant was talking to Stacy, told her "I thought you were just standing at the doorway waiting to get picked up."

7. The Appellant directly confronted Barbara Beward about her offending behavior in her February 26, 2014 email marked as Appellant's Exhibit 2 and warned Ms. Beward that if her behavior continued she would be filing an EEO complaint against her. The Appellant also instructed Ms. Beward, to keep the contents of her email between themselves. The said email had the desired effect because from that date forward the Appellant did not experience any further difficulties with Ms. Beward.

8. The Appellant seems to have taken offense to the language contained in the letter of suspension addressed to Scott Parritt (marked as Appellant's Exhibit 4) and the tact used by Cary Bishop during Mr. Parritt's Personnel Board appeal. However, there is no probative or competent evidence of record demonstrating that Mr. Bishop's actions constitute any form of harassment intentionally or unintentionally directed toward the Appellant.

CONCLUSIONS OF LAW

1. The Appellant, Megan F. Maynard, timely filed her appeal with the Personnel Board on March 10, 2015, alleging "Other Penalization," specifically: "Harassment and Hostile Work Environment."

2. The Appellant has failed to demonstrate by a preponderance of the evidence that she was discriminated against, retaliated against, harassed or forced to work in a hostile environment as defined by Finance and Administration Cabinet's Standard Procedure #3.3 or any other known legal authority. The record plainly reflects that any actual offensive behavior directed toward the Appellant involved communications which were isolated and not so severe or pervasive that they created a work environment that a reasonable person would consider intimidating, hostile or abusive. In addition, these offending communications clearly ceased to occur after February 26, 2014.

3. The impression left upon the undersigned is that the Appellant was far more concerned with shining a light upon what she believed to be a cover up of sorts and enacting revenge upon Troy Robinson for his perceived involvement with Scott Parritt's suspension and subsequent transfer than she was about clearing her name or seeking actual damages. By utilizing the Personnel Board as her forum in which to do so, the Appellant's appeal borders on the abuse of process.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **MEGAN F. MAYNARD V. FINANCE AND ADMINISTRATION CABINET, (APPEAL NO. 2015-045)** 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 9th day of June, 2016.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Stephen G. Dickerson
Hon. Katherine Fitzpatrick
Ms. Megan F. Maynard