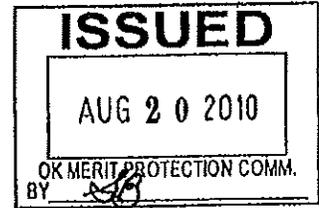


OKLAHOMA MERIT PROTECTION COMMISSION

STATE OF OKLAHOMA

JUDY CAVNAR, )  
 )  
 APPELLANT, )  
 )  
 v. )  
 )  
 OKLAHOMA STATE DEPARTMENT )  
 OF HEALTH, )  
 )  
 APPELLEE. )  
 )  
 OFFICE OF PERSONNEL )  
 MANAGEMENT, )  
 )  
 INTERVENOR. )

CASE NO. MPC-08-138



**FINAL ORDER**

Hearing on this matter was held April 16 and May 19, 2010, before the duly appointed, undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. Present at the hearing was Appellant who was represented by legal counsel, Jarod Morris. Present for the State Department of Health (hereinafter "Department" or "Appellee") was Blake Bostick, Office of the General Counsel. Also present was table representative for Appellee, Mendy Spohn. Present on behalf of Intervenor, Office of Personnel Management ("OPM"), was General Counsel Kara Smith.

Appellant is a permanent classified employee alleging that an improper salary inequity exists within her job classification and that she has been discriminated against based on her age. Appellant is requesting a salary increase and promotion from her current position of Health Educator II to the position of Health Educator III.

At the beginning of the hearing, the parties were given an opportunity to present legal arguments regarding a Motion in Limine filed by Appellee on April 12, 2010.<sup>1</sup> After hearing all arguments, the undersigned held that the testimony to be introduced by Appellant and objected to by Appellee in its motion would not be allowed.

Thereafter, sworn testimony of witnesses for Appellant and Appellee was presented along with exhibits, which were admitted and are incorporated herein and made a part hereof. At the conclusion of the hearing, Appellant and Appellee were instructed to submit written closing arguments and legal authority regarding Appellant's burden of proof.

In addition, Appellant was instructed to address allegations by Appellant that certain witnesses had violated the Rule of Sequestration invoked by the Court on the first day of hearing. Thereafter on May 21, 2010, Appellant filed a Motion for Sanctions to which Appellee responded on June 1, 2010. A hearing on the motion was scheduled for June 30, 2010, and then continued at Appellant's request. Before that hearing was held, Appellant filed a Motion to Withdraw the Motion for Sanctions on July 27, 2010. The undersigned received written notice that Appellee had no objection to the withdrawal of the motion and after review of all documents pertaining to the motion, the undersigned granted Appellant's motion to withdraw and closed the record on August 9, 2010.<sup>2</sup>

Accordingly, after careful consideration of all evidence, testimony, and exhibits, the undersigned Administrative Law Judge issues the following findings of fact, conclusions of law, and order.

## **FINDINGS OF FACT**

### **I. THE HEARING**

Appellant is a Health Educator II ("HE II") working in the Carter County Health Department. On January 9, 2008, Appellant filed a grievance with the Department claiming that she was being paid less than recently hired Health Educators with less or the same credentials. Appellant also alleged age discrimination by her supervisor, Mendy Spohn. The Appellant's requested remedies were all denied, and she appealed that

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<sup>1</sup> Appellant and Intervenor filed a response to Appellee's motion.

<sup>2</sup> Appellant's Motion for Sanctions requested certain testimony taken at the hearing be stricken from the record and not considered by the Court therefore the record was held open until a decision on that motion was made by the Court.

determination to the Oklahoma Merit Protection Commission. That appeal ultimately resulted in this hearing.

In 2000, Mendy Spohn became Appellant's immediate supervisor. At that time Ms. Spohn was approximately 25 years old and Appellant was 49 years old. Appellant's previous two supervisors had been Ron Roberts (age 65), and Sandy Butler (age 59).

Appellant asserts it is the intent of Supervisor Spohn to not hire older people. Appellant believes Supervisor Spohn interacts differently with different employees and speaks in a harsh and derogatory manner with older employees.

According to Appellant's calculations, there had been 33 employees hired since Ms. Spohn became supervisor and 24 of those employees had been under the age of 40.<sup>3</sup> Supervisor Spohn testified that since she became the Administrative Director, she had hired, promoted, or laterally transferred 71 people, 42 of whom were over the age of 40. Neither Appellant nor Supervisor Spohn provided documentation to support their data.

Appellant did however admit a document listing 30 Health Educators in various counties in the state along with their salaries (Appellant's Exhibit 4). There were six individuals on this list who made a salary higher than Appellant's salary and three of those six were Health Educators III's ("HE III").<sup>4</sup> The remaining three on the list were HE II's one of whom was the Appellant's age. The other two HE II's whose salaries were greater than Appellant's were Ms. McGehee (age 30) and Ms. Green-Gilbert (age 41).<sup>5</sup> Neither Ms. McGehee nor Ms. Green-Gilbert were hired by Supervisor Spohn or supervised by Supervisor Spohn and both worked in the Pottawatomie County Health Department. The Appellant works in Carter County and acknowledges that there is no HE II in Carter County making a salary larger than her salary.

In support of Appellant's assertion that Supervisor Spohn discriminates against older people, Appellant presented six employees who testified as to their interaction with, and observation of, Supervisor Spohn.

Anna Jolene Walker is a Women's Health Nurse Practitioner and only sees Supervisor Spohn two or three times a month. When Ms. Walker would see Supervisor

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<sup>3</sup> Appellant's figures are from 2007.

<sup>4</sup> HE III's make a higher salary than HE II's.

<sup>5</sup> There was another employee mentioned named Amy Nelson however there was insufficient testimony offered regarding her status.

Spohn, Ms. Walker thought Supervisor Spohn would ignore her unless she [Supervisor Spohn] wanted to talk to her. Ms. Walker stated Supervisor Spohn had once called her a liar and was generally disrespectful to her. Ms. Walker thought Supervisor Spohn favored younger employees but did not give any examples of how that favoritism manifested itself in promotions or salary increases. Ms. Walker is not under Supervisor Spohn's direct supervision.

Theresa Testerman retired from the Department in November 2008. Ms. Testerman had been the supervising nurse in Ardmore and Healdton, Oklahoma, before her retirement. In November 2005, Supervisor Spohn asked Ms. Testerman to go to the Healdton office to address concerns that the "numbers were down" and the clinic would be closed. Supervisor Spohn told Ms. Testerman she needed her experience and consistency in the Healdton clinic. Two years later Carressa Carroll, who was approximately 20 years younger than Ms. Testerman, was placed in the supervising nurse position in Ardmore. Supervisor Spohn was not on the committee which recommended Ms. Carroll be placed in that position.

Ms. Testerman testified that Supervisor Spohn did not treat her in a derogatory fashion. Ms. Testerman thought Supervisor Spohn was friendlier and more compatible with the younger employees but did not give any specific examples.

Carolyn Jones is an R.N. II, not a Health Educator, and is not under Supervisor Spohn's direct supervision. It is Nurse Jones's opinion that Supervisor Spohn does not interact with the nurses and is trying to get rid of the older staff. As an example, Nurse Jones stated that Theresa Testerman had been moved by Supervisor Spohn to the Healdton office and replaced with a younger nurse. Nurse Jones did not mention the "replacement with a younger nurse" took place two years after Ms. Testerman had moved to the Healdton office or that Supervisor Spohn was not on the committee which recommended Ms. Carroll be placed in that position.

Anna Duran is a HE II in Carter County. Ms. Duran's impression was that Supervisor Spohn did not believe experience was important and preferred younger workers. Ms. Duran testified she had applied for two positions which were given to younger employees but also testified that Supervisor Spohn had not been the interviewer when Ms. Duran had interviewed for those positions.

Rebecca Burton is a Public Health Nurse in Carter County whose opinion is that Supervisor Spohn treats the younger staff better. Nurse Burton testified that although Supervisor Spohn is not her direct supervisor, she once yelled at Ms. Burton regarding the use of cigarettes around an entrance into the building.

Janie Pennington-Cagle is a HE I in Johnston and Love Counties.<sup>6</sup> Ms. Pennington-Cagle sees Supervisor Spohn less than one day a week. It is Ms. Pennington-Cagle opinion that Supervisor Spohn discriminates against older employees because she believes Supervisor Spohn has allowed younger workers to sit on boards and get travel pay but does not allow the same for Ms. Pennington-Cagle.

Mendy Spohn has been an Administrative Director since August, 2001 and her duties include supervising four counties: Carter, Johnston, Love, and Jefferson counties. Supervisor Spohn does not consider age, race, or gender when dealing with employees and if employees are friendly, she is friendly in return. Supervisor Spohn testified that Appellant told her that she was interested in retiring soon and would make more money if she did so as a HE III.

Supervisor Spohn testified that during her tenure, there has never been an employee acting as a HE III in Carter County and therefore there is no HE III position available for Appellant. Kathy Payne, Health Promotion Director testified that a job posting for HE III is very rare and there were only two HE III's positions in the counties.

The testimony of Supervisor Spohn and Kathy Payne is consistent with Appellant's own testimony that she did not know of any HE III jobs that were posted and she had never seen any job announcements for a HE III. Appellant also acknowledged there had never been a HE III in Carter County.

In Appellant's January 9, 2008, grievance she requested a promotion to HE III and a pay adjustment. Assistant Deputy Commissioner Toni Frioux was the Step 2 decision maker who handled the grievance. Appellant's allegation of age discrimination was forwarded to Charles Smith, Civil Rights Administrator.

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<sup>6</sup> At one time, Ms. Pennington-Cagle had been an Appellant in this case along with Appellant Cavnar. Ms. Pennington-Cagle is no longer a party to this action and the disposition of Ms. Cagle's case is not relevant to this matter.

On February 27, 2008, Assistant Deputy Commissioner Frioux denied the promotion because there was no documentation submitted by Appellant that she was eligible to be a HE III.

Specifically, Appellant provided no documentation establishing that she was "C.H.E.S." eligible. The education and experience requirements for HE III included eligibility for certification as a Certified Health Education Specialist ("C.H.E.S.") pursuant to criteria established by the National Commission for Health Education Credentialing ("NCHEC"). In order to ascertain if a person is eligible to take the C.H.E.S. certification examination, that person must request and submit credentials to NCHEC who then makes the determination whether or not the person is eligible to take the examination.

When Appellant filed her grievance, she did not have an eligibility letter from NCHEC. Appellant did have a June 29, 2006, email from Neil Hann which stated Appellant had sufficient undergraduate and graduate hours to be eligible for certification as a Certified Health Education Specialist.

Neil Hann is Chief of Community Development Services. One of Mr. Hanns' duties is to review transcripts and look for courses in health education to ascertain if employees have enough courses to make them eligible for certification as a Certified Health Education Specialist. If he finds that the employee has enough courses, Mr. Hann recommends the transcript be sent to NCHEC.

Appellant maintains that based on past handling of similar cases, Mr. Hanns' e-mail was sufficient to establish her eligibility for certification. Assistant Deputy Commissioner Frioux however spoke to Mr. Hann who said the best way to tell if Appellant was eligible was a letter from NCHEC.

In addition, Kathy Payne testified she first spoke to Appellant in June, 2006 about her transcript and told Appellant she did not think Appellant was eligible and to send a request and her credentials to NCHEC. Director Payne gave that information to Assistant Deputy Commissioner Frioux during her investigation.

Supervisor Spohn also told Appellant as early as 2005 that Appellant needed to submit her credentials to the NCHEC. Supervisor Spohn made the suggestion to Appellant but was never involved in any determinations regarding Appellant's eligibility

for certification including Assistant Deputy Commissioner Frioux determination to deny Appellant's grievance.

In the February 27, 2008, denial letter Assistant Deputy Commissioner Frioux explained that every effort would be made to promote Appellant to a HE III upon demonstration that she met the requirements of the Job Family.

Assistant Deputy Commissioner Frioux also stated in the letter:

"Although you meet the educational requirements, you will need to demonstrate C.H.E.S. eligibility. One option to assure that you meet the eligibility requirements for C.H.E.S. certification is to submit your college transcript(s) to the National Commission for Health Education Credentialing for evaluation. Once your coursework is deemed appropriate for C.H.E.S. eligibility you would meet the requirements as outlined in the Job Family. You do not have to be certified, but must demonstrate eligibility for certification."

Assistant Deputy Commissioner Frioux testified that her statement to Appellant that "every effort would be made to promote her to the HE III" was not intended as an absolute promise since there was no HE III posting in Carter County, no funds to pay a HE III, and no showing that the county had a critical need for a HE III. In addition, there was no evidence presented at this hearing that Assistant Deputy Commissioner Frioux had the authority to unilaterally create such a position and then place Appellant in that position.

The pay adjustment also requested by Appellant in her grievance was also denied because Assistant Deputy Commissioner Frioux did not find a violation of state law. In making her decision, Assistant Deputy Commissioner Frioux reviewed a list of all health educators provided by the records department comparing years of service and salary. Her intent was to insure all employees were within the pay range according to OPM rules. She reviewed knowledge, skill and ability to ascertain if the employee was in the correct classification and pay band and within the salary plan of OPM. She did not look at the age of each employee, because the age discrimination claim had been forwarded to the Civil Rights Administrator Charles Smith.<sup>7</sup>

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<sup>7</sup> Mr. Smith was not called as a witness at this hearing.

Assistant Deputy Commissioner Frioux found that even though Appellant received a lower salary than some other employees, she was still paid within the pay range. Assistant Deputy Commissioner Frioux concluded that although there was a variance among salaries in the HE II salaries, the variance was within the range set by OPM.

At the conclusion of Appellant and Appellee's' cases, Intervener OPM produced one witness, Assistant Manager Tom Patt. Mr. Patt testified regarding Title 74 OS section 840-2.17 and explained how that section provides a framework for the salary of state employees while OPM rules provide additional mandates regarding the granting of pay raises.

According to Mr. Patt, if the Department finds an employee in a job family has significantly lower pay than other employees in the same job family and at the same level, the Department may make an equity-based pay adjustment. If the equity pay adjustment is above the midpoint of the pay band however OPA must approve the adjustment. In those cases, OPM looks at significant disparity, did the Department do it on purpose, and are employees being treated uniformly.

In addition, not every employee in a job family and level has to be paid the same salary and there are situations in which all employees in the same job family and level do not make the same salary.

## II. DISCUSSION

The Appellant has alleged that she is a victim of age discrimination and has been denied an increase in compensation and promotion because she is over the age of 40. In cases such as this where an employee alleges disparate treatment, the employee (Appellant) must establish a prima facie case of age discrimination. Thereafter, if such prima facie case is established, the burden then shifts to the employer (Appellee) to rebut the presumption of discrimination. *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973)

Disparate treatment may be shown when the employer treats some people less favorably than others because of their race, color, or religion or other protected characteristics, such as age. *Trans World Airlines v. Thurston*, 469 US 111, 105 S.Ct. 613(1985).

The parties agree that the burden shifting analysis articulated in *McDonnell Douglas Corp. v. Green* should be applied in this case. However, the parties disagree on what facts Appellant must show in order to establish a prima facie case.

It is Appellee's position that for the wage discrimination claim, Appellant has to establish four facts after which the burden shifts to the Appellee: 1) Appellant is a member of a protected class; 2) Appellant has met her employer's legitimate expectations; 3) Appellant has suffered adverse employment action; and 4) other similarly situated persons not in the protected class were treated more favorably.

It is Appellant's position that Appellant establishes a prima facie case of age discrimination thereby shifting the burden to Appellee by showing three facts: 1) Appellant was within the age group protected by the Age Discrimination in Employment Act ("ADEA"); 2) Appellant was performing satisfactory work; and 3) Appellant was paid less than other younger employees with job qualifications and responsibilities comparable or inferior to those of Appellant.

It is the Appellee's position that for the failure to promote claim, Appellant has to establish four facts after which the burden shifts to the Appellee: 1) there was a promotional opportunity; 2) Appellant was qualified and had established availability for the position; 3) despite the Appellant's qualifications, she was not promoted to the position; and 4) the promotional opportunity remained open or was filled.

Appellant did not respond to Appellee's position regarding the failure to promote claim in her Response to Appellee's Written Closing Brief filed June 7, 2010 and dispute that is the proper test to be applied to the failure to promote claim.

Relying exclusively and completely on the evidence and testimony offered at the hearing on this matter, the undersigned does not find that Appellant has established a prima facie case of age discrimination using either the test proposed by Appellee or the test proposed by Appellant.

#### **A. WAGE DISCRIMINATION**

Specifically regarding wage discrimination, Appellant has failed to establish that other similarly situated persons not in the protected class were treated more favorably. Appellant also failed to establish younger employees with job qualifications and responsibilities comparable or inferior to Appellant were paid more. Having founded

Appellant has failed to establish these parts of the test, the undersigned does not address the remaining parts of the test.

**1. Similarly situated persons.** Although the Appellant disagrees with Appellee position as to what facts the Appellant must show in order to establish a prima facie case, Appellant also maintains that she is paid less than other employees who are "similarly situated" with the same job title and responsibilities. This position seems to be a mix of Appellee and Appellant positions regarding what facts establish a prima facie case.

Be that as it may, Appellant presented into evidence the names and salaries of 30 health educators. Six individuals on this list made a salary higher than Appellant but three of those were HE III's. The remaining three on the list were HE II's but one was Appellant's age. The other two HE II's employees whose salaries were greater than Appellant's and who Appellant asserts are "similarly situated" are Ms. McGehee (age 30) and Ms. Green- Gilbert (age 41).

"A similarly situated employee is one who deals with the same supervisor and is subject to the same standards governing performance evaluation and discipline. Work histories, company policies applicable to the Appellant and the comparator, and other relevant employment circumstances should be considered when determining when employees are similarly situated." *Green v. New Mexico*, 420 F.3d 1189, 1194 (10<sup>th</sup> Cir. 2005).

Neither Ms. McGehee nor Ms. Green-Gilbert were hired by Supervisor Spohn. Neither Ms. McGehee nor Ms. Green-Gilbert were supervised by Supervisor Spohn and therefore Supervisor Spohn did not perform evaluations or take disciplinary action regarding these two employees. Neither Ms. McGehee nor Ms. Green-Gilbert's salaries were set by Supervisor Spohn. No promotional decisions regarding Ms. McGehee or Ms. Green-Gilbert were made by Supervisor Spohn. Both Ms. McGehee and Ms. Green-Gilbert work in the Pottawatomie County Health Department and Supervisor Spohn has no supervisory authority in that County.

The Appellant has failed to establish that Ms. McGehee or Ms. Green-Gilbert's meet the definition of "similarly situated persons".

**2. Appellant was paid less than younger employees with job qualifications and responsibilities comparable or inferior to Appellant.**

The Appellant was paid less than Ms. McGehee and Ms. Green-Gilbert. The question is were Ms. McGehee and Ms. Green-Gilberts' job qualifications and responsibilities comparable or inferior to Appellant?

Appellant's testified about her job qualifications, duties and responsibilities. Her description of her job was more extensive, detailed and specific than the qualifications, duties and responsibilities found in the Health Educator Job Description admitted as Appellant's Exhibit 2.

However, other than testifying that Ms. McGehee had no masters degree and Ms. Green-Gilbert did have a masters degree, Appellant offered no testimony regarding their job qualifications, duties and responsibilities. In fact, Appellant admitted she did not know all the background information of the two employees and did not know the educational backgrounds and qualifications of each person listed on Appellant's Exhibit 4.

Ms. McGehee and Ms. Green-Gilbert were not called by Appellant as witnesses and therefore sworn testimony as to their job qualifications, duties and responsibilities as HE II's in Pottawatomie County was not offered. The Court cannot make a determination that these younger employees had job qualifications and responsibilities comparable or inferior to Appellant when no evidence or testimony was offered as to what the younger employees' qualifications and responsibilities were during the relevant timeframe.

**B. FAILURE TO PROMOTE**

Regarding the failure to promote claim, Appellant has failed to establish there was a promotional opportunity and therefore cannot establish that Appellant was qualified and available for the position, was not promoted to the position and, the promotional opportunity remain opened or was filled. The Appellant could not be promoted to a position that did not exist.

Appellant testified that she did not know of any HE III jobs that were posted and she had never seen any job announcements for a HE III. Appellant also acknowledged that there had never been a HE III in Carter County. Therefore, Appellant's request for

promotion to a HE III is actually a request that a HE III position be created for Appellant even though there are no funds available for a HE III position and there has been no showing of critical need for a HE III in Carter County.

In addition, there has been no claim against Assistant Deputy Commissioner Frioux of age discrimination and yet it was Assistant Deputy Commissioner Frioux, not Supervisor Spohn, who decided Appellant's request for promotion was denied. It has not been asserted or established that Supervisor Spohn had any input whatsoever in to Assistant Deputy Commissioner Frioux decision to deny Appellant's request for promotion.

### C. INTENT TO DISCRIMINATE

Regarding Appellant's assertion that Supervisor Spohn intended to discriminate against Appellant because of Appellant's age, the Supreme Court has held:

"In a disparate treatment case, liability depends on whether the protected trait (under the ADEA, age) actually motivated the employer's decision. Whatever the employer's decision making process, a disparate treatment claim cannot succeed unless the employee's protected trait actually played a role in that process and had a determinative influence on the outcome." *Hazen Paper Company v. Biggins*, 507 U.S. 604, 610, 113 S.Ct. 1701 (1993).

The undersigned finds that Appellant has failed to prove that any decisions made by Supervisor Spohn regarding Appellant were motivated by Appellant's protected trait, age.

In addition, there was no evidence introduced of any discriminatory comments made by Supervisor Spohn. No evidence introduced of any memorandums or directives from Supervisor Spohn establishing her discriminatory intent or practices. Appellant is relying on circumstantial evidence in the form of her own observations and the testimony of six other employees to establish Supervisor Spohn's intent to discriminate against Appellant and others.

To summarize their testimony;

1. Ms. Walker sees Supervisor Spohn two or three times a month. Although it is her opinion Supervisor Spohn favors younger employees, she did not give any examples of how that favoritism manifests itself in salary increases or promotions.

2. Ms. Testerman was transferred because Supervisor Spohn needed her experience and consistency in the Healdton clinic. Appellant did not produce any evidence that the reason given for the transfer by Supervisor Spohn was pretense. Also, Supervisor Spohn was not on the committee which recommended Ms. Carroll be placed in Ms. Testerman's previously held position two years later.

Ms. Testerman thought Supervisor Spohn was friendlier and more compatible with the younger employees but did not give any specific examples.

3. Carolyn Jones is not a Health Educator and it is not under Ms. Spohn's direct supervision. It was Nurse Jones' opinion that Supervisor Spohn was trying to get rid of the older staff. As the only example given, Nurse Jones gave her understanding of Ms. Testerman's transfer to Healdton. Having heard Ms. Testerman's own testimony, it is obvious Nurse Jones did not have accurate information as to why Ms. Testerman had been transferred to the Healdton office or how Ms. Carroll was chosen to be her replacement.

4. Anna Duran applied for two positions which were given to younger employees. Supervisor Spohn was not the interviewer when Ms. Duran had interviewed for those positions and there was no evidence that Supervisor Spohn discriminated against Ms. Duran.

5. Rebecca Burton testified that although Supervisor Spohn is not her direct supervisor, she once yelled at Ms. Burton regarding the use of cigarettes around an entrance into the building. There was no testimony offered that younger employees are allowed the use of cigarettes around an entrance into the building.

6. Janie Pennington-Cagle sees Supervisor Spohn less than one day a week. She believes Supervisor Spohn discriminates against older employees because she has allowed younger workers to sit on boards and get travel pay but does not allow the same for Ms. Pennington-Cagle.

While these witnesses are unhappy with Supervisor Spohn's demeanor and behavior, "Not everything that makes an employee unhappy is an actionable adverse action." *Smart v. Ball State Univ.*, 89 F.3d 437, 441 (7<sup>th</sup> Cir.1996).

Lastly, the mere fact that Supervisor Spohn is younger than Appellant and six other employees, does not, without other evidence, prove that Supervisor Spohn is

discriminating against employees based on their age. See *Rea v. Martin Marietta Corp.*, 29 F.3d 1450, 1455 (10<sup>th</sup> Cir.1994) "We attribute little significance to the fact that the supervisors who selected plaintiff for layoff were under the age of 40, and we are not prepared to presume, without any other evidence, that the supervisors were predisposed to engage in age discrimination by virtue of the fact that they themselves were under the age of 40."

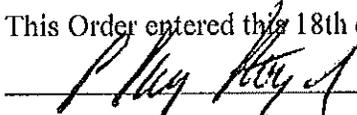
### **CONCLUSIONS OF LAW**

1. The Merit Protection Commission has jurisdiction over the parties and subject matter in the above entitled cause.
2. Any finding of fact which is probably a conclusion of law is incorporated herein as a conclusion of law.
3. Relying exclusively and completely on the evidence and testimony offered at the hearing on this matter, the undersigned does not find that Appellant has established a prima facie case of age discrimination.
4. OAC 455:10-9-2 **Burden of proof** states that when an Appellant files an alleged violation appeal (an appeal in which an allegation is made that a violation of law or rules over which the Commission has jurisdiction has occurred) the burden of proof shall be upon the Appellant who must prove his or her case by a preponderance of the evidence. Appellant has failed to meet her burden of proof.

### **ORDER**

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED by the undersigned Administrative Law Judge that the petition of Judy Cavnar, MPC-08-138 be DENIED.

This Order entered this 18th day of August, 2010.

  
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