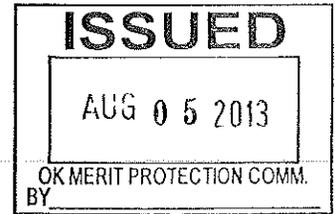


**BEFORE THE OKLAHOMA MERIT PROTECTION COMMISSION  
STATE OF OKLAHOMA**

MARIA B. KHAVE, )  
Appellant, )  
 )  
v. )  
 )  
OKLAHOMA TAX )  
COMMISSION, )  
Appellee. )

Case No. MPC 12-216



**FINAL ORDER**

This matter comes on for hearing on the 22nd day of July, 2013, before the undersigned Administrative Law Judge at the offices of the Oklahoma Merit Protection Commission, Oklahoma City, Oklahoma. The Appellant, Maria B. Khave (hereinafter "Khave"), appears by personally, pro se. The Appellee, Oklahoma Tax Commission (hereinafter "OTC"), appears by and through counsel, Abby Dillsaver. Also present for Appellee was Table Representative, Kanda Woods.

Appellant is a ten point veteran pursuant to OAC 530:10-9-130. After selecting Khave for an opening at OTC, the Appellee sought and obtained approval to have her passed for cause pursuant to OAC 530:10-9-131 for failure to pass the background investigation. Khave appealed this decision, alleging a violation of the Oklahoma Personnel Act regarding a claim of discrimination based upon her race. The parties acknowledged that the Prehearing Conference Order in this matter incorrectly listed this matter as an Adverse Action appeal. This is an Alleged Violation appeal and the burden of proof is upon the Appellant.

Whereupon the hearing began and the sworn testimony of witnesses was presented, along with exhibits. Joint Exhibits #5 through #15 were offered and were admitted into the record. Appellant offered Exhibit # 16, the MPC Investigation Report which was admitted. The parties stipulated to the following facts:

1. Khave was contacted by OTC to interview for the position of Secretary V;
2. Khave was initially selected for the position of Secretary V;
3. Khave consented to a background check, which was performed by OTC; and

4. The background check revealed that Khave had not filed her 2008 Oklahoma state tax return and Khave had unpaid state taxes due in the amount of \$1256.92, plus applicable interest and penalty, for tax years 2009 and 2010.

Accordingly all exhibits presented and admitted and all stipulations of the parties are incorporated herein and made a part of the record.

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

### **FINDINGS OF FACT**

#### **Background of Case**

Appellant Khave is a ten point veteran pursuant to OAC 530:10-9-130. After initial selection for the Secretary V position at the OTC, the appointing authorities' background investigation revealed unpaid tax liability. Khave was advised to meet with the tax compliance office to resolve these issues as soon as possible. On March 15, 2012, Khave met with Stacie Shockley to discuss the unpaid taxes or to set up a payment plan. At that time, it was discovered that the 2008 return had not been filed and would need to be submitted before payments could be established. At a subsequent meeting the next day, the 2008 return was filed. OTC requires some amount of down payment in order to set up a payment plan. Khave claims that the OTC employees demanded 25% down, which she could not pay. OTC claims that Khave refused to make any amount of down payment, stating she had no money and that the payments would need to be deducted from her payroll. According to OTC, Khave was verbally combative and confrontational. An agreement for payment of the taxes could not be reached and Khave left. OTC requested and received approval to pass Khave for cause.

On May 3, 2012, Khave filed an appeal with the Oklahoma Merit Protection Commission (hereinafter "MPC") alleging that OTC refused to set up a payment plan for her because of her race as a Black American. The matter was investigated at MPC, with a recommendation that the matter be set for hearing to determine if a violation occurred or whether OTC was within its rights to refuse to notify Khave of the right to make less than 25% down payment due to the escalation of the exchange between the tax compliance section employees and Khave. The report

also found that Khave had failed to present a prima facie case of racial discrimination. The matter was scheduled for hearing and a full evidentiary hearing was held on July 22, 2013.

### **ISSUES**

1. Was there just cause to deny Appellant the position and pass her for cause?
2. Was there disparate treatment or discrimination in the process?

### **The Testimony**

The testimony of four (4) witnesses was given, with each witness sworn and offered under oath.

Stacey Shockey was called by Khave. Shockey is Revenue Compliance Officer at OTC. Khave's first question to Shockey was if she remembered what Khave was wearing when they met on March 15, 2013. Shockey responded that Khave was wearing a sweat suit and the top had a hood on it. She testified that Khave had the hood up during the entire meeting, hiding her face from view. Shockey also stated that Khave sat with her back turned to her during the entire meeting. She pointed out to Khave that the 2008 return was missing and needed to be filed. Khave left and returned the next day. She said Khave again sat with her back to her. Because the meeting had been contentious the day before, her supervisor requested to meet with them and Richard Hobera entered the meeting. Shockey testified that Hobera had to ask Khave several times to turn around and talk with them. She stated that Khave raised her voice numerous times. Shockey stated that Khave repeatedly told her that she only had \$8 and could not afford to make any down payments. Shockey stated that they discussed that 25% was generally required but they could take a lesser amount as a down payment. She stated that Khave repeated that she could not make any amount of down payment. Shockey testified that she told Khave that \$100 was the minimum payment that they could accept. As a result of Khave's refusal to make any down payment and her combative behavior, the meeting ended without a payment plan being established. On recall, Shockey testified that there is a different protocol for potential hires, which allows for down payments less than 25%. The minimum down payment is \$100 and all payments must be made to pay off the liability before April of the following year. She further described Khave's demeanor during the meetings and stated that Khave slammed the door when

she left. Shockey made written comments on this first visit (Joint Exhibit #7). Shockey stated that when Khave returned the next day and submitted the 2008 return, she recalculated the liability. Again Khave stated to her that she could not afford to make any initial payment and she demanded the policy or guidelines for the payment plans. She was given the only written guidelines that were available, although Shockey stated that they didn't apply to potential hires (Joint Exhibit #6). Shockey agrees that Khave repeatedly asked to be put on a payment plan but she refused to make any amount of down payment. Shockey testified that the sole reason for not setting up the payment plan was Khave's refusal to make any amount of initial payment and her race had nothing to do with it.

Richard Hobera is Shockey's supervisor in the Tax Compliance division. He denied hearing Khave "begging" to be put on some kind of payment plan. He testified that Khave had her back to them during most of the meeting and that she raised her voice, causing him some concern. He recalled that Khave stated that she was a veteran and needed a job. On recall, Hobera testified that his goal is to get taxpayers into compliance. He also described Khave behavior during the second meeting. He repeated that she sat with her back to them, with her arms crossed. He said that she was very hostile and uncooperative.

Khave testified that Shockey's testimony made a point of her wearing a "hoodie" which is a racial profiling reference. She denied that she raised her voice or had her back turned during the meetings. She testified that she is educated and knows how to behave in a professional manner. Khave testified that the witnesses were both just lying about the meetings. She testified that if she had been offered a \$100 minimum down payment, she could have borrowed the money from a family member in order to get the job. Khave testified that she had been employed at another state agency after OTC passed her for cause, however, to date, she has failed to make any payments on this unpaid tax liability.

Kanda Woods, the OTC Human Resources Director identified the documents submitted to request that Khave be passed for cause on the register (joint Exhibits #5, #9 and #11).

## DISCUSSION

The burden of proof in an alleged violation appeal lies with the Appellant to prove that a violation of the Oklahoma Personnel Act has occurred. The Appellant must prove by the

preponderance of the evidence that a violation has occurred. The Appellant must show that the actions of Appellee were racially motivated. Khave stated that the repeated references to her wearing a “hoodie” were elements of racial profiling. Khave denied that her attire was only brought up as a result of Khave’s own line of questioning. She was unable to present any evidence to support her allegations that OTC’s actions were racially motivated. After hearing all of the evidence presented, it appears that OTC refused to set up a payment plan with Khave as a result of her behavior in the meetings, not because of her race. Whether she was offered an initial payment of \$100 or 25% does not seem to matter since Khave was adamant to OTC that she could not pay any amount of initial payment. There is no evidence that requiring an initial payment was racially or discriminatorily made by OTC.

The record is completely devoid of any evidence of racial discrimination against Khave.

#### **CONCLUSIONS OF LAW**

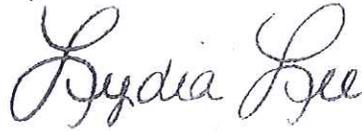
1. The Oklahoma Merit Protection Commission has jurisdiction over the parties and subject matter in the above entitled cause and the filing of the Petition for Appeal was timely.
2. Any finding of fact which is properly a conclusion of law is so incorporated herein as a conclusion of law.
4. 74 O.S. §840-2.9 and OAC 455:10-3-5 prohibit racial discrimination in any way with respect to appointment in the state service.
5. 74 O.S. §840-6.6 provides for appeal of alleged violations of the Oklahoma Personnel Act to the Oklahoma Merit Protection Commission.
6. OAC 455:10-9-2 (f) (2) places the burden of proof in an alleged violation appeal upon the Appellant who must prove his or her case by a preponderance of the evidence.
7. OAC 530:10-9-131 provides the procedure to pass for cause any ten point veterans for the any reason set forth in OAC 530:10-9-9, which permits disqualification when the applicant fails any part of an Appointing Authority's background investigation.
8. 68 O.S. §238.2 requires all state employees to be state tax compliant.
8. The preponderance of evidence does not support a finding of a violation of the Oklahoma Personnel Act or that Appellee discriminated against the Appellant as alleged. Appellant has failed to prove by a preponderance of the evidence that Appellee improperly refused to allow her to establish a tax payment plan. Appellant has failed to prove by a

preponderance of the evidence that Appellee improperly disqualified her from selection or that the request or approval to pass her for cause was improper.

**ORDER**

~~IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED~~ by the undersigned Administrative Law Judge that the petition of Appellant Maria Khave, MPC 12-216 is DENIED.

This Order entered this 1<sup>st</sup> day of August, 2013.

A handwritten signature in cursive script that reads "Lydia Lee".

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Lydia Lee  
Administrative Law Judge