

**BEFORE THE ALABAMA
STATE PERSONNEL BOARD
IN THE MATTER OF**

QUENETTA C. FENDERSON,)
)
 Complainant,)
)
v.)
)
ALABAMA BOARD OF PARDONS)
AND PAROLES,)
)
 Respondent.)

Case No. 19-26-RCS

**RECOMMENDATION TO
THE STATE PERSONNEL BOARD**

I. Procedural History

On June 6, 2019, Quenetta C. Fenderson (“Fenderson”), an employee of the Alabama Board of Pardons and Paroles (“the Board”), filed a Consumer Complaint with the Office of the Attorney General. Fenderson alleged retaliation by her reviewing supervisor, Askisha Jones (“Jones”). Fenderson contends that Jones ordered Fenderson’s immediate supervisor, Gabrelle Simmons (“Simmons”), to lower Fenderson’s annual performance appraisal score, resulting in her receiving only a one-step raise instead of a two-step raise. Fenderson alleged she attempted to file a grievance within the Board’s policies but was unable to perfect the filing of such grievance because she felt doing so would result in additional retaliation and creation of a hostile work environment.

The Office of the Attorney General forwarded Fenderson's Consumer Complaint to the Alabama State Personnel Board and the complaint was placed on the undersigned's docket on or about Monday, June 17, 2019.

A prehearing conference was held on Wednesday, June 19, 2019. Fenderson's original complaint mentioned multiple individuals employed by the Board, in addition to Jones, making it unclear who she wanted to name in her claim of retaliation. Fenderson was subsequently ordered to file a more definite statement by close of business on June 21, 2019. Fenderson complied with that order and timely filed a more definite statement. In her more definite statement, Fenderson alleged Jones retaliated against her by directing Simmons to lower her annual performance appraisal score because Fenderson exposed "...the fact that [Jones] gave a directive regarding the October 2018 docket of violent offenders that cause[d] individuals to be considered for parole that should [not] have [been considered]." Fenderson expressed her concern that blame would be placed elsewhere, so Fenderson "...began gathering statements from co-workers with first-hand personal knowledge of any and all events related to the directive being given." Fenderson alleged Jones found out about her fact-finding mission and her performance appraisal score was lowered so that she would only receive a one-step raise instead of a two-step raise. In her more definite statement, Fenderson asked for a two-step pay increase, "because it would be more consistent with my prior evaluations ..."

Fenderson also asked that her June 1, 2018 – June 1, 2019 annual performance appraisal be removed from her records/files “due to the potential negative effect for future raises and advancements within the department.” Fenderson asked for a corrected performance appraisal that reflected “a more accurate score.”

On June 25, 2019, the Board filed a Motion to Dismiss arguing that Fenderson had failed to state a claim upon which relief may be granted. The Board recognized the State Personnel Board’s authority to hear citizen/taxpayer complaints pursuant to ALA. CODE § 36-26-27(b); however, the Board argued that the relief sought by Fenderson (*i.e.*, a revised performance appraisal and an additional one-step pay increase) is unavailable to her through an action filed under that code section.

On June 27, 2019, Fenderson responded to the Board’s Motion to Dismiss and dropped her request for a modification of her 2018-2019 performance appraisal and increase of her raise from one-step to two-steps. Fenderson instead asked for “relief from retaliation from Director Askisha Jones (past and future)” noting that if the State Personnel Board were to find in her favor regarding her claim of retaliation “... the remedy, adjustment and/or modification [of her annual performance appraisal score] will more than likely be handled by the appropriate authority.”

II. Jurisdiction of the Alabama State Personnel Board

The Alabama State Personnel Board has primary jurisdiction over employee dismissal appeals pursuant to State Personnel Board Rule 670-X-18-.02 and

complaints of discrimination pursuant to State Personnel Board Rule 670-X-4-.03. The Alabama State Personnel Board routinely denies hearing complaints of harassment, complaints of hostile work environment, and complaints of retaliation unless those complaints also allege discrimination.

ALA. CODE § 36-26-27(b) provides the Alabama State Personnel Board the responsibility of conducting hearings on charges filed against persons in the classified service. Those hearings permit the Alabama State Personnel Board to remove or discipline the employee who is the subject of the complaint. The Alabama State Personnel Board does not have the authority to order Fenderson's performance appraisal re-scored by the Board or to change Fenderson's one-step pay raise to a two-step pay raise. The only remedial action contemplated by ALA. CODE § 36-26-27(b) is removal or other discipline against the person in classified service against whom the complaint was filed.

In Fenderson's Response to the Board's Motion to Dismiss, she cited ALA. CODE § 36-26A-3 – Discharge for reporting violation of law prohibited. Under this code section it states, in pertinent part, “A supervisor shall not discharge, demote, transfer, or otherwise discriminate against a state employee regarding the state employee's compensation ... if the state employee reports, under oath or in the form of an affidavit, a violation of law, a regulation, or a rule, promulgated pursuant to the laws of this state ...” The Alabama State Personnel Board does not have jurisdiction over complaints

of this nature. Pursuant to ALA. CODE § 36-26A-4 – Limitations; venue, an action contemplated under this rule provides that (a) “a state employee shall bring a civil action within two years after the occurrence of the alleged violation of this chapter” and (b) the “action may be brought in either Montgomery County or the county in which the supervisor against whom the complaint is filed resides.”

III. Discussion

Initially, the relief Fenderson sought was a re-scored performance appraisal and her one-step pay raise increased to a two-step pay raise. After the Board pointed out the limited relief afforded under ALA. CODE § 36-26-27(b), Fenderson amended the remedies she sought and stated she only wanted the retaliation to stop. However, based upon her more definite statement and her response to the Board’s Motion to Dismiss, Fenderson has not been subjected to repeated acts of retaliation nor has she established an ongoing pattern of conduct by Jones. In fact, the **only** adverse employment action she alleges is the score she received on her annual performance appraisal which was rated by her immediate supervisor, Simmons, and approved by her reviewing supervisor, Jones. Fenderson did not ask for disciplinary action to be taken against Simmons or Jones, merely that the alleged retaliation by Jones cease.

After careful consideration of Fenderson’s allegations and her request for remedy, it is the recommendation of the undersigned that this cause should be **DISMISSED** for failure to state a claim for which relief may be granted.

Done, this the 2nd day of July 2019.

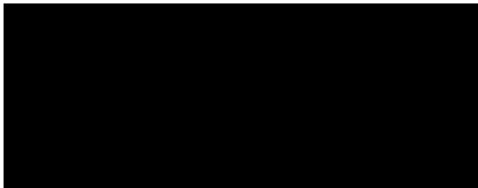


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