

**INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE**

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**CHRISTINA BAZANELE,**  
Complainant,

**v.**

**DEPARTMENT OF HUMAN SERVICES, COLORADO MENTAL HEALTH HOSPITAL IN PUEBLO,**  
Respondent.

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Administrative Law Judge (ALJ) Keith A. Shandalow held the evidentiary hearing in this matter on December 18-20, 2024, remotely through Google Meet. The record was closed on January 8, 2025, following the issuance of an order regarding the admissibility of Complainant's exhibits not ruled on during the hearing. Casey J. Leier, Esq., represented Complainant Christina Bazanele.<sup>1</sup> Carlos Ramirez, Assistant Attorney General, represented Respondent Department of Human Services (Respondent or DHS). Respondent's advisory witness, and Complainant's appointing authority, was Jill Marshall, Chief Executive Officer of the Colorado Mental Health Hospital in Pueblo (CMHHIP).

A list of witnesses who testified at hearing is attached hereto as Appendix A. A list of exhibits offered and admitted into evidence is attached hereto as Appendix B.

**MATTERS APPEALED**

Complainant is the Director of Laboratory Services and Medical Services Manager at CMHHIP. Complainant's position is classified as a Health Professional (HP) VII. Complainant is the lowest paid HP VII at CMHHIP. Complainant alleges that Respondent has kept Complainant's salary as the lowest paid HP VII due to discrimination in violation of the Colorado Anti-Discrimination Act (CADA) on the basis of national origin or race (Hispanic)<sup>2</sup> and sex (female). Complainant seeks an increase in her base salary commensurate with her job duties, experience, and accomplishments, back pay and benefits, and attorney's fees and costs.

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<sup>1</sup> Complainant is also known as Christina Bazanele-Sabatka, as indicated in various documents. In this Decision, she will be referred to as "Complainant."

<sup>2</sup> Discrimination against Hispanics can be characterized as being based on either race or national origin. *Maldonado v. City of Altus*, 433 F.3d 1294, 1303 (10th Cir. 2006). Here, Complainant's national origin/race claim is referred to as her national origin claim.

Respondent contends that Complainant's salary is not the result of any discriminatory action, and Complainant has failed to establish that Respondent discriminated against her on any unlawful basis. Respondent requests that the Board dismiss Complainant's discrimination claims with prejudice.

For the reasons discussed below, the undersigned ALJ finds Respondent did not discriminate against Complainant on the basis of national origin or sex and dismisses this matter with prejudice.

### **ISSUES**

1. Did Respondent discriminate against Complainant on the basis of either national origin or sex in violation of the Colorado Anti-Discrimination Act? If so, what is the remedy?

2. Is Complainant entitled to attorney's fees and costs?

### **FINDINGS OF FACT**

#### **Background**

1. Complainant is the Director of Laboratory Services and Medical Services Manager at CMHHIP. Her position is classified as a Health Professional (HP) VII. Complainant has worked for the state since 2012 and became an HP VII in September 2017.

2. Complainant is a Hispanic female.

3. Complainant earned her B.S. degree from CSU-Pueblo, and is a certified Medical Laboratory Scientist. She sits on numerous Boards in the Pueblo community and serves on several hospital committees.

4. CMHHIP is a 516-bed acute care psychiatric hospital that provides inpatient behavioral health services for adults, adolescents and geriatric patients. CMHHIP is a high-security forensic facility that serves individuals with pending criminal charges who require evaluations of competency, individuals who have been found to be incompetent to proceed (restoration treatment), individuals found to be not guilty by reason of insanity by Colorado's criminal courts, and civil patients.

5. At all times relevant to this matter, Complainant's supervisor was Dr. Al Singleton, Chief Medical Officer at CMHHIP, and Complainant's appointing authority was Jill Marshall, CMHHIP's Chief Executive Officer (CEO). Singleton is a Caucasian male. Marshall identified herself at hearing as Hispanic.

6. The job duties for Complainant's position as of September 2017 included, but were not limited to, the following: research, develop and implement policies, procedures, and programs to ensure compliance with mandates set forth by various

regulatory agencies such as The Joint Commission on Accreditation of Health Care Organizations, Clinical Laboratory Improvement Amendments, Centers for Medicare and Medicaid Services, Occupational Safety and Health Administration, and the Colorado Department of Health; ensure diagnostic procedures and physical care activities fall under the scope of practice for specific disciplines; ensure care is rendered according to set guidelines, and within the frame of CMHHIP policies and procedures; ensure accuracy, precision and timeliness of laboratory test data through development and oversight of departmental Quality Assurance (QA) programs which includes internal and external Quality Control (QC) systems and QC problem resolution mechanisms; design methods to collect data, interprets data for trends, benchmarks and advocates for change in response to data collection; plan, organize, direct, and control operation of Pathology department and duties of 9 FTEs (8 professional level staff); establish work schedules, set workload priorities and assign responsibility for task or programs to staff members; serve as the subject matter expert for Pathology to other departments and agencies by actively serving on committees such as Antimicrobial Stewardship/Infection Control, Suicide Mitigation.

7. Complainant's job performance evaluations have been consistently exceptional.

8. Complainant possesses a stellar professional reputation. The Laboratory at CMHHIP, under Complainant's directorship, has been recognized by national accreditation organizations as one of the highest quality laboratories in the United States.

#### Complainant Raises Fair Compensation Issues – 2020-2021

9. At all times relevant to this matter, Complainant was the lowest paid HP VII at CMHHIP.

10. In or around August or September 2020, Complainant learned that Kathryn Cotner, who identified as a Caucasian female,<sup>3</sup> had just been hired as CMHHIP's Director of Quality Support Services (QSS) and was classified as an HP VII at an annual salary that was approximately \$26,000 more than Complainant's. Complainant believed then, and continues to believe, that she and Cotner were similarly situated.

11. Generally, Cotner as the Director of QSS was responsible for CMHHIP's hospital-wide quality assessment and performance improvement program (QAPI). The QSS Director interprets accrediting and licensing standards applicable to the various sections of the hospital. Cotner worked with subject matter experts or each section of the hospital and was responsible for the entire hospital's policies and procedures. Cotner was part of CMHHIP's Executive Team and reported directly to Marshall as the hospital's CEO. Cotner, as an administrator, was on call during evenings and weekends and also

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<sup>3</sup> There was testimony at the hearing to the effect that Cotner may be Hispanic also. However, Cotner did not reveal that to Respondent's Human Resources department. Cotner was considered Caucasian by others when hired and at all times relevant to this matter.

served as backup for Marshall when necessary. Cotner held one of only three positions qualified to act as Marshall's backup.

12. On August 5, 2020 Complainant submitted proposals to Marshall and Singleton that included a request to provide Complainant with a competency-based salary increase.

13. On October 29, 2020, Complainant sent an email to Juanita Valle, a Human Resources (HR) Business Partner, stating that she would no longer seek a competency-based pay increase and would now seek a review pursuant to the Equal Pay for Equal Work Act (EPEWA).

14. On October 29, 2020, Complainant emailed Singleton asking that he request a compression pay review for the HP VII class.

15. On October 30, 2020, Singleton's Program Assistant emailed Valle requesting a compression pay review for Complainant.

16. On November 9, 2020, having heard nothing about the requested compression review, Complainant exchanged a series of emails with Valle asking about the status of the review. Valle indicated that she had heard nothing but added:

I would like to remind you that we are in the middle of a budget crisis and we won't see pay increases approved during this time. Dr. Singleton will need to confer with Jill [Marshall] to determine if there is justification for any pay increase and then to determine the budget to do so.

17. Shortly after receiving Valle's email, Complainant sent an email to Singleton and Valle, with a copy to Marshall, in which she wrote, in pertinent part, "As I have mentioned, I would like to see the whole HPVII class evaluated from this compression study. As one of the only female Hispanic women in this class, I feel that my current salary does not reflect what is demonstrated in the compression evaluation."

18. A few minutes after sending the email referenced immediately above, Complainant sent an email to Valle alone, in which she wrote, in pertinent part:

I also feel that I'm the only Hispanic women in my class that meets the equal pay act criteria and every other individual in this class is getting compensated significantly more than I, which I'm sure would be demonstrated on the compression study.

19. In response to Complainant's November 9, 2020 email, Singleton expressed his ignorance of Complainant's Hispanic ancestry.

20. The next day, Valle shared the information conveyed by Complainant with Valle's supervisor, Cynthia Nunez, HR Supervisor.

21. In late January 2021, after not hearing anything further about the compression study requested in late October 2020, Complainant renewed her request for a compression study.

22. On January 22, 2021, Singleton again requested a compression study for Complainant as an HP VII.

23. On January 25, 2021, Nunez, sent an email to Singleton and Marshall:

Hello Dr Singleton

I am in receipt of your request for a compression review for the HP VII position. Please note, Christina has talked with Dr Trapp, myself and you about this request and ha [sic] been told that we are in a budget crisis and there is no money for any type of compensation increases due to the current state of the budget. In addition, the HP VII classification has many different types of positions, for example Christina's position as well as the program director positions and other positions at different agencies. They may not all be the exact same job or be similar enough to compare salaries. We (HR) needs to evaluate those positions to see if they are similar before we do a comp review that would be applicable.

Jill [Marshall] and I just met ad [sic] looked at the other HP VII's at CMHIP (Program Directors) and she is in line with their current compensation. The other HP VII's are not similar positions and would not be reviewed for compensation with her position.

Last, compensation reviews should not be requested with the employee on the email, we will never share compensation for anyone that does not report directly to Christina so we would not share compensation for other HP VII's who do not report to her. Any compensation review should be done by the Appointing Authority and not the employee.

24. On January 28, 2021, Complainant sent a memorandum to Marshall, Nunez, and Vince Scarsbrook, Chief Financial Officer for CMHIP, with the subject line, "Compression Evaluation of HPVII Class and Personnel Budget Request." The five-page memorandum constituted Complainant's justification "to support the reevaluation of the Health Professional VII (HPVII) class series and my current job assignments . . . ."

25. As of May 13, 2021, Complainant's compression and equal pay for equal work requests were still in process and had been reassigned to Jacob Finger of DHS's Job Evaluation and Compensation (JEC) team.

### Complainant Raises Discrimination Claim and an EPEWA Analysis is Completed

26. Complainant submitted a complaint on May 17, 2021, alleging that she has been subject to race and gender discrimination under the Equal Pay for Equal Work Act (EPEWA). Complainant alleged that she was the lowest paid HP VII and that she believed she should be paid the same as QSS Director Cotner.

27. Finger performed and completed an EPEWA analysis on May 18, 2021. Finger concluded that Complainant's salary did not present any issues under the EPEWA. The report noted, in pertinent part, "There is not a substantially similar position to the employee's current position, therefore there is not a direct EPEWA violation occurring. There are, however, a series of compression concerns that could lead to a claim of possible discrimination through compensation."

28. On June 2, 2021, the JEC team informed Complainant of the results of the EPEWA analysis, and wrote, "A review of your job classification, position and compensation took place resulting in a determination that there are no EPEWA concerns."

29. In response to the EPEWA analysis, Complainant sent emails on June 2 and June 3, 2021 to the JEC team questioning the analysis. Complainant pointed out that the analysis listed her years of experience post certification as 11 when she was just shy of 13 years of experience post certification.

30. As a result of the EPEWA analysis, Complainant's monthly salary was raised from \$7,709 to \$9,270, effective July 1, 2021, as a result of compression concerns. The salaries of the other HP VIIs at CMHHIP were also raised. Complainant salary remained the lowest of the HP VII class.

31. Despite the increase in her base salary, Complainant continued to believe that her compensation was inequitable. In June 2021, Complainant requested a desk audit, and the request was approved by Singleton and conveyed to the JEC team.

32. In or about June or July 2021, in an attempt to assist Complainant in obtaining a higher salary, Marshall worked with Complainant to revise Complainant's position description (PD). The hope was that Complainant could be reallocated to a Program Manager III position, which would afford Complainant a higher salary.

33. A panel reviewed Complainant's PD determined that the PD would be a PM II, which would have been a demotion for Complainant. Consequently, Complainant remained an HP VII.

### Flynn Investigations Group Investigates Complainant's Discrimination Claims

34. In May 2021, Complainant's allegations concerning discrimination in compensation, delays in addressing Complainant's concerns, and allegations of

retaliation for pursuing her claims were sent to the Employment Matters LLC Flynn Investigations Group, a third-party entity, for an investigation.

35. The matter was assigned to Investigator Juliane DeMarco of the Flynn Group, who conducted an investigation from May 2021 to August 2021.

36. DeMarco issued her investigation report on August 24, 2021.

37. The Flynn Group's Summary of Findings was as follows:

Allegation 1: This investigator finds it less likely than so that Ms. Bazanele-Sabatka is experiencing compensation discrimination based on race or gender.

Allegation 2: This investigator finds it less likely than so that Ms. Bazanele-Sabatka's 11/9/2020 email was "ignored" but more likely than not that neither Ms. Marshall, Ms. Nunez or Dr. Singleton responded to Ms. Bazanele-Sabatka raising race and gender bias concerns in regards to her pay. This investigator finds it more likely than not that Dr. Singleton called Ms. Bazanele-Sabatka and said something like, "I didn't know you are Hispanic."

Allegation 3: This investigator finds it less likely that so that Ms. Marshall's 4/5/2021 communication to Ms. Bazanele-Sabatka regarding her 8/5/2020 request to reclassify staff members represents prohibited retaliation.

Allegation 4: This investigator finds it less likely that so that Ms. Marshall's 2/16/2021 discussion with Ms. Bazanele-Sabatka regarding restructuring ancillary service represents prohibited retaliation.

38. In the investigation report, DeMarco compared Complainant's position with Cotner's position as the Director of QSS, because Complainant alleged that she was similarly situated to Cotner and Cotner's salary was significantly greater than Complainant's. DeMarco concluded that Cotner's level of responsibility and duties were higher than Complainant's and justified the difference in compensation. DeMarco also concluded that Cotner was responsible for matters involving the entire hospital and was a member of the hospital's Executive Team, while Complainant was primarily responsible for just one section of the hospital.

#### Delays Prompt Tessean Involvement

39. In or about October or November 2021, due to continued delays in performing a desk audit and a market analysis for Complainant's position, Marshall asked Michael Tessean, who was then the DHS Director of Leadership & Organizational Development, to help guide the process forward.

40. Over the course of the next several months, Tessean acted as a liaison between HR and Complainant, pressuring HR to conduct a desk audit or market analysis for Complainant, and reporting back to Complainant about HR's progress, or lack thereof, in conducting the compensation reviews.

41. In December 2021, Tessean was informed by HR that Complainant's concerns would likely be addressed in January 2022.

#### A Market Analysis Conducted in February 2022

42. The market analysis was conducted by Maryum Pelot, a JEC supervisor, who reviewed Finger's analysis and researched salaries for "Laboratory Managers" across the United States.

43. In an email to Carole Sumption, Workforce Strategy Manager, dated February 9, 2022, Pelot wrote, in pertinent part:

I did complete reviewing Jake's [Finger] analysis. I also looked into salary practices for Laboratory Manager across the United States as "Laboratory Administrator" is not a common term. After completing both of those processes, I would not recommend any changes. Please see below:

1. Jake's recommendation, based on compression as there were no equity concerns, was to increase {Complainant's} salary to \$9270.
3. Current salaries for Laboratory Manager across the United States average at \$70,000.
4. Microsoft in Seattle and Deloitte in Houston pay \$111k and \$115 respectively (this is an exception not the norm).

The recommendation is to use the prior recommendation provided by Jake. As that amount has already been applied to [Complainant's] salary, no further action is required.

44. Tessean thought the market analysis did not capture the size, scope, and complexity of Complainant's role. Tessean was frustrated with HR's handling of Complainant's concerns, specifically with the lack of communication and follow through and the lack of thoughtfulness and completeness in the market analysis.

45. On February 28, 2022, Tessean requested a new market analysis because Pelot's analysis misidentified Complainant's position. It was based on a Lab Manager position, not a Director of Laboratory Services.

46. Tessean's frustration with HR was not limited to Complainant's compensation claims. He experienced HR's handling of employee issues as generally untimely and evidencing a lack of thoroughness, thoughtfulness and professionalism.



## The August 2022 Compensation Review

47. On August 12, 2022, Barbara Wilson of the JEC team issued a memorandum with the subject line, “3rd Compensation Review for Christina Bazanele-Sabatka.” This was characterized as a compression review and was a response to Tessean’s and Complainant’s request for a review based on the correct position held by Complainant, Laboratory Director.

48. Wilson reviewed Finger’s and Pelot’s analyses and summarized research begun by Pelot and completed by Wilson. Wilson found that Complainant’s “compensation was in line with other state agencies whose positions are of a similar nature.” Wilson noted that, **“We do not recommend, nor does DPA, using private sector salaries for a comparator. This would set precedence going forward for all salary review requests.”** (Emphasis in original.)

49. Wilson also confirmed that, like Finger and Pelot, Complainant’s position was unique to DHS. However, Wilson listed the job duties that were common among all HP VII positions that warranted placing Complainant within that job classification. Those common duties included:

- Manages the daily operation of a professional program and/or division
- Provides oversight, direction, and leadership for the operations within a department
- Initiates, develops, and sets goals for programs according to the strategic objectives of the department and communicates goals and outcomes with a variety of stakeholders
- Liaises and coordinates with a variety of program/project stakeholders
- Ensures program/project compliance with all regulatory bodies
- Develops guidelines and establishes standards to implement programs
- Develops and maintains a variety of reports, communicates, and presents data to stakeholders
- Determines staffing patterns
- Has formal supervisory authority of the unit staff to include decisions that impact pay, status, and tenure

50. Wilson concluded that, “Compression adjustments were made and therefore no further action is recommended at this time. If management decides to adjust Christina’s salary as she has requested, then other HP VII classified employees should be brought up as well, as this will create a compression issue.”

## September 2022 Compensation Review

51. On September 26, 2022, Wilson issued an analysis and recommendation for a review of Complainant's compensation. Wilson reviewed the past three compensation reviews and provided her recommendation as follows:

A review of three thorough and intensive iterations of compensation review, completed by three separate Job Evaluation and Compensation Supervisors, and consultation with the state-wide senior manager of compensation at DPA, indicate that Christina is receiving a fair and comparable wage to other HPVILs and two comparable state positions. The appropriate compression adjustment was made in 6/2021 and therefore no further action is recommended at this time. All appropriate actions have been taken to ensure a thorough and appropriate analysis was completed using comparable positions to Christina. Within CDHS and DPA's structure for compensation review, all processes have been completed and the recommendation is final.

52. On February 13, 2023, Kimberly Farestad, Director of Operations, Health Facilities, emailed Nunez, Wilson, and others, and wrote:

I wanted to close the loop and share that Jill, Dr. Singleton and I were able to meet with Christina last week. We shared the outcome of the PD panel and the discussions that we have had. We again went through the fact that there have been several reviews done on her compensation and all of them have concluded that she is being paid appropriately within her classification. We were very clear that there is nothing further that we can do related to her concern that she is not paid appropriately. We let Christina respond, and she shared that she does not fully agree with the evaluation processes, but she did seem to understand that we are not going to take any further action with regard to this matter. All in all, I think it went about as well as could be expected.

## Complainant's Step One Grievance

53. Complainant submitted a Step One grievance on February 16, 2023, alleging continuing "inequities in pay at CMHHIP within the Health Professional VII series."

54. Complainant met with Singleton on June 1, 2023 for a discussion of Complainant's Step One grievance.

55. Complainant was provided the Step One grievance decision on June 21, 2023, signed by Singleton. The Step One grievance decision denied Complainant's requested relief.

56. The decision explained the reasons for the denial as based on (1) the fact that the issue of placement within the salary range is not grievable per State Personnel Board Rule 8-11; and (2) the civil rights investigation came back as unfounded (see below).

#### Complainant Submits an Employee Discrimination Form

57. On March 1, 2023, Complainant submitted an Employee Discrimination Complaint Form with the DHS Civil Rights Unit alleging “compensation inequity” based on her sex and national origin.

58. On the Discrimination Complaint Form, Complainant indicated that the discrimination first occurred on February 8, 2023. Under Statement of Issues, Complainant wrote:

Discussed compensation inequities with Supervisor and Senior Level Leadership on 2/8/2023. After discussion, I continue to see inequities in pay at CMHHIP within the Health Professional VII series. As a female Latina, I continue to be the lowest paid HPVII. I have voiced my concerns regarding inequities since 2020. I continued to address inequities within the Health Professional VII series with my Supervisor, CEO, and Senior Leadership and there has been no resolution to compensation inequities. There continues to be inequitable compensation practices where new employees who are White/Caucasian are being hired at higher wages within the Health Professional VII series.

#### The March 2023 Equity Review

59. On March 10, 2023, Alea Resendez of the JEC team issued a memorandum addressing her equity review of Complainant’s compensation. The JEC team utilized an objective method of comparing salaries of employees within the HP VII class, entitled that Total Relevant Credited Experience (TRCE). This method considers each employee’s experience relevant to their position, years of relevant education, licensure, as well as years of State service, and assigns an employee a “TRCE score” based on these factors. That TRCE score is then used as a means of comparing the salaries for each employee in the class and allegedly objectively determining salary. The TRCE analysis does not consider job performance and an employee’s national origin or sex is not factored into the analysis.

60. Resendez summarized the past three compensation reviews for Complainant and concluded:

The Equity Analysis, completed on 3/10/2023, found no evidence of compensation discrimination based on either gender or national origin (ethnicity). Christina’s current base salary is in-line with the tenure and

Total Relevant Credited Experience calculations of the identified direct comparators for the HP VII classification at CMHHIP. Allegations concerning compensation discrimination are unsubstantiated.

61. Resendez recommended that “[n]o further action or change to salary is recommended at this time.”

#### Respondent’s Civil Rights Unit Reviews Complainant’s Discrimination Claim

62. On March 21, 2023, Jim Payonk, a Civil Rights Investigator with the DHS Civil Rights Unit, interviewed Complainant. In the interview Complainant complained about being the lowest paid HP VII and alleged that “people who are not in protected classes are being compensated higher within the Health Professional VII series and it’s not getting addressed.”

63. Also during that interview, Complainant stated her requested relief as follows: “I want to be equitably compensated as a Director of Laboratory Services and Medical Service Manager at CMHHIP.” She stated that she currently earns \$9,458 per month, and that as a resolution to this matter, she is seeking a salary that is “more in line with the midpoint of the Health Professional VII class,” as well as “liquidated damages, attorney’s fees, and interest that has accumulated over the last three years.”

64. On May 3, 2023, Payonk issued an Executive Summary Memorandum to Singleton as the Chief of Medical Staff, and Renate Rivelli, Employee and Labor Relations Unit Manager, regarding Complainant. He concluded that “[t]he allegations raised by Bazanele-Sabatka do not implicate the need for a full CRU investigation at this time.” Payonk based his conclusion on the fact that Complainant’s allegations had been raised and investigated on three prior occasions with no finding of compensation discrimination.

#### Complainant Files A Petition for Hearing with the Board

65. On or about May 26, 2023, Complainant filed a petition for hearing with the Board, alleging discrimination on the basis of sex and national origin/race in violation of the Colorado Anti-Discrimination Act, as well as a grievance that violates CADA.

#### Complainant’s Step Two Grievance and Grievance Decision

66. Complainant submitted a Step Two grievance on June 22, 2023, alleging that the Step One grievance decision failed to address the merits of her pay inequity claim.

67. On July 5, 2023, Complainant, accompanied by her attorney, met with Marshall for a Step Two grievance meeting.

68. On July 28, 2023, Marshall issued her Step Two Grievance Decision, denying Complainant’s requested relief. Marshall explained her reasons for denying

Complainant's requested relief as based on Board Rule 8-11, which provides, in pertinent part, that in-range salary movements are not grievable, and "[t]he CDHS Civil Rights Division completed their review and investigation and it was determined that your concerns did not implicate the need for a full Civil Rights investigation at this time." Marshall added:

This decision was made in part due to multiple compensation reviews that have been done as well as an independent investigation that was done and determined that there were no findings of discrimination or retaliatory behavior. If you would like a copy of this report, you can obtain it through a request through the Colorado Open Records Act.

#### Complainant's Subsequent Board Proceedings

69. On July 31, 2023, Complainant filed another petition for hearing with the Board, objecting to the Step Two grievance decision. That petition, assigned Board case number 2024G014, was dismissed as being duplicative of this case.

70. Upon completion of the preliminary review process, this matter was scheduled for hearing.

### **DISCUSSION**

#### **A. Legal Standards**

Complainant alleges that she was discriminated against by Respondent on the basis of her national origin, Hispanic, and her sex, female, in violation of CADA. She alleges national origin or sex discrimination was the reason for Respondent's decision keep Complainant as the lowest paid HP VII at CMHHIP.

CADA prohibits discrimination "in matters of compensation, terms, conditions or privileges of employment against any person otherwise qualified" due to, *inter alia*, that person's national origin or sex. C.R.S. § 24-34-402(1)(a). See also, Board Rule 9-3 ("Discrimination and/or harassment against any person is prohibited because of . . . sex . . . national origin . . . or any other protected class recognized under the Colorado Anti-Discrimination Act (CADA). This applies to all employment decisions.").

CADA was drafted to mirror federal anti-discrimination laws and federal case law is frequently used to interpret CADA. See, e.g., *George v. Ute Water Conservancy Dist.*, 950 P.2d 1195, 1198 (Colo. App. 1997). See also *Johnson v. Weld County, Colorado*, 594 F.3d 1202, 1219 n.11 (10th Cir. 2010) ("Colorado and federal law apply the same standards to discrimination claims").

Colorado has adopted the following approach [for analyzing discrimination claims based on circumstantial evidence], modeled on the [U.S.] Supreme Court's analysis in

*McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), for proving an inference of discriminatory intent.

“First, an employee must show that [she] belongs to a protected class. Second, the employee must prove that [she] was qualified for the job at issue. Third, the employee must show that [she] suffered an adverse employment decision despite [her] qualifications. Finally, the employee must establish that all the evidence in the record supports or permits an inference of unlawful discrimination.” *Bodaghi v. Dep’t of Natural Resources*, 995 P.2d 288, 297 (Colo. 2000).

If the complainant establishes a *prima facie* case of discrimination, the burden of production shifts to the employer to articulate some legitimate, nondiscriminatory reason for the employment decision. Once the employer meets its burden, the complainant must then be given a full and fair opportunity to demonstrate by competent evidence that the presumptively valid reasons for the employment decision were in fact a pretext for discrimination.

*Colorado Civil Rights Commission v. Big O Tires, Inc.*, 940 P.2d 397, 401 (Colo. 1997). See also *Bodaghi*, 995 P.2d at 298 (if the employer produces evidence of a legitimate, nondiscriminatory reason for its action, the factfinder “giving full and fair consideration to the evidence offered by both sides, proceeds to decide the ultimate question: whether, in light of all the evidence in the record, the employee has proved that the employer intentionally and unlawfully discriminated against the employee.”).

**B. Complainant Established a *Prima Facie* Case of Unlawful Discrimination Based on National Origin, But Not Sex**

In this case, Complainant established a *prima facie* case of discrimination on the basis national origin but not sex. As a Hispanic female who is very well qualified for her position, she met the first two prongs of a *prima facie* case of national origin and sex discrimination. Respondent’s decision to set her base salary lower than all the other HP VIIs at CMHHIP and its rejection of Complainant’s multiple attempts to remedy the alleged inequity constitute adverse employment actions, and establishes the third prong of a *prima facie* case of national origin and sex discrimination.

For the fourth prong of a *prima facie* case of national origin and sex discrimination, Complainant must establish that the circumstances give rise to an inference of unlawful discrimination. Only a “small amount of proof [is] necessary to create an inference of discrimination.” *Smothers v. Solvay Chems., Inc.*, 740 F.3d 530, 539 (10th Cir. 2014) (quoting *Orr v. City of Albuquerque*, 417 F.3d 1144, 1149 (10th Cir. 2005)).

Here, the fact that Complainant is the lowest paid HP VII at CMHHIP despite her exemplary job performance and reputation is sufficient to permit an inference of unlawful discrimination on the basis of Complainant’s national origin. However, because Complainant has identified Cotner as the HP VII to whom Complainant is similarly

situated, and Cotner is a female who is paid much more than Complainant, the circumstances of Complainant's compensation claim do not give rise to an inference of sex discrimination.

Complainant established a *prima facie* case of discrimination on the basis national origin. The burden of production now shifts to Respondent to offer a legitimate, nondiscriminatory reason for its compensation decisions concerning Complainant.

### **C. Respondent Provided Legitimate Nondiscriminatory Reasons for Its Decisions**

Respondent articulated purported legitimate, nondiscriminatory reasons for its decisions concerning Complainant's compensation. Respondent notes that Complainant's salary has been set in compliance with existing guidelines and regulations; accordingly, Complainant's salary has been set without any discriminatory intent. Respondent contends that, based on the multiple reviews of Complainant's claims undertaken by Respondent from 2020 to 2023 based on objective criteria, Complainant's salary is entirely justified. Finally, Respondent contends that Complainant and Cotner were not similarly situated, and the disparity in their salaries was based on Cotner's higher level of responsibility and her years of experience.

Therefore, the discussion must now focus on evidence that these purported legitimate, nondiscriminatory reasons were pretextual.

### **D. Complainant Has Not Established Pretext**

Complainant has failed to establish by a preponderance of the evidence that Respondent's legitimate, non-discriminatory reasons for its actions concerning Complainant's compensation are a pretext for unlawful discrimination.

The courts have recognized a number of categories of evidence of pretext. Generally, to show that an employer's proffered nondiscriminatory reason for an adverse employment action is pretextual, a complainant must produce evidence of such weaknesses, implausibilities, inconsistencies, incoherences, or contradictions in employer's proffered legitimate reasons for its action that a reasonable fact-finder could rationally find them unworthy of credence, and hence infer that employer did not act for the asserted nondiscriminatory reasons. *E.E.O.C. v. BCI Coca-Cola Bottling Co. of Los Angeles*, 450 F.3d 476, 490 (10th Cir. 2006); *Kendrick v. Pense Transp. Services, Inc.*, 220 F.3d 1220, 1230 (10th Cir. 2000).

Pretext can also be established by disturbing procedural irregularities or an employer action contrary to policy or contrary to company practice. *Timmerman v. U.S. Bank, N.A.*, 483 F.3d 1106, 1122 (10th Cir. 2007) ("disturbing procedural irregularities surrounding an adverse employment action may demonstrate that an employer's proffered nondiscriminatory business reason is pretextual"); *Kendrick*, 220 F.3d at 1230

(pretext may also be demonstrated through evidence that an employer “acted contrary to a written company policy ... or contrary to company practice ...”).

Complainant argues that pretext can be established by the alleged fact that a white female who is similarly situated to Complainant, and thus a comparator, has been and is being paid significantly more than Complainant. In addition, Complainant points to procedural irregularities in the delay of, and errors in, the multiple reviews and studies that failed to result in the remedy Complainant sought.

#### Cotner and Complainant Were Not Similarly Situated

Complainant has argued that she and Cotner were similarly situated and the fact that Cotner, a white female, was paid significantly more than Complainant supports the conclusion that Respondent discriminated against Complainant on the basis of her national origin. In support of her contention that she and Cotner were similarly situated, Complainant relies on the general tasks and functions of all HP VIIs, as enumerated in several of Respondent’s analyses of Complainant’s compensation, see p. 9, ¶ 49, above.

However, Complainant downplays the significant differences between her role and Cotner’s, differences that justify the compensation disparity between the two. As the QSS Director for CMHHIP, Cotner was responsible for the entire hospital’s policies and procedures as well as CMHHIP’s hospital-wide quality assessment and performance improvement program (QAPI); she interpreted accrediting and licensing standards applicable to the various sections of the hospital and worked with subject matter experts for each section of the hospital; she was part of CMHHIP’s Executive Team and reported directly to Marshall as the hospital’s CEO; she was on call during evenings and weekends and also served as backup for Marshall when necessary, one of only three positions qualified to act as Marshall’s backup. On the other hand, Complainant is primarily responsible for CMHHIP’s Laboratory, which is just one section of the hospital’s many sections.

Complainant has failed to establish by a preponderance of the evidence that the reasons articulated by Respondent for the pay disparity between Complainant and Cotner were a pretext for unlawful discrimination.

#### Respondent’s Delays and Errors Do Not Establish Pretext

There were inordinate delays in Respondent addressing Complainant’s concerns about perceived compensation inequities. Complainant first raised those concerns in August 2020, and it took Respondent over nine months to conduct and complete its first analysis of the fairness of Complainant’s compensation. After that it took another six months for Respondent to complete a flawed market analysis. In addition, there were some errors in the investigations that were conducted into Complainant’s claims, such as misidentifying her as a Lab Manager rather than the Director of Laboratory Services, and getting her years of experience wrong in the Finger compensation analysis.



However, it is more probable than not that these delays and errors were the result of confusion about what Complainant was seeking, miscommunication or lack of communication among Complainant, Singleton, Marshall, HR (and within HR, the JEC and the CRU), changes in personnel and a lack of thoroughness, thoughtfulness, and professionalism. These causes for whatever irregularities were attendant upon Respondent's handling or mishandling of Complainant's claims do not support a claim of unlawful discrimination. As Tessean testified credibly at hearing, he was frustrated with HR's handling of Complainant's issues, but in his experience the manner in which HR handled Complainant's issues was not unique to Complainant, but was a common occurrence. Not all errors and not all evidence of unprofessionalism can be ascribed to unlawful discrimination.

Those DHS employees who conducted the reviews and who testified at hearing – Wilson and Payonk—testified credibly about how they went about conducting their reviews and there was no evidence presented that would support an inference that they were motivated by discriminatory animus toward Complainant. Despite minor objections to the TRCE methodology, the preponderance of the evidence established that the methodology was objective, valid, and was applied without regard to the national origin of any of the HP VIIs at CMHHIP. In addition, the Flynn Group investigation was thorough and thoughtful and reached the same conclusion that Complainant's level of compensation was not a result of unlawful discrimination.

Furthermore, despite pointing to the errors in Respondent's compensation analyses, Complainant did not establish that but for those errors, Complainant would have been compensated at the much higher level she sought. In short, those errors were inconsequential.

In addition, Respondent's decision in 2021 to raise Complainant's monthly base salary from \$7,709 to \$9,270 – over a 20% raise – based on compression issues undermines Complainant's contention that she was discriminated against in her compensation. Furthermore, Marshall testified credibly that she sought ways in which to compensate Complainant at a higher level. Although ultimately unsuccessful, Marshall's efforts also undermine Complainant's allegations of discriminatory intent.

Complainant did not establish that Respondent's purported legitimate, nondiscriminatory reasons for its actions concerning Complainant's compensation were a pretext for discrimination in violation of CADA. Accordingly, Complainant's discrimination claim fails.

Complainant's frustration with the fact that she is the lowest paid HP VII at CMHHIP is understandable. She is an exemplary employee and the laboratory for which she is responsible is among the best-run laboratories in the country. Complainant's base salary does not appear to be commensurate with Complainant's skills and job performance. However, Complainant has not established that the reason for that apparent incongruity is unlawful discrimination based on Complainant's national origin or sex.

**E. Complainant is Not Entitled to an Award of Attorneys' Fees and Costs**

Complainant has requested her attorney's fees and costs incurred in this litigation.

Board Rule 8-51(B) provides:

Upon final resolution of a proceeding under this Chapter 8, Resolution of Appeals and Disputes, Part A, attorney fees and costs may be assessed against a party if the Board finds that the personnel action from which the proceeding arose, or the appeal of such action was frivolous, in bad faith, malicious, a means of harassment, or was otherwise groundless.

Complainant failed to establish that Respondent discriminated against her in violation of CADA. Respondent's decisions with respect to Complainant's compensation were neither frivolous, in bad faith, malicious, a means of harassment, nor groundless. Complainant has not established grounds for an award of attorney's fees and costs.

Accordingly, Complainant is not entitled to an award of attorney's fees and costs.

**CONCLUSIONS OF LAW**

1. Respondent did not discriminate against Complainant on the basis of either national origin or sex in violation of the Colorado Anti-Discrimination Act.

2. Complainant is not entitled to attorney's fees and costs.

**ORDER**

Complainant's appeal is **dismissed** from the State Personnel Board and **referred** to the State Personnel Director to review any issues raised by Complainant that may fall within the Director's jurisdiction.

DATED this 24th day  
of February 2025,  
at Denver, Colorado

/s/ [REDACTED]  
Keith A. Shandalow, Administrative Law Judge  
State Personnel Board  
1525 Sherman Street, 4th Floor  
Denver, CO 80203

**CERTIFICATE OF SERVICE**

This is to certify that on the 24th day of February 2025, I electronically served a true and correct copy of the foregoing **INITIAL DECISION OF THE ADMINISTRATIVE LAW JUDGE** as follows:

Casey J. Leier, Esq.  
cleier@ll.law

Carlos Ramirez, Esq.  
Assistant Attorney General  
Carlos.Ramirez@coag.gov

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## **APPENDIX A**

### **WITNESSES TESTIFYING AT HEARING (IN ORDER OF APPEARANCE)**

Christina Bazanele

Dr. Albert Singleton

Michael Tessean

Jill Marshall

Barbara Wilson

James Payonk

## **APPENDIX B**

### **EXHIBITS ADMITTED AND NOT ADMITTED INTO EVIDENCE**

#### **Exhibits Admitted Into Evidence**

**COMPLAINANT'S EXHIBITS:** A, C, D, E, F, G, H, I, J, K, L, M, N, O, Q, R, S, T, U, X, Y, Z, AA, CC, FF, GG, LL, OO, PP, QQ, RR, VV, XX, ZZ, AAA, BBB, CCC, EEE, FFF, GGG, KKK, MMM, PPP, RRR, SSS, UUU, VVV, XXX, YYY, ZZZ, AAAA, DDDD

**RESPONDENT'S EXHIBITS:** 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15

#### **Exhibits Offered But Not Admitted Into Evidence, or Withdrawn:**

**COMPLAINANT'S EXHIBITS:** P, DD, EE, HH, II, JJ, KK, NN, NNN, QQQ, TTT, WWW, BBBB, CCCC

## **NOTICE OF APPEAL RIGHTS**

### **EACH PARTY HAS THE FOLLOWING RIGHTS:**

1. To abide by the decision of the Administrative Law Judge ("ALJ").
2. To appeal the decision of the ALJ to the State Personnel Board ("Board"). To appeal the decision of the ALJ, a party must file a designation of record with the Board within twenty (20) calendar days of the date the decision of the ALJ is served to the parties. § 24-4-105(15), C.R.S. and Board Rule 8-53(A)(2).
3. Additionally, a written notice of appeal must be filed with the State Personnel Board within thirty (30) calendar days after the decision of the ALJ is served to the parties. §§ 24-4-105(14)(a)(II) and 24-50-125.4(4), C.R.S. The appeal must describe, in detail, the basis for the appeal, the specific findings of fact and/or conclusions of law that the party alleges to be improper and the remedy being sought. Both the designation of record and the notice of appeal must be received by the Board no later than the applicable twenty (20) or thirty (30) calendar day deadline referred to above. *Vendetti v. Univ. of S. Colo.*, 793 P.2d 657 (Colo. App. 1990) and § 24-4-105(14) and (15), C.R.S.

### **RECORD ON APPEAL**

The cost to prepare the electronic record on appeal in this case is \$5.00. This amount does not include the cost of a transcript, which must be paid by the party that files the appeal. That party may pay the preparation fee either by check or, in the case of a governmental entity, documentary proof that actual payment already has been made to the Board through COFRS. A party that is financially unable to pay the preparation fee may file a motion for waiver of the fee. That motion must include information showing that the party is indigent or explaining why the party is financially unable to pay the fee.

Any party wishing to have a transcript made part of the record is responsible for having the transcript prepared. To be certified as part of the record, an original transcript must be prepared by a disinterested, recognized transcriber and filed with the Board within 59 days of the date of the designation of record. See Board Rule 8-53(A)(5)-(7). For additional information contact the State Personnel Board office at (303) 866-3300 or email at [dpa\\_state.personnelboard@state.co.us](mailto:dpa_state.personnelboard@state.co.us).

### **BRIEFS ON APPEAL**

When the Certificate of Record of Hearing Proceedings is mailed to the parties, signifying the Board's certification of the record, the parties will be notified of the briefing schedule and the due dates of the opening, answer and reply briefs and other details regarding the filing of the briefs, as set forth in Board Rule 8-54.

### **ORAL ARGUMENT ON APPEAL**

In general, no oral argument is permitted. Board Rule 8-55(C).

### **PETITION FOR RECONSIDERATION**

Motions for reconsideration are discouraged. See Board Rule 8-47(K).