

Please print in ink or type

Arkansas  
State Claims Commission  
DEC 06 2019BEFORE THE STATE CLAIMS COMMISSION  
Of the State of Arkansas

- ☒ Mr.  
☐ Mrs.  
☐ Ms.  
☐ Miss

Brian Sanders, Claimant

vs.

State of Arkansas, Respondent

Do Not Write in These Spaces			
Claim No.			
Date Filed	(Month)	(Day)	(Year)
Amount of Claim \$			
Fund			

## COMPLAINT

Brian Sanders, the above named Claimant, of [REDACTED] (City)  
 [REDACTED] (State) [REDACTED] (Zip Code) [REDACTED] (Daytime Phone No.) County of [REDACTED] represented by [REDACTED] (Legal Counsel, if any, for Claim)

of [REDACTED] (Street and No.) [REDACTED] (City) [REDACTED] (State) [REDACTED] (Zip Code) [REDACTED] (Phone No.) [REDACTED] (Fax No.), says:

State agency involved: AR Secs for the Bund Amount sought: Est. 6000.

Month, day, year and place of incident or service: July 1, 2017 - May 2019

Explanation: Requesting back pay for pay grade. At the time of paygrade change, there 5 managers and only 3 were adjusted correctly.

May 2019, transferred to new position a pay was adjusted but never received back pay.

Requested a 15% raise for exceptionally well-qualified position which would have been a 15% above starting salary, which I was denied with no explanation and that I strongly feel I was qualified for.

Also, another employee was accommodated with all the new position transfer benefits & paychange.

As parts of this complaint, the claimant makes the statement and answers the following questions, as indicated: (1) Has claim been presented to any state department or officer thereof?  
 when? (Month) (Day) (Year) ; to whom? (Department)

(Yes or No) and that the following action was taken thereon:

and that \$ [REDACTED] was paid thereon: (2) Has any third person or corporation an interest in this claim? ; if so, state name and address

(Name) (Street or R.F.D. & No.) (City) (State) (Zip Code)

and that the nature thereof is as follows: ; and was acquired on ; in the following manner:

THE UNDERSIGNED states on oath that he or she is familiar with the matters and things set forth in the above complaint, and that he or she verily believes that they are true.

Brian Sanders  
 (Print Claimant/Representative Name)

(Signature of Claimant/Representative)

SWORN TO and subscribed before me at Little Rock, AR  
 (City) (State)

on this 6<sup>th</sup> day of December, 2019  
 (Date) (Month) (Year)

Sabreana J Hyche  
 (Notary Public)

My Commission Expires: March 29, 2027  
 (Month) (Day) (Year)



**BEFORE THE ARKANSAS STATE CLAIMS COMMISSION**

**BRIAN SANDERS**

**CLAIMANT**

**V.**

**CLAIM NO. 200577**

**DIVISION OF SERVICES FOR THE BLIND**

**RESPONDENT**

**ORDER**

Now before the Arkansas State Claims Commission (the “Claims Commission”) is a motion filed by the Arkansas Rehabilitation Services on behalf the Division of Services for the Blind (the “Respondent”) for summary judgment as to the claim of Brian Sanders (the “Claimant”) for back pay. Based upon a review of the motion, the arguments made therein, and the law of Arkansas, the Claims Commission hereby finds as follows:

1. Claimant filed his claim on December 6, 2019, seeking “Est. 6000-” in back pay. Claimant alleged that when the paygrade changed, only three of the five managers’ salaries were adjusted correctly. Claimant also alleged that when he transferred to a new position, he requested a fifteen percent raise as an exceptionally well-qualified candidate, which he did not receive.

2. Respondent filed a motion to dismiss Claimant’s claims regarding back pay and disparate treatment. As to the disparate treatment claim, the Claims Commission agreed with Respondent and dismissed the claim. As to the backpay claim, the Claims Commission found dismissal to be premature.

3. Respondent subsequently filed the instant motion for summary judgment, arguing that Claimant is not entitled to retroactive pay and that Respondent was within its discretion to deny Claimant’s full requested raise. In support of its motion, Respondent attached the affidavits of Cassandra Williams-Stokes, director of the Division of Services for the Blind (DSB), and DeCarlia Smith, human resources director for the Arkansas Department of Commerce (which

includes DSB). Respondent argued that Claimant was moved from a GS08 to a GS09 position in May 2019, at which time he received a ten percent raise (although his request for a fifteen percent raise as an “exceptionally well qualified” hire was denied). Respondent also argued that Claimant’s pay was proper under the Uniform Classification and Compensation Act (UCCA)

4. Claimant did not file a formal response to the motion but did submit a letter and attached portions of March 2017 and June 2017 “Board Meeting Minutes” that discuss DSB issues, including the “inequity” in pay grades between area field supervisors.

5. Claimant filed a second letter describing the three times he was denied a raise.

6. Pursuant to Rule 56(c)(2), summary judgment is appropriate when there are no genuine issues as to any material fact, and the moving party is entitled to judgment as a matter of law. *See Hisaw v. State Farm Mutual Auto Insurance Co.*, 353 Ark. 668, 122 S.W.3d 1 (2003). Summary judgment motions are subject to a shifting burden, in that once the moving party has made a *prima facie* showing of entitlement to summary judgment, “the burden then shifts to the nonmoving party to show that material questions of fact remain.” *Flentje v. First National Bank of Wynne*, 340 Ark. 563, 569, 11 S.W.3d 531, 536 (2000). Summary judgment is useful “when there is no real issue of fact to be decided.” *Hughes Western World, Inc. v. Westmoore Manufacturing Co.*, 269 Ark. 300, 301, 601 S.W.2d 826, 826 (1980).

7. The Claims Commission finds that Respondent made a *prima facie* showing of entitlement to summary judgment, especially in light of the following applicable portions of the UCCA:

- c. It is the specific intent of the General Assembly to authorize, in the enactment of the compensation plans, rates of pay for each of the appropriate grades assigned to a class, but it is not the intent that any pay increases shall be automatic or that any employee shall have a claim or a right to pay increases unless the department head of the state agency determines that the employee, by experience, ability, and work

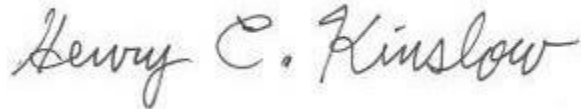
performance, is eligible for the increase in pay authorized for the appropriate rate.

- d. Pay levels established in this subchapter are for compensation management purposes and are not to be construed as a contract, right, or other expectation of actual employee salary determination.

Ark. Code Ann. § 21-5-209 (emphasis added). The Claims Commission further finds that Claimant's response does not demonstrate that material questions of fact remain.

8. As such, Respondent's motion is GRANTED, and Claimant's claim is DENIED and DISMISSED.

IT IS SO ORDERED.



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ARKANSAS STATE CLAIMS COMMISSION

Courtney Baird  
Dexter Booth  
Henry Kinslow, Co-Chair  
Paul Morris, Co-Chair  
Sylvester Smith

DATE: February 8, 2021

**Notice(s) which may apply to your claim**

- (1) A party has forty (40) days from the date of this Order to file a Motion for Reconsideration or a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1). If a Motion for Reconsideration is denied, that party then has twenty (20) days from the date of the denial of the Motion for Reconsideration to file a Notice of Appeal with the Claims Commission. Ark. Code Ann. § 19-10-211(a)(1)(B)(ii). A decision of the Claims Commission may only be appealed to the General Assembly. Ark. Code Ann. § 19-10-211(a)(3).
- (2) If a Claimant is awarded less than \$15,000.00 by the Claims Commission at hearing, that claim is held forty (40) days from the date of disposition before payment will be processed. *See* Ark. Code Ann. § 19-10-211(a). Note: This does not apply to agency admissions of liability and negotiated settlement agreements.
- (3) Awards or negotiated settlement agreements of \$15,000.00 or more are referred to the General Assembly for approval and authorization to pay. Ark. Code Ann. § 19-10-215(b).

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Arkansas Services for the Blind  
5401 S University Ave  
Little Rock, AR 72209



To:

Fax number:

From: Brian Sanders

Fax number:

Date:

3/16/21

Regarding:

Phone number for follow-up:

Comments:

## Motion for appeal

I, Brian Sanders am filing a motion for an appeal in relation to claim number 200577. I am including the following information to be considered in my appeal.

Exhibit 1 documents show discrepancies between salaries and job titles for five employees of Division of Services for the Blind. All were performing the same job duties, hired at different salaries. Note: Brian Sanders salary \$3285 less than the others for the same duties. Document date 06/21/18.

Exhibit 2 shows positions with title rehabilitation program manager and rehabilitation area manager descriptions and salaries. Please note I was hired as a rehabilitation program manager position (position #22101136), a salary difference of \$3285 annually. These documents also show that the starting salary for an Area Manager falls within the pay range of a Rehabilitation Program Manager position. Therefore, Division of Services for the Blind could have been able to adjust my salary to match the salaries of the other Area Managers.

I began working in functional job description of Area Manager on 10/31/16 although I was in a program manager position. At time I was being paid comparable salary to the other Area Managers through June 30, 2017. On July 1, 2017 the State pay grades changed which resulted in Other area managers receiving a pay increase. The Division of Services for the Blind administration was aware of the discrepancy in salaries as evidenced in board meeting notes dated March, June and September 2017. Although the Administration was aware of the

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inequity, this issue was not resolved. Please note on Board Meeting notes for March 2017 Director Katy Morris stated that, "Pay Plan 365 contains errors placing our five area supervisors at different pay grades, so, obviously that is not right since they all have similar (although ~~separately separate~~) ~~certificates and identical~~ credentialing

I was in the Program Manager position, and I did not receive a pay increase. Others performing the same job duties were paid at a higher rate, and all in rehabilitation area manager positions. I moved to position 22102007, Rehabilitation Area Manager, on 05/20/2019. However, at that time I was also required to supervise an additional office in order to be hired into the Rehabilitation Area Manager position. I was required to resign from my position as Program Manager, apply for the Area Manager position and interview for that position. I was hired into the Area Manager position and placed on probation. This was all required of me to allow me to perform the same functional job which I was already performing since October 2016. This was also all required of me to receive the same pay as the other Rehabilitation Area Managers.

Exhibit #3 shows various correspondence between myself, Betsy Barnes and Cassondra Williams between January 2018 and May 2019 regarding acceptance of the position of Rehabilitation Area Manager with higher salary justification by exceptionally well qualified staff. This request was an attempt to equalize the discrepancy between my salary in position of Program Manager to position of Rehabilitation Area Manager. These documents show that request was denied on 05/02/19.

### **Equal Pay/Compensation Discrimination document (Example #1)**

**States that the Equal pay act of 1963 requires that men and women in the same workplace be given equal pay for equal work. Job content and job titles determines whether jobs are substantially equal.**

**The Lilly Ledbetter Fair Pay Act of 2009 states that each paycheck which contains discriminatory compensation is a separate violation regardless of when the discrimination began.**

**Board meeting notes of March 10, 2017, June 9, 2017 and November 8, 2017 indicate awareness on behalf of DSB Director Katy Morris that DSB was aware of "inadequate hiring registers and organizational inequity", which, needed to be addressed.**

**Please be directed to example #2 outlining discriminatory hiring practices by Dell Inc. and legal action taken by EEOC on behalf of a female employee who was discriminated against with regard to hiring practices and wages. Article in the example clearly outlines that Dell hired a female employee through a company merger at a substantial wage difference from a male employee who was performing the same job. The article outlines that Dell's approach to establishing salaries resulted in a wage gap between the female and male employee which was discriminatory.**



## Reference information:

[Eeoc.gov/laws/guidance/equal-pay-act-1963](https://www.eeoc.gov/laws/guidance/equal-pay-act-1963) (Example 2)

## Lilly Ledbetter Fair Pay Act of 2009

On March 03, 2009, President Obama signed the most powerful legislation of this Administration: the Lilly Ledbetter Fair Pay Act of 2009 ("Act"). This law overturned the Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 550 U.S. 818 (2007), which severely restricted the time period for filing complaints of employment discrimination concerning compensation.

The Act states the EEOC's longstanding position that each paycheck that contains discriminatory compensation is a separate violation regardless of when the discrimination began. The Ledbetter Act recognizes the "reality of wage discrimination" and restores "bedrock principles of American law." Particularly important for the victims of discrimination, the Act contains an explicit retroactivity provision.

People challenging a wide variety of practices that resulted in discriminatory compensation can benefit from the Act's provisions. Those practices may include employer decisions about base pay or wages, job classifications, career ladder or other noncompetitive promotion denials, tenure denials, and failure to respond to requests for raises.

Differences in pay that occur because of sex violate the EPA and/or Title VII of the Civil Rights Act of 1964, as amended. In addition, compensation differences based on race, color, religion, national origin, age, disability, genetic information, and/or retaliation also violate laws enforced by EEOC. For more information regarding equal wages because of any of these reasons, please call the EEOC.

## Reference DSB Board Meeting Minutes March, June and September 2017

09/08/17.

September 08, 2017 8 Recruitment-Katy Morris Mrs. Morris noted that this topic was on the agenda to seek guidance and assistance from the board to aright the serious recruitment and personnel classification problems the division is encountering. The complicated recruitment process leaves caseloads vacant for extended periods, requiring supervisors to provide both direct services to clients and managerial services to the staff they supervise. This delays services to clients

and in some situations jeopardizes client rehabilitation plans. These problems have been documented repeatedly and were resolved by DHS for a short time prior to the 2017 Pay Plan Act. The 2017 Act reversed the correction though DSB appealed the errors in time for them to be resolved before the act was passed. Federal regulations require the DSB Director to give written assurance that DSB has an appropriate number of positions at appropriate levels to carry out the state plan. Turnover, inadequate hiring registers and organizational inequity indicate this is not the case. The General Assembly will meet in fiscal session in the winter of 2018 and present the opportunity to correct the inequities. Hopefully, with the board's assistance, we will be able to resolve these problems still remaining because we have staff members who have stepped forward to take on additional responsibilities saying that they are trusting that DSB will resolve the issues of inequity. Chairman Sheeler committed to review the composition of the board personnel committee and work with the committee to address this issue.

### **Examples of Similar Cases in Private Sector**

#### **Example #1: Reference: U. S. Equal Employment Opportunity Commission**

Press Release 10-15-20. "Dell Sued by EEOC for Violation of Equal Pay Laws. IT Analyst Paid Less Than Male Co-Worker for the Same Work, Federal Agency Charges"

Dallas-Dell, Inc. violated federal law by paying lesser wages to a female IT analyst than it paid to a male employee performing work that required substantially equal skill, effort and responsibility; the U. S. Equal Employment Opportunity Commission charged in a lawsuit filed 10-15-20.

According the EEOC's Lawsuit, a female analyst with 24 years of work experience in the industry was hired by Dell at the same time that her male analyst coworker was hired. Despite that the two employees performed the same tasks, assignments and work, Dell paid the female

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According to the EEOC's Lawsuit, a female analyst with 24 years of work experience in the industry was hired by Dell at the same time that her male analyst coworker was hired. Despite that the two employees performed the same tasks, assignments and work, Dell paid the female

employee \$17,510 less than her male coworker. In this case, The EEOC sought back pay, compensatory and punitive damages and injunction relief, including an order barring Dell from engaging in discriminatory treatment the future.

Senior Trial Attorney stated, "Dell failed to properly pay the female employee for her work. Dell's approach to establishing salaries for the male and female employees who worked for the company acquired by Dell (who employed the female employee) resulted in a large gap between the female and male employees salaries. The inequity was not corrected, despite the female employee's complaints to the company."

Example #2: Reference ACLU Pay Equity Cases.

<https://www.aclu.org/other/pay-equity-cases>

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**Eeoc.gov/laws/guidance/equal-pay-act-1963 (Example 2)****Lilly Ledbetter Fair Pay Act of 2009**

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**Reference DSB Board Meeting Minutes November 8, 2017** excerpt from Board meeting minutes: Recruitment report, Katy Morris, DSB Director 09/08/17.

[www.education.org/services/division-of-services-for-the-blind](http://www.education.org/services/division-of-services-for-the-blind)

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