

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-071

CHARLES BAKER

APPELLANT

VS.

FINAL ORDER
SUSTAINING HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

DEPARTMENT OF VETERANS AFFAIRS

APPELLEE

*** **

The Board, at its regular January 2020 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated December 3, 2019, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 15th day of January, 2020.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Dennis Shepherd
Mr. Charles Baker

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
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VS. FINDINGS OF FACT, CONCLUSIONS OF LAW,
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APPELLEE

* * * * *

This matter came on for an evidentiary hearing on October 10, 2019, at 9:30 a.m., ET, at the office of the Kentucky Personnel Board, 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Roland P. Merkel, Hearing Officer. The proceedings were recorded by audio/video equipment and authorized by virtue of KRS Chapter 18A.

The Appellant, Charles Baker, was present *pro se* and accompanied by Ms. Wendy Austin. The Appellee, Department of Veterans Affairs, was present and represented by the Hon. Dennis Shepherd. Also present as Agency representative was Mr. John Ostroske.

The issue on appeal is whether or not there was just cause for the two-day suspension of Appellant from his position as a Registered Nurse in the Department of Veterans Affairs, Radcliff Veterans Center, effective beginning of business March 27, 2019, through close of business March 28, 2019, and whether that penalty was excessive or erroneous. The burden was on the Appellee to prove its case by a preponderance of the evidence.

The rule separating witnesses was invoked and employed throughout the course of the hearing.

BACKGROUND

1. The first witness for the Appellee was **Heather Thompson**, who offered her testimony by telephone per agreement of the parties. KRS 13B.080(7). For the past year, Ms. Thompson has been employed at the Radcliff Veterans Center as a Charge Nurse. When a nurse comes on duty at the Center, they take over a section of residents. The nurse is in charge of a medicine cart, which is kept under lock and key. A nurse on third shift must conduct a medicine cart audit to make sure: (a) the medications are in

date, (b) expired medications are removed, and (c) open medications are labeled with an "open date." There is a checklist provided for this purpose.

2. Mr. Baker, a Registered Nurse, performed medicine cart audits. Ms. Thompson's duty was to review Baker's audit to make sure it had been done correctly. On two occasions, she found Baker had made some errors.

3. When nurses are hired, they participate in orientation. At orientation, they are trained how to perform a cart audit. Once a new employee comes to the facility, the facility provides an orientation on the floor.

4. She identified Appellee's Exhibit 1 as a packet of documents pertaining to Medication - Treatment - Med Room Audits. Pages 1 and 2 reflect the February 14, 2019 audit performed by Mr. Baker. He had checked an indication of "yes" for all the categories and did not list any issues or corrections.

5. Ms. Thompson conducted her audit of Mr. Baker's February 14, 2019 audit. Mr. Baker's audit indicated he had checked the cart for expired medicines and had removed same. Ms. Thompson found expired medicines were still on the cart and had not been removed. Her audit appears at pages 3 and 4 of Appellee's Exhibit 1. On page 4, she indicated all the errors and corrections that should have been performed by Mr. Baker.

Pages 7 and 8 of Appellee's Exhibit 1 show the February 19, 2019 audit performed by Mr. Baker. It is noted he did not place a checkmark in every category. Ms. Thompson again conducted her own audit and indicated on the final page of Appellee's Exhibit 1 the deficiencies of Mr. Baker's audit. Three medications should have removed from the cart.

6. Employees such as Mr. Baker are required to be "on-call" at least two shifts per month. An employee can select the two shifts per month they wish to serve on call. If an employee fails to make that choice, then the two shifts will be chosen by management and assigned to the employee. Mr. Baker never picked his own on-call dates, so these shifts were assigned to him each month. He was provided notice of those dates, written on a document delivered to him. A Notice of On-Call Assignment is given to employees to identify the dates, shifts, and times they are on call. Mr. Baker never signed acknowledgement of receipt of any of his Notice of On-Call Assignments.

7. Appellee's Exhibit 2 was identified as a Notice of On-Call Assignment for Mr. Baker for the dates of January 20 and 28, 2019. Ms. Thompson noted on the document that Mr. Baker refused to sign it on January 13, 2019. He had stated to her at that time the facility could not force him to work overtime.

8. She identified Appellee's Exhibit 3 as a Notice of On-Call Assignment delivered to Mr. Baker assigning him the dates of March 16 and 25, 2019. This document was presented to him on March 4, 2019. He refused to sign acknowledgement of receipt of the document and wrote "Nope" on the signature line.

9. Ms. Thompson testified that a finding of Appellant's unprofessional conduct resulted from his refusal to sign documents. In face-to-face talks she had with him about on-call assignments, Appellant stated the facility could not force him to work overtime. Thompson testified the facility is a long-term care premises for veterans. It has to have staff present to provide the necessary care. Veterans are unable on their own to take their medications and treatments. They require help with basic care needs such as feeding and use of the bathroom.

10. For the purposes of being on-call, an employee has to have a phone with them in case they are needed. An assignment of an on-call date does not necessarily mean that an employee will be called in to work. However, such employee is on-call for the entirety of the shift to which they are assigned or to which they volunteered. If the employee is called, they have to call the facility and advise when they could be expected to arrive. On third shift only, which begins at 10:30 p.m., the facility has one hour from the start of the shift to call someone who is on the on-call list. If that person is not called in within the first hour, that employee is no longer considered on-call. Upon arrival at the premises, whether on-call or regular shift, an employee has to be in uniform. Those on-call should know what their on-call days are and make certain they are physically able to respond appropriately.

11. In conjunction with their duties for the medication cart, nurses are handed lists of all the patients' active medications for that cart. The nurse is to review the list and make sure such active medications are on the cart. Any medications on the cart that are not on the list are to be removed from the cart. Also, listed medications that are open and do not have open dates, or medications that are expired, are to be taken off the cart.

12. When Appellant told her the facility could not make him work more than 40 hours in a week, she said it had already been looked into and "yes, staff could be called in when needed." When Appellant had been on-call February 28, 2019, the facility attempted to reach him by telephone. Appellant could not be reached and a message was left for him. Ms. Thompson spoke to the Appellant subsequent to the on-call shift. Appellant stated he did not have his phone with him and did not know what days he was on-call. Thompson again explained the on-call procedure to him as well as the purpose of providing him the written Notice of On-Call Assignment in advance of his on-call dates. He said he did not check his telephone until the following day.

13. The next witness was **Stacy Collingwood**. Ms. Collingwood, currently retired, had for two years and eight months been employed by the Department of Veterans Affairs as Director of Nursing. All staff issues had been brought to her as she oversaw facility operations as well as enforcement of policies and procedures. When a disciplinary matter was brought to her attention, she conferred with Human Resources to obtain direction about the disciplinary process to be followed. Information came to her from the Charge Nurse Supervisor. She and Human Resources agreed about how to deal with the situation. The Human Resource Administrator is the individual who has the authority to issue a suspension.

14. Registered Nurses who enter the Department's employ go through orientation covering a wide range of topics, including policies specific to nursing. Such orientation included Radcliff Veterans Center, Policy #011, Medication Administration and Documents (Appellee's Exhibit 4). This policy addresses the checklists employees follow, including the documentation of medications. Item 23 states:

Medications will be discontinued on the electronic medical record. Discontinued medications will be noted with a yellow highlighter, plus "dc'd", the date, time and initials of the licensed nurse when utilizing a paper Medication Administration Record. (sic)

Audits are done for patient safety to ensure medications are not available that should not be there.

15. She identified Appellee's Exhibit 5 as Radcliff Veterans Center Policy #094, Work Schedules. This policy pertains to the scheduling of facility staff and includes matters of on-call and overtime. Item 6 states:

Based on 101 KAR 2:095, Section 2 - the Appointing Authority may require mandatory overtime.

- a. In the event that there is not sufficient staff to meet resident care needs the Appointing Authority shall be notified. The Appointing Authority may require employees to work hours, days or shifts other than normal, including inclement weather schedules if it is in the best interest of the facility. Any employee may be reassigned from one shift to another and/or from one workstation to another or alternate days off to meet staffing requirements.
- b. Overtime work assignments will be required as a last resort when the number or classification of employees on a shift is inadequate to meet resident care needs.
- c. Overtime work assignments will be required in a fair, equitable manner.
- d. Upon determining the need for overtime, employees shall first be asked to volunteer.
- e. When overtime is required to meet resident care needs, employee abilities and their certification shall be assessed. In order to implement this policy, all employees must be "reasonably accessible" by telephone. "Reasonably accessible" is defined as providing a telephone number where they can be reached.

16. She identified Appellee's Exhibit 6 as a copy of 101 KAR 2:095. Classified Service General Requirements. Section 3(3) states "An appointing authority may require an employee to work hours and days other than regular days and hours, including an overtime or inclement weather schedule if it is in the best interest of the agency."

17. Nurses are scheduled for on-call in the interest of the veterans and facility. The facility has a responsibility to make sure the needs of the veterans are met. If there is an insufficient number of staff anticipated for the next shift, volunteers are sought from the currently working shift. Thereafter, telephone calls are made to staff

employees who have previously indicated they are willing to work overtime hours. If staff members cannot be obtained from those two methods, then the on-call list is referred to and those who have been designated on such date will be called.

18. She identified Appellee's Exhibit 7 as an Acknowledgement of Skills Manual signed by the Appellant on April 10, 2017. Such document denotes Appellant acknowledged having read and reviewed a clinical nursing skills reference book as well as Mosby's Textbook for Long-Term Care Assistants, and that said documents are located in the medication room for use and reference.

19. A Registered Nurse is responsible for a team of veterans. The nurse is required to meet the veterans' care needs during that shift. Such care needs includes medications, treatment, food and fluid intake, and repositioning the veteran in bed. Basic skills are taught to nurses in nursing school, which also addresses discontinued medications.

20. The employee has the right not to sign acknowledgement documents, but they are still responsible for knowing the information contained in that document. Appellant was disrespectful to the process by writing "Nope" on the on-call acknowledgement form.

21. **Donya Goode** was the next witness. For the past three years she has been employed by the Department of Veterans Affairs, Radcliff Veterans Center, as the Human Resources Administrator. When a disciplinary package is sent to her from a supervisor, she begins to gather all relevant information. She also sends the matter up through the administrators. She examines the facts to determine the severity of the acts. She then consults with legal counsel and her supervisor in Human Resources. She followed that procedure in this instance.

22. She also examined Appellant's personnel file for prior disciplinary actions. She then assembled all the information, and contacted the Human Resource Branch Manager and legal counsel for their input to make sure any disciplinary action was appropriate. She drafted the current suspension letter (Appellee's Exhibit 9), which was signed by the former Human Resource Administrator, Israel Ray. Mr. Ray was the Appointing Authority who made the final decision on this disciplinary matter.

23. She identified Appellee's Exhibit 8 as Kentucky Department of Veterans Affairs, Standards of Professional Conduct, Policy Directive 14. Item 2 under Professional Demeanor requires all employees refrain from showing

“disrespect...towards coworkers or supervisors.” She concluded that Appellant failing to volunteer for on-call duty, writing “Nope” on the bottom of an acknowledgement document, and telling his supervisor that he did not have to sign up for on-call duty all constituted violations of the Standards of Professional Conduct. She also cited that paragraph from the suspension letter where Appellant had told Heather Thompson he was not going to copy the schedule or write down the dates, as he could not be made to work over 40 hours per week.

24. She testified there is a right not to have to sign paperwork. However, as part of the job, one has a duty to sign up for on-call. He showed disrespect in writing “Nope” on the on-call acknowledgement document.

25. She identified Appellee’s Exhibit 9 as the March 24, 2019 suspension letter. That letter includes Appellant’s previous disciplinary and corrective actions:

- December 4, 2017 Verbal Counseling for negligence in job duties;
- March 20, 2018 Written Reprimand for unprofessionalism/being disrespectful to coworkers;
- August 8, 2018 Written Reprimand for absenteeism; and
- August 21, 2018 Sick Leave Verification.

26. The Department employs a progressive disciplinary process. She believed the current disciplinary action of a two-day suspension was appropriate and at the lower end of the suspension spectrum.

27. The next witness was **John Ostroske**. For more than a year, he has been employed by the Department of Veterans Affairs as the Human Resource Branch Manager with his workstation in Frankfort, Kentucky. He oversees all veterans’ cemeteries, field operations, and four nursing facilities, including the Radcliff Veterans Center. Previously, he had been employed 17 years at the Thomson-Hood Veterans Center as the Human Resource Branch Manager.

28. Ms. Goode consulted with Mr. Ostroske about this matter. The Department employs a progressive disciplinary policy. Each level is employed to correct behavior, restore the relationship with the employee, and move on.

29. He identified Appellee's Exhibit 10 as Kentucky Department of Veterans Affairs, KDVA Employee Progressive Discipline - Policy Directive 2. In examining this matter, Mr. Ostroske applied these guidelines to the case. Appellant had been issued discipline consistent with this policy and his prior disciplinary history.

30. Simply refusing to sign a paper does not constitute disrespect. However, in this situation, taking into account the totality of Appellant not showing up for an assigned on-call, writing "Nope" on a document, and stating that he could not be made to work more than 40 hours per week, the witness determined Appellant had shown disrespectful intent and acts.

31. He identified Appellee's Exhibit 11 as the August 10, 2018 written reprimand issued to the Appellant for having demonstrated a pattern of calling in to miss work on days consecutive with periods where he had two scheduled days off.

32. Appellee's case was closed. Appellant offered testimony as the sole witness on his own behalf.

33. The **Appellant, Charles Baker**, is employed by the Department of Veterans Affairs at the Radcliff Veterans Center, where he has served for two and one-half years. Heather Thompson had given him a piece of paper showing the on-call days for which the institution had signed him up. He did not feel he should sign the paper as he did not agree with it. Ms. Thompson kept asking him several times to sign it, but he refused. He said, "Nope" and she said, "Well then, put that down." So he did.

34. The process previously employed on the medical cart audits required the nurse to consult the computer to see what orders to confirm and what "dc" orders are to be confirmed. The nurse then unlocks the medical cart and takes the "dc" medicine off the cart.

35. When new nurse managers came on the scene, they would check the computers, delete information regarding "dc'd" meds once they saw it, and did not pass that information on to the nurses who had the carts. The nurses did not know then that such medications should have been taken off the cart.

36. "When I made these errors, I did 'dc' some of the medications" and take them off the cart. He admitted he had missed some. Ms. Thompson then spoke to him about the issue and explained the new way to do it. She then gave him a big stack of papers so he had something to reference.

37. Mr. Baker testified he did not have a problem serving on on-call. Ms. Thompson told him that they were on-call for the entire shift, were to report within one hour of being called, and were required to be in uniform. If one does not pick their days, the facility will give you days you do not want, like weekends. By doing that, they are trying to make you sign up beforehand. "Instead of asking people, they bully people."

38. He stated that the regulations required he be paid a full eight hours if he "cannot use his own time effectively" for his own purposes during the eight hours on call. In that case, he believes he is to be paid time and one-half.

39. Mr. Baker stated that if he were on call from 10:30 p.m. to 7:00 a.m., he is not responsible to turn on his phone until the on-call shift starts at 10:30 p.m., "just when I am on-call." "This system is completely broken."

40. Appellant stated his duties required him to check yes or no on the Medication-Treatment-Med Room Audit checklist, or to list problems on the second page. He was never instructed how to use the checklist. For the February 14, 2019 checklist, he did check "Yes" in every box. "I missed some things, obviously." It was not difficult for him to understand the checklist.

41. By February 19, 2019, he knew how to use the checklist. On that day's audit, he did not check off all the boxes. He had been told that if he did not do one of the items, not to check the box. There are times they do not do an in-depth audit every night.

Appellant's case was closed. Appellee did not call any witnesses in rebuttal. Appellee waived presentation of a closing argument. Appellant presented a closing argument.

FINDINGS OF FACT

1. Charles Baker, the Appellant, is a classified employee with status. He is a Registered Nurse employed at the Radcliff Veterans Center (the "facility").

2. The facility is a long-term care premises for veterans. The veterans in residence are unable to take medications on their own. They also require help with basic care needs.

3. In addition to the training they receive in nursing schools, Registered Nurses participate in an orientation process when they are hired by the Department of Veterans Affairs. The facility also provides an orientation when a Registered Nurse begins work there. Appellant's totality of orientation included "Radcliff Veterans Center, Policy #011, Medication Administration and Documents (Appellee's Exhibit 4); and Radcliff Veterans Center, Policy #094, Work Schedules (Appellee's Exhibit 5). Appellant acknowledged, on April 10, 2017, he had read and reviewed a clinical nursing skills reference book and a textbook for long-term care assistance, and that both reference materials were available in the Medication Room for staff members' use (Appellee's Exhibit 7).

4. When a Registered Nurse comes on duty, they take over a section of the residents. The nurse is in charge of a medicine cart, which is kept under lock and key. The nurse conducts a medicine cart audit to confirm medications are in date, have not been discontinued or expired, are present for specific veterans, and that open medications have their "open dates" listed thereon. The nurse fills out a checklist to complete this duty and removes expired or non-compliant medications from the cart.

5. Heather Thompson, the Charge Nurse, conducted check audits of the audits conducted by Registered Nurses. On February 14, 2019, she conducted such an audit of Appellant's audit for that same date (Appellee's Exhibit 1). Appellant checked off "yes" to every item on the checklist and signed it. Ms. Thompson found Appellant failed to: (a) remove discontinued medications, (b) remove expired medications, and (c) note some open medications had no "open date" notation. She then counseled Appellant on his errors.

6. On February 19, 2019, Thompson conducted another check audit of the audit conducted by Appellant earlier that shift (Appellee's Exhibit 1). Appellant checked off "yes" to most items on the checklist, did not indicate "no" to any item, and left some items blank. He signed the audit. Ms. Thompson found Appellant again failed to remove some discontinued medications from the cart.

7. The facility has in place an "on-call" procedure for its employees, including Appellant. The facility is required to be sufficiently staffed for all shifts in order to provide the necessary care for the veterans. Employees are required to be "on-call" at least two shifts each month. An employee is given the monthly opportunity to select the two shifts. An employee may also make known a willingness to work overtime hours each month in addition to the "on-call" dates. If an employee decides not to select the two shifts per month, the facility will make that selection for them.

Appellant never selected his two shifts and, as a result, such shifts were always assigned to him by the facility. Shifts selected by or assigned to employees are then placed on a Notice of On-Call Assignment form (such as Appellee's Exhibit 2) and delivered to that employee.

8. It is expected that an employee who is on-call be readily available and physically able to arrive at the facility within about one hour of the start of that shift. When an employee is on-call for a certain shift, they remain on-call for the entire shift, with the exception of the 10:30 p.m. to 7:00 a.m. third shift. On third shift, if an on-call employee is not called in by the facility within the first hour of the start of the shift, the employee is no longer on-call for that shift.

9. When additional staff are required for an upcoming shift, a request for volunteers is made to the employees currently working on site. If there are an insufficient number of volunteers, telephone calls are made to employees who previously indicated a willingness to work overtime hours. If there are still an insufficient number of employees, calls are then made to employees on the on-call list for that shift.

10. An appointing authority may require mandatory overtime of employees. 101 KAR 2:095, Section 2; Radcliff Veterans Center, Policy #094. All employees must be "reasonably accessible" by telephone.

11. On January 13, 2019, Appellant was advised that his on-call dates were for the third shift of January 20 and January 28, 2019, and provided a Notice of On-Call Assignment. He refused to sign acknowledgement of receipt of the document (Appellee's Exhibit 2).

12. Appellant had been assigned on-call for February 23, 2019. A telephone call was made to him to report to work, but Appellant did not answer his telephone. A voice mail message was left for him (Appellee's Exhibit 9). He did not report for on-call duty that day.

13. On March 4, 2019, Appellant was advised and provided a Notice of On-Call Assignment advising him that his on-call dates were the third shift of March 16 and March 25, 2019. He refused to sign acknowledgement of receipt of the document and, instead, wrote "Nope" on it (Appellee's Exhibit 3).

14. At all times during the events described herein, the following were in full force and effect:

- 101 KAR 1:345, Section 1;
- 101 KAR 2:095 (Appellee's Exhibit 6);
- Radcliff Veterans Center, Policy #011, Medication Administration and Documents (Appellee's Exhibit 4);
- Radcliff Veterans Center, Policy #015, Discontinued Medications;
- Kentucky Department of Veterans Affairs, Time and Attendance, Policy Directive 1;
- Radcliff Veterans Center, Policy #094, Work Schedules (Appellee's Exhibit 5);
- Kentucky Department of Veterans Affairs, Standards of Professional Conduct, Policy Directive 14 (Appellee's Exhibit 8);
- Kentucky Department of Veterans Affairs, KDVA Employee Progressive Discipline, Policy Directive 2 (Appellee's Exhibit 10).

15. A disciplinary package was sent to Donya Goode, Human Resource Administrator for the Radcliff Veterans Center. She gathered relevant information and examined the facts. She consulted with legal counsel and her own supervisor in Human Resources. She also examined Appellant's personnel files and reviewed his disciplinary history, which included:

- December 4, 2017 - Verbal counseling for negligence in job duties;
- March 20, 2018 - Written reprimand for unprofessionalism/being disrespectful to coworkers;
- August 8, 2018 - Written reprimand for absenteeism;

- August 21, 2018 – Sick leave verification.

16. Ms. Goode again consulted with legal counsel and with John Ostroske, Human Resource Branch Manager. Subsequently, she drafted the underlying disciplinary letter and sent it to Israel Ray, formerly the Appointing Authority, for his review and approval.

17. The Department of Veterans Affairs employs a progressive disciplinary policy pursuant to Kentucky Department of Veterans Affairs, Policy Directive 2 (Appellee's Exhibit 10).

18. Mr. Ray, the former Human Resource Administrator and Appointing Authority, examined the facts, the letter provided to him by Ms. Goode, and the Department's disciplinary policy. He then made the decision to issue a two-day suspension to Appellant. He approved and signed the March 24, 2019 letter that notified Appellant he would be suspended from duty and pay for two working days, March 27 and 28, 2019, pursuant to 101 KAR 1:345, Section 1, Unsatisfactory Performance of Duties, and KDVA Policy Directive 14, Standards of Professional Conduct. Specifically, he was cited for: (a) medicine cart errors, (b) failure to remain on-call, and (c) unprofessional conduct. He was also advised his actions were in violation of various policies listed on page 2 of that letter (Appellee's Exhibit 9).

19. Appellant timely filed his appeal of the disciplinary action with the Kentucky Personnel Board.

CONCLUSIONS OF LAW

1. A classified employee with status shall not be suspended or otherwise penalized except for cause. KRS 18A.095(1). Appointing authorities may discipline employees for lack of good behavior or unsatisfactory performance of duties. 101 KAR 1:345, Section 1. A suspension shall not exceed thirty (30) days. 101 KAR 1:345, Section 4(1).

2. Appellee, Department of Veterans Affairs, issued Charles Baker a two-day suspension by letter of March 24, 2019 (Appellee's Exhibit 9). That suspension was based on allegations of unsatisfactory performance of duties in violation of Kentucky Department of Veterans Affairs' policies. The evidence shows by a preponderance of the evidence that Charles Baker:

- a. After having been counseled for errors in conducting a February 14, 2019 medication cart audit, continued to commit errors when he conducted the February 19, 2019 cart audit;
 - b. That on February 23, 2019, when Appellant was on-call, he was called by the facility and failed to answer his telephone. Appellant subsequently admitted he did not have his telephone with him at the time.
 - c. On February 28, 2019, Appellant told Charge Nurse Heather Thompson he was not going to copy the schedule or write down his on-call dates; that the facility could not make him work over 40 hours per week; that when he refused to sign a Notice of On-Call Assignment for March 2019 on-call dates, he wrote in the word "Nope" (Appellee's Exhibit 3).
3. The facility employs a progressive disciplinary policy. Appellant's disciplinary history includes a verbal counseling for negligence in job duties (December 4, 2017), written reprimand for unprofessionalism/being disrespectful to coworkers (March 20, 2018), written reprimand for absenteeism (August 8, 2018), and sick leave verification (August 21, 2018).
4. Appellee has shown by a preponderance of the evidence that there was just cause for disciplinary action against the Appellant, and has also shown by a preponderance of the evidence that the disciplinary action taken, that is, a two-day suspension, was neither excessive nor erroneous.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Personnel Board that the appeal of **CHARLES BAKER V. DEPARTMENT OF VETERANS AFFAIRS (APPEAL NO. 2019-071)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other

party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

Any document filed with the Personnel Board shall be served on the opposing party.

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of Hearing Officer Roland P. Merkel this 3rd day of December, 2019.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Dennis Shepherd
Mr. Charles Baker