

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-306**

MICHAEL BLASI

APPELLANT

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

**TOURISM, ARTS AND HERITAGE CABINET
DEPARTMENT OF PARKS
BOB STEWART, APPOINTING AUTHORITY**

APPELLEE

** ** *

The Board at its regular October 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated September 3, 2015, Appellee's exceptions, Appellant's response, oral arguments and being duly advised,

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

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 14th day of October, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Leigh Powers
Hon. Kirk Hoskins

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This matter came on for evidentiary hearing on July 6 and 7, 2015, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Michael Blasi, was present and was represented by the Hon. Kirk Hoskins. The Appellee, Department of Parks, was also present and represented by the Hon. Leigh Powers. Appearing as Agency representative was Laurie Googe.

BACKGROUND

1. This matter involves the dismissal of the Appellant by letter dated October 9, 2014, from his position as Maintenance Superintendent I at E.P. Tom Sawyer State Park (EPTS), in Louisville, Kentucky. A copy of the letter is attached hereto as **Recommended Order Attachment A**.

2. The burden of proof was placed upon the Appellee by a preponderance of the evidence to show that the dismissal was appropriate under all surrounding circumstances and was neither excessive nor erroneous

3. The testimony from various witnesses established the following undisputed facts:

a. EPTS is a 550 acre park located in Jefferson County. It is one of the, if not the, most visited park in Jefferson County.

b. On Friday, May 30, 2014, there was great pressure from the public and park management to get the swimming pool at EPTS open. Normally the park pools open on Memorial Day weekend, which had been the previous weekend including Monday 26.

c. After the pool had been painted and filled with water, it was discovered that a part used with the acid pump was broken, thus necessitating employees to "hand-feed" the necessary chemicals into the water to achieve a proper water balance. Another reason for the pool not being ready to be opened was a shortage of lifeguards.

d. During the "hand-feeding" of acid into the pool on Friday, May 30th, Maintenance employee, Eric Calain, was splashed with Muriatic Acid. Following his departure from the park that afternoon to seek medical assistance, it was apparent that someone would have to "hand-feed" the acid into the pool on the days following, with the hope that the pool could be ready for opening on Monday, June 2. Employee, Lora Sekeres, was asked to perform this task by the Appellant and she did so on Sunday, June 1.

e. Following an OSHA complaint filed by Calain, the state OSHA office investigated and ultimately issued two citations to the park. Those citations involved the lack of an eyewash station and the fact that the employees had not been provided with the proper personal protective equipment (PPE) which were chemical safety goggles and face shields. It was established that the lack of an eyewash station was because, although the part was at the park, it had not yet been installed by plumbers who had been contracted to do so. The park was assessed an OSHA fine in the amount of \$3,750.

4. The Appellee called as its first witness, **Eric Calain**. The witness testified that he is a Maintenance Worker II and has been employed at the EPTS for the past twenty-five years. His job duties include maintaining the pool equipment, mowing, picking up trash, and generally keeping the grounds safe for park visitors. He testified that in performing his duties, he sometimes wore earplugs and safety glasses. His supervisor was the Appellant.

5. The witness stated that on Friday, May 30, 2014, staff was attempting to get the pool ready for opening. However, they discovered a needed part for the acid pump was broken. As a result they had to "hand-feed" the chemicals into the pool to achieve the proper water balance. He had "hand-pumped" chemicals into the pool in the past without safety goggles and without incident.

6. He explained that he had attended a safety meeting in March and had been made aware of the need to use PPE. Following that training session, the witness stated that he had requested the necessary safety equipment to be made available. However, when hand-feeding the chemicals on May 30, he used what he had on hand, which were a pair of gloves. As a result, he got a Muriatic Acid splash around his eye. He finished the task, but as a result he left early around 3:30 p.m. and went to Urgent Care for a treatment. He suffered no permanent damage. That day he told the Appellant what had happened, and shortly thereafter, he contacted OSHA to file a complaint over lack of proper equipment. He added that at no time had the Appellant ever cautioned him for his failure to wear the proper PPE.

7. On cross-examination, the witness explained that there were three maintenance people, including the Appellant, to take care of the large EPTS Park. He also added that he worked without close supervision from the Appellant and he never felt that the Appellant was indifferent to his safety.

8. He went on to explain that at the March safety meeting, he had raised some safety concerns about lack of necessary equipment with Dr. Troy Rawlins and Clay Foreman, Park Manager. Dr. Rawlins is the staff member in charge of the safety for all state parks.

9. The witness also added that he knew that park management urgently wanted the pool to be opened that weekend. Further, since the maintenance staff is responsible for maintaining the pool equipment, he did not know if the pool staff (Aquatics Director and lifeguards) had ever had to perform a "hand-feed" of chemicals in the pool.

10. On redirect, regarding the purchase of necessary equipment, the witness testified that he or the Appellant would go and pick up items as needed using the Pro-card, which is a state credit card. He explained that either he or the Appellant would check out the equipment needed, but ultimately any purchases had to be finally approved by manager Clay Foreman.

11. Appellee's next witness was **Clay Foreman**. He has been the Park Manager at EPTS since August 2011. He testified after the first couple of weeks on his job, his analysis of park operations showed him that the Maintenance Department needed improvement. He stated that he would meet with the Appellant in the early morning on most days in order to lay out a work plan. He added that he would write out most things which he expected the Appellant to do and gave the Appellant the chance to write down from his perspective what was needed.

12. He explained that the first time he evaluated the Appellant was for the calendar year 2012, for which he issued a "Needs Improvement" rating. He then issued a Performance Improvement Plan (PIP) in early 2013. Nevertheless, his year-end evaluation for 2013 also resulted in a "Needs Improvement" ranking for the Appellant. The witness then introduced Appellee's Exhibits 2 and 3. The first was a four-day suspension issued December 2, 2011, for failing to uphold the Harassment Prevention Policy. This involved not seeing that various pornographic magazines found on-site in the maintenance barn were removed. The second

suspension was issued June 17, 2013, again a four-day suspension for unsatisfactory performance of job duties by failing to complete various assignments.

13. He detailed that following the second four-day suspension and as winter approached, he made out a "winter plan" for various jobs to be performed by the maintenance staff during the winter of 2013/2014. The witness then detailed that he had sent to the Appellant a February 26, 2014 memo regarding the fact that no progress had been made on the winter plan.

14. Foreman then explained that regarding operation of the pool, the Maintenance Department was responsible for maintaining the pool equipment. He explained that the Appellant had told him that the acid pump was not working and that the part had been ordered. As a result, he was told that employees would have to "hand-feed" chemicals in to the pool to get a good water balance. At this point, the witness then explained that the park pool did not open as scheduled on Memorial Day weekend and that a subsequent delay was caused by the "acid splash" incident involving Calain. He also added that since Calain was not at work, the responsibility for seeing the pool open fell to the Appellant. The witness testified that the Appellant was good at following purchase procedures, which requires the initiation of a purchase request of certain items sent to Foreman for final approval. He added that he had approved some purchases for PPE, such as goggles, gloves, and earplugs.

15. The witness then asserted that the Appellant was the one responsible for seeing that the necessary PPE equipment was purchased and on-hand. He insisted that at the March 2014 safety meeting, he was not told about the lack of PPE pool equipment.

16. Foreman then testified that he was later informed of the Friday, May 30th acid incident with Calain. His understanding was that after he left, it was not possible to open the pool on Saturday. He was further told that the Appellant had told one of the recreation staff, Lora Sekeres, to hand-feed the acid in to the pool water from a bucket. He was also told that she had never done this task before. He then learned that an OSHA investigation would occur. He also stated that as part of the lack of progress on the maintenance activities in early spring 2014, he had requested Dr. Troy Rawlins, the Safety Coordinator, to visit the Appellant at least once a week to emphasize the importance of training.

17. On **cross-examination**, the witness testified that as the former Mayor of Jeffersontown, he had five parks under his supervision and had experience there with the budget and oversight of parks. He felt that his working relationship with the Appellant was one where they got along well.

18. The witness then went on to state that a shortage of lifeguards was one reason for the pool opening late. This was in addition to the fact that the replacement part for the acid pump had not yet arrived and been installed.

19. He explained that he had relied on the maintenance staff to make the necessary repairs and he was not aware that it would require hand-feeding acid into the pool.

20. Foreman then testified that Dr. Troy Rawlins was a staff member in charge of the safety of all state parks. Rawlins had sent him a February 16, 2012 memo stressing the importance of wearing PPE for necessary tasks. As a result of this memo, he discussed the use of PPEs with his staff, including the Appellant. Regarding the OSHA violation of failure to have an eyewash sink, the witness testified that he himself had contracted with a plumber to install the station which was on-site, but that the installation did not occur until a few days after Calain was injured.

21. Directed to Appellant's Exhibit 1 and 2, the witness acknowledged receiving a February 16, 2012 e-mail from Troy Rawlins regarding having appropriate PPE on-hand, and also acknowledged the February 17, 2012 memo to him from the Appellant listing as a goal the purchase of emergency eyewash stations. The witness noted that the Appellant had the ability to initiate the purchase of the needed equipment, as it only required the filling out of a purchase request and submitting it to him.

22. He went on to state that there had been at least seven occasions where the Appellant had listed the purchases of necessary PPE equipment as a goal. This witness deemed these as a "goal" to be achieved, rather than a purchase request. In his later testimony, the Appellant insisted that these were purchase requests which require action by Foreman.

23. The witness then stated that the lack of having the necessary chemical PPEs on-hand would have supported the option of not opening the pool. He added that he did not think the Appellant was trying to get anyone hurt with the acid incident, but rather was only trying to open the pool and was doing it in good faith. [Hearing Officer Note: In earlier testimony, this witness had stated that the lack of lifeguards was a reason for not opening the pool.]

24. Finally, the witness admitted that he had received a written reprimand over the OSHA incident and also admitted there was no adverse action against the Appellant until after the OSHA finding.

25. On **redirect**, the witness stated that normally staff comes to him to initiate the purchase of equipment. He added that the chemical PPE items were not found when OSHA conducted its investigation. He again insisted that the weekly goals expressed in Appellant's Exhibit 2 were items he considered as goals and not purchase requests.

26. The witness testified that he had found out on the following Monday or Tuesday (June 1 or 2) that the Appellant had asked Sekeres to empty the chemicals into the pool, but had not provided any PPE or instructions to her. [Hearing Officer Note: Both Sekeres and the Appellant testified instructions were given, although the length of time was disputed.] He also confirmed that the Appellant was not her supervisor. The witness then insisted that the necessary PPEs had been on-hand, except for the installation of the eyewash station. He also added that both the pool staff, headed by Sekeres, and the maintenance staff were responsible for water

level readings. This confirmed that it was not the sole responsibility of the maintenance staff for water testing.

27. Appellee's next witness was **Lora Sekeres**. On May 30, 2014, she was the Aquatics Coordinator at EPTS. Part of her responsibilities included supervising the lifeguards and testing the water to maintain its appropriate levels. She testified that on Friday, May 30, at approximately 3:30 p.m., in anticipation of opening the pool the following day, the Appellant asked her to help with the pool during the weekend. Apparently, she was the only one who was going to be on duty. After the Appellant asked if she would "hand-feed" the chemicals into the pool, the witness stated that she inquired of him about the availability of PPEs. She then testified that the Appellant told her, "We don't have that stuff." She testified that this conversation lasted less than five minutes. She then came back on Sunday, after having retrieved gloves from home and attempted to hand-feed the pool. During this process, she spilled some Muriatic Acid on a rug. She stated that she had no idea of what she was dealing with regarding the acid until she spilled and saw it bubbling on the rug. It appears she performed this task without using chemical safety goggles, also knowing this was a violation of safety protocol.

28. The witness also explained that on that Friday afternoon at approximately 4:00, she had talked with Foreman and told him that she would have to bring gloves from home in order to feed the chemicals, to which he replied, "Okay." She added that she had only been at EPTS approximately four weeks, but had been to a safety meeting in April. She also was a certified pool operator.

29. Sekeres stated that the Appellant did not mention to her that Eric Calain had been splashed with acid earlier that day. Rather, he simply asked her to hand-feed the chemicals. He testified that she was upset later when she found out that she had not been told about Calain's incident.

30. On cross-examination, the witness confirmed that it was her responsibility to hire lifeguards, and that was one reason why the pool could not open on time. She also stated that she had been shown by the Appellant on Friday afternoon how to hand-feed the pool, which she did on the following Sunday. However, she also added that she had never performed "hand-feeding" previously.

31. The Appellee's next witness was **Troy Rawlins**. He has a Ph.D. from Eastern Kentucky University and was an Assistant Professor there for one year over the Safety Service Emergency Management Department.

32. At the time of the incident in question, he worked for the Parks Department as an Administrative Branch Manager over safety. Part of his responsibility was keeping EPTS in compliance with federal and state safety regulations.

33. He stated that he had conducted the PPE safety meeting in March 2014 at EPTS. After he heard of the May 30 incident, he went to the park and did some investigation before OSHA arrived.

34. He stated that his inquiries resulted in him knowing that Eric Calain had to hand crank a pump and feed acid into a bucket which went into the pool. He added that from his investigation, he determined that the Appellant had never instructed Lora Sekeres on the need to wear PPE. She told this witness that she did not feel comfortable about hand-feeding the acid, especially after seeing it spill on the rug. The witness testified that during his investigation, the Appellant took him back to the maintenance building, but could not find the PPE.

35. The witness then stated that he turned in his investigative notes to Human Resources Director Laurie Googe when he left the Parks Department on or around July 14, 2014. [Hearing Officer Note: Apparently, Googe primarily used the information developed in his investigation in drafting the dismissal letter.]

36. The witness concluded by saying that he felt the Appellant was responsible for providing the PPEs to his subordinates. He added that he felt that the Appellant lacked leadership and training. He felt the Appellant failed to explain and ensure that his employees complied with the necessary safety procedures.

37. Under further examination, the witness explained the role of OSHA relative to safety violations. He stated that OSHA only fines employers and that is why supervisors are held to a higher standard so as to ensure compliance. He added that the Appellant was the agent for the employer because he had the knowledge and expertise to protect his subordinates. He also added that it was troubling to him that the same incident with the acid had occurred twice.

38. He closed by saying that he felt the Appellant should have actually showed Sekeres, per a physical demonstration, of how to hand-feed, rather than just telling her how to do it.

39. The Appellee's next witness was **Laurie Googe**. She has been employed with the Agency as the Human Resources Director for approximately nine years. She is Appointing Authority for the Cabinet.

40. She testified that she found out about the Eric Calain incident through a Worker's Comp claim, which he filed. She then e-mailed Clay Foreman and the Appellant to ask if Calain had been wearing the proper PPE. She raised this question because the Worker's Comp claimed that the equipment had not been worn.

41. The witness then testified that later that week Troy Rawlins told her the OSHA people were coming and he went to the park, where he first found out about the Sekeres' incident. She explained that she waited for the completion of the OSHA investigation before taking disciplinary action against the Appellant.

42. She explained that the Appellant had two prior suspensions for poor work performance and stated that she had instructed Rawlins to meet with the Appellant after the second suspension one or two times a week in order to help him.

43. Googe then testified that in making her decision to terminate, she had considered the Appellant's prior evaluations, prior disciplinary actions, and the seriousness of the misconduct in the present incident, along with the documentation furnished her by Rawlins in making the decision. She added that the Appellant had exhibited poor leadership previously in not requiring his employees to perform job tasks and felt the seriousness of potentially allowing a person to be exposed to Muriatic Acid was egregious.

44. She then added that at the pre-termination hearing, the Appellant apparently did not realize it was his responsibility to see that the proper PPE was worn. He also did not appear to realize the position in which he had put Sekeres.

45. She then introduced the Department of Parks Policy 12-01 (Safety Compliance and Training) (Appellee's Exhibit 10), which clarifies the role of the supervisor and employee. She concluded by saying that at one time she had considered demotion, but did not because she had no position where the Appellant could be demoted.

46. On cross-examination, the witness testified that she did not personally interview any of the persons involved prior to receiving the OSHA violations. This would have included the Appellant, Calain, Sekeres, and the lifeguard involved. However, she stated that she did interview Sekeres after she had issued the intent to dismiss letter. Generally, she explained that she had relied on Rawlins' investigative notes, although she had the Workers Comp form and the Complaint filed with OSHA.

47. The biggest issue in her mind regarding the May 30 incident was the Appellant did not inform Sekeres of the possible danger she faced. She added that her first thought of the May 30 incident was that the use of hand-feeding chemicals because of a broken pump was probably rare. However, she then found out about the request to Sekeres to hand-feed without being told Calain had been injured, as a much more serious matter.

48. Directed to the dismissal letter, the witness admitted that there was no mention in that letter which included the context of the urgency of employees and management attempting to get the pool open on the weekend of May 30-31.

49. The witness then explained that the decision to issue a written reprimand to Clay Foreman was made after her decision to discipline the Appellant. She added that she did not hold the Appellant responsible for the eyewash station not being installed. The witness was then directed to Appellant's Exhibit 6, a September 10, 2014 e-mail from this witness to Sam Devine. The relevance is this shows the witness' intent to issue a written reprimand to Foreman. Additionally, pertinent language expressed is "One concern I have is that Blasi put on his weekly

goals that he needed to order PPE's, and that was on there repeatedly. I think Clay should have inquired as to why these were not being ordered."

50. She then added that Clay Foreman was the Safety Coordinator at EPTS.

51. On re-direct, the witness introduced Appellee's Exhibits 12 through 16. These consisted of the Appellant's acknowledgement of having received the Park policies, and also yearly evaluations in 2007, 2009 and 2010. The 2009 and 2010 evaluations gave the Appellant a "Needs Improvement" ranking, whereas the 2007 evaluation gave him a "Highly Effective" ranking.

52. The witness concluded by testifying, to her knowledge, the Appellant never wrote up any of his employees for failing to wear the proper PPE. Also, she explained that Park Manager Foreman was not disciplined to the same extent as the Appellant because he had no prior disciplinary actions and he did not direct anyone to do anything.

53. On re-cross, directed to the 2009 and 2010 evaluations of Appellant, the witness confirmed that Appellant suffered an aneurism in 2009 and was off work approximately six months. She stated that both evaluations were performed by the previous Park Manager, Chris Head.

54. The Agency closed its case in chief.

55. Appellant, **Michael Blasi**, called himself as his first and only witness. Appellant is a fifteen-year employee with EPTS and has been Maintenance Supervisor I since 2006. At the time of his promotion, he had two full-time employees under his supervision. As of approximately 2010 or 2011, the Park contracted with ADECCO, a temporary agency for contract labor.

56. Appellant spends 95 percent of his time as a working supervisor. The other 5 percent is dedicated to direct supervision. Appellant testified that the duties of the maintenance staff, including himself, include mowing, landscaping, janitorial, maintaining the buildings and machinery, picking up trash and seeing that the various sports fields and nature trails are maintained.

57. He explained that he has received no complaints from the public regarding the condition of the park. He added that the park is the home for college and high school team activities and this in itself requires a lot of maintenance. The witness also explained that because of the immense size of the park, he and the other maintenance employees are not always within eyesight of each other. The witness went on to explain what will be called "the OSHA incident" of May 30, 2014. He testified that the pool usually opens on the weekend of Memorial Day, which that year was May 26. Therefore, the pool was about a week late in opening. He testified that he and his staff do not run the pool, but rather Aquatics Director Sekeres and her lifeguards are responsible. They also take the water readings.

58. His staff is responsible for the machinery in the pool and he explained that after the pool had been painted and filled with water, the filtration system was tested and found broken just before the pool was scheduled to open.

59. He had previously ordered the necessary system part and it was on-site, although it had not yet been installed.

60. This necessitated having to "hand-feed" Muriatic Acid in to the pool. He stated the options on the weekend of May 30 were either to pump by hand or to close the pool. He added that closing the pool at that late date was not really an option.

61. He therefore instructed Eric Calain to perform this task, as he was the most experienced and had done this before.

62. Blasi testified that Calain came to him sometime during the afternoon on May 30 and said he had splashed acid on his face. He appeared to be in no apparent distress and finished the task and washed himself off. Afterwards, Calain went to an urgent care center and was treated.

63. The witness explained that there were safety goggles in Calain's area, and because of Calain's previous experience with hand-feeding, he assumed he would use the goggles.

64. The witness also explained that the pool water would need "hand-feeding" every day until the pump had been fixed. This was going to necessitate somebody doing this task on Saturday, Sunday, and onward until prepared for opening.

65. Since Sekeres was going to be on duty on the weekend and was a certified pool operator, he felt that she could do the hand-feeding. He added that he is not her supervisor. He also explained that if Sekeres had told him she did not feel comfortable in performing the task, he would come back in on Saturday and do it himself.

66. He then went on to add that on that Friday afternoon, he demonstrated to her how to do it. He then put on a demonstration for the Hearing Officer showing how he used one hand to pump up and down to get the liquid flowing, while holding the hose in the bucket with his other hand so as to prevent splashing. The witness then went on to add that the first time he knew there was a problem expressed by Sekeres was when he received his intent to dismiss letter. He explained that safety gloves were on-site at the time she was there, but there were no chemical goggles. He also explained that the gloves on-hand were not chemical gloves. This resulted in Sekeres bringing her own gloves from home to do the task.

67. The witness then explained that he and staff normally use what they had as PPE and he trusted his people to use common sense.

68. Blasi then stated that in order for him to request purchases from Park Manager Foreman, he would have to get approval and then see if the items were on price contract, would have to locate a vendor, and would check the price. He explained that he had never verbally told Foreman about the needed PPE, but rather had sent him seven different notifications via the weekly "work goals" he was required to turn in to Foreman.

69. When the OSHA investigators arrived on-site, the witness explained that he had told them he had gloves and eyeglasses in the form of PPE, but they were not for chemicals. He also added that the OSHA investigation began based on Calain's complaint, and there was nothing said about Sekeres' discomfort with having to hand-feed the chemicals.

70. After the May 30 incident, the witness testified that no one from the Parks Department ever asked for an interview with him or Calain. Although Rawlins previously testified that his conversations amounted to an interview, this witness thought they were only casual conversations.

71. At the pre-termination hearing, this witness expressed thoughts that he was the one selected to take the blame for the incident because of the OSHA involvement. He also stated that soon after Foreman became Park Manager in 2011, he told this witness that, "I'm going to make some changes in the Maintenance Department and I'm going to have you fired." It should be noted that Foreman denied this in his testimony.

72. The witness also went on to state that he and his employees knew their jobs and did not need weekly lists of things to do from Foreman. He essentially accused Foreman of micromanaging.

73. Lastly, the witness stated that he felt that it was Foreman's job to provide the necessary PPE, for he had to approve any purchase of same.

74. On cross-examination, the witness was asked about his supervisory duties and explained this included setting goals for his employees, documenting problems, maintaining contact with the Park Manager, scheduling time for his employees, and handling payroll for his people. He also admitted that one of the duties listed on his evaluation form included providing safety leadership.

75. Asked about his failure to inform Sekeres that earlier that day Calain had been splashed with acid, he admitted that he did not tell her of this incident and really cannot explain why not.

76. Blasi also testified that in 2013, after having received two four-day suspensions, he talked with Human Resources Director Googe. She told him that there would not be any more suspensions and that he had to do better in his position.

77. The witness was then directed to Appellant's Exhibit 2. This is a series of seven weekly maintenance goals which he was expected to achieve. These ranged from the week of February 17, 2012, through April 2, 2012, and it is noted that all goals contained the notification that the purchase of PPE for chemical safety was listed on each weekly goal.

78. The witness then went on to add that Park Manager Foreman would usually approve most purchase requests, except for some big ticket items. The witness was then directed to Appellee's Exhibit 5, a February 16, 2012 memo to him from Foreman in which Foreman directed that if training or safety equipment was needed, to please inform him.

79. The witness was then asked about his earlier statement that he had received no complaints regarding the condition of the park. He was then shown Appellee's Exhibit 20, a November 7, 2013 memo from Foreman, in which several items were mentioned "as needed" being corrected. Some of these were based on complaints from the park users.

80. The Appellant announced closed.

81. **Applicable Law, Regulations and Policies**

- 101 KAR 1:345
- Department of Parks, Policy No. 01-03 (Conduct)
- Department of Parks, Policy No. 12-01 (Safety Compliance & Training)

FINDINGS OF FACT

1. On Friday, May 30, 2014, employee Eric Calain was slightly injured while "hand-pumping" a corrosive material, Muriatic Acid, into the swimming pool at E.P. "Tom" Sawyer State Park (EPTS). This was primarily the result of Calain not wearing the proper protective equipment, including chemical goggles. Calain performed this task on his own volition and, indeed, had performed this task before at the park.

2. On that same day, the Appellant asked an employee not under his direct supervision, Lora Sekeres, to perform this same task. On questioning from Sekeres as to the availability of personal protective equipment (PPE), the Appellant stated "We don't use that stuff." As a result, Sekeres obtained chemical gloves from her home and performed the task on Sunday, June 1. She suffered no injury, but was unaware that Calain had suffered an injury performing the same task on Friday, May 30.

3. Following an OSHA complaint filed shortly thereafter by Calain, that agency investigated and found two violations and, thereafter, fined the Agency \$3,750. One OSHA violation was based upon the Park pump room not being equipped with an eyewash station for flushing of the eyes. Testimony showed this was not the fault of the Appellant. The second OSHA citation found that the employer did not ensure that each affected employee used

appropriate eye or face protection in the form of chemical safety goggles or a face shield when being exposed to liquid chemicals. It is this violation which was one of the bases for Appellant's termination.

4. This series of events on May 30 was primarily caused by Calain's complaint to OSHA. However, Laurie Gooze testified that the Appellant was dismissed primarily because he did not tell Lora Sekeres about the earlier incident involving Calain and the Muriatic Acid. She also testified that had Sekeres not been involved, she probably would have considered the "hand-pumping" by Calain as a rare occurrence.

5. Gooze never interviewed any of the involved parties prior to issuing the intent to dismiss letter. She relied primarily on the investigative report from Dr. Troy Rawlins.

6. One job duty of the Appellant as expressed on his evaluation form was to provide safety leadership, allocate resources, and become familiar with all individual Department of Parks safety programs.

7. The Appellant demonstrated to Sekeres how to perform the "hand-pumping" function and also told her he would return the next day and do it if she was not comfortable with doing this. Both the Appellant and Sekeres had attended earlier training sessions involving safety. In addition, Sekeres was a certified pool operator.

8. Department of Parks, Policy No. 12-01, states in pertinent part:

SAFETY SLOGAN AND MISSION STATEMENT

Duties and Responsibilities

Employees

All employees are responsible for assuring safe and healthful working conditions and practices and for protecting the safety of the public. Each employee will:

...

- Operate all equipment and vehicles in a safe manner and refrain from removing, displacing, or damaging any safety device installed on equipment or property.
- Call all unsafe conditions or possible hazardous violations of the policy procedures to the attention of the supervisor and to the Office of Safety, Compliance and Training.

...

Supervisors

Each supervisor has the responsibility to enforce the provision of the Comprehensive Safety, Risk Management and Loss Control policy manual and the Kentucky Tourism, Arts and Heritage Cabinets Department of Parks work practices in order to prevent human, facilities, and financial losses or to keep them to a minimum. Each supervisor will:

- Assume the full responsibility for the safe and healthful working areas for all employees while they are under the supervisor's direction.
- Be accountable for preventable injuries, accidents, and liabilities occurring in his/her areas of the facility.
- ...
- Take the initiative in recommending corrective action of all deficiencies noted in facilities, work practices, employee job knowledge, or attitudes that adversely affect the comprehensive safety program or loss control efforts.
- ...
- Ensure that each employee is fully trained for the job and the employee is assigned to do and familiar with the published rules and acknowledge in writing that he/she understanding that compliance is mandatory.

9. The testimony was disputed whether the necessary chemical goggles and chemical gloves were in the area of the maintenance shop. Some testimony indicates the PPEs were actually there, but could not be found. Other testimony indicates the particular PPEs had never been ordered. As a result, the Hearing Officer makes no finding as to whether the necessary PPEs for the job at hand were at the facility.

10. The Hearing Officer finds that the Appellant, as a supervisor, was the person primarily responsible for ordering the necessary safety equipment, in this case particularly the chemical goggles and chemical gloves. This is in part based upon the fact the Appellant had previously taken the initiative to order the part for the broken filtration system which was on-site, but not yet installed. It further seems it would be an undue burden on the Park Manager to initiate all necessary purchases, whether minor or major, on his own, without having a requisition for purchase presented to him by his subordinates. Although the Appellant had no purchasing power of his own, it appears that standard protocol for Park purchases was for the

employees to initiate and purchase the necessary items after receiving permission from the Park Manager.

CONCLUSIONS OF LAW

1. As a part of his written closing argument, the Appellant moved for a directed verdict. The Hearing Officer finds no basis for such, and hereby **DENIES** the motion.

2. The Hearing Officer concludes as a matter of law that the Agency failed to carry its burden of proof to show that the Appellant violated Department of Parks Policy No. 01-03 [Employee Conduct and Personal Appearance]. This policy primarily deals with an employee conducting themselves in an appropriate manner and primarily as a dress policy.

3. The Hearing Officer concludes as a matter of law that the Agency carried its burden of proof to show that the Appellant violated Department of Parks Policy No. 12-01 as pertains to the referenced bullet points in Finding of Fact No. 8.

RECOMMENDED ORDER

Based on Google's testimony, the primary reason for her decision to terminate was the Appellant's failure to inform Sekeres (who was not injured) that Calain had been slightly injured when hand-feeding chemicals into the pool. This seems to minimize the fact that the necessary PPE in the form of chemical goggles and gloves were not available. It is undisputed that DOP Policy 12-01 requires all employees, including Calain and Sekeres, to perform their duties in a safe manner. It is equally clear that the same policy requires supervisors to be accountable for preventable injuries and accidents in their area of the facility and to take the initiative in recommending corrective action of all deficiencies noted in work practices.

While there was clearly a failure to follow model safety practices herein, the Hearing Officer believes the unusual and perhaps rare circumstances which occurred do not support the Appellant's termination. The Hearing Officer, therefore, recommends to the Personnel Board that the appeal of **MICHAEL BLASI VS. TOURISM, ARTS AND HERITAGE CABINET, DEPARTMENT OF PARKS (APPEAL NO. 2014-306)** be **SUSTAINED** and that he be reinstated to his previous position and further awarded lost pay and benefits and that he otherwise be made whole. However, the Appellant shall be suspended from duty and pay for a period of thirty (30) days, said suspension having already been served by virtue of his termination, and any award for lost pay and benefits should be reduced by said thirty-day period. Also, upon Appellant's return to work, he should be scheduled for further training in safety policies and procedures. **[KRS 18A.105 and 200 KAR 12:030.]**

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).

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 R. Hanson Williams** this 3rd day of September, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Leigh Powers
Hon. Kirk Hoskins



STEVEN L. BESHEAR
GOVERNOR

TOURISM, ARTS AND HERITAGE CABINET
DEPARTMENT OF PARKS
11th Floor, Capital Plaza Tower
500 Mero Street
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Phone 502-564-2172
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BOB STEWART
SECRETARY

ELAINE N. WALKER
COMMISSIONER

October 10, 2014

REGULAR MAIL
Michael L. Blasi

APPELLEE'S
EXHIBIT

Revised Letter to Correct Date on Page 7

Dear Mr. Blasi:

Your final action letter, Dismissal, dated 10-/9-14, mailed yesterday, October 9, 2014, had a typo on page 7, in regards to a date. I made the correction and highlighted the date on the revised copy. Let me know if you have any questions.

Sincerely,


Laurie Googe
Human Resources Director

CC

Timothy Longmeyer, Secretary, Personnel Cabinet
William Dexter, Executive Director, Legal Services Tourism & Arts Heritage Cabinet,
Misty Judy, Executive Director, Tourism & Arts Heritage Cabinet
Personnel File (2)



STEVEN L. BESHEAR
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BOB STEWART
SECRETARY

ELAINE N. WALKER
COMMISSIONER

October 9, 2014

Certified/ Regular Mail
Michael L. Blasi

DISMISSAL

Mr. Blasi:

Having considered all statements made on your behalf during your pre-termination hearing held on October 2, 2014, I have determined that you committed most of the charges as outlined in the letter issued to you, dated September 22, 2014. You admitted during the pre-term that you directed another employee to hand feed the chemicals in the pool without providing proper PPE to the employees, shortly after another employee was injured by performing the same task. Although you disputed some of the charges as outlined in the Intent to Dismiss letter, I believe this action, along with your prior disciplinary actions, rises to the level of a dismissal and that you committed the charges as outlined in my letter to you dated September 22, 2014.

By issuance of this letter, the DOP notifies you pursuant to KRS 18A.095 (2) of the final action taken. You will be removed from Administrative Leave effective beginning of business, Friday, October 10, 2014.

Therefore based on the authority of KRS 18A.095 you are hereby notified that you are officially dismissed from duty and pay on October 10, 2015.

You are being dismissed from your position for violation of 101 KAR 1:345 Section 1 (lack of good behavior and unsatisfactory performance of job duties); Violation of DOP Policy 01-03 (Conduct Policy), DOP Policy 12-01 (Safety Compliance and Training) and OSHA violation 29 CFR 1910.133(a)(1), and upon a review of your employment record and the recommendation of the DOP, for the specific reasons outlined in my letter to you dated September 22, 2014, 2014, and these reasons are again indicated as follows.

Unsatisfactory Performance of Job Duties-Failure to Provide Safe Working Environment/Protective Equipment

You are the Maintenance Superintendent I at E. P. "Tom" Sawyer State Park (EPTS). As the Maintenance Superintendent I, your job duties as referenced in your performance plan include the following: Oversee and maintain park grounds, buildings, equipment and infrastructure. Perform general maintenance work in the upkeep of park facilities and grounds. Inspect, monitor, and repair facilities. Provide leadership, training and supervision to the maintenance department employees; assign duties, responsibilities, expectations, and ensure the employees under your supervision, follow park policies, and procedures. You are also expected to provide safety leadership and be familiar with all individual DOP Safety programs.; Maintain a scheduled maintenance program to preserve the function of park facilities and equipment; Specific expectations of you include the assignment of duties to employees to meet the needs of daily operations, performance of duties as assigned by the Park Manager and the completion of tasks assigned by the Park Manager in a thorough and prompt manner.

On Friday, May 30, 2014, your employee Eric Calain, Maintenance Worker II, was injured by Muriatic Acid while attempting to pump the Muriatic Acid into a 5 gallon bucket in the pool chemical storage area. The acid splashed on his face because Mr. Calain was not wearing the proper personal protective equipment of a mask, apron, and gloves, as required when using corrosive chemicals. After receiving the injury Mr. Calain rinsed off with a water hose, and went to the maintenance unit and informed you about his injury. Then he proceeded to the urgent treatment center. Shortly after the incident Mr. Calain filed a complaint with the Labor Cabinet, Office of Occupational Safety or Health Hazards, stating that he was not provided personal protective equipment or eye wash station to wash off the chemicals. Later that same day, May 30, 2014, you met with Ms. Lora Sekeres, Parks Program Service Leader, and instructed her that she would need to add the pool chemicals that weekend.

On June 19, 2014, Dr. Rawlins, Assistant Director, DOP Safety Coordinator, investigated this incident and met with you and Ms. Lora Sekeres. You admitted that after the incident on May 30, 2014, you went to the recreation pool area and met with Ms. Sekeres and showed her how to apply chemicals to the pool using the 5 gallon bucket. You stated to Dr. Rawlins that she is a certified pool operator like you and Mr. Calain so you left the safety precautions to her. You reported to Dr. Rawlins that you believe you mentioned to her at that time that she should wear gloves. You admitted that you were aware of the personal protection equipment (PPE) needed when using corrosive chemicals and that you did not offer any PPE to Ms. Sekeres. You stated to Dr. Rawlins that the PPE's were in the maintenance area. You admitted that you did not tell Ms. Sekeres about Mr. Calain being injured earlier in the day by performing the same task.

According to Ms. Lora Sekeres, on May 30, 2014, you communicated to her that she would need to add the pool chemicals and you showed her how to add chemicals to the pool when the pool pump is not working properly. She communicated to Dr. Rawlins that she was not told about which personal protective equipment (PPE) should be used. The PPE Hazard Assessment states that employees handling corrosives in which they are pouring or mixing need to wear chemical glasses, apron, and appropriate gloves. Ms. Sekeres stated that you told her "We don't use any of that stuff!" She also reported that you said "Don't let any of those goof lifeguards add the chemicals to the pool." Ms. Sekeres communicated to you that her husband had some gloves at home she could wear.

As the Maintenance Superintendent you are responsible for ensuring that the proper PPE's are readily available to employees and for ensuring that employees follow the proper procedures in wearing the necessary PPE's. As such you put the employees of EPTS in an unsafe working environment.

Your decision to get another employee to perform the duties of pumping the pool chemicals into a 5 gallon bucket without ensuring that proper PPE's were used is unacceptable. It should have occurred to you that Mr. Calain's injury was a direct result of him not wearing the proper PPE's as directed. You should have brought the incident to management's attention immediately and discussed whether or not it was even safe to administer the chemicals in this manner, at this time. You should have reviewed the area where the employee was injured to ensure it was a safe working area prior to having another employee perform the same duty. To show another employee how to apply the chemicals, to the pool in this manner without providing the proper PPE's and ensuring they were being used was unacceptable. Regardless of whether you believed her to be a certified pool operator or not, she was a new employee to the park and this was her first full pool season. You didn't even share with Ms. Sekeres that another employee was hurt earlier in the day, and caution her to be careful.

During Dr. Rawlins investigation he reviewed your weekly reports. These reports are basically a list of items or "goals" you plan to accomplish each week that are submitted to your supervisor, Clay Forman, Park Manager III. You listed on several of the reports the need to purchase PPE's for chain saw and chemical safety, which shows that you were aware of the necessary safety equipment. The reports from 2012 also show that you repeatedly listed the need to purchase these items on your report week after week, and that the item on your list "purchase PPE's" was not being addressed. You failed to take the appropriate steps to purchase these items to ensure you had the equipment available for your employees as needed. When Mr. Rawlins asked you on June 19, 2014, to show him where the PPE's were located you could not readily produce them. This is particularly disturbing as not only was this a month after Mr. Calain's accident, your park had also just participated in a safety meeting on March 19, 2014, and Dr. Rawlins attended the meeting and presented safety training to the full time employees at E. P. "Tom" Sawyer State Park. During this meeting Dr. Rawlins explained the importance of safety and conducted a presentation reviewing Code Adam procedures and specifically, the use of Personal Protective Equipment.

On August 25, 2014 the Kentucky Labor Cabinet, Office of Occupational Safety and Health issued a report of their findings from their June 11, 2014 to August 15, 2014, inspections. TAHC, Department of Parks, E. P. "Tom" Sawyer State Park received the following citation which states in part:

Citation 01 Item 001a Type of Violation: Serious:

803 KAR 2:310, Section 2: If the eyes or body of any person may be exposed to injurious corrosive material suitable facilities for quick drenching or flushing of the eyes and body shall be provided within the work area for immediate emergency use.

For the two employees working the pump room area of the pool at EP "Tom" Sawyer State Park located in Louisville, KY who used corrosive chemicals such as but not limited to Hydrochloric Acid, Sodium Bicarbonate, and Sodium Hypochlorite 12.5%. The pump room was not equipped with an eye wash station for flushing of the eyes during an emergency. The employer did not meet the requirements of ANSI Z358.1-1990, section 5.4.4.

Citation 01 Item 001b Type of Violation: Serious:

29 CFR 1910.133(a)(1): The employer did not ensure that each affected employee used appropriate eye or face protection when exposed to eye or face hazards from flying particles molten metal, liquid chemicals, acids, or caustic liquids, chemical gases or vapors, or potentially injurious light radiation.

For the two employees who operate the pool at EP "Tom" Sawyer State Park in Louisville, KY where on June 11, 2014, and times prior there to, employees were not provided with chemical safety goggles or face shield when exposed to liquid chemicals, acids, or caustics such as but not limited to hydrochloric acid and sodium hypochlorite 12.5%. These chemicals are used in the pool treatment process.

Summary of Penalties \$3750.00

As a maintenance supervisor, you are responsible for complying and enforcing park policies for your employees. By failing to ensure employees were wearing the proper PPE's in the pool room and failing to ensure a safe work environment for park employees, your actions violate DOP Policy 12-01 (Safety Compliance and Training) which states in part:

Policy Statement:

Maintaining a safe work environment, working in a safe manner, and protecting the safety of employees and the general public are of the utmost importance to the Kentucky Tourism, Arts and Heritage Cabinet (TAHC). All TAHC employees and officials have a responsibility that includes such activities as establishing a safe workplace, following safe work practices, reporting hazards, limiting exposure to potential liability and loss, and carrying out the steps necessary to maintain an effective and efficient comprehensive safety, risk management and loss prevention programs.

Duties and Responsibilities - Employees

All employees are responsible for assuring safe and healthful working conditions and practices and for protecting the safety of the public. Each employee will:

- Comply with the results, regulations and policies set forth in the comprehensive safety programs issued from the office of Safety, Compliance and Training applicable to personal actions and conduct.
- Operate all equipment and vehicles in a safe manner and refrain from removing, displacing, or damaging any safety device installed on equipment or property.
- Call all unsafe conditions or possible hazardous violations of the policy procedures to the attention of the supervisor and to the Office of Safety, Compliance and Training.
- Report all accidents according to the property procedures set forth in this manual.
- Operate only those machines and equipment for which the employee has been trained and/or authorized to operate

Duties and Responsibilities - Supervisors

Each supervisor has the responsibility to enforce the provision of the Comprehensive Safety, Risk Management and Loss Control policy manual and the Kentucky TAHC work practices in order to prevent human, facilities, and financial losses or to keep them to a minimum. Each supervisor will:

- Assume the full responsibility for the safe and healthful working areas for all employees while they are under the supervisor's direction.
- Be accountable for preventable injuries, accidents, and liabilities occurring in his/her areas of the facility.
- Ensure that all management policies pertaining to safety and loss control are fully implemented for maximum efficiency of each job and maintain the corresponding manuals and directives.
- Take the initiative in recommending corrective action of all deficiencies noted in facilities, work practices, employee job knowledge, or attitudes that adversely affect the comprehensive safety program or loss control

- Be firm in enforcement of work policies by being impartial in taking disciplinary action against those who fail to conform, and by being prompt to give recognition to those who perform well.
- Ensure that each employee is fully trained for the job and the employee is assigned to do and familiar with the published rules and acknowledge in writing that he/she understanding that compliance is mandatory.

During your pre-termination hearing on October 2, 2014, with Misty Judy, Executive Director, TAHC, and me, you communicated that the duty to hand feed the chemicals in the pool was a simple 5 minute task. You stated that both Mr. Calain and Ms. Sekeres should have been able to perform this task without incident. You stated that Mr. Calain was smart enough to know whether or not he needed to wear PPE's to do the job. During the pre-termination hearing also stated that you explained to Ms. Sekeres how to add the chemicals and you felt she was comfortable doing so. You admitted that you walked her through the process but that you didn't actually perform the task as the pool didn't need the chemicals at that time. I asked you if you had the proper PPE to do this job and you stated you had gloves and goggles, but you were informed from the OSHA inspector, as well as our Safety Coordinator Dr. Rawlins this was not the proper equipment needed to hand feed chemicals into the pool. You admitted you only had white latex gloves rather than the proper vinyl gloves and that you had goggles or safety glasses rather than the face shield. You admitted that you failed to ensure that Mr. Calain even wore the PPE that you had available, However you disputed Ms. Sekeres' statement that you didn't offer PPE to her; and instead you claim that you did offer her gloves.

I also determined that it was not standard practice to "hand feed" chemicals in the pool. This was a rare situation as the chemical pump that puts the chemicals in the pool was not working and therefore required the "hand feed" of chemicals. This process is not a typical duty for employees, and handling chemicals in this manner should be done carefully and safely with the proper PPE. It is disturbing that you didn't recognize the higher risk of hand feeding the chemicals and that you failed to caution employees of the risk and ensure they wore the proper PPE.

I did a follow up investigation and met personally with Ms. Laura Sekeres on October 7, 2014, as you communicated to me at the pre-termination meeting that you felt she was comfortable in adding the chemicals to the pool. You also stated that you offered her gloves. Ms. Sekeres confirmed to me that she was not at all comfortable, she communicated to me that she was very nervous. She stated that you implied it was her responsibility but that you did state if she wasn't comfortable she could call you and she specifically stated back to you "I'm not comfortable but I'll do it". She stated that she specifically asked you "Do we have safety equipment and you told her "We don't use that stuff." You assured her she would be fine. She said she brought in an old pair of shoes and asked a lifeguard to assist her in case there was an incident. Although Ms. Sekeres was not injured, the chemical was spilled and had she not asked for assistance from a co-worker, the incident may have resulted in another employee injury.

I understand that Ms. Sekeres was a Certified Pool Operator; however she began her employment with Kentucky State parks in the middle of the previous pool season. This was her first experience in opening the pool as well as her first time dealing with the "hand feed" process. In reviewing the practices of handling chemicals and "hand feeding" chemicals, this should not have been taken lightly or considered a simple "5 minute task" as you previously stated. It was irresponsible to ask Ms. Sekeres to perform this task. At minimal Ms. Sekeres should have observed you performing the tasks until she was comfortable completing the task herself

As a Maintenance Superintendant you made a poor decision to ask Recreation employee, Ms. Sekeres to perform this duty. I find it egregious that you did so without ensuring that she had the necessary PPE, particularly after another employee was hurt the same day. Your lack of regard for safe practices is unacceptable.

During the Pre-Termination meeting I asked you if enforced park procedures in regards to employees wearing the proper PPE and you stated that you only tell them what they should wear but you have not enforced the rules or addressed any of your employees for not wearing the proper PPE. As a Maintenance Superintendant you are expected to ensure a safe working environment which includes addressing employees for unsafe practices. You attended the Training in March 2014, where Mr. Rawlins stressed the importance of safety and the use of PPE. Your lack of leadership to enforce park procedures is unacceptable as it puts our employees in an unsafe work environment.

When I asked you if you would do anything different you stated that if you had to do over, you would have completed the task yourself. I also asked what changes you have made to the safety processes or procedures since the incident and you did not communicate any changes.

Your 2014 Performance Plan states that you are responsible to provide safety leadership; to allocate resources and become familiar with all individual units safety programs and to disseminate safety information to subordinates and correct any unsafe actions you witness.

Your lack of good behavior and unsatisfactory performance of your duties is unacceptable, disruptive to the daily operations, and compromises the safety of our employees at E. P. "Tom" Sawyer State Park and will not be tolerated. It is my determination that your actions constitute misconduct and are in violation of DOP Policy 01-03 (Employee Conduct) which states in part.

Employees are expected to carry out assignments as directed by supervisor(s) if reasonably considered a part of the employee's job duties. Refusal of assignments may be considered insubordination on the part of the employee.

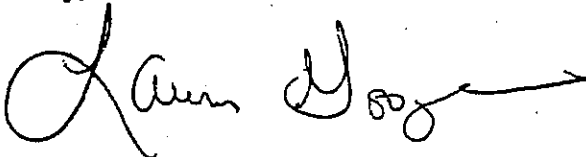
Prior to this incident, you received a four (4) day suspension on June 22, 2013, for failure to complete assignments and insubordination, a four (4) day suspension on

December 2, 2011, for violation of the Harassment Prevention Policy 01-06, for failing to address employee complaints of inappropriate obscene magazines being displayed in the workplace, and for failing to address employees for inappropriate conduct in the workplace. On October 12, 2009, you received a written reprimand for performance issues; failing to complete your job duties as assigned, and for poor oversight of the maintenance operations at E. P. "Tom" Sawyer State Park. Mr. Forman placed you on a performance improvement Plan from February 15, 2012 to April 30, 2012. You did show some improvements during this time period; however your performance declined again in 2013. In your 2013 Interim Review, dated May 24, 2013, Mr. Forman addressed these performance issues with you again and discussed with you the areas you needed to improve. On your year end 2013 Performance Evaluation you received a score of 158, which falls in the category of *Needs Improvement* and in May of 2014 you were again placed on a performance improvement plan, primarily to focus on the areas of leadership, communication, and scheduling. Dr. Rawlins met with you on several occasions to assist you in these areas as well as to work with you on various safety concerns within the Maintenance unit.

Your actions as set forth in this letter of failing to comply with safety procedures and ensure the safe practice of your employee Mr. Calain, resulted in an injury to Mr. Calain as well as fines to the Park, which constitute a lack of good behavior and unsatisfactory performance of your duties in violation of 101 KAR 1:345 Section 1, DOP Policy 01-03 (Conduct) DOP Policy 12-01 (Safety Compliance and Training) and OSHA violation 29 CFR 1910.133(a)(1). Your misconduct affects the business interest of the Department of Parks and is disruptive to the daily operations at E. P. "Tom" Sawyer State Park. Despite the numerous opportunities to correct your behavior and provide you with proper guidance and training on how to do your job, you continue to make poor decisions.

As such, the Department of Parks can no longer depend on you to make appropriate and sound decisions and/or count on you to carry out duties and responsibilities as assigned. Thus based on the events outlined in this letter, the fact that you have received repeated prior discipline for performance and conduct issues and violating DOP procedures and policies, I have determined that a dismissal is the most justifiable action, in the best interest of the DOP.

Sincerely,

A handwritten signature in black ink, appearing to read "Laurie Googe", with a long horizontal flourish extending to the right.

Laurie Googe

Human Resources Director

Attachment: Appeal Form

Cc: Tim Longmeyer-Secretary, Personnel Cabinet
William Dexter, Tourism, Arts & Heritage Cabinet, Executive Director, Legal Services
Misty Judy, Tourism, Arts & Heritage Cabinet, Executive Director, Human Resources
Sam Devine, Regional Director, DOP
Clay Foreman, Park Manager III, E. P. "Tom" Sawyer State Park
Personnel File (2)

In accordance with KRS 18A.095, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the date notification is received. Such appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.