CERTIFICATION OF PERSONNEL BOARD RECORDS

I certify that attached hereto is a true and correct copy of the Findings of Fact, Conclusions of Law and Recommended Order and Final Order in the case of **ANTHONY BLEDSOE VS. LABOR CABINET (APPEAL NO. 2013-201)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 12th day of August, 2014.

MARK A. SIPEK, SECRETARY
KENTUCKY PERSONNEL BOARD

Copy to Secretary, Personnel Cabinet

COMMNWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-201

ANTHONY BLEDSOE **APPELLANT**

VS.

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

LABOR CABINET
LARRY L. ROBERTS, APPOINTING AUTHORITY **APPELLEE**

** ** ** ** **

The Board at its regular August 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated June 11, 2014, having noted Appellee's exceptions, 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 altered as follows:

A. **Delete** Conclusion of Law paragraph 12 and substitute the following:

12. The Board concludes that in view of Appellant's clean prior disciplinary history, the level of professionalism he had shown up to this incident, and by the support of his supervisor, Ms. Lancaster, that the disciplinary action of a suspension was in fact appropriate. The Board concludes that the twenty-day suspension imposed on the Appellant was neither excessive nor erroneous and was supported by the evidence. The Board rejects the Hearing Officer's conclusion that the twenty-day suspension was in any way excessive or erroneous. The Board concludes the twenty-day suspension of the Appellant was taken for good cause especially in light of the finding that the Appellant had ample opportunity to withdraw from the premises, get into his vehicle and leave the site.

B. **Delete** the Recommended Order, and substitute the following:

IT IS HEREBY ORDERED that the appeal of **ANTHONY BLEDSOE VS. LABOR CABINET (APPEAL NO. 2013-201)** be **SUSTAINED to the extent** that Appellant be appropriately compensated for the one-half-hour of time he worked while acting in his official capacity during the incident of April 25, 2013, but otherwise his appeal should be **DISMISSED.**

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

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 12th day of August, 2014.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Cannon Armstrong
Anthony Bledsoe
Lynn K. Gillis
Sherry Butler

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-201

ANTHONY S. BLEDSOE — APPELLANT

V. FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDED ORDER

LABOR CABINET,
LARRY L. ROBERTS, APPOINTING AUTHORITY — APPELLEE

** ** ** ** **

This matter came on for an evidentiary hearing on April 10, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Roland P. Merkel, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Anthony S. Bledsoe, was present in person and not represented by legal counsel. The Appellee, Labor Cabinet, was present and represented by the Hon. Cannon G. Armstrong. Also present as the agency representative was Ms. Holly McCoy-Johnson.

The issue in this matter pertains to the suspension of the Appellant from duty and pay from his position as an OSH Safety Compliance Specialist with the Labor Cabinet for a period of 20 days, from the beginning of business June 27, 2013, through close of business July 3, 2013, and from the beginning of business July 8, 2013, through close of business July 26, 2013, for Lack of Good Behavior and Unsatisfactory Performance of Duties. The burden of proof was on the Appellee to show, by a preponderance of the evidence, the disciplinary action was taken with just cause, and was neither excessive nor erroneous. The rule separating witnesses was invoked and employed throughout the course of the hearing. Each party made a brief opening statement.

The parties stipulated there is no policy of the Labor Cabinet which states that when an employee stops his vehicle while on a break (while off the clock) that he or she is considered back on the clock.

BACKGROUND

1. The first witness for the Appellee was **Elizabeth Shannon Lancaster.** Ms. Lancaster has been employed by the Labor Cabinet since January 1995, and is currently the Safety Supervisor, Division of Occupational Safety and Health Compliance. She is charged with enforcing the occupational safety and health regulations as applied to general industry, the public sector, and construction sites. The Division's compliance officers conduct investigations and inspections to determine whether a company is in compliance with regulations.

2. Lancaster has known and worked with Appellant for about 15 years. The Appellant is an OSH Compliance Safety Specialist. Lancaster herself held that position for 5 to 6 years. She described the training provided to such Specialists. New cabinet employees are given Cabinet Policies and Procedures when first hired, which are reviewed with them at that time. Updates to same are given to employees from time to time.

3. On April 25, 2013, the Appellant called Lancaster at her office. Appellant stated he was on his way home for lunch when he came upon individuals performing roofing work. He stated things had gotten "A little heated" and words were exchanged. The roofers said something to him about "Kicking his ass." He responded, "Try it and I'll pop a cap." The roofers apparently replied that Appellant did not have a gun. Appellant continued to relate that he had walked back to his car and retrieved his gun. The roofers started to leave the site.

4. Lancaster identified Appellee's Exhibit 1 as the April 25, 2013 written statement she had provided (upon request) to Patricia Dempsey at the Personnel Department. Lancaster read the statement into the record.

5. The incident, as described by the Appellant, would be considered one of imminent danger, as there was a threat to the safety of the individuals while they were on the roof. The Cabinet would want the workers removed from the hazard as quickly as possible. The Appellant had faced such imminent danger situations before. The procedure required him to identify who is in charge of the work site, make them aware why he is present, identify to that person his own credentials, and get the workers off the roof, all in a quick manner.

6. Employers have the right to refuse an inspection. They are to be advised that, in the event of a refusal, the Cabinet has to obtain a search warrant for the inspection. The inspector is then to leave the site. Should a violation be visible from a public street and an employer refuses an inspection, the inspector, equipped with a camera, is to take photographs of the violation.

7. When Appellant directed the roofers to get off the roof and the roofers thereafter engaged in unpleasant words, this constituted a refusal. Appellant could then contact his supervisor for assistance, and gathered as much information as possible for a search warrant. Lancaster, once notified, has the ability to telephone a local deputy to meet the inspector at the site. In this instance, a warrant was not obtained.

8. After Lancaster received the telephone call from Appellant, she approached her supervisor, Tommy Long, and related the information to him. As soon as Director Evan Satterwhite was available, Lancaster and Long went to his office and related the incident. Other than having provided the written statement (Appellee's Exhibit 1), Lancaster had no further involvement in this matter.

9. Specialists are not required to carry firearms. There is no policy granting them authority to use force or draw a firearm during an inspection. No training is provided to instruct the inspector what to do, as far as personal safety, when threatened. There is an expectation that they would leave the situation and telephone the office. Furthermore, the Field Operations Manual (FOM) addresses what to do when an inspector is presented with a refusal.

10. Lancaster identified Appellee's Exhibit 2 as Chapter 3, General Inspection Procedures, from the Occupational Safety and Health Program Field Operations Manual. Subsection D(1)(d) sets out what an inspector is to do when they are refused an inspection. An inspector shall not engage in an argument, but should leave the premises and report the refusal to his supervisor.

11. At this point in the hearing, Appellee's counsel played a DVD video for examination by the witness and the parties. This DVD was marked and admitted as Appellee's Exhibit 7. After having reviewed the video a number of times, Lancaster identified the Appellant standing next to his black vehicle in the foreground. The Appellant opened his car door. She observed the Appellant to have his hand down at his side, with no one within ten (10) feet of him. One person approached the Appellant. Appellant did not appear in any hurry at any time during the video.

12. Lancaster was provided with a set of headphones to better hear the audio on the DVD. After reviewing the video again, she stated she heard the Appellant say, "Get your ass up here." Based on the video, Lancaster believes Appellant had an opportunity to leave the situation. Lancaster lives in this same neighborhood and is familiar with the scene. There are avenues of escape. Appellant told Lancaster that Jeff Smith, a Franklin County Deputy Sheriff, had taken this video of the incident.

13. When the Appellant is at lunch, he is off the clock. There is no written policy that, should an inspector stop a vehicle during his lunch, he is back on the clock. If Appellant told the roofers to get down off the roof, he acted in his capacity as a compliance officer, even if he was not on the clock.

14. Lancaster had been involved in an incident one time when, while on lunch break, she saw the Appellant in the neighborhood, stopped and asked if he needed assistance. She could not remember if Appellant conducted an inspection at that time. If one is just going to give a warning to an employer, the inspector is not conducting an inspection. If someone just "cusses" at you, that is not necessarily a refusal.

15. As a supervisor, Lancaster reviewed Appellant's requests for overtime. She cannot remember if he was paid for this incident on April 25, 2013. The day of the incident, Appellant had been removed from the building by means of investigative leave. Appellant normally worked from 8:30 a.m. to 5:00 p.m., five days per week, with one hour off for lunch each day. He is paid for 7.5 hours per day. He is not paid for his lunch hour, unless he works through lunch. Upon request, Lancaster would have approved one hour of compensatory time.

16. Lancaster identified Appellant's Exhibit 1 as Kentucky Labor Cabinet Policy Statement on Violence in the Workplace, issued January 8, 2013. She read the "Purpose" as well as "Prohibited Actions" into the record.

17. Lancaster believes that, in view of the Appellant's actions on April 25, 2013, it was his intent to conduct an inspection.

18. **Evan Satterwhite**, who for the past three years has been the Director of Occupational Safety and Health Compliance for the Labor Cabinet, was the next witness. The Appellant reports directly to Lancaster; Lancaster reports to Tony Long; and Long reports to Satterwhite.

19. On April 25, 2013, Lancaster and Long came to Satterwhite's office. They related there had been an incident involving the Appellant, who had brandished a gun to a constituent. They related what they knew about the matter.

20. Satterwhite reported the incident to Patricia Dempsey, Assistant Director in Personnel Operations.

21. Later that day, Satterwhite went to Dempsey's office and was told Appellant would be put on administrative leave, pending investigation. Personnel prepared a letter for the Appellant. Appellant was brought to the Personnel Office and issued the letter. At that time, the parties and Satterwhite engaged in a 30-minute

discussion. Appellant told his side of the story. Appellant's equipment was then collected by C. J. O'Banion of Security, Dempsey and Satterwhite.

22. The events relayed by Appellant appeared to be a self-referral, as he took it on his own to conduct an inspection. Appellant had stated the roofers called him names, intimidated him, and refused an inspection; that he had done nothing wrong.

23. Whenever an incident is to be documented, Satterwhite writes down the matter in an e-mail which he sends to himself. He identified Appellee's Exhibit 3 as such an e-mail he authored on April 26, 2013.

24. An employee/business owner has the right to refuse an inspection. Upon that event, an inspector is to call his supervisor. Usually thereafter, a warrant is obtained and the inspection conducted. In this matter no request for a warrant was made.

25. The 20-day suspension of the Appellant was appropriate. Satterwhite's initial thought was that Appellant would be terminated, and that too would have been appropriate. There had been no prior disciplinary or other problems with Appellant.

26. Appellant had several less egregious reactions available to him. He could have gone to his car, locked the door, rolled up the windows, driven away, and called his supervisor once away from the site. Appellant is the person most responsible in that situation for his own safety. He is expected to conduct himself professionally while in the field. Pulling a gun on someone can never be justified.

27. If an inspector sees a dangerous situation or violation, whether on duty or off duty, he is to make a self-referral and contact the employer to advise him of the danger. He is to identify himself as an officer of the State of Kentucky. If there is imminent danger, he is to immediately get the workers off the roof. If the workers refuse, the inspector must back off and abide his own safety. An inspector's safety takes precedence over conducting an inspection.

28. Satterwhite identified Appellant's Exhibit 2 as a page from the Occupational Safety and Health Program Field Operations Manual, specifically the General Duty Requirement. Satterwhite read that paragraph into evidence. That provision does apply to the Labor Cabinet in its capacity as an employer, however, it does not apply to Appellant in the field per this incident.

29. The next witness was **Holly McCoy-Johnson.** She is the Executive Director of General Administrative Program Support Shared Services (GAPS), and provides administrative support to the Labor Cabinet, Public Protection Cabinet and

the Energy and Environment Cabinet. Her duties include oversight of the Budget Division, Human Resources Management Division, Fiscal Division and IT Division. Such oversight includes disciplinary matters involving employees. She is the Appointing Authority designee for these three Cabinets. Patricia Dempsey is the GAPS liaison to the Labor Cabinet.

30. Johnson was involved in this disciplinary matter, and had been contacted with the information about what had occurred. She identified Appellee's Exhibit 4 as the June 26, 2013 Notice of Suspension she had authored which had been delivered to the Appellant. In reaching this decision, she had relied on the OIG report, a police report, written statements provided by various individuals, and matters which came to her attention during the pre-termination hearing. Appellant had originally been provided an Intent to Dismiss letter, and had requested a pre-termination hearing.

31. Appellant signed a document signifying he had received a copy of the Cabinet's Workplace Violence Policy. This set out the expectations for such employees. From her review of all the information, it was her belief Appellant got out of his car and told the workers numerous times to get off the roof. They responded with threats, racial slurs or inappropriate comments. They did get off the roof, and a majority of the individuals walked away from the Appellant on their way to lunch. Two individuals stayed behind and started to walk away.

32. Two independent witnesses said that one of the men turned abruptly and said, "Don't you threaten me" or similar words, and started to walk back toward the Appellant. Appellant went to his vehicle and retrieved his gun, and said, "Come on, I'll kick your ass" or words to that effect.

33. Appellant had multiple opportunities to defuse the situation. Had he first shown his credentials immediately, he could have helped to defuse the matter. The workers had been heading to lunch. He could have gotten into his car and left. He may have made the "Pop a cap" comment, which resulted in a worker abruptly turning around.

34. Johnson identified Appellee's Exhibit 5 as the Franklin County Sheriff's report, upon which she heavily relied in making her decision of an Intent to Dismiss. This report noted an allegation of Wanton Endangerment – 1st degree. She read the officer's statement (UOR2 Supplement) into the record, as well as parts of the statement from Jeffrey Smith, Appellant's statement, and the statement of McDonald.

35. Johnson had also viewed about 50 times, the video taken by Mr. Smith. She believed the video showed Appellant going to his vehicle to retrieve his gun, but not moving in a quick manner. The workers did not approach him closely at any time.

36. Johnson identified Appellee's Exhibit 6 as 101 KAR 2:095, Classified Service Administrative Regulations, Section 9, Workplace Violence Policy. This is the policy she cited in her letter to the Appellant. She believed he had violated Section 9(2)(b) and (c) when he approached the workers and told them he would "Kick your ass." This was an aggressive position. He had voluntarily admitted to the OIG that he made that statement.

37. When Appellant stopped his vehicle and got out of his car to approach the roofers, he did so in the course of his employment, acting as an agent of the Labor Cabinet. He had been acting with the authority of his position, and in an official capacity.

38. Johnson ultimately decided not to dismiss the Appellant, but to issue him a 20-day suspension. In reaching that decision, she had considered the Appellant's 14-year career, a clean record, that his supervisor (Lancaster) wanted him back and liked the work he performed, and no one had any issues with his work. Appellant had over-reacted in this situation, and did not defuse it. He did not act in a professional manner. She then considered termination would be a little harsh, because she believed Appellant could better himself from this event.

39. She identified Appellant's Exhibit 3 as the June 7, 2013 Notice of Intent to Dismiss letter she authored.

40. Johnson identified Appellant's Exhibit 4 as the June 6, 2013 Final Report of the Office of Inspector General. She placed greater weight on statements made by individuals which were given initially to the police. Those statements were very consistent and closer to the time of the incident.

41. At this point of the proceedings, the Appellee offered into evidence the DVD video taken by Mr. Smith. The DVD was admitted as Appellee's Exhibit 7.

42. The next witness was **Lynn Keeling-Gillis**. She is the Division Director for the Division of Human Resources, GAPS, Labor Cabinet. Part of her duties includes oversight of the Cabinet's payroll administration.

43. Gillis identified Appellee's Exhibit 8 as a screenshot of Appellant's reported 7.5 hours of work for April 25, 2013. It also indicates Appellant had been placed on investigative leave that same day in the afternoon. She was familiar with the letter which had placed Appellant on investigative leave. Appellant was paid 7.5 hours for this workday, and for each workday during the entire period of investigative leave.

44. An employee's lunch hour is non-compensable time. If Appellant conducted an inspection during the lunch hour, he would therefore be considered to have been working, which resulted in compensable time. It appears in this situation that he did not include the April 25, 2013 inspection on his timesheet.

45. The Appellee's case was closed.

46. The first witness for the Appellant was **Leroy Brock, Jr.** Mr. Brock has been employed for six and one-half years with the Labor Cabinet. He had never been trained how to respond to threatening situations during an inspection.

47. At this point, the parties stipulated that individuals who hold the position of OSH Certified Safety Compliance Officer for the Labor Cabinet are, at times, subject to potential threats from constituents in the conduct of their duties.

48. If one is threatened during an inspection, the response would be to do whatever is necessary to keep oneself safe. Brock had never been trained on any official response. It would be his responsibility to de-escalate the matter as best as he could.

49. **Tim Kappel**, who has been employed as a Safety Compliance Officer with the Labor Cabinet for about eight years, was the next witness. Inspectors do not initiate official inspections without prior approval. There have been times when Kappel stopped his vehicle and asked roofers to get off the roof, or workers in other situations to get out of trenches. During those times when he was off the clock, he never claimed overtime or mileage.

50. **Gary Lee Davis**, who for seven years has been employed as a Safety Compliance Officer with the Labor Cabinet, was the next witness. He never received training on how to defuse tense inspection situations. When one is on the job site, there is no one other than the inspector himself who is responsible for his own safety. Should there be a refusal of an inspection, the individual is required to call his supervisor. If someone threatens you, Davis stated he tries to defuse the matter himself. If the matter gets past that point, "I run...I escape."

51. The next witness was the Appellant, **Anthony Bledsoe**. He started employment with the Labor Cabinet in 1998 as a trainee. Since March 2013, he has served as a Safety Compliance Specialist.

52. On April 25, 2013, he drove home for lunch. On the way, he saw a number of men on a residential rooftop. He stopped his vehicle, got out and asked the man he saw on the ground if he was in charge. That man responded yes. He then asked that the men get off the roof.

53. A Mr. Lockerbay came, "cussing and fussing," which resulted in the other roofers "cussing and fussing." Appellant did not have a chance to identify himself. He told Lockerbay, "you need fall protection." Lockerbay responded, "Buddy, I don't need anything. I'm a volunteer." Appellant asked if he had any paperwork. The response he received was "I don't have to show you shit." They came down out of the driveway. Appellant walked to the front of his car. The workers were in the middle of the road, walking away, and one stated, "Come on, let's go to lunch."

54. Appellant told them, "If you come back, you still need fall protection." That was the "threat" Appellant made. That is also the point at which one worker turned around and said, "Don't threaten me, I'll fuck you up" or "I'll lay you up." Appellant responded, "I'm not threatening you," and "I'm too old to take an ass-whooping; I'll pop a cap in your ass." The worker kept approaching.

55. Appellant went to his car, reached into the back seat, and retrieved his gun. He had no round in the chamber. He did not point the gun at anyone. He walked around to the front of his car with his arms at his side. The worker said, "Put it away." Appellant responded, "No, come on." It happened quickly and the workers had been coming at him, Appellant thought, to do bodily harm. The workers then left.

56. Very soon thereafter, another man approached Appellant and said he was not with the roofers. This man tried to calm the Appellant down. Appellant was nervous. He put the gun back in his car. He retrieved his credentials from the trunk of the car, and went to the homeowner. He showed the homeowner his credentials, and gave her his business card. Thereafter, he went home and telephoned his supervisor to relate these events. He asked Ms. Lancaster if she wanted him to do an inspection. She replied in the negative, told him to finish lunch and return to the office.

57. Appellant returned to the office after lunch, finished a report and turned it in. At approximately 4:25 p.m., Patricia Dempsey telephoned him and requested he come to her office. When he went to Dempsey's office, he was handed a letter placing him on investigative leave. He tried to explain that he did not do anything wrong.

58. Appellant testified that a 20-day suspension is an entire months' pay, and has put him behind on his mortgage and other bills.

59. He identified Appellee's Exhibit 9 as a Statement of Receipt of Policies and Procedures, Kentucky Labor Cabinet, which he had signed on January 15, 2009. Among the Policies and Procedures of which he acknowledged receipt are included the Statement of Violence in the Workplace, Revised 1/6/09.

60. The Appellant's case was closed. There were no further witnesses or evidence presented, and the matter stood submitted to the Hearing Officer for his recommendation.

FINDINGS OF FACT

1. Anthony S. Bledsoe, the Appellant, is employed as an Occupational Safety and Health Compliance Safety Specialist with the Kentucky Labor Cabinet, Department of Workplace Standards, Division of Occupational Safety and Health Compliance. He has held this position since March 2013, and has been employed by the Cabinet since 1998. Appellant's normal work hours are 8:30 a.m. to 5:30 p.m., five days per week, with one hour off for lunch. He is paid for 7.5 hours each normal work day, but is not paid for his lunch hour.

2. While driving home for lunch on April 25, 2013, Appellant observed roofers performing work on the roof of a residence located at 362 Village Drive, Frankfort, Kentucky. The roofers were not wearing safety equipment, specifically, fall protection. He determined the situation posed an imminent danger to the roofers.

3. Appellant stopped his vehicle, found the man in charge at the site, and asked him to have the men come down off the roof. While the men came down from the roof, a number of them were "cussing and fussing." A conversation ensued between Appellant and the man in charge, a Mr. Lockerbay. The conversation became heated and Lockerbay refused to cooperate. The actions of the Appellant to this point in the incident, as related by him in his testimony, convinced the Hearing Officer his intent was to conduct an inspection after observing a situation of imminent danger.

4. About 4 or more roofers left the site to go to lunch. Two other roofers were also walking away when Appellant called to them that if they returned, they would still need fall protection. One worker turned around and said "Don't threaten me, I'll fuck you up." or "I'll lay you up." Appellant responded, including the remark "I'll pop a cap in your ass."

5. Appellant went to his car and retrieved his personal gun. He walked to the front of the car with his arms at his side. He did not point the gun at anyone. The two workers then left the site, and the incident ended.

6. Appellant returned to his car and put the gun back into the vehicle. Another man, not one of the roofers, approached Appellant and tried to calm him down.

7. Appellant then spoke with the homeowner, showed his credentials, and gave her his business card. He then drove home.

8. Jeff Smith, a Franklin County Deputy Sheriff, happened to be in the neighborhood when this incident occurred. He recorded a video of the last part of the incident, which was admitted in evidence as Appellee's Exhibit 7.

9. Once Appellant got home for lunch, he telephoned his supervisor, Elizabeth Shannon Lancaster. He told her what had occurred. He was instructed to finish lunch and return to the office.

10. Lancaster related the substance of the telephone call to her supervisor, Tommy Long, and together they met that same day with, and reported the matter to, Director Evan Satterwhite. Lancaster provided her written statement, which she identified as Appellee's Exhibit 1.

11. At approximately 4:25 p.m. that day, Appellant was notified he had been placed on Special Leave for Investigative Purposes by the personnel office.

12. The Labor Cabinet, Office of Inspector General, conducted an investigation, and on June 6, 2013, issued its final report (Appellant's Exhibit 4). The request for investigation was made based on an allegation that Appellant had violated the Labor Cabinet's policy on violence in the workplace.

13. On June 7, 2013, Holly McCoy-Johnson, Appointing Authority designee for the Labor Cabinet, notified Appellant of the Cabinet's intent to dismiss him, and that he was being placed on administrative leave with pay pending a final decision (Appellant's Exhibit 3). Up to this point, Appellant had no prior disciplinary action against him.

14. Appellant requested and participated in a pre-termination hearing. Johnson considered Appellant's long career, his clean disciplinary history, the fact that his supervisor, Ms. Lancaster, wanted Appellant back on the job and liked his work, and that no one had any issues with him at all at work. She considered the video taken by Jeff Smith and the statements she examined. She re-considered the matter, and thereafter suspended Appellant for 20 days. The suspension letter was issued on June 26, 2013 (Appellee's Exhibit 4).

15. Although Appellant had been on his lunch break at the time of the incident, once he stopped his vehicle and sought to have the roofers come off the roof, he acted on behalf of the Commonwealth in his official capacity as a Safety Compliance

Officer. However, he had not been paid for this time (Appellee's Exhibit 8). Conducting an inspection during lunch hour is compensable time.

16. All safety inspectors have a copy of the Occupational Safety and Health Program Field Operations Manual (FOM), and are required to be familiar with its contents. Chapter 3, subsection D(1)(d) instructs how a safety inspector is to react when he is refused an inspection: he is to leave the premises and report the refusal to his supervisor (Appellee's Exhibit 2). The supervisor may thereafter seek to have a search warrant issued by a court. An inspector, with a search warrant, may then re-visit the site, with or without assistance from local law enforcement, and may then conduct the inspection.

17. If an inspector is subject to threats or possible harm to his own safety, he may either attempt to defuse the situation, or withdraw and leave the site to protect his own safety.

18. The facts of this situation show Appellant had ample opportunity to withdraw from the premises, get into his vehicle and leave the site. This is particularly true when the roofers were leaving the site to go to lunch. Appellant called after them and advised they would still have to have fall protection if they returned to the site. Once he was threatened by one of the workers who had turned around, instead of quickly retreating and leaving the site, Appellant retrieved and showed his gun, thus escalating the potential for violence.[1]

19. During the date of the incident, the Labor Cabinet had in full force and effect the following:

- 101 KAR 2:095, Section 9 - Workplace Violence Policy (Appellee's Exhibit 6);
- Kentucky Labor Cabinet Policy Statement on Violence in the Workplace, dated 1/8/2013 (Appellant's Exhibit 1); and
- Kentucky Labor Cabinet Occupational Safety and Health Program Field Operations Manual, Chapter 3, General Inspection Procedures (Appellee's Exhibit 2).

20. Appellant filed his appeal in a timely manner on August 14, 2013.

[1] The Hearing Officer is cognizant that Appellant kept the gun at his side and did not point it at anyone or in any general direction.

CONCLUSIONS OF LAW

1. A classified employee with status shall not be suspended except for cause. KRS 18A.095(1). Appointing Authorities may discipline employees for Lack of Good Behavior or the Unsatisfactory Performance of Duties. 101 KAR 1:345, Section 1. A suspension shall not exceed 30 days. 101 KAR 1:345, Section 4(1).

2. The Appellant, Anthony S. Bledsoe, is a classified employee with status. He is employed as an Occupational Safety and Health Compliance Safety Specialist with the Kentucky Labor Cabinet. Part of his duties include conducting safety inspections at construction sites.

3. As a result of the incident which occurred on April 25, 2013, at or near a residence located at 362 Village Drive, Frankfort, Kentucky, during Appellant's lunch hour, Appellant was suspended for a period of 20 working days as a result of an allegation of violation of 101 KAR 2:095, Section 9, the Kentucky Labor Cabinet Policy Statement on Violence in the Workplace, dated January 15, 2009, and portions of the Kentucky Labor Cabinet Occupational Safety and Health Program Field Operations Manual (FOM), Chapter 3, General Inspection Procedures.

4. 101 KAR 2:095, Section 9. Workplace Violence. (1) prohibits a state employee from engaging in workplace violence, and under (2)(b) and (c) examples of prohibited workplace violence include: "brandishing or displaying a weapon in a manner which would present a safety risk to a state employee or a member of the general public, or threatens or intimidates them; or intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture.' (Appellee's Exhibit 6.)

5. Under the Kentucky Labor Cabinet Policy Statement on Violence in the Workplace, IV. Prohibited Actions, Such policy statement reiterates and reinforces 101 KAR 2:095, Section 9, stating prohibited actions include: "brandishing or displaying a weapon, or an object that looks like a weapon, in a manner which would present a safety risk to a state employee or a member of the general public, or threatens or intimidates them; intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture." (Appellant's Exhibit 1.)

6. The Kentucky Labor Cabinet Occupational Safety and Health Program Field Operations Manual, Chapter 3, General Inspection Procedures, D(1)(d), sets out that an employer has a right to require an inspector seek an inspection warrant prior to entering an establishment, and may refuse entry without such a warrant; once the inspector is refused entry he "shall not engage in argument concerning the refusal."

Furthermore, the inspector "...shall leave the premises and immediately report the refusal to the supervisor." (Appellee's Exhibit 2.)

7. Although Appellant was "off the clock" on his way home to lunch that day, once he stopped his vehicle to speak with the individuals on the roof at 362 Village Drive, Frankfort, Kentucky, and thereafter require that they come down from the roof, he acted in his official capacity. The evidence shows Appellant was not paid for his time during this incident (Appellee's Exhibit 8). If Appellant was indeed acting in his official capacity, not only as shown by the evidence, but as admitted by the Appellee on page 4 of the June 26, 2013 suspension letter, then indeed he is entitled to compensation.[2] The incident took no more than 30 minutes to transpire. Lynn Keeling-Gillis, Division Director for the Division of Human Resources (GAPS), testified that in her opinion if Appellant conducted an inspection during the lunch hour, he is considered to have been working and entitled to compensable time. The Hearing Officer believed Appellant should receive an additional one-half hour compensation.

8. Once Mr. Lockerbay refused to cooperate with the Appellant, this constituted a refusal to the inspection. It is at that point that the Appellant was required to refrain from engaging in an argument, and to immediately leave the premises and report the refusal to his supervisor. While Appellant may have felt threatened for his own personal safety, there is a reason he is required to leave the site. He did have opportunity to leave the site at that point in the incident.

9. The Hearing Officer is convinced by the evidence that when the remaining two workers started to walk away from the Appellant, that the Appellant made a comment to them that they needed to have fall protection when they returned to the site. It was that, or some other comment, which incited one of the workers to wheel around, start walking towards the Appellant, and make threatening statements. At this point in the incident, again it was incumbent upon Appellant to retreat to his vehicle and either lock the doors and/or drive away from the site. There is no evidence to show that the roofers who approached him at that point were armed in any manner, or that they brandished any implements.

10. Instead, when Appellant retreated to his vehicle, he retrieved his personal handgun and, while keeping the gun pointed downward at his side, yelled in the direction of the approaching roofers and approached them for a step or two. This is borne out not only by the testimony offered in the hearing, but by the video taken by a disinterested third party. (Appellee's Exhibit 7.)

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[2] The June 26, 2013 suspension letter states, "The moment you instructed the roofers to come down from the roof, you were engaging in activity associated with your position at the Labor Cabinet. That is further supported by the fact that you informed your supervisor, Ms. Lancaster, about the situation and presented your credentials and identified yourself as an employee of the Labor Cabinet, leaving a business card with the homeowner."

11. The Appellee has shown by a preponderance of the evidence that Appellant, by his actions, violated the Kentucky Labor Cabinet Occupational Safety and Health Program Field Operations Manual, Chapter 3, General Inspection Procedures, D(1)(d)(1); 101 KAR 2:095, Section 9. Workplace Violence Policy (1), (2)(b) and (c); and the Kentucky Labor Cabinet Policy Statement on Violence in the Workplace, IV. Prohibited Actions, thereby justifying institution of disciplinary action against the Appellant.

12. It is abundantly clear from the evidence that the Cabinet's initial issuance of an intent to terminate the Appellant, even after its examination of the Office of Inspector General report, was far and away an overreaction. This is especially true in view of the Appellant's clean prior disciplinary history, the level of professionalism he had shown up to this incident, and the supporting position of his supervisor, Ms. Lancaster. However, in the course of the matter, Appellant disregarded his own training and experience by engaging the roofers in an argument and using incendiary language rather than attempting to de-escalate the intensity of emotions. He eventually brandished a weapon. All this constituted a violation of reasonable Cabinet policy. However, in reviewing the totality of the circumstances, including Appellant's past performance and lack of disciplinary history, the evidence shows that a 20-day suspension was also excessive. It is recommended to the Personnel Board that Appellant's suspension be reduced to five days, particularly as this is a first offense over a lengthy and otherwise admirable career.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **ANTHONY S. BLEDSOE V. LABOR CABINET (APPEAL NO. 2013-201)**, be **SUSTAINED TO THE EXTENT** that:

1. The suspension from duty and pay be reduced from twenty (20) days to five (5) days, and the Appellant be restored all compensation and benefits to which he might be entitled for the appropriate time; and

2. Appellant be appropriately compensated for the one-half hour of time he worked while acting in his official capacity during the incident of April 25, 2013.

3. Appellant, pursuant to KRS 18A.095(25), shall have any leave time restored to him which he used at pre-hearing conferences or the evidentiary hearing in this appeal to the Personnel Board.

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 Merkel** this 11th day of June, 2014.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Cannon Armstrong
Mr. Anthony S. Bledsoe