

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-108**

**AMANDA BURTON**

**APPELLANT**

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

**CABINET FOR HEALTH AND FAMILY SERVICES  
J. P. HAMM, APPOINTING AUTHORITY**

**APPELLEE**

**\*\* \*\* \***


The Board at its regular April 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 7, 2014, and having considered Appellant's exceptions and Appellee's response 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 **DISMISSED**.

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

**SO ORDERED** this 16<sup>th</sup> day of April, 2014.

**KENTUCKY PERSONNEL BOARD**

  
**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. Tim Salansky  
Hon. Richard Kenniston  
J. P. Hamm

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-108**

**AMANDA BURTON**

**APPELLANT**

**VS.**

**FINDINGS OF FACT, CONCLUSION OF LAW  
AND RECOMMENDED ORDER**

**CABINET FOR HEALTH AND FAMILY SERVICES  
J.P. HAMM, APPOINTING AUTHORITY**

**APPELLEE**

\*\*\*    \*\*\*    \*\*\*    \*\*\*    \*\*\*

This matter came on for evidentiary hearing on October 7 and 8, 2013, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Geoffrey B. Greenawalt, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Amanda Burton, was present at the evidentiary hearing and was represented by the Hon. Richard Kenniston. The Appellee, Cabinet for Health and Family Services, was present and was represented by the Hon. Tim Salansky.

At issue at the evidentiary hearing was the dismissal of Appellant and whether such dismissal was excessive or erroneous under the circumstances and was taken for just cause. The burden of proof was upon the Appellee and was to be by a preponderance of the evidence

**BACKGROUND**

1. Appellant, Amanda Burton, timely filed her appeal with the Personnel Board on May 7, 2013, appealing from her termination from her position as a Family Support Specialist I with the Department for Community Based Services, Northeastern Service Region.

2. The first to testify was **Mr. Ron Wells**. Prior to retiring in July 2013, Mr. Wells was a Field Service Supervisor in the Montgomery County office. Mr. Wells' supervisor was Tammy Davis, the Service Region Administrator Assistant.

3. On January 31, 2013, Mr. Wells called Jennifer Jones, the Field Service Supervisor of the Adult Medical Services Branch. Mr. Wells testified that the call was prompted by several clients calling in complaining that they had turned in verification information with Amanda Burton only to be told that she had not received the same. According to Mr. Wells these frequent complaints were being received against the Appellant and not the remaining workers in the office. Mr. Wells explained that the front desk secretary that receives and

disperses verification information from clients was on extended medical leave beginning December 1, 2012. To compensate, the office rotated workers in order to cover the front desk. One such worker, Jane Hammack, informed Mr. Wells that during the morning of January 31, 2013, six or seven clients had complained that despite having turned in their verification information, their cases had been denied or they had been told by the Appellant that she never received the information.

4. Mr. Wells explained that it is the upfront secretary's job to receive verification information from the clients, make copies of the same, then place the copies in the case workers boxes (located in the front office). The case workers then picked up the materials and worked them as necessary. Mr. Wells stated there were twelve workers in the Montgomery County office and two of them were the Adult Medical Workers, including the Appellant. He stated that he received no complaints on the other workers, but was getting all kinds of complaints about the Appellant for not working cases or for cases getting discontinued.

5. Mr. Wells explained that no one in the Montgomery County office directly supervised the Appellant and that her immediate supervisor was Jennifer Jones, whose office was located in Rowan County.

6. Mr. Wells testified he and Tammy Davis eventually spoke on the phone at which time he was informed that Ms. Jones would be coming to the Montgomery County office to inspect the shred bins. Mr. Wells volunteered to look through the bins that day whereupon he found certain verification information which had not been worked. Cabinet's Exhibits D-2-a, D-3-a, D-4-a and D-5-a were introduced through the witness. Mr. Wells testified that these were the documents that he found in the shred bin on January 31, 2013. Pictures of the bins were marked and entered into the record through the witness as Cabinet's Exhibits H-1, H-2, and H-3. Mr. Wells stated that the documents marked Cabinet's Exhibits D-2-a were found in a manila envelope addressed as shown on the exhibit. It should be noted that Exhibit D-3-a was not entered into the record because it was date-stamped February 1, 2013, or one day after Mr. Wells testified he retrieved the document from the trash bins. Mr. Wells was unable to explain why there was a February 1 date-stamp on this document and thus could not verify that it was one of the documents he found on January 31, 2013. Finally, Mr. Wells stated that he took the documents he had retrieved from the trash bin and kept them in his office until Tammy Davis arrived.

7. The next to testify was **Ms. Jane Hammack**. Ms. Hammack is presently stationed out of the Fleming County office, but prior to that had been in the Montgomery County office for twenty-three years working as a Case Manager. As part of her duties, she would meet with clients, fill out the necessary forms and collect the necessary verification in order for clients to qualify for the Kentucky Works program. She stated that on one or two occasions over the years, a client had claimed to have turned information in, but she had not received the same. Ms. Hammack testified that while Pam Willoughby, the usual front-desk secretary, was on medical leave in late December, 2012 and early January, 2013, she, along with the other workers in the

office, covered the front desk. Initially it was on a one-hour rotation, but was eventually changed to a half-day shift.

8. Ms. Hammack testified she had received client complaints about the Appellant. Initially the complaints were that the Appellant would not return calls; then almost 50 percent of the clients would complain they had provided verification information which the Appellant would claim to have never received. One client even said it was the sixth time verification information had been turned in. As a result, she e-mailed Ron Wells, who was her supervisor at the time, and informed him about the numerous complaints. That marked the end of Ms. Hammack's involvement in this particular case. Ms. Hammack further testified she had not received similar complaints about any other caseworker located in the Montgomery County office.

9. On cross-examination, Ms. Hammack testified when she first came to the Montgomery County office she was a secretary. Three years later she became a caseworker. She stated that when information is brought to the office, the documents are each date-stamped and then copies are made and placed in the workers bins to be picked up and worked. She noted that all the incoming documents had to be date-stamped regardless of how busy the front desk was.

10. The next to testify was **Mr. Howard J. Klein**, Division Director for the Office of Human Resource Management with the Cabinet for Health and Family Services. Mr. Klein is the Cabinet's Appointing Authority and reviews and signs-off on any employee penalizations or disciplinary actions.

11. Mr. Klein testified that the disciplinary action taken against the Appellant was initiated by Tammy Davis through her request for Major Disciplinary Action (MDA) which was marked and entered as Cabinet's Exhibit A. Mr. Klein reviews the MDA requests, then sends them on to his Employee Relations Branch to be investigated. Once investigated, if disciplinary action is to be taken, the staff member assigned to the case looks for similar situations as precedents in order that the level of disciplinary action chosen is consistent with previous actions taken. A draft disciplinary letter is then prepared and reviewed by the Branch Manager, Shawn Estep, the Office of Legal Services and the EEO Branch to determine before it is sent to Mr. Klein for final review and if no changes are necessary, his signature. In this instance, it was determined that the disciplinary action to be taken was the dismissal of the Appellant. The Appellant was so advised by the intent to dismiss letter marked and entered Cabinet's Exhibit B. Relative thereto, the Appellant requested a pre-termination hearing. This request was marked and entered as Cabinet's Exhibit C. Following the pre-termination hearing, it was determined that the Appellant's dismissal for lack of good behavior should be upheld. The dismissal letter was marked and entered as Cabinet's Exhibit D.

12. Mr. Klein testified that the charges set forth under “lack of good behavior” found on the said dismissal letter marked as Cabinet’s Exhibit D were in and of themselves, sufficient to warrant the Appellant’s termination. Essentially, the Appellant had been telling her clients lies and throwing things out rather than working their cases. According to Mr. Klein, these particular charges were egregious and involved making false entries into the official KAMES system. In addition, the Appellant’s behavior led, or could have led, to financial hardship for her clients. Mr. Klein admitted the remaining charges of “unsatisfactory performance of duties” set forth on pages 8 through 17 of the dismissal letter, in and of themselves, would not have warranted the Appellant’s termination given she had no prior disciplinary action taken against her. Cabinet’s Exhibit E, F, and G were marked and entered into the record and are the policies referred to in the termination letter.

13. On cross-examination, Mr. Klein stated that in determining the level of discipline, he would have looked at the Appellant’s personnel file, including her 2012 Performance Evaluation (which indicated she needed improvement). [See Cabinet’s Exhibit J.] Mr. Klein acknowledged that as a result of her performance evaluation, the Appellant was placed on a Performance Improvement Plan (PIP). According to Mr. Klein, given such a low performance rating, issuing a PIP made sense and would go hand-in-hand with such a low evaluation.

14. The next to testify was **Ms. Diane Burns**, who is an Adult Medical Program Specialist stationed out of the Ashland office. It is her duty to review cases and to help train caseworkers. She covers fifteen counties and attempts to visit five counties each month. Montgomery County is part of Ms. Burns’ territory. Ms. Burns stated she knew the Appellant and had helped her with her duties early on in her career.

15. Ms. Burns testified that the Appellant never achieved case decision authority because her error rate was too high. As such, any decision to be made in a case had to be approved by somebody with case decisional capacity. Ms. Burns explained that once a caseworker receives verification materials from the client, they are supposed to scan the documents into the Electronic Case Filing (ECF) then keep a hardcopy of the documents for ninety days.

16. In February of 2013, Ms. Burns was in Montgomery County for two weeks working on cases pending beyond thirty days. She found that some forms had not been sent out to clients and also found verification materials in other places which had not been scanned. When she talked to the Appellant about sending out the documents, the Appellant told her they had been sent. According to Ms. Burns, there were 17 or so cases pending past thirty days which she had to finish.

17. Ms. Burns testified that Cabinet’s Exhibit D-5-a contained her handwriting indicating that the same had been scanned on February 19, 2013. She noted the document was not date-stamped, but had been signed by the client on January 15, 2013.

18. According to Ms. Burns, the Appellant was not properly performing her duties because verification documents were either missing or certain forms were not being sent out. She also stated she took some calls from clients who complained the Appellant was not returning phone calls or was denying she ever received verification information they had sent. Ms. Burns stated there were two boxes on the Appellant's office floor. One was for scanned documents and the other was for trash. The Appellant told Ms. Burns that the documents in her scan box were to be placed in the client hard files. When Ms. Burns looked into the hard files she found some documents but usually not the ones needed for pending case decisions. According to Ms. Burns, when files are not being properly worked in a timely manner, clients risk losing money out of their pocket or being discharged from a housing facility if premiums cannot be paid. Also, in some cases when this occurs, clients cannot be reimbursed. For these reasons, it is imperative that applications and cases are processed in a timely manner. According to Ms. Burns, the Appellant had the documentation she needed to process the case shown in D-5-a. However, Ms. Burns had to request restoration of benefits due to the Agency error. Ms. Burns also noted there were people the Appellant could have contacted if she needed help processing a case.

19. On cross-examination, Ms. Burns stated she went to Montgomery County more often than one to three times per month since the Appellant had no case decision authority. Instead she would go there four to eight times per month. She also admitted she never saw the Appellant do anything but what she thought she should be doing. When asked to review Cabinet's Exhibit D-5-a, Ms. Burns testified that the "2QA" notation on the upper left-hand side meant that the form had been delivered twice because either the client did not bring in documentation on the first request or the worker had failed to put the information in the case file.

20. The next to testify was **Ms. Jennifer Jones**, who is the Rowan County Regional Adult Medicaid Field Service Supervisor. Ms. Jones is the Appellant's first line supervisor and is responsible for supervising nine Adult Medical Workers, of which all but the Appellant, had case decision authority. Because of her lack of authority, each case the Appellant processed had to be reviewed by herself, Diane Burns, or Debra Skaggs. In addition, Ms. Jones was in the Montgomery County office one to two times per week and had to work closely with the Appellant due mainly to her lack of case-decision authority.

21. Ms. Jones testified she performed the Appellant's Annual Employee Performance Evaluation, marked as Cabinet's Exhibit J. She stated she and the Appellant met in January 2012 to go over her duties and expectations. At her first interim review, the Appellant had only been on the job for a couple of months. By the time of her second interim review, the Appellant had low processing rates on re-certifications and was experiencing problems asking for the correct information to process her cases. In other words, the Appellant struggled with timeliness. Ms. Jones explained that re-certifications were to be worked within ten days and new applications within thirty days. The Appellant was also having trouble returning client phone calls. To assist the Appellant, Ms. Jones had a principal worker go to Montgomery County and help with her organizational skills. By the end of 2012, it was apparent cases were not being placed on the ECF or being documented correctly which was causing them to be discontinued or denied. As a result, the Appellant was placed on a performance improvement plan (PIP).

22. Ms. Jones testified she received a few sporadic calls from clients throughout the year complaining they had turned information in to the Appellant but their cases were still being discontinued. These calls were not overwhelming until the end of the year. When confronted, the Appellant would state she did not know what had happened.

23. In January 2013, Ms. Jones received a phone call from a gentleman who was the power of attorney for his mother who was in long-term care. This gentleman was very concerned because he had sent verification information to the Montgomery County office, but had yet to hear anything. At the time his mother needed dental work and was in excruciating pain. It turned out the information this gentleman sent was the documentation contained in Cabinet's Exhibit D-2-a.

24. After receiving this call, Ms. Jones contacted Ron Wells on January 30 or 31, 2013 and told him she would be coming to Montgomery County to look around the first part of the following week. In the mean time, Mr. Wells volunteered to check the shred bins which led to him reporting to her on January 31 that he had found some verification documentation in one of the shred bins. This discovery caused Ms. Jones and Tammy Davis to visit the Montgomery County office on February 4, at which time Mr. Wells showed them a manila envelope containing various documentation which was marked and entered as Cabinet's Exhibit D-2-a. Cabinet's Exhibit D-2-b is the e-mail Ms. Jones received from the Appellant when she inquired about the situation. Ms. Jones testified that the documents, marked as Cabinet's Exhibit D-3-a, were found in Appellant's office by herself or Tammy Davis when they arrived in Montgomery County. She ended up having to re-enter this case onto KAMES and have the benefits reapproved since it had been denied in error.

25. Ms. Jones testified that the document marked as Cabinet's Exhibit D-4-a was time-stamped received January 16, 2013. This document was also found in the shred bin by Mr. Wells and was re-entered into KAMES on or about February 18, 2013. [See Cabinet's Exhibit D-4-b.]

26. Ms. Jones testified that the document marked as Cabinet's Exhibit D-5-a was also found in the shred bin and had not been scanned into ECF. It was later entered into the KAMES system on February 18, 2013. [See Cabinet's Exhibit D-5-b.]

27. Ms. Jones testified that the document marked as Cabinet's Exhibit D-7-a is a copy of a checking account statement returned by Client #7 on January 17, 2013, which she found in a stack on the Appellant's desk. The Appellant's e-mail response to inquiry regarding this case is found in Cabinet's Exhibit D-7-b. Cabinet's Exhibit D-7-c indicates that on February 7, 2013 the Appellant noted in KAMES that the case had been reviewed, but no bank account verification had been received.

28. The documents marked as Cabinet's Exhibit D-8 were received in the Montgomery County office on January 18, 2013, and are bank account statements and Social Security award letters. According to Ms. Jones, these documents were found in a stack of papers in the Appellant's office. She stated that on January 18, 2013, the Appellant improperly discontinued the case on the false basis that the client had failed to return verification information.

29. The documents marked as Cabinet's Exhibit D-9 is additional verification information found by Ms. Jones in a stack of papers in the Appellant's office. In this instance, the client's application was denied for failure to return verification. This particular verification was found on February 6, 2013, but had not been date-stamped. It turns out the case did not qualify on another basis, but it was not because of a failure to return verification information as reported by the Appellant.

30. The documents marked as Cabinet's Exhibit D-19 is a Form KIP-2.1 which is a request for information. Apparently the application had been unsigned and there was a need for a Voter Registration Card. This document was found in a folder in the Appellant's office. The application was entered on January 25, 2013, but there was no proof the required interview was ever completed. Apparently the client was in a nursing home. Ms. Jones had to deny this application because no interview had been completed. However, another Adult Medical Worker was sent to the nursing home and completed the interview. Ms. Jones stated the consequence was that without the interview the application was just pending with no action being taken. If it had not been caught and corrected the client would never have received benefits and could have been discharged from her nursing home.

31. The note marked as Cabinet's Exhibit D-20 was delivered to Ms. Jones by a client who was adamant she had already turned in all of her requested verification information. Ms. Jones went ahead and processed her case and was able to procure a restoration of benefits for February and March of 2013.

32. The documents marked as Cabinet's Exhibit D-21-a, D-21-b and D-21-c were found in a folder with a client's name on it in the Appellant's office on her desk.

33. The documents marked as Cabinet's Exhibit D-23 indicates this client's case was discontinued on December 2012 effective for January 2013. Ms. Jones could find nothing entered on KAMES or in ECF and these documents were eventually found filed in another client's file in the file room.

34. The letter marked as Cabinet's Exhibit D-24 was prepared by a client's daughter after her mother had her benefits discontinued in January 2013. This woman was insistent that she brought the verification information into the office herself. This erroneous discontinuance resulted in a loss of Medicaid Part B premiums. The case was subsequently processed and a restoration of benefits was requested and eventually approved.



35. The documents marked as Cabinet's Exhibits D-25-a, D-25-b and D-25-c indicates a client went to the Montgomery County office on January 9, 2013 and applied for benefits. Cabinet's Exhibit D-25-b, are KAMES entries indicating the client failed to return verification information and the application was discontinued. The case was subsequently approved on March 7, 2013. Cabinet's Exhibit D-25-c is a letter from the client indicating that she brought in her verification information. The purpose of this note was to support the request for restoration of benefits.

36. Cabinet's Exhibit D-26-a is a KAMES entry indicating the client had a phone interview with the Appellant on December 3, 2012. This was a pass-through re-certification and the Appellant reports on December 14, 2012, no verification information had been received from the client. However, Cabinet's Exhibit D-26-b demonstrates the client had been in the Montgomery County office on December 7, 2012. It should be noted, the purpose of said visit or whether any information was delivered is unknown. Cabinet's Exhibit D-26-c indicates that the Appellant took another application on this client which was ultimately approved in March of 2013.

37. Cabinet's Exhibits D-31 through D-39 were introduced into the record. Ms. Jones testified that the documents marked as Cabinet's Exhibit D-23 were found in client 31's case file.

38. On cross-examination, Ms. Jones testified that the Appellant came to Montgomery County from Clark County Family Support on January 16, 2012. This was a promotion for the Appellant and Ms. Jones was part of the team that hired her. Ms. Jones stated that there was no intent to dismiss the Appellant at the time of her 2012 year-end evaluation.

39. Ms. Jones admitted there was no proof the manila envelope and/or the documents contained therein (marked as Cabinet's Exhibit D-2-a) were ever in the Appellant's office and further admitted the shred bin in which they were found is not located in the Appellant's office. Ms. Jones also admitted there was no way of knowing that the documents marked as Cabinet's Exhibit D-4-a and D-4-b were ever touched by the Appellant.

40. Ms. Jones testified she found the verification documents marked as Cabinet's Exhibit D-7-a on the Appellant's desk during the first week of February 2013. She simply stated there were no KAMES entries which correlated with this information. She also noted the Appellant was on leave February 7 and 8, 2013, and upon her return to work, she was placed on desk duty. From that point forward, the Appellant had no client casework or access to a computer. Similarly, the documents marked as Cabinet's Exhibit D-8 is also verification information without correlating KAMES entries which were found on the Appellant's desk. Ms. Jones explained that the documents marked as Cabinet's Exhibit D-7 had to do with an application for benefits while the documents marked as Cabinet's Exhibit D-8 had to do with a re-certification of benefits.

41. Ms. Jones also stated that on February 7, 2013, she checked the Appellant's voicemail and over thirty messages were found. Ms. Jones admitted that the documents marked as Cabinet's Exhibit D-9, which were found in the Appellant's office, were not date-stamped. She speculated this was because the documents had either been delivered to the Appellant directly or because the front desk failed to time-stamp them. This situation is similar to the documents marked as Cabinet's Exhibit D-20, which also had no date-stamp on it.

42. The next to testify was **Ms. Tammy Davis**, the Service Region Administrative Associate. Ms. Davis testified that the request for MDA, marked as Cabinet's Exhibit A, was drafted by herself and Jennifer Jones. The photograph marked as Cabinet's Exhibit I is a picture of a box found in the Appellant's office and known as the Appellant's "scanning" box. Ms. Davis testified she took this box from the office on February 4, 2013. Within this box she found both scanned and other documents that should have been scanned and entered.

43. Cabinet's Exhibit K is a copy of the request to place Appellant on desk duty drafted by Ms. Davis. Cabinet's Exhibit L is a copy of the request for MDA served by Ms. Davis on the Appellant on February 12, 2013. Ms. Davis testified she requested that the Appellant be placed on desk duty after she had talked to a client who had been crying on the phone just the day before. At the time there were quite a few cases that they had to go through and Ms. Davis did not want the Appellant working on any other cases until the big picture had been clarified.

44. Ms. Davis testified that on February 4 she went to the Appellant's mailbox and copied documents contained therein to see if they had been worked. Ms. Davis stated that at the time she did not know the extent of the problems. When she returned on February 7 she found the original copies in the Appellant's scan box. Cabinet's Exhibits D-1-a, D-1-b, and D-1-c are the copies of these documents which were in the Appellant's shred box. They had not been scanned or entered into the system. Cabinet's Exhibit D-1-b was found in the Appellant's scan box and indicates that certain information was asked for. Apparently the Appellant had entered the case in the wrong category which is why the client provided medical bills with her application, etc., on January 16, 2013. Cabinet's Exhibit D-1-d indicates that Jennifer Jones got on the KAMES system and corrected this action.

45. The documents marked as Cabinet's Exhibit D-6-a through D-6-d were found in a stack of papers on Appellant's desk on February 7, 2013, by Ms. Davis. Ms. Davis noted that Cabinet's Exhibit D-6-a was date stamped January 11, 2013, after the application, which was dated December 4, 2012, had been denied on December 14, 2012. [See Cabinet's Exhibits D-6-b.] According to Ms. Davis, this demonstrates that there was a pattern of not properly working cases, but there were no separate incidents.

46. The documents marked as Cabinet's Exhibits D-10-a through D-10-f were found in Appellant's scan box, but they were never scanned into the system. Cabinet's Exhibit D-10-b demonstrates the client's application was taken on December 4, 2012, and was discontinued on December 14, 2012, for lack of verification. Cabinet's Exhibit D-10-c was date-stamped December 12, 2012. Cabinet's Exhibit D-10-d indicates the client came to the Montgomery County office on January 14 and 15, 2013. Again, according to Ms. Davis, this demonstrates that the Appellant did not properly process cases on at least two occasions. As a result, the client lost benefits for January and February of 2013.

47. Cabinet's Exhibits D-11-a, D-11-b and D-11-c indicates that an application was taken for this client on January 7, 2013, and was denied on February 6, 2013, for failure to bring in verification documents. Ms. Davis testified that she called the client who told her that she retrieved the necessary documentation on that same day and handed them directly to the Appellant also on the same day. Cabinet's Exhibit D-11-b demonstrates that the client was in the Montgomery County office on January 7, 2013, on two occasions. Cabinet's Exhibit D-11-c demonstrates that the requested bank statements had been printed out on January 7, 2013, which was consistent with the client's statement.

48. As a result of the discontinuance of this application, this client had to reapply and attempt to receive her lost benefits. In the end, retroactive coverage was requested, but that takes a few months to get the money back to the client. In the meantime, the client lost money for a few months plus 20 percent coverage on any medical bills she had, which could not be retroactively retrieved.

49. Cabinet's Exhibit D-12-a was found in the Appellant's scan box and is a system generated application. This document demonstrates that on December 10, 2012, the Appellant mailed the client a recertification form. Cabinet's Exhibit D-12-b demonstrates that the Appellant met the client on December 18, 2012. The problem is a recertification form was never found and no documents were ever scanned in the ECF. Given that the Appellant entered some information into KAMES which reflects that the Appellant had a KIP 2-Q form, one can only assume the client mailed back her recertification documents, however, these could not be found.

50. According to Ms. Davis, this demonstrates that on at least five occasions the Appellant failed to process cases properly which resulted in losses to clients and demonstrates a lack of good behavior. It also demonstrates an unsatisfactory performance of her duties as a result of failing to process cases pursuant to policy and procedure and federal guidelines. According to Ms. Davis, letting cases be denied or discontinued is not serving the public. It also demonstrates a pattern which reflects that clients had been returning verification while the Appellant can continue to deny receiving the same when the fact was these documents were found in the Appellant's office on her desk. In addition, some of the Appellant's KAMES entries reflect the wrong activity. According to Ms. Davis, all of these mistakes, errors and failures were overwhelming.

51. On cross-examination, Ms. Davis admitted to not having confronted the Appellant regarding her findings and made no attempt to get her side of the story. According to Ms. Davis, she felt there was no point in asking the Appellant any questions about this while they were looking into it because she would always just deny having received any of the information in question. The testimony of Tammy Davis marked the end of the Appellee's case in chief.

52. The next to testify was the Appellant, **Ms. Amanda Burton**. Ms. Burton testified that prior to her termination, she had been employed as a Family Support Specialist I since January 2012. Prior to that, she was an OSA II secretary.

53. Ms. Burton testified she had a shred bin in her office which she would carry to the shredder in the hall every day. She testified the box photographed as shown on Cabinet's Exhibit I was not found in her office. She was certain of that because the previous Sunday she brought her daughter into the office and while there, her daughter drew cardinals and "I love you" on her shred box. Ms. Burton testified she received up to 100 calls per day along with voicemails and would check her voicemail in the morning. She also testified that verification documents were never given to her directly by a client. Instead she would pick them up from her box located at the front office after each break and at the end of the day. When she received these documents she would scan them into ECF then place them in her scan box to be filed. She stated that volunteers did all the filing.

54. Ms. Burton stated that Jennifer Jones was her supervisor and that she saw her about two times per month. She stated that Ms. Burns, the Program Specialist, would come down every now and then to read cases. At first she would come two or three times a week and then would show up less and less. As for Principal Worker, Debra Skaggs, she saw her two times the whole year. Ms. Burton testified that she laid eyes on Tammy Davis for the first time in February, 2013. She also stated no one ever told her she was not performing her job satisfactorily. She also stated she had no case decisional authority and that her cases were decided by Ms. Jones, Ms. Burns, or Ms. Skaggs.

55. Ms. Burton testified that not receiving verification documentation was very common, especially with the elderly. However, she was never questioned about the same by the people who reviewed her cases. She also stated it was not at all true she was the only worker who was not receiving verification documentation. She stated that once the usual secretary went on medical leave on December 1, 2012, the problem with missing verification documents became much greater.

56. Ms. Burton testified that during the end of January 2013 some relatives of a public official came into the office to see about some verification. Around that time, Jennifer Jones forwarded an e-mail from Tammy Davis indicating she wanted the case processed. The Appellant told Ms. Jones she could not do it without verification. Apparently the case ended up being processed by someone else. Ms. Davis wanted the case processed within seven days. The next week, Ms. Jones showed up and the Appellant was placed on desk duty. At that time, no specifics were discussed with her and no documents were shown to her. Rather, she was given

ten days in which to write a response. However, since nothing had been discussed with her or shown to her, she had no idea how or what to respond to. She also mentioned that no one was allowed to talk to her while she was on desk duty.

57. Ms. Burton requested a pre-termination hearing after receiving the intent to dismiss letter marked as Cabinet's Exhibit B. However, prior to the same, she was told to get out of the building and to turn in her keys. The pre-termination hearing lasted approximately one hour. Jay Klein was not in attendance.

58. During the pre-termination hearing, she was asked to go through her intent to dismiss letter and explain each charge on a case-by-case basis. However, since she had no KAMES notes to review she could not remember everything and was unable to properly refute the allegations.

59. The Appellant stated flatly she never set documents aside improperly and never told a client she did not receive a document when she actually had. The Appellant stated she had never laid eyes on the documents marked as Cabinet's Exhibit D-2-a although she did recall speaking to the client's power of attorney and sending out two separate certifications for him to return. She noted that the entirety of the documents allegedly entered into the system by Ms. Davis and Ms. Jones had never been shown to her until the time of hearing.

60. The documents marked as Cabinet's Exhibit D-3-b are partial notes and were not the Appellant's notes from KAMES, so the Appellant had no recollection of what happened there. She also noted she was already on desk duty on February 11, 2013, when these documents were entered into the system. As for the documents marked as Cabinet's Exhibit D-3-a, the Appellant stated that the client's daughter had been into the office several times and had called the Appellant admitting she did not bring the necessary information and knew she would have to start the process over. As for the document marked as Cabinet's Exhibit D-6-a, the Appellant stated that this was a letter mailed to the client when there was a change in his benefits. She had no recollection of this letter as it would have been mailed directly to the client and was system generated. Cabinet's Exhibit D-6-b is an inquiry on the KAMES system and shows when the Appellant completed an action. The Appellant had no recollection as to this matter. The document marked as Cabinet's Exhibit D-6-c, does not have the Appellant's code. Instead the contact was entered on November 28, 2012, and would have been made by the secretary. As for the document marked as Cabinet's Exhibit D-6-d, the Appellant could not recall this client without looking at her notes.

61. As for Cabinet's Exhibit D-7-a, the Appellant had no recollection of these documents. The Appellant could also not recall the e-mail marked as Cabinet's Exhibit D-7-b, but acknowledged it was from her. The KAMES comments noted in Cabinet's Exhibit D-7-c are at least partially the Appellant's. She stated that she did not receive the documents or put them in some other place. She also stated that she would not attempt to hide information in her office or place it in the shredder if she did not want to deal with it. She noted that Mr. Wells would go

to the shredder occasionally and noted that on those occasions when he did go through the shredder none of the Appellant's documents were ever found.

62. Cabinet's Exhibit D-10-c, the Appellant stated that this is a Voter Registration form which can be turned into the office or into the Voter Registration office. This document comes from Frankfort.

63. The Appellant objected to the use of a client's statement as shown on Cabinet's Exhibit D-11-a as hearsay. Cabinet's Exhibit D-11-b is a contact sheet which Appellant points out was not properly coded. She also noted that although Ms. Davis testified that nobody comes into the office for no reason, many of these clients receive other services in the office, so they could have come for some other reason. As for this particular client, the Appellant could not remember receiving the documents she needed on January 7, 2013. She does remember needing verification on two checking accounts and that the client called upset complaining that it was not the Cabinet's business regarding her IRA account. The Appellant had to apologize and reiterate she needed the information in order to recertify her benefits. The Appellant stated that it was common practice to have to ask for verification more than once and stated that clients frequently argued with her saying they had brought documents into the office even though they had not.

64. Cabinet's Exhibit D-19 indicates the Appellant performed a phone interview and mailed an application to a client. The Appellant stated she was told to always keep a copy of a blank application in the file as proof it had been sent. This particular client was in a nursing home and needed to apply over the phone. The Appellant mailed the application to the nursing home.

65. The Appellant testified she had not seen the document marked as Cabinet's Exhibit D-20 until just prior to this hearing and further stated she had no recollection of this particular client.

66. Regarding Cabinet's Exhibit D-21-a, D-21-b and D-21-c, the Appellant stated that this particular client's son came in to apply for benefits. The client owned property with two others and the Appellant recalled having a hard time getting verification from the co-owners because they did not want to sell the property. The Appellant thought this application was sent to the review team in Frankfort because the client was in a nursing home and was getting notice that she might have to leave. According to the Appellant, this could take up to six months on review. There was no formal letter to the client that the case was on review and the Appellant stated that it had to go through Ms. Burns before setting up on review.

67. The Appellant reiterated that she did not have a supervisor in the office. Although Ms. Davis testified there were plenty of people for her to ask questions of, the Appellant stated that this was not the case as everyone had caseloads and if they had a client in their office and she needed a quick answer, it was hard to get. She stated she saw people every half-hour from the first to the fifteenth of every month together with any walk-ins. According to the Appellant, the other Adult Medical Worker in the Montgomery County office never liked her

from day one so they never developed a relationship. She also stated that when the usual front desk secretary went on medical leave, a lot of people manned the front desk, including workers and volunteers, who would rotate every hour. According to the Appellant, there were a lot of new people working the front desk.

68. Regarding the documents marked as Cabinet's Exhibits D-25-a, D-25-b, and D-25-c, the Appellant stated that she did not recall this client. She also noted that she was only responsible for one notation into KAMES regarding this client.

69. Regarding Cabinet's Exhibit D-26-a through D-26-c, Appellant recalls this particular client and stated that her case was processed and approved. She forgets how she verified the Social Security and insurance premium because she did not do those very often. She only did these type of pass-through cases maybe three times the entire year, so Ms. Jones finished the notes and approved the benefits.

70. Regarding the information contained in Cabinet's Exhibit D-31, the Appellant remembers this client was married to another client. She speculated that her spouse's information was likely attached to hers, which is likely why her spouse's information ended up in her hard file. That is all the Appellant could recall regarding this client.

71. The Appellant testified she was placed on a PIP on January 3, 2013. The plan called for a supervisor to work on all pending cases with her, but that never happened. No cases were reviewed with her pursuant to the PIP during the remainder of her employment with the Appellee.

72. The Appellant testified that she never kept stacks of paper on her desk because clients would frequently come into her office and because of HIPAA laws, this type of information was to be kept out of their sight. She also stated that Mr. Wells would remind the workers to keep their desktop clear. In addition, the office had just been audited, so keeping information away from prying eyes was a recent point of emphasis. The Appellant further stated that during the course of her employment she had trouble scanning documents into ECF and had to call the help desk often. Although the scanning problem got better during the course of the year, it was never fully fixed. The Appellant stated that after she scanned her documents, she would put them in her scan box to be filed in the hard copy files by office volunteers. According to the Appellant, everything was filed by volunteers and she never physically filed anything during the course of her employment in Montgomery County.

73. On cross-examination, the Appellant stated that "once in a blue moon" a client would hand her verification documents directly. However, she would tell the client to turn it into the front desk so a contact sheet could be filled out. The Appellant reiterated that she never filed any documents in the hard files and never even took her scan box to the file room. She did take a tray in at one point and put it on the file cabinet, but she did not actually do the filing.

74. The Appellant also noted in her second interim evaluation set forth within Cabinet's Exhibit J, that she was having problems with her scanner in May and June. Although these problems did diminish somewhat they never were fully resolved. She stated that in order to get case approval, generally the supervisors had to see the scanned verification documents before they could approve. Ms. Burns would also approve cases if the verification documents were physically in hand and they would get scanned later. The Appellant testified that she refused to sign any major disciplinary requests because she was not told what precipitated the request. She did not request any further documents from that point forward because she did not know she could. She also stated she was having marital problems in late 2012 and early 2013 and really needed her job. As such, she would not have done anything to jeopardize her employment.

75. Upon further review of Cabinet's Exhibit D-3-a, the Appellant admitted that the client had contacted the office on February 2, 2013. However, the Appellant testified that 95 percent of her clients had some other cases, such as family medical or food benefits, etc., which was the reason why contact sheets had to be filled out completely.

76. **Tammy Davis** was recalled as Appellee's rebuttal witness. Cabinet's Exhibit M was introduced through the witness and are the e-mails having to do with the alleged state representative seeking case approval for a relative. Ms. Davis stated she was never contacted directly by the public official, but was questioned about this issue by Angela Hockensmith who is from the Cabinet Secretary's office. She noted there was nothing in the e-mail chain indicating the case had to be processed within seven days. She also stated that situation with the public official's family had nothing to do with the disciplinary action taken against the Appellant and that the same all started when Ron Wells found the documents marked as Cabinet's Exhibit D-2-a in the shred box. Finally, according to Ms. Davis, older clients tend to be more concerned with making sure all the information was provided and that their cases are processed. She stated that it was the younger people who usually are the worst about getting documents back in.

77. This matter is governed by KRS 18A.095(1) which states:

A classified employee with status shall not be dismissed, demoted, suspended, or other penalized except for cause.

78. The Hearing Officer has considered the entire administrative record, including the testimony and statements contained therein.

### **FINDINGS OF FACT**

1. The Appellant, Amanda Burton, was terminated from her position as a Family Support Specialist I in the Department for Community Based Services, Northeastern Service Region, on April 25, 2013. [See Cabinet's Exhibit D.]



2. The Appellant, a classified employee with status, timely filed her appeal with the Personnel Board on May 7, 2013, appealing from her termination.

3. As shown on the termination letter, marked as Cabinet's Exhibit D, the Appellant was terminated based on lack of good behavior and two separate counts of unsatisfactory performance of duties. Generally speaking, the lack of good behavior charge stems from the Appellant's inappropriate disposal of client verification documents and/or failing to properly scan these documents into ECF, from making false entries into KAMES indicating verification information was not received from the client, and from falsely advising clients she had not received the verification information they provided to her.

4. The first count of unsatisfactory performance of duties as noted on p. 8 of Cabinet's Exhibit D, stems from the Appellant's failure to "timely and appropriately enter and/or process client benefit cases, which caused undue financial hardships for clients." The second count of unsatisfactory performance of duties as shown on p. 15 of Cabinet's Exhibit D, generally stem from the Appellant's failure to follow office filing protocol.

5. Howard J. Klein, the Appellee's Appointing Authority, testified that it was the Appellant's lack of good behavior as noted on pp. 1 through 8 of Cabinet's Exhibit D that warranted the Appellant's termination. According to Mr. Klein, the two counts of unsatisfactory performance of duties set forth on pp. 9 through 18 of Cabinet's Exhibit D, would not have, in and of themselves, warranted the termination of the Appellant.

6. The cumulative effect of the evidence of record, particularly that of SRAA Davis and FSS Jones, demonstrates conclusively that the Appellant mishandled client verification documentation, intentionally misinformed clients, and intentionally made false entries into KAMES, as more specifically alleged in the termination letter marked as Cabinet's Exhibit D.

### **CONCLUSION OF LAW**

The Appellee has demonstrated by a preponderance of the evidence that the disciplinary action taken against the Appellant, the same being her termination as a Family Support Specialist I in the Department of Community Based Services, Northeastern Service Region, was neither excessive nor erroneous and was appropriate under the circumstances.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **AMANDA BURTON VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2013-108)** be **DISMISSED**.

**NOTICE OF EXCEPTION AND APPEAL RIGHTS**

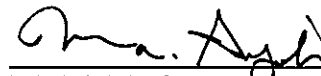
Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

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 Geoffrey B. Greenawalt** this 7<sup>th</sup> day of March, 2014.

**KENTUCKY PERSONNEL BOARD**



**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Richard Kenniston  
Hon. Tim Salansky  
Amanda Burton