

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-242

DARLENE BUSSELL

APPELLANT

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

EDUCATION AND LABOR CABINET, formerly known as
EDUCATION AND WORKFORCE DEVELOPMENT CABINET

APPELLEE

* * * * *

The Board, at its regular August 2022 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 20, 2022, Appellant's Exceptions and Request for Oral Argument, Joint Motion to Continue July 8, 2022 Oral Argument, 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** Background paragraph 26 that states:

26. On cross-examination, the Appellant was asked why she just did not email Ms. Adams on October 5, to ask for approval for overtime. The Appellant stated that all she knew was that at 4:30 p.m. she was not finished with her presentation, and it was not up to par. So, she stayed and worked on it a little longer. According to her, this was a small issue that was made into something big.

and substitute the following:

27. On cross-examination, the Appellant was asked why she just did not email Ms. Adams on October 5, to ask for approval for overtime. The Appellant stated that all she knew was that at 4:30 p.m. she was not finished with her presentation, and it was not up to par. So, she stayed and worked on it a little longer. According to her, this was a small issue that was made into something big.


B. **Renumber** Background paragraph 27 to 28, paragraph 28 to 29, and paragraph 29 to 30.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer, as altered, are approved, adopted and incorporated herein by reference as a part of this Order and that the Appellant's appeal is **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 16th day of August, 2022.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
SECRETARY

A copy hereof this day mailed to:
Darlene Bussell
Hon. Linda Keeton
Hon. Rosemary Holbrook (Personnel Cabinet)

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2020-242

DARLENE BUSSELL

APPELLANT

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

EDUCATION AND WORKFORCE DEVELOPMENT CABINET

APPELLEE

This matter came on for evidentiary hearing on November 18, 2021, at approximately 9:30 a.m. (ET), at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before Geoffrey Greenawalt Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by KRS Chapter 18A.

The Appellant, Darlene Bussell, was present and represented by the Hon. Paul Fauri. The Appellee, Education and Workforce Development Cabinet, was present and represented by the Hon. Linda Keeton. (As of the time of this Recommended Order, the Appellant is no longer represented by counsel).

Per the Interim Order entered October 18, 2021, the issue to be determined at the evidentiary hearing was whether or not there was just cause for the two (2) - day suspension of the Appellant and whether or not the penalty was either excessive or erroneous. The burden of proof was upon the Appellee and was to be by a preponderance of the evidence.

BACKGROUND

1. The Appellant, Darlene Bussell, filed her appeal with the Personnel Board on December 16, 2020, appealing her two (2) - day suspension, effective November 4, 2020, and November 5, 2020. At the time of the Appellant's suspension, she was classified as a Procedures Development Specialist 1 with the Department of Workforce Investments, Division of Technical Assistance.

2. The first witness called by the Appellee was **Kimberly Tucker**. Ms. Tucker is the Assistant Director of the Division of Human Resources, Education and Workforce Development Cabinet (EWDC), and has been so employed since May 2015. Ms. Tucker has worked in Human Resources in various capacities beginning with her employment at the Eastern State Hospital in 1995 and has been involved with employee disciplinary actions her entire career.

3. Ms. Tucker explained that the disciplinary process begins with a Request for Major Disciplinary Action (RMDA), which is usually made by a supervisor. In order to maintain consistency, the RMDA is then reviewed and compared with similar disciplinary actions previously taken. If the RMDA is warranted, a draft of the charges against the employee is prepared, which includes a proposed level of disciplinary action based on previous disciplinary actions taken by the Cabinet. The draft is then presented to the Office of Legal Services and finally to the appointing authority for review. Ms. Tucker stated that, disciplinary actions are to be progressive in nature.

4. Ms. Tucker testified she was involved with the Appellant's two (2) - day suspension, which began by reviewing the disciplinary action request and the supporting materials attached thereto. In order to maintain consistency, Ms. Tucker then considered the corrective action to be taken by comparing it with other disciplinary actions previously taken under similar circumstances by the Cabinet. She also reviewed the Appellant's personnel file and disciplinary history.

5. Ms. Tucker stated that the basis for the two (2) - day suspension was outlined in the suspension letter to the Appellant dated October 28, 2020. This letter was not made an Exhibit during the hearing but is part of the record due to having been attached to the Appellant's appeal form. The basis of the RMDA centered on two (2) separate occurrences. The first such occurrence involved a Zoom meeting the Appellant scheduled, then held, after being directed by her immediate supervisor not to proceed with the same. According to Ms. Tucker, in this instance, the Appellant was insubordinate and her subsequent emails to her supervisor were inappropriate. The second occurrence involved the Appellant working overtime without requesting the necessary approval. Ms. Tucker verified that she drafted the Appellant's suspension letter.

6. The draft suspension letter was forwarded to the appointing authority, Elizabeth A. Roark. Ms. Tucker testified that the disciplinary action request came from Honor Barker, who, at the time, was the Appellant's second-line supervisor. Rachel Adams was the Appellant's first-line supervisor.

7. Prior to drafting the suspension letter, Ms. Tucker interviewed both Ms. Adams and Ms. Barker. According to Ms. Tucker, the disciplinary action taken with regard to the Zoom meeting was based upon the Appellant's insubordination and her inappropriate emails.

8. Ms. Tucker was aware that Ms. Adams and the Appellant had a contentious work relationship. It was her understanding that the Appellant would continually disagree with Ms. Adams and become argumentative and insubordinate. It was also Ms. Tucker's understanding that Ms. Adams had previously attempted to address her issues with the Appellant without taking formal disciplinary action. Ms. Tucker also made note that Ms. Adams is no longer the Appellant's first-line supervisor, having since been replaced by Honor Barker.

9. Ms. Tucker interviewed the Appellant in connection with the subject disciplinary action request, at which time, the Appellant told her that it was Ms. Adams who was being uncooperative. Ms. Tucker asked the Appellant if she had any witnesses to support her allegation,

but none were provided. In addition, to Ms. Tucker's knowledge, the Appellant never lodged a written or oral complaint with the Human Resource Department or her second-line supervisor against Ms. Adams for being uncooperative.

10. The next witness to testify was **Honor Barker**, who has been the Deputy Commissioner for the Department of Workforce Investment since April 2020. Ms. Barker testified that part of her duties included supervising employees, preparing timesheets, and conducting Annual Employee Performance Evaluations. She testified she is currently the Appellant's supervisor and has been so since October 16, 2021.

11. Ms. Barker testified that she submitted the Request for Major Disciplinary Action against the Appellant to Human Resources. According to Ms. Barker, after great thought, she requested the disciplinary action because the Appellant's continuing and persistent behavior needed to change.

12. In order to keep Ms. Barker in the loop in case things went off course, which they very often did between Ms. Adams and the Appellant, Ms. Adams informed her that she had received some complaints from some Directors located throughout the state that the Appellant was continuing to push for additional information to complete some past due quarterly reports. Ms. Adams finally told the Appellant to quit asking for more information and to wrap up her report with the information she already had. Instead, the Appellant flatly refused to do so and sent out a Zoom meeting notification to all of the Directors in an effort to obtain the information she was seeking. Ms. Adams then informed Ms. Barker about the proposed Zoom meeting and Ms. Barker requested that it be stopped. Rather than cancelling as directed, the Appellant held the meeting and sent unprofessional emails to her supervisor. Ms. Barker felt that the Appellant's actions constituted the very definition of insubordination.

13. The occurrence involving the Appellant's unapproved overtime, mentioned in the suspension letter, came right on the heels of the Zoom meeting incident and was a flagrant violation of the Time and Attendance Policy. The bottom line being that the Appellant knowingly worked overtime without prior approval. Finally, Ms. Barker testified that she recommended a five (5) - day suspension when she made her Request for Major Disciplinary Action.

14. The next to testify was **Rachel Adams**, who has been a Staff Assistant to the Commissioner for the Department of Workforce Investments since July 16, 2021. Prior to then, she was employed as the Division Director in the Offices of Technical Assistance. Ms. Adams testified that, in July 2019, she began supervising the Appellant. When asked if she had any difficulties supervising the Appellant, Ms. Adams testified that her professional relationship with the Appellant has always been contentious. According to Ms. Adams, the Appellant is a good employee but not a great employee.

15. Ms. Adams testified that, prior to the subject Zoom meeting, she received complaints from two (2) local Directors regarding the Infrastructure Funding Agreements (IFA) report, which was overdue. The Directors were concerned about how complicated the reporting process had been made. After speaking with the Commissioner about these concerns, she was

instructed to table the reporting until an internal discussion could be held to straighten out the complications. Ms. Adams then discussed the matter with the Appellant, who responded by scheduling a Zoom meeting with the Directors for the very next day. The Appellant also requested an immediate conference call. Because she did not have the time, Ms. Adams let the Appellant know she could send her a list of her concerns so they could discuss them the following week. The next morning, October 2, 2020, Ms. Adams emailed the Appellant and instructed her to cancel the Zoom meeting that was scheduled for 11:00 a.m. that day. The Appellant responded by email asking Ms. Adams, "since when did she ever need her approval to schedule a meeting." Ms. Adams subsequently found out the Appellant had not cancelled the Zoom meeting as instructed, which caused her to contact Commissioner Hammond and Deputy Commissioner Barker and request that disciplinary action be taken against the Appellant. According to Ms. Adams, after she provided Ms. Barker with supporting information, she had no further involvement in the matter.

16. The overtime occurrence set forth in the Appellant's suspension letter came about when the Appellant was asked to make a presentation on the IAF process for Tuesday, October 6, 2020. Because of the short notice provided, the Appellant asked to be approved for overtime over the weekend so she could fully prepare her presentation. According to Ms. Adams, the Appellant had made a similar presentation before, so this was not new to her. In addition, since the Appellant had the remainder of Friday, October 2, 2020, and all of Monday October 5, 2020, to get her presentation ready, Ms. Adams denied her overtime request. The Appellant subsequently informed Ms. Adams, by email, that she had worked overtime on Monday, October 5, 2020, in order to finish working on her presentation. Once it was known that the Appellant had worked overtime, she was instructed to report it on her timesheet. Rather than simply reporting her overtime, the Appellant responded by stating she was the one who gets to decide whether or not to report overtime. It was only after Ms. Adams convinced the Appellant that she could not sign an inaccurate time sheet that the Appellant finally reported her overtime.

17. When asked to testify about the February 14, 2020 Time and Attendance Memorandum listed under "previous actions issued" on the last page of the Appellant's suspension letter, Ms. Adams stated that, on that date, she and Commissioner Marty Hammons met with the Appellant regarding a sick leave issue and the necessary documentation needed to document the same. During that meeting, the overtime policy was also discussed with the Appellant who was under the mistaken impression she had blanket approval to work overtime. The issue was discussed with the Appellant and was told that, per policy, her supervisor's approval was necessary before she could work overtime. The Commissioner did mention the situation of when an emergency was at hand and told the Appellant that, in such event, when pre-approval could not be obtained, policy required that she be compensated. Ms. Adams explained that, to her, an emergency existed when it is 4:30 p.m. on Friday afternoon and something that is due the following Monday morning at 8:00 a.m. has yet to be completed. Ms. Adams stated that, since the Appellant had Friday afternoon and the following Monday to prepare for a presentation she was already familiar with, there was no emergency here, especially considering her request to work overtime during the weekend had already been denied. As such, the Appellant's unilateral decision to work overtime on Monday, October 5, 2020, violated the Time and Attendance Policy.

18. The testimony of Rachel Adams marked the end of Appellee's case-in-chief.

19. The first to testify on behalf of the Appellant was **Karen Miller**. Ms. Miller is a One-Stop Operator for the Lake Cumberland Development Region and oversees the operation of twelve (12) career centers. As a Director of the Region, she prepares the IFA Reports that were the root of the Zoom occurrence for that Region. She explained that the IFA reports are prepared for each region in the state to ensure the Workforce partners in the region are paying their portion of rent, utilities, supplies, personnel administration, etc. The Appellant gathers this information from the Director's in each region to reconcile the budget. She explained that the IFA reports are reconciled quarterly and stated, as an example, that the process of gathering information begins in October for the previous quarter of July, August, and September. Ms. Miller felt that she had a good working relationship with the Appellant.

20. Ms. Miller testified that she participated in the Appellant's Zoom meeting on October 2, 2020, and thought it was absolutely beneficial.

21. The next witness to testify was **Marty Hammons**, who has been the Commissioner for the Department of Workforce Investment since January 2020. According to Commissioner Hammons, the Appellant worked in the Division of Technical Assistance and oversaw the reporting. Commissioner Hammons could not recall any of the specifics from the Time and Attendance meeting he and Ms. Adams had with the Appellant on February 14, 2020. He further testified he was aware of the Appellant's disciplinary action but had Honor Barker handle it.

22. The next person to testify was the Appellant, **Darlene Bussell**. The Appellant testified she began working as an Internal Policy Analyst III in August 2017. In June 2019, she went from a grade 15 to a 13. She testified that, although her pay rate was cut, instead of doing less, her duties had increased after Ms. Adams put her in charge of preparing the IFA reports for the Budget Director. The Appellant testified that she has had six (6) Supervisors in four (4) years and that there was a lot of staff and leadership turnover. The Appellant admitted that she no longer performs the IFA reporting function. However, in October 2020, she was still overseeing the IFA reporting, and had reworked the process to simplify it.

23. The Appellant explained that, when the email chain between herself and Ms. Adams began on October 1, 2020, the Appellant was not aware that any complaints had been registered about the IFA process. At that time, she had already received five (5) out of the ten (10) Director's reports even though they all should have been submitted by the end of July. Also, on September 28, 2020, Ms. Adams asked the Appellant to give a presentation about the IFA process to the Labor Cabinet on October 6, 2020. The Appellant was thrilled to do it, but, at the same time, she was still waiting on information from some of the Directors. When Ms. Adams told her she had received some complaints from some Directors regarding the reporting requirements, the Appellant thought it would be an easy fix with a Zoom meeting. After Ms. Adams instructed her to cancel the meeting, the Appellant responded emphatically, in an effort to get her point across, that it could be a very easy fix. Since she did not hear right back from Ms. Adams, she decided to proceed with the meeting.

24. According to the Appellant, her relationship with Ms. Adams started off on the

wrong foot when Ms. Adams told her she would be training the Appellant. However, during the first few months of her employment, the Appellant only saw Ms. Adams briefly about six (6) times. So, she was basically left to sink or swim. The Appellant also testified that, during a Performance Improvement Plan meeting, Ms. Adams told her that nobody liked her, and the Appellant took that to include Ms. Adams, who was in charge of preparing her Annual Employee Performance Evaluation. This set the stage for the rest of their relationship. The Appellant also asked Ms. Adams how to achieve a score of four (4) or five (5) on evaluations and Ms. Adams simply told her that she did not have to give her that information. She also asked Ms. Adams how to get in a position to move up the promotion ladder and Ms. Adams responded by telling the Appellant it was not her job to do so. This set the Appellant's frame of mind for the email conversation referred to in the suspension letter.

25. In hindsight, the Appellant agrees that her emails were worded a little strong but, at that point, she was very frustrated. Prior to that time, the Appellant never had to have approval to perform training. Regarding the overtime issue, when Ms. Adams asked her to perform the presentation, the Appellant was covered up with work and so she had a short timeframe to put her presentation together. Once her initial request for overtime was denied, the Appellant stopped everything she was doing and worked solely on the presentation. She then picked back up on Monday and worked all day on her presentation. She was not quite done at the end of the day even after working through lunch. At that point, the Appellant did not care if she was paid for overtime or not. According to the Appellant she did not refuse to report her overtime, she just did not care if she was paid for it. Finally, she just capitulated and put down what Ms. Barker wanted her to put down on her timesheet.

26. During the February 14, 2020 Time and Attendance Memorandum meeting the Appellant had with Ms. Adams and Commissioner Hammons, it was the Appellant who brought up the issue of overtime. The Appellant asked the Commissioner if she would still be paid if she suddenly needed some additional time to perform a task, and he responded that she would.

26. On cross-examination, the Appellant was asked why she just did not email Ms. Adams on October 5, to ask for approval for overtime. The Appellant stated that all she knew was that at 4:30 p.m. she was not finished with her presentation, and it was not up to par. So, she stayed and worked on it a little longer. According to her, this was a small issue that was made into something big.

27. The Appellant's testimony marked the end of her rebuttal, and the evidentiary record was closed.

28. The Hearing Officer has considered the entire administrative record, including the testimony and exhibits therein.

29. This matter is governed by KRS 18A.095(1), which states a classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.

FINDINGS OF FACT

The Hearing Officer makes the following findings by the preponderance of the evidence:

1. The Appellant, Darlene Bussell, a classified employee with status, timely filed her appeal with the Personnel Board on December 16, 2020, appealing her two (2) - day suspension from duty and pay from her position as a Procedures Development Specialist I with the Education and Workforce Development Cabinet, Department of Workforce Investment, Division of Technical Assistance, effective November 4, and 5, 2020.
2. Pursuant to the Interim Order dated October 18, 2021, the issue before the Personnel Board was whether or not there was just cause for the Appellant's two (2) - day suspension and whether such penalty was excessive or erroneous under the circumstances. The Appellee had the burden of proof, which was to be by a preponderance of the evidence.
3. The email chain marked as the **Appellee's Exhibit 1** documents the emails between the Appellant and her first-line supervisor, Rachel Adams, regarding the scheduling of the subject Zoom call meeting and the Appellant's response to being told to cancel the meeting.
4. The email chain marked as the **Appellee's Exhibit 2** documents the email discussion between the Appellant and Ms. Adams between October 1 and October 2, 2020, regarding the need for scheduling the subject Zoom call meeting.
5. The time records and email chain marked as the **Appellee's Exhibit 3** are associated with the unapproved overtime allegation contained in the Appellant's two (2) - day suspension letter.
6. The Appellant's suspension letter dated October 28, 2020, was not made an Exhibit, but is a part of the record, having been attached to the Appellant's appeal form. The letter sets forth the Appellee's two-part basis for suspending the Appellant from duty and pay from her position as a Procedures Development Specialist I with the Department of Workforce Investment, Division of Technical Assistance effective November 4 and 5, 2020, for Lack of Good Behavior.
7. The first allegation of Lack of Good Behavior contained in the Appellant's suspension letter alleges that the Appellant was insubordinate when she disregarded a direct order from her Supervisor, Rachel Adams, and proceeded to schedule and hold the subject Zoom meeting. The Appellant was also accused of responding to the directive with inappropriate, unprofessional, and argumentative emails to Ms. Adams. Based upon the testimony of Rachel Adams, the Appellant, and the Exhibits attached hereto, it is found that the Appellant knowingly and purposefully disregarded a direct order from her immediate Supervisor, Rachel Adams, on October 2, 2020, when she scheduled and held the subject Zoom meeting. It is further found that the email response from the Appellant to Ms. Adams as set forth in Appellee's Exhibit 1 was inappropriate, unprofessional, and unduly argumentative.
8. The second allegation of Lack of Good Behavior contained in the Appellant's

suspension letter had to do with the Appellant's unilateral decision to work overtime without her supervisor's pre-approval. Based upon the testimony of Honor Barker, Rachel Adams, the Appellant, and the email contained in the Appellee's Exhibit 3, it is found that the Appellant worked 1.25 hours of overtime on October 5, 2020, without the prior approval of her supervisor. It is further found that the Appellant initially failed to report her overtime on the basis that it was she alone who determined whether or not to report her overtime and only reported the same after being told her timesheet could not be signed as it was known to be inaccurate. Finally, it is found that the tone taken by the Appellant with Ms. Barker in the email marked as Appellee's Exhibit 2 was unduly argumentative and unprofessional.

CONCLUSION OF LAW

The Appellee has demonstrated by a preponderance of the evidence that there was just cause to suspend the Appellant for her Lack of Good Behavior from duty and pay for two (2) days, effective November 4, 2020, and November 5, 2020, from her position as a Procedures Development Specialist I with the Education and Workforce Development Cabinet Department of Workforce Investment, Division of Technical Assistance, and that such penalty was neither excessive nor erroneous under the circumstances.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusion of Law, the Hearing Officer recommends to the Personnel Board that the appeal of **DARLENE BUSSELL VS. EDUCATION AND WORKFORCE DEVELOPMENT CABINET (APPEAL NO. 2020-242)**, be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

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

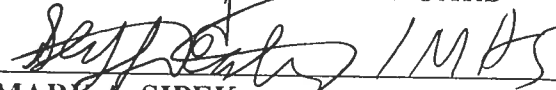
Any document filed with the Personnel Board shall be served on the opposing party.

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

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

ISSUED at the direction of **Hearing Officer Geoffrey Greenawalt** this 20 day of May, 2022.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK

EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Linda M. Keeton
Darlene Bussell
Hon. Rosemary Holbrook (Personnel Cabinet)