

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-014

CHRIS CAMPBELL

APPELLANT

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

TRANSPORTATION CABINET
MIKE HANCOCK, APPOINTING AUTHORITY

APPELLEE

** **

The Board at its regular July 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated June 18, 2015, 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 14th day of July, 2015.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Fogle
Hon. Richard Reid
Kathy Marshall

**COMMONWEALTH OF KENTUCKY
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This matter came on for evidentiary hearing on May 18, 2015, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Stephen T. McMurtry, Hearing Officer. The proceedings were recorded by audio/video equipment as authorized by KRS Chapter 18A.

The Appellant, Chris Campbell, was present and represented by the Hon. Richard Reid. The Appellee, Transportation Cabinet, was also present and represented by the Hon. William Fogle.

BACKGROUND

1. The Cabinet on November 21, 2014, suspended Chris Campbell, a Highway Equipment Operator IV, for ten days to begin November 24, 2014, for lack of good behavior, alleged to be in contravention of 201 KAR 1:345 and General Administration and Personnel Policy, GAP-801, for “failing to carry out assignments as directed by (his) supervisor . . .”

2. The suspension came in a November 21, 2014 letter from Carol Beth Martin, Appointing Authority, incorporated here as **Recommended Order Attachment A**.

3. **Michael Vise** supervised a road crew of Heavy Equipment Operators in the Roadside Agronomy Division of the Highway Maintenance Department for which Campbell temporarily worked. The Agronomy crew was “short-handed.” Vise said that on October 23, 2014, he assigned his crew to attend maintenance training, including compulsory snow and ice training, at Morehead, Kentucky. Campbell informed Vise that he would not attend that day because he had a problem “with others” who would be there. Vise called Daran Razor, Branch Manager for Engineering Support, to seek advice as to what he should do, as he did not have the authority to excuse Campbell from the training. Razor told him, “Fine, I’ll set up another day and Campbell can work around the barn.” Vise said he searched for Campbell after talking to Razor, but learned he had signed out at 8:30 a.m. and gone home. Vise testified that he did not advise Campbell that Razor had scheduled Campbell to attend training at Morehead the next day.

4. **Daran Razor**, Vise's second-line supervisor, testified that on October 23, 2014, Campbell called to tell him that he preferred not to be around the "traffic crew" and was not going to attend the Morehead training. Razor said he told Campbell he would try to reschedule, but he should work around the barn that day and he would call back with another day and time for compulsory training. Razor arranged for Campbell to take training the next day. Razor called Campbell back to tell him of the plan for the next day, but Campbell had gone home. Razor said Campbell failed to show up on October 24 as well. Razor said he advised Vise that Campbell was scheduled for training on October 24. He said training dates are scheduled three to four weeks in advance and the supervisors customarily give employees advance notice of the training dates.

5. **Bart Bryant**, Chief District Engineer, testified he received a phone call on October 23, 2014, from Troy Shrout, Administrative Coordinator for personnel, about Campbell's refusal to attend training. Bryant understood the refusal stemmed from a physical confrontation Campbell had with Jeff McIntyre which resulted in a five-day suspension for Campbell. McIntyre was scheduled to attend the Morehead Training on October 23. Bryant said he initially decided that Campbell's reason not to attend was invalid, but when he called the Flemingsburg office to convey his decision he learned Campbell had gone home. Bryant then rescheduled Campbell for training the next day expecting he would be informed of the plan when he reported for work on October 24.

6. Bryant testified he had a conversation with Campbell about the refusal to attend mandatory training and his, Bryant's, request for Major Disciplinary Action. Bryant reminded Campbell he was on an improvement plan to address time and attendance problems. The plan required Campbell to advise his supervisor ahead of leave taking and, if illness was the cause, to obtain a doctor's excuse. During the conversation, Bryant said he asked Campbell if he was actually sick, but he refused to answer. Campbell told him that he could get a medical excuse, if one was needed, even though he had not gone to the doctor's office on October 23 or 24. Bryant then told Campbell he assumed he had not been sick on those days to which Campbell made no reply.

7. **Kathy Marshall**, Human Resources Manager for the Cabinet, testified she was assigned the request for Major Disciplinary Action against Campbell. She read the written reports of the events of October 23 and 24, talked to the witnesses and prepared the intent to suspend letter for the Appointing Authority to sign. She said she made a comparative analysis of Campbell's dereliction and ten-day penalty with analogous cases to assure that Campbell's punishment was not excessive. She used Campbell's past disciplinary record that included a five-day suspension imposed October 9, 2014, for lack of good behavior in the McIntyre incident and a July 15, 2014 time and attendance reprimand to decide that a ten-day suspension was appropriate.

8. **Chris Campbell** is a fifteen-year Heavy Equipment Operator (HEO) IV for the Transportation Cabinet, stationed at the District 9 office in Flemingsburg. Campbell testified his usual assignment was on the traffic crew, but for a period in October, 2014, the Cabinet had assigned him to the Agronomy crew supervised by Michael Vise. Campbell testified that a coworker, Rob Earlywine, had advised him on the morning of October 23 of the snow and ice training at Morehead. Campbell said he had chronic stomach problems and was sick that morning. He told Vise that he was sick and he had a "conflict of interest," so he would not be going to Morehead that day. Because he did not want to get Vise into trouble, he called Razor who knew the problem he had with McIntyre. Razor told him to clean the barn that day.

9. Campbell's testimony is somewhat unclear, but he testified that he asked if he could sign out because of sickness and "they" said there was no problem with signing out because of his sickness. Campbell said he signed the necessary papers for sick leave and was actually sick on October 23 and 24. He said assignments were usually given by supervisors on the afternoon preceding the workday, and, if no assignment had been communicated, he was required to call in to the supervisor. He said he was unaware that his training had been rescheduled for he did not call in on the afternoon of October 23 or the morning of October 24 and no one called him. He said he made his own arrangements for compulsory snow and ice training. Campbell did not offer into evidence the excuse form he said he signed to process his request for sick leave on October 23 and 24. He complained about not being advised of the grievance process to respond to the five-day suspension he received for the McIntyre controversy.

FINDING OF FACT

1. General Administration and Personnel Policy, GAP 801, requires that employees of the Transportation Cabinet carry out assignments as directed by their supervisors or request meetings with their supervisors to seek further direction or discuss problems with their assignments. Campbell failed to observe these rules.

2. Campbell refused to go to the mandatory snow and ice training and other maintenance training on October 23, 2014, as directed by his supervisors. He attempted to avoid this directive by claiming sickness, but whether or not he was sick, he failed to follow an earlier directive, given by Branch Manager Bryant to justify sick excuses, that he had to obtain a doctor's certificate and advise his immediate supervisor he intended to leave work because of sickness. He claimed he completed the paperwork to document his leaving on October 23, but that document was not offered as evidence. His refusal to confirm that he had actually been sick on October 23 and 24 during his conversation with Bart Bryant and his inappropriate offer to produce a doctor's excuse when he had not visited a doctor were rightly disapproved by Bryant. Campbell's failure to inquire of his supervisor about returning to work on October 24 and about rescheduling his training violated GAP 801.

3. The testimony of Kathy Marshall regarding disciplinary action against six Cabinet employees, who received a ten-day suspension after having been suspended variously from three to six days for derelictions similar to Campbell's, presented analogous and comparable disciplinary action to that received by Campbell.

CONCLUSIONS OF LAW

1. The actions of Chris Campbell described in the above Findings of Fact violated General and Administration Personnel Policy, GAP 801, General Conduct, as he did not carry out assignments as directed by his supervisors. This conduct also violated 101 KAR 1:345, Lack of Good Behavior.

2. The ten-day suspension did not violate KRS 18A.095(22)(c) and was not excessive or erroneous in view of the surrounding circumstances.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **CHRIS CAMPBELL VS. TRANSPORTATION CABINET (APPEAL NO. 2015-014)** 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).

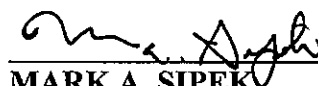
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

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

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 Stephen T. McMurtry** this 18th day of June, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. William Fogle
Hon. Richard Reid
Kathy Marshall



TRANSPORTATION CABINET

Frankfort, Kentucky 40622
www.transportation.ky.gov/

Steven L. Beshear
Governor

Michael W. Hancock, P.E.
Secretary

November 21, 2014

Chris Campbell

APPELLEE'S
EXHIBIT

Re: Ten (10) Day Suspension

Personnel Number:

Dear Mr. Campbell:

By letter dated November 14, 2014, you were advised of my intent to suspend you from duty and pay for ten (10) working days from your position as a Highway Equipment Operator IV with the Department of Highways, District Nine. You provided documentation as a response via fax on November 14, 2014. After taking the documentation into consideration, I find no reason to alter my original intent. Your ten (10) day suspension will be effective beginning of business on Monday, November 24, 2014 through close of business on Wednesday, November 26, 2014. You will be paid for Thursday, November 27, 2014 and Friday, November 28, 2014, which is a state holiday. Your suspension will continue the beginning of business on Monday, December 1, 2014 through Tuesday, December 9, 2014. Based on the authority of KRS 18A.095 and 101 KAR 1:345, Section 4, you are being suspended from your position as a Highway Equipment Operator IV, in District Nine, for the following specific reason:

Lack of Good Behavior: On October 23, 2014, Mike Vise, Highway Superintendent I, advised you of the mandatory snow and ice training that would be held that day for the Project Delivery and Preservation Branch I employees. You telephoned Daran Razor, Transportation Engineering Branch Manager, and advised that you would not be able to attend due to a conflict with another employee who works within that branch. Razor telephoned Vise and advised that you could stay behind and clean the barn until he (Razor) received direction from the district office. The district office advised that the training was mandatory, and that there was no conflict in attending the training with the other employee. Upon attempting to locate and inform you of the decision, Razor learned that you had left the facility at approximately 8:30 a.m., and requested sick leave. That afternoon, Razor made arrangements for you to attend the mandatory training on October 24, 2014; however, you did not report to work on October 24, 2014 and requested sick leave. Bart Bryant met with you on



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Recommended Order Attachment A

November 14, 2014 to discuss the request for corrective/major disciplinary action. Bryant asked you multiple times if you were sick on October 23, 2014 and October 24, 2014, you did not respond.

Each district is required to conduct a training program with all district maintenance personnel and contract personnel that will be involved in the snow and ice removal efforts. This includes all supervisory personnel, truck and grader operators, and support personnel. As a Highway Equipment Operator IV, you were required to attend this training. Your actions are in violation of 101 KAR 1:345, and General Administration and Personnel Policy, GAP 801, General Conduct, by not carrying out assignments as directed by your supervisors.

You previously received the following corrective actions:

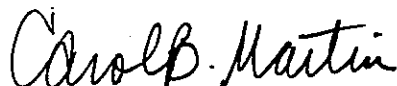
| <u>Date</u> | <u>Action</u> | <u>Reason</u> |
|-----------------|-------------------------|--------------------------|
| October 9, 2014 | Five (5) Day Suspension | Lack of Good Behavior |
| July 15, 2014 | Written Reprimand | Poor Time and Attendance |

Any Further incidents of violation of policy may result in disciplinary action, up to and including dismissal.

For your information, the Kentucky Employee Assistance Program (KEAP) is a voluntary and confidential assessment and referral service for state employees. This service may help you with any personal problems that may be affecting your job performance. KEAP can be reached at 1-800-445-5327 or (502) 564-5788.

As you are an employee with status, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the day of receipt. To appeal, you must complete the attached form and direct it to the address indicated on the form. Copies of KRS 18A.095 and 101 KAR 1:365 concerning appeal and hearing procedures are enclosed.

Sincerely,



Carol Beth Martin
Appointing Authority

cc: Personnel Cabinet
Personnel Board
Steve Waddle, State Highway Engineer
Bart Bryant, Executive Director
Troy Shrout, Administrative Coordinator
Cabinet Personnel File