

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-098

BETHANY COOK

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF CORRECTIONS
J. MICHAEL BROWN, APPOINTING AUTHORITY

APPELLEE

** **

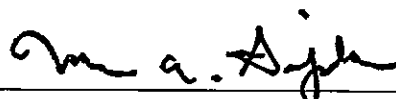
The Board at its regular December 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order After Remand of the Hearing Officer dated October 20, 2014, having noted Appellant's exceptions (returned as untimely filed, but accepted by Board Order), Appellee's response (accepted by Board Order), 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 17th day of December, 2014.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Edward Baylous
Hon. C. Mike Moulton
Bobbie Underwood

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Following procedural rulings by the Personnel Board at its July 2014 meeting, this matter was remanded to the Hearing Officer for a ruling on the merits.

This matter came on for evidentiary hearing on April 28 and 29, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Bethany Cook, was present and was represented by the Hon. Mike Moulton. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was also present and represented by the Hon. Amber Arnett. Also appearing as Agency representative was Trent Vanmeter.

BACKGROUND

1. This matter involves the dismissal of the Appellant by letter dated April 10, 2013. A copy of the letter is attached hereto as "**Recommended Order Attachment A.**"

2. The burden of proof was placed upon the Appellee to show that the dismissal was neither excessive nor erroneous and was appropriate under all surrounding circumstances. The Appellant was assigned the burden of proof as to her claim of disability discrimination. All burdens of proof as to all claims were to be proven by a preponderance of the evidence.

3. Appellee's first witness was **Heather Meredith**. She testified that she has been employed with the Department for approximately seven years, having begun as a Probation and Parole Officer in 2007 and then rising to Assistant Supervisor in the Hardin County Probation and Parole office in February 2012.

4. She stated that she has been a trainer, and does this to ensure that the Department policies are followed. As a part of her job, she also reviews Pre-Sentence Investigation (PSI) reports. Her central region office is based in Elizabethtown, Kentucky, with two satellite offices in Leitchfield (Grayson County) and Bullitt County.

5. She testified that there are two Probation and Parole Officers (PPO) in each county, and also a PSI writer in each county. These officers, other than PSIs, supervise caseloads and testify in court. They also perform record checks of offenders and oversee restitution and drug problems.

6. The witness stated that the Appellant is located in the Grayson County office and that she has worked with the Appellant since 2007 and has been her supervisor since 2012. She described the PSIs as a personal history of the offender, including the arrest record, crime committed, family history, and a record of any substance abuse. The PSI report is the beginning of the supervision history of the offender.

7. The witness explained that until early 2012, the Appellant performed the duties of a PPO, having a caseload of approximately 40 to 50. In March 2012, she was assigned to write PSIs only, leaving four other PPOs in her office to perform those duties.

8. Appellant's assignment to write PSIs only involved her covering both Circuit Court divisions in Grayson County and all of Hart County. She was assigned these duties because she had previous problems supervising her caseload.

9. The witness introduced Appellee's Exhibit 1, her March 14, 2012 e-mail to supervisor Vanmeter detailing a one and a half-hour meeting that day with the Appellant, during which the PSI module was reviewed and an expression by the Appellant that she was comfortable with entering the information into the Kentucky Offender Management System (KOMS) and that she needed no additional help. KOMS is a system encompassing all offenders and their records. In addition, it can also provide information on how many PSIs are written each month.

10. During the March 14 meeting with the Appellant, the witness advised her to complete her ledgers after each court date and to send all completed PSIs to her, as supervisor, for approval prior to submission to the court. The Appellant was also instructed to complete the PSIs five days before sentencing, so as to give sufficient time for review and for the generally enforced policy of having the PSIs ready at least two days before the court date.

11. The witness then introduced Appellee's Exhibit 3, CPP 28-01-02. This policy outlines the administrative responsibilities for the PSI reports and states in pertinent part as follows:

II. Policy and Procedure

...
C. District Supervisor's Presentence Investigation Responsibilities

1. The Division of Probation and Parole shall deliver completed presentence investigations to the sentencing court at least two (2) days prior to final sentencing, unless otherwise directed by the Court.

2. Each District Supervisor shall establish presentence investigation completion deadlines in accordance with the sentencing date. Factors that may cause modification of investigation deadlines include:

- a. The nature of the offense;
- b. Complexity of the offender's situation;
- c. Assigned workload;
- d. Availability of background information; or
- e. Judicial scheduling of final sentencing.

Also, the same policy at II. C(5) reads:

5. The presentence investigation and recommendations shall be reviewed and approved by the District Supervisor or designee prior to submission to the court.

12. The witness also mentioned that in 2011 and 2012 the Appellant had reviewed all pertinent CPPs and had signed documents indicating she understood each of the policies and procedures. The witness then introduced Appellee's Exhibit 5, a spreadsheet of cases under the Appellant's supervision. This document shows the dates the PSIs were completed and when they were due for approval. These are the same cases underlying the reasons for which the Appellant was dismissed. The witness testified that she had begun using the spreadsheets in April or May 2012 to compile a record of the Appellant's meeting the required deadlines. This exhibit contains 36 cases, of which 33 cases were completed after the date they were due for supervisor approval. Of the remaining three cases, two cases were not completed and one was postponed. Also, the witness pointed out that in the case of Daniel Bell, the PSI report was completed after the sentencing date.

13. In fact, the witness pointed out that the Bell case in Grayson Circuit Court was originally scheduled for sentencing on December 4, but was postponed until December 18, because the Appellant had not completed the PSI report.

14. Meredith then introduced Appellee's Exhibit 7, an April 3, 2012 e-mail to Cook reminding her to send the completed PSIs one at a time for review, rather than holding them and submitting in a group of six. This e-mail also contained a July 11, 2012 e-mail from the Appellant to supervisor Vanmeter admitting that she did not manage well the preparation of 16 PSIs for June 19, 2012. The witness further elaborated that she had attempted to help the Appellant meet her deadlines and had checked each PSI report for problems. Despite her offer of help, the Appellant indicated to her that she only wanted to do the reports one day before the PSI was due. The witness further elaborated that she felt that all the documentation needed to complete these reports were there for the Appellant to review, however, she just did not input it into the system. She also mentioned that Appellant's caseload was slightly lower than the other officers.

15. The witness next introduced Appellee's Exhibit 8, which contained e-mails dated June 15, 2012 to Judges Seay and Simms, informing them that certain PSIs for cases set to come before them for sentencing the following Tuesday had not been completed by the Appellant. On June 18, 2012, the day before the sentencing referenced above, the Appellant e-mailed the witness that the PSIs were still not complete. The witness also advised the Appellant by e-mail on July 11, 2012, that she would need to go to court in Hart County on sentencing day and explain to the court why the reports had not been completed again.

16. On June 4 and June 18, 2012, the Appellant apparently mentioned for the first time to Meredith that she was having physical problems, evidenced by a drop in blood pressure and a tendency to get lethargic and fall asleep. She also mentioned that she had been bitten by ticks on the job and was going to seek continued medical treatment.

17. The witness explained that no specific accommodations were requested by the Appellant and no medical documentation was provided to her.

18. On cross-examination, the witness stated that her immediate supervisor was Trent Vanmeter. She also stated that the Appellant had first become PSI only writer in March 2012. Her previous duty had included the training of PPOs and prison officials, and she also assisted new hires with PSI writing.

19. Directed to Appellee's Exhibit 1, the witness confirmed that the wording was "If possible, please attempt to complete the reports five days before sentencing." She also admitted that there was no other directive saying that the reports "must" be submitted five days prior.

20. The witness also explained the preferable way to submit the reports was to finish several on one day and send them en masse to the supervisor for review. She cited Eric Franklin as one writer who did this. Apparently, the Appellant would send in one or two reports at one time, and often retained the group of reports which she had finished until the day before or the day of they were due for review.

21. Directed to Appellee's Exhibit 3, which contain the requirement of submission two days to the court prior to sentencing, the witness admitted that she was not aware that Judge Simms did not want his report until the morning of sentencing. The witness then also was directed to Appellee's Exhibit 3 and admitted that policy contained language stating: "unless otherwise directed by the court."

22. The witness then disclosed that she, Vanmeter, and supervisor Herald had created a "quiet day" on each Monday for the Appellant. After assigning her to write PSIs only, this quiet day was to remain for the benefit of Appellant. None of the supervisors monitored her on her quiet day.

23. The witness then explained two cases listed on Appellee's Exhibit 5, the spreadsheet, and explained that the notations "not sent on ledger" referring to the Bell and Miller cases, meant that the information was not sent to this witness and she had to go through various court documents in order to find the necessary information.

24. Asked to address the matter of Appellant's sick days, the witness explained that she did not know how much sick leave Appellant took in May and June 2012. She did admit that on June 4, some medical problems were identified for her by the Appellant, but that she did not really explore the medical problems with her. Also, this witness was never told that any accommodation had been made for Appellant, resulting from medications she was taking.

25. On re-direct, the witness emphasized that there was no problem with the quality of the work produced by the Appellant, but rather the timeliness of having it submitted to her and to the court. She also explained that the Appellant had never questioned her regarding the due date of five days before the sentencing date.

26. The Appellee's next witness was **Trent Vanmeter**. He testified that he is currently the Probation and Parole Supervisor over District 5 in Elizabethtown, Kentucky. After beginning as a Probation Officer, he became supervisor in September 2008. His area includes Breckinridge and Grayson Counties. He was the assistant supervisor over the Appellant when she worked in the Leitchfield office and explained that at one time, he only wrote PSI reports. As supervisor, he emphasizes that supervising a caseload requires making sure that policies are followed, as that is the only way to ensure quality of the reports.

27. The witness explained that when he was over the Leitchfield office, the Appellant worked there and had a supervisory caseload at that time. The witness introduced Appellee's Exhibit 9, an "Investigations by Officer" report. This covered the period from March 1 through December 31, 2012, and reveal that the Appellant had been assigned 131 cases, of which 99 were PSI reports only.

28. The witness next introduced Appellee's Exhibit 10, a June 27, 2012, letter from Hart County Assistant Commonwealth Attorney Ballard, detailing that of eleven felony sentencings scheduled, PSI reports had only been completed on two. Beyond requiring a rescheduling of these cases, this letter also pointed out that extra costs were borne by the Hart County Jail in having to keep these offenders incarcerated longer. The cases referenced were all cases belonging to Appellant. The witness further explained that he does not recall looking for any ways to reduce the Appellant's caseload at that time, since all PSI writers carried approximately the same load.

29. The witness introduced Appellee's Exhibit 12, a packet of material detailing his decision to assign the Appellant only to PSI writing. The witness also added that the Appellant is "one of the smartest people" he ever met. He also added that the Appellant had never asked for any specific help, but rather just "help me get caught up." Vanmeter also added that each Monday remained a "quiet day" for the Appellant, where she stayed in the office working on her cases and not having to have contact with anyone.

30. The witness then introduced Appellee's Exhibit 12 containing an e-mail November 20, 2012, in which then supervisor Renee Maness, copied this witness that the Appellant had been instructed to stop doing a colleague's updated PSIs and to concentrate on her own work.

31. The witness introduced Appellee's Exhibit 14, year-end evaluations of the Appellant from 2007 through 2012. This witness completed all these evaluations on the Appellant with the exception of the year 2007. The evaluations from 2007 through 2009 ranked Appellant as "Good." During this period she was carrying a full caseload. For the years 2010 and 2011, the Appellant received a "Needs Improvement" rating. During the 2010 and 2011 evaluations, the Appellant was still a supervisory officer. In 2012, she became a PSI writer only and the interim meetings for that year express concerns of her failure to meet due dates with her reports. The 2012 evaluation also reflects the Appellant was given a ten-day suspension in August 2012 for poor work performance and that a Performance Improvement Plan (PIP) was issued on July 30, 2012. The witness noted the Appellant had been placed upon a PIP in 2010, 2011, and 2012. The plans all revolved around the Appellant's failure to meet due dates and her pledge to meet those in the future.

32. The witness also noted that on October 5, 2010, as a part of the PIP, the Appellant requested a reasonable work accommodation because of adult Attention Deficit Hyperactivity Disorder (ADHD). As part of this accommodation, the Appellant requested extending the time for correcting case deficiencies under the plan from 60 days to 90 days. This accommodation was granted by the Agency.

33. The witness went on to testify the implementation of these PIPs had no positive change on the Appellant's work. As a part of this plan, he was monitoring her performance to see that the same weaknesses previously exhibited did not occur again.

34. Appellee then introduced Appellee's Exhibit 17, a ten-day suspension issued to the Appellant on July 19, 2012, for poor work performance. This involved her duties regarding PSI writing. Vanmeter then revealed that he had discussions with the Appellant regarding the amount of clutter on her desk and the need to be better organized. He also added that an office assistant named Jones would be assigned to her to help with the filing.

35. As evidence of the "quiet day" accommodation afforded to the Appellant, Appellee's Exhibit 19 was introduced. This quiet day resulted from a mediation session concluded on July 6, 2011. This accommodation provided that the Appellant did not have to receive any phone calls regarding other employees' clients and that the Agency would provide assistance to help the Appellant catch-up on her caseload.

36. As evidence that the "quiet day" was effective, the witness introduced Appellee's Exhibit 20, an August 15, 2011 letter from Branch Manager Maness to Director Tim Carman stating that the Appellant's active caseload was current and in compliance with CPPs.

37. The witness then introduced Appellee's Exhibit 21, notes from the medical providers regarding the Appellant's condition to show that she was diagnosed with ADHD and has trouble focusing. In addition, Ph.D. Paul Carney suggested reasonable accommodations might include:

- (1) Extended work time to complete necessary tasks;
- (2) Working in a quiet work environment; and
- (3) Assistance to catch up on her allegedly delinquent work.

38. Vanmeter then explained that the Leitchfield office is a quiet one, and has walls, not cubicles. He believes the quiet atmosphere there should have helped the Appellant. Finally, the witness denied that any disciplinary actions had been taken against her because of her disability.

39. On cross-examination, the witness confirmed that he was the Assistant Supervisor in District 5 prior to 2008. On September 1, 2008, he became supervisor.

40. The witness was asked to address Appellee's Exhibit 22. According to him, this is a note from Eric Franklin sometime in January 2013 detailing to a coworker named Tom how she prepares PSIs. A copy was apparently given to the Appellant to assist her. The witness explained that he found this after escorting the Appellant out of the building, subsequent to her having received her intent to dismiss letter in January.

41. The witness was then directed to Appellee's Exhibit 14, the yearly 2012 evaluation with the interim meetings noted. The primary notations during the first interim period ending in April 2012 were that the Appellant had to be reminded to add minor pieces of information; however, she did enter PINs timely and asked questions when completing reports.

However, it was noted that Appellant consistently failed to meet district due dates set based on her new job duties to allow ample time for supervisor review of reports.

42. The witness then explained that he had given the Appellant a two-week period in which he had assigned no cases to her. During that time, part of her time was spent helping other staff members to catch up.

43. The witness then noted that on the second interim review, conducted for the period from May through August 31, 2012, the concerns reflected were that she continued to consistently fail to meet district due dates that were set based on her new job duties. This review noted that of 51 reports completed by the Appellant, 34 were completed after the assigned supervisor review date, which translates to 67 percent of her reports being submitted late for review. This activity occurred following a ten-day suspension given to the Appellant in August 2012.

44. This activity noted also occurred during which time the Appellant was operating under a PIP (Appellee's Exhibit 15) which ran from March 1, 2012, through July 30, 2012. Asked whether the PIP had helped the Appellant improve her performance, the witness noted that on p. 2 of the PIP, the Appellant noted that her evaluator had notified her that if her work performance did not improve, it might result in a low rating at the end of the Annual Performance Evaluation.

45. Asked whether at the end of the PIP period any discussions were held with the Appellant, the witness replied that discussions had been held with her by supervisor Heather Meredith.

46. Vanmeter also addressed a letter dated October 5, 2010, from the Appellant in response to the discussions surrounding the PIP. He noted that she had asked for some accommodations, including expanded time to correct deficiencies in her audited cases, expansion of time from 60 to 90 days to correct case deficiencies, and being put on notice by each Friday of the work expected of her of the following week. The witness noted that he did not make any modifications in her PIP at that time.

47. The witness then introduced Appellant's Exhibit 1, a November 27, 2012 e-mail from the Appellant to supervisor Meredith, in which she requested to be returned to a probation caseload and cease to write PSIs. The witness denied that the Appellant had been told when she was moved to write PSIs that it was done because her position was being eliminated. He stated it was merely a reallocation of duties to other employees. The witness also admitted that on September 24, 2012, he had received an e-mail from Appellant requesting to fill the position of Grayson County Probation Officer because of the addition of a new position allowing someone else to switch positions.

48. The witness then detailed a partial disciplinary history of the Appellant. He mentioned that an initial three-day suspension in October 2010 had been reduced to a written reprimand by virtue of mediation in 2011. He also added that a PIP issued in 2011 was a result of this mediation, and was followed by a fourth PIP on July 30, 2011. At some point, he was aware Appellant claimed to have some kind of medical condition.

49. As evidence of the Appellant's treatment during her Monday "quiet day," the witness referred to Appellant's Exhibit 2, an August 11, 2011 e-mail in which supervisor Maness directed that a supervisor should be present each Monday to assist Appellant and wishing to be notified if the Appellant was not doing as instructed. He added that he felt like this was both supervision and monitoring of the Appellant.

50. Directed to Appellant's Exhibit 3, a summary prepared by Renee Maness on July 11, 2011, prior to Appellant's first "quiet day," the witness noted the perception that Maness was expecting extra work to be placed upon other staff because of this time given to Appellant. He explained that this was a small office.

51. It was noted that during the beginning of this "quiet time," the Appellant on August 15, 2011, complained about having to be at work and leave on time as required, stating it was not part of the condition of her quiet time. The witness confirmed that Appellant was expected to be at work from 8:00 a.m. to 4:30 p.m., just as all the employees were.

52. The witness also pointed out that in Appellee's Exhibit 12, an e-mail dated November 19, 2012, from supervisor Maness to him instructing him to address with her meeting supervisory due dates so that PSIs could be reviewed thoroughly. Apparently Maness was frustrated with the reports being received at the last minute.

53. The witness also identified Appellee's Exhibit 25, a February 21, 2011 e-mail from the Appellant to him. In this e-mail, she resisted being switched to doing PSI writing because of the travel requirements, and requested to remain as a PPO in Grayson County. He noted that in this e-mail, she expressed no concerns about her ability to do PSI work, but simply cited travel as a concern.

54. The witness concluded by stating that Appellant's "quiet time" never stopped prior to the time of her termination.

55. On cross-examination, the witness reiterated that all PSI writers were required to turn in their reports to a supervisor at least five days prior to sentencing.

56. Appellee's next witness was **Tim Carman**. This witness worked with the Agency from February 1993 through March 2013. He began as a PPO and also supervised PSI writers. At the time he left the Agency, he was previously Administrative Branch Manager for the Eastern Region and became the Director of Probation and Parole in August 2010. He was the Appointing Authority for Probation and Parole.

57. After introducing the Appellant's termination letter, Appellee's Exhibit 16, he stated that he had reviewed the entire personnel actions, the mediation performed and the PIPs in making his decision to terminate her.

58. The witness further justified the dismissal by stating that she held a public safety position, which involved upholding the public trust. He also advised that he had tried to help her by providing a "quiet day" and asked her supervisors to track her performance more closely. He denied that her health condition had been a factor in his decision.

59. Appellee closed its case.

60. Appellant called as her first witness, **Erik Franklin**. He has worked as a PPO in Leitchfield for approximately fifteen years. He now writes PSI reports for Grayson and Breckinridge counties. He also used to do this in Hart County. The witness stated that Appellant took over for him in one division in Hart County and two divisions in Grayson County.

61. He explained that it was customary for him to provide the PSI reports the day of sentencing for the two Judges in Grayson County and the same for the Judge in Hart County.

62. He explained that previously, he did not have to send in the PSI reports for review. Sometime in early 2013, he was told to send his reports to an assistant supervisor for review approximately five days before the sentencing date. He opined that he thought this requirement had something to do with an accreditation requirement. He also added that he did not, and still does not, send the actual PSI report to the supervisor; rather, only the PID number so that they may access it.

63. The witness stated that he has not previously asked any court to delay the sentencing date in order for him to complete his report. He added that each PSI report is different as far as getting the needed information regarding the actions of the offender. The witness stated that he also enters his own due dates and does not use staff.

64. He also explained that after the PSI report is submitted and sentencing occurs, he does follow-up within twenty-four hours and cuts the case loose so the inmate can be released.

65. This witness indicated that he had worked with the Appellant at the Leitchfield office. Since he telecommutes, he had limited contact with her, but felt there was more scrutiny of her because she was untimely with her reports. He related that after she was assigned to PSI only, that he did help her with a memorandum. He also added that she never asked for help.

66. On cross-examination, the witness again confirmed that only recently had he been required to submit his PSIs for review. He stated that he has no problem making the due dates required.

67. Appellant's next witness was **William Herald**. He is currently the District Supervisor for District 4 in Louisville. He also supervises PSI writings. He was formerly the Assistant Supervisor in the Elizabethtown office and dealt with the Leitchfield office for two days a week from 2009 through 2011. Trent Vanmeter was his supervisor.

68. He testified that he supervised the Appellant following the accommodation of a "quiet day" she achieved through mediation. He explained that this day was devoted to letting her cleanup her caseloads. He helped fix and catch-up her load and this had been accomplished by the end of August 2012.

69. He explained that the Leitchfield office had no "duty officer." These employees helped with the small things which must be done in an office and are meant to give the workers time to perform their primary duties. Leitchfield had no such duty officer. Herald agrees with previous testimony that the Appellant performs good quality work, but that lack of timeliness and time management are her main problems. He was aware of her ADHD condition as she told him.

70. The witness explained that she did ask for specific guidance quite frequently, which he gave. He also indicated that on rare occasions, he has asked a court to move the sentencing date if the PSI was not ready.

71. Finally, the witness confirmed that on an internal basis, the PSI supervisors can require reports to be sent for review five days prior to sentencing, at least in Jefferson County. He is also aware of the two-day requirement of being submitted before the court sentencing date.

72. On cross-examination, the witness testified that as the PSI supervisor, he received e-mails from the writers to review after court proceedings. He added that he saw nothing from Vanmeter which suggested any unfair treatment of the Appellant and saw no different expectations for her.

73. The witness then introduced Appellee's Exhibits 23 and 24, **which are placed under seal per a protective order**. Exhibit 23 is a caseload assigned to the Appellant following the 2011 mediation. This document indicates all the "corrections or fixes" to these cases which were performed by this witness. Exhibit 24 is a February 10, 2012 audit response to her cases which was completed in December 2011. She was given a chance to make the necessary corrections by February 7, 2012.

74. The witness then confirmed that every PSI writer gets ten cases audited per year. During the caseload audit of Appellant from July through December 2011, this witness was surprised to find the many problems revealed with her caseload. He explained that was especially noteworthy, since it had been cleaned-up as of June 2011.

75. Appellant's next witness was **Chris Cann**. He has been a PPO for approximately nine years in District 5 in Breckinridge County. He works through the circuit court there. He explained that he works out of the Leitchfield office Monday through Friday, and does not have to sign-in/out. His position is supervisory.

76. The witness explained that his office was next door to the Appellant's. Occasionally he went with her out in the field and testified that she did a good job. He is aware that all officers get occasional audits of their caseload. However, he thinks the Appellant is the only one who has had her entire caseload audited.

77. Appellant's next witness was **Tyra Livers**. She has been employed in the Bullitt County Probation and Parole office for the past eight years. She strictly writes PSIs only. Her supervisor for the past five to six years has been Trent Vanmeter. She explained that she is the only PSI writer for Bullitt County.

78. She testified she is to file her PSI reports with Vanmeter five days prior to the sentencing date. Apparently in Bullitt County, the Judge likes to receive this at least three days prior to that date.

79. She explained that she sends her reports for review to her supervisor, by e-mail, normally before the five-day due date. She added that this five-day requirement has been in effect for approximately two years.

80. On cross-examination, the witness stated that she had never worked with the Appellant or reviewed any of her cases. She stated that her PSI reports are always ready for the court. On average, she produces thirty-five to forty PSI reports per month.

81. Appellant's next witness was **Mark Stonex**. He has been the Western Region Branch Manager since October 2013 over five districts, including Elizabethtown. Previously he was the supervisor of District 3 in Bowling Green. He offered no helpful information.

82. Appellant, **Bethany Cook**, testified that she is a graduate of Western Kentucky University with a Bachelor's degrees in Biology and Chemistry. From 1993 to 1995 she worked in the State Police Crime Lab in Frankfort as a Forensic Chemist. That was followed by work in the private sector for two years as a chemist from 2005 to 2007. She took her first job as a PPO I in 2007.

83. She was told upon employment that she would be managing a caseload as a PPO and did so working in the Grayson County office in 2007 through 2012, at which time she became a PPO II.

84. Appellant detailed that she suffers from ADHD which she discovered early in 2009. She describes its effect on her as being hard for her to stay focused on one activity at a time. She states that a variety of work is better for her. She told her supervisor, William Herald, she was taking a controlled substance for ADHD.

85. She further explained that she had trouble organizing her caseload, and after her first reprimand, she asked for an accommodation. She went onto explain that the PPO job evolved the longer she was in it, requiring more computer work and data entry and more paperwork in general.

86. In February 2011, she was offered a job of being solely a PSI writer. This was at the suggestions of Renee Maness and Trent Vanmeter.

87. She explained that she told them that the PSI job would itself involve more paperwork, and that she could not do it because it would be a harder job. However, she thought that if she did not take it, it would be harder to stay in her regular caseload job. In essence, she felt it better to maintain a positive attitude and, while being based in Grayson County, also agreed to cover one Circuit Judge in Hardin County and in Meade County.

88. She explained that she complained about her work hours during her “quiet day,” because she was the only one required to sign-in and out for work. She added that while functioning as a PPO in 2011, the sign-ins were also required for her breaks, lunch and return to office upon leaving.

89. She also added that in March 2012 when being reallocated to PSI writing only, she was trained by Heather Meredith for less than thirty minutes. She also explained that regarding the PIP she was under through late 2009 and early 2010, although this called for supervisory staff to conference with her on a monthly basis to discuss issues, this did not occur. She then pointed out that Appellee’s Exhibit 22, the notes found on her desk by Vanmeter after escorting her from the office in January 2013, were actually notes from Erik Franklin. These notes were an effort to assist her in adjusting to PSI writing.

90. Appellant then testified that in March 2012, before beginning her PSI writing, she notified Meredith that she was having medical issues, involving special allergies, which were a reaction to Lyme disease. She explained that she later pursued Workers Compensation claims regarding these. She also added that in 2012 she had strong reactions to her medical issues during work and often had to take leave time.

91. The Appellant confirmed that Appellee’s Exhibit 5, the spreadsheet of her cases, mirrored those listed in the termination letter. As such, the exhibit shows that although her PSIs were not completed on the date of her supervisory review, at least two of them were submitted several days prior to the sentencing date.

92. Appellant also added that regarding offender Daniel Bell, his PSI report had been completed prior to sentencing. She stated there had been a change in his sentencing date after discussion with the Judge.

93. Appellant further confirmed that a complaint received at some earlier time from the Hart County Attorney regarding the delays in receiving her PSI reports were the main basis for her ten-day suspension. The Appellant also added that regarding her "quiet day," supervisor Maness informed her that if she could not handle that day, it would be taken from her. She termed this as very stressful for her, and also commented that supervisors Meredith and Vanmeter rarely spoke to her. She also testified that a new PPO position had been created in Grayson County after she began doing PSI reports. She felt this new worker was doing the same caseload she had done before.

94. On cross-examination, the Appellant informed that the PIP (Appellee's Exhibit 15) had a requirement that her reports be due five days prior to sentencing for supervisory review. She also admitted that a May 15, 2012 e-mail advised her the due dates were five days before sentencing. Lastly, the Appellant confirmed that her request for accommodations in January 2009 (Appellee's Exhibit 21) were granted.

95. On rebuttal, the Appellee recalled **Trent Vanmeter**. He testified that regarding the Jeremiah Daily case, even though it eventually was received by the Court, that the Agency does not consider that a PSI report is submitted until it has been first reviewed. This is why the charge is alleged against her that she missed the due date in submitting it.

FINDINGS OF FACT

1. The Appellant began employment with the Agency in April 2007 as a Probation and Parole Officer I with a supervision caseload. Her 2008 and 2009 performance evaluations indicated some problem with completing tasks by deadlines, properly completing field investigations, and failure to record some contacts with her clients.

2. The Appellant was issued a Performance Improvement Plan (PIP) in February 2010 concerning these same issues. The Appellant was issued a written reprimand in May 2010 for failing to sufficiently address the issues in the PIP. In September 2010, the Appellant was issued a three-day suspension for not making supervision notes or contact on 40 cases. [The suspension was later changed as a result of subsequent mediation.] In October 2010, the Appellant was issued another PIP in order to help her improve her performance. During this same timeframe, she was assigned an Office Support Assistant to help alleviate some of the paperwork she had to do.

3. The Appellant's 2010 evaluation was a "Needs Improvement," revealing problems with proper documentation, making contacts and home visits, and problems with follow-up and tracking referrals. As a result, in February 2011, her supervisors discussed the possibility with her of changing duties to writing PSI reports only. The Appellant declined this offer, citing travel issues.

4. As a result of mediation July 2011, the Agency issued another PIP and allowed the Appellant one "quiet day" per week where she could concentrate and work on nothing but her caseload, and not assign her any new cases until she was caught up. Another accommodation was that the Appellant's time for correcting case deficiencies was extended from sixty days to ninety days.

5. Subsequent to the "quiet day" provided as a result of the July 2011 mediation, and with assistance from other workers, as of August 15, 2011, the Appellant's caseload was current.

6. In March 2012, the Appellant's duties were changed from offender supervision to writing PSIs only, as a result of the Agency believing that altering the Appellant's job duties to only PSI writing and reducing the risk associated with failing to properly supervise offenders, would be in the Appellant's and the Agency's best interest.

7. Supervisors, Heather Meredith and Trent Vanmeter, explained to the Appellant that PSIs had to be reviewed by a supervisor before they were submitted to the courts, and informed her these should be completed and submitted to a supervisor for review five days before they were due in court. She was also advised that most courts required the sentencing reports to be there at least two days prior to sentencing date, although it was possible that some courts could direct otherwise. Although Eric Franklin testified that there was no internal policy requiring submission for reviews to the supervisor five days prior to sentencing, before these actions involving the Appellant, it is clear that such an internal policy was put in place applying to all PSI writers at or around the time the Appellant was informed of these requirements. The Hearing Officer finds no disparate treatment toward the Appellant.

8. The Hearing Officer also finds that the policy requirements of submission to a supervisor for review and to a court prior to sentencing, as mandated in CPP 28-01-02, were simply to enable the supervisors to meet the requirements of this policy.

9. Appellant was next issued a PIP in July 2012 because of continued failure to meet internal and court deadlines for PSIs. In September 2012, the Appellant was given a ten-day suspension for failing to complete 28 PSIs by required deadlines. Following her return from suspension, the Appellant continued to miss internal review deadlines for the 35 PSI reports cited in her termination letter.

10. Appellant's disability (ADHD) was diagnosed in early 2009 and she began treatment with medication. In February 2010, the Appellant and her doctor notified the Agency of her need for reasonable accommodation. While still serving as a PPO with case supervision,

the Appellant was given a suspension in September 2010. Following mediation, on or about July 6, 2011, among other things, the Appellant was provided a “quiet day” each Monday as an accommodation for her medical condition.

11. On or about March 1, 2012, the Appellant’s job duties were changed from being a Case Officer to that of a PSI Writer only. The Appellant felt, in light of her ADHD, the PSI job would be more difficult for her since it involved more paperwork. The Agency felt that by eliminating the various duties associated with caseload supervision, the Appellant could better focus on the production of the limited documents necessary for the PSI reports.

12. Following a ten-day suspension in August 2012, based upon a letter from the Hart County Commonwealth Attorney complaining of PSIs not being timely filed, supervisors and other staff pitched in and assisted in the Appellant’s caseload being caught up upon her return from suspension.

13. Following her return, the Appellant’s PSI caseload again suffered the same problems of untimeliness regarding her reports and she was thus terminated on April 10, 2013.

14. The Hearing Officer finds that the Agency proved the cases cited as being untimely, both for supervisory review and for submission to the courts prior to sentencing, as referenced in the termination letter and Appellee’s Exhibit 5. Failure to complete these reports in a timely manner was a violation of the internal policy CPP 28-01-02 requiring PSIs to be reviewed by a supervisor prior to submission to the court. These failures constituted poor work performance pursuant to 101 KAR 1:345. The Hearing Officer also finds that the arguments by the Appellant that the references in the dismissal letter to CPP 28-01-02(1) and CPP 28-01-02(5) are harmless, in that all parties were well aware of the policy deemed to have been violated and no actual harm resulted to any party.

15. The Hearing Officer also finds that upon the Appellant’s request for reasonable accommodation based on disability, the Agency offered reasonable accommodations in the form of a “quiet day” by extending her deadline to correct case deficiencies and in allowing other workers to help bring her caseload current.

CONCLUSIONS OF LAW

1. Disability discrimination occurs when an employer takes adverse employment action because of a disability or when that employer fails to make reasonable accommodation. 42 USC §12112(b)(5)(A). As found above, the Appellant was an individual with a disability. She requested accommodations, which were granted by the employer. An adverse employment action was taken (termination) allegedly because of her disability. The Sixth Circuit Court of Appeals has determined that an employer has no obligation under this disability discrimination to accommodate a disabled person beyond a reasonable accommodation. *Haskins v. Oakland County Sheriff’s Dept.*, 227 F.3d 719 (6th Cir. 2000).

2. The Hearing Officer concludes as a matter of law that the Appellant was covered by the Americans with Disabilities Act (ADA). He also concludes as a matter of law that the Agency made reasonable accommodations for the Appellant after having been requested to do so.

3. The Hearing Officer concludes as a matter of law that the Agency, having made reasonable accommodations for the Appellant, had no further obligations under the ADA.

4. The Hearing Officer concludes as a matter of law that the Agency has carried its burden by a preponderance of the evidence to show that the Appellant was guilty of poor work performance under 101 KAR 1:345.

5. The Hearing Officer concludes as a matter of law that the Appellant failed to carry her burden of proof to show that her termination was a result of disability discrimination.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **BETHANY COOK VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2013-098)** 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 R. Hanson Williams** this 20th day of October, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPER
EXECUTIVE DIRECTOR

A copy hereof mailed this date to:

Hon. Amber Arnett
Hon. C. Mike Moulton



LaDonna H. Thompson
Commissioner

COMMONWEALTH OF KENTUCKY

Department of Corrections
Community Services – Probation and Parole
P. O. Box 2400, 275 East Main Street
Frankfort, Kentucky 40602-2400
Telephone: (502) 564-4221
Fax Number: (502) 564-5783

Tim Carman
Director

April 10, 2013

Bethany Cook

Re: Dismissal

Dear Ms. Cook:

On January 10, 2013, you were issued notice of my intention to dismiss you from your position as Probation and Parole Officer II with the Department of Corrections, Division of Probation and Parole. You requested a pre-termination hearing to reply to the charges, and on February 6, 2013, you and your attorney, the Honorable C. Michael Moulton, presented statements and information on your behalf and waived the deadline for me to issue a final letter so that I could fully consider them. I have taken your statements and the information into consideration and I have determined that the clear weight of evidence establishes that you did commit the charges as outlined in the Intent to Dismiss. Therefore, based on the authority of KRS 18A.095, you are hereby notified of my decision to dismiss you from your position of Probation and Parole Officer II with the Department of Corrections, Division of Probation and Parole. This action is to be effective April 12, 2013. Your dismissal is based on the following specific reasons:

Poor Work Performance. According to Trenton VanMeter, Probation and Parole District Supervisor, since returning, on September 1, 2012, from your 10 day suspension (August 20, 2012 through August 31, 2012), you failed to complete presentence investigation reports by the courts' deadlines or internal office deadlines.

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Specifically, you failed to complete the investigation and report for the Grayson County Circuit Court in the case listed below. The case was set for final sentencing on December 4, 2012, and had to be continued to wait for completion of the investigation and report.

<u>Offender</u>	<u>Date Assigned</u>
Bell, Daniel	11/05/2012

In addition, since September 1, 2012, you failed to complete 35 presentence/supplemental investigation reports by the deadline for internal review.

<u>Name</u>	<u>Date Assigned</u>	<u>Due Date</u>	<u>Date Completed</u>
West, Charles	09/05/2012	09/11/2012	09/18/2012
Davis, Nathan	09/19/2012	11/06/2012	11/15/2012
Jewell, Josh	09/19/2012	09/25/2012	09/27/2012
Mudd, Dalton	09/19/2012	10/09/2012	10/18/2012
Parker, Alice	09/19/2012	10/09/2012	10/11/2012
Sanders, Peggy	09/19/2012	10/09/2012	10/11/2012
Miller, Douglas	09/24/2012	10/23/2012	11/02/2012
Noblett, Brittany (S)	10/11/2012	11/13/2012	11/20/2012
Cover, Rebecca	10/15/2012	11/13/2012	11/16/2012
Dixon, Phillip	10/15/2012	11/27/2012	12/03/2012
Holbert, Trinity	10/15/2012	11/27/2012	12/03/2012
Husk, John	10/15/2012	10/30/2012	11/01/2012
Jones, Christopher	10/15/2012	11/27/2012	11/30/2012
Logsdon, James	10/15/2012	11/13/2012	11/19/2012
Rucker, Kevin	10/15/2012	11/27/2012	11/30/2012
Sinaga, Juan	10/15/2012	11/27/2012	12/03/2012
Walters, Robert	10/15/2012	11/27/2012	11/30/2012
Taylor, Daniel	10/17/2012	11/13/2012	11/16/2012
Winston, Robert	10/17/2012	10/30/2012	11/01/2012
Clayton, Damarkis	10/22/2012	11/27/2012	12/03/2012
Coon, Jeremy	10/24/2012	11/13/2012	11/20/2012
Dailey, Jeremiah	10/24/2012	11/13/2012	11/26/2012
Fegan, Patrick (S)	10/24/2012	11/13/2012	11/20/2012
Manley, Erika	10/24/2012	11/13/2012	11/20/2012
Phelps, Joseph (S)	10/24/2012	11/13/2012	11/20/2012
Cobb, Donnie	11/08/2012	11/27/2012	12/03/2012
Maxie, Kentrell	11/08/2012	11/27/2012	11/30/2012
Weghorst, Thomas	11/08/2012	11/27/2012	11/30/2012
Bell, Brittany	11/14/2012	11/27/2012	12/04/2012
Miller, Thomas	11/14/2012	11/27/2012	12/04/2012
Murphy, Steve	11/15/2012	11/27/2012	12/04/2012
Weston, Craig	11/20/2012	11/27/2012	11/30/2012

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Daniel Bell	11/05/2012	11/27/2012	12/13/2012
Russell Sanford	11/26/2012	12/11/2012	Not Completed
Adam Whaley	11/26/2012	12/11/2012	Not Completed

You failed to complete the Pretrial Diversion investigation and report for the Grayson County Probation Office in the case listed below.

<u>Offender</u>	<u>Date Assigned</u>
Mullins, Michael	10/11/2012

Your actions violate the Division of Probation and Parole, Corrections Policy and Procedure 28-01-02(1), which requires you to deliver completed presentence investigations to the sentencing court at least two (2) days prior to final sentencing, unless otherwise directed by the Court; and CPP 28-01-02 (5), which requires you to submit your investigations for review and approval by the District Supervisor or designee prior to submission to the court. Time frames established according to CPP 28-01-02 (5) were acknowledged, by you, by signature in a Performance Improvement Plan dated July 30, 2012.

Poor Work Performance. According to Trenton VanMeter, Probation and Parole District Supervisor, in the Performance Improvement Plan, you signed and dated July 30, 2012, you were to give the PSI/Supplemental, the LSCMI, and the Intake Forms to the Office Support Assistant within 24 hours of an offender being sentenced to prison so the file could be prepared for receipt of judgment. This has not happened.

Your personnel file indicates that you were issued a Performance Improvement Plan on February 22, 2010, and a Written Reprimand on May 5, 2010, for poor work performance. Another Performance Improvement Plan was issued to you on October 4, 2010, in an effort to improve your work. You received a Written Reprimand for poor work performance on July 19, 2011. On July 11, 2011, a third Performance Improvement Plan was issued to you for poor work performance. On July 30, 2012, a fourth Performance Improvement Plan was issued to you for poor work performance. On August 20, 2012, you were given a ten (10) day suspension for poor work performance.

As Probation and Parole Officer, you are held to a standard of work performance that requires you to follow proper protocols in the performance of your duties. Your actions not only reflect on you as Probation and Parole Officer, but also on the Department of Corrections in its mission to assure the safety and security of the citizens of our Commonwealth and to uphold the highest standard of performance.

A copy of this notice will be forwarded to the Secretary of the Personnel Cabinet.

You are not to come on Department grounds unless directed to do so.

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By the provisions of KRS 18A.095, as a classified employee with status, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice of dismissal, excluding the date of receipt. Such appeal must be filed in writing utilizing the attached appeal form and in the manner prescribed on the form.

Sincerely,



Tim D. Carman, Director
Division of Probation and Parole

cc: Tim Longmeyer, Secretary-Personnel Cabinet
LaDonna H. Thompson, Commissioner-Department of Corrections
Stephanie Appel, Director-Division of Personnel
Kim Potter-Blair, Deputy Commissioner - Community Services
Michael Bolcas, Assistant Director-Division of Probation and Parole
Renee Maness, Branch Manager-Probation and Parole
Personnel File