

CERTIFICATION OF PERSONNEL BOARD RECORDS

I certify that attached hereto is a true and correct copy of the Findings of Fact, Conclusions of Law and Recommended Order and Final Order in the case of **HEATHER DAMRON VS. LABOR CABINET (APPEAL NO. 2018-030)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 19th day of September, 2019.



MARK A. SIPEK, SECRETARY
KENTUCKY PERSONNEL BOARD

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2018-030

HEATHER DAMRON

APPELLANT

VS.

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

LABOR CABINET

APPELLEE

*** **

The Board, at its regular September 2019 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated July 31, 2019, Appellee's Exceptions and Request for Oral Argument, Appellant's Response, oral argument, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **SUSTAINED to the extent** that the dismissal of the Appellant is set aside, that she shall be reinstated to the same or a similar position, that she be assessed a five-day suspension, and that she receive back pay, benefits, and otherwise be made whole. Further, the dismissal shall be expunged from Appellant's personnel records. (KRS 18A.105 and 200 KAR 12:030)

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 19th day of September, 2019.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:
Hon. Kate Bennett
Hon. Tressa Root
Ms. Heather Damron
Ms. Leslie Tindall

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2018-030

HEATHER DAMRON

APPELLANT

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

LABOR CABINET

APPELLEE

* * * * *

This matter came on for evidentiary hearing on May 29, 2019, at 9:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. John C. Ryan, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by KRS Chapter 18A.

The Appellant, Heather Damron, was present and was not represented by legal counsel. The Agency/Appellee, Labor Cabinet, was present and represented by the Hon. Kate Bennett and the Hon. Tressa Root.

This appeal was the subject of at least four pre-hearing conferences, including an initial conference to define the issues, discuss the option of mediation, and related matters. Conferences were also convened to discuss matters of discovery, which were dealt with somewhat extensively due to the broad nature thereof as initially posed by the parties. Mediation was not pursued.

BACKGROUND

1. By letter of February 15, 2018, over the signature of Tiffany N. Yeast, designated Appointing Authority, which letter is 11 pages in length, Heather Damron was dismissed from her position of Administrative Branch Manager of the Statistical Services Branch, Division of Occupational Safety and Health Education and Training, Department of Workplace Standards of the Cabinet, effective the following day. As will be evident from a true copy thereof attached hereto and incorporated herein as **Recommended Order Attachment A**, the Agency recites a lengthy, detailed series of asserted time and attendance events and email usage, which it alleges violated relevant policies, likewise cited in the letter.

2. Ms. Damron took timely issue with the action by appeal on February 26, 2018, wherein she urged, in pertinent part:

I was terminated for email usage and time and attendance. Clock in.

My badge times differed 10-15 minutes which my supervisor knew I would stay late. I told her verbally. I have never been in trouble and have had all outstanding evals. I was not given any progressive discipline when others were. We have no time clock. I would walk in behind others (sic)

Appellant amended her claim at the initial pre-hearing conference conducted on April 24, 2018, to add claims of age, disability, and gender discrimination.

3. Upon convening the hearing, the Agency, in conformity with its assigned burden of proof as to the dismissal, presented the testimony of **Rodney C. Stewart**, who has served as Inspector General for the Cabinet since April 2016. He previously retired following extensive service in a similar position for the state of Ohio. His professional career also included conduct of investigations for other agencies in both that state and for the California State Bar Association.

4. Mr. Stewart explained that his office was engaged by inquiry from the then-Cabinet Secretary to investigate a claim that Appellant was not reporting for work on Fridays without approval to be absent. Relevant records were procured, including so-called “door scans,” which reflect use of the employee’s badge to enter the Cabinet building, together with sign-in logs, which the employee is required to complete to reflect actual time on the job.

5. Inquiry revealed that the allegation concerning Appellant’s absences on Fridays was unfounded. However, in the course of conducting the research, what appeared to be discrepancies in her time and attendance were reflected, whereupon the Cabinet Secretary directed him to expand the scope of his review.

6. The witness learned from Appellant’s supervisor that, although a standard workday with the Cabinet is 8:00 a.m. to 4:30 p.m., Appellant’s schedule was approved to be 7:00 a.m. to 3:00 p.m. with 30 minutes for lunch. He obtained her timesheets and sign-in logs from her supervisor, together with those of all others in the Branch; the purpose of seeking all records was to minimize the number of personnel aware of the investigation, as well as to prevent gossip and to prevent placing the subject of the review on notice. Records revealed that her completed timesheets did not match the door scan entries for numerous workdays; specifically, the pattern was that the sign-in entries were for earlier times than the door records recording her actual arrival. He introduced and discussed a series of spreadsheets, identified as a transaction log, which he asserted to be a complete charting of all daily door scans of Appellant’s badge, ranging from mid-July 2017 through late January 2018. By way of comparison, he supplied and discussed Appellant’s sign-in logs, pointing out their failure to align with her established times of arrival. He explained that only discrepancies of at least 10 minutes or more were documented.

7. By way of further and/or separate investigation, the Inspector General also retrieved sets of emails and proof of internet usage attributable to Appellant which, he explained, is routine in investigations pertaining to time and attendance. It was discerned that Appellant, in compiling a requisite dissertation in pursuit of a doctorate degree from Cumberland University, exercised her work email privileges “well beyond allowable time.” He elaborated that the email

contacts back and forth were between Appellant and her professor at Cumberland and were viewed as entirely non-work related. He presented and discussed a sizeable quantity of emails and related correspondence from and to Appellant which, he asserted, was generated during work hours.

8. The witness continued that he interviewed both Appellant and her supervisor. The supervisor ratified Appellant's 7:00 a.m. to 3:00 p.m. work schedule, with a 30-minute lunch break. She confirmed that all personnel under her supervision are required to record their exact times upon entering and leaving. Appellant acknowledged that upon occasion she manually adjusted records to match the actual times worked without express permission to do so. She also admitted that she utilized work time and equipment in the process of gathering information to be used in her doctorate dissertation, while insisting that such research was included among her statistician-related job duties and therefore work-related. The witness disputed her contentions, pointing out that the activity was not approved by the Agency. Finally, he explained, his office supplied a completed report but did not participate in the disciplinary decision.

9. Under inquiry by Appellant, the Inspector General acknowledged that time and attendance records of other Branch employees which were summoned also contained discrepancies in arrival times, but in those instances the coworkers reported the times accurately. He concurred that if two individuals enter the building in tandem, the first in line could correctly scan whereas the second could enter without having scanned in. He confirmed that badges are not used to scan out. Further responding variously, the witness noted that no Agency policy addresses the matter of an individual holding an entry door open for another to enable them to "just walk in," and that express consent must be obtained to vary from an assigned work schedule.

10. **Tiffany N. Yeast**, the designated Appointing Authority, has served in a Human Resources capacity since 2005. Currently her position is Executive Director of the Office of Administrative Services with the Education and Workforce Development Cabinet, where she commenced in July 2018. Previously, she was Executive Director of the Office of Administrative Services with the Agency, commencing there in February 2018. It was she who issued both the Intent and Dismissal letters to Appellant, which she produced as part of her testimony. She outlined the background and procedural review conducted for the preparation and issuance thereof, including conduct of a pre-termination hearing that was afforded Appellant and exercised. She recalled that at the hearing Appellant urged that the cited violations supported only a suspension at most, without suggesting a proposed length.

11. The witness discussed the concept of progressive discipline, pointing out that while that process is available to the Agency, it is not mandated by any statute or regulation and, in any event, dismissal was the appropriate action in the immediate instance. She insisted that all relevant factors were sought out and reviewed and that her overview thereof dictated the action taken. She pointed to Appellant's position as a manager as a major factor; managers are held to a higher standard than their staff and must set a proper example through compliance with all policies, including those defining time and attendance. She expressly denied any discriminatory treatment of Appellant due to her age, gender, or any asserted disability.

12. Under inquiry by Appellant, Yeast further explained the processes engaged in reaching the conclusions set forth in the dismissal letter. Presented with a quantity of materials detailing the treatment of another employee whom Appellant asserted was subjected to progressive discipline arising from time and attendance violations, and who was eventually terminated over the witness's signature, she recalled that the disciplines in his case, commencing with a reprimand, were begun before her time as the Appointing Authority. Further, she insisted, the discipline of this individual was mishandled initially and her actions were intended to undo and implement it correctly. In addition to the mitigating factors specific to the circumstance of that employee, she explained, he was not in a management capacity.

13. Appellant pressed the witness variously concerning the use of employee badges (badge scanning) for entry and the recordkeeping thereof as implemented into the imposition of discipline over alleged time and attendance violations. She agreed that "piggy-backing," wherein an individual scans in and another closely follows and does not scan, is not prohibited by policy but is strongly discouraged. She noted that all staff are trained to avoid the practice and are assumed to understand that it should not be utilized. Directed to certain portions of the dismissal letter to which Appellant pointed as such having possibly occurred, the witness reacted that Appellant was afforded the opportunity at her pre-termination hearing to discuss and explain any aspects of that nature which she desired to be utilized in her favor.

14. The witness urged that Appellant's apparent focus upon the badge scanning factor overemphasizes its importance in the Agency's analysis of her circumstance. She asserted that the badge aspect is not a timekeeping tool, but simply a mechanism for admission to the premises. However, in those circumstances in which time and attendance is under challenge or presents cause for review, it becomes one of the several elements utilized in the analysis and decision-making process. She observed that the badge scan is found to be the best predictor of an employee's use of time and attention to accuracy thereof. In summary, she noted, badge scans, timesheets, and other available tools form a composite to "capture" an employee's work history.

15. As its final proof-in-chief witness, the Agency sought the testimony of **Appellant, Heather Damron**. She was with the Agency 11 years and, during that interval, signed for, as read and understood, a series of Agency policies including computer, mail, internet usage, and time and attendance, together with bulletins and memoranda from management addressing those aspects in depth. Appellant acknowledged and identified the series, including an omnibus-type summary, "STATEMENT OF RECEIPT OF POLICIES AND PROCEDURES – KENTUCKY LABOR CABINET," in April 2009. Among the materials were acknowledgements of understanding as to maintenance of accurate time records, both as employee and as manager, most recently in 2015 and 2018.

16. Appellant related that previously she was afforded a variable time schedule, which involved being off on Fridays. She overlooked volunteering information about that arrangement in the pre-termination meeting with Director Yeast, insisting that she was still in shock, was stressed due to the dismissal threat, and was unsure how to proceed. She ratified that

at the time of her dismissal she was under a “flex” schedule (7:00 a.m. to 3:00 p.m.), documentation of which she made part of her testimony.

17. Directed to preparation of her doctoral dissertation, Appellant recalled that she sought financial assistance by written request to the Agency, which was denied in June 2016. She urged that, nonetheless, the process involved five separate courses, one of which the Agency did pay for. Her understanding was that the funds earmarked for such purposes were depleted, although the basis was not recited in the denial. She did conduct email correspondence with a professor at Cumberland University during work hours as claimed. She defended that the Agency benefited therefrom, continuing to use portions of her research and data which she developed while preparing the dissertation, although the Agency did supply some data. At the request of the Agency, she introduced a copy of her completed dissertation, conceding that nowhere therein does it acknowledge or credit the Agency for any contribution although reflecting her work email address and telephone number for contact purposes.

18. Appellant, while acquiescing in the basic accuracy of the dismissal letter, insisted that her attempts to explain and justify variances detailed in the lengthy recitation of asserted shortages have been ignored or misunderstood. She pointed out that the time and attendance policy itself has fluctuated during her time with the Agency and, in connection therewith, at least one of her four supervisors directed her to maintain a “clean” timesheet in conformity with the then-policy, while informally advised her to simply make up for any late arrivals or early departures. She followed the advice, although it was never reduced to writing. She urged that actual practice has varied with each supervisor, and if her handling of door scans and timesheets was improper, it was by mistake or oversight and never with intent to deceive or deprive the Agency of a full workday.

19. Directed to discuss certain of the entries, and/or the overall thrust, of the letter, specifically the numerous variances between the door scan entries and her timesheets, Appellant explained that her understanding had been to alter or correct only those blocks of time of 15 minutes or greater. She conceded that, notwithstanding this perception, the numerous policies for which she signed require use of correct and accurate entries. She suggested that portions of the policy are a “matter of interpretation,” evidenced by the latitude and flexibility afforded her by one or another supervisor.

20. Discussing the large quantity of email material previously introduced pertaining to her doctoral dissertation, Appellant agreed that the summary pertaining thereto in the dismissal letter is accurate, reiterating that a sizeable quantity of the time expended benefitted the Agency. Again pressed as to the reason she did not supply such information or explanation for the asserted violations at her pre-termination meeting, Appellant reiterated that the shock and stress of having been confronted with claims of wrongdoing in the face of what she assumed was exemplary service to the Agency dominated her thinking and she did not properly prepare. She insisted that she felt “singled-out” for discipline, which she viewed as excessive and discriminatory. She was especially distressed concerning the failure to engage progressive discipline and, had she been informed of asserted wrongdoing by way of reprimand, or even suspension, she would have immediately corrected the actions complained of.

21. The Agency, having completed its proof-in-chief, moved for directed verdict of dismissal of the appeal. The motion was passed to the merits, whereupon Appellant sought the testimony of **Jamie Ballinger**, who is a Workforce Resource Analyst III for the Agency and who was supervised by Appellant. She depicted her primary duty to be the collection of workforce injury and illness statistics through surveys, which are supplied to the Federal Bureau of Labor Statistics.

22. The witness opined that Appellant was the best of the four managers under whom she has served, explaining that she was “always there for us and went well beyond what was required.” She recited various examples in support of her praise, expressly noting that Appellant was always prompt and responsive to all needs of her staff, and that under her guidance the Branch routinely met its various deadlines and often completed the tasks early. She complimented Appellant’s organizational skills and ability to maintain harmony, asserting that the Branch’s output and efficiency has deteriorated following her departure.

23. Under brief cross- and redirect examination, the witness noted that the Agency’s time and attendance policy has fluctuated throughout her time there, appearing to depend upon the philosophy of each supervisor, as well as being inconsistent even among the different areas of the building. She observed that the clock specific to her Branch does not match other devices such as her computer or her cell phone.

24. **Lynn Whitehouse** is employed with the Agency as an Industrial Hygiene Program Manager. One of Appellant’s former supervisors, she recalled no issues with her time and attendance compliance at any time. Further, Appellant was never late with assignments nor did she ever fail to complete any tasks for which she was responsible.

25. The witness, as a supervisor, was familiar with Agency policies, including those dealing with time and attendance. During her tenure, this policy has fluctuated over the years, depending upon management interpretation and application. During one interval, personnel were instructed to “round-up” their time to the nearest even mark, while at other times they were required to “round back,” so 7:03 could either be 7:00 or 7:05, depending upon management directives. Currently staff are required to list the time exactly without alteration.

26. This manager recalled dealing with another employee under her supervision who was ultimately dismissed. The individual chronically failed to appear for work, did not call-in when not coming, and reported for work while inebriated. She undertook to coach him and commenced to document his behavior, which did not improve. Progressive discipline was initiated, specifically one or more reprimands and ultimately leading to an attempt to dismiss him. However, the then-new Executive Director, Tiffany Yeast, viewed that irregularities with the process had occurred and cancelled, or set aside, the dismissal. Progressive discipline was again initiated, whereupon the same steps were implemented, presumably properly, and ultimately he was dismissed due to his continuous violations of the time and attendance policy.

27. The witness complimented Appellant's use of emails and internet time throughout her supervisory tenure. She found her to be highly efficient and organized, recalling that under their respective work schedules, Appellant arrived prior to her and completed many assignments to a level of preparedness for review and completion by the witness.

28. **Jerry Kilby**, a Labor Cabinet Systems Technician Specialist, appeared. He was Appellant's coworker for an undisclosed timeframe, and observed no inappropriate abuse of any policies, including that of time and attendance, by her.

29. **Kimberlee Perry**, Appellant's supervisor at the time of her dismissal, has served the Commonwealth for 28 years, 15 of which has been as a supervisor, although never in the human resources area. Pursuant to inquiry, she discussed her own processing of staff timesheets, recalling that essentially they are required to enter the time of arrival, departure for lunch, return therefrom, and when leaving for the day. These are reviewed each two weeks, whereupon she routinely approves the entries by signature. She recalled no issues or concerns ever being presented by Appellant's timekeeping documentation, nor was she aware of any corrective actions being required of her while under her supervision.

30. Previously, the witness had little need or interest in badge scan matters. However, in 2018, when informed of Appellant's termination arising from asserted time and attendance violations, specifically because her badge scans and timesheets did not match, she approached Human Resources seeking scan records. Her concern was that if management viewed such circumstance as a violation, whereas the various clocks throughout the building routinely differed from room to room and, further, did not match the entries by staff upon their timesheets, steps should be taken to attain consistency and to prevent further disciplinary actions arising therefrom. Her records request was rebuffed, whereupon upper management sought her reasons for seeking the scans, informing her that the feature is exclusively a matter of security and not timekeeping.

31. The witness ratified that the Inspector General sought and received the timesheets of all of her staff, concerning which she informed them, and that eventually she was interviewed by him. Turning to the matter of educational grants, she confirmed that such requests must pass through her office as supervisor and are then submitted for review by upper management. Some are approved and others not, including applications from Appellant over a period of time. She introduced and reviewed an OSHA report which, she explained, is an annual requisite to demonstrate that the Agency is performing a particular mandatory function in order to preserve its grant status. She pointed to a reference therein to Appellant's doctorate degree and alluding to her dissertation, noting that it is included in the Agency's library of materials/resources dealing with the subject of the report. She viewed the contribution to be substantial and of importance supporting the report, especially regarding its statistical data.

32. Again referencing Appellant's termination, the witness was not consulted nor her opinion sought. Upon being informed thereof, she was shocked and mystified as to what basis could support terminating one whom she considered an excellent and dependable employee.

Upon seeking an explanation for the action and the failure to consult her as supervisor, she was informed that the underlying facts were confidential.

33. This witness was the second-line supervisor of the previously-referenced employee who was ultimately dismissed, after a false start, for serious time and attendance violations, though use of progressive discipline. She asserted that throughout her tenure with the Commonwealth, the progressive method has always been employed in disciplining personnel, and Appellant's termination without the steps was her first experience with that approach. She considered the Agency's treatment of Appellant to be discriminatory upon more than one level.

34. The witness identified, introduced, and discussed portions of Appellant's employee evaluations issued under her watch and by prior supervisors. She confirmed that her ratings have primarily been outstanding, which support her previous comments pertaining to her abilities. She added that Appellant always enjoyed an excellent reputation, demonstrated outstanding motivation, and rarely, if ever, missed deadlines. Further, she urged, Appellant is a self-starter and requires minimal supervision to perform her assignments. She recalled that at one interval Appellant endured a troublesome family issue, of which she made her, as supervisor, aware and, despite the distraction her work performance remained high.

35. Under quizzing by the Agency, Perry viewed that the failure to utilize progressive discipline, without warning or opportunity to correct the offending practice, combined with lack of input from herself as supervisor, was unduly harsh and discriminatory, given that the procedure has been routinely utilized for others previously.

36. The witness identified and discussed the Agency's policy on educational aid, acknowledging that at least one provision thereof provides that educational assistance courses must be taken on the employee's personal time. She insisted that she has never counseled her staff to disregard any Cabinet policy, reiterating that some policies, including that for time and attendance, have fluctuated with management and administrative changes. She conceded that her own interpretation may have differed from that of upper management upon occasion, particularly when their intentions were never made clear. She urged that flexibility was always mandated in light of the fact that the times on clocks throughout the building rarely coincide, although the variances are ordinarily under 10 minutes. Finally, she stood by the comments and information attributed to her as set forth in Appellant's dismissal letter.

37. **Chasidy Hawkins**, a Program Coordinator with the Agency, was familiar with Appellant's routine. She recalled that she was vigilant about promptness, whether reporting for work, returning from breaks or lunch, and departing.

38. **Margaret Miles Herrington**, a Workforce Research Analyst for the Bureau of Labor Statistics and under Appellant's supervision, recalled that Appellant never missed deadlines. She viewed her to be the best manager under whom she ever served. She felt shock and dismay when learning of her dismissal.

39. **Danny Vernon**, a Program Manager supervised by Kimberlee Perry, was present for a conversation wherein Executive Director Yeast expressly stated that door scans are never to be used for timekeeping purposes.

40. **Appellant, Heather Damron**, concluded her proof with further brief testimony. She produced and filed an Employee Educational Assistance Program form from 2013 which, she urged, established that the employer paid for a portion of her quest for her doctorate. She further produced and filed materials outlining acceptable work-related email volume, urging that the contents demonstrated that her asserted use did not violate acceptable practices. She conceded that her time and attendance habits were violative of the wording of that policy, although not necessarily its intent, since she did not log exact times. She insisted that all workdays were completed, regardless of what was written, and that she never intended to defraud or deceive management as to her time. She reiterated that had she been approached informally by anyone in upper management, or even been subjected to commencement of progressive discipline, she would have immediately corrected any shortfalls and thereafter adhered to the letter of the policy. The sworn testimony was thereupon concluded and, following closing statements and motion for dismissal by the Agency, the appeal stood submitted for recommended order.

41. KRS 18A.095(1) directs that “a classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.”

42. 101 KAR 1:345 is the regulation pertaining to disciplinary actions. Section 1 thereof permits that “Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.”

43. KRS 18A.145(4) directs that “No person shall make any false statement, record, or report regarding hours, days, or other time worked by any employee. No person shall falsely prepare any payroll document or record relating to the pay of any employee.”

44. 101 KAR 2:095 is an omnibus regulation pertaining to the classified service. Section 2 thereof addresses attendance and hours of work, as follows:

- (1) The number of hours a full-time employee shall be required to work shall be thirty-seven and one-half (37 1/2) hours per week or forty (40) hours per week, unless specified otherwise by the appointing authority or the statutes.
- (2) The normal work day shall be from:
 - (a) 8 a.m. to 4:30 p.m., local time, Monday through Friday, for a thirty-seven and one-half (37 1/2) hour work schedule; or
 - (b) 8 a.m. to 5 p.m., local time, Monday through Friday, for a forty (40) hour work schedule.

- (3) An appointing authority may require an employee to work hours and days other than regular days and hours, including an overtime or inclement weather schedule if it is in the best interest of the agency.

FINDINGS OF FACT

1. At all times germane to this proceeding, Appellant, Heather Damron, was a classified employee with status, holding the position of Administrative Branch Manager in the Division of Occupational Safety and Health Education and Training, Department of Workplace Standards in the Labor Cabinet. She enjoyed an 11-year stint there, although her time as Manager is not found in the proof. Throughout her tenure, her employee evaluations ranged from above average to exceptional, and she was complimented and respected for her promptness, diligence, and leadership by her supervisors and by coworkers. Her diligence concerning work-related duties, and her upward mobility, are demonstrated by her having obtained a doctorate degree from Cumberland University while continuing to be employed fulltime.

2. In mid-2017, an anonymous communication to the Cabinet Secretary alleged that Appellant was improperly absent from work on Fridays. The claim proved to be unfounded but, upon investigating it, the Agency Inspector General routinely procured her timekeeping records, most notably so-called door scans, or badge swipes, and timesheets. These materials, when charted, reflected notable inconsistency and/or discrepancies. Specifically, the door scan security logs reflected numerous arrival times that were later than the timesheet logs indicated that Appellant actually claimed to have begun work. This signaled a violation of both relevant statute and existing Agency policy. It also implied that Appellant was not giving the employer a full day of work, while seeking compensation therefor.

3. As noted, Appellant now holds a doctorate degree in her chosen field, which parallels and/or blends with her duties with the Agency. She has been working toward the doctorate for some time, although the exact timeframe of study is not reflected in the testimony. The Agency has, from time to time, apparently found the subject matter to be sufficiently germane to its mission to supplement the cost of one or another course, although not during the latter part of the studies. While aspects thereof, including a requisite dissertation, overlapped with her Agency duties, Appellant did not seek the permission of her manager or of upper management to utilize work time and Agency assets to prepare the dissertation. However, her immediate supervisor was fully aware of and condoned her efforts.

4. The proof is that Agency policy governing the time and attendance of its personnel has fluctuated over time, and its application has been greatly dependent upon the philosophy and interpretation of the then-management. Although presumably, as these variations occurred, memoranda or other notices were circulated, rigidity of enforcement has ebbed and flowed, leading to flexibility at the manager level. Appellant readily acknowledges her failure to strictly comply with current policy, but asserts having never intentionally sought

payment for time not worked nor ever knowingly falsifying her timesheets to the detriment of the Agency. She testifies that any shortfalls evidenced by badge scans (which the Agency avows are not a timekeeping mechanism in any event) were routinely made up at the end of the day. No proof contradicting this is presented and, as the Agency acknowledges, door scans are not utilized for departure from the premises. The “piggy-backing” possibility, referenced in the testimony is inconclusive and of little probative value.

5. The Agency’s engagement of progressive discipline appears inconsistent. While it correctly asserts that it is not required to utilize the process, and presents no proof as to any policy on the subject one way or another, it has utilized the procedure previously to attain dismissal of at least one employee whose behavior, by all accounts, was more egregious than that of which Appellant is accused.

6. The Hearing Officer finds the testimony of all witnesses, including that of Appellant, to be credible.

CONCLUSIONS OF LAW

1. The proof is clear that the Agency properly implemented its own time and attendance policy (or policies) commensurate with the relevant statute and regulation. It is also clear that Appellant, both in her capacity and status as an 11-year employee and, more recently, manager, was well aware of the official requirements. She admits as much. Further, she concedes that she violated the letter thereof in place at the time the investigation of her behavior was conducted, both as to the time and attendance aspects and non-work related use of time and equipment. She concedes that some level of penalization is warranted.

2. Asserted email usage aside for the moment, what is entirely absent from the Agency’s proof pertaining to the time and attendance issue is any evidence that Appellant either deliberately or negligently sought compensation for hours not expended toward her assigned duties. Specifically, other than Appellant’s testimony that all shortfalls were made up, the record depicts only arrival times and is devoid of any proof concerning her day-to-day times of departure from the workplace, since no scan out is required. Further, management is adamant that the badge scan is not a timekeeping device.

3. The Agency’s lack of consistency, or any announced policy, concerning implementation of progressive discipline is concerning, particularly in light of Appellant’s credible insistence that a warning to her to strictly adhere to the relevant policy would have been sufficient. Her supervisors and coworkers depict her as a “team player” who recognized that proper example is called for in her managerial position.

4. In summary, the Agency has met its burden relative to the need for a penalization relative to Appellant’s lax timekeeping and use of email time, but it has not sustained its burden to support the severity of that which it has imposed, i.e. the most serious available to it without

warning. The issue of whether Appellant was the victim of discrimination as defined under the statute is not reached in light of the recommended disposition as set forth below.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **HEATHER DAMRON V. LABOR CABINET (APPEAL NO. 2018-030)** be **SUSTAINED to the extent** that the dismissal of Appellant is set aside and she be assessed a 5-day suspension instead with back pay, benefits, and otherwise be made whole. Further, the dismissal shall be expunged from Appellant's personnel records. (KRS 18A.105 and 200 KAR 12.030.)

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 John C. Ryan** this 31st day of July, 2019.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:
Hon. Kate Bennett
Hon. Tressa Root
Ms. Heather Damron



Matthew G. Bevin
Governor

Janean M. Hampton
Lt. Governor

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Derrick K. Ramsey
Secretary

Mike Nemes
Deputy Secretary

February 15, 2018

Heather N. Damron

Notice of Dismissal
56-106/ 30044040
Personnel #

Dear Ms. Damron:

On January 24, 2018, you received a Notice of Intent to Dismiss along with information explaining your right to request a pre-termination hearing with the Appointing Authority or designee of the Labor Cabinet ("Cabinet"). On January 31, 2018, you submitted your request for a pre-termination hearing, which was held on February 8, 2018. Having considered all evidence and statements made during your pre-termination hearing, including your own admissions, the Cabinet has determined that the evidence establishes that you committed the acts documented within this Notice of Dismissal and the January 24, 2018 Notice of Intent to Dismiss.

By issuance of this letter, the Cabinet notifies you pursuant to KRS 18A.095 that you are officially dismissed from duty and pay for cause from your position as Administrative Branch Manager of the Statistical Services Branch, Division of Occupational Safety and Health Education and Training, Department of Workplace Standards, Labor Cabinet, effective beginning of business Friday, February 16, 2018. You are being dismissed from your position for the violations outlined within this Notice of Dismissal including: KRS 18A.145(4), the Labor Cabinet's *Time, Attendance and Leave Policy*, the Labor Cabinet's *Electronic Mail, Internet and Computer Remote Access Policy*, the Commonwealth Office of Technology's *Internet, Electronic Mail, Acceptable Use Policy (CIO-060)*, and for your misuse of state time and resources. Effective close of business today, February 15, 2018, you are removed from administrative leave.

A review of your personnel file shows that you received and acknowledged, by signature, the Labor Cabinet's *Time, Attendance and Leave Policy* on February 18, 2009, and April 21, 2009, and attended *Accurate Time Reporting* training on April 23, 2015. In relevant part, the *Accurate Time Reporting* training notes that an "employee is required to abide by the set work schedule unless approved to do so otherwise[] in advance by the supervisor" and specifically states in section 6.1-Employee Time Reporting that "[t]imesheets must accurately reflect hours worked and leave used."



This training also references KRS 18A.145 and specifically states: "[F]alsification of records relating to time, including omission of overtime worked, is a violation of state law." For its part, KRS 18A.145(4) mandates: "No person shall make any false statement, record, or report regarding hours, days, or other time worked by any employee. No person shall falsely prepare any payroll document or record relating to the pay for any employee."

On February 2, 2016, the Cabinet revised and resubmitted the Kentucky Labor Cabinet Time, Attendance and Leave Policy. This policy was sent to all employees by email Monday, February 8, 2016. The Kentucky Labor Cabinet Time, Attendance, and Leave Policy provides, in relevant part:

- I. **AUTHORITY:** KRS 336; KRS 337; KRS 18A; 101 KAR Chapter 2; Fair Labor Standards Act (FLSA)
- II. **EFFECTIVE DATE AND AMENDMENTS:** This policy is effective upon issuance. The Labor Cabinet reserves the right to amend this policy at any time, and employees will receive written notice of any changes.
- III. **PURPOSE:** All Labor Cabinet employees shall comply with the Kentucky administrative regulations governing time, attendance, and leave found at 101 KAR 2:095, 2:102, 2:105, and 2:106. The purpose of this policy is to set forth specific requirements and procedures for the Labor Cabinet which are consistent with those administrative regulations and with other state and federal laws.
- IV. **APPLICABILITY:** This policy applies to all employees of the Labor Cabinet while they are on duty working for the agency.
- V. **HOURS OF WORK:** Employees are required to work, or be on leave, 37.5 hours per work week. The regular work schedule for Labor Cabinet employees is 8:00 a.m. to 4:30 p.m., Monday through Friday.
- VI. **SIGN-IN/SIGN-OUT PROCEDURE AND TIME REPORTING:** Employees shall record their actual start time, meal break, and departure times on their sign-in sheets. For emergency and safety reasons, employees shall note on sign-in or activity sheets any time they leave the premises, whether on work or personal time, and state the reason for the absence.

Employees who arrive up to fifteen minutes later than their starting time shall make up the time during the day, either by taking a reduced lunch period or by working past their scheduled departure time. Employees who arrive fifteen minutes or more after their scheduled start time must take annual or compensatory leave for the missed time. Reduced break periods may not be used to make up the time.

Habitually arriving after the scheduled start time or not adhering to the sign-in/sign-out procedure may be reflected in performance evaluations and result in disciplinary action.

Employees shall accurately record their time and attendance for each pay period on their KRONOS timecards. Supervisors and timekeepers shall compare sign-in sheets to KRONOS entries before approving timecards. Habitually failing to record KRONOS timecards accurately or on time may be reflected in evaluations and result in disciplinary action.

You also received and acknowledged, by signature, the Labor Cabinet's *Electronic Mail, Internet and Computer Remote* policy on February 18, 2009, and April 21, 2009, and the COT Internet and Electronic Mail Acceptable Use Policy (CIO-060) on April 15, 2008. The Labor Cabinet's *Electronic Mail, Internet, and Computer Remote Access Use Policy* provides, in relevant part:

- III. PURPOSE:** Computer equipment and e-mail are the property of the Labor Cabinet. The purpose of this policy is to establish operating guidelines for the appropriate use of electronic mail (e-mail), Internet, and computer remote access.
- IV. APPLICABILITY:** This policy applies to all employees of the Labor Cabinet while they are on duty working for the agency.
- V. ACCEPTABLE USE:** When using e-mail and the Internet, employees shall use the same degree of care and thought as are appropriate when drafting written public records. Messages should be written as though they are ordinary business correspondence.

Employees shall comply with the requirements contained in the *Commonwealth Office of Technology Enterprise Policy Number CIO-060, Internet and Electronic Acceptable Use Policy*, revised March 19, 2013, and *Enterprise Policy Number CIO-61, Social Media Policy*, effective July 1, 2011, . . .

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VII. MONITORING: The Labor Cabinet reserves the right to monitor e-mail and internet use periodically to insure [sic] that they conform to this policy.

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IX. DISCIPLINARY ACTION: Any violation of this policy may constitute grounds for disciplinary action pursuant to KRS Chapter 18A, up to an [sic] including dismissal.

And the *Commonwealth Office of Technology Enterprise Policy Number CIO-060, Internet and Electronic Acceptable Use Policy* declares, in relevant part:

State government staff members should use the Internet and E-mail, when appropriate, to accomplish job responsibilities more effectively and to enrich their performance skills.

The acceptable use of Internet and E-mail represents the proper management of state business resource. The ability to connect with a specific Internet site does not imply that a staff member is permitted to visit that site. Tools are in place to monitor staff member's use of E-mail and the Internet. Staff shall have no expectation of privacy associated with E-mail transmissions and/or the information they publish, store, or access on the Internet using the Commonwealth's resources.

Incidental personal use of the Internet and E-mail are permissible, but not encouraged. Excessive personal use could lead to loss of the resource privileges and may result in disciplinary action pursuant to KRS 18.A [sic] up to and including dismissal. Staff members are responsible for exercising good judgment regarding incidental personal use. Any incidental personal use of Internet or E-mail resources must adhere to the following limitations:

- It must not cause any additional expense to the Commonwealth or the staff members agency
- It must be infrequent and brief
- It must not have any negative impact on the staff members overall productivity
- It must not interfere with the normal operation of the staff members agency or work unit
- It must not compromise the staff members agency or the Commonwealth in any way
- It must be ethical and responsible

How you violated each of these standards is set forth below.

Lack of Good Behavior and Unsatisfactory Performance of Work Duties

On or about July 12, 2017, Labor Cabinet Secretary Derrick K. Ramsey received information alleging that you were consistently out of the office and not working on Fridays. Secretary Ramsey then referred the issue to the Office of Inspector General (OIG) to investigate the validity of the information.

The initial review by OIG verified that the statement about your not working on Fridays was inaccurate, however, the information reviewed by OIG created a concern that your arrival time to work was inconsistent. This determination was reached by OIG's initial review of Velocity, the Cabinet's badge access security system. For your information, Velocity maintains a daily transaction log that memorializes the date and time you used your state-issued identification badge to gain access to the Cabinet's main office located at 1047 U.S. Highway 127 South in Frankfort. OIG initially reviewed this transaction log for the period of January 1, 2017, through July 18, 2017. After conducting a complete review of the security log showing your use of your state-issued identification badge to enter the Cabinet building, OIG found that you often swiped your identification badge to enter the Cabinet building *after* your scheduled start time of 7:00 AM. In January 2017, alone, the security log for your identification badge showed your initial entry into the Cabinet building as follows:

| Date | Time of First Badge Swipe (Recorded) |
|----------|--------------------------------------|
| 01/03/17 | 7:12:08 AM |
| 01/04/17 | 7:04:38 AM |
| 01/05/17 | 7:07:26 AM |
| 01/06/17 | 9:17:36 AM |
| 01/07/17 | 7:12:07 AM |
| 01/10/17 | 7:12:28 AM |
| 01/11/17 | 7:12:51 AM |
| 01/12/17 | 7:09:37 AM |
| 01/13/17 | 7:12:32 AM |
| 01/17/17 | 7:09:27 AM |
| 01/18/17 | 7:04:50 AM |
| 01/19/17 | 7:09:35 AM |
| 01/20/17 | 7:10:11 AM |
| 01/23/17 | 7:12:30 AM |
| 01/24/17 | 7:12:07 AM |
| 01/25/17 | 7:10:17 AM |
| 01/26/17 | 7:07:59 AM |
| 01/27/17 | 7:02:05 AM |
| 01/30/17 | 10:45:42 AM |

Accordingly, OIG obtained copies of your sign-in, sign-out sheets for the time period of January 1, 2016, through December 1, 2016, and the timeframe of January 1, 2017, through July 15, 2017, from your

supervisor, Kimberlee Perry, Assistant Director, Division of Occupation Safety and Health Education and Training.

After reviewing your sign-in, sign-out sheets and the Cabinet's security log for the timeframe of January 1, 2016, to July 15, 2017, OIG calculated the following numbers:

January 1, 2016, Through December 31, 2016

- 233 – Number of days you reported to work.
- 137 – Number of days you adjusted your work schedule to something other than your tentatively approved "flex" schedule of 7:00 AM – 3:00 PM, Monday through Friday, with a half-hour lunch.
- 60 – Percentage of days worked you inaccurately recorded your start time by five (5) minutes or more on your timesheet (one-hundred forty (140) days).
- 37 – Percentage of days worked you inaccurately recorded your start time by ten (10) minutes or more on your timesheet (eighty-six (86) days).
- 28 – Number of days you claimed compensatory time when you inaccurately recorded your start time by ten (10) minutes or more.

January 1, 2017, Through July 14, 2017

- 124 – Number of days you reported to work.
- 86 – Percentage of days worked that you inaccurately recorded your start time by five (5) minutes or more on your timesheet (one-hundred six (106) days).
- 59 – Number of days you adjusted your work schedule to something other than your tentatively approved "flex" schedule of 7:00 AM – 3:00 PM, Monday through Friday, with a half-hour lunch.
- 51 – Percentage of days worked you inaccurately recorded your start time by ten (10) minutes or more on your timesheet (sixty-three (63) days).
- 8 – Number of days you claimed compensatory time when you inaccurately recorded your start time by ten (10) minutes or more.

Specifically, OIG found the following discrepancies of ten (10) minutes or more between the time you represented you began work on your sign-in, sign-out sheets and the time recorded in the Cabinet's security log when you first entered the Cabinet building:

| Date | Start of Day (Recorded) | Building Entry (Scanned) | Discrepancy (in minutes) | Lunch | End of Day (Recorded) | CTE |
|----------|-------------------------|--------------------------|--------------------------|-------------|-----------------------|------|
| 01/06/16 | 6:45 AM | 9:41 AM | 176.00 | 12:00-12:30 | 3:00 PM | 0.25 |
| 01/07/16 | 6:40 AM | 6:54 AM | 14.00 | 12:10-1:00 | 3:00 PM | |
| 01/19/16 | 7:30 AM | 6:50 AM | -40.00 | 12:00-12:45 | 4:00 PM | |
| 01/20/16 | 6:50 AM | 7:45 AM | 55.00 | 12:00-12:45 | 3:00 PM | 0.25 |
| 01/27/16 | 6:45 AM | 7:01 AM | 16.00 | 12:00-12:45 | 3:30 PM | 0.5 |
| 01/29/16 | 6:45 AM | 6:56 AM | 11.00 | | 2:00 PM | |
| 02/01/16 | 6:45 AM | 6:56 AM | 11.00 | 12:15-12:45 | 3:00 PM | 0.25 |
| 02/02/16 | 6:45 AM | 6:57 AM | 12.00 | 12:15-12:45 | 3:30 PM | 0.75 |
| 02/04/16 | 6:45 AM | 7:01 AM | 16.00 | 12:15-1:15 | 4:00 PM | 0.75 |
| 02/08/16 | 6:45 AM | 7:02 AM | 17.00 | 12:00-12:30 | 3:15 PM | 0.5 |
| 02/18/16 | 7:00 AM | 7:12 AM | 12.00 | 12:00-12:30 | 3:00 PM | |
| 02/19/16 | 6:45 AM | 6:59 AM | 14.00 | 12:00-12:45 | 3:00 PM | |
| 02/23/16 | 7:00 AM | 12:54 PM | 354.00 | 12:30-1:00 | 3:00 PM | |
| 04/12/16 | 11:15 AM | 11:28 AM | 13.00 | | 3:15 PM | |
| 04/19/16 | 6:45 AM | 7:01 AM | 11.00 | 12:30-1:00 | 3:00 PM | 0.25 |
| 04/26/16 | 6:45 AM | 6:56 AM | 11.00 | 11:45-1:00 | 3:30 PM | |

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|----------|----------|----------|--------|-------------|----------|------|
| 05/20/16 | 6:50 AM | 7:01 AM | 11.00 | 12:30-1:00 | 3:05 PM | 0.25 |
| 06/03/16 | 6:50 AM | 7:15 AM | 25.00 | | 8:35 AM | |
| 06/07/16 | 6:50 AM | 7:04 AM | 14.00 | 11:30-12:10 | 3:05 PM | |
| 06/08/16 | 7:00 AM | 7:12 AM | 12.00 | 12:15-12:45 | 3:15 PM | 0.25 |
| 06/14/16 | 6:50 AM | 7:07 AM | 17.00 | 9:40-10:40 | 3:05 PM | |
| 06/20/16 | 7:00 AM | 7:12 AM | 12.00 | 11:50-12:20 | 3:00 PM | |
| 07/06/16 | 7:00 AM | 7:12 AM | 12.00 | 11:45-12:15 | 3:15 PM | 0.25 |
| 07/07/16 | 7:00 AM | 7:12 AM | 12.00 | 12:30-1:30 | 3:30 PM | |
| 07/18/16 | 6:50 AM | 7:01 AM | 11.00 | 12:45-1:15 | 3:05 PM | 0.25 |
| 07/21/16 | 7:00 AM | 7:17 AM | 17.00 | 12:30-1:00 | 3:00 PM | |
| 07/26/16 | 7:00 AM | 7:15 AM | 15:00 | 12:10-12:40 | 3:00 PM | |
| 07/27/16 | 7:00 AM | 7:15 AM | 15.00 | 1:00-1:30 | 3:00 PM | |
| 07/29/16 | 7:00 AM | 7:17 AM | 17.00 | 12:15-12:30 | 3:15 PM | 0.5 |
| 08/01/16 | 7:00 AM | 7:12 AM | 12.00 | 12:30-1:00 | 3:00 PM | |
| 08/02/16 | 7:00 AM | 7:14 AM | 14.00 | | 3:00 PM | |
| 08/03/16 | 6:50 AM | 7:01 AM | 11.00 | 12:10-12:30 | 3:10 PM | 0.5 |
| 08/04/16 | 7:00 AM | 7:13 AM | 13.00 | 12:10-12:40 | 3:00 PM | |
| 08/05/16 | 7:00 AM | 7:16 AM | 16.00 | 12:00-12:30 | 3:00 PM | |
| 08/08/16 | 7:00 AM | 7:14 AM | 14.00 | 12:15-12:30 | 3:00 PM | 0.25 |
| 08/09/16 | 7:00 AM | 7:14 AM | 14.00 | 12:15-12:45 | 3:00 PM | |
| 08/10/16 | 7:50 AM | 8:01 AM | 11.00 | | 3:05 PM | |
| 08/11/16 | 7:00 AM | 7:12 AM | 12.00 | | 3:00 PM | 0.5 |
| 08/17/16 | 6:50 AM | 7:02 AM | 12.00 | 12:10-12:50 | 3:00 PM | |
| 08/22/16 | 7:00 AM | 7:15 AM | 15.00 | 12:30-1:00 | 3:00 PM | |
| 08/23/16 | 6:50 AM | 7:02 AM | 12.00 | | 9:50 AM | |
| 08/25/16 | 6:45 AM | 7:00 AM | 15.00 | | 12:15 PM | |
| 08/31/16 | 11:00 AM | 12:29 PM | 79.00 | | 3:15 PM | |
| 09/06/16 | 7:00 AM | 7:10 AM | 10.00 | 12:00-1:00 | 4:15 PM | 0.75 |
| 09/07/16 | 7:00 AM | 7:10 AM | 10.00 | 12:45-1:15 | 3:00 PM | |
| 09/08/16 | 7:00 AM | 7:15 AM | 15.00 | | 2:00 PM | |
| 09/13/16 | 7:00 AM | 7:12 AM | 12.00 | 12:00-12:30 | 3:00 PM | |
| 09/14/16 | 7:00 AM | 10:04 AM | 184.00 | 12:05-12:45 | 2:00 PM | |
| 09/15/16 | 7:00 AM | 7:17 AM | 17.00 | | 10:30 AM | |
| 09/16/16 | 7:00 AM | 7:17 AM | 17.00 | 12:20-12:50 | 3:00 PM | |
| 09/19/16 | 7:10 AM | 7:23 AM | 13.00 | | 11:10 AM | |
| 09/20/16 | 7:10 AM | 7:20 AM | 10.00 | 12:00-12:20 | 3:10 PM | |
| 09/21/16 | 7:00 AM | 7:12 AM | 12.00 | 12:00-12:40 | 3:10 PM | |
| 09/22/16 | 7:00 AM | 7:17 AM | 17.00 | | 12:00 PM | |
| 09/23/16 | 7:00 AM | 7:10 AM | 10.00 | 12:05-12:35 | 3:00 PM | |
| 09/26/16 | 7:00 AM | 7:15 AM | 15.00 | 12:30-1:00 | 3:00 PM | |
| 09/27/16 | 7:00 AM | 7:12 AM | 12.00 | 11:55-12:30 | 3:05 PM | |
| 09/28/16 | 7:10 AM | 7:20 AM | 20.00 | 12:25-12:45 | 3:00 PM | |
| 10/06/16 | 7:00 AM | 7:15 AM | 15.00 | | 1:45 PM | |
| 10/10/16 | 7:00 AM | 7:12 AM | 12.00 | 12:00-12:30 | 3:00 PM | |
| 10/11/16 | 7:00 AM | 7:12 AM | 12.00 | 11:50-12:20 | 3:00 PM | |
| 10/13/16 | 7:00 AM | 7:15 AM | 15.00 | | 3:30 PM | 1.0 |
| 10/17/16 | 7:00 AM | 7:15 AM | 15.00 | 12:30-1:00 | 3:15 PM | 0.25 |
| 10/19/16 | 6:45 AM | 7:01 AM | 16.00 | 11:45-12:15 | 3:15 AM | 0.5 |
| 10/20/16 | 7:00 AM | 7:13 AM | 13.00 | 12:00-1:00 | 5:00 PM | 1.5 |
| 10/24/16 | 7:00 AM | 7:17 AM | 17.00 | 12:20-12:50 | 3:15 PM | |
| 10/27/16 | 7:00 AM | 7:12 AM | 12.00 | 12:15-12:45 | 3:00 PM | |
| 10/28/16 | 6:50 AM | 7:00 AM | 10.00 | 11:30-11:50 | 2:50 PM | |
| 10/31/16 | 6:50 AM | 7:04 AM | 14.00 | 12:00-12:30 | 3:05 PM | 0.25 |

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|----------|----------|----------|--------|-------------|-------------|------|
| 11/04/16 | 7:00 AM | 7:10 AM | 10.00 | | 10:00 AM | |
| 11/14/16 | 6:50 AM | 7:08 AM | 18.00 | 12:00-12:50 | 3:10 PM | |
| 11/17/16 | 7:00 AM | 7:15 AM | 15.00 | 11:30-12:30 | 4:30 PM | 1.0 |
| 11/22/16 | 6:50 AM | 7:02 AM | 12.00 | | 2:20 PM | |
| 11/23/16 | 7:00 AM | 7:17 AM | 17.00 | 11:30-12:15 | 3:15 PM | |
| 11/28/16 | 7:00 AM | 7:12 AM | 12.00 | 12:00-12:30 | 3:00 PM | |
| 11/30/16 | 7:00 AM | 7:14 AM | 14.00 | 11:55-12:30 | 3:05 PM | |
| 12/01/16 | 7:00 AM | 7:12 AM | 12.00 | 12:10-12:40 | 3:00 PM | |
| 12/02/16 | 6:50 AM | 7:02 AM | 12.00 | | 2:20 PM | |
| 12/07/16 | 6:50 AM | 7:07 AM | 17.00 | 11:30-12:00 | 3:05 PM | 0.25 |
| 12/09/16 | 7:00 AM | 7:12 AM | 12.00 | 12:00-12:30 | 3:00 PM | |
| 12/12/16 | 7:00 AM | 7:12 AM | 12.00 | 12:15-12:45 | 3:00 PM | |
| 12/20/16 | 6:45 AM | 7:07 AM | 22.00 | | 1:15 PM | |
| 12/22/16 | 6:45 AM | 6:56 AM | 11.00 | | 2:45 PM | 0.5 |
| 12/28/16 | 7:00 AM | 7:17 AM | 17.00 | 12:30-12:45 | 3:15 PM | 0.5 |
| 12/29/16 | 7:00 AM | 7:12 AM | 12.00 | 12:00-12:30 | 3:15 PM | 0.25 |
| 01/03/17 | 7:00 AM | 7:12 AM | 12.00 | | 12:30 PM | |
| 01/09/17 | 7:00 AM | 7:12 AM | 12.00 | | 3:00 PM | 0.5 |
| 01/10/17 | 7:00 AM | 7:12 AM | 12.00 | 12:10-12:40 | 3:00 PM | |
| 01/11/17 | 7:00 AM | 7:12 AM | 12.00 | 12:00-12:30 | 3:00 PM | |
| 01/13/17 | 7:00 AM | 7:12 AM | 12.00 | | 12:15 PM | |
| 01/20/17 | 7:00 AM | 7:10 AM | 10.00 | 12:00-12:40 | 3:05 PM | |
| 01/23/17 | 7:00 AM | 7:12 AM | 12.00 | 12:30-1:00 | 3:00 PM | |
| 01/24/17 | 7:00 AM | 7:12 AM | 12.00 | 12:15-12:30 | 3:00 PM | 0.25 |
| 01/25/17 | 7:00 AM | 7:10 AM | 10.00 | 12:10-12:40 | 3:00 PM | |
| 01/26/17 | 6:45 AM | 7:07 AM | 22.00 | 12:00-1:00 | 3:15 PM | |
| 01/30/17 | 10:30 AM | 10:45 AM | 15.00 | 12:10-12:40 | 3:00 PM | |
| 02/03/17 | 6:50 AM | 7:09 AM | 19.00 | 12:45-1:25 | 3:05 PM | |
| 02/08/17 | 7:00 AM | 7:10 AM | 10.00 | (Illegible) | 3:05 PM | |
| 02/14/17 | 7:00 AM | 7:13 AM | 13.00 | | 9:30 AM | |
| 02/20/17 | 7:00 AM | 7:10 AM | 10.00 | 10:00-10:10 | 1:15 PM | |
| 02/28/17 | 7:00 AM | 7:12 AM | 12.00 | (Illegible) | 2:50 PM | |
| 03/03/17 | 7:00 AM | 7:11 AM | 11.00 | 12:00-12:30 | 2:05 PM | |
| 03/13/17 | 6:50 AM | 7:04 AM | 14.00 | 12:00-12:30 | 2:05 PM | |
| 03/16/17 | 6:50 AM | 7:17 AM | 17.00 | | 9:05 AM | |
| 03/20/17 | 9:30 AM | 9:44 AM | 14.00 | | 3:15 PM | |
| 03/21/17 | 7:00 AM | 7:17 AM | 17.00 | 12:30-1:00 | 3:00 PM | |
| 03/22/17 | 7:00 AM | 7:12 AM | 12.00 | 12:00-12:30 | 3:00 PM | |
| 03/23/17 | 7:00 AM | 7:12 AM | 12.00 | 12:00-12:30 | (Illegible) | |
| 03/27/17 | 7:00 AM | 7:15 AM | 15.00 | 12:00-12:30 | 3:00 PM | |
| 03/29/17 | 7:05 AM | 10:35 AM | 110.00 | 12:10-12:45 | 3:10 PM | |
| 04/06/17 | 7:00 AM | 7:12 AM | 12.00 | 12:00-12:30 | 3:00 PM | |
| 04/10/17 | 7:05 AM | 7:15 AM | 10.00 | 12:30-1:00 | 3:03 PM | |
| 04/11/17 | 7:00 AM | 7:12 AM | 12.00 | 11:50-12:20 | 3:00 PM | |
| 04/17/17 | 7:00 AM | 7:10 AM | 10.00 | | 10:00 AM | |
| 04/18/17 | 6:50 AM | 7:04 AM | 14.00 | 12:10-12:45 | 3:05 PM | |
| 04/19/17 | 6:50 AM | 7:05 AM | 15.00 | 12:20-12:40 | 3:10 PM | |
| 04/24/17 | 6:50 AM | 7:07 AM | 17.00 | | 10:05 AM | |
| 04/26/17 | 6:50 AM | 7:09 AM | 19.00 | 12:00-12:40 | 3:15 PM | 0.25 |
| 04/27/17 | 7:00 AM | 7:20 AM | 20.00 | 12:00-12:20 | 3:20 PM | 0.5 |
| 05/02/17 | 7:00 AM | 7:12 AM | 12.00 | 12:10-12:40 | 3:00 PM | |
| 05/03/17 | 7:00 AM | 7:12 AM | 12.00 | 12:15-12:35 | 3:15 PM | 0.25 |
| 05/05/17 | 6:50 AM | 10:24 AM | 274.00 | 12:00-12:45 | 3:05 PM | |

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|----------|---------|---------|-------|-------------|----------|------|
| 05/08/17 | 9:00 AM | 9:30 AM | 30.00 | | 12:00 PM | |
| 05/10/17 | 7:00 AM | 7:15 AM | 15.00 | | 2:30 PM | |
| 05/11/17 | 6:45 AM | 7:10 AM | 25.00 | 8:45-9:15 | 11:30 AM | 0.75 |
| 05/12/17 | 6:45 AM | 7:20 AM | 35.00 | 12:00-12:15 | 2:30 PM | |
| 05/16/17 | 8:15 AM | 9:01 AM | 46.00 | | 3:45 PM | |
| 05/17/17 | 7:00 AM | 7:17 AM | 17.00 | 12:00-12:30 | 3:30 PM | |
| 05/18/17 | 7:00 AM | 7:13 AM | 13.00 | | 9:45 AM | |
| 05/19/17 | 7:00 AM | 7:10 AM | 10.00 | 12:00-12:30 | 3:30 PM | |
| 05/22/17 | 6:50 AM | 7:04 AM | 14.00 | 12:00-12:30 | 3:05 PM | |
| 05/23/17 | 6:50 AM | 7:01 AM | 11.00 | 12:10-12:50 | 3:05 PM | |
| 05/24/17 | 7:00 AM | 7:14 AM | 14.00 | 12:15-12:45 | 3:30 PM | |
| 05/30/17 | 7:00 AM | 7:15 AM | 15.00 | 1:00-1:55 | 3:25 PM | |
| 05/31/17 | 6:50 AM | 7:05 AM | 15.00 | 12:00-12:30 | 2:20 PM | |
| 06/06/17 | 6:50 AM | 7:01 AM | 11.00 | 12:50-1:20 | 3:05 PM | 0.25 |
| 06/08/17 | 6:50 AM | 7:02 AM | 12.00 | 12:00-12:30 | 3:05 PM | 0.25 |
| 06/09/17 | 6:50 AM | 7:02 AM | 12.00 | 12:00-12:30 | 3:05 PM | 0.25 |
| 06/12/17 | 7:00 AM | 7:12 AM | 12.00 | 12:00-12:30 | 3:00 PM | |
| 06/15/17 | 6:50 AM | 7:10 AM | 20.00 | 12:00-12:30 | 3:05 PM | |
| 06/26/17 | 7:00 AM | 7:12 AM | 12.00 | (Illegible) | 3:05 PM | |
| 06/27/17 | 7:10 AM | 7:24 AM | 14.00 | 12:00-12:30 | 3:10 PM | |
| 06/28/17 | 7:00 AM | 7:12 AM | 12.00 | 12:00-12:35 | 3:05 PM | |
| 06/29/17 | 7:00 AM | 7:12 AM | 12.00 | 12:00-12:30 | 3:00 PM | |
| 06/30/17 | 7:00 AM | 7:17 AM | 17.00 | 12:00-12:30 | 3:00 PM | |
| 07/10/17 | 7:00 AM | 7:10 AM | 10.00 | 11:40-12:15 | 3:15 PM | 0.25 |
| 07/14/17 | 7:00 AM | 7:15 AM | 15.00 | 12:00-12:30 | 3:30 PM | 0.5 |

Taking into account only those days where the discrepancy was equal to, or greater than, ten (10) minutes, and setting aside those days where the discrepancy was more than twenty (20) minutes, OIG reasonably estimated that you still falsely credited yourself approximately 1,769 minutes—or more than twenty-nine (29) hours—of time worked between January 6, 2016, and July 14, 2017.

Misuse of State Resources

In addition to your time-recording discrepancies, e-mail records beginning in early January 2017 reflect that you used your state-issued e-mail account to share and discuss your doctoral dissertation with faculty members at the University of the Cumberlands in Williamsburg, Kentucky. That conversation continued off-and-on through mid-August 2017, the period of time for the e-mails in OIG's possession:

| Date | Time | E-Mail Recipient | E-Mail Topic |
|----------|---------|------------------|--|
| 01/06/17 | 9:49 AM | Merissa Waddey | Question re: Finishing dissertation in one semester |
| 01/10/17 | 9:26 AM | Merissa Waddey | Submitting chapters 1-3 of dissertation |
| 01/10/17 | 9:26 AM | Merissa Waddey | Re-submitting letter to previous e-mail |
| 01/17/17 | 7:19 AM | Merissa Waddey | Sending revised questions from home |
| 01/18/17 | 7:21 AM | Merissa Waddey | Confirmation of time to talk and discussion of changing OSH laws |
| 01/25/17 | 1:00 PM | Merissa Waddey | Discussion of questions for dissertation |

| | | | |
|----------|----------|----------------|---|
| 02/07/17 | 9:08 AM | Merissa Waddey | Submission of chapter 4 of dissertation |
| 02/27/17 | 9:57 AM | Merissa Waddey | Request to arrange conference call |
| 03/29/17 | 2:12 PM | Merissa Waddey | Request to arrange conference call |
| 04/10/17 | 10:40 AM | Merissa Waddey | Switch gears for research because BLS says that release of information is breach of confidentiality |
| 04/21/17 | 9:06 AM | Merissa Waddey | Request to arrange conference call – statistical team in DC asking questions |
| 04/25/17 | 1:36 PM | Merissa Waddey | Discussion of topic for dissertation |
| 05/30/17 | 10:20 AM | Merissa Waddey | Discussion of topic for dissertation |
| 06/07/17 | 9:46 AM | Merissa Waddey | Request to arrange conference call |
| 06/19/17 | 7:20 AM | Merissa Waddey | Work e-mail is back up. Will work on changes and forward to tutor |
| 07/05/17 | 1:49 PM | Merissa Waddey | Paper to be complete by July 14 |
| 07/14/17 | 4:15 PM | Merissa Waddey | Need help with citations to references |
| 07/31/17 | 11:24 AM | Merissa Waddey | Paper to be returned by Wednesday |
| 08/04/17 | 3:01 PM | Merissa Waddey | Submission of dissertation with corrections made from comments |
| 08/11/17 | 8:17 AM | Merissa Waddey | Question re: turnaround time for review of dissertation |

In all of these cases, you communicated with your faculty advisor during your regular work hours. This communication was personal and not work related, yet your timesheets reflect that you recorded this time as time worked. You also entered and recorded your time in KRONOS as time worked, and, as such, you were paid for time worked on these dates. This behavior is particularly egregious considering that on June 15, 2016, you were issued a Denial of Educational Assistance Request on the basis that “[t]he Dissertation course is not on the approved courses list and it does not have a clear and direct relationship to the work of the Labor Cabinet.”

As you may recall, on September 11, 2017, you interviewed with OIG, which OIG recorded. You acknowledged during that interview that your scheduled work hours were from 7:00 a.m. to 3:00 p.m., with a half-hour lunch, and that you were familiar with the Cabinet’s Time, Attendance and Leave Policy. You also agreed that you would be required to obtain approval through your chain of command up to Secretary Ramsey to adjust from your set schedule, yet you admitted to, at times, clocking in at 6:45 a.m. and clocking out at 2:45 p.m. to avoid earning compensatory time. You further admitted that you did not receive authorization to further “flex” your schedule beyond your already approved schedule of 7:00 a.m. to 3:00 p.m.

During the discussion on your work schedule, you revealed to OIG that you had recently completed a doctorate degree. As part of that process, you acknowledged that you conducted research on your state-issued computer and through Facebook for records of workplace fatalities. All of the information you obtained, however, was available online through public websites. OIG then asked whether you performed this research on state time, which led to the following exchange, which OIG recorded:

- Q. Well, did you do it during state time?
- A. **Um, I did do research, yes. Again, it—relation to my job. Um, I'm conducting research. My—my job—I work for the Bureau of Labor Statistics, too. And we conduct accident fatality trends, absolutely.**
- Q. What I'm saying is, gathering information, did you do extra work gathering information for your dissertation?
- A. **Yes, but I also—it also relates to my job is what I'm saying.**

The conversation then continued:

- Q. Did you do your dissertation on—on, uh, using state resources and on state time?
- A. **Yes. Uh, some of it.**
- Q. Were you authorized to do that?
- A. **Again, I thought it was research pertaining to my . . . department.**
- Q. But you were writing your dissertation—were you writing it for your education?
- A. **Yes. But that's . . . [inaudible].**
- Q. But that's still personal and private, correct?
- A. **Ye—some of it, yes.**

When pressed, you maintained that you thought the information gleaned from that research would be beneficial to the Cabinet and beneficial in your field. But when OIG asked whether you had advised anyone that you were doing that research and dissertation-writing on state time, you admitted that you had not advised anyone and admitted that you had received no permission to do so. Additionally, you admitted that your Ph.D. advisor, Dr. Merissa Waddey, would send communications to you through your state-issued e-mail account. Moreover, you admitted that you would respond to Dr. Waddey's e-mails via your state-issued e-mail account and while on state time.

Turning back to the issue of accurate time recording, OIG initiated the following conversation:

- Q. And are you accurate—accurately recording the time you worked?
- A. **Um, you know, a lot of times I don't take my breaks. A lot of times I work through lunch and I record lunches. Sometimes, again, if I come in at 7:10—sometimes I write 7:00. Um, again, I'll stay usually later, but for whatever, you know, for the purpose of that sometimes I do write, uh . . .**

Later in the interview, you revealed that someone had brought your irregular timesheets to your attention within the past month, and had instructed you to record your time accurately. When OIG inquired how the matter had been brought to your attention, you stated that you could not recall specifically who brought it to your attention and that it may have been in a "general conversation." Aside from these concerns, you also admitted that you used your state-issued computer, on state time, to create player cards for your children's soccer club. You further admitted to using a state-owned computer to print off photos for the soccer club.

Finally, when confronted with your timesheets and the security log records, you admitted to the many inaccuracies you recorded, and admitted that you had not received prior authorization to adjust your schedule beyond your previously approved schedule of 7:00 a.m. to 3:00 p.m. Again, this is all recorded on tape. Your only explanation for adjusting your schedule without authorization was that you needed to tend to a family-based medical issue.

To be sure, OIG interviewed your supervisor, Kimberlee Perry, on August 24, 2017. Ms. Perry confirmed that in the absence of a particular project requiring an adjustable schedule your regular work schedule was 7:00 a.m. to 3:00 p.m. with a half-hour lunch. Ms. Perry also confirmed that Cabinet employees are to sign in when they arrive to work. When provided an example of an employee arriving to work at 8:10 a.m., Ms. Perry confirmed that the employee is to document on the sign-in sheet that they arrived to work at 8:10 a.m. and not 8:00 a.m. Further, when questioned, Ms. Perry agreed that it was not permissible to use state resources, such as computers, for private work. Your supervisor also communicated that she did not have any staff that were permitted to do educational or school work on state time. And finally, Ms. Perry answered in the negative when OIG asked whether anyone on her staff might pursue additional education to benefit the office where the use of state time might be justified.

Your current annual employee performance evaluation plan identifies the following duties and identifies the following expectation for each duty:

DUTIES: Self-Management-Punctuality

EXPECTATION: Arrives on time and leaves when expected. Respects time allowed for lunch and breaks and calls in in accordance with Labor Cabinet policy.

DUTIES: Self-Management-Dependability/Responsibility

EXPECTATION: Job assignments completed by deadline. Complies with applicable cabinet policies relating to internet usage and safety training

During your Pre-Termination Hearing, you acknowledged that you had not accurately reported your time and that you had not followed policy by failing to accurately sign in and out. You provided an example of how you theoretically managed your 7.50 hours worked in which your example further demonstrated a pattern of arriving or leaving at a particular time but falsely representing a different time on your sign in and out sheets. You explained a difficult personal family situation in which you had permission from your supervisor to modify your schedule on some days or take leave to accommodate the family situation during the period of early to mid-year in 2016, however, you provided no evidence from that situation that would have prevented you from accurately recording your time. Additionally, you provided the explanation that a former supervisor, prior to being promoted to the Branch Manager in October 2015, had instructed you to make your sign in sheets cleaner by recording time on the hour. But even if one gives you the benefit of the doubt as to that advice, your timesheets show you failed to follow it by often recording your start time as "6:40," "6:50," or "7:10." Moreover, you later contradicted this statement by admitting to not following the Labor Cabinet's Time, Attendance and Leave Policy, which requires all Cabinet employees to "record their *actual* start time, meal break, and departure times on their sign-in sheets."

Finally, in responding to the question "What did the June 15, 2016 denial of Educational Assistance Request related to your dissertation mean to you?," you theorized that it meant that the Labor Cabinet would not pay for the class as the Cabinet had previously done. Though you acknowledged to having received educational assistance previously, you provided no information to refute the allegation that you utilized state time and resources to complete school work, which is prohibited under the Educational Assistance Policy even when an employee is approved under the program.

Taken in the aggregate, your actions as described within this letter constitute misconduct in the workplace. As a manager, you were expected to be knowledgeable of, adhere to, and enforce all established rules, regulations, and statutory requirements for the Labor Cabinet. Though the Cabinet's Time, Attendance and Leave Policy was substantially updated in 2016, your reliance on an interpretation of time and attendance rounding from a supervisor in 2015 exemplifies your failure to carry out and perform your responsibilities as a manager and an employee. Your actions as documented by the OIG and set forth within this letter are

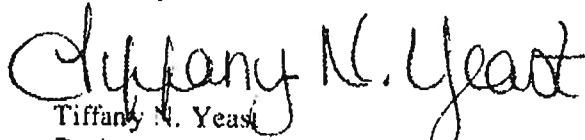
contrary to these expectations; the consistency of reported discrepancies between the recorded start time on your sign-in sheets versus the badge scan records reflects an ongoing and deliberate misrepresentation of time worked, constituting falsification of payroll documents in violation of KRS 18A.145. Your repeated use of state time, your state-issued computer, and your state-issued e-mail to work on your Ph.D. dissertation, especially when you received word that the Cabinet did not approve as a work-related matter, constitutes a clear violation of the Labor Cabinet's *Electronic Mail, Internet, and Computer Remote Access Use Policy* and the *Commonwealth Office of Technology Enterprise Policy Number CIO-060, Internet and Electronic Acceptable Use Policy*.

Considering the facts above, there is clear evidence that you have violated 18A.145(4), the Cabinet's *Time, Attendance and Leave Policy*, the Cabinet's *Electronic Mail, Internet and Computer Remote Access Policy*, the Commonwealth Office of Technology's *Internet, Electronic Mail, Acceptable Use Policy (CIO-060)*, and that you misused state resources, falsified official state records, engaged in unsatisfactory performance of work duties, and demonstrated a lack of good behavior. As outlined above, your behavior violates 101 KAR 1:345, Section 1, and constitutes misconduct warranting this dismissal notice.

Pursuant to KRS 18A.032, you will not be certified on future registers for employment within the Kentucky Labor Cabinet, Department of Workplace Standards.

In accordance with KRS 18A.095, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the date you receive this notification. Such appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

Sincerely,

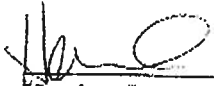


Tiffany N. Yeast
Designated Appointing Authority
Kentucky Labor Cabinet

Attachment: Appeal Form

cc: Secretary, Personnel Cabinet
Personnel File

I, Heather Damron, have received Dismissal notice dated February 15, 2018, and the attached appeal form.



Heather Damron

2-26-18
Date

Delivered By

Date

Witness

Date