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 **AMELIA DAVENPORT VS. FINANCE AND ADMINISTRATION CABINET, DEPARTMENT OF REVENUE, (APPEAL NO. 2018-015)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 21st day of December, 2018.

MARK A. SIPEK, SECRETARY
KENTUCKY PERSONNEL BOARD

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2018-015

AMELIA DAVENPORT **APPELLANT**

VS.

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

FINANCE AND ADMINISTRATION CABINET,
DEPARTMENT OF REVENUE **APPELLEE**

*** *** *** *** ***

The Board, at its regular December 2018 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated November 14, 2018, Appellee's Exceptions and Request for Oral Argument, Appellant's Response to Exceptions, Oral Arguments, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer 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 therein**.

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 21st day of December, 2018.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:
Hon. Paul Fauri
Hon. Katherine Fitzpatrick
Ms. Stacy Perry

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2018-015

AMELIA DAVENPORT **APPELLANT**

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

FINANCE AND ADMINISTRATION CABINET,
DEPARTMENT OF REVENUE **APPELLEE**

** ** ** ** **

This matter came on for an evidentiary hearing on July 5 and 6, 2018, at approximately 9:30 a.m., EST, each day at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Amelia Davenport, was present and was represented by the Hon. Paul Fauri. The Appellee, Finance and Administration Cabinet, was present and represented by the Hon. Katherine Fitzpatrick. Appearing as agency representative was Jane Becker, Deputy Commissioner of the Department of Revenue.

At issue was the Agency's dismissal of the Appellant and, potentially, the Appellant's claim that the Agency's pre-termination hearing was pretext. The Agency was assigned the burden of proof on the dismissal and the Appellant was assigned the burden of proof in challenging the propriety of the Agency's pre-termination hearing, both by a preponderance of the evidence.

BACKGROUND

First Day of Hearing

1. Following opening statements by both parties, the Agency called **Rebecca Rodgers-Johnson** as its first witness. The witness first began working with the Department of Revenue ("DOR") in 2007 and is currently employed as a Disclosure and Security Officer, a position she has held since May 2015.

2. The witness's primary duties include protecting the information entrusted to the Department of Revenue, training DOR employees about confidentiality and information security, work with the Internal Revenue Service ("IRS") to ensure the DOR is meeting federal data security standards, and drafting policies to meet those goals. She also maintains the security and

confidentiality of Federal Tax Information ("FTI"), taxpayer information received from the IRS, including confidential information protected by the provisions of KRS 131.190.

3. The witness testified that the confidential information identified by KRS 131.190 is protected by heightened data security standards, set out in IRS Publication 1075. The guidelines of Publication 1075 set out a broad variety of organizational security standards, including how visitors to DOR's offices are to be treated and how DOR's computer systems must be set up. The witness further made clear that DOR is required to follow Publication 1075's guidelines in order to maintain access to IRS's confidential data and the tax revenue derived from access to that confidential data, which, according to the witness, is about sixty-eight (68) million dollars a year. Importantly, Publication 1075 was updated in 2016, adding, amongst other things, a background employee investigation. Employees accessing confidential FTI must be subjected to a local background check, a FBI fingerprint check, and complete the "I-9" verification process through U.S. Citizenship and Immigration Services. At the state level, such changes were ratified by DOR through statute, regulation, and policy changes. Each employee handling FTI is subjected to a "trustworthiness" analysis.

4. The witness further testified that any employee who fails the aforementioned "trustworthiness" analysis must have their access to FTI removed and, most likely, should be removed from DOR employment as essentially all DOR employees have access to confidential data.

5. The witness explained that an employee's failure to follow the provisions of KRS 131.190 are punishable, pursuant to KRS 131.990. Penalties can range from six months in jail and a $500 penalty to five years in prison and a $5,000 penalty. Moreover, pursuant to KRS 131.081(14), a taxpayer harmed by DOR's failure to secure their confidential data can bring a claim against DOR in the Board of Claims.

6. The witness then introduced Appellee's Exhibits 1 and 2, DOR regulations setting out DOR policies pertaining to confidentiality and conflicts of interest.

7. The witness then addressed how she got involved in the allegations against the Appellant. The witness testified that she received notification from the Cabinet for Health and Family Services ("CHFS") about a possible data breach. Specifically, on or about September 12, 2017, she received an email from the Security Liaison with the Office of Child Support within CHFS. The email informed that there was a possible issue with a breach of confidentiality of tax information by the Appellant as relayed by a CHFS agent in Shelby County. The allegation was that the Appellant accessed the confidential tax information of her children's father to benefit herself in obtaining child support.

8. After receiving the CHFS email, the witness called CHFS employees to ask a series of follow-up questions to determine next steps. The witness began by asking the Appellant to get her version of events. The Appellant denied accessing confidential information, including information pertaining to her children's father. The witness then accessed the DOR

application wherein the Appellant did most of her work, CACS-G, the Computer Automated Collections System - Government. Such application will be discussed at length below; however, this witness explained that CACS-G maintains a log of the specific information DOR employees access, view, and change. Importantly, the witness testified that pulling the Appellant's CACS-G log revealed that the Appellant, through her unique User ID, accessed her children's father's taxpayer information multiple times over a multi-year period. As a result, the witness said she was then duty-bound to file a report about a possible breach of confidentiality and to notify the Kentucky State Police about the possible breach. The witness then introduced Appellee's Exhibit 3, documentation of the data breach notification, and clarified that such document was issued on September 15, 2017.

9. The witness stated that she then met with the Appellant again, later on September 15, 2017. The witness informed the Appellant that she had access to the Appellant's CACS-G logs and that the logs revealed that she had accessed her children's father's tax information. The witness said that the Appellant then acknowledged accessing those records but did so only because her children's father asked her to access that information and answer certain questions for him. However, the witness said that the Appellant admitted accessing those records only one time and did not explain the numerous other accesses over a multi-year period. At this point, the witness introduced the Appellee's Exhibit 4, the Appellant's CACS-G logs, admitted under seal. She also introduced Appellee's Exhibit 5, Rodgers-Johnson's notes generated after meeting with the Appellant on September 15, 2017.

10. The witness then identified the father of the Appellant's children, Brian Griffin. She went on to say that DOR policy prohibits employees from accessing your own tax information or information relating to family members. The witness further states that the same DOR policy would apply to close friends as well. In the situation where friends or family asks a DOR employee about their tax records, policy indicates the DOR employee should transfer that person to a coworker or supervisor.

11. Relating back to Appellee's Exhibit 4, the witness testified that on September 15, 2017, the Appellant was aware that she had accessed records which contained Mr. Griffin's confidential taxpayer information including wage information and Social Security number. She also testified that the Appellant's CACS-G User ID was REV 5318 and addressed the Appellant's multiple accesses of Mr. Griffin's taxpayer records.

12. The witness then introduced Appellee's Exhibit 6, an email from the aforementioned Shelby County CHFS social worker to Ms. Rodgers-Johnson setting out the allegations against the Appellant, admitted as a public record over the Appellant's hearsay objections. The witness conveyed that Appellant told the social worker that she (the Appellant) knew Mr. Griffin made more money than he claimed in the child support calculations, that the Appellant was using such information in an attempt to obtain additional child support, and that the social worker knew such use was a breach of confidentiality.

13. The witness then discussed what she did to follow-up on the Appellant's version of events. She stated that the Appellant blamed the multiple CACS-G accesses on a computer malfunction; specifically, the computer would refresh itself every couple of seconds, possibly leading to the CACS-G logs falsely showing multiple employee accesses when the employee really accessed a taxpayer's file only once. The witness proved that such malfunction did not exist and that each CACS-G log entry detailing the Appellant's access to Mr. Griffin's tax records was intentional and unique.

14. On cross-examination, the witness confirmed that the CHFS social worker emailed her and spoke on the telephone on September 12, 2017, that she met with the Appellant on September 13, 2017, and that she (Rodgers-Johnson) did not take notes when she spoke to the social worker. Rodgers-Johnson introduced Appellant's Exhibit 1, an email chain in which the witness was involved, and she verified that she had not spoken with Mr. Griffin, the father of the Appellant's children. The witness also disclosed she referred the allegations underlying the instant appeal to the Kentucky State Police, she had not seen the KSP investigative report, but was made aware that KSP declined to advance criminal charges against the Appellant.

15. The witness was directed to Appellee's Exhibit 4, the CACS-G printout that captured actions taken in Mr. Griffin's electronic DOR file. The witness conceded that she questioned the Appellant about actions the Appellant took in Mr. Griffin's file, but she did not show the Appellant the document. The witness was also directed to Appellee's Exhibits 1 and 2 and testified as to the policies the Appellant is alleged to have violated. The witness then introduced Appellant's Exhibit 2, the investigative leave letter issued to the Appellant, and Appellant's Exhibit 3, a document request propounded upon the Agency by the Appellant. She further discussed the documents produced in response to Appellant's Exhibit 3.

16. On redirect, the witness clarified the meaning of the term "tax record," how DOR employees are trained on that term of art, and how it is used in DOR policies. In response to Hearing Officer questioning, she also clarified that the personal gain the Appellant was alleged to have received was the knowledge of Mr. Griffin's salary, which the Appellant used in an attempt to gain additional child support. She also stated that the Appellant working on her children's father's file was a violation of DOR policy, made worse by the sheer volume of the Appellant's accesses over a period of time.

17. Lastly, the witness again testified about Appellee's Exhibit 1, DOR Policy 6.1.2, and the "need to know" test contained therein. Specifically, DOR employees are only permitted to access confidential taxpayer information if necessary in conformity with policy and only to perform their job duties; browsing such information for any reason other than necessity is a violation and DOR employees are advised of this policy annually during Agency-provided training.

18. The Appellee's next witness was **Jane Becker**. She is employed as a Deputy Commissioner within the Department of Revenue ("DOR"). Her job is multi-faceted by

definition but involves, at a minimum, working on personnel issues, serving as a liaison between DOR and the Finance Cabinet, and providing support for DOR managers.

19. The witness stated that she got involved in the matters underlying this appeal in September of 2017 when DOR's Disclosure and Security Officer, Ms. Rodgers-Johnson, informed her of potential security concerns; specifically, the previously mentioned allegation that the Appellant was using information obtained at work to gain additional child support benefits. The witness then worked with Ms. Rodgers-Johnson to investigate the allegations against the Appellant. The witness confirmed that she met with the Appellant on September 13 and September 15, 2017. The witness then introduced Appellee's Exhibit 7, the witness's notes generated during her investigation of the Appellant and a September 17, 2017 email containing those notes along with other contemporaneous observations about the September 13 and 15 meetings with the Appellant.

20. The witness explained that the Agency did not have much information entering the September 13 meeting and just wanted to get the Appellant's side of the story. She said that the Appellant denied accessing Mr. Griffin's records and acknowledged that accessing Mr. Griffin's records would be improper. The witness stated that the Appellant's position changed during the September 15 meeting when confronted with Agency records demonstrating that the Appellant previously accessed Mr. Griffin's records multiple times. The witness recalled that the Appellant told her that her (the Appellant's) supervisor was aware of her accessing Mr. Griffin's records, that she was sure she did not take any payments from Mr. Griffin, and Mr. Griffin gave her permission to access his DOR records. The witness also confirmed that she issued the Appellant an investigative leave letter during the September 15 meeting.

21. The witness then expounded on the investigation conducted by the Kentucky State Police, the importance of Federal Tax Information ("FTI"), the Agency's requirements to protect the security of FTI, and the impact of the allegations against the Appellant on the Appellant's access to FTI. Specifically, she stated that the Agency felt compelled to remove the Appellant's access to FTI because: 1) the Appellant misstated the truth and/or changed her story a number of times about her access to Mr. Griffin's records, 2) the records indicated that the Appellant was "browsing[1]" through confidential information, 3) the Agency is required to maintain strict security standards to continue receiving access to valuable FTI via the IRS, and 4) the Appellant's actions violated DOR policy 6.1.2. She then introduced Appellee's Exhibit 8, an email to the witness from Appointing Authority Stacy Perry recommending the Appellant receive a thirty-day suspension for her actions instead of termination and the Appellant's response to Ms. Perry's email, rejecting the thirty-day suspension recommendation.

22. On cross-examination, the witness began by acknowledging that neither she nor the Agency reviewed the State Police investigative report and had not spoken with Mr. Griffin. She also acknowledged the Appellant did not have the chance to review Appellee's Exhibit 4, the

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[1] Deputy Commissioner Becker defined "browsing" in this context as unauthorized access to Federal Tax Information without a legitimate business purpose or a "need to know" purpose. See Appellee's Exhibit 1, DOR policy 6.1.2(2)(a).

records of the Appellant's CACS-G activity, during the September 15 meeting and that the Agency does not have the ability to log when a DOR employee accesses tax returns, which are stored differently than the broader category of FTI.

23. The witness then introduced Appellant's Exhibit 4, a copy of the thirty-day suspension letter drafted by Appointing Authority Stacy Perry, referenced in Appellee's Exhibit 8. She then described the conversations between Stacy Perry, herself, and the Commissioner of the DOR, which largely focused on definitional issues like whether the Appellant's behavior implicates a DOR policy pertaining to tax returns and whether the father of the Appellant's children, Brian Griffin, is properly considered a "family member" as used in DOR policy. The conversations resulted in a determination that the policy relating to tax return confidentiality, DOR policy 6.1.4, did not apply to information the Appellant accessed and that, given the nature of their relationship, Mr. Griffin is properly considered a family member by DOR policy. Deputy Commissioner Becker then introduced Appellant's Exhibit 5, an email written by the witness to which the intent to dismiss letter issued to the Appellant is attached. The witness also testified that, when dealing with friends or family members, the appropriate response is to forward that person to another employee without a personal relationship; she also testified that the Appellant previously followed policy and, at least once, forwarded Mr. Griffin to another employee when he had a question about a wage levy. However, at least 28 other times, the Appellant did not forward Mr. Griffin to another employee and, instead, worked on his case herself.

24. The Agency next called **Stacy Perry**. Ms. Perry serves the Finance and Administration Cabinet as a Division Director with the Cabinet's Division of Human Resources, a position she has held for approximately a year and a half. She also has almost 18 years of HR experience with the Finance and Administration Cabinet.

25. The witness began by discussing her thought process in debating between a thirty-day suspension or dismissal, given the allegations lodged against the Appellant. She considered progressive discipline, so she looked at the Appellant's personnel file and determined that Appellant's disciplinary history consisted of a 2015 written reprimand for time and attendance issues, which weighed in favor of a lengthy suspension. The witness balanced the Appellant's light disciplinary history against her understanding that, once the Appellant returned to work after serving her suspension, she would be precluded from working with FTI. She noted that she considered offering the Appellant an opportunity to transfer elsewhere in the Finance and Administration Cabinet, but the Agency did not have any job openings with a similar title or qualifications outside of the Department of Revenue. She stated that the Appellant's purportedly false statements made during the September 13, 2017 meeting weighed against giving the Appellant the benefit of the doubt, as the Agency's confidence in the Appellant's integrity was significantly undermined. Specifically, the witness gave significant weight to the Appellant acknowledging that she accessed Mr. Griffin's CACS-G file once while still claiming that Appellee's Exhibit 4, which purports to show the Appellant accessing Mr. Griffin's CACS-G file 29 times, was misleading because that log was merely capturing the Appellant's computer screen refreshing every couple of seconds. The witness testified that the Department of Revenue

followed up on the Appellant's version of events and quickly determined that the Appellant's "screen refresh" claim was demonstrably false.

26. The witness then addressed the different policy citations included in the intent to dismiss letter and the dismissal letter. The intent to dismiss letter accused the Appellant of violating DOR Policies 6.1.2 and 6.1.4 while the dismissal letter only alleges a violation of DOR Policy 6.1.2. She explained that the reference to DOR Policy 6.1.4 was intentionally left out of the dismissal letter because of definitional concerns about the relationship between the Appellant and Mr. Griffin. The witness determined that the Appellant's ex-husband and father of her children does not constitute a family member, as the term is used in DOR policy. Because she felt that an ex-husband is not a family member, she decided to drop the allegation the Appellant violated the Agency's conflict of interest policy and, instead, allege violation of the Agency's confidentiality and anti-browsing policies.

27. On cross-examination, the witness introduced Appellant's Exhibit 6, the December 6, 2017 dismissal letter issued to the Appellant, a copy of which is attached as "**Recommended Order Attachment A**." The witness acknowledged that she did not show the Appellant Appellee's Exhibit 4, the CACS-G logs, when questioning her about her access to Mr. Griffin's file and did not provide the Appellant those CACS-G logs before her pre-termination hearing. The witness also testified that she left the pre-termination conference believing the Appellant's story, examined the CACS-G logs closely after hearing the Appellant's "screen refresh" story, and drafted the thirty-day suspension letter during the period of time between the pre-termination hearing and when the Agency examined their computer systems, determining the Appellant's version of events was not supported by evidence.

28. On redirect, the witness testified to how "disappointed" she felt after being informed that the Appellant's version of events was false. The witness explained that the CACS-G system required employees to log back after the computer sat idle for more than a few minutes. Further, the Appellant's CACS-G log-ins undermined the Appellant's story because those log-ins were not two or three minutes apart; instead, the Appellant accessed Mr. Griffin's file on 26 separate days. The witness stated that discovering the Appellant's story was demonstrably false changed her opinion as to the appropriate level of discipline and she then felt dismissing the Appellant was the proper course of action.

29. The witness ratified three reasons why dismissal was more appropriate than a thirty-day suspension: 1) termination is the appropriate penalty for accessing FTI inappropriately, 2) by lying to her supervisors, the perception of the Appellant's integrity is fatally undermined, and 3) given her actions, IRS Publication 1075 mandates that the Appellant shall not have access to FTI. The witness testified that the combination of those three factors require the Appellant's termination.

30. The witness also introduced Appellee's Exhibit 9, a newly enacted Department of Revenue regulation, 103 KAR 1:120, establishing, pursuant to 2016 Amendment to IRS Publication 1075, new security protocols to ensure the security of FTI. She acknowledged that the policy was not in effect at any time germane to this appeal and did not apply to the Appellant,

but was being developed while the Agency was considering the appropriate level of discipline for the Appellant. The witness indicated that information security is an Agency top priority and the Agency believes, under the regulation now in effect, the Appellant could no longer access FTI if she were returned to work.

Second Day of Hearing

31. Day two of the evidentiary hearing commenced with **Stacy Perry** retaking the stand. The Agency began by questioning the witness about the factors she generally considers when deciding the appropriate level of discipline in all cases. She testified that she considers a number of factors including the employee's actions, the policy violated, the length of the employee's service with state government, their annual evaluations, and their disciplinary history. She stated that the penalty imposed is ultimately her decision, but she seeks input from the Agency about what they think is appropriate, given the circumstances.

32. As to the Appellant, the witness explained that she determined termination was appropriate after considering the Appellant's disciplinary history, her performance evaluations, the Agency's position that the breach of data security warranted dismissal, and the perceived lack of honesty by the Appellant.

33. The Agency next recalled **Rebecca Rodgers-Johnson**. The witness discussed the requirements of IRS Publication 1075. She stated that Publication 1075, which went into effect in September 2016 but only enforceable in September 2017, imposes numerous requirements on all agencies receiving FTI including mandates about building security, computer access, technical details about limits within applications, and background checks on all employees who have access to FTI. The witness then introduced Appellee's Exhibit 10, IRS Publication 1075 as amended in 2016.

34. On cross-examination, the witness expounded upon the Kentucky State Police criminal investigation. She testified that Publication 1075 requires a criminal investigation of data breaches and serves, amongst other purposes, to ensure that any employee involved in a data breach is trustworthy enough to continue handling confidential FTI. Here, the Kentucky State Police investigated the Appellant, but no criminal charges were lodged.

35. On redirect and re-cross, the parties variously asked the witness about the business "need to know" test established in Publication 1075. The witness simplified that the requirement for employees accessing FTI is that they must not access that confidential information unless they are doing so for legitimate business purposes; that is, the employee can only access FTI if they need to know that information to perform their job duties. The witness testified that all employees who have access to FTI, including the Appellant, receive annual training establishing requirements on how FTI is to be handled and/or accessed as well as prohibitions on browsing FTI and on accessing FTI for friends, family members, acquaintances, or co-workers. The witness stated that she believes the Appellant violated DOR Policies 6.1.2 and 6.1.4 as well as Publication 1075's "need to know" test.

36. The Agency announced closed.

37. The Appellant began her case by calling **Brian Griffin**, the non-custodial father of the Appellant's children and the taxpayer whose records underlie this appeal. The witness testified that he and the Appellant were together for several years, never married, separated in 2014, and then entered into a child support agreement in the fall of 2014. He stated that the child support agreement was amended in April 2018. He is employed by the Ford Motor Company, where he has worked since November 2011.

38. The witness testified that before he started working for Ford, he worked in construction. While working construction, he failed to pay taxes for several years, resulting in the assessment of a tax levy. While the tax levy was in place, his employer was required to withhold a certain amount from the witness's paycheck; at least once, Ford withheld almost the entirety of the witness's paycheck. The witness testified that he often contacted the Appellant with questions about his tax levy, including questions about whether his payments were received, when the levy would be lifted, and how to fix issues with DOR garnishing too much of his salary, including an incident where almost his entire paycheck was taken. In 2016, the witness bought a new truck and contacted the Appellant with questions about the tax levy while attempting to secure financing for the truck. Importantly, the witness verified that he called the Appellant repeatedly, seeking assistance with his tax issues, and asserted that the Appellant had his permission to access his records every time she did it.

39. The witness testified that he and the Appellant get along very well and came to an agreement about the amount of child support the Appellant would receive, an amount that has increased over the years. He explained that he has a predictable salary schedule with Ford because he works under an eight-year contract with explicitly defined raises until the eighth year when his salary is capped. The witness stated that the Appellant is aware of his employment contract and, as a result, is aware of what his salary will be.

40. On redirect, the witness discussed his involvement with the Kentucky State Police investigation. He said a captain with the State Police interviewed him in the spring of 2018. The witness stated that he told the State Police Captain that he knew the Appellant, that they had kids together, and that he does not believe the Appellant would have accessed his records without his approval. The witness also confirmed that he called the Appellant during work for help with his tax issues and that the State Police has not contacted him after that initial interview.

41. After being directed to Appellee's Exhibit 4 and other CACS-G records by the Hearing Officer, the witness was asked to try to explain some of the quirks in the Appellant's access to his DOR records in 2015. The witness stated that the only tax levy he was enduring in 2015 related to the back taxes he owed from when he was working in construction. The witness verified that he was not having any child support issues in 2015 and that he called the Appellant whenever DOR withheld too much of his check. He also stated that he would call the Appellant to confirm that his tax payments were applied properly to his delinquent taxes. Given the

witness's reasons for calling the Appellant, he was unable to explain satisfactorily the Appellant's access to his tax records. For example, the witness's DOR records were accessed every month from March to November in 2017, approximately twenty-five times, sometimes multiple times in a day and sometimes just a couple of days apart from each other. The witness testified that he called the Appellant multiple times a month over the span of several months. However, the reasons given by the witness for calling the Appellant would only explain a handful of the accesses. When asked to explain the other times his records were accessed, times that seem unsupported by the witness's version of events, the witness did not offer an adequate response.

42. On re-cross, the witness testified that he received a number of notices from the Agency regarding his tax delinquency. He verified that he would call the Appellant after receiving such notices. The witness explained that the Appellant filed his taxes from approximately 2011 until they separated in 2014. When reminded of the Hearing Officer's questions about the scope of his contacts with the Appellant, the witness testified that he called the Appellant when the tax levy was imposed, he called the Appellant when he defaulted on his tax levy, he called the Appellant when a new tax levy was imposed, he called the Appellant when his entire paycheck was taken, he called the Appellant after receiving a bill, he called the Appellant when he made a payment, and he called the Appellant when he applied for a loan. Essentially, the witness credibly testified that whenever he received a document from the Department of Revenue, he would call the Appellant.

43. On redirect, the witness denied ever talking to either the Appellant or Appellant's counsel about the reason he was called to the stand. The witness indicated that he knew he was called to talk about "taxes," but then claimed that what he knew about this evidentiary hearing was limited to what was set out in the subpoena he was served by the Appellant. Because the Personnel Board's subpoena does not state the anticipated grounds the witness could expect to address, the Hearing Officer finds this claim not to be credible.

44. The Appellant's next witness was **Jim Shelby**. He is employed as a Section Supervisor with the Department of Revenue, Division of Collections, Individual Collections Branch. He has been so employed for approximately 19 years and has been a state employee for 24 years. The witness is familiar with the Appellant, but they have never worked in the same branch.

45. The witness stated that, given their staffing levels, employees are instructed to "do the best you can" when accepting payments. As a practical matter, that means Collections employees often accept payments outside of their particular branch, i.e. an employee in the Business Collections Branch will accept payments for the Individual Collections Branch. The witness also stated that business and enterprise collections are more complex than individual collections so a Business Collections Branch employee should not have much difficulty accepting a payment from an individual taxpayer.

46. On the other hand, the witness testified that Collections employees should not work on cases involving people they know; if the employee personally knows the client, the

Collections employees should transfer that client to someone else for assistance. Collections employees should avoid working on the cases of even acquaintances because of the potential for a conflict of interest and Collections employees are trained to avoid such conflicts. When directed to the facts underlying the instant appeal, to conform with policy and training, the witness stated the Appellant should not have worked on Mr. Griffin's case and should have transferred him to another Collections employee.

47. The Appellant next called **Adam Schaffner**, who is the Branch Manager with the Department of Revenue, Division of Collections, Contact Branch. He was formerly employed as a Section Supervisor with the Department of Revenue, Division of Collections, Corporate Collections Branch. He was the Appellant's direct supervisor from 2006 – 2015. He introduced Appellant's Exhibit 7, the Appellant's 2015 annual evaluation, completed by the witness, and Appellee's Exhibit 11, a collection of the detritus contained in the Appellant's personnel file including a 2015 written reprimand.

48. The witness opined that the Appellant's use of CACS-G was unusual and that the Appellant's actions violated policy. He also ratified that Mr. Griffin would be considered a family member, family members present conflicts of interest, family members should be transferred to another Collections employee, and annual training instructs Agency employees how to appropriately handle conflicts of interest. Mr. Schaffner's testimony was echoed by the Appellant's next witness, **Matt Richardson**, who testified consistently with Mr. Schaffner.

49. The Appellant's last witness was the Appellant herself, **Amelia Davenport**. She was employed as a Taxpayer Specialist II with the Department of Revenue, Division of Collections, Corporate Collections Branch. The witness began by discussing the September 13, 2017 meeting she had with members of the Agency's leadership, including Deputy Commissioner Becker and Disclosure and Security Officer Rodgers-Johnson. The witness was asked about the allegation lodged by the CHFS child support caseworker that the Appellant was improperly using confidential taxpayer information. The witness confirmed that she interacted with that CHFS employee but did not think she did anything wrong and was confused as to why she was being questioned by Agency leadership about a personal issue. During the September 13 meeting, the witness also specifically denied accessing Mr. Griffin's tax returns or wage information, though there is still some question as to whether the Appellant also denied accessing the much broader category of "tax records."

50. The witness next discussed the September 15, 2017 follow-up meeting she had with Agency leadership, again including Deputy Commissioner Becker and Disclosure and Security Officer Rodgers-Johnson. She stated that at the beginning of that meeting the Agency placed her on investigative leave. See Appellant's Exhibit 2. She noted that the September 13 meeting focused almost exclusively on the topic of child support, while the September 15 meeting focused almost exclusively on her access to Mr. Griffin's DOR files. The witness testified that, when specifically directed to explain her access to Mr. Griffin's CACS-G file, she became instantly upset because she did not believe those topics were related. She implicitly acknowledged falsely denying accessing Mr. Griffin's records but states that, once the Agency

referenced Mr. Griffin's collections account, she immediately remembered working on Mr. Griffin's case and immediately explained that access to Becker and Rodgers-Johnson. However, the explanation given by the witness would explain her 2015 access to Mr. Griffin's file, not the 2016 access. When directed to address that 2016 access, the witness noted that she was not shown any record proving she accessed Mr. Griffin's file in 2016 before she answered the Agency's question about that access and was unable to explain that specific access. However, she again asserted that every time she accessed Mr. Griffin's file, she did so at his request.

51. The witness then discussed the Kentucky State Police (KSP) criminal investigation into the Agency's accusations. The witness described her interaction with the Electronic Crimes Unit and related that KSP determined that she was telling the truth about her access to Mr. Griffin's files, which led to KSP's decision to not investigate further and to not advance criminal charges against the Appellant. She also briefly addressed her confusion about the Agency contacting her and instructing her to pick up the belongings she left at her workstation before any disciplinary action was taken; she felt it was inappropriate to remove her possessions while she was still an employee of the Agency.

52. The witness further clarified her belief that the access to Mr. Griffin's file captured in Appellee's Exhibit 4, the CACS-G logs, were the result of a computer refresh issue. She explained that the Agency's expectations for Collections employees is based in part upon their level of experience and, given her 14 years of Agency experience, she operated under enhanced expectations. She had eight computer screens at her workstation and was limited to 30 seconds after she assists a caller to document her interaction with that taxpayer in the CACS-G system. She further explained that, given that workflow, a particular taxpayer's file might remain open on one computer screen as she assists other callers and potentially could remain open for hours. If that occurred, she would have to log back into CACS-G to continue accessing that first taxpayer's file. The witness said that was the refresh issue she referred to during her September meetings with the Agency; moreover, even after reviewing Appellee's Exhibit 4, she still is not certain that some of the access reflected in that document was not the result of that refresh issue.

53. When directed to review the special leave, intent to dismiss, and dismissal letters, the witness largely disputes the allegations set out therein. She acknowledges the broad context, she did go into the child support office, for instance, but she specifically disputes the statements attributed to her in those letters.

54. She also testified that the 29 accesses to Mr. Griffin's file occurred over an eight-month period, a rate that she believes is not excessive. She explained that the CACS-G system would automatically send taxpayers, including Mr. Griffin, documentation memorializing almost any change made to that taxpayer's account; whenever a bill is issued, a payment is received, or the amount collectable by the Agency changes, a letter is sent to the taxpayer. The witness said that some taxpayers, including Mr. Griffin, would then call her and the Collections Branch after receiving every such letter, asking her to explain what each of those letters meant.

55. The witness then stated that she did not transfer Mr. Griffin to another Collections Branch employee because she did not feel like she was doing anything wrong. She said that she was just answering his general questions and taking payments from him. She acknowledged transferring Mr. Griffin to another Collections Branch employee, Jim Shelby, when Mr. Griffin's tax levy was first lodged, but she felt that she could properly handle more routine requests. She explained that she basically works in a call center and Collections Branch employees are flexible in their duties; for instance, even though she is a Corporate Taxpayer Specialist, there are times of the year when her workday is consumed with answering questions from individual taxpayers asking questions about their tax returns.

56. On cross-examination, the witness answered that she did not recall to a series of questions about both her memory and her current understanding. During the September 15, 2017 interview, the witness explained that she did not recall the details of Mr. Griffin's file, she did not recall Mr. Griffin calling her more than once, she did not recall accessing Mr. Griffin's file more than once, she did not recall if she worked on the cases of other friends and family, she did not recall the details of what she told Agency leadership, she did not recall being trained on IRS Publication 1075, and she did not recall being trained to avoid working on the cases of friends, family, or acquaintances. However, the witness specifically recalls that the details set out in the Agency's various disciplinary letters are wrong.

57. The witness also testified about the training she received concerning, amongst other topics, the panoply of Agency policies. The witness acknowledged receiving significant training but argued that she retained very little of the information because it was a fast-paced webinar and she was allowed to use her notes when taking the test about the information set out in the training module. Similarly, the witness expressed significant skepticism that she was supposed to retain the information provided by Disclosure and Security Officer Rodgers-Johnson during her hour-long, in-person training. The witness says retaining that information is what is supposed to happen but it does not happen. Troublingly, the witness seemed wholly unconcerned by her lack of training retention, arguing, "I do my job to the best of my ability." She stated that she paid a lot of attention to training during her first couple of years with the Agency but, at some point during her 13 years, the training and policy changed so frequently that she stopped paying attention to those changes. When asked if she was intentionally ignoring training/policy changes, the witness stated, "it's not intentional; I'm just too busy working."

58. The witness then specifically stated that she does not believe she did anything wrong when dealing with Mr. Griffin. She also acknowledged that she relied upon "common knowledge" instead of training or policy when figuring out how to handle particular situations. She said that she never refused a payment and that she was never trained to avoid taking certain payments. When asked about her manager' and coworker's testimony about avoiding conflicts of interest, she said that it is a judgment call reserved for each individual employee. Further, because she believes her supervisor is monitoring her every move, the witness said that it is her supervisor's responsibility to make sure that she is following policy.

59. On redirect, the witness acknowledged a violation of DOR policy 6.1.2 when she worked on Mr. Griffin's collections account.

60. The Appellant closed.

61. The Agency then moved for a directed verdict on the Appellant's allegation that the Agency's pre-termination hearing was pretext. The specific allegation advanced by the Appellant is that the Agency boxed and returned her personal possessions prior to conducting a pre-termination hearing. The Appellant argues that returning her possessions clearly proved the Agency had already decided to terminate her before the pre-termination hearing was ever conducted. After reviewing the evidentiary record, including testimony that the Agency returned the Appellant's possessions before the pre-termination hearing, the Hearing Officer concludes that the Appellant did not introduce sufficient evidence that would create a *prima facie* case that the pre-termination hearing was pretext. As a result, a directed verdict was **GRANTED** on that issue.

FINDINGS OF FACT

1. On December 6, 2017, the Appellant was dismissed from her position as a Taxpayer Specialist II with the Division of Collections, Corporate Branch, of the Department of Revenue ("the Agency"). Prior to her dismissal, the Appellant had worked for the Agency for approximately 14 years, had good annual performance reviews, and a relatively clear disciplinary history.

2. On September 12, 2017, Agency Disclosure and Security Officer Rebecca Rodgers-Johnson received an email from the Cabinet for Health and Family Services' Security Liaison with the Office of Child Support warning Ms. Rodgers-Johnson about a potential breach of confidentiality reported by a CHFS employee. Specifically, a CHFS Child Support Specialist in Shelby County reported that the Appellant told her that the child support payment received by the Appellant would not decrease because she knew the exact amount of wages received by the father of her children. The CHFS Child Support Specialist asserted that the Appellant improperly accessed confidential tax information entrusted to the Agency in order to benefit herself in obtaining additional child support.

3. Ms. Rodgers-Johnson conducted an investigation on the alleged breach of confidentiality in addition to referring the breach to the Kentucky State Police for potential criminal charges. During her internal investigation, Ms. Rodgers-Johnson gathered the pertinent documents, including the records generated by the computer application wherein the Appellant did most of her work, the Computer Automated Collections System – Government (CACS-G), and spoke with the several of the pertinent individuals, including the Appellant. Importantly, Ms. Rodgers-Johnson did not speak with the taxpayer whose records were accessed, Brian Griffin, the father of the Appellant's children, nor did she review the investigative report prepared by the Kentucky State Police.

4. Ms. Rodgers-Johnson and Deputy Commissioner Jane Becker met with the Appellant on September 13, 2017. During that meeting, without being confronted with documentation establishing her use of CACS-G, the Appellant denied accessing confidential information, including information pertaining to her children's father.

5. Ms. Rodgers-Johnson and Deputy Commissioner Becker then met with the Appellant on September 15, 2017. During that meeting, after Ms. Rodgers-Johnson gathered the documentation establishing the Appellant's use of CACS-G but before she showed those documents to the Appellant, the Appellant then acknowledged accessing the tax records attributable to her children's father one time, but says she did so only because Mr. Griffin asked her to access that information and answer certain questions for him. The Appellant did not satisfactorily explain the significant number of additional accesses captured by CACS-G over a multi-year period.

6. Multiple witnesses, including witnesses called by the Appellant, testified that Agency employees are prohibited by the Agency's conflict of interest policy from working on any account if the Agency employee is friends, family, or acquaintances with that taxpayer. These witnesses also testified that they received annual training to avoid such conflicts as did the Appellant. Although there was some amount of discretion, these witnesses testified that the Agency employee with a conflict of interest should transfer the taxpayer to another Agency employee not so burdened.

7. The CACS-G records establish that the Appellant accessed her children's father's tax records at least 29 times from March until October of 2015 in addition to taking at least four actions in his account during that same period of time. By accessing the tax records of her children's father, the Appellant violated DOR Policy 6.1.2. Stated simply, the Appellant should not have looked at or taken any action in Mr. Griffin's account because accessing his tax records, even at his request, is a violation of the Agency's confidentiality policy. Accordingly, the Agency had just cause to discipline the Appellant for a significant policy violation; still at issue is whether the discipline imposed, dismissal, was excessive or erroneous.

8. Witnesses, including Appointing Authority Stacy Perry, testified that the Agency debated between imposing a thirty-day suspension or terminating the Appellant. The Appellant advanced several reasons why suspension was more appropriate: 1) the intent to dismiss was based on alleged violations of DOR Policies 6.1.2 and 6.1.4 and the dismissal letter implicitly acknowledges the Appellant did not violate Policy 6.1.4; 2) several Agency staff, including a longtime highly regarded supervisor, were wholly unfamiliar with the "need to know" test cited in the dismissal letter; 3) the Agency's investigation into the allegations underlying this appeal was inadequate; 4) the Appellant accessed Mr. Griffin's account only at his request; and 5) the Appellant received no personal gain from accessing Mr. Griffin's records.

9. The Agency argues that dismissal was appropriate for three primary reasons: 1) termination is generally the appropriate penalty for policy violations relating to mishandling confidential tax information; 2) in this case, the Appointing Authority believed the Appellant's

denials of any wrongdoing, those denials turned out to be false, and now the Appellant cannot be trusted because she lied; and 3) because the Appellant improperly handled confidential tax records, IRS Publication 1075 prohibits her from handling confidential tax records going forward, thus disqualifying the Appellant from any Agency position as all such positions potentially have access to confidential tax information. Importantly, the Appointing Authority specifically noted that she gave the Appellant the benefit of the doubt and recommended a thirty-day suspension before she reviewed evidence that established the fact that the Appellant clearly lied to her. After realizing the Appellant lied throughout the investigative process, the Appointing Authority then recommended the Appellant be dismissed.

10. The Hearing Officer specifically finds that, during the September 13 and 15, 2017 meetings, the Appellant was not truthful about her prior access to Brian Griffin's Agency records.

11. The Hearing Officer also finds Brian Griffin was not truthful when he testified that he did not speak to anyone about the subject matter underlying the instant appeal. The fact that the witness knew he was called to the stand to discuss "child support and taxes" clearly indicates that someone with substantive knowledge of this appeal talked to Mr. Griffin before he appeared before the Personnel Board. Nonetheless, Mr. Griffin credibly and unrebuttedly testified that he called the Appellant multiple times a month, every month from March until October 2015, all shortly before the Appellant accessed his Agency records. He was also credible when he testified that the Agency did not speak with him prior to disciplining the Appellant.

12. Finally, the Hearing Officer finds the Appellant violated DOR Policy 6.1.2., but finds that termination is excessive.

CONCLUSIONS OF LAW

1. The Agency's complaint with Appellant has to do with her asserted "lack of good behavior." 101 KAR 1:345 does not present examples of what should be considered as "lack of good behavior" nor does the regulation (or the underlying statute) provide the level of penalization to accompany the determination of poor performance, as it cannot. This is left to management's discretion, with the factors deemed relevant thereto summarized in the statutorily-mandated, written notice assessing the penalty. Stated differently, the grounds for disciplining a merit employee must be set out in the letter and due process principles mandate that justification for any penalization be predicated upon those grounds. The basis for any penalization, and likewise any challenge thereof, must be statutory, regulatory, fact-based, or a combination of these. KRS 18A.095 (1) – (7).

2. In the immediate appeal, the scope of the disciplinary letter issued by the Agency takes on outsized importance. The respective parties rely heavily upon differing interpretations of the facts. The Agency claims the Appellant improperly accessed Mr. Griffin's confidential tax information in order to gain an advantage in obtaining child support, while Appellant admits

she accessed Mr. Griffin's files, but asserts she accessed his files at Mr. Griffin's request and disputes the allegation that she knowingly violated policy. In the end, the parties basically agree that the Appellant improperly accessed Mr. Griffin's files; thus, just cause for a penalization was established and the primary question before the Hearing Officer is whether the Appellant's dismissal was excessive.

3. The evidence establishes the fact that the Agency considered both termination and imposing thirty-day suspension, based on the Appellant's actions. Agency Appointing Authority Stacy Perry discussed the factors that prompted the Agency to decide termination was more appropriate than a lengthy suspension: 1) termination is generally the appropriate penalty for policy violations relating to mishandling confidential tax information; 2) the Agency, including Ms. Perry, believed the Appellant's denials of any wrongdoing, those denials turned out to be false, and now the Appellant cannot be trusted because she lied; and 3) because the Appellant improperly handled confidential tax records, IRS Publication 1075 prohibits her from handling confidential tax records going forward, thus disqualifying the Appellant from any Agency position as all such positions potentially have access to confidential tax information. However, importantly, the Appellant was not charged with either lying to the Agency or disqualification pursuant to IRS Publication 1075. Thus, the only grounds properly relied upon to justify termination instead of a suspension is the general statement that termination was appropriate for mishandling confidential tax information.

4. Yet, the evidence of record establishes the Appellant accessed Mr. Griffin's tax records at his repeated request. Even given the obvious conflict of interest in the Appellant working on the collections account of the father of her children and even considering the Appellant's uncharged lying about her violation of policy, the penalty meted to this 13-year employee with a largely clear disciplinary history seems excessive. Such a level of punishment might be deserved if the Appellant knowingly and intentionally accessed Mr. Griffin's records for personal financial gain, or deliberately misused Mr. Griffin's tax records, not the case here.

5. Further, because she was not charged with these violations, neither the Appellant's lying during the September 13 and 15, 2017 meetings nor potential disqualification pursuant to IRS Publication 1075 enhance the Appellant's violation of the conflict of interest policy sufficient to warrant imposing a dismissal.

6. Accordingly, the Agency has carried its burden to establish that there was just cause to discipline the Appellant. Nonetheless, given the testimony that the Appellant accessed Mr. Griffin's records at his request and given the relatively narrow grounds asserted in the dismissal letter, the Agency has failed to carry its burden of proof to establish, by a preponderance of the evidence, that termination was appropriate under the circumstances.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **AMELIA DAVENPORT V. FINANCE AND ADMINISTRATION CABINET, (APPEAL NO. 2018-015)** be **SUSTAINED to the extent the dismissal be rescinded and removed from the Appellant's personnel files and the Appellant receive a thirty (30) day suspension in place thereof. The Appellee/Agency shall also reimburse the Appellant the amount of pay that was withheld from her because of the dismissal - subject to all appropriate offsets, to reimburse Appellant for any leave time she used attending the hearing and any pre-hearing conferences at the Board, and to otherwise make Appellant whole. KRS 18A.105, 18A.095(25), 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 Stafford Easterling** this 14th day of November, 2018.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:
Hon. Katherine Fitzpatrick
Hon. Paul Fauri

Matthew G. Bevin
Governor

Commonwealth of Kentucky
Finance and Administration Cabinet
OFFICE OF ADMINISTRATIVE SERVICES
DIVISION OF HUMAN RESOURCES
702 Capital Avenue, Room 188
Frankfort, KY 40601
(502) 564-7233 / Fax (502) 564-2613

William M. Landrum III
Secretary

Stacy M. Perry
Division Director

December 6, 2017

Amelia M. Davenport

PERNR

Dear Ms. Davenport;

Having considered all statements made on your behalf during your pre-termination hearing held on November 29, 2017, I have determined that the weight of the evidence establishes that you acted as previously outlined in the intent to dismiss letter I sent to you on November 13, 2017.

Therefore, based on the authority of KRS 18A.095, you are hereby notified that you are officially dismissed from your position of Taxpayer Services Specialist II effective December 8, 2017.

You are being dismissed pursuant to 101 KAR 1:345, Section 1, for the specific reasons outlined in my letter to you dated November 13, 2017, and these reasons are again indicated as follows;

On September 12, 2017, Department of Revenue (DOR) Disclosure Officer, Rebecca Rodgers-Johnson, was informed by the Cabinet for Health and Family Services (CHFS) security liaison of a possible tax information security breach. The notification indicated that a DOR employee made statements to a CHFS child support caseworker about knowing confidential taxpayer information based on their employee access to DOR records and that the employee was attempting to leverage the confidential information for personal gain. Ms. Rodgers-Johnson discovered that you are the DOR employee in question. Further discussions with the caseworker revealed that you met with her regarding your child support case and that you stated that you knew you were entitled to an increase of child support because you were able to see what the father of your children (hereinafter referred to as the non-custodial parent, or "NCP") was making. The caseworker advised you not to communicate that information to her because if she knows of a security breach, she must report it. In response, you said you had a friend to look up the information for you. The caseworker explained that action is also prohibited as gainful information. You responded that it had been some time since the NCP's taxpayer information was retrieved. During your pre-termination hearing you claim you never said the aforementioned comments.

On September 13, 2017, when questioned by Ms. Rodgers Johnson and Deputy Commissioner Jane Becker, you denied any access to the NCP's account or that you had told the case worker any confidential information or that you had accessed any confidential information.

Ms. Rodgers Johnson, Ms. Becker and Assistant Director, Cindy Baker met with you on September 15, 2017 to ask if you had any additional information to add to your previous meeting. You explained you had received a call from the NCP as he was very angry that DOR had levied his whole paycheck. You said that you helped explain to him the account and told him it was completed incorrectly by his employer. You then told Ms. Rodgers Johnson, Ms. Becker and Ms. Baker that you transferred him to someone in Individual Collections because you could not help him with the case. When asked during the meeting if that was the only time you accessed his account, you stated you couldn't remember, but that you never took a payment for him and thought you had only looked at his case the one time. You told Ms. Rodgers Johnson, Ms. Becker and Ms. Baker that you didn't remember doing anything in his account because you don't work in Individual Collections. Ms. Rodgers Johnson asked you to confirm the time period you accessed the account and you stated that you and the NCP had broken up 3 years ago and your child support started approximately 6 months after that and the wage levy occurred a short time after the child support started coming out of his paycheck. You confirmed that would put the access in 2015.

During your pre-termination hearing you stated that you informed your supervisor at the time, Adam Schaffner of the call regarding the wage levy and your NCP and that you went to Jim Shelby, Section Supervisor in the Individual Collections Branch to see if he could provide assistance to the NCP. The NCP's account footprint does show that you accessed the account on March 25, 2015 at 9:11AM, then a co-worker in your section, Matthew Richardson accessed the account on the same day at 9:20AM and then Mr. Shelby accessed the account at 10:35AM that day.

During your pre-termination hearing you stated you can recall taking at least 2 payments from the NCP over the phone. DOR reviewed the access audit log and discovered that you accessed the NCP's account 29 times. Of those 29 access points, only four corresponded with an action completed. You last accessed the account in 2016—a year after the account was closed. When asked during your pre-termination hearing why you accessed the account 29 times, you stated that the access was the system refreshing and that one log in could show multiple times. That claim does not match to the case footprint as there are only a few instances of access made by you multiple times on the same day. The case history shows that you did receive calls from the NCP on June 17, 2015, August 17, 2015 and November 4, 2015 and payments were made to the account by you. On November 23, 2015 you made a history text on the account. The log shows you accessed the account 25 times with no action being taken. When asked why you accessed the account in 2016, you stated the NCP had texted you to confirm the account was closed as he was trying to purchase a home. Attached you will find the NCP's account footprint your access is indicated by your uniquely assigned REV numbe

By accessing and viewing the NCP's account and information without a business need, you violated Finance and Administration Cabinet procedure #6.1.2, Confidentiality of State and Federal Information. You violated confidentiality by viewing confidential taxpayer information without an authorized "need to know" reason. While the NCP is not a direct family member he is the father of your children and you do have a current child support agreement with him.

The Department of Revenue cannot tolerate such conduct. The Finance and Administration Cabinet views this type of misconduct as a serious violation of workplace policies and procedures and established standards of conduct. As an employee of DOR you have violated the trust and integrity you held as a Taxpayer Services Specialist II. You have abused access granted to you as a DOR employee to access a person of interest to you in defiance of DOR policies and procedures.

Pursuant to KRS 18A.032, you will not be certified on future registers for employment within the Finance and Administration Cabinet unless the Cabinet so requests. You may contact Jordan Moseley to pick up your personal belongings.

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 notification is received. Such appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

Sincerely,

Stacy M. Perry, Appointing Authority
Finance & Administration Cabinet

Attachment: Appeal Form

Cc: Thomas B. Stephens, Secretary, Personnel Cabinet
Dan Bork, Commissioner, Department of Revenue
Jane Becker, Deputy Commissioner, Department of Revenue
Mack Gillim, Executive Director, Office of Processing & Enforcement
Tammy Watts, Deputy Executive Director, Office of Processing & Enforcement
Stephen Crawford, Division Director, Division of Collections
Cindy Baker, Assistant Director, Division of Collections
Brandi Shular, Assistant Director, Division of Collections
Timothy Thomas, Revenue Branch Manager, Corporation Branch
Jordan Moseley, Revenue Section Supervisor, Corporation Section 2