

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 **OLIVIA DOTSON V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2023-002)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 18th day of June, 2024.



**GORDON A. ROWE, JR., SECRETARY
KENTUCKY PERSONNEL BOARD**

Copy to Secretary, Personnel Cabinet

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-002**

OLIVIA DOTSON

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

*** **

The Board, at its regular June 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated April 15, 2024, Appellant's Request for Oral Argument, and being duly advised,

IT IS HEREBY ORDERED that (1) the Appellant's Request for Oral Argument is **DENIED**, and (2) 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 18th day of June, 2024.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

A copy hereof this day emailed and mailed to:

Hon. Lucas Roberts
Hon. Ron Diddle
Hon. Rosemary Holbrook (Personnel Cabinet)
Jay Klein

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-002**

OLIVIA DOTSON

APPELLANT

VS.

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

** ** *

This matter came on for an evidentiary hearing on February 28, 2024, at 9:30 a.m., at 1025 Capital Center Drive, Suite #105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Olivia Dotson, was present and was represented by the Hon. Ron Diddle. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Lucas Roberts. Also present for the Appellee was L.C. Dobson.

BACKGROUND

1. The Appellant filed her appeal with the Personnel Board on January 9, 2023, from a five (5) -day suspension.

2. The issue for the evidentiary hearing was whether there was just cause for the five (5) -day suspension and whether the penalty was excessive or erroneous. The burden of proof was upon the Appellee and was by a preponderance of the evidence.

3. **Witnesses:**

a. Appellee:

- 1) L.C. Dobson, Service Region Administrator Associate
- 2) Shauna Moore, Service Region Administrator
- 3) Krystal Dean, Family Services Office Supervisor
- 4) Howard J. Klein, Assistant Director and Appointing Authority

b. Appellant:

- 1) Appellant, Olivia Dotson, Social Services Worker I

4. Exhibits:

a. Appellee:

- 1) TWIST Access Spreadsheet for the Appellant
- 2) Case Management Report for Client 2
- 3) Case Management Report for Client 1
- 4) Case Management Report for Client 3
- 5) Request for Major Disciplinary Action for the Appellant, dated June 6, 2022
- 6) Department of Community Based Services, Division of Protection and Permanency, Standards of Practice, Section 1.1 Ethical Practice, Section 1.16 Confidentiality and Safeguards Regarding DPP Office, Program and Facility Information, Section 2.1 Employee Conduct and Section 2.10 Privacy and Security of Protected, Health, Confidential, and Sensitive information
- 7) Five (5) -day suspension letter, dated November 10, 2022 and signed by Howard J. Klein

b. Appellant: – none

5. At the close of testimony, counsel for both parties presented closing arguments.

FINDINGS OF FACT

1. The Appellant, a Social Service Worker I, was suspended for five (5) days for accessing confidential information outside the scope of her job duties in The Workers Information System (TWIST). The Appellee alleged the Appellant accessed TWIST and reviewed confidential information regarding Client 1, Client 2, and Client 3 when none of the cases were assigned to the Appellant. The five (5) -day suspension letter was signed by the Appointing Authority Howard J. Klein (Klein) on November 10, 2022. This letter was introduced into evidence as Appellee's Exhibit 7 and is Attachment A to this Recommended Order. (Testimony of Klein and Appellee's Exhibit 7)

2. The Appellant was the assigned case manager for Client 1 from January 4, 2022 until February 18, 2022. On February 17, 2022, the Appellant's supervisor, Krystal Dean, informed the Appellant that she was removed from the case because Client 1 had filed a complaint. The Appellant was officially taken off the case the next day on February 18, 2022. The Appellant accessed Client 1 in TWIST on February 19 and twice on May 10, 2022. Dean was not aware of any reason the Appellant would access Client 1 in TWIST when she was no longer assigned to the case. If the Appellant needed to access the case, she should have

requested a “case share” from a supervisor, which she did not. The suspension also listed forty-five (45) occasions when the Appellant accessed Client 1’s case in TWIST when she was the assigned case manager. These forty-five (45) occasions were incorrectly identified as inappropriate access. (Testimony of the Appellant, Dean, Dobson, Klein, and Appellee’s Exhibits 1, 3 and 7).

3. The Appellant maintained she needed to access Client 1 in TWIST for a reason she could not remember on February 19, 2022. She stated that Dean said it was “fine” and “not a big deal.” The Appellant also stated that she accessed Client 1 in TWIST on May 10, 2022 for court. Dean was not aware of any reason the Appellant needed to access Client 1 on either date. The Hearing Officer finds Dean credible and finds that the February 19 and May 10, 2022 access of Client 1 in TWIST were unauthorized. (Testimony of the Appellant and Dean)

4. The Appellant was the case manager assigned to Client 2 from March 7, 2022 until May 24, 2022. She accessed Client 2 in TWIST nine (9) times from February 23 through March 6, 2022. Dean could not identify any reason for the Appellant to access Client 2 in TWIST before she was assigned the case. The suspension letter also identified the sixty-five (65) times the Appellant accessed Client 2 in TWIST when she was the case manager as inappropriate. (Testimony of the Appellant, Dean, Dobson, Klein, and Appellee’s Exhibits 1, 2 and 7).

5. The Appellant alleged that Dean told her she could familiarize herself with Client 2’s file in TWIST before she was officially assigned. The Hearing Officer finds Dean’s testimony more credible and finds the Appellant’s access of Client 2 in TWIST before March 7, 2022, to be unauthorized. (Testimony of the Appellant and Dean)

6. The Appellant was never the assigned case manager for Client 3, yet she accessed Client 3 in TWIST three (3) times on May 4, 2022. The Appellant claimed that one (1) of her clients told her that the child of Client 3 was subjected to abuse or neglect. The Appellant encouraged her client to report the abuse or neglect, but the client refused. The Appellant attempted to contact Dean for permission, but alleged that she did not contact Dean until the following morning. The Appellant admitted she did not attempt to contact the on-call supervisor. The Appellant stated she accessed Client 3 in TWIST in order to make a report of abuse or neglect. The Hearing Officer finds the Appellant’s access of Client 3 was unauthorized. By her own admission, she did not follow proper procedure when she did not contact the on-call supervisor and request permission. (Testimony of the Appellant, Dobson, and Appellee’s Exhibits 1, 4 and 7).

7. The Appellee’s policies and standards of practice emphasize client confidentiality. Social Service Workers are trained to request a case share if they believe they need to access a client in TWIST that they are not assigned to. At the time of these events, the Appellant had

been working as a Social Service Worker I for over a year and a half and should have known to follow procedure. (Testimony of Dobson, Moore, Dean, Klein, and Appellee's Exhibits 5, 6 and 7).

8. In the suspension letter, the Appellant was alleged to "have displayed inappropriate and unprofessional behavior towards clients, supervisors, and co-workers on several occasions." The Appellee presented no credible evidence of a Lack of Good Behavior with respect to these charges. The Appellee identified the wrong client as the one the Appellant called law enforcement on without supervisor approval. The Appellant engaged in mutual name calling with a coworker and then stopped, once she learned it might be offensive. Lastly, the Appellant told Dean that she was no longer a good supervisor because she had been around the other supervisors too long. The Appellee made no attempt to prove most of the allegations of unprofessional behavior. The Appellee failed to introduce any evidence justifying disciplinary action based on these allegations. (Testimony of the Appellant, Dean, Klein, and Appellee's Exhibit 7).

9. Klein testified credibly that unauthorized TWIST access results in a three (3) -day suspension. He stated this is true regardless whether the access is for personal gain or not. Even though the Appellant thought she was helping clients, she should have known her TWIST access was unauthorized and violated policy and her training. (Testimony of Klein and Appellee's Exhibits 6 and 7).

10. The Appellee proved there was just cause to suspend the Appellant for three (3) -days. The five (5) -day suspension was excessive because the Appellee failed to prove the allegations of "inappropriate and unprofessional behavior towards clients, supervisors, and co-workers." (Testimony of Klein and Appellee's Exhibit 7).

CONCLUSIONS OF LAW

1. The Appellee carried its burden of proof that there was just cause to suspend the Appellant for unauthorized access of confidential TWIST records. KRS 18A.095(1) and 13B.090(7), 101 KAR 1:345, CHFS Personnel Procedures 2.10, Privacy and Security of Protected Health, Confidential and Sensitive Information and DCBS, DPP, SOP Sections 1.1 Ethical Practice and 1.16 Confidentiality and Safeguards Regarding Client, DPP Office, Program and Facility Information.

2. The five (5) -day suspension was excessive because the Appellee failed to prove the Appellant demonstrated a Lack of Good Behavior through inappropriate and unprofessional behavior toward clients, supervisors and coworkers. KRS 18A.095(22) and 13B.090(7)

3. The appropriate penalty is a three (3) -day suspension for unauthorized TWIST access. KRS 18A.095(1) and (22)

4. Because all the events underlying this Appeal occurred before the effective date of Senate Bill 153, all references to KRS Chapter 18A are to the sections in effect at the time of the events associated with this Appeal.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **OLIVIA DOTSON VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2009-068)** be **SUSTAINED to the extent that the Appellee be ORDERED to:**

1. Reduce the five (5) -day suspension to a three (3) -day suspension and that the Appellant be reimbursed for two (2) -days of lost pay and benefits.
2. Delete the five (5) -day suspension letter dated November 10, 2022 from the Appellant's personal file and substitute a three (3) -day suspension letter taking out references to the Appellant's authorized TWIST access to Clients 1 and 2 and all references to "inappropriate and unprofessional behavior toward clients, supervisors and coworkers."
3. Reimburse the Appellant for any leave time she used attending the hearing and any pre-hearing conferences before the Hearing Officer.
4. And otherwise make the Appellant whole consistent with this Recommended Order. KRS 18A.105, KRS 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 fifteen (15) 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).

[Hearing Officer Note: Any document filed with the Personnel Board shall also be served on the opposing party.]

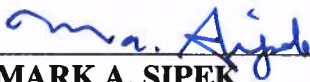
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov

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** this 15th day of April, 2024.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Lucas Roberts

Hon. Ron Diddle

Hon. Rosemary Holbrook (Personnel Cabinet)