

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-139

ERIC GOODIN

APPELLANT

VS.

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

TOURISM, ARTS AND HERITAGE CABINET
DEPARTMENT OF PARKS
BOB STEWART, APPOINTING AUTHORITY

APPELLEE

** ** *

The Board at its regular August 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 21, 2013, and having considered Appellant's exceptions, Appellee's response, 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 be altered as follows:

A. **Delete** Background paragraph 20 and substitute the following:

20. Appellant stated that he thought the employee was entitled to a verbal warning and up to three prior written reprimands before being terminated. The Appellant only received one previous written reprimand. He thought that a reprimand or suspension was the appropriate punishment in this case. Appellant was queried if a former Park Ranger, Larry Totten, had ever had a talk with him regarding sexual harassment. Appellant answered that he did not recall any discussions about inappropriate comments.

B. **Delete** Background paragraph 71 and substitute the following:

71. The conversation concluded with Googe telling Appellant she would continue investigating the situation and would let him know when the investigation was concluded and what management's decision was. Googe then interviewed Van Back and Kathy Hale regarding the alleged complaint Stargel

made about the missing money. She also reviewed Appellant's personnel file, his prior disciplinary actions, and his evaluations.

C. **Delete** Background paragraphs 98 and 99 and substitute the following:

98. Kathy Hale has been employed at LCSRP for the past 16 years. She is the Dining Room Supervisor. She has known the Appellant for 10 years, and stated that he was "very helpful" to work with. Hale stated that Appellant "teased, joked, and carried on" with the other park employees. As for guests, "he joked and laughed with them too. They loved him and still ask about him."

99. Hale testified that she has known Tonya Stargel and her family "all her life." She was asked to address a complaint Stargel made regarding some stolen property. Hale stated that she asked Stargel how her weekend was and Stargel replied, "Fine, until my wallet was stolen – it had a lot of cash in it." Hale reported the allegations to the Park Manager and Deron Polston, but Stargel never filed a formal complaint, so Hale took no further action. On cross-examination, Hale stated that Stargel had not named a specific employee in regard to the alleged theft.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as altered, be and they hereby are approved, adopted and incorporated herein by reference as a part of this Order and that the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that is Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100:

SO ORDERED this 14th day of August, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Misty Judy
Hon. Elmer J. George

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-139**

ERIC R. GOODIN

APPELLANT

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

**TOURISM, ARTS & HERITAGE CABINET,
DEPARTMENT OF PARKS,
MARCHETA SPARROW, APPOINTING AUTHORITY**

APPELLEE

** ** *

This matter came on for an evidentiary hearing on October 23, 2012, and on December 4, 2012, at 9:30 a.m. ET, at 28 Fountain Place, Frankfort, KY, before the Hon. Colleen Beach, Hearing Officer. The proceedings were recorded by audio/video equipment pursuant to the authority found at KRS Chapter 18A.

The Appellant Eric R. Goodin was present and represented by the Hon. Elmer J. George. The Appellee, Tourism, Arts and Heritage Cabinet, was present and represented by the Hon. Misty Judy.

The parties were granted to February 20, 2013, to file closing briefs. At that time, this matter was submitted to the Hearing Officer for a Recommended Order.

BACKGROUND

1. The Appellant, Eric Goodin, was a classified employee with status who worked as a Front Desk Clerk at the Lake Cumberland State Resort Park (LCSRP). He filed a timely appeal with the Personnel Board on June 15, 2012, from a dismissal. Appellant provided the following statement of facts relating to his appeal, "I am appealing a wrongful termination due to the facts of false information given in a complaint on me at Lake Cumberland State Resort Park. I did nothing wrong and have several co-workers waiting to testify on my behalf. Laurie Googe did not contact any of the employees which knew the facts of the complaint/complaintent (sic). I am a victim of sex discrimination and false information."

2. The Appellee called the Appellant, Eric Goodin, as its first witness. Appellant stated he had been employed at Lake Cumberland State Resort Park, as a Park Desk Clerk from October 16, 2003, until his dismissal on April 27, 2012.

3. As a Front Desk Clerk, Appellant's duties included processing e-mail reservations, tracking customer calls, checking guests in and out, and performing "general customer service." As a Front Desk Clerk, Appellant stated that he did have access to guests' home addresses and credit card information, but noted that he was only permitted to send e-mail confirmations and mail the receipts.

4. For a few months, from March to June 2009, he was also a temporary supervisor of the front desk employees. During his tenure as supervisor, Appellant was responsible for enforcing Park policy.

5. Appellant first learned of the complaint against him when he was called into the office of Mike Lynn, Acting Park Manager. Appellant's supervisor, Van Back, was also present. Appellant testified that he was asked if he wrote anything on an invoice sent to a customer, Tonya Stargel. He told them that he hadn't. He did say that he had known Ms. Stargel for a while and "considered her a friend." He denied saying that they dated or that they had had a physical relationship. Appellant described their relationship: "When I saw her in town, we talked. I've known her for 8 or 9 years."

6. Appellant was asked about his employment at Off-Track Betting (OTB). Appellant stated he worked there part-time, prior to being employed by Lake Cumberland. When queried if Ms. Stargel had also worked there, Appellant answered that he didn't remember her working there.

7. Appellant was asked if he wrote on the invoice he sent to Tonya Stargel. Appellant answered that he wrote a note on a piece of paper and enclosed it with the invoice. He testified that he wrote: "A trade would have been fun."

8. Appellant was asked to explain the events that occurred on January 28 and 29, 2012. Appellant stated that Stargel had called the front desk that Friday night (1/28/12) to place a food order. That evening the only items available from the kitchen were hamburgers and chicken sandwiches. Appellant stated that Stargel complained about the limited choices, but placed her order and asked it to be delivered to the cottage where she and her scrapbooking group were staying. Appellant testified he told her, "I can't bring your food because I can't leave the desk." He stated that he could tell Stargel had been consuming alcohol. Stargel told him: "You can come to the room and stay with us." Appellant responded: "I can't because you're married." Stargel replied: "That never stopped me before." Appellant then asked if there was anyone in her group sober enough to pick up the food. Appellant stated that it was obvious Stargel had been drinking because her speech was slurred.

9. Appellant never saw who picked up the food order because he had left work by then.

10. Appellant was asked to explain the invoice sent to Stargel (introduced as Appellee's Exhibit 2), in which the following notation appears: "Trade would have been much more fun for both of us. Love ya, Eric." Appellant agreed that it appeared to be his handwriting, but stated he believed Stargel traced his note – written on a separate sheet of paper – onto the invoice. A copy of the invoice is enclosed as Recommended Order Attachment B. Appellant denied that the invoice appeared to be altered in any other way.

11. Appellant was asked what he meant by the word "trade" on his note to Stargel. He testified that he was referring to Stargel's proposition to him. When asked what it was he was proposing to trade, Appellant answered: "More credit on her room."

12. Appellant stated he put the envelope containing the invoice in a wire basket designated for the Business Office, and a staff member picked it up the next morning.

13. Appellant first learned that he had been referred to Human Resources when he was interviewed on March 6, 2012, by Laurie Googe, Monica Conrad, and Barbara Atwood. According to Appellant, he felt that Ms. Atwood and Ms. Googe had already decided he was guilty and accused him of being a chauvinist. When asked if he felt it was a good idea to send a note like that to a married woman, Appellant replied: "She was overly flirtatious with me all the time. It was done in a joking manner. . . It's always been her business; I just found out he owns part of her business. He's not been to her retreats, except one."

14. Appellant testified he had told Laurie Googe that he had, at one time, a "close friendship" with Ms. Stargel, but denied he ever stated they had had a physical relationship. He added that Mr. Stargel "never liked me because of my friendship with his wife. He gives me hateful looks, won't talk to me. He's made derogatory statements about me to friends."

15. Appellant stated that he had been "Facebook friends" with Ms. Stargel for a couple of years. He supplied to Laurie Googe the printout of a Facebook "conversation" he had with Ms. Stargel on February 6, 2012. Part of the conversation contains the following dialogue:

Eric Goodin:	I sent you a copy of the paid bill.
Tonya Stargel:	You ERICS are a lot of trouble.
Eric Goodin:	not me.
Tonya Stargel:	Thanks for the compliments – but won't work for now. Love my hubby. Finally found someone.
Eric Goodin:	I can wait. All men screw up eventually. LMBO.
Tonya Stargel:	lol. No more chatting for me.
Eric Goodin:	I just wish I had known before ya fell for him, but I'm sure he's a good guy. Take care.

16. When queried if some part of the conversation had been deleted on the Facebook page he had printed for Ms. Googe, Appellant replied, "I just printed it out; what the computer showed." He stated that the dialogue is an "IM (instant message)" or "chat." He denied that he

had ever written, "Trade, trade, trade" to Ms. Stargel on her Facebook page, but did admit to Ms. Googe that some part of their conversation may have been left out.

17. Appellant was asked when he first met Ms. Stargel. He stated, "Sometime in 2001 or 2002 when I was approximately 36, I saw her in town." He denied remembering working with her at Off-Track Betting. Appellant claimed he had spoken two or three times on the telephone prior to her marriage, "but it was just conversation – not asking her out," he added.

18. Appellant testified the first time he mentioned "trade" was when he wrote it "in jest" on the bill. Appellant stated that he felt Ms. Stargel was "trying to get back at him" because he "turned her down."

19. After Appellant received the "Intent to Dismiss" letter, he requested a pre-termination hearing, which was held on April 18, 2012. Tiffany Yeast, Laurie Googe, Misty Judy and his attorney at the time, Robert Bertram, were present.

20. Appellant stated he had had three prior written reprimands. Appellant was queried if a former Park Ranger, Larry Totten, had ever had a talk with him regarding sexual harassment. Appellant answered that he did not recall any discussions about inappropriate comments.

21. Stephanie Foley was employed as a seasonal worker at Lake Cumberland State Resort Park from April 2005 to July 2008. Her last two summers there she worked the same shift as Appellant. Foley testified that one day he made the comment to her, "Hop onto the counter. I'm hungry." Foley complained to Larry Totten about the comment.

22. On cross-examination, Foley was asked if the comment was made in jest. She stated that she wasn't sure, but added, "Some other girls joked with him in a sexual manner and then one day they would file a complaint." Foley denied that she teased him in a sexual way. Appellant did apologize to her after she made the complaint to Totten.

23. Tonya Stargel lives in Russell Springs, Kentucky. She is self-employed and owns two businesses, Scrapbook Memories and The Playground, a children's consignment store.

24. Stargel stated that she has, for the past several years, held scrapbooking retreats at Lake Cumberland. She holds two retreats per year. Approximately 40 to 80 women usually attend these weekend retreats, but the January 28, 2012 event was a smaller event -- there were only 8 to 10 women -- and it was held at Pumpkin Creek Lodge, not the main lodge.

25. Stargel testified that she first met Appellant in 1998 or 1999, when she was 18 or 19 years old. They were both employed at OTB. She stated that her boss heard Appellant say sexual things to her. She denied that she had ever had a relationship of any kind with Appellant.

26. Stargel was asked to refer to the events that occurred the evening of January 28, 2012. Stargel testified that her children and husband had come by the lodge to eat dinner with her. When she placed the phone order for the food, they were present, along with the other women attending the retreat. She used her cell phone to call the lodge's front desk, and asked to speak to the kitchen. Appellant told her the kitchen was too busy and Appellant took her order instead. After the order was placed, her husband drove her to the main lodge and she ran in to get the food.

27. Stargel stated that she was not drinking alcohol that evening, and in fact, alcohol is not allowed at her scrapbooking events.

28. As for her conversation with Appellant while placing the food order, she denied that she requested Appellant to join her, or invited him to stay with her. She denied he ever said, "You're a married woman." There was nothing uncomfortable about this conversation, Stargel testified. She had no further contact with him that evening.

29. On February 6, 2012, Stargel called the lodge to speak to Deron Polston in the business office regarding her bill. Appellant answered the phone and told her Polston was not available. Stargel asked if she could pay her bill over the phone. Stargel testified that Appellant said to her, "Can you trade the bill for sex?" Stargel responded, "Oh, stop it." Appellant then said, "No, you're really hot." Stargel replied, "Thanks for the compliments, but I'm happily married."

30. One of her customers, Angie Belcher, was present during the February 6, 2012 phone call.

31. Stargel stated that she was "shocked" at his comments. Stargel testified that within minutes of hanging up, Appellant sent her a message on her Facebook page: "Trade, trade, trade." She printed out a copy of this Facebook page and gave Parks management a copy. It was introduced into the record as Appellee's Exhibit 7.

32. The day Stargel received the invoice, she was with her husband in their vehicle. He pulled up to the mailbox, retrieved the mail and handed her the letter. After she read Appellant's note, she said to her husband, "You're not going to believe this," and handed the invoice to him to read. They proceeded to call the park to complain but "got referred to different people." She first told Mike Lynn, and then spoke to Laurie Googe. She also filed a written complaint, which was introduced as Appellee's Exhibit 8.

33. Stargel stated she has not spoken to Appellant since their phone conversation on February 6, 2012, and has not seen him outside the park.

34. On cross-examination, Stargel was asked if she allowed Appellant to be her "friend" on Facebook. She responded that she wasn't sure, she uses Facebook for marketing her business and she thought her profile could be "public."

35. Stargel was asked about complaints she had made against Lake Cumberland Park staff. She stated she had complained about the dining room service before, and also complained about the Pumpkin Creek Lodge meeting room, which would not lock the evening of January 28, 2012. She and another guest had to sleep in the meeting room to keep an eye on the participants' scrapbooking materials. The park "comped" that room for them.

36. Stargel was asked to describe an incident that involved the theft of some money. She stated that at one of the scrapbooking events, one of her customers went to the dining room. She had a planner that contained two or three thousand dollars. The customer lost the planner and the money was not recovered. Stargel called the park later to follow up.

37. Angela Belcher is a friend and customer of Tonya Stargel's. She testified that she attended the January 28, 2012 scrapbooking event Ms. Stargel held at Pumpkin Creek Lodge at LCSRP. Sometime between 5 and 6 p.m., Stargel called the food order in to the front desk. Belcher was standing by Stargel as she called the food order in to make sure she got the order right. Belcher testified that she never heard Stargel invite Appellant to join her that evening, nor did she hear Stargel say, "That never stopped me before."

38. Belcher stated that while she called the order in, Stargel's husband and children were in the meeting room with them. No one was drinking and she noticed "nothing unusual" about the incident.

39. Belcher was also present at Stargel's scrapbooking store when she called the front desk at LCSRP to pay the bill. Belcher was sitting across a desk from Tonya and saw her make a "disgusted" face. Stargel scribbled on a piece of paper, "he wants to trade for bill." Belcher heard Stargel say "No, I'm happily married; I just want to pay my bill."

40. On cross-examination, Belcher stated she is 40 years old, and has known Stargel for 22 or 23 years. She has done business with Stargel for approximately 11 years.

41. Belcher attends Stargel's scrapbooking events at LCSRP twice a year. The events used to be held at Jamestown, but they outgrew the space there, Belcher stated.

42. On the morning of January 28, 2012, Belcher arrived sometime between 8 and 10 a.m. There were about 10 or 12 people in attendance, and they all stayed at the Pumpkin Creek Lodge. Belcher only went to the main lodge once, to get some new keys, because the ones they were given didn't work. The problem with the keys was never resolved. She and Stargel were given blankets and pillows and they slept in the meeting room to watch over the other women's scrapbooking materials.

43. Mike Lynn is currently employed as a Park Manager II at Dale Hollow State Resort Park. From January to May 2, 2012, he was employed at Lake Cumberland State Resort Park as an Acting Park Manager.

44. Lynn was asked to explain how the lodges were set up at LCSRP. He explained that there is a main lodge that houses 50 guest rooms, the administrative offices, and the "front desk" where guests check in. Located about a half mile from the main lodge is "Pumpkin Creek" lodge, a smaller facility that houses 10 guest rooms and a meeting room.

45. As Acting Manager of LCSRP, Lynn was Appellant's second-line supervisor. Lynn described Appellant's job duties as front desk clerk as answering telephones, taking reservations and checking guests in and out.

46. Lynn was asked to refer to the incident that occurred in February 2012 involving Appellant and Tonya Stargel. Lynn stated Group Sales Coordinator Deron Polston informed Lynn of a verbal complaint made by Tonya Stargel's husband. Lynn called Mr. Stargel, who informed Lynn that Appellant had sent Ms. Stargel a "folio"¹ to their home address which had a written message on it to his wife. Mr. Stargel also stated that Appellant had also contacted his wife on Facebook. Lynn told Mr. Stargel his wife needed to call him and make the complaint herself. Tonya Stargel sent Lynn a letter regarding the incident which was introduced into the record as Appellee's Exhibit 8.

47. Lynn sent Ms. Stargel's letter and a copy of the folio with the handwritten note to Laurie Googe, Personnel Director of the Department of Parks, and to his immediate supervisor, Monica Conrad. Googe directed Lynn to speak to the Appellant, and on February 29, 2012, he had a meeting with Appellant and Front Desk Supervisor, Van Back. When first questioned about the note, Appellant stated he did not remember if he had sent one. When Lynn showed him a copy of the message, he admitted it was his handwriting. When Lynn asked Appellant for an explanation, Appellant "referenced that he and Ms. Stargel were more than front desk clerk and guest. They had known each other for several years, going back to high school. He even suggested they had a relationship more than friendship, even so far as dating."

48. After the meeting, Lynn sent Laurie Googe an e-mail regarding their conversation. The e-mail, dated February 29, 2012, 7:00 p.m., was introduced as Appellee's Exhibit 10. In the e-mail Lynn relayed to Googe the Appellant's comments about his relationship to Stargel: "[Appellant] said that he was good friends with this lady and he commented that they dated a long time ago."

49. Lynn had been told by Appellant that Stargel could be demanding and referenced an incident regarding a purse that had gone missing. Lynn "looked into the matter," but could find no evidence documenting that allegation. Lynn learned of another complaint Stargel allegedly made from Deron Polston who told him that Stargel had stated that someone had "gotten into her room." Lynn investigated that allegation too, but again found nothing to corroborate it.

¹ Lynn described a "folio" as a receipt with a guest's account balance and some general information regarding the person or organization that made the reservation, such as their mailing address.

50. Lynn presented the Intent to Dismiss letter to Appellant on March 23, 2012. Laurie Googe was on the phone during this meeting to answer any questions Appellant may have had. After receiving the letter he was immediately placed on paid leave until his dismissal on April 27, 2012.

51. On cross-examination, Lynn stated that while he was employed at LCSRP, Appellant was a good worker and that he had received no other complaints regarding Appellant for the approximately 4 months Lynn worked at the Park.

52. Lynn was asked if Appellant "seemed dumbfounded" when Lynn questioned him about the note he wrote Stargel. Lynn replied, "No, but he was very vague. I felt that he didn't know I had the folio."

53. Monica Conrad is currently Director of Resort Parks, a position she had held since May 2012. Prior to assuming that position, she was Regional Director of 8 resort parks, including LCSRP. She was Appellant's third-line supervisor at the time of his dismissal.

54. On February 21, 2012, Conrad received an e-mail from Mike Lynn, informing both Conrad and Laurie Googe of Tonya Stargel's complaints against Appellant. Stargel's letter was included as an attachment to the e-mail.

55. Conrad advised Lynn to speak to Appellant about the complaint and report their conversation back to her and Googe. Conrad also spoke to Stargel to inform her of "what the park was going to do. She asked if he was still employed." Conrad explained that he was a merit employee, ". . . and there was a process we had to follow. I told her that if the investigation was still ongoing, we would have [Appellant] scheduled off when she came to the park."

56. Some time the first part of March 2012 (Conrad could not recall the exact date), she and Googe and Barbara Atwood, Executive Director of the Tourism, Arts and Heritage Cabinet, met in person with Appellant.

57. At the meeting, Appellant admitted he had written Stargel a note, but denied it was on the invoice. Appellant told them Stargel had called him asking that food be delivered to her guest room. He also stated that he had a previous relationship with Stargel. He stated that they had a "history," and had dated in the past.

58. When queried about Appellant's demeanor during the meeting, Conrad answered, "He was not taking it very seriously. He was nonchalant about the entire event."

59. After Laurie Googe concluded the investigation, the decision was made to dismiss Appellant. Conrad felt dismissal was appropriate because, "[Appellant] violated the trust of a guest. He admitted he wrote a note and sent it to a guest of our park system. As a park desk

clerk, he had access to guests' personal history and information, as well as the keys to their room. [Appellant's] actions were egregious and inappropriate for a person in this position."

60. On cross-examination, Conrad denied that Barbara Atwood had been "abusive" or called Appellant a "male chauvinist" at their March meeting. Conrad admitted that in rural areas, guests and park employees often know each other.

61. Laurie Gooze is the Human Resources Director for the Kentucky Department of Parks. She manages the Human Resources Division and is the official custodian of Parks' policies and procedures. She also serves as Appointing Authority for disciplinary actions and employee appointments.

62. Gooze stated that the complaint against Appellant by Tonya Stargel was first brought to her attention by Mike Lynn. She instructed Lynn to follow-up on the complaint by allowing Appellant to provide a response to the allegations.

63. On March 6, 2012, while she and other park managers were at LCSRP for a meeting, she arranged an interview with Appellant. Accompanying her were Monica Conrad and Barbara Atwood.

64. At this meeting with Appellant, he was asked if he had written the note on the invoice. Appellant denied that he had written on the invoice itself, but did admit writing a note on a separate piece of paper.

65. When asked if he felt that was appropriate, Gooze testified Appellant: "[S]aid he was joking, that he had had a relationship with [Stargel]. He knew her before she came to the park and they dated. He meant it as a joke. He never dreamed her husband would open it. [Appellant] said Stargel's husband didn't like him because he had had a previous relationship with his wife."

66. As for the events that transpired the evening of January 28, 2012, Gooze stated that Appellant recounted that Stargel had called the front desk and asked Appellant to deliver the food. He thought she was inviting him to come to her room to hang out.

67. Gooze asked Appellant several times what "trade" meant, but he would only state that "He never meant it seriously. He thought she would think it funny." In Gooze's opinion, the note he wrote: "A trade would have been fun, Love ya, Eric," was sexual in nature.

68. Stargel contacted Gooze to discuss an upcoming stay she had reserved and whether Appellant would be present at the lodge. Gooze explained to her that, "we had a process to follow before I could take action, but I assured her [Appellant] wouldn't be there when she came in."

69. During this conversation, Gooze asked Stargel if she had ever dated Appellant. She responded, "Absolutely not." She also denied that they had ever been friends.

70. Some time around March 20 or March 21, 2012, Gooze had a follow-up telephone conversation with Appellant. Because Mike Lynn was unavailable, she asked Joe Mounce, Business Manager, to "sit in" on the conversation. She told Appellant she wanted to give him "the opportunity to be honest" with her. She asked him if he dated Stargel. He responded that they went way back; he knew her from the community, but they didn't date. He did say they had had phone conversations. He denied ever telling her she was "hot," or that he was thinking about her. He denied writing "Trade, trade, trade" on her Facebook page.

71. The conversation concluded with Gooze telling Appellant she would continue investigating the situation and would let him know when the investigation was concluded and what management's decision was. Gooze then interviewed Van Back and Cathy Hill regarding the alleged complaint Stargel made about the missing money. She also reviewed Appellant's personnel file, his prior disciplinary actions, and his evaluations.

72. Gooze stated that she discussed Appellant's situation with her "support team" which was comprised of Human Resources Executive Director Tiffany Yeast and Misty Judy in Legal Services. They considered previous disciplinary actions given to other employees and decided that dismissal was the appropriate action.

73. A pre-termination meeting was held on April 18, 2012. Gooze attended along with Yeast and Judy; Appellant was present and accompanied by his legal counsel at the time. Gooze testified that Appellant stated Ms. Stargel caused trouble for the park, complained often, and had acted inappropriately towards him the evening of January 28, 2012, by trying to get him to her room. He also said Stargel had been drinking. Gooze noted that this was the first time Appellant "had implied Stargel made a suggestive comment to get him to her room." Gooze stated Appellant admitted he was aware of the Cabinet's policy on harassment and that he had received a verbal counseling from the former Park Manager about the policy.

74. At the meeting, Appellant asked Gooze to speak to another front desk employee, Katie Smith, about what she may have overheard the evening January 28, 2012. Gooze did speak to Smith, but Smith could barely recall Stargel calling in the food order and did not overhear anything inappropriate. Gooze also spoke to Deron Polston, Group Sales Coordinator, about Stargel's complaints. Polston related the nature of Stargel's complaints, but Gooze found them to be "legitimate general complaints a guest would make if they were dissatisfied."

75. Gooze testified that dismissal of Appellant was the appropriate action because front desk employees have access to confidential information, including credit card information and other guest records, and that it was inappropriate for Appellant to communicate with a guest on an invoice, especially a comment of a sexual nature. Gooze further stated that while she was not able to corroborate inappropriate behavior by Appellant on the phone or via Facebook, she felt he was not truthful to her or cooperative during her multiple conversations with him.

76. On cross-examination, Googe was asked if any male staff members had been involved in the March 21, 2012 meeting with Appellant. Googe stated, “No.” Googe denied Barbara Atwood had called Appellant a “male chauvinist” or that she had been “abusive” to him.

77. Googe was asked why she felt Appellant had been untruthful to her over the course of her investigation. She responded that Appellant “was misleading me to believe he had this relationship and it wasn’t until I confronted him with Stargel’s comments that he changed his story.” Googe admitted that there were inconsistencies in Stargel’s statement as well, and stated that she found no evidence that Appellant had written “Trade, trade, trade” on Stargel’s Facebook page.

78. Googe was asked to address Appellant’s employment record. She stated that he had worked for the State for ten (10) years; he had one prior disciplinary action (a written reprimand from 2007²), and that his performance evaluations had been good.

79. Googe was asked why – with such a positive employment history – Appellant had been dismissed. She answered, “In this situation, I felt this one incident – with his history of “joking” – caused me to question his judgment. His role is to maintain guest confidentiality and I did not feel comfortable putting him back in that position. It was egregious and I think it rose to the level of dismissal. In my opinion, he was not forthcoming in the beginning, but putting that message on the invoice was enough to warrant dismissal.”

80. At the end of Googe’s testimony, the Appellee rested its case.

81. Appellant **Eric Goodin** was called as Appellant’s first witness. Appellant was asked to recall his March 6, 2012 meeting with Laurie Googe, Barbara Atwood and Monica Conrad. Appellant stated that he did admit writing a note to Stargel on a piece of paper. He added that Atwood “talked to me like a dog. She accused me of messing with a married woman. She said I was a male chauvinist.”

82. Appellant recalled that Conrad had asked him about a prior incident with a co-worker. Appellant explained that his supervisor, Larry Totten, had once told him he “needed to watch what he said in front of co-workers,” but denied that this was a verbal reprimand.

83. As for whether Appellant told Googe, Conrad or Atwood that he had “dated” Stargel, Appellant answered that he “did not remember saying that.” But he does think of Stargel as a friend, “I told her stuff, she told me stuff.”

84. Appellant was asked exactly what he mailed Stargel. He responded, “A folio with a note on a piece of paper stuck to it.” He stated that he “was joking with her because she jokes with me all the time. She’ll say ‘Hey Baby’ or ‘Darling’ or ‘Sweetie’ to me.”

² The written reprimand was for an alleged “joke” Appellant played on another employee.

85. Appellant denied that he had ever “harassed” Julie McDonald or Stephanie Foley. As for his relationships with guests, Appellant said he did sometimes “joke with guests,” but only people that he knew and never inappropriately.

86. When queried if he had ever had a “problem with his job,” Appellant stated that a “false complaint” against him cost him the supervisory position he temporarily held.

87. Appellant was asked to address the complaints that Tonya Stargel made. Appellant testified that “Stargel complained all the time. Every ten minutes she complained – the meeting room was too cold or too hot. Nothing was ever right.” Appellant added that when she had complaints “she asked for me or Deron Polston.” She had had charges comped in the past due to her dissatisfaction with her stay.

88. On cross-examination, Appellant was asked what he meant by “a trade would have been more fun,” specifically if Stargel would have known what “trade” Appellant was referencing. Appellant answered, “She would have known it was a joke. I wrote it and didn’t think anything about it. I didn’t mean anything sexual by it. I thought we were friends.”

89. Appellant was asked why – if he considered Stargel a complainer – he wrote on the invoice. He responded, “Because she always confided in me. She knew we – me and Deron – would try to make it right because we do need the revenue.”

90. Appellant was asked to address Mike Lynn’s March 22, 2012 e-mail to Laurie Googe (Appellee’s Exhibit 10), in which he summarizes his meeting with Appellant and Van Back. In the e-mail, Lynn writes that Appellant “could not recall weather (sic) he propositioned the guest. . .” He also stated that Appellant “said that he was good friends with this lady and he commented they dated a long time ago.” Appellant testified that the statements in the e-mail were incorrect.

91. Linda Wilson works in the dining room at LCSRP. She is a Cashier/Hostess, and has been so employed for the past 13 years. She stated she has known the Appellant for six (6) years, and occasionally they worked the same shift.

92. Wilson was queried if she knew Tonya Stargel. She responded that she has known Stargel since she was a child, and is also acquainted with Stargel’s mother and grandmother. As for Stargel’s behavior as a guest at LCSRP, Wilson stated that Stargel “is never satisfied, has no patience and is always ready to report things. Her husband is worse.”

93. Wilson stated that the Appellant is very helpful to work with, and treats the guests well. She denied she had ever seen Appellant act inappropriately around Stargel. She agreed that Appellant does “like to tease people.”

94. On cross-examination, Wilson admitted she had been involved in an incident with Stargel, sometime in January 2011. The dining room had been completely booked and Stargel demanded that she be seated in the back. Stargel later complained that Wilson had been rude.

95. Brenda Hammond has been employed at LCSRP for the past 33 years as a dining room server. She has worked with Appellant in the past and stated that he is "great" to work with. She added that she has never seen him act inappropriately. Stargel once accused her of stealing, and asked that Hammond never wait on her or her party.

96. Debra Bernard is a seasonal custodian at LCSRP, where she has been employed since 2005. Bernard testified that she has seen Appellant interact with guests and that he was "really good at his job." She agreed that he "likes to cut up." As for Tonya Stargel, Bernard stated she was "sometimes bitchy, sometimes sweet, but she was very demanding. She wanted things right away." Bernard testified Stargel "cut up and teased" with Appellant. They acted like they were the best of friends. Because Bernard was a seasonal worker, she was not employed at LCSRP in January 2012.

97. Andrea Foley is a full-time Hostess and Cashier at LCSRP, where she has been employed since 1999. Foley described Appellant as a "good employee" and "courteous with customers." She characterized Stargel as "demanding." Foley had never personally observed any interactions between Appellant and Stargel.

98. Kathy Hill has been employed at LCSRP for the past 16 years. She is the Dining Room Supervisor. She has known the Appellant for 10 years, and stated that he was "very helpful" to work with. Hill stated that Appellant "teased, joked, and carried on" with the other park employees. As for guests, "he joked and laughed with them too. They loved him and still ask about him."

99. Hill testified that she has known Tonya Stargel and her family "all her life." She was asked to address a complaint Stargel made regarding some stolen property. Hill stated that she asked Stargel how her weekend was and Stargel replied, "Fine, until my wallet was stolen – it had a lot of cash in it." Hill reported the allegations to the Park Manager and Deron Polston, but Stargel never filed a formal complaint, so Hill took no further action. On cross-examination, Hill stated that Stargel had not named a specific employee in regard to the alleged theft.

100. Allen Liten is a Front Desk Clerk at LCSRP, where he has worked for approximately twenty (20) years. Liten stated that Appellant "does his job well, communicates with guests well." As for Appellant's interaction with Stargel, "they seemed to have a long-term, friendly relationship." Liten testified that Stargel would "hang out with [Appellant] for a while, ten to 45 minutes. They would tease and cut up. She would be flirtatious or over-friendly." Liten admitted he could not hear their actual conversation, "I would be working the switchboard most of the time."

101. **Roger Deron Polston** is the Sales Coordinator at LCSRP, a position he has held for the past 2 1/2 years. He described his job duties as “trying to solicit business, getting groups to come in and taking care of them.” He was at one time Appellant’s supervisor, back when he had first started at LCRSP, eight years ago.

102. Polston denied that he had ever received any complaints about Appellant’s job performance. Polston stated that Appellant’ interaction with guests “was always good.”

103. When queried about Tonya Stargel’s behavior, Polston answered that “she complained some,” but that her complaints were general ones – the kind that he heard from other guests. The only odd complaint, Polston added, was the time she complained of money missing from the conference room. Polston testified that he had never seen Stargel with Appellant.

104. The initial complaint regarding Appellant’s note to Stargel came to Polston because the Park Manager was not at the park when Stargel’s husband called. Polston told Mr. Stargel that he should contact Mike Lynn.

105. **Van Back** worked at LCSRP for three years as the Front Desk Supervisor and was Appellant’s first-line supervisor. He is currently employed by the Wayne County Convention Bureau.

106. Back was present at the interview that occurred on February 29, 2012, between Mike Lynn, Park Manager, and Appellant regarding the complaint the Stargels made. Back recalled Appellant stated that he and Stargel were “good friends,” but could not recall him stating that he dated her.

107. Back stated that Appellant was a good employee who was pleasant to guests.

108. **Timothy Muckler** is a Landscape Garden Supervisor at LCSRP, a position he has held for the past twelve years. He has known Appellant since he started working at the park. He described Appellant as someone who liked to “tease and cut up.”

109. Muckler testified that the Maintenance Supervisor, Jack Golber had been an “abusive bully,” and made “threats to park employees, and false statements.” Muckler informed Laurie Gooe of this behavior, but Golber only received a suspension and eventually returned to work, where he is still Muckler’s supervisor.

110. Golber was aware that Gooe had investigated Muckler’s complaints. He denied that Gooe had retaliated against him in any way.

111. **Melissa Ann Murray** began working at LCSRP full-time in 2000, and was originally hired as a housekeeper. She is now the Housekeeping Supervisor.

112. Murray testified that housekeeping staff and the front desk personnel interact frequently. She stated that Appellant “was good to work with – he was always prepared. Things were much better organized when [Appellant] was there.”

113. Murray stated she was familiar with a complaint a housekeeping employee made regarding an inappropriate picture another employee, Michael Duggins, drew. Murray complained about Duggins’ misconduct to Eddie Moore, who was then the Park Manager. To Murray’s knowledge, Duggins was not reprimanded.

114. On cross-examination, Murray stated that she did not complain about Duggins’ actions to Laurie Googe. Murray agreed that she did not have first-hand knowledge as to whether Duggins received any disciplinary action.

115. Sonya Robertson works in the Housekeeping Department of LCSRP, a position she has held since 1998. Robertson knows Appellant from his position there at the front desk. Robertson stated that Appellant was good to work with, and never did anything inappropriate.

116. Robertson stated that another Park employee, Mike Duggins, “cussed [her] and made a gesture about [her] butt.” She reported the incident to her supervisor, Melissa Murray, who reported it to the Park Manager, Eddie Moore. The end result, Robertson testified, was that “[she] got a verbal over Mike Duggins’ cussing me. Everyone is so scared of him. I dread going to the Park. Have had to get on nerve pills.” It’s a little better now that Duggins is not in her department, Robertson added.

117. On cross-examination, Robertson admitted she did not have personal knowledge as to whether Duggins ever received a disciplinary action. Robertson agreed that she was “disgruntled like a whole lot of people” at LCSRP.

118. At the end of Robertson’s testimony, the Appellant rested his case.

119. The Appellee called Barbara Atwood as its first rebuttal witness. Barbara Atwood is the Executive Director of the Tourism, Arts and Heritage Cabinet. She was present at the March 6, 2012 meeting held with Appellant, Laurie Googe, and Monica Conrad.

120. Atwood denied that she called Appellant a “male chauvinist.” She also denied accusing Appellant of “attempting to mess around with a married woman.”

121. Laurie Googe was recalled by Appellee as a rebuttal witness. Googe was asked if she investigated complaints LCSRP employees made against Mike Duggins. She answered that she did investigate the allegations, and Duggins received a 20 or 30-day suspension (she could not recall which), and was transferred to another park. As for Eddie Moore, he was ultimately dismissed by the Department of Parks.

122. On cross-examination, Googe admitted that morale at LCSRP is low. “They have been without a Park Manager for a long time.”

123. KRS 18A.095(1), states:

A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.

124. 101 KAR 1:345, Section 1, states:

Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.

FINDINGS OF FACT

1. Appellant, Eric Goodin, was a classified employee with status who was employed as a Front Desk Clerk at Lake Cumberland State Resort Park.

2. On April 27, 2012, Appellant was dismissed for "Lack of Good Behavior, Unsatisfactory Performance of Duties, and Misconduct in Violation of Conduct and Harassment Prevention Policies." (Dismissal letter, Appellee's Exhibit 15.)

3. On February 6, 2012, Appellant mailed a copy of an invoice and credit card receipt to Tonya Stargel, who stayed at LCSRP on January 28 and 29, 2012, for a scrapbooking retreat sponsored by Stargel's business, "Scrapbook Memories."

4. Under the credit card receipt, which was stapled to the invoice, were written the words: "Trade woulda been much more fun for both of us. Love ya, Eric."

5. While admitting that the handwriting was his, Appellant stated that he had written the words on a separate piece of paper, which he had enclosed with the invoice. Appellant asserted that Stargel must have traced the note directly onto the invoice itself. Stargel testified that the notation was written on the invoice, and "hidden" by the credit card receipt which was stapled directly over it. Having seen the original document at the evidentiary hearing, and having considered the testimony of both witnesses, the Hearing Officer finds that the notation was written directly on the invoice by Appellant, and not "traced" onto it by Stargel.

6. The events that led up to the written note on the invoice were strongly contested. On the evening of January 28, 2012, Stargel called the front desk to place a food order for her scrapbooking retreat, and spoke to Appellant. Appellant testified that he "could tell Stargel had been consuming alcohol," and asserted that she flirted with him, inviting him to "come to the room and stay with us," to which Appellant claimed he responded: "I can't because you're married." Appellant testified Stargel answered, "That never stopped me before."

7. Conversely, Stargel testified she merely placed the food order with Appellant the evening of January 28, 2012, and nothing else noteworthy transpired. She also denied that she

drank alcohol that evening and asserted that the use of alcohol is forbidden at her scrapbooking retreats. Stargel did state that on February 6, 2012, the day she called LCSRP to discuss her bill, Appellant "propositioned" her, asking, "Can you trade the bill for sex?"

8. The Hearing Officer, having observed the witnesses at the evidentiary hearing and weighed the credibility of their testimony, rejects Appellant's claim that Stargel was inebriated and flirting with him the evening of January 28, 2012. Stargel's assertion that she had not been drinking and merely placed the food order with Appellant was bolstered by the corroborated testimony that Stargel's husband and children were with her that evening, and standing in close proximity to her when she made the call.

9. The testimony regarding the exact nature of the relationship between Appellant and Stargel was also conflicting. Appellant stated that he considered Stargel a "friend," and asserted that Stargel was "overly flirtatious with him all the time." Stargel denied that she had ever had a "relationship" with Appellant. A review of their Facebook "dialogue" reveals to the Hearing Officer that Appellant's advances are responded to, but politely rebuffed, by Stargel.

10. While it was undisputed that Appellant was an effective Front Desk Clerk, it was equally uncontroverted that he was a "jokester" who liked to "tease" and "cut up." In fact, Appellant admitted that the note he wrote to Stargel was done in a "teasing manner." This kind of behavior demonstrates a lack of professionalism which can result in the very consequence that did in fact occur. Whatever the Appellant's motive for writing the note, its intended recipient, a guest of LCSRP, was not amused by it, nor apparently was her husband. As Ms. Stargel complained to the Department of Parks, "My husband and I are very close – but should another couple receive something like this in the mail – it could be very disruptive and devastating to their marriage." (Appellee's Exhibit 8.)

11. Appellant's conduct was a violation of Department of Parks' policy 01-03, which states, "All employees are expected to conduct themselves in an appropriate and professional manner at all times." Front desk clerks have access to guests' personal history and credit card information, as well as keys to their rooms. Such responsibility dictates a level of professionalism on the job which was clearly lacking in Appellant's behavior. As Laurie Googe stated, Appellant's "history of joking caused me to question his judgment. His role is to maintain guest confidentiality and I did not feel comfortable putting him back in that position."

CONCLUSIONS OF LAW

1. Appellant committed sufficient misconduct to meet the just cause requirement of KRS Chapter 18A in writing an inappropriate note to a guest on a business invoice.

2. Appellant's conduct satisfied the elements of poor work performance and misconduct pursuant to 101 KAR 1:345.

3. The Department of Parks was not arbitrary or excessive in its decision to terminate the Appellant for misconduct.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **ERIC R. GOODIN V. TOURISM, ARTS AND HERITAGE CABINET, DEPARTMENT OF PARKS (APPEAL NO. 2012-139)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

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 Colleen Beach** this 21st day of May, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:
Hon. Misty Judy
Hon. Elmer George