

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-031

CEDRIC HALE

APPELLANT

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

TRANSPORTATION CABINET

APPELLEE

*** **

The Board, at its regular February 2020 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 2, 2020, 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 **DISMISSED**.

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

SO ORDERED this 12th day of February, 2020.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Fogle
Mr. Cedric Hale
Mr. J. R. Dobner

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This matter came on for evidentiary hearing on July 17, 2019, at 9:30 a.m. (ET), at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before Geoffrey B. Greenawalt, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Cedric Hale, was present and was not represented by legal counsel. The Appellee, Transportation Cabinet, was present and was represented by the Hon. William Fogle.

By Interim Order dated April 24, 2019, at issue in the evidentiary hearing was the Agency's 30-day suspension of the Appellant. The Appellee had the burden of proof, which was to be by a preponderance of the evidence that the Appellant's suspension was neither excessive nor erroneous under the circumstances and was taken with just cause.

BACKGROUND

1. The Appellant, Cedric Hale, timely filed his appeal before the Kentucky Personnel Board on February 12, 2019, appealing from his 30-day suspension from duty and pay as a Highway Technician IV with the Kentucky Transportation Cabinet, Department of Highways, District 7.

2. The first witness to testify was **Mr. J. R. Dobner**, who is the Deputy Executive Director in the Office of Human Resource Management with the Transportation Cabinet. Mr. Dobner is responsible for administering the Personnel department for the Appellee, and his duties include preparing disciplinary actions.

3. According to Mr. Dobner, the Appellant is a Highway Technician IV in District 7. The Appellant is required to maintain a Commercial Driver's License (CDL), which entails a whole bevy of training. According to Mr. Dobner, he became aware of the issue involving the Appellant when he received a request for disciplinary action from the management in District 7. Apparently, the Appellant had used a state assigned vehicle without permission. Mr. Dobner assigned Mr. Chuck Hines to investigate the subject vehicle's GPS. Karen Smith also participated in the investigation.

4. Appellee's Exhibit 1 was introduced into the record and is a copy of the Intent to Suspend letter delivered to the Appellant. According to Mr. Dobner, the issue arose when the Appellant requested to use a state-owned vehicle which request was denied in writing by Matt Simpson on October 9, 2018. Ignoring the denial, on October 16, 2018, the Appellant approached his new supervisor, Kyle Bidwell, and presented him with a form approving his use of the state owned vehicle. Mr. Bidwell signed the form while under the false impression that the Appellant's request had already been approved. A review of the GPS records for the subject vehicle demonstrated that the Appellant began driving a state-owned vehicle home on October 11, 2018, prior to Mr. Bidwell's first day at his new job, after his request for the use of it was denied by Matt Simpson. It was also determined that the Appellant used the vehicle to transport his child to and from North Madison Elementary School. According to Mr. Dobner, even had the Appellant been permitted to use the state-owned vehicle, other than the occasional incidental use, such as filling it up with gasoline, he would only have been allowed to take it to and from home and work.

5. Appellee's Exhibit 2 was introduced into the record and is the Appellant's written response to the Intent to Suspend. Mr. Dobner indicated he was impressed with the Appellant's response but already believed a thirty-day suspension was lenient considering the Appellant's level of deception. Appellee's Exhibit 3 was introduced into the record and is a copy of the Appellant's official 30-day suspension letter dated January 28, 2019.

6. Appellee's Exhibit 4 was introduced into the record and is a copy of GAP-801, General Conduct. According to Mr. Dobner, the Appellant violated this particular policy.

7. Appellee's Exhibit 5 was introduced into the record and is a copy of GAP-808, Code of Ethics and Conflict of Interest. Again, Mr. Dobner testified the Appellant violated this policy.

8. Appellee's Exhibit 6 was introduced into the record and is a copy of GAP-1104-2, User Requirements, Assignments, and Responsibilities. Again, according to Mr. Dobner, the Appellant violated several sections of this policy.

9. Appellee's Exhibit 7 was introduced into the record and is a copy of GAP-901, Employee Discipline. According to Mr. Dobner, the Appellant violated this particular policy by misusing state resources. Mr. Dobner opined that this constituted a major infraction, which caused him to consider a higher level of disciplinary action from the start.

10. Mr. Dobner testified that a 30-day suspension was the proper disciplinary action in this instance because it touched on the top two issues that confronts the Transportation Cabinet, safety and liability for misuse of state resources. According to Mr. Dobner, the Transportation Cabinet has over 4,000 employees and a lot of vehicles are out there, so it is important to make sure those employees understand that using state-owned vehicles for their personal use will not be tolerated. The subject 30-day suspension also sends the message to the employees that they are not to take liberties with the rules. On top of the safety and liability issues, Mr. Dobner also considered the Appellant's level of deception with his immediate supervisor. Mr. Dobner further testified that he considered terminating or demoting the Appellant, but soon determined it would be against the Appellee's best interest because the Transportation Cabinet has a difficult time hiring employees to handle snow removal.

11. Appellee's Exhibits 8, 9, 10, 11, and 12 were introduced into the record as examples of similar disciplinary actions taken for similar instances of lack of good work performance and behavior. Mr. Dobner testified he considered all of these similar actions when determining that suspending the Appellant for 30 days was reasonable and appropriate given the circumstances.

12. On cross-examination, Mr. Dobner testified he keeps a log and lot of other information in mind when determining what level of disciplinary action to take.

13. The next witness to testify was **Mr. Matthew Simpson**, the Branch Manager over Project Development and Preservation in District 7. Mr. Simpson was the Appellant's second-line supervisor. According to Mr. Simpson, Kyle Bidwell is the section supervisor out of the Richmond office and was the Appellant's first-line supervisor.

14. Appellee's Exhibit 13 was entered into the record and is a copy of the email where he denied the Appellant's request to use a state-assigned vehicle. According to Mr. Simpson, this email was sent just days before Mr. Bidwell became the supervisor in the Richmond section, so, at the time, he was acting as the section supervisor (and the Appellant's immediate supervisor).

15. Appellee's Exhibit 14 was entered into the record and is a copy of the Request for Corrective or Major Disciplinary Action prepared by himself and Mr. Bidwell against the Appellant.

16. The next to testify at the hearing was **Mr. Kyle Bidwell**, who is the Transportation Engineer Supervisor in the Appellee's Richmond office. He is the Appellant's first-line supervisor. According to Mr. Bidwell, he came back to work for the state in October 2018. On his first or second day at work, the Appellant gave him a form to sign, which would allow him to drive a state-assigned vehicle home. Mr. Bidwell had never seen the form before, but since the Appellant told him "they" were allowing him to use the car because he was having trouble with his car, he took the Appellant at his word and signed the form. Appellee's Exhibit 15 was introduced into the record and is a copy of the form Mr. Bidwell signed. Mr. Bidwell testified that he was not aware that the Appellant had already started driving the state-assigned vehicle home before he had come to him to sign the form marked as Appellee's Exhibit 15.

17. Appellee's Exhibit 16 was introduced into the record and is a copy of Mr. Bidwell's statement given to Karen Smith in relation to the investigation of the Appellant's misuse of a state-assigned vehicle.

18. On cross-examination, Mr. Bidwell testified that he thought the Appellant was a trustworthy employee and stated he had no issue with his work ethic, etc. He also testified that the Appellant does go over and above expectations while at work. However, on redirect, Mr. Bidwell also testified that he felt like he was misled into signing the form marked as Appellee's Exhibit 15.

19. The next to testify at the hearing was **Mr. Chuck Hines**, who is an Investigative Officer for the Transportation Cabinet, Office of Human Resource Management. Mr. Hines testified he was assigned by J. R. Dobner to investigate the Appellant's use of a state-assigned vehicle. Also assisting him with his investigation was Karen Smith. According to Mr. Hines, he interviewed the Appellant and investigated the subject vehicle's GPS records. During his interview, the Appellant did not deny any of the allegations and admitted he had improperly

used a state-assigned vehicle. Appellee's Exhibit 17 was introduced into the record and is a copy of the GPS location printout for the state-assigned vehicle used by the Appellant. This printout demonstrates when the Appellant took the subject vehicle home. Appellee's Exhibit 18 was introduced into the record and is the GPS printout for the subject vehicle that demonstrates when it was taken by the Appellant to North Madison Elementary School. The Appellant informed Mr. Hines that he has a daughter who attends this school.

20. Mr. Hines testimony ended the Appellee's case in chief.

21. The next to testify at the hearing was the Appellant, **Cedric Hale**. According to Mr. Hale, he is a Highway Technician IV and has been so for approximately fifteen years.

22. The Appellant admitted to the facts as stated in the letter of suspension. He further testified that he had no additional disciplinary action in his personnel file. He also testified that Mr. Simpson's email response, marked as Appellee's Exhibit 13, was "wishy-washy," but also admitted he never attempted to clear up any confusion. According to the Appellant, he had Mr. Bidwell sign the form approving his use of the state vehicle because Mr. Bidwell was his actual supervisor. He also testified he told Mr. Bidwell he had talked to Matt Simpson about the use of a vehicle but never told him whether or not Mr. Simpson had approved the use of the vehicle. By that time, the Appellant had already taken the car home at least two times because he had no other transportation to get back and forth from work.

23. The Hearing Officer has considered the entire administrative record, including the testimony and exhibits therein.

24. This matter is governed by KRS 18A.095(1) which states:

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

FINDINGS OF FACT

1. The Appellant, Cedric Hale, a classified employee with status, timely filed his appeal with the Personnel Board on February 12, 2018, appealing his 30-day suspension from duty and pay as a Highway Technician IV with the Kentucky Transportation Cabinet, Department of Highways, District 7.

2. Pursuant to Interim Order dated April 24, 2019, the issue before the Personnel Board was whether or not there was just cause for the Appellant's 30-day suspension and whether that penalty was excessive or erroneous under the circumstances. The Appellee was assigned the burden of proof, which was to be by a preponderance of the evidence.

3. The facts herein are not in dispute. The Appellant clearly used a state-assigned vehicle without obtaining the proper permission. When he did attempt to procure permission, it was clearly denied by his then-acting immediate supervisor, Matt Simpson, and was only later approved by his newly employed immediate supervisor, Kyle Bidwell, on the basis of misleading information.

4. The failure to adhere to the Appellee's clearly expressed policies, set forth in Appellee's Exhibits 4, 5, 6, and 7, was clearly established by the Appellee and was not denied by the Appellant. As evidenced by the Appellee's Exhibits 8, 9, 10, 11, and 12, the Appellant's 30-day suspension was consistent with disciplinary actions taken against other Transportation Cabinet employees under similar circumstances and was otherwise neither excessive nor erroneous under the circumstances.

5. Given the importance of maintaining a safe work environment and the avoidance of potential liability, each Transportation Cabinet employee must strictly adhere to all of the Appellee's policies and procedures. As such, there was just cause for the Appellee to suspend the Appellant for 30 days from duty and pay from his position as a Highway Technician IV with the Kentucky Transportation Cabinet, Department of Highways, District 7.

CONCLUSION OF LAW

The Appellee has demonstrated by a preponderance of the evidence that the 30-day suspension of the Appellant, Cedric Hale, was neither excessive nor erroneous and was taken with just cause.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **CEDRIC HALE V. TRANSPORTATION CABINET (APPEAL NO. 2019-031)** 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 Geoffrey B. Greenawalt** this 2nd day of January, 2020.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. William Fogle
Cedric Hale
J. R. Dobner