

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 **DANIELLE HAWKINS VS. TOURISM, ARTS AND HERITAGE CABINET, DEPARTMENT OF FISH AND WILDLIFE RESOURCES (APPEAL NO. 2016-049)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 17th day of June, 2019.



MARK A. SIPEN, SECRETARY
KENTUCKY PERSONNEL BOARD

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-049

DANIELLE HAWKINS

APPELLANT

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

TOURISM, ARTS AND HERITAGE CABINET,
DEPARTMENT OF FISH AND WILDLIFE RESOURCES

APPELLEE

*** **

The Board, at its regular June 2019 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 14, 2019, Appellee's Exceptions and Request for Oral Argument, 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**.

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

SO ORDERED this 19th day of June, 2019.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Steven Fields
Hon. Whitney True Lawson
Ms. Misty Judy

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-049

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VS. FINDINGS OF FACT, CONCLUSIONS OF LAW
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TOURISM, ARTS AND HERITAGE CABINET,
DEPARTMENT OF FISH AND WILDLIFE RESOURCES

APPELLEE

*** **

This matter came on for an evidentiary hearing on September 4 and 5, 2018, at 9:30 a.m., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stephen McMurtry, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Danielle Hawkins, was present at the evidentiary hearing and was represented by the Hon. Whitney True Lawson. The Appellee, Tourism, Arts and Heritage Cabinet, Department of Fish and Wildlife Resources, was present and represented by the Hon. Amber Arnett.

The Appellant, Danielle Hawkins, moved the Personnel Board to supplement the record to include recent audits of the Kentucky Department of Fish and Wildlife Resources that allegedly reveal mismanagement of money. Hawkins asserts the audit shows a \$50,895 shortage in collected receipts in fiscal year 2017 when compared to sales per the Kentucky Direct Sales System (KDSS) (a division of the Kentucky Department of Fish and Wildlife Resources).

In response, Melissa Trent, by affidavit and after stating her accounting experience, explains that the \$50,895 noted as a shortage is "truly an outstanding deposit." That is, the shortage was only a "delay in reconciling income with deposits due to the mechanisms of electronic banking."

No request to respond has been filed with the Kentucky Personnel Board by Hawkins.

Having reviewed the filings of both parties and being otherwise advised, it is hereby ordered that the motion to supplement the record is **DENIED**.

BACKGROUND

1. The Kentucky Department of Fish and Wildlife Resources (KDFWR), on February 11, 2016, dismissed Danielle Hawkins from her position as an Administrative Specialist III for violations of 101 KAR 1:345, Section 1, Lack of Good Behavior and Unsatisfactory Performance of her job duties. The allegations were violations of KRS 41.070, in

part: "all revenue collected for the state...shall be deposited in state depositories..." and failure to "maintain records to report adequately each amount received, from whom received and date received." KDFWR also charged her with violation of KRS 514.040, Theft by Deception.

2. In the dismissal letter, Billye M. Haslett, Appointing Authority Designee for the Cabinet, alleged 357 cash receipts totaling \$94,395 were not "received" and transferred to the State Treasury by Hawkins over a period from December 2006 through January 11, 2016, after which she was suspended and relieved of her duties without pay.

3. As an Administrative Specialist III for the Accounting Branch of KDFWR, **Danielle Hawkins** received all of the proceeds for licenses, permits, fines, and admissions fees collected by employees of the various KDFWR departments: Kentucky Direct Sales System (KDSS), Fisheries Department, Wildlife Department, Law Enforcement, and Wildlife Education Center (Salato). Hawkins took these proceeds in cash or checks and with the information usually found in the corresponding applications for licenses, such as the type of license, the name of the purchaser, date of purchase and cost, and entered the information in the receipts database, a computer with software designed by KDFWR to record and store all the above information. When Hawkins was on leave from her duties, other employees within KDFWR would perform these functions for her.

4. Hawkins also created a cash receipts document (CR) that included a number automatically assigned by the receipts database, the name of the purchaser, the type of license or other permit or service purchased, and the amount. Hawkins then turned the cash, checks, and her CR document over to an Internal Policy Analyst, who would assign revenue codes corresponding to the source of the money, determine the amount of cash and checks received from Hawkins, and make sure the amounts in the receipts database matched Hawkins' CR.

5. To aid in making entries into the state's Electronic Management Reporting System (eMars), Hawkins testified that she often grouped together licenses and permits of the same kind to enable the Internal Policy Analyst to more readily key-in all of the eMARS entries.

6. She said:

Each (code) is going to represent one line on a CR document, so if I have 15 Taxidermy Licenses on my report (Daily Receipts Report), (the Internal Policy Analyst) would only need to enter one line on the CR document, and total all of those lines together in a group. So what I tried to do, to make her job easier, was to group all of those together, in order, and then, if I had additional ones to add on...I would just hold off until the following day.

Hawkins was referring to a CR document that was generated by the eMARS system, not the CR document which Hawkins compiled herself. The resulting CR was called the eMARS cash receipt or "CR." Thus, the Internal Policy Analyst would create another cash receipt document, turn it over to the Accounts Manager, who reviewed and made sure the eMARS CR and the cash received from the Internal Policy Analyst matched. The Analyst would then submit all of this, the eMARS CR, the cash, and the checks, to the Kentucky State Treasury. Before 2011, the Treasury allowed cash and checks to be submitted under one CR. Thereafter, cash and checks had to be submitted separately, requiring two eMARS CR's.

7. There was little, if any, uniformity as to how the personnel in the various departments, in particular KDSS, Fisheries, and Wildlife, documented the licenses and permits, other services purchased, the cash, and the checks received, all of which were ultimately delivered to Hawkins. **Wendy Bohn** of KDSS sold hunting and fishing licenses that did not require the purchaser to submit an application. She compiled for Hawkins a "sales summary receipt" that represented all of the sales made on a particular day, usually by 4 p.m. Sales after 4 p.m. would be included in a separate summary entered from 4 p.m. until closing.

8. **Carrie Shipley** of KDSS sold licenses for disability hunting, taxidermy, fur buying, fur processing, commercial fishing (only until 2011), pay lake, selling live bait, and "musseling." These licenses required an application. Shipley processed the applications, issued the licenses, and provided the purchaser with a receipt, if a receipt book was available. She kept the application and sent copies of these documents with the cash and checks to Hawkins. She made photocopies of the cash received, laid on the background of the application.

9. **Amy Akers**, Fisheries Division, sold commercial fishing licenses, fishing gear tags, roe harvesters' and buyers' licenses, fish net permits, and fish transportation permits. At the top of the applications for these licenses, she would write the date and the amount of cash received, initial the application, and send all to Hawkins. Hawkins returned the application with a receipt reference number to indicate "payment entered" in the receipts database.

10. There was no requirement that Hawkins meet with Bohn, Shipley, or Akers, during which they would count the cash in front of each other and sign an agreed delivery and receipt.

11. The events which led to Hawkins' dismissal began December 22, 2015, when Dr. James Rich, a KDFWR Commissioner, made a \$625 cash purchase of licenses as Christmas presents for members of his family. Wendy Bohn made the sale at approximately 2:40 p.m. that day, after she had prepared her report to Hawkins regarding the day's sales. She had expected to leave early for the holidays. Bohn asked her supervisor, Vera King, to deliver her report of sales and the \$625 cash that day to Hawkins.

12. When Bohn returned on January 4, 2016, from the Christmas holidays, she atypically searched the receipts database, which she was not adept at doing, to determine if Hawkins had entered the cash. Bohn testified that she could not find the \$625 cash in the receipts database. When Vera King returned to work on January 8, 2016, Bohn and Shipley, a fellow worker whom Bohn had told of her concern, notified King that the cash could not be found. King advised David Bruce, her supervisor, of the alleged missing cash and, in response, he scheduled a meeting with the three women. Bruce told them it might be a "glitch," but to keep close track of cash sales thereafter by making a note of cash turned over to Hawkins. Hawkins testified that she would not have entered Dr. Rich's purchases of several fishing licenses under the name Rich.

13. During the week of January 4, 2016, Shipley had sales of \$775 in cash for multiple taxidermy licenses scheduled to be turned over to Hawkins. Hawkins picked up the money during the late morning of January 8, 2016. On the morning of January 11, 2016, Bohn again checked the receipts database, but was unable to find the \$775 cash entry. She found entry of the checks paid for some of the taxidermy licenses, but no cash entries for the remaining taxidermy licenses. Hawkins testified that it would not have been unusual for her to have entered the checks for the taxidermy licenses on a Friday and the cash receipts in the late afternoon on the following Monday.

14. **Melissa Trent**, the Accounts Branch Manager, now involved in the surveillance of Hawkins, testified that she checked the receipts data base in the late morning of January 11, 2016, but could not find a cash entry in the receipts database for the taxidermy licenses. Trent then told Bohn, Shipley, and King to conduct a quick investigation to determine if previous cash sales had been entered into the receipts database. They testified that their random search found about \$10,000 in cash not entered.

15. The next day, Trent met with Pat Bernard, KDFWR Human Resources Branch Manager; Joe West, KDFWR Law Enforcement Colonel; David Wicker, Counsel for KDFWR; and Charles Bush, Deputy Commissioner. They decided to turn the investigation over to the Kentucky State Police, who selected **Detective Jason Propes** to lead it. Hawkins was placed on Administrative Leave and ultimately terminated from her employment.

16. Propes began his investigation on January 15, 2016. Melissa Trent began a parallel investigation by having King, Shipley, Bohn, and Amy Akers begin searching their files for cash sales not "receipted" into the receipts database, dating back to December 2006. Trent would receive the results of their investigation and then research the receipts database for corresponding cash receipts.

17. According to his testimony and report, Detective Propes identified four possible, other areas in which cash could have been taken from KDFWR: (1) when the cash first transferred hands from the customer to the employees receiving it; (2) when the cash first arrived

in the mail; (3) when the cash was put in the accounting safe accessible generally to supervisory employees awaiting transfer to Danielle Hawkins, who would transfer the cash to the Internal Policy Analyst; and (4) when given to the Accounting Branch Manager, who transferred the cash for deposit in the State Treasury, or (5) by Hawkins entering money into the receipts database. Propes, in his investigation, learned from Audrey Patterson, the Accounting Branch Manager from 2006 to 2010, that the receipts database could easily be "hacked" so that employees who actually handled the cash could delete the entries made by Hawkins, pocket the cash, and change the eMARS entry, leaving little or no evidence of the theft.

18. In a follow-up interview, David Bruce advised Propes that "If the other employee attempted to change the database entry after the original entry, the computer assigned number would be deleted and could not be reused." Propes interviewed Chip Quarles, the Information Systems Manager and the employee who corrected mistakes in the receipts database. Propes reported that Quarles told him, "Numbers missing sequence would indicate a deleted line of data." **Chip Quarles** testified that he "typically modified data" when requested by Hawkins. He explained that if entered data was modified, the assigned sequential number would be altered, leaving a "gap" in the numbering, but, he said, "the number could be manually changed, a procedure not commonly known." "However," Quarles said, "You can Google it."

19. Propes interviewed Melissa Trent to learn that she had a theory as to how Hawkins stole the cash, which was different from his initial assumption that Hawkins simply took the cash and did not enter the application in the receipts database. Trent believed Hawkins took the cash, but "assigned [in her handwriting] a false, reused receipt number to the application." When the false number was used by the Internal Policy Analyst, there was no correlation between the correct application for which cash had not been "receipted" into the database and the application associated with the false, reused number. Propes concluded in his report that Brewer "believed" the handwriting on the application was Hawkins' but "was unable to confirm with any reliable certainty that the handwriting belonged to Hawkins."

20. Further in his investigation, Detective Propes received contradictory information from **Melissa Trent** and Melissa Brewer on the process of "receipting" cash and checks into the receipts database. Trent told Propes, and testified, that "receipting money into the database" was completed most often the first part of the workday to facilitate an efficient work process. **Melissa Brewer** disagreed. She told Propes, and testified, that Hawkins "sometimes...could be working on the database entries at the end of the day."

21. Detective Propes subpoenaed Hawkins' bank records for cash deposits from January 2007 through May 2016. The records indicated that Hawkins had made cash deposits during these nine years of \$47,921.96. Propes compared the cash deposit dates to "the dates in which cash was taken from KDFWR" and concluded the comparison "did not reveal any direct correlation between the two." Propes requested that KDFWR provide him with Hawkins' "leave" records, to determine if there was a correlation between her time away from work and

cash missing from the receipts database. Propes concluded, "For a majority of days in which Hawkins took a full day of leave...no money was determined missing from the Department records." There was no indication in Propes' testimony or his report as to the size of the majority.

22. Detective Propes interviewed Melissa Brewer, who became the Accounting Branch Manager in 2011. Brewer said Hawkins was a "trusted person at KDFWR," but "she distrusted Melissa Trent's ability to accurately determine that amount of money taken." Brewer explained the process by which she "made sure the (cash) entered into the receipts database matched the cash to be 'receipted' into the state eMARS system." She "checked Hawkins' (CR) sales summary with the eMARS entries by the Internal Policy Analyst. If the amounts reflected in the receipts database did not match the money to be entered into the eMARS system, the mismatch was researched and always reconciled."

23. Brewer told Detective Propes, later confirmed in her testimony, that when she assumed Hawkins' responsibilities after her dismissal, she (Brewer) noticed records missing that had been previously entered. Propes discredited this problem in his report after consulting with Bruce. Propes reported that Bruce told him the database could have been left open and the files corrupted. Propes concluded the lack of "record entries" would have resulted in an excess of cash instead of a shortage..." Propes gave no explanation as to what caused the computer database to be corrupt or an assurance that it was not.

24. Propes interviewed **Brenna Brooking**, an Internal Policy Analyst IV and the KDFWR's Budget Director. "Brooking expressed concerns about the accuracy of the receipts database system" and told Propes about Trent's request that she (Brooking) set up "an additional code entry to the KDFWR revenue sheet" because "the receipts database has inconsistencies which make it [incompatible] for making some types of payments." This occurred after Hawkins was dismissed from her employment.

25. Propes reported that Brooking doubted the "integrity" of the internal investigation of Hawkins because Trent, as well, had access to the cash and associated documents.

26. Brooking testified that she left KDFWR in July 2018, and is presently employed in the Fayette County public school system. She said, as the Budget Director of KDFWR, she was constantly looking for inconsistencies in the revenue flow, coding, and spending in an effort to make projections for the next year's budget. She periodically checked the receipts database and eMARS for inconsistencies and unusual entries made by Hawkins and, for a period of time, Melissa Brewer.

27. Brooking testified that she was concerned about Trent's failure to involve her in the investigation of Hawkins. She testified that she was critical of the methodology used by Trent to reconcile cash sales with cash receipts ultimately entered into the eMARS system. She would have, instead, attempted to reconcile sales from the licensing system to the eMARS

system. Looking at the spreadsheets prepared by Trent in her attempt to prove theft, Brooking expressed the opinion that the data therein was “created data,” not “hard data” from the reporting system.

28. Brooking testified that when she was belatedly interviewed by Propes in August 2016, he expressed surprised that he had not earlier been advised of her existence. She told him that Trent had never officially made her aware of Hawkins’ investigation or involved her in it. She felt that she was purposefully left out. Her access to the safe where cash was kept was also cut off by Trent during the investigation of Hawkins.

29. Propes referred his investigation, summarized in a 75-page document, to the Franklin County Commonwealth Attorney for a decision as to whether or not to prosecute Danielle Hawkins. The Commonwealth Attorney decided not to prosecute or refer the matter to the Grand Jury for an indictment.

FINDINGS OF FACT

The relevant evidence offered by the Appellee was not substantial and a reasonable mind would not accept it as adequate to prove by a preponderance of the evidence the accusations of either (1) theft by deception in violation of KRS 514.040 and KRS 41.070 or (2) in violation of 101 KAR 1:345 or KRS Chapter 18A, for the following reasons:

1. The audit conducted by Melissa Trent failed to account for the methods used by Hawkins to enter information into the receipts database. Hawkins testified that she often “receipted” the same type of licenses or permits in groups to enable the Internal Policy Analyst or the Accounts Branch Manager, as the case may have been, to use only one entry in the eMARS database as a time-saving measure. Melissa Brewer, in her testimony, confirmed this procedure, as did her statement to Detective Propes. The audit conducted by Trent made no attempt to distinguish the names of the license or permit holders that were bundled into one “receipts” entry.

2. Melissa Brewer noticed, when she was performing Hawkins’ job after her dismissal, that entries she (Brewer) made in the receipts database did not match the “receipted” number written on the application. Although KDFWR argued that the anomaly reported by Brewer resulted in more, not less, cash, the fear of malfunction and the lack of confidence in the receipts database remained.

3. Detective Propes appears to have lost confidence in the receipts database and in Trent’s theory of how Hawkins was able to hide her alleged theft. Considering the probable malfunctioning of the receipts database, the complexity of both Hawkins’ system for entry of information into the receipts database and her cash receipts document [apparently known only to her and the Internal Policy Analyst, who refined it for entry into eMARS], and the absence in the

record of any detailed explanation of Hawkins' system of documentation by either party, Trent's theory of how Hawkins committed theft is not reasonably substantiated by the evidence. Furthermore, the KDFWR appears to have abandoned Trent's theory, as it chose not to argue Trent's theory in its closing statement.

4. Several KDFWR current and past employees expressed concern to Propes about the reliability of the receipts database. Detective Propes interviewed Audrey Patterson, who was the Accounting Branch Manager at KDFWR from 2006 to 2010, and Hawkins' supervisor. Patterson said the "database [inexplicably] would take a receipt number that had already been entered." Propes reported that Patterson said, "...there were occasions when money could not be found. If this happened, Hawkins made a note about the discrepancy and the money was always located." Patterson said that "the Accounting Branch Manager was in the best position to have taken the money, as she could access both the receipts database and the eMARS system, easily delete the cash entry on the database, throw away the application, and change the eMARS entry prior to the money going to the State Treasury." Mindy Rose, who worked from April 2015 to February 2016 as an Internal Policy Analyst and backup Accounting Branch Manager, distrusted the receipts database, and told Propes that access to changing an entry in the database was easily available to Bohn, Akers, Trent, Brewer, and "possibly others." Hawkins received more oversight from her supervisors than any other employee handling cash paid by the public for licenses, permits, and other services. Bohn, Shipley, and Akers received cash directly from the public with no requirement that a receipt be given. Each determined, somewhat willy-nilly, how the transaction would be documented. Each could have easily, at opportune times, thrown out the application and the copy of the license issued and kept the cash. As explained by Mindy Rose, the Accounting Branch Manager was in the best position to pilfer cash and destroy the application. There was no supervision of her. Anyone who knew how to enter the receipts database could erase entries and change information so that there would be no record of names, applications, and cash paid. That person could have been the Accounting Branch Manager or the Internal Policy Analyst, but not Hawkins, as she had no access to the eMARS system.

5. Detective Propes testified that there were "quite a few problems" with the receipts database. After reviewing "60,191" entries, Propes found that "numerous receipt numbers were completely missing from the database." "Eight numbers were entered twice" and "six of three duplications (were) blank entries with a \$0.00 amount." Explanations given to Propes by Quarles and Bruce were expressed with little confidence as "could have" or "might have" caused the deletions and incorrect entries.

6. Propes reported that Brenna Brooking told him Trent had asked her "to set up an additional code entry to the KDFWR revenue sheet." Brooking asked Trent, "Why...the current method of tracking could not be used?" Trent told her that the "receipts database had inconsistencies which made it [incompatible] for tracking some types of payments. Melissa Brewer testified that after Hawkins had been dismissed from employment, she took over the dual tasks of entering data into the receipts database, coding it, and, then, entering the money receipts

into the eMARS database. Brewer noticed that in several occasions the entries she made into the receipts database did not match the number she had written on the application.

7. The fairness of the parallel investigation conducted by Melissa Trent is subject to criticism. This observation is not to accuse anyone of wrongdoing, but to express concerns about the possible lack of due process in the investigation of Hawkins. Bohn, Shipley, Akers, and Trent were in positions to have access to the cash and an opportunity to take it. There was no supervision of Bohn, Shipley or Akers, except for Trent who, as well, was in a position to take cash assets. Furthermore, there was no accounting procedure imposed on Bohn, Shipley, or Akers from the time they took cash from the public for licenses, etc., until they turned it over to Hawkins. During that time they could have kept the money, hidden the application and license, and given the remainder to Hawkins. One would have to track down the fisherman or the hunter to get a copy of the license, apparently the only remaining documentary evidence left to prove theft.

8. Hawkins' entries of information into the receipts database had to match the information she included in her (CR) and delivered to the Internal Policy Analyst. That information included the names of the applicants, the automatically-assigned reference numbers, the type of license or permit, and the amounts paid. If an applicant's name was recorded in the receipts database, the name, the assigned number, and cash, or lack thereof, would be reflected in her summary (CR), except if the license was bundled to enable more efficient entry into eMARS. If Hawkins had tried to hide the information in the database, as suspected by Trent, there would have been inconsistencies in the succession of assigned reference numbers easily found by the Internal Policy Analysts by comparison of the information in the database and the summary (CR) prepared by Hawkins. Sooner or later, it is reasonable to assume, the Internal Policy Analyst would have noticed missing cash and a search would have ensued for the missing documents and money. Hawkins appears to be the only KDFWR employee who had any effective supervision.

9. Melissa Trent, the Accounting Branch Manager, was in a position to pilfer the cash. As explained by Audrey Patterson, a person in her job had access to the receipts database, the eMARS database, the cash, and the safe, all of which could either be altered or accessed and the cash taken. Persons in these positions should not lead or conduct an investigation against an accused fellow employee. Melissa Brewer, Mindy Rose, Audrey Patterson, and Brenna Brooking all expressed a distrust in Melissa Trent leading the Hawkins' investigation. KDFWR would have been well advised to have used a forensic certified public accountant to investigate the alleged theft of \$94,395 and a computer science engineer to explain the apparent malfunctioning of the receipts database. Experts were sorely needed in this investigation to conduct it with impartiality and due process and with a methodology chosen by them, so that they might have expressed opinions to help explain this complicated appeal.

10. Although Melissa Trent had an accounting degree and had participated in other state audits, there was no attempt by KDFWR to qualify her as an expert and little chance she

would have qualified under the *Daubert* rule. Similarly, there was no attempt to qualify Quarles as an expert in computer science. He was a fact witness only and his qualifications were not fully articulated.

CONCLUSIONS OF LAW

1. By an Interim Order of February 22, 2018, the Personnel Board determined that the Appellee would have the burden to prove by a preponderance of the evidence that Hawkins violated 101 KAR 1:345, Section 1 (lack of good behavior and unsatisfactory performance of job duties). Those violations came from KRS 514.040 (theft by deception) and KRS 41.070, essentially the requirement that all receipts of state money shall be deposited in the State Treasury. The evidence presented by the Department of Fish and Wildlife to prove these charges must be substantial evidence. It must be a body of evidence “that a reasonable mind would accept as adequate to support a conclusion and evidence that when taken alone or in the light of all the evidence, has sufficient probative value to induce conviction in the minds of reasonable men.” *Moore v. Asente*, 110 S.W. 3d 336, 354 (2003), *Bowling v. Natural Resources and Environmental Protection Cabinet*, 891 S.W. 2d 406, 409 (1994).

2. The Hearing Officer concludes as a matter of law that the evidence presented by the Department of Fish and Wildlife Resources does not and would not induce confidence “in reasonable minds” and “support a conclusion” that it has proved its allegation of theft by deception by a preponderance of the evidence. Although the Appellant did not object to the preponderance of the evidence burden of proof, there is a persuasive argument that the Appellee should have been required to prove theft by deception by clear and convincing evidence. The elements of the crime of theft by deception are substantially the same as civil fraud, which under Kentucky law must be proved by clear and convincing evidence. *Hardin v. Savageau*, 906 S.W. 2d 356 (1995).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **DANIELLE HAWKINS V. TOURISM, ARTS AND HERITAGE CABINET, DEPARTMENT OF FISH AND WILDLIFE RESOURCES (APPEAL NO. 2016-049)** be **SUSTAINED**, that Appellant be returned to her position of Administrative Specialist III with back pay, and otherwise be made whole. Further, this matter shall be expunged from Appellant’s personnel records. The Appellee is **ORDERED** to reimburse the Appellant for any leave time she used attending the evidentiary hearing and any pre-hearing conferences at the Personnel Board. (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 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 Stephen McMurtry** this 14th day of February, 2019.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Daniel Schulman
Hon. Whitney True Lawson