

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2021-092**

**CHARLES HENLEY**

**APPELLANT**

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

**CABINET FOR HEALTH AND FAMILY SERVICES**

**APPELLEE**

\* \* \* \* \*

The Board, at its regular May 2023 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 6, 2023, Appellee Exceptions, Appellant's Exceptions, 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** Finding of Fact 19 and substitute the following:

19. Accordingly, the Board finds that the Appellee established just cause for the dismissal, which was neither excessive nor erroneous. The Board rejects the Hearing Officer's determination that a thirty (30) - day suspension was the appropriate penalty under all the surrounding circumstances. The Appellant's falsification of official records, which indicated he conducted rounds when he did not, is a serious violation of the Appellee's policies that is worthy of dismissal. The Appellant's misconduct strikes at the heart of KCPC's mission, because his actions endangered the safety and security of the facility and the well-being of its vulnerable population.

**B. Delete** Conclusion of Law 3 and substitute the following:

The Appellee carried its burden of proof that there was just cause for the dismissal of the Appellant. The penalty was neither excessive nor erroneous under all the surrounding circumstances. KRS 13B.090(7) and KRS 18A.095(1) and (2)(b) and (c).

- C. **Delete** Conclusion of Law 5.
- D. **Delete** the Recommended Order and substitute the following:


**IT IS HEREBY ORDERED** that the appeal of **CHARLES HENLEY V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2021-092)**, be **DISMISSED**.

**IT IS FURTHER ORDERED** that the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer, as altered, are approved, adopted, and incorporated herein by reference as a part of this Order and that the Appellant's appeal is **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 17<sup>th</sup> day of May, 2023.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
**SECRETARY**

A copy hereof this day mailed to:

Hon. Mark Hall  
Hon. Lucas Roberts  
Hon. Rosemary Holbrook (Personnel Cabinet)  
Jay Klein

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2021-092

CHARLES HENLEY

APPELLANT

VS.

FINDINGS OF FACT, CONCLUSIONS OF LAW,  
AND RECOMMENDED ORDER

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

\*\*\* \*\*

This matter came on for evidentiary hearing on May 23 and 24, 2022, at 9:30 a.m., ET, each day at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by KRS Chapter 18A.

The Appellant, Charles Henley, was present and was represented by the Hon. Mark Hall. The Appellee, Cabinet for Health and Family Services, was present and was represented by the Hon. Joan Grefer.

BACKGROUND

1. The Hearing Officer notes this appeal was filed with the Personnel Board on August 19, 2021. On the appeal form and during the pre-hearing conference, the Appellant, a classified employee with status, indicated he was appealing his dismissal by the Agency. The Appellant further explained his claims in the narrative portion of the appeal form wherein he states, in pertinent part:

I accused of falsifying documentation, and disobeying a direct order from a supervisor[;] also having a[n] issue with my wife and ended up getting arrested[.] I did not falsify documentation. I had a problem with a supervisor who makes a hostile work environment. [sic]

2. Issues: Whether there was just cause for the dismissal of the Appellant and whether the penalty was excessive or erroneous.

3. Burden of Proof: On the Appellee by a preponderance of the evidence.

4. Witnesses:

A. Appellee:

(1) Bullitt County Sheriff's Deputy Daniel Embry

(2) Correctional Lieutenant Richard Lavender

B. Appellant:

(1) Alma Murphy (wife of the Appellant)

(2) Appellant Charles Henley

5. Exhibits:

A. Appellee:

(1) Uniform Citation, dated June 29, 2021, from the Bullitt County Sheriff's Department charging the Appellant with the following:

Charge 1 Intimidating a Participant in the Legal Process;

Charge 2 Unlawful Imprisonment – 2<sup>nd</sup> Degree;

Charge 3 Assault, 4<sup>th</sup> Degree (Domestic Violence);

Charge 4 Resisting Arrest.

(2) Kentucky Correctional Psychiatric Center Standard Practice # 27 – Duties of Correctional Officer (i.e. Unit Officer, Round Officer, and Utility/Relief Officer), dated September 12, 1983.

(3) Security 15-Minute Round log, dated April 2, 2021, Unit-Charlie, 2<sup>nd</sup> Shift.

(4) August 3, 2021 Dismissal Letter to Charles Henley from Howard J. Klein, designated Appointing Authority.

(B) Appellant:

(1) Two (2) June 30, 2021 letters to Charles Henley from Howard J. Klein, designated Appointing Authority, regarding 1) placement on Administrative Leave With Pay and 2) Notice of Intent to Dismiss.

- (2) Two (2) July 8, 2021 letters to Charles Henley from Howard J. Klein, designated Appointing Authority, regarding 1) Rescission of Intent to Dismiss and Remain on Administrative Leave and 2) second Notice of Intent to Dismiss.
6. Following the evidentiary hearing, the parties submitted Post Hearing Briefs.

### **FINDINGS OF FACT**

1. The Appellant, a former Correctional Officer at the Kentucky Correctional Psychiatric Center (KCPC), was dismissed from his position by letter dated August 3, 2021, from the designated appointing authority, Howard J. Klein. This letter was introduced into evidence as Appellee's Exhibit 4 and is attached to this Order as **Recommended Order Attachment A**. It is incorporated in the Findings of Fact as the allegations against the Appellant.

2. In her opening statement, Counsel for the Appellee stated that the Appellant was dismissed because he 1) failed to report an off-duty arrest, 2) falsified records regarding conducting rounds, and 3) inappropriately argued with his supervisor.

3. In his opening statement, Counsel for the Appellant stated that the Appellant actually conducted the rounds at issue in the disciplinary letter and that discipline was based on a discrepancy in the paperwork. He also stated that the Appellant timely brought this discrepancy to the attention of his supervisor, Lieutenant (Lt.) Richard Lavender. Further, Counsel stated that the Appellant did not report his off-duty arrest because he had been instructed to not contact the institution while he was on administrative leave.

4. As agreed to by the parties, in his employment as a Correctional Officer at KCPC, the Appellant was assigned as a Unit Officer on second (2<sup>nd</sup>) shift from 10:45 p.m. on April 2, 2021, until 7:00 a.m. on April 3, 2021. It was his responsibility to conduct rounds every fifteen (15) minutes. This included checking each room and each patient. It was also his responsibility to accurately document that he conducted rounds and the time of each round. The Appellant conducted two (2) rounds of his Unit 3 Charlie, at approximately 3:30 a.m. before he left the facility for a forty-five (45) minute break. He falsified the log by initialing that he had conducted rounds at 3:45 a.m. and 4:00 a.m. The Appellant's falsification was discovered by Lt. Lavender when he arrived at the Unit at 3:45 a.m. and saw that the Appellant had already initialed the log, stating he had conducted rounds at 3:45 a.m. and 4:00 a.m. (Testimony of Lt. Lavender and Appellee's Exhibit 4)

5. The Appellee introduced Standard Practice # 27 – Duties of Correctional Officer (i.e. Unit Officer, Round Officer and Utility/Relief Officer), dated September 12, 1983, as Appellee's Exhibit 2. This security policy requires the Unit and/or Round Officer to check each patient and room every fifteen (15) minutes. These rounds are then to be documented by that Unit and/or Round Officer in the unit log. Lt. Lavender stated that officers are given a two (2) minute leeway on the timing of rounds. (Testimony of Lt. Lavender and Appellee's Exhibit 2)

6. The Appellant testified that he did double rounds before he left on break to account for the 3:45 a.m. round. He also stated that when he returned early from his forty-five (45) - minute break at 4:04 a.m., he was going to conduct the 4:00 a.m. round. After consideration and review of the applicable policy, the Hearing Officer rejects the Appellant's argument that these actions complied with Appellee's Exhibit 2. Specifically, the Appellant conducting double rounds before 3:30 a.m. does not meet the requirement imposed by policy that rounds be conducted every fifteen (15) minutes. Even if the Appellant intended to conduct a round after he returned at 4:04 a.m., he still falsified the log. (Testimony of the Appellant and Appellee's Exhibit 2)

7. On April 5, 2021, the Appellant was working as the Correctional Officer in the Control Panel for Unit 3. Lt. Lavender visited the Unit and found the Appellant seated across two (2) chairs like he was lying down. Lt. Lavender directed the Appellant to sit up and thought the Appellant was sleeping. The Appellant responded sarcastically with "Yes, sir." The Appellant argued that he was not sleeping and did not violate any policy. (Testimony of Lt. Lavender and the Appellant)

8. After Lt. Lavender left the Unit, he returned five (5) minutes later to find the Appellant again lying across two (2) chairs. Lt. Lavender again instructed the Appellant to stop lying down or he would write up the Appellant. The Appellant again argued that it was not a policy violation. (Testimony of Lt. Lavender)

9. Lt. Lavender left the Unit and returned a third time and, this time, found the Appellant sitting in a chair with both feet up on the counter. The Appellant did not remove his feet from the counter until instructed by Lt. Lavender. Lt. Lavender asked the Appellant if he wanted to be written up. The Appellant replied, "Do what you gotta do." (Testimony of Lt. Lavender)

10. At hearing, the Appellant argued that Lt. Lavender was more strict than other supervisors and that he was just out to get him. The Hearing Officer is not convinced by this testimony. The Hearing Officer finds Lt. Lavender to be a credible witness regarding the events of April 3, 2021, and April 5, 2021. After consideration of the evidence of record, the Hearing Officer finds that the Appellant violated policy by falsifying logs and being insubordinate to his supervisor.

11. As a result of the misconduct on April 3 and April 5, 2021, the Appellant was issued an Intent to Dismiss letter and was placed on Administrative Leave With Pay. Those actions were detailed in a letter mailed and emailed to the Appellant on June 30, 2021. (Testimony of the Appellant and Appellant's Exhibit 1)

12. The Appellant was arrested in the early morning hours of June 29, 2021, in his home by Bullitt County Deputy Sheriff Daniel Embry. The Appellant was charged with 1) Intimidating a Participant in the Legal Process, 2) Unlawful Imprisonment – 2<sup>nd</sup> Degree, 3) Assault, 4<sup>th</sup> Degree (Domestic Violence) No Visible Injury, and 4) Resisting Arrest. (Testimony of Deputy Embry, Alma Murphy, the Appellant, and Appellee's Exhibit 1)

13. The Appellee did not present evidence from the Appointing Authority or anyone with knowledge of the disciplinary action. The Appellee failed to introduce any evidence that the Appellant was dismissed for his conduct on the morning of July 29, 2021. In the absence of testimony from a witness, the Hearing Officer accepts the opening statement by Counsel for the Appellee that the Appellant was disciplined, in part, for failure to report his arrest. The Appellee did not present any evidence of the Appellant's failure to report the arrest, except that he did not report the arrest to Lt. Lavender. (Testimony of Lt. Lavender)

14. In the amended Dismissal Letter issued on July 8, 2021, the Appellant is accused of violating the Cabinet for Health and Family Services' Personnel Procedures 2.1, Employee Conduct. According to the amended Dismissal Letter, this policy requires employees to report a criminal charge(s) to their first or second-line supervisor within five (5) days of the charge(s). Importantly, at hearing, not only did the Appellee fail to introduce any testimony regarding the Appellant's failure to report his criminal charges, the Appellee also failed to introduce into evidence the very policy that requires the reporting of a criminal charge. The absence of the policy from the official record is notable as Lt. Lavender testified at hearing that criminal charges must be reported to the facility within twenty-four (24) hours, a timeframe which is inconsistent with the policy requirements quoted in the Dismissal Letter. (Testimony of Lt. Lavender and Appellee's Exhibit 4).

15. The Appellant went on to testify that, following his arrest, he was taken to the Bullitt County Detention Center on June 29, 2021. He was released from custody the following day and stayed with his in-laws because he had been ordered to have no contact with his wife. The Appellant further testified that:

- (a) While he was in custody, the Major at the Bullitt County Detention Center contacted the facility and verified his employment at KCPC;
- (b) He did not receive the June 30, 2021 Intent to Dismiss Letter and the June 30, 2021 letter placing him on Administrative Leave With Pay until a few days after he was released from jail, and his wife gave the letters to his in-laws;
- (c) When he received the June 30, 2021 Administrative Leave letter, he thought he was not supposed to contact his supervisor unless they contacted him because of the following language contained in the letter:

You are cautioned that retaliation is prohibited. Any unauthorized contact with staff or clients may be considered interference in the disciplinary process. During this period of administrative leave, you will not be allowed admittance to any Cabinet for Health and Family Services premises, unless you have been

scheduled for an appointment. During the duration of this administrative leave, you are to make yourself available and cooperate in the event Cabinet officials need to contact you.  
(Appellant's Exhibit 1);

- (d) He talked to Captain Weisnor (sp) and asked for help in finding a lawyer. The date of this phone conversation is not known, except that the Appellant stated it was after he received the June 30, 2021 letters and before he received the July 8, 2021 Recission of Intent to Dismiss and Remain on Administrative Leave letter. (Appellant's Exhibit 2);
- (e) All of the criminal charges as listed in the Appellee's Exhibit 1 were ultimately dismissed.

16. The Hearing Officer finds that it is clear that by July 8, 2021, the Appointing Authority was specifically aware of the Appellant's arrest as it is referenced in the amended Intent to Dismiss Letter of July 8, 2021 as one of the reasons for the dismissal of the Appellant. No evidence was presented as to how the Appointing Authority learned this information. (Appellee's Exhibit 2)

17. After review of the evidence of record, the Hearing Officer finds that the Appellee failed to prove the Appellant committed misconduct by not reporting his criminal charges or his arrest in accordance with the Appellee's policy.

18. Nonetheless, the Hearing Officer finds that the Appellee carried its burden of proof of establishing that the Appellant committed misconduct 1) on April 3, 2021, by falsifying records and failing to conduct fifteen (15) minute rounds as required by policy and 2) by being insubordinate to Lt. Lavender on April 5, 2021.

19. Accordingly, the Hearing Officer finds that the Appellee established just cause for disciplinary action, however, dismissal was excessive under the facts of this case. The Hearing Officer finds a thirty (30) - day suspension is the appropriate penalty under all the surrounding circumstances.

### **CONCLUSIONS OF LAW**

1. The Appellee carried its burden of proof that the Appellant committed misconduct when he falsified a document and failed to conduct fifteen (15) minute rounds on April 3, 2021 and was insubordinate on April 5, 2021. KRS 13B.090(7) and 101 KAR 1:345.

2. The Appellee failed to carry its burden of proof that the Appellant committed misconduct by failing to report his charges or arrest. KRS 13B.090(7).



3. The Appellee did not carry its burden of proof that there was just cause for the dismissal of the Appellant. This penalty was excessive and erroneous under all the surrounding circumstances. KRS 13B.090(7) and KRS 18A.095(1) and (22)(b) and (c). The Hearing Officer concludes that a thirty (30) - day suspension is the appropriate remedy.

4. The Hearing Officer would also note that KRS Chapter 18A does not provide for dismissal of a classified employee with status for the mere receipt of a criminal charge. *William E. McClelland (Estate) v. Justice and Public Safety Cabinet, Department of State Police*, 2016 WL 2903403 (KY PB). The Appellee failed to introduce any evidence that the Appellant was dismissed for his conduct on the morning of July 29, 2021.

5. The Appellee is strongly encouraged to retrain the Appellant upon his reinstatement.

#### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **CHARLES HENLEY V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2021-092)** be **SUSTAINED** to the extent that the dismissal of the Appellant is converted to a thirty (30) - day suspension. The Appellant shall be reinstated to his former position or a position of like pay and status with backpay and benefits, except for the period of suspension, and he be otherwise made whole. **KRS. 18A.095(22) and 200 KAR 12:030.**

#### **NOTICE OF EXCEPTION AND APPEAL RIGHTS**

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

**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 Mark A. Sipek this 6 day February, 2023.

KENTUCKY PERSONNEL BOARD

  
\_\_\_\_\_  
MARK A. SIPEK  
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Hon. Mark Hall  
Teri Carpenter (Cabinet for Health and Family Services)  
Hon. Rosemary Holbrook (Personnel Cabinet)



**CABINET FOR HEALTH AND FAMILY SERVICES**  
**Office of Human Resource Management**

**Andy Beshear**  
Governor

275 East Main Street, 5C-D  
Frankfort, KY 40621  
Tel.: 502-564-7770  
Fax: 502-564-3129  
www.chfs.ky.gov

**Eric C. Friedlander**  
Secretary

**Tresa Straw**  
Executive Director

August 3, 2021

Delivered Via: UPS Tracking Numbe  
US Regular Mail  
Personal Email

Charles Henley III

Re: Return from Administrative Leave and Dismissal

Dear Ms. Henley:

After considering your and your attorney's statements presented at the pre-termination hearing held on July 23, 2021, I have not found sufficient reason to rescind the intent to dismiss dated July 8, 2021.

Therefore, based on the authority of KRS 18A.095 and 101 KAR 1:345, you are hereby notified that you are officially dismissed from your position as a Correctional Officer, in the Department for Behavioral Health, Developmental and Intellectual Disabilities (DBHDID), Kentucky Correctional Psychiatric Center (KCPC).

Further, on July 8, 2021, in accordance with the authority of KRS 18A.095 (2)(c) and 101 KAR 2:102, Section 9 (4), the Appointing Authority placed you on administrative leave until the Cabinet for Health and Family Services' final action. As your dismissal is effective August 4, 2021, your administrative leave is hereby concluded.

You are being dismissed from your position for the following specific reason:

**Lack of Good Behavior.** As reported by Facility Director Gregory Taylor, you engaged in behavior incompatible with your position as a Correctional Officer at KCPC with DBHDID

**APPELLE'S EXHIBIT**

4

**TEAM KENTUCKY**

**RECOMMENDED ORDER ATTACHMENT A**

Charles Henley III  
August 3, 2021  
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and were subsequently arrested. Your conduct directly conflicts with your capacity to effectively perform your job duties and harms the legitimate business interest of DBH/DID.

The Cabinet for Health and Family Services' (CHFS) Personnel Procedure 2.1, Employee Conduct, I, Purpose, states in part, "CHFS expects its employees to maintain a high standard of conduct and professional behavior, including outside of work, to maintain the public's confidence in the integrity of its government and public servants. Actions in violation of this duty as a public servant may lead to corrective or disciplinary action, up to and including dismissal." In addition, the procedure states in part that employees shall "report within five days any charges or convictions they receive as a result of a violation of any criminal law. Such report is to be made to employee's first or second line supervisors who shall contact OHRM."

Specifically, on June 29, 2021 at 5:55 a.m., you were arrested by Bullitt County Sheriff Deputy Daniel Embry and charged with Intimidating a Participant in the Legal Process (Class D Felony), Unlawful Imprisonment, 2<sup>nd</sup> Degree (Class A Misdemeanor), Assault in the 4<sup>th</sup> Degree (Domestic Violence) (Class A Misdemeanor), and Resisting Arrest (Class A Misdemeanor), due to the following, which also occurred on June 29, 2021. You failed to report this arrest to your first or second line supervisors.

As reported within Uniform Citation #0150000, Deputy Embry responded to a report of you and your spouse in a verbal argument. Deputy Embry stated that he knocked on the door and heard a male voice telling him to come in. The front door was open, he walked in and made contact with you, and you were sitting in a chair in the living room. Next to you was a handgun and a shotgun laying on the table. You stated that you did not touch Ms. Murphy and that she was mad at you for doing housework. Deputy Embry advised that you were under arrest for assault and you stated that you "is [sic] not getting arrested." Deputy Embry walked closer to you and you again stated that you "was [sic] not going to jail." Deputy Embry grabbed you by the arm and pulled you away from the handgun. You went to the floor and put your hands down on the ground to keep from going to the floor. Deputy Embry gave you commands to get on the ground, and you would not. Deputy Embry grabbed your arms, pulled them up, and forced you to the ground. You then placed your arms under your body and Deputy Embry gave you commands to place your hands behind your back, but you refused. Deputy Embry gave you commands to stop resisting, but you still would not put your hands behind your back. Sergeant Trevor Ford, who was present with Deputy Embry, then struck your legs with an expandable asp to get you to stop resisting; however, you still would not place your hands behind your back. Deputy Embry sprayed your face with pepper spray and you still would not place your hands behind your back. Sergeant Ford and Deputy Embry had to force your hands behind your back.

You were lodged in the Bullitt County Detention Center on June 29, 2021.

Further, as a Correctional Officer in the Department for Behavioral Health, Developmental and Intellectual Disabilities, Kentucky Correctional Psychiatric Center, you represent the Commonwealth of Kentucky in your daily interaction with the public and as such, are expected to maintain high standards of conduct and required to always demonstrate the highest level of

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professional behavior in order to maintain the public's confidence in the integrity of its government and public servants. Your actions are inconsistent with your duties as a public servant of the Commonwealth. In addition, your conduct directly conflicts with and jeopardizes your capacity to effectively perform your job duties, and harms the legitimate business interest of DBHDID. Your actions demonstrate a total disregard for the laws of the Commonwealth and, therefore, have made it impossible for the Cabinet to entrust you with your responsibilities as a Correctional Officer.

Your actions violate CHFS' Personnel Procedure 2.1, Employee Conduct. Further, your actions constitute lack of good behavior for which you may be disciplined pursuant to 101 KAR 1:345, Section 1.

**Lack of Good Behavior.** As reported by Facility Director Gregory Taylor, you falsified and signed the Security 15-Minute Round sheet (security rounds log), an official document used to observe the patients housed in a Unit of KCPC. In addition, you were insubordinate towards your direct supervisor when directed to not sit in the chair with your feet propped, as it gave the appearance that you were sleeping. You were given multiple chances to correct your behavior. Yet, you continued to disobey the instructions of your supervisor.

KCPC's Policy Number HR-12, Employee Code of Ethics, Prohibited Activities and Conduct, states in part, "(21) The falsification, forgery or inappropriate alteration of signatures, facility records, documents, books, papers, files, time sheets, physician statements, photographs, microfilms, sound recordings, video recordings, magnetic storage media, computer data or other similar material will not be tolerated."

KCPC Security Department's Standard Practice #27, Duties of Correctional Officer (i.e. Unit Officer, Round Officer and Utility/Relief Officer), *Procedures B, Security and Safety*, states in part, "1. The Unit Rounds Officer constantly supervises both wings in the unit. Each room and patient (including the IC Room when occupied) is to be checked every fifteen (15) minutes, and documented on the Unit Round Sheet. This record for rounds should be maintained by the Unit Officer and kept in their possession. (For patients being housed in the Unit IC room, the Unit Officer shall visually observe patient every 15-minutes and document such observations in the Security Observation Record). They are to observe and watch for trouble developing and try to stop it before it escalates into a disturbance. Permission for this area to be unattended must be granted by the Captain's Office."

On January 17, 2020, you acknowledged by signature, while employed as a contract employee through Crown Services, that you attended the KCPC orientation and understood it was your responsibility to be familiar and comply with all requirements, policies and procedures of KCPC. Specifically, you initialed the section for "Conducting 15-minute rounds" on January 6, 2020.

You were scheduled to work from 10:45 p.m. on April 2, 2021 to 7:00 a.m. on April 3, 2018, with a forty-five (45) minute meal break. Part of your assigned duties were to complete the unit rounds on 3Charlie (3C). As such, you were required to check the unit and visually observe each room and patient in order to observe and watch for trouble developing and try to

Charles Henley III

August 3, 2021

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stop it before it escalates into a disturbance. Further, you were required to document on the unit round sheet that you had visually observed each room and patient as failure to do so would be a safety issue.

On April 3, 2021, at approximately 3:25 a.m., Lieutenant (Lt.) Richard Lavender was making security rounds on the unit. At approximately 3:45 a.m., Lt. Lavender arrived at Unit 3 Charlie. Lt. Lavender picked up the rounds log and prepared to conduct a round on the unit with Correctional Officer Joshua Acosta (which they then performed). Lt. Lavender observed that, on the fifteen (15) minute round log, you had already initialed rounds for 3:30 a.m., 3:45 a.m., and 4:00 a.m. Lt. Lavender asked Correctional Officer Acosta where you had gone. Correctional Officer Acosta stated that you had left the unit for your break. You signed out for your meal break in the Captain's Office at 3:30 a.m. and you signed in at 4:04 a.m. (Meal breaks are forty-five (45) minutes). You inappropriately signed two security rounds prior to signing out for break. Two of the rounds would have occurred while you were on meal break. A review of the video from April 3, 2021, shows you completing your last round at 3:27 a.m. Accordingly, you falsely recorded that you had conducted rounds at 3:45 a.m. and 4:00 a.m. before you went on break at 3:30 a.m.

You returned from break at approximately 4:06 a.m. and Lt. Lavender asked you how you were able to sign off on three rounds during the time that you were signed out for break and not present in the unit. You stated that you had done two rounds back to back and returned from lunch break early to complete the third. Lt. Lavender pointed out that was not the proper procedure for completing the security rounds, nor was it acceptable. Lt. Lavender also explained to you that this was falsifying an official document. You argued with Lt. Lavender, saying security rounds did not have to be every fifteen (15) minutes as long as they are just done.

In addition, on April 5, 2021 at approximately 2:33 a.m., Lt. Lavender went to Unit 3 Charlie to utilize the restroom and found you seated across two chairs as if you were lying down. You were the only Correctional Officer in the control panel. Lt. Lavender directed you to sit up, as it appeared that you were sleeping. You responded sarcastically with a "yes sir" and did as instructed. You then began arguing that you were not sleeping and that there was no policy or procedure stating that you were doing anything wrong. Lt. Lavender then left the unit but returned within five minutes and again found you insubordinately lying across two chairs and he addressed your behavior. You again made the argument of not violating policy or procedure. Lt. Lavender again directed you to not lay across two chairs and he (Lt. Lavender) informed you if he saw this again that you would be written up. Lt. Lavender exited the unit as he was called away.

At approximately 2:55 a.m., as Lt. Lavender was returning to the Captain's Office from assisting with the patient move, he stopped at Unit 3 Charlie to conduct his supervisor rounds and sign the security log. As he entered the unit, he observed you sitting in a chair by the bathroom with both of your feet up on the counter. Lt. Lavender entered the security panel and you looked at Lt. Lavender and made no attempt to remove your feet from the counter. You were again directed by Lt. Lavender to remove your feet from the countertop and place them on the floor in order to sit properly. You proceeded to slam your feet on the floor,

Charles Henley III  
August 3, 2021  
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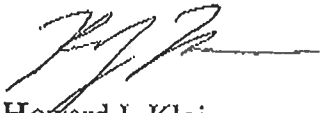
knocking several items off the counter. Further, you proceeded to make a comment that Lt. Lavender was not able to understand. Lt. Lavender asked if you were purposely trying to get him (Lt. Lavender) to write you up. You defiantly and insubordinately answered, "Do what you gotta do." Correctional Officer Acosta and Correctional Officer Phillip Schwender witnessed this incident.

Your actions violate KRS 519.060 (1) (a), Tampering with Public Records, which states, "A person is guilty of tampering with public records when: He knowingly makes a false entry in or falsely alters any public record." Further, your actions violate KCPC's Policy Number HR-12, Employee Code of Ethics; KCPC's Standard Practice #27 and the Cabinet for Health and Family Services' Personnel Procedure 2.1, Employee Conduct, and constitutes lack of good behavior for which you may be disciplined pursuant to 101 KAR 1:345, Section 1.

Pursuant to KRS 18A.032, you will not be certified on future registers for employment within DBHDID unless DBHDID so requests.

As you are an employee with status, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the day of receipt. To appeal, you must complete the attached form and direct it to the address indicated on the form. (See attached KRS 18A.095 and 101 KAR 1:365, Appeal and Hearing Procedure.)

Sincerely,



Howard J. Klein  
Designated Appointing Authority

HJK:jtm

Attachments

cc: Personnel Cabinet Secretary Gerina D. Whethers  
Executive Director Mark Sipek, Personnel Board  
Commissioner Wendy Morris, DBHDID  
Facility Director Gregory Taylor, KCPC  
Cabinet Personnel File

**18A.095 Rights of executive branch employees.**

- (1) A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.
- (2) Prior to dismissal, a classified employee with status shall be notified in writing of the intent to dismiss him. The notice shall also state:
  - (a) The specific reasons for dismissal including:
    1. The statutory or regulatory violation;
    2. The specific action or activity on which the intent to dismiss is based;
    3. The date, time, and place of such action or activity; and
    4. The name of the parties involved;
  - (b) That the employee has the right to appear personally, or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee; and
  - (c) Whether the employee is placed on administrative leave by the appointing authority with pay upon receiving the intent to dismiss letter prior to the agency's final action.
- (3) The Personnel Cabinet shall prescribe and distribute a form to be completed and forwarded by an employee who wishes to appear before the head of the cabinet or agency or his designee, to each appointing authority. The form shall be attached to every notice of intent to dismiss and shall contain written instructions explaining:
  - (a) The right granted an employee under the provisions of this section relating to pretermination hearings; and
  - (b) The time limits and procedures to be followed by all parties in pretermination hearings.
- (4) No later than five (5) working days after receipt of the notice of intent to dismiss, excluding the day he receives the notice, the employee may request to appear, personally or with counsel if he has retained counsel, to reply to the head of the cabinet or agency or his designee.
- (5) Unless waived by the employee, the appearance shall be scheduled within six (6) working days after receipt of an employee's request to appear before the head of the cabinet or agency or his designee, excluding the day his request is received.
- (6) No later than five (5) working days after the employee appears before the head of the cabinet or agency or his designee, excluding the day of the appearance, the cabinet head or agency or his designee shall:
  - (a) Determine whether to dismiss the employee or to alter, modify, or rescind the intent to dismiss; and
  - (b) Notify the employee in writing of the decision.
- (7) If the cabinet or agency head or his designee determines that the employee shall be dismissed or otherwise penalized, the employee shall be notified in writing of:
  - (a) The effective date of his dismissal or other penalization;
  - (b) The specific reason for this action, including:



1. The statutory or regulatory violation;
  2. The specific action or activity on which the dismissal or other penalization is based;
  3. The date, time, and place of the action or activity; and
  4. The name of the parties involved; and
- (c) That he may appeal the dismissal or other penalization to the board within sixty (60) days after receipt of this notification, excluding the day he receives notice.
- (8) A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:
- (a) The demotion, suspension, or other penalization;
  - (b) The effective date of the demotion, suspension, or other penalization;
  - (c) The specific reason for the action including:
    1. The statutory or regulatory violation;
    2. The specific action or activity on which the demotion, suspension, or other penalization is based;
    3. The date, time, and place of the action or activity; and
    4. The name of the parties involved; and
  - (d) That he or she has the right to appeal to the board within sixty (60) days, excluding the day that he or she received notification of the personnel action.
- (9) Any unclassified employee who is dismissed, demoted, suspended, or otherwise penalized for cause may, within thirty (30) days after the dismissal, demotion, suspension, or other form of penalization, appeal to the board for review thereof.
- (10) (a) An employee whose position is reallocated shall be notified in writing by the appointing authority of:
1. The reallocation; and
  2. His right to request reconsideration by the secretary within ten (10) working days of receipt of the notice, excluding the day he receives notification.
- (b) He shall be provided with a form prescribed by the secretary on which to request reconsideration.
- (c) The employee shall file a written request for reconsideration of the reallocation of his position with the secretary in a manner and form prescribed by the secretary and shall be given a reasonable opportunity to be heard thereon by the secretary. The secretary shall make a determination within sixty (60) days after the request has been filed by an employee. After reconsideration of the request by the secretary, the employee may appeal to the board.
- (11) Any state employee, applicant for employment, or eligible on a register may appeal to the board on the grounds that his right to inspect or copy records, including preliminary and other supporting documentation, relating to him has been denied,

- abridged, or impeded by a public agency. The board shall conduct a hearing to determine whether the records related to the employee, applicant, or eligible, and whether his right to inspect or copy these records was denied, abridged, or impeded. If the board determines that the records related to the employee and that the right to inspect or copy these records has been denied, abridged, or impeded, the board shall order the public agency to make them available for inspection and copying and shall charge the cost of the hearing to the public agency. A state employee, an applicant for employment, and an eligible on a register shall not have the right to inspect or to copy any examination materials.
- (12) Any classified employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age forty (40) and above. Nothing in this section shall be construed to preclude any classified or unclassified employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.
- (13) When an eligible's name is removed from a register, the secretary shall notify the eligible of his action and the reasons therefor, together with his right of appeal. An eligible's name shall be restored to the register upon presentation of reasons satisfactory to the secretary or in accordance with the decision of the board.
- (14) (a) Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board.
- (b) Any applicant whose application for admission to an open-competitive examination has been rejected shall be notified of this rejection and the reasons therefor and may appeal to the board for reconsideration of his qualifications and for admission to the examination. Applicants may be conditionally admitted to an examination by the secretary pending reconsideration by the board.
- (c) Any applicant who has taken an examination may appeal to the board for a review of his rating in any part of the examination to assure that uniform rating procedures have been applied equally and fairly.
- (d) An appeal to the board by applicants or eligibles under subsections (11) and (13) of this section and under this subsection shall be filed in writing with the executive director not later than thirty (30) calendar days after the notification of the action in question was mailed.
- (15) An evaluation may be appealed to the board if an employee has complied with the review procedure established in KRS 18A.110(7)(j).
- (16) (a) Appeals to the board shall be in writing on an appeal form prescribed by the board. Appeal forms shall be available at the employee's place of work. The Personnel Cabinet shall be responsible for the distribution of these forms.
- (b) The appeal form shall be attached to any notice, or copy of any notice, of dismissal, demotion, suspension, fine, involuntary transfer, or other penalization, reallocation, or notice of any other action an employee may

- appeal under the provisions of this section. The appeal form shall instruct the employee to state whether he is a classified or unclassified employee, his full name, his appointing authority, work station address and telephone number, and, if he has retained counsel at the time he files an appeal, the name, address, and telephone number of his attorney.
- (c) The form shall also instruct a classified employee to state the action he is appealing in a short, plain, concise statement of the facts. The form shall instruct an unclassified employee to make a short, plain, concise statement of the reason for the appeal and the cause given for his dismissal.
  - (d) Upon receipt of the appeal by the board, the appointing authority and the Personnel Cabinet shall be notified and the board shall schedule a hearing.
- (17) All administrative hearings conducted by the board shall be conducted in accordance with KRS Chapter 13B.
- (18) (a) The board may deny a hearing to an employee who has failed to file an appeal within the time prescribed by this section; and to an unclassified employee who has failed to state the reasons for the appeal and the cause for which he has been dismissed. The board may deny any appeal after a preliminary hearing if it lacks jurisdiction to grant relief. The board shall notify the employee of its denial in writing and shall inform the employee of his right to appeal the denial under the provisions of KRS 18A.100.
- (b) Any investigation by the board of any matter related to an appeal filed by an employee shall be conducted only upon notice to the employee, the employee's counsel, and the appointing authority. All parties to the appeal shall have access to information produced by the investigations and the information shall be presented at the hearing.
- (19) Each appeal shall be decided individually, unless otherwise agreed by the parties and the board. The board shall not:
- (a) Employ class action procedures; or
  - (b) Conduct test representative cases.
- (20) Board members shall abstain from public comment about a pending or impending proceeding before the board. This shall not prohibit board members from making public statements in the course of their official duties or from explaining for public information the procedures of the board.
- (21) An appeal to the board may be heard by the full board or one (1) or more of the following: Its executive director, its general counsel, any nonelected member of the board, or any hearing officer secured by the board pursuant to KRS 13B.030.
- (22) (a) If the board finds that the action complained of was taken by the appointing authority in violation of laws prohibiting favor for, or discrimination against, or bias with respect to, his political or religious opinions or affiliations or ethnic origin, or in violation of laws prohibiting discrimination because of such individual's sex or age or disability, the appointing authority shall immediately reinstate the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or

- otherwise make the employee whole unless the order is stayed by the board or the court on appeal.
- (b) If the board finds that the action complained of was taken without just cause, the board shall order the immediate reinstatement of the employee to his former position or a position of like status and pay, without loss of pay for the period of his penalization, or otherwise make the employee whole unless the order is stayed by the board or the court on appeal.
  - (c) If the board finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall direct the appointing authority to alter, modify, or rescind the disciplinary action.
  - (d) In all other cases, the board shall direct the appointing authority to rescind the action taken or otherwise grant specific relief or dismiss the appeal.
- (23) If a final order of the board is appealed, a court shall award reasonable attorney fees to an employee who prevails by a final adjudication on the merits as provided by KRS 453.260. This award shall not include attorney fees attributable to the hearing before the board.
- (24) When any employee is dismissed and not ordered reinstated after the appeal, the board in its discretion may direct that his name be placed on an appropriate reemployment list for employment in any similar position other than the one from which he had been removed.
- (25) After a final decision has been rendered by the board or court, an employee who prevails in his appeal shall be credited with the amount of leave time used for time spent at his hearing before the board or court. Employees who had an insufficient amount of leave time shall be credited with leave time equal to the amount of time spent at their hearings before the board or court.
- (26) If the appointing authority appeals the final order of the board, unless the board rules otherwise, the reinstated employee shall remain in his former position, or a position of like status or pay, until the conclusion of the appeals process, at which time the appointing authority shall take action in accordance with the court order.
- (27) After a final decision in a contested case has been rendered by the last administrative or judicial body to which the case has been appealed, the board shall make the decision available to the public in electronic format on its Web site and shall organize the decisions according to the statutory basis for which the appeal was based.
- (28) For the purposes of subsections (2), (3), (4), (5), (6), and (7) of this section, the word "agency" means any agency not assigned to a cabinet for organizational purposes.
- (29) Notwithstanding any other prescribed limitation of action, an employee that has been penalized, but has not received a written notice of his or her right to appeal as provided in this section, shall file his or her appeal with the Personnel Board within one (1) year from the date of the penalization or from the date that the employee reasonably should have known of the penalization.

**Effective:** April 13, 2010

**History:** Amended 2010 Ky. Acts ch. 153, sec. 8, effective April 13, 2010. -- Amended 2009 Ky. Acts ch. 75, sec. 15, effective June 25, 2009. -- Amended 2007 Ky. Acts ch. 85, sec. 104, effective June 26, 2007. -- Amended 2000 Ky. Acts ch. 501, sec. 2, effective July 14, 2000. -- Amended 1998 Ky. Acts ch. 154, sec. 23, effective July 15, 1998. and ch. 425, sec. 2, effective July 15, 1998. -- Amended 1996 Ky. Acts ch. 318, sec. 22, effective July 15, 1996. -- Amended 1994 Ky. Acts ch. 317, sec. 1, effective July 15, 1994; ch. 405, sec. 4, effective July 15, 1994; and ch. 475, sec. 1, effective July 15, 1994. " Amended 1992 Ky. Acts ch. 202, sec. 1, effective July 14, 1992. -- Amended 1988 Ky. Acts ch. 250, sec. 1, effective July 15, 1988. -- Amended 1986 Ky. Acts ch. 494, sec. 16, effective July 15, 1986. -- Repealed, reenacted, and amended as KRS 18A.095, 1982 Ky. Acts ch. 448, sec. 19, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 269, sec. 6, effective June 17, 1978. -- Amended 1976 Ky. Acts ch. 86, sec. 9, effective March 29, 1976. -- Amended 1972 Ky. Acts ch. 13, sec. 6. -- Created 1960 Ky. Acts ch. 63, sec. 14.

**2014-2016 Budget Reference.** See State/Executive Branch Budget, 2014 Ky. Acts ch. 117, Pt. I, C, 2, (2) at 628.

**2014-2016 Budget Reference.** See State/Executive Branch Budget, 2014 Ky. Acts ch. 117, Pt. I, D, 10, (1) at 636.

**Formerly codified as** KRS 18.270.

101 KAR 1:345. Disciplinary actions.

101 KAR 1:345. Disciplinary actions.

RELATES TO: KRS 18A.020, 18A.075, 18A.0751, 18A.095

STATUTORY AUTHORITY: KRS Chapter 13A, 18A.0751

NECESSITY, FUNCTION, AND CONFORMITY: KRS 18A.075 requires the Personnel Board to promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 specifies that the Personnel Board promulgate comprehensive administrative regulations for the classified service governing dismissals, suspensions, fines and other disciplinary measures. KRS 18A.095 relates specifically to dismissals, suspensions and other penalizations. KRS 18A.020 relates, in part, to written reprimands. This administrative regulation will replace 101 KAR 1:340 which includes repetition of statutory language which is being repealed.

Section 1. General Provision. Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.

Section 2. Dismissal. (1) The notice required by KRS 18A.095(6) and (7) may be combined provided all requirements are satisfied.

(2) When the employee is notified, copies of the notice of intent to dismiss and the notice of dismissal or other penalization shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

Section 3. Demotion. When the employee is notified, copies of the notice of demotion shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

Section 4. Suspension. (1) A suspension shall not exceed thirty (30) working days.

(2) An employee without status may also be suspended for a period not to exceed thirty (30) days and shall be entitled to the same provisions of notice contained in KRS 18A.095(8) with the exception of the right of appeal.

(3) When the employee is notified, copies of the notice of suspension shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

Section 5. Disciplinary Fine. (1) A disciplinary fine shall not exceed ten (10) days pay. The fine shall be computed on the basis of the employee's current salary.

(2) Prior to imposition of a disciplinary fine, the employee shall be notified by the appointing authority in writing of the amount of the fine.

(3) An employee without status may also be fined for a period not to exceed ten (10) days and shall be entitled to the same provisions of notice contained in KRS 18A.095(8) with the exception of the right of appeal.

(4) When the employee is notified, copies of the notice of disciplinary fine shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee. (15 Ky.R. 1717; Am. 2009; eff. 3-8-89.)

**101 KAR 1:365. Appeal and hearing procedures.**

**RELATES TO:** KRS Chapter 13B, 18A.075, 18A.0751, 18A.095  
**STATUTORY AUTHORITY:** KRS 18A.0751

**NECESSITY, FUNCTION, AND CONFORMITY:** KRS 18A.075 provides that the Personnel Board shall promulgate comprehensive administrative regulations consistent with the provisions of KRS 18A.005 to 18A.200. KRS 18A.0751 provides that the Personnel Board shall promulgate comprehensive administrative regulations providing for the procedures to be utilized by the board in the conduct of hearings. This administrative regulation establishes Personnel Board hearing procedures.

- Section 1. Definitions.**
- (1) "Because of sex" or "on the basis of sex" is defined by KRS 344.030(8).
  - (2) "Qualified individual with a disability" is defined by KRS 344.030(1).
  - (3) "Reasonable accommodation" is defined by KRS 344.030(6).
  - (4) "Religion" is defined by KRS 344.030(7).
  - (5) "Undue hardship" is defined by KRS 344.030(9).

**Section 2.** An appeal of an action alleged to be based on discrimination shall be governed by the terms defined in Section 1 of this administrative regulation.

**Section 3. Filing.** (1) An appeal or a document relating to an appeal shall be filed with the Personnel Board through the office of the executive director within the time period set forth in KRS 18A.095 after receiving notification of the penalization or after becoming aware of the penalization through the exercise of due diligence.

(2)(a) An appeal, motion, request, objection, exception, response, witness list or other document may be filed by a party with the board by means of facsimile transmission.

(b) If a party transmits a document to the board by facsimile transmission, he shall attempt to transmit the document to all parties by facsimile transmission.

(3) To be timely filed, a document transmitted by facsimile shall be received by the board within the statutory or regulatory times specified for filing and be received by the board no later than midnight on the last day for filing.

(4) The original of a facsimile transmission shall be received by the Personnel Board no later than three (3) business days after transmission or the document transmitted shall be voided unless good cause is shown.

(5) The date of filing of a document filed by facsimile transmission shall be the date the original of the document was received by the board, if the board fails to receive the facsimile transmission.

(6) A state employee shall not use state time, equipment, materials, or personnel in pursuing an appeal.

(7) An appeal shall be heard in Frankfort, Kentucky.

**Section 4. Designation of Hearing Officer.** (1) Unless otherwise directed by the board, the executive director shall assign a hearing officer or officers to an appeal.

(2) If more than one (1) hearing officer is assigned, one (1) shall be designated as chief hearing officer.

(3) If an appeal will be heard by the full board, the chairman of the board shall serve as the chief hearing officer.

**Section 5. Continuances.** (1) A continuance of a scheduled hearing may be granted by a hearing officer for good cause.

(2) A request for a continuance shall:

- (a) Be written;
- (b) State the reason for the request;
- (c) Include proposed dates for rescheduling the hearing;
- (d) Be filed with the board; and
- (e) Be mailed to all parties at least ten (10) days prior to the scheduled hearing.

(3) An objection to a request for a continuance shall:

- (a) Be written;
- (b) State the reason for the objection to the request for continuance;
- (c) Be filed with the board; and

- (d) Be mailed to all parties at least five (5) days prior to the scheduled hearing.
- (4)(a) At the direction of the hearing officer, the executive director shall execute and transmit to all parties an interim order either granting or denying the request for continuance.
- (b) If the request for continuance is granted, the interim order shall state the date on which the hearing has been rescheduled or that the hearing has been continued generally.

Section 6. Prehearing Procedures. (1) A motion, request or filing shall be in writing, filed with the board through the office of the executive director, and served on all parties.

- (2) Unless an interim order provides for review by the board prior to the conclusion of a hearing, the board shall review an interim order when it considers the recommended order, record, and exceptions.
- (3) If an employee retains counsel subsequent to filing his appeal, his attorney shall file a written entry of appearance.
- (4) An employee shall notify all parties and the board in writing of a change of address.
- (5)(a) A Kentucky Personnel Board subpoena form shall be available in the office of the executive director and shall be issued by the executive director.
- (b) Preparation and service of the subpoena and compliance with the subpoena shall be the responsibility of the party requesting the subpoena.
- (6) A deposition may be taken in an extraordinary circumstance and upon authorization by the hearing officer. A request to take a deposition shall be filed at least fifteen (15) days prior to the scheduled hearing. An objection to the request shall be filed prior to the scheduled hearing.
- (7) Upon agreement of all parties and approval by the hearing officer, two (2) or more appeals which involve the same or similar facts may be consolidated. Upon motion of a party, or upon his own motion, the hearing officer may join other parties as necessary to appropriately consider the matter.
- (8) An agreed settlement shall be submitted in writing for review and final action by the board.

Section 7. Conduct of Hearing. (1) Unless the appeal is heard by the full board, the hearing officer assigned shall hear the appeal.

- (2) A party shall provide four (4) copies of an exhibit that is to be introduced as evidence. Copies shall be prepared prior to the hearing.

Section 8. Board Review and Action. (1) A response to a written exception to a recommended order may be filed by a party within five (5) days after the date the written exception is filed with the board. A response shall be:

- (a) In writing; and
- (b) Served on all parties.
- (2) At the request of a party or on its own motion, the board may permit oral arguments before the full board. A request for oral argument shall be:
  - (a) In writing; and
  - (b) Filed with the board within fifteen (15) days of issuance of a recommended order.
- (3) A final order shall be prepared, executed and entered at the direction of the board by the secretary to the board.

Section 9. Incorporation by Reference. (1) The following forms are incorporated by reference:

- (a) "Kentucky Personnel Board Appeal Form (12-15-94)"; and
- (b) "Kentucky Personnel Board Subpoena Form (2-90)".
- (2) These forms may be inspected, copied or obtained at the office of the Personnel Board, 28 Fountain Place, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (15 Ky.R. 1719; eff. 3-8-89; Am. 16 Ky.R. 2250; eff. 6-10-90; 17 Ky.R. 2758; 4-10-91; 19 Ky.R. 80; 866; eff. 10-8-92; 21 Ky.R. 460; eff. 9-14-94; 23 Ky.R. 2193; 2711; eff. 1-13-97; 24 Ky.R. 387; 852; eff. 10-13-97.)



08-19-21 09:25 FROM- BCPS Food Service

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TO: Ky Personnel Board

FAX #: 502-695-5799

FROM: Charles W. Henley III

Number of Pages including cover: 17