

**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 **WADE HESTER VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2012-271)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 14<sup>th</sup> day of January, 2014.

  
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**MARK A. SIPEK, SECRETARY**  
**KENTUCKY PERSONNEL BOARD**

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2012-271

WADE HESTER

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES,  
J. P. HAMM, APPOINTING AUTHORITY

APPELLEE

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The Board at its regular January 2014 meeting having considered the Appellee's Motion to File Exceptions Out of Time, and being duly advised,

**IT IS HEREBY ORDERED** that the Appellee's Motion to File Exceptions Out of Time is **DENIED**. (See KRS 13B.110(4).)

The Board at its regular January 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated October 24, 2013, Appellee's Motion to File Exceptions Out of Time, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** Background paragraph 8, and substitute the following:

8. Young interviewed Appellant on September 19, 2012, and he told her that the background checks for himself and his daughter were to be provided for a list of people qualified to provide respite care for individuals who cared for disabled people. She felt he was not very forthcoming in the interview. He provided the name of the person to be assisted, but did not indicate that person was his stepson. He stated that the other individual he attempted to obtain the background checks on had provided their information through Dorothy Nash, the mother of the

disabled child he was to work with, but did not say that Nash was his wife. Appellant did not run background checks as part of his job duties.

B. **Delete** Finding of Fact paragraph 4, and substitute the following:

4. The Appellant had two prior verbal warnings and one prior written reprimand. The written reprimand was for working on an IT project without a work ticket.

C. **Delete** Conclusion of Law number 1, and substitute the following:

1. Although the evidence established the Appellant had two prior verbal warnings and one prior written reprimand, no evidence suggested these previous actions warranted any enhancement of the penalty for the Appellant's current transgression.

D. **Delete** Conclusion of Law number 3, and substitute the following:

3. The Board concludes that a five-day suspension is excessive, given the Appellant's misconduct. The Board concludes that a two-day suspension is the appropriate action. This is consistent with the discipline received by the employee who obtained the records for the Appellant.

E. **Delete** the Recommended Order and substitute the following:

**IT IS FURTHER ORDERED** that the Hearing Officer's Recommended Order be altered and that the appeal of **WADE HESTER VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2012-271)** be **SUSTAINED** to the extent that the five day suspension without pay be reduced to a two-day suspension without pay. The Appellant should receive appropriate back pay and benefits. In addition, the Appellee is ordered to reimburse the Appellant for any leave time he used attending the hearing and any pre-hearing conferences at the Board, and to otherwise make the Appellant whole. **KRS 18A.105, KRS 18A.095(25) and 200 KAR 12:030.**

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

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

SO ORDERED this 14<sup>th</sup> day of January, 2014.

KENTUCKY PERSONNEL BOARD



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MARK A. SIPEK  
SECRETARY

A copy hereof this day mailed to:

Hon. Tim Salansky  
Mr. Wade Hester  
Mr. J. P. Hamm

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2012-271**

**WADE HESTER**

**APPELLANT**

**VS.**

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

**CABINET FOR HEALTH AND FAMILY SERVICES  
J. P. HAMM, APPOINTING AUTHORITY**

**APPELLEE**

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This matter came on for an evidentiary hearing on September 6, 2013, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Kim Hunt Price, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Wade Hester, was present at the hearing and was not represented by legal counsel. Appellee, Cabinet for Health and Family Services, was present and was represented by the Hon. Tim Salansky.

**BACKGROUND**

1. By letter dated October 18, 2012, Appellant, Wade Hester, was suspended from his position of Network Analyst III in the Office of Administration and Technology Services without pay for a period of five working days. A copy of the suspension letter is attached hereto as **Recommended Order Attachment A**

2. Appellant filed a timely appeal with the Personnel Board on December 18, 2012, appealing his suspension and alleging that he had been "Denied, abridged or impeded right to inspect or copy records," stating:

Five day suspension was excessive and arbitrary. Facts in the five day suspension were not entirely correct and clearly slanted. I have evidence of the true motivation of the intent and selective enforcement of rules and regulations. The actions taken to inquire into the facts of this matter in itself, violated confidentiality of personal information and procedures. That the entire action brought against me was based on selective application of rules and regulations by key personnel in the alleged "fact finding" process. Key personnel involved in this selective enforcement were also engaged in the same actively (sic) and guilty

of the same actions I have been alleged to have engaged in and yet no action is brought against them.

3. With regard to the issues of the records being denied, the Appellant stated that he had made an open records request to Jay Klein in November of 2012, and subsequently to J.P. Hamm, for his personnel record in an issue connected with receiving four hours of election pay when it was alleged that he did not vote and he had to obtain a letter from the Boone County Board of Elections showing that he did. When he requested the copy of his personnel file, he did not receive the documents concerning the voting leave.

4. He did acknowledge at the beginning of the hearing that he had been given the opportunity to make discovery requests in this matter and did not do so.

5. There was also an issue of the verbal and written reprimands which were referred to in the suspension letter. The Cabinet provided copies of those to the Appellant during the hearing. Appellant agreed there was no issue remaining with regard to the production of those records.

6. **Jennie Young**, Office for Human Resource Management Human Resource Administrator, testified that she, her supervisor and the EEO office reviewed the five-day suspension. Her role in the matter was to review the request for discipline, investigate it, and draft the letter. The request came from the regional office and she spoke with Lisa Prewitt, Service Region Administrator (SRA), because she did not understand how the Kinship Care Program works. She also spoke with IT people and interviewed Appellant prior to writing the letter.

7. Young testified that Appellant's actions were inappropriate, as he obtained confidential information outside of his duties. Specifically, he had obtained an Administrative Office of the Courts (AOC) check and a Certified Abuse/Neglect (CA/N) check for himself and his daughter and attempted to obtain such records for another individual.

8. Young interviewed Appellant on September 19, 2012, and he told her that the background checks for himself and his daughter were to be provided for a list of people qualified to provide respite care for individuals who cared for disabled people. She felt he was not very forthcoming in the interview. He provided the name of the person to be assisted, but did not indicate that person was his stepson. He stated that the other individual he attempted to obtain the background checks on had provided their information through Dorothy Nash, the mother of the disabled child he was to work with, but did not say that Nash was his wife. Appellant was not in the IT section and so did not run background checks as part of his job duties.

9. Young learned in this investigation that Medicaid pays respite care providers and that billing goes through an outside agency. The person who wants to be certified must provide the background searches to the agency that pays them. The Cabinet does not do such background searches, but does reimburse the agencies that provide respite care.

10. Young testified that the Cabinet maintains a summary of disciplinary actions through 1996 and when making a recommendation of discipline she goes back through those to look for similar occurrences. Using an official position for personal gain is typically a five-day suspension. Any private individual who would be seeking to provide respite care would have to pay for their request and Appellant used his position to get the background checks for free. Young introduced Appellee's Exhibit 2, Acknowledgement of Responsibility, which Appellant had signed on August 29, 2008, when he began his work as a Network Analyst III. It specifically states:

All hardware, software and data to which I have access in the performance of my job is the property of the Commonwealth of Kentucky and is to be used in the performance of my assigned job duties. I shall be responsible for the proper use of these resources. I understand that excessive personal use of these resources shall lead to loss of privilege to use them; use of these resources for personal gain is not allowed.

11. Further, Young introduced Appellee's Exhibit 3, Cabinet for Health and Family Services, Employee Privacy and Security of Protected Health, Confidential and Sensitive Information Agreement, which Appellant had entered into on February 1, 2011. In pertinent part said document states:

I understand that accessing or releasing confidential information and/or records, or causing confidential information and/or records to be accessed or released, to myself, other individuals, clients, relatives, etc., outside the scope of my assigned job duties would constitute a violation of this agreement and may result in disciplinary action being taken against me, up to and including dismissal.

12. Young also introduced Appellee's Exhibit 4, which is CHFS Policy 2.1, Employee Conduct, and Appellee's Exhibit 5, CHFS Policy 2.10, Privacy and Security of Protected Health, Confidential and Sensitive Information. She testified that Appellant's actions in using the background check for personal gain and not in a matter related to his job duties violated both policies (2.1 and 2.10).

13. Young looked at Appellant's prior disciplinary action as reflected on page 4 of the suspension letter in order to determine what amount of time would be appropriate for suspension. Appellant had received a written reprimand for lack of good behavior on March 18, 2009; a verbal warning for lack of good behavior and unsatisfactory performance of duties on February 25, 2009; and a verbal warning for lack of good behavior on May 3, 2007.

14. Young testified that she made the recommendation for the five-day suspension and forwarded that to Jay Klein, the Appointing Authority, who made the final decision. Young had no knowledge of anything concerning Appellant's military or voting leave when she did this recommendation and did not recall seeing anything about either in his personnel file.

15. On cross-examination, Young stated that she did not realize all respite care for services were not paid for; but acknowledged there was a valid need for such people to volunteer. She stated that whether or not the service was free would not matter in terms of a disciplinary action in this case because Appellant was disciplined for misusing his position to obtain records without paying for them. The CA/N report that Appellant obtained is not one that is available to the general public.

16. **Jo Woods**, a Commonwealth Office of Technology employee and previously the Information Systems Manager for the Appellee, is Hester's second-line supervisor. As of October 2012, the IT unit was placed on special detail to the Finance Cabinet as part of a consolidation of IT services in the Executive Branch. Woods testified that Appellant was a Desktop Support person for the Northern Kentucky Service Region. When people in the offices needed work on their computers, they obtained a work ticket, and Appellant would work on them. His job never included accessing any information that would have been contained in the AOC or CA/N checks. Only people who have specialized clearance can access those.

17. When Woods heard of Appellant's request, she made a request for major disciplinary action. The original report of the incident went to Brian Smith who reported it to her. Smith is Appellant's first-line supervisor. Woods then reported it to her Director and Assistant Director and they proceeded to request disciplinary action. Woods introduced Appellee's Exhibit 6, her request for major disciplinary action, and Appellee's Exhibit 7, the Acknowledgment of Request for Major Disciplinary Action, which was provided to the Appellant.

18. In connection with the prior disciplinary action, Woods stated that Appellant did have a personality conflict with his prior supervisor, Richard Grogan, and that a lot of other individuals had personality conflicts with Grogan as well. She is not aware of anyone who actually left state employment because of that. She is not aware of what his prior disciplinary action was for, so she does not know if Grogan acted inappropriately concerning same, but she does agree that the written reprimand concerning working without a work ticket would be an appropriate action because an IT worker is not supposed to work without a work ticket.

19. The Appellant, **Wade Hester**, testified that at the time of the hearing he was working in the Office of Technology at the Finance Cabinet and had been doing so since March 18, 2013. Prior to the reorganization, he had been the provider of IT services for the entire Northern Kentucky Bluegrass Region for the Department for Community Based Services (DCBS) with a physical office in Covington. It was not part of his duties to obtain AOC or CA/N searches.



20. Appellant readily acknowledged that on August 20, 2012, he went to Barbara Shelton because he was told by Kelly Wiley, an attorney in their office, that Shelton could do such checks. He asked Shelton to make the records request and did not have the right forms for the requests. Shelton said if he had a Social Security Number she could run for records. Four days later, on August 20 he approached Diane Garrett, Sue Taylor, Amy Miller, and Jennifer Newman and asked if they knew anyone who could do a CA/N search because Shelton was not there. Garrett said she had the authority and, at that time, he had the paperwork and gave it to her and asked her to get the records.

21. Appellee's Exhibits 8, 9, 10, 11, 12 and 13 were introduced through the Appellant. Appellee's Exhibit 8 was a Central Registry Check for Appellant that he prepared on July 26, 2012. Appellee's Exhibit 9 was a Central Registry Check the Appellant prepared for his daughter on the same date. These forms are those that are required for an agency to do a background check.

22. Appellant explained that the program he applied to work with was the Michelle P. Waiver (MPW) where individuals work with disabled children and can get respite care and where he would also be able to volunteer to help with such disabled children after school and in special events, such as the Special Olympics. He was requesting to be able to provide services for his stepson and his class because once you get on the list as a certified individual you can use that to work with other special needs children. He acknowledged that you can be reimbursed for your expenses. He also acknowledged that his stepson resides with him, and that he does not need to apply to provide services directly to him. He would have been providing services to the Northern Kentucky Community Care. He acknowledged that his daughter could get paid for respite care for his stepson.

23. Appellee's Exhibit 10 is a check which is dated July 26, 2012, for twenty dollars. Appellant acknowledged that he did not send this check until October 19, 2012, since there was an issue of payment he submitted payment with a check for the payment dated the same day he made the request. Both were mailed to the DCBS address in Frankfort on the form. A month later, Northern Kentucky had still not received his CA/N or AOC check back so he said he mailed the request again. He admitted that he did not send the check originally on July 26.

24. Appellee's Exhibit 11 is the third application for the CA/N check that was completed on July 26, 2012. He thinks that individual mailed it out herself and it was not sent by him with the twenty dollar check. That individual would have paid for the CA/N check on her own.

25. When he requested the staff to do his checks in August, he also asked them to do an AOC check on this third party. He felt that possibly the AOC and CA/N requests all got sent in the same package to AOC and that may have been the reason he did not get a response back on the CA/N checks. He alleged that he sent a separate check for the AOC requests, but that it never cleared the bank. Appellant stated that he was running out of time to get the background checks completed and that is why he went to Shelton to have her run them.

26. **Barbara Shelton** testified that she ran the background checks for Appellant and it was part of her daily job duties to do such requests.

27. Shelton received a two-day suspension for doing this because the request was for Appellant's personal purposes. She did not appeal the two-day suspension. At the time she saw nothing wrong with doing it, but after she got her suspension she went back and read the policy and believed it was correct that you could not run a report for a coworker.

28. Shelton stated that she is not personal friends with the Appellant and only knows him through work. She did not think he was the type of person who would intentionally ask her to do something wrong or put her in a position to be disciplined.

29. Shelton stated that Nikki Kippenbrock was the newly appointed second-line supervisor over her at the time and Jennifer Newman was her direct supervisor. Around the time this happened, she had heard Newman make negative statements about Appellant. Initially, Newman had told her this was not a big deal and nothing would happen. Then Appellant came into the building one day and paged everybody over the intercom saying, "You don't need to call the front desk, I'm here." This was done in a sharp tone, and that is when she heard Newman say to Kippenbrock, "That's it, we're going after him now."

30. Shelton believed that he had told her he and his daughter needed the background checks because they were starting a daycare so she felt it was okay to give those. She learned later that was not the actual reason that they were needed for. She did not know there was a fee at the time in Frankfort.

31. Shelton stated that she values her integrity and if she felt it was wrong at the time she would not have done it.

32. **Diane Garrett** acknowledged that she was in the group the day the Appellant asked who could do AOC checks when Shelton was gone. This was done in front of the entire group, including her supervisor, and when the request was made she did not have any concerns as to whether he was requesting something that would be wrong. She did not feel that Appellant would ask her to do anything wrong. Appellant had explained to them that Shelton had done one earlier. He did explain at the time why he needed it, but Garrett could not recall that reason. She and Newman later discussed it and thought maybe it was not a proper thing to do. Newman said she would check into it, and had Garrett give the papers back to Appellant after they learned that employees could not obtain background checks for themselves.

33. **Jennifer Newman** acknowledged that she had requested that Shelton provide her the AOC and CA/N reports that she had retrieved for Appellant so that she could forward them on to Nikki Kippenbrock.

34. Newman verified that she did not realize that Shelton would be subject to a major disciplinary action until someone decided to obtain major disciplinary action against the Appellant.

35. Newman stated that Appellant had made the request from Garrett while they were all in a group and she felt that it might be personal, so thought she needed to speak with Kippenbrock to see if it could be done and she said, "No." The request forms were put back in Appellant's box with a post-it note, "Not able to run the report," or something to that effect.

36. Newman denied that Kippenbrock had ever made any statements about getting Appellant out and never felt that Kippenbrock had any animosity toward Appellant. She did remember him coming into the office and making the PA announcement and said that she could tell he was upset and Kippenbrock did hear it and say, "Did you hear Wade?", but did not say "That's it we're getting rid of him." She does not believe she had ever had any such conversation with Garrett either.

37. **Dorothy Nash**, the Appellant's wife, testified that she works in the regional office as an Administrative Secretary paying bills and doing regular office liaison between building managers and the regular office staff. She testified that Lisa Prewitt is the SRA for the regional office where she works and that Nikki Kippenbrock is the SRAA for the Kenton County Permanency and Protection office. Prewitt is the supervisor of Kippenbrock. Nash was Kippenbrock's secretary when she worked in Guardianship Services for a few months before transferring to Family Support. Nash left Guardianship with no bad feelings between her and Kippenbrock. No one has told Nash of any animosity that Kippenbrock or Prewitt had toward either her or the Appellant.

38. Nash testified that Kippenbrock and Prewitt did not follow procedure for purchasing requisitions when the Kenton County office had an issue with bedbugs last year and they paid an Orkin bill for \$4,000 rather than going through and obtaining three bids and getting approval from Frankfort for the service. Due to this she also paid the \$4,000 and it was paid twice. She is not aware whether Orkin ever reimbursed that to Frankfort. Prewitt had given her the invoice to pay, and Frankfort sent an e-mail that proper procedure was not followed.

39. Nash also stated that Prewitt did not follow procedure with regard to an inventory to be stored in a Kenton County office when a ceiling fell in and workers had to be relocated. The inventory was unilaterally put into storage by Prewitt without sending a request for the mover to Frankfort. Again, Frankfort sent an e-mail that the procedure was not properly followed concerning this matter. To her knowledge, neither Kippenbrock nor Prewitt had ever received a major disciplinary action, but she would not necessarily be privy to that.

40. Nash testified that Appellant had been on active duty in Kuwait in May of 2012 when she had to undergo an emergency surgery, and he had to be brought back on an emergency basis because she was at home by herself with three children, ages 6 months, 14 months and a 9-year old special needs child.

41. Appellant went back to work with the state on May 21, 2012, in the same position as he had when he left for military service.

42. Nash also verified that the CA/N and AOC checks had been sent for in July and they waited for over a month before trying to obtain them otherwise.

43. Nash was not aware that Appellant had received major disciplinary action for this until he filed an appeal.

44. **Nicole Kippenbrock** testified that Jennifer Newman brought this matter to her attention when Appellant had asked Garrett about these personal AOC and CA/N requests while Barbara Shelton was on vacation. She told Newman policy would not permit this and to give those back to him and to ask Shelton if she knew about the requests. Kippenbrock then advised her supervisor, Prewitt. She did obtain a copy of the CA/N and AOC requests which Newman had completed for Appellant at the request of Lisa Prewitt as part of the investigation.

45. Kippenbrock said that she had no animosity toward the Appellant or Nash.

46. Kippenbrock denied any knowledge of when she or Prewitt had not followed proper procedures.

47. When questioned concerning the announcement that Appellant made over the PA, Kippenbrock did say that it was inappropriate and that she was going to talk to him and she did. No disciplinary action was taken against him in that regard.

48. **Courtney Murphy**, a Records Management employee at CHFS, was called in rebuttal. She testified that each time a background check is received into the main office they are stamped "received," logged into the computer and assigned to a worker who obtains the reports and logs into the computer when they have mailed them out. The payment is given to an employee named Lynn. Appellee's Exhibits 12 and 13 were introduced through the witness and shows that the requests at issue dated July 26, 2012, were not received by CHFS Records Management until October 10, 2012.

49. Murphy testified that they have thirty days to process these requests for background checks, but typically they get them out in twenty-four hours. She did not believe that one would be there from July 26, 2012, without being processed until October.

**FINDINGS OF FACT**

1. The Hearing Officer does not find the Appellant's testimony that he mailed the original request for AOC and CA/N checks and a check for twenty dollars on July 26, 2012, when they are dated to be credible. The evidence is clear that the requests were not received in the office for records requests until October 10, 2012. The requests were mailed near October 10, 2012. By this time the Appellant was already aware of the investigation.

2. The Appellant did request a coworker to obtain AOC and CA/N records requests for him for his personal use and the personal use of his family.

3. The employee who obtained these records for him received a two-day suspension. Her prior disciplinary history is unknown.

4. Although it is cited in the disciplinary letter, the Appellant had two prior verbal warnings and one prior written reprimand, no evidence was introduced into the record as to these occurrences. There was testimony of problems with his supervisor at the time, making the appropriateness of said discipline an issue.

5. The Acknowledgement of Responsibility signed by Appellant on August 29, 2008, states:

All hardware, software and data to which I have access in the performance of my job is the property of the Commonwealth of Kentucky and is to be used in the performance of my assigned job duties. I shall be responsible for the proper use of these resources. I understand that excessive personal use of these resources shall lead to loss of privilege to use them; use of these resources for personal gain is not allowed.

6. The CHFS Employee Privacy and Security of Protected Health, Confidential and Sensitive Information Agreement, executed by Appellant on February 1, 2011, in pertinent part states:

I understand that accessing or releasing confidential information and/or records, or causing confidential information and/or records to be accessed or released, to myself, other individuals, clients, relatives, etc., outside the scope of my assigned job duties would constitute a violation of this agreement and may result in disciplinary action being taken against me, up to and including dismissal.

7. CHFS Policy and Procedures 2.1 and 2.10, prohibit employees from using private/confidential information or state assets for personal use.

8. Appellant's coworker received a two-day suspension for obtaining the records check.

9. 101 KAR 1:345, Section 1, states as follows:

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

### CONCLUSIONS OF LAW

1. Although it is cited in the disciplinary letter the Appellant had two prior verbal warnings and one prior written reprimand, these documents were not introduced into the record as to these occurrences. Possible issues as to their validity were testified to by Appellee's employees, thus they cannot be used against the Appellant.

2. Appellant's behavior in making the requests for these records is in violation of the Acknowledgement of Responsibility; the Employee Privacy and Security of Protected Health, Confidential and Sensitive Information Agreement; and Policy and Procedures 2.1, Employee Conduct, and 2.10, Privacy and Security of Protected Health, Confidential and Sensitive Information and constitutes a lack of good behavior pursuant to 101 KAR 1:345, Section 1.

3. In accordance with the concept of progressive discipline and consistency of discipline within the Agency, the Appellant should have received a two-day suspension, as did his coworker. Had the background information for Appellant's prior disciplinary actions been introduced into evidence, it may well have shown that additional days of suspension were merited, but those were not provided to this Hearing Officer for consideration. Due to the fact the employee who obtained these records received a two-day suspension, consistency would require that Appellant obtain the same.

### RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **WADE HESTER VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2012-271)** be **SUSTAINED to the extent** that Appellant's five-day suspension be modified to a two-day suspension, to reimburse Appellant for the amount of pay that was withheld from him for three days of the five-day suspension, to reimburse Appellant for any leave time he used attending the hearing and any pre-hearing conferences at the Board, and shall otherwise be made whole. KRS 18A.105, 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 Kim Hunt Price** this 24<sup>th</sup> day of October, 2013.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof mailed this date to:

Hon. Tim Salansky  
Wade Hester



**CABINET FOR HEALTH AND FAMILY SERVICES  
OFFICE OF HUMAN RESOURCE MANAGEMENT**

Steven L. Beshear  
Governor

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Audrey Tayse Haynes  
Secretary

October 18, 2012

Wade Hester

RE: Five Day Suspension

Dear Mr. Hester:

Based on the authority of KRS 18A.095 and 101 KAR 1:345, you are hereby notified that you are officially suspended from duty and pay for a period of five (5) working days. The effective dates of your suspension are October 22, 23, 24, 25, and 26, 2012.

In accordance with 101 KAR 1:345, Section 1, you are being suspended from your position as a Network Analyst III in the Office of Administration and Technology Services (OATS) for the following specific reasons:

**Lack of Good Behavior.** As reported by Division Director Chris Walters, you inappropriately acted outside the scope of your assigned duties and circumvented the system in order to improperly acquire Administrative Office of the Courts (AOC) and Certified Abuse/Neglect (CA/N) background checks on you, your daughter, and another individual.

You are employed by OATS as a Network Analyst III, and are assigned as the computer technician for The Department for Community Based Services' (DCBS) Northern Bluegrass Service Region offices. As such, you have been provided office space within the Kenton County regional office, in order to provide such technical services within the region.

On or about August 22, 2012, you became aware that Kenton County DCBS Office Support Assistant II Barbara Shelton could access and print AOC and CA/N background checks. You approached Office Support Assistant II Barbara Shelton on August 22, 2012, and asked her to process AOC and CA/N background checks on you and your daughter, \*. According to Ms. Shelton's September 5, 2012 email to DCBS' Northern Bluegrass Service Region Administrator (SRA) Lisa Prewitt, she understood you to say that \* was going to be opening a daycare and therefore, you needed the background checks in order for her to do so. Further, you asked Ms. Shelton if she needed the paperwork you and your daughter had completed and signed; specifically, the DPP-156 *Central Registry Check* and AOC-RU-004 *Administrative Office of the Courts* background request forms. However, Ms. Shelton advised you that she could process the background checks with the information you had provided to her, which were your and \*'s names and



social security numbers. This is the normal information Ms. Shelton receives from DCBS employees who need her to perform AOC and CA/N background checks on clients and other business related individuals. As a result of your request, Ms. Shelton performed and provided you with the personal AOC and CA/N checks you requested.

On August 24, 2012, you approached a group of DCBS clerical workers; specifically, Office Support Assistant II Diane Garrett; Office Support Assistant II Sue Taylor; Office Support Assistant II Amy Miller; and Office Support Supervisor Jennifer Newman, while they were outside on break. Since Ms. Shelton was out of the office on that date, you asked them who could complete AOC and CA/N background checks. Ms. Newman advised you that other than Ms. Shelton, Ms. Garrett had access to run those reports. Once you discovered Ms. Garrett could perform the background checks, you handed her some paperwork in order for her to do an AOC and CA/N check on another individual, \*\*, and then you walked away. Of note, you also advised the group that Ms. Shelton had previously performed several background checks for you.

After you walked away from the group of clerical workers, Ms. Garrett questioned Ms. Newman on whether she could perform the background checks, since they were related to your personal business and not work related. Ms. Newman indicated she did not think it was appropriate and therefore, Ms. Garrett and Ms. Newman went to Service Region Administrator Associate (SRAA) Nicole Kippenbrock's office and asked her if your request could be processed. SRAA Kippenbrock verified that they could not perform the request, because it was for your personal use and not business related. Therefore, the uncompleted paperwork was placed in your Kenton County office mailbox, with a note informing you that due to your request being of a personal nature, the AOC and CA/N checks could not be performed by the Kenton County DCBS office personnel. Therefore, as with any private citizen with such a need and request, you would have to follow normal procedures, which were clearly outlined on the AOC-RU-004 and DPP-156 forms you, \*, and \*\* had completed and signed.

Of note, during a phone interview on September 19, 2012 with Office for Human Resource Management Human Resource Administrator Jennie Young, you stated the paperwork you provided to Ms. Garrett on August 24, 2012, were the AOC-RU-004 and DPP-156 forms on \*\*. You advised Ms. Young that the background checks on yourself, \*, and also \*\*, were needed in order for the three (3) of you to be placed on a list of qualified respite care providers for Client \*1. When asked if these background checks were for business or personal use, you claimed that the Cabinet required these background checks in order to place an individual's name on a list of qualified respite care providers and therefore, they were for business purposes. However, your explanation to Ms. Young was deceptive, as you failed to mention that Client \*1 was your step-son. Further, you failed to mention that Kenton County DCBS Administrative Secretary Dorothy Nash, who is Client \*1's mother, and whom you stated had provided you with the AOC-RU-004 and DPP-156 forms on \*\*, was your wife. Therefore, your requests for background checks on August 22, 2012 and August 24, 2012, were clearly not business related as you claimed, but were for your personal use in obtaining approval as respite care providers for Client \*1 (your wife's son and your step-son), and had nothing to do with Client \*1's case with the Cabinet for Health and Family Services.

Due to the nature of DCBS business, and the need for background checks to be completed on clients, caretakers, foster parents, alleged perpetrators, temporary custodians, etc., the Cabinet has an agreement with AOC and CA/N, which allows us to timely access the data and records for our business purposes without incurring a charge for each report processed at the time of access. Private individuals who wish to obtain AOC or CA/N background checks may do so, but must follow the proper AOC and CA/N policy

and procedure in order to obtain background checks, as clearly outlined on the AOC-RU-004 and DPP-156 forms and must pay the normal fees for this service of \$20.00 and \$10.00 per person, respectively.

Further, as you, \*, and \*\* were intending to provide respite care services for Client \*1, the outside agency that was coordinating such respite services should have been your primary contact. As part of their services, Client \*1's case manager with that agency should and could have processed the required AOC and CA/N checks as part of their normal business practice and processes. Therefore, there was no need to involve the Cabinet in your intent to be placed on a qualified respite care provider list for Client \*1.

Although you were aware the background checks you requested from Ms. Shelton and Ms. Garrett were for your personal use, and that the respite care services were being provided by an outside agency, you failed to follow the procedures on the DPP-156 and AOC-RU-004 forms, or properly involve the outside agency in your quest to be placed on Client \*1's respite care provider list. Instead, you used your position with the Cabinet, and stepped outside the scope of your assigned job duties when you requested DCBS clerical staff to complete the background checks for your personal benefit. Therefore, on August 22, 2012 you circumvented the system, and on August 24, 2012 you again attempted to circumvent the system in order to obtain AOC and CA/N background checks for your personal gain. Further, during your interview with Ms. Young, you were deceptive in your statements that your requests for such background checks were required by the Cabinet and business related.

As an employee with the Cabinet for Health and Family Services, on February 20, 2009 and January 29, 2010, you signed as having read and understood the Acknowledgement of Responsibility, which states, "I have the responsibility to protect the confidentiality and integrity of all Commonwealth of Kentucky data to which I have access in the performance of my job. This confidentiality and data integrity responsibility extends to, but is not limited to, systems and software which the Commonwealth owns, or develops, or acquires from third parties. I acknowledge my responsibility to protect all such information, in whatever form, from improper disclosure or use. I am aware of my responsibilities to read, comprehend, and abide by all COT/Enterprise policies and procedures, as well as the CHFS Personnel Procedures Handbook, Section 2.4, Internet and Electronic Mail Acceptable Use Policy," and "All hardware, software and data to which I have access in the performance of my job is the property of the Commonwealth of Kentucky and is to be used in the performance of my assigned job duties. I shall be responsible for the proper use of these resources. I understand that excessive personal use of these resources shall lead to loss of privilege to use them; use of these resources for personal gain is not allowed."

Also, on September 1, 2006; July 20, 2009; January 29, 2010; and January 1, 2011, you signed as having read and understood the Employee Privacy and Security of Protected Health, Confidential and Sensitive Information Agreement, which clearly states, "I understand that accessing or releasing confidential information and/or records to be accessed or released, to myself, other individuals, clients, relatives, etc., outside the scope of my assigned job duties would constitute a violation of this agreement and may result in disciplinary action being taken against me, up to and including dismissal. I further understand that employees may subject themselves to civil and criminal liability, as well as disciplinary action, for the disclosure of confidential information to unauthorized persons".

Therefore, you knew or should have known your actions were contrary to Cabinet policy. Your failure to follow such policy is especially egregious due to your position as a computer network analyst with the Cabinet, and your particular access to confidential Cabinet data resources and therefore, you should have been keenly aware that your inappropriate personal request for data was not business related and outside the scope of your job duties.

Your actions violate KRS 11A.020 Public servants prohibited from certain conduct -- Exceptions -- Disclosure of personal or private interest; the Cabinet for Health and Family Services' Personnel Procedures 2.1, Employee Conduct and 2.10 Privacy and Security of Protected Health, Confidential and Sensitive Information; as well as the Employee Privacy and Security of Protected Health, Confidential and Sensitive Information Agreement; and Acknowledgement of Responsibility. Further, your actions constitute lack of good behavior for which you may be disciplined pursuant to 101 KAR 1:345, Section 1.

You previously received the following action(s):

<u>DATE</u>	<u>ACTION</u>	<u>REASON</u>
March 18, 2009	Written Reprimand	Lack of Good Behavior
February 25, 2009	Verbal Warning	Lack of Good Behavior and Unsatisfactory Performance of Duties
May 3, 2007	Verbal Warning	Lack of Good Behavior

To keep confidential the identities of \*, \*\*, and Client \*1, as required by law, the names of the individuals and client referenced are transmitted by the attached list marked "CONFIDENTIAL" which is not to be disclosed without proper authorization. Further, you are not authorized to disclose the following names to anyone, including any attorney who may be representing you as counsel.

Further incidents in violation of policy may lead to further and more severe disciplinary action, up to and including dismissal.

For your information, the Kentucky Employee Assistance Program (KEAP) is a voluntary and confidential assessment and referral service for state employees. This service may help you with any personal problems that may be affecting your job performance. KEAP can be reached at 1-800-445-5327 or (502) 564-5788.

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. Copies of KRS 18A.095 and 101 KAR 1:365 concerning appeal and hearing procedures are enclosed.

Sincerely,

  
Howard J. Klein  
Appointing Authority

HJK:jty

c: Secretary Tim Longmeyer, Personnel Cabinet  
Executive Director Mark Sipek, Personnel Board  
Executive Director Rodney Murphy, OATS  
Director Chris Walters, OATS  
Cabinet Personnel File