

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2020-159**

**CORY HUBER**

**APPELLANT**

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

**TRANSPORTATION CABINET**

**APPELLEE**

**\*\*\* \*\***

The Board, at its regular February 2023 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 23, 2023, and being duly advised,

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

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

**SO ORDERED** this 14<sup>th</sup> day of February, 2023.

**KENTUCKY PERSONNEL BOARD**

  
\_\_\_\_\_  
**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Cory Huber  
Hon. William Fogle  
Hon. Rosemary Holbrook (Personnel Cabinet)  
J. R. Dobner

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2020-159

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

TRANSPORTATION CABINET

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\*\* \*\* \* \* \* \* \*

This matter came on for an in-person evidentiary hearing on March 29, 2022, at 9:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Cory Huber, was present and was not represented by legal counsel. He was accompanied by his wife, Vicki Huber, who was allowed to sit with him at counsel table over the objection of the Appellee. The Appellee, Transportation Cabinet, was present and represented by the Hon. William Fogle. Present as Agency representative was Priscilla McCowan.

**BACKGROUND**

1. The Appellant filed his appeal with the Personnel Board on July 7, 2020, appealing a demotion from Highway Technician Superintendent II (pay grade 14, hourly salary of twenty-three dollars and eight-six cents (\$28.86/hr)), to a Highway Technician I (pay grade 10, hourly salary of nineteen dollars and eighty-nine cents (\$19.89/hr)) in addition to an involuntary transfer.

2. The issue for the evidentiary hearing was whether there was just cause for the demotion and involuntary transfer and whether those penalizations were excessive or erroneous. The burdens of proof were on the Appellee.

3. Witnesses

A. Appellee:

- (1) Priscilla McCowan, Human Resource Administrator;
- (2) William Gallagher, Highway Technician I, Campbell County;

- (3) Andrew Temke, Highway Technician Assistant, Campbell County; and
- (4) Anderson Vernet, Former Highway Technician Assistant, Kenton County.

B. Appellant:

- (1) The Appellant, Cory Huber, called himself as his only witness.

4. Exhibits

A. Appellee:

- (1) February 25, 2020 email from Sherry Deters to Priscilla McCowan and others re: District 6 personnel issues;
- (2) February 25, 2020 email from Priscilla McCowan to Tracy Hyatt and JR Dobner re: District 6 problem brewing;
- (3) February 27, 2020 Detail to Special Duty employee notification for the Appellant, Cory Huber;
- (4) April 23, 2020 Investigation Report from the Department of Highways, Office of Civil Rights and Small Business Development;
- (5) Statements from Anderson Vernet regarding Cory Huber;
- (6) Text messages between Cory Huber and Anderson Vernet;
- (7) May 19, 2020 Letter of Intent to Demote issued to Cory Huber by Appointing Authority;
- (8) June 10, 2020 Letter of Notification to Demote issued to Cory Huber by Appointing Authority;
- (9) General Administration and Personnel Policy, GAP-801, Employee Conduct, General Conduct;
- (10) General Administration and Personnel Policy, GAP-803, Employee Conduct, Antiharassment/Antidiscrimination;

- (11) April 13, 2018 Letter of Dismissal for Richard D. Gater issued by Appointing Authority;
- (12) February 26, 2020 Statement from William Gallagher;
- (13) February 26, 2020 Statement from Andrew Temke;
- (14) February 26, 2020 Statement from Anderson Vernet.

B. Appellant:

- (1) Final Order and Recommended Order in Douglas Alton v. Transportation Cabinet, Personnel Board Appeal No. 2020-062;
- (2) October 29, 2020 Transportation Cabinet disciplinary letter notifying Ronald E. Stuff of his five (5) - day suspension;
- (3) November 24, 2020 Transportation Cabinet disciplinary letter notifying Joel G. Reams of his one (1) - day suspension;
- (4) December 15, 2021 Transportation Cabinet disciplinary letter notifying Brian R. Cox, Sr. of his fifteen (15) - day suspension.

**FINDINGS OF FACT**

1. The material facts in this matter are largely not in dispute. The Appellant admits the accuracy of the Agency's allegations as set out against him in the June 10, 2020 demotion letter with one (1) exception. He specifically denies referring to Anderson Vernet as "boy." The Appellant contended that the context is crucial to understanding these allegations. In addition, he contends the penalty was too severe and he should have received some type of suspension.

2. The Appellant was demoted from his position as a Highway Technician Superintendent II, pay grade 14, to a Highway Technician I, pay grade 10, by letter dated June 10, 2020, from Tracy Hyatt, Appointing Authority Designee. The Appellant was also involuntarily transferred by this same letter, which was introduced into evidence as Appellee's Exhibit 8. (**See Recommended Order Attachment A.**) The Hearing Officer incorporates the letter in the Findings of Fact as the allegations against the Appellant.

3. The Appellee presented evidence of all the misconduct and poor work performance allegations made against the Appellant through the testimony its four (4) witnesses and the introduction of Appellee's Exhibits 6, 12, 13, and 14.

4. As previously stated, the Appellant admitted all of the misconduct and poor work performance allegations made against him, except for the allegation that he made the statement, "Well, get it done, boy!" The Appellant was adamant that he never referred to Vernet as "boy." Notably, William Gallagher was the only testifying witness who referenced this particular statement, which included the caveat that this was not a "word-for-word account of what was said."

5. The Hearing Officer finds that all allegations of misconduct and poor work performance made by the Agency against the Appellant were proven by a preponderance of the evidence, except for the allegation that the Appellant made the statement, "Well, get it done, boy!" The Hearing Officer specifically finds the following:

A. Around November 2019, the Appellant was looking at a marketing campaign photograph and stated to Vernet, "Juice, I can't see you due to your dark skin and it's hard to see your face on the picture." This statement was made in front of Vernet's coworkers who were supervised by the Appellant.

B. On February 14, 2020, while the Appellant and Vernet were discussing Black History Month, the Appellant made a series of inappropriate remarks including:

- (1) "I don't give a fuck about Black History Month!"
- (2) While discussing Martin Luther King Jr., the Appellant stated, "Wasn't that the guy who invented peanut butter?"
- (3) "Load the material, you stupid motherfucker."
- (4) The Appellant continued to call Vernet a "silly fucker" despite numerous requests for him to stop.

C. The Hearing Officer also finds credible the testimony that Vernet felt completely disrespected by the Appellant's behavior and that two (2) Campbell County Transportation employees (Gallagher and Temke) requested not to be assigned to work under the Appellant's supervision anymore as a result of the Appellant's conduct.

D. Between 2018 and 2020, the Appellant sent a series of inappropriate text messages to Vernet using his state-issued cell phone. Many of these text messages are profane. Some contain "racially insensitive undertones."

6. The Appellant stated that his statements and actions should be looked at in the context of the friendship between Vernet and himself. He testified that he thought they were joking because of their close relationship.

7. The Hearing Officer finds that the Appellant's actions violated General Administration and Personnel Policy, GAP-801, General Conduct, and General Administration and Personnel Policy, GAP-803, Anti-harassment/Anti-discrimination. The fact the Appellant thought of Vernet as his friend does not excuse his unprofessional comments to and about Vernet. The Hearing Officer similarly finds that the Appellant's actions also constituted poor work performance and misconduct pursuant to 101 KAR 1:345 and clearly established just cause for the underlying disciplinary actions.

8. In his defense, the Appellant maintains that the demotion and involuntary transfer were excessive. In support of his arguments that his penalizations were excessive, he presented examples of misconduct by other Transportation Cabinet employees who were suspended or reprimanded for various fact patterns. However, the Hearing Officer was persuaded by the testimony of McCowan who stated that the Appellant's conduct was different because he was a supervisor directing comments towards his subordinate. In addition, many of these comments directed at Vernet, who rightfully felt disrespected, were made in front of other employees. In addition, even if the Appellant was "just joking" and meant no harm, the racially offensive content of his comments is unacceptable in the workplace. The Hearing Officer finds just cause for the Appellant's demotion and involuntary transfer, which were neither excessive nor erroneous.

### CONCLUSIONS OF LAW

1. The Appellant's conduct violated General Administration and Personnel Policy, GAP-801 and General and Administration and Personnel Policy, GAP-803. His actions also constituted misconduct and poor work performance, pursuant to 101 KAR 1:345. As a result, disciplinary action was appropriate.

2. Given all the surrounding circumstances of this case, the Appellee's actions of demotion and involuntary transfer of the Appellant were taken with just cause and were neither excessive nor erroneous. KRS 18A.095(1) and (22)(c)

3. The Appellee carried its burden of proof and the Appellant's appeal should be dismissed, pursuant to KRS 13B.090(7).

### RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **CORY HUBER VS. TRANSPORTATION CABINET (APPEAL NO. 2020-159)** be **DISMISSED**.

### NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a

response to any exceptions that are filed by the other party within 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 23 day of January, 2023.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day e-mailed and mailed to:

Cory Huber  
Hon. William Fogle  
J.R. Dobner  
Hon. Rosemary Holbrook (Personnel Cabinet)



COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET  
transportation.ky.gov

Andy Beshear  
GOVERNOR

Jim Gray  
SENATOR

June 10, 2020

Cory Huber

PERNR:

Re: REVISED - Demotion

Dear Mr. Huber:

This letter, originally dated June 1, 2020, is being re-issued because the reversion from detail to special duty letter was not issued first.

After considering your statements presented at your pre-demotion hearing held on Thursday, May 28, 2020, I have not found sufficient reason to rescind or alter the intent to demote letter dated May 19, 2020. This letter serves as notification that you are being demoted from your position as a Highway Technician Superintendent II, pay grade 14, hourly salary of \$23.86, to a Highway Technician I, pay grade 10, hourly salary of \$19.89 effective close of business Wednesday, June 10, 2020. In addition, you will be involuntarily transferred to the Kentucky Transportation Cabinet (KYTC), Department of Highways, District Six, Project Delivery and Preservation Branch I, Covington Section effective close of business Wednesday, June 10, 2020.

In accordance with KRS 18A.095, 101 KAR 1:345 and 101 KAR 1:335, you are being demoted and involuntarily transferred based on the following specific reasons:

**Lack of Good Behavior/Misconduct.** On March 2, 2020, the Office of Civil Rights and Small Business Development (OCRSBD) received a complaint against you filed by Anderson Vernet, Highway Technician Assistant II. In his complaint, he alleged the following:

1. You made inappropriate references to his skin color; and
2. You made racially disparaging, disrespectful and profane comments directed at him in front of his peers.

APPELLE'S  
EXHIBIT



Caisey Ramsey-Johnson, Program Investigative Officer II, and Tiffany Squire, Program Investigative Officer I, investigated the allegations. Their investigative findings supported many of Vernet's allegations and the complaint was substantiated. The investigation revealed the following:

1. In the fall of 2019, Vernet alleged that you made racial remarks about a photograph that was taken for a KYTC marketing campaign. He said you looked at the picture and said "*Juice, I can't see you due to your dark skin and it's hard to see your face on the picture.*" Jonathan Bradford, Highway Technician Superintendent I, confirmed that you made comments to Vernet about his dark skin color in the picture, and that the comments were made in front of Vernet's coworkers, employees whom you supervise.
2. In addition to the above mentioned comment, you engaged in inappropriate conduct on February 14, 2020. On that date, several Campbell County crew members were present to assist the Kenton County crew with a work assignment. This included Andrew Temke, Highway Technician Assistant II, William Gallagher, Highway Technician Assistant I, and Donald Schuckmann, who has since resigned his employment with the KYTC. The crew ran out of mix around lunch time, and Anderson went to Bradford to report the issue. When he did, you were also present. Vernet claims you asked him a question that he did not understand, and you told him to get out of your office. Vernet claimed you followed him out of the office and continued to make comments to him in front of KYTC employees.

Witnesses who were there reported they heard you ask Vernet if he filled the hot box and when he said no, you said "*Well get it done boy!*" Vernet had previously told you he would take care of loading the hot box before the crew had to resume work. The term "boy" has historically been used by white men to belittle black men, and the manner by which you used it was highly inappropriate and unwelcome in a KYTC workplace.

Vernet said he was embarrassed and told you to respect him because it was Black History month. One witness heard you say, "*I don't give a fuck about Black History Month!*" and you and Vernet continued to discuss Black History Month. You commented about Martin Luther King, Jr. and said "*wasn't that the guy who invented peanut butter?*" One witness said he perceived your comment to be an insult toward Vernet and all witnesses were made uncomfortable by your comments.

The confrontation moved outside, and witnesses heard you say, "*load the material, you stupid motherfucker!*" Witnesses said you used the term "stupid motherfucker" several times in this conversation, and it was

directed toward Vernet. Vernet again asked you to stop disrespecting him in front of coworkers. Witnesses heard Vernet ask you numerous times to stop your behavior, and you did not stop until Vernet left the premises. In your interview with Ramsey-Johnson, you were asked if you told Vernet to "get your stupid ass out of here." You responded "I'm not saying I didn't say something, but I didn't call him a stupid ass." When asked what names you do call others, you said "silly fucker."

**Lack of Good Behavior/Misconduct** – During the investigation, you submitted text messages between you and Vernet that date back to 2018. Vernet confirmed that those text messages are between you and him. The text messages were created using cell phone 859-445-2190, which the district confirmed is your state issued cell phone. The content of the messages between you and Vernet is profane and inappropriate, especially in your position as his supervisor. Your language in the text messages sometimes carries racially insensitive undertones. The text messages are attached in full as Appendix A of this document. The following are three examples of your inappropriate behavior.

August 23, 2018, 2:40 p.m.

Huber: *"Yo bruh, what time do you want me to pick yo ass up?"*

Vernet: *"Yo bro, bro dont worry my wife going to take me to get my car while she getting my son in daycare."*

Huber: *"Yo bruh, dats fly"*

August 30, 2018, 11:22 a.m.

Huber: *"Yo, you got email mother fucker?"*

Vernet: *"LOL...no good morning? But my email is An\*\*\*\*t30@live.com."*  
*(This email is abbreviated for privacy).*

Huber: *"No. No good morning bitch. I never axed you about yo morning. Why you using sick instead of annual?"*

Vernet: *"Why is that a crime...just wanted to save it up but if that a problem, u can put annual."*

Huber: *"Ok, yo! Don't go all lock and load on me and shit. Put the gun down."*

Vernet: *"Lol I dont know how dawg look like gun"*

Huber: *"I sent that info u wanted."*

Vernet: *"Alright, dawg, good looking out (smiley face emoticon)"*

Huber: *"What the fuck ever, yo"*

December 31, 2019, 12:51 a.m.

Huber: *"Yo Bitch! Let me know if there are any cops down there when you arrive."*

Vernet: *"Alright fool, 10-4"*

The text messages listed above, along with the rest of the transcript in Appendix A, reveal that your pattern of behavior has continued since 2018. Even if Vernet used profanity and made inappropriate comments, as the supervisor, it was your responsibility to set an appropriate work environment for employees, which includes ensuring that employees, including you, conduct themselves within the parameters of KYTC policies.

Your actions are in violation of 101 KAR 1:345, General Administration and Personnel Policy GAP-801, General Conduct, and GAP-803, Anti-Harassment/Anti-Discrimination, because, as a supervisor, you made comments about Vernet's skin color being too dark, called Vernet "boy," called Vernet a "stupid motherfucker," belittled the achievements of Martin Luther King, Jr. in a conversation with Vernet, and used profane and racially insensitive language in text messages with Vernet using a state-issued cell phone.

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.

If you have any questions, please contact the Employee Compliance Branch at (502) 564-4610.

Sincerely,



Tracy Hyatt  
Appointing Authority Designee

TH/pm

Attachment – Appeal Form

cc: Personnel Cabinet  
Personnel Board  
Mike Hancock, State Highway Engineer  
Robert Yeager, Executive Director  
Brandon Seiter, Transportation Engineer Branch Manager  
Stacey Hans, Staff Assistant

Cabinet Personnel File