

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-063

WESLEY D. JACKSON

APPELLANT

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

TRANSPORTATION CABINET  
MIKE HANCOCK, APPOINTING AUTHORITY

APPELLEE

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The Board at its regular June 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated April 23, 2014, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby 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 18<sup>th</sup> day of June, 2014.

KENTUCKY PERSONNEL BOARD

  
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MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Fogle  
Wesley D. Jackson  
Kathy Marshall

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-063**

**WESLEY D. JACKSON**

**APPELLANT**

**VS.**

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
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**TRANSPORTATION CABINET  
MIKE HANCOCK, APPOINTING AUTHORITY**

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This matter came on for evidentiary hearing on February 21, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Geoffrey B. Greenawalt, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Wesley D. Jackson, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Transportation Cabinet, was present and was represented by the Hon. William Fogle.

The issue at the evidentiary hearing was the Appellant's one-day suspension without pay. The burden of proof was upon the Appellee to demonstrate by a preponderance of the evidence that the disciplinary action taken against Appellant was neither excessive nor erroneous and was taken with just cause.

**BACKGROUND**

1. The Appellant, Wesley D. Jackson, was suspended from duty and pay for a period of one working day effective beginning of business through the close of business, Tuesday, February 5, 2013, from his position as Highway Equipment Operator III with the Kentucky Transportation Cabinet, Department of Highways, District 3.

2. The Appellant filed his appeal with the Personnel Board on March 15, 2013, appealing from his one-day suspension from duty and pay.

3. The first to testify was **Mr. Marcus Hill**. Mr. Hill is employed as the Superintendent I with the Kentucky Transportation Cabinet, Department of Highways, in District 3, which covers Warren County, Kentucky. Mr. Hill is the Appellant's immediate supervisor. A part of Mr. Hill's duties include sending out road crews and inspecting their work once it is completed. Mr. Hill explained that road crew members are occasionally called out on emergencies and are on call 24/7 on a rotating basis. His maintenance crew is divided into groups with three or four members in each. These groups rotate each week and are subject to call-outs during that particular week at anytime from Monday morning at 7:00 a.m. to the following Monday at 7:00 a.m. Appellee's Exhibit 1 was introduced through the witness and is a copy of the District 3 Maintenance Worker Overtime Call in Rotation.

4. Mr. Hill testified that on Sunday, January 13, 2013, heavy rain showers came through the Bowling Green area. As a result, starting at approximately 12:20 p.m., the road department began receiving complaints of standing water in the roadway, which presented a safety issue and necessitated a road crew call out. As such, Mr. Hill called Tyler Smith, Josh Cornwell, and the Appellant, to come in to work and take care of the standing water issues. Mr. Hill explained that he did not call Tim "Dog" Watt (who was also in the same overtime call rotation as the Appellant) because he was new to the job and would not have known how to handle standing water issues.

5. Mr. Hill explained that when he tried to call the Appellant all he could get was his voicemail so he left a message. Approximately thirty to thirty-five minutes later, around 1:00 p.m., the Appellant called back and told him he was at the Rivergate Mall, which was about 40-45 minutes away from Bowling Green. The Appellant explained that the best he could do was to call Mr. Hill when he got back into Bowling Green later that day. According to Mr. Hill, the Appellant did not offer to come immediately into work as requested which left his crew short-handed.

6. Mr. Hill testified that he prepared the memorandum, marked and entered into the record as Appellee's Exhibit 2, and that the information contained thereon was true and accurate.

7. On cross-examination, Mr. Hill denied that the Appellant told him on the phone that he could be there within 30-40 minutes. Instead, Mr. Hill testified that he told the Appellant he needed him now, not when he got back into town later that day.

8. The next to testify was **Mr. James R. Dobner**, who is presently the Policy Advisor with the Transportation Cabinet, Office of Human Resources. However, in January 2013, when the subject incident occurred, he was the Human Resource Administrator with the Transportation Cabinet. Part of his duties as a Human Resource Administrator was to review requests for Major Disciplinary Action (MDA). In this instance, Mr. Dobner reviewed the

request for MDA which was entered into the record as Appellee's Exhibit 5, together with the Appellant's personnel file. Thereafter, he drafted the one-day suspension letter dated January 30, 2013, marked and entered into the record as Appellee's Exhibit 6.

9. Appellee's Exhibit 3 was introduced through Mr. Dobner and he pointed out that part of the Appellant's duties were to respond to emergencies as required. Receipt of this document was acknowledged by the Appellant by his signature on July 30, 2007.

10. Appellee's Exhibit 4 was also introduced through Mr. Dobner and reflects the Appellant's responsibility to respond to emergency call-outs had been reviewed during his orientation back in September of 2001.

11. The General Administration and Personnel Policy GAP-801 was introduced into the record through Mr. Dobner. This is the policy referred to the suspension letter marked as Appellee's Exhibit 7. Specifically, under the first arrow, second diamond, Mr. Dobner was of the opinion that the Appellant failed to carry out his assignment as directed by his supervisor. Appellee's Exhibit 8 was introduced into the record and demonstrates that the Appellant acknowledged he had previously received and reviewed a copy of GAP-801.

12. Appellee's Exhibits 9 and 10 were introduced into the record and are the written reprimands referred to in the suspension letter, marked as Appellee's Exhibit 6.

13. Mr. Dobner explained that he believed a one-day suspension was appropriate in this instance because it appeared that a pattern of misconduct was emerging which needed to be halted. He also noted that failing to respond to emergency call-outs result in safety concerns for the public. Mr. Dobner testified that this situation was comparable to an incident in which a supervisor failed to respond to an emergency call-out. In that incident, that supervisor received a three-day suspension which was longer than the Appellant, mainly because a supervisor has a heightened responsibility.

14. The next to testify was **Mr. Wesley Jackson**, the Appellant. Mr. Jackson works with the Transportation Cabinet in Warren County and is a Highway Equipment Operator III. He has been employed as such since 2001. According to Mr. Jackson, he never refused to come in when Mr. Hill called him. He also returned Mr. Hill's call; at which time he informed him he could be at work within 30 to 40 minutes. He also offered to call Mr. Hill when he got back into town. According to Mr. Jackson, Mr. Hill had two other road crew members on the job that could have taken care of the situation. Finally, Mr. Jackson admitted he did not report to work on January 13, 2013.

15. On cross-examination, the Appellant admitted he knew he was on the call-out list on January 13, 2013. He also acknowledged that by the time he returned Mr. Hill's call he was at least 40 minutes away at the Rivergate Mall.

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

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

17. The Hearing Officer has considered the entire administrative record, including the testimony and statements therein.

#### **FINDINGS OF FACT**

1. The Appellant, Wesley D. Jackson, was suspended from his position as a Highway Equipment Operator III with the Kentucky Transportation Cabinet, Department of Highways, District 3, for one working day, effective the beginning of business through the close of business Tuesday, February 5, 2013. According to the suspension letter marked as Appellee's Exhibit 6, the suspension was due to Appellant's lack of good behavior.

2. The Appellant, a classified employee with status, timely filed his appeal with the Personnel Board on March 15, 2013, appealing from his one-day suspension as noted above.

3. The Appellant, a Highway Equipment Operator III, who worked out of the Warren County Maintenance Facility, was on the overtime call rotation on Sunday, January 13, 2013. On that date, heavy rainstorms came through the Warren County area and complaints were received by the road department concerning standing water on the roadways. As a result, Marcus Hill, the Appellant's immediate supervisor, attempted to contact the Appellant in an attempt to call in him into work to help address the standing water issues.

4. Mr. Hill called the Appellant and left him a message at approximately 12:25 p.m. on January 13, 2013. Approximately 30 to 35 minutes later the Appellant returned Mr. Hill's call, and informed him that he was located approximately 40 minutes away from Bowling Green at the Rivergate Mall. The Appellant did not offer to come in immediately as requested. Instead he offered to call Mr. Hill when he got back into town later that evening. The Appellant did not report to work on January 13, 2013, as requested.

5. By not reporting to work on January 13, 2013, the Appellant failed to carry out his assignment as directed by his supervisor and failed to satisfactorily perform his job duties, which constitutes a violation of general administration and personnel policy GAP-801, General Conduct.

### **CONCLUSIONS OF LAW**

1. The Appellant timely filed his appeal with the Personnel Board on March 15, 2013, appealing from his one-day suspension from duty and pay from his position as a Highway Equipment Operator III, in the Kentucky Transportation Cabinet, Department of Highways, District 3, effective the beginning of business through the close of business, Tuesday, February 5, 2013.

2. The Appellant was suspended on the basis of a lack of good behavior as noted in the suspension letter dated January 30, 2013, and marked as Appellee's Exhibit 6.

3. Not reporting to work on January 13, 2013, as requested by his immediate supervisor, Marcus Hill, constitutes a violation by the Appellant of general administration and personnel policy GAP-801.

4. The Appellee has demonstrated by a preponderance of the evidence that the disciplinary action taken against the Appellant, the same being a one-day suspension from duty and pay, was neither excessive nor erroneous and was appropriate under the circumstances.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **WESLEY JACKSON VS. TRANSPORTATION CABINET (APPEAL NO. 2013-063)** be **DISMISSED**.

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

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

**Any document filed with the Personnel Board shall be served on the opposing party.**

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

**ISSUED** at the direction of **Hearing Officer Geoffrey B. Greenawalt** this 23<sup>rd</sup> day of April, 2014.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day mailed to:

Hon. William Fogle  
Wesley D. Jackson  
Kathy Marshall