

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-096

ALONDA KILBURN

APPELLANT

VS.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

*** **

This matter came on for an evidentiary hearing on January 15, 2020, at 9:30 a.m. (ET), at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before Stephen McMurtry, Hearing Officer. The proceedings were recorded by audio/video equipment as authorized by KRS Chapter 18A.

The Appellant, Alonda Kilburn, was present and not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Brent Irvin.

BACKGROUND

1. The Appellant, Alonda Kilburn, appealed a one-day suspension imposed under 101 KAR 345, Section 1, from the duties of her position as a Family Support Specialist II with the Department for Community Based Services (DCBS), Southern Bluegrass Service Region, for violation of Personnel Procedure 2.10, Privacy and Security of Protected Health, Confidential and Sensitive Information, as stated here, in pertinent part:

Do not search for access to, or inquire about protected health, confidential and sensitive information in excess of the minimum necessary to do [the] job.

2. DCBS Operations Manual Section (MS) 0015, Volume I, Ethics Policy or Family Support Employees, states in pertinent part:

Family Support employees:

A. Adhere to standards of ethics, confidentiality and security agreements;

...

M. Shall not use confidential information for any personal gain or in a manner which may be detrimental to the welfare of the citizens of the Commonwealth.

3. Appellant, **Alonda Kilburn**, admits that she violated Personnel Procedure Section 2.10, but asserts that the one-day suspension was excessive in light of her work record and the absence of any prior disciplinary action against her during her five-year period of employment with the Cabinet. She produced a 2016 Certificate of Appreciation from the Cabinet for outstanding field service, a House of Representatives' citation for helping establish a central command for "benefits processing," and three Annual Performance Evaluations that predominately award "Greatly exceeds expectations" to her work performance.

4. **Howard J. Klein**, Appointing Authority for the Cabinet, testified that he examined comparable appeals from Cabinet employees over a fifteen-year period to assure that Kilburn's one-day suspension was not excessive as compared to the discipline meted out to similarly situated Cabinet employees who had violated the same policy. He testified that the Department had given disciplinary actions ranging from dismissals to multiple-day suspensions for violations of the policy and many one-day suspensions to employees whose actions were similarly egregious to Kilburn's. Klein said Kilburn's one-day suspension was consistent with similar violations of the policy and was on the "low end." He testified that accessing such confidential information could invoke criminal penalties.

FINDINGS OF FACT

1. By a preponderance of the evidence, the Hearing Officer finds that the factual testimony of Kilburn and Klein summarized in the above Background is true and uncontested. To be more specific, Kilburn admitted that she accessed the Worker Portal System to review a "case summary," a "case notes summary," and a "Dashboard" in violation of Personnel Procedure 2.10.

2. Kilburn also attempted to lessen the seriousness of what she had done as she had previously worked on the case in question and was curious about what had occurred. But her accessing the file was not to "do the job;" rather, it was to satisfy her curiosity as to what had been the aftermath of a recently publicized event involving the person who was the subject of the case file.

3. Kilburn was well aware of the policy. The Cabinet established that it made significant efforts to assure its employees understood it and their responsibilities in regards to it.

4. Finally, the Hearing Officer finds that to reduce Kilburn's discipline to a verbal or written reprimand, as she has pleaded, would unfairly treat her more favorably than the similarly situated employees who violated the policy.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes as a matter of law that there was sufficient evidence to establish that the Appellant, Alonda Kilburn, violated 101 KAR 1:345, Section 1, Lack of Good Behavior, by unlawfully accessing protected confidential information outside the scope of her job duties in violation of the Cabinet's policy identified as Personnel Procedure 2.10.

2. It is further concluded as a matter of law that the imposition of a one-day suspension by the Cabinet for the behavior was not excessive or erroneous in view of the surrounding circumstances and in violation of KRS 18A.095(22). The disciplinary action when compared to past action against similarly situated Cabinet employees was fair and consistent.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **ALONDA KILBURN V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2019-096)** 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.

SO ORDERED at the direction of **Hearing Officer Stephen McMurtry** this 10th day of March, 2020.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Brent Irvin
Alonda Kilburn