



COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2018-249

CLARENCE MICHAEL LAWSON

APPELLANT

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

TRANSPORTATION CABINET

APPELLEE

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This matter came on for evidentiary hearing on July 30, 2019, at 9:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Geoffrey Greenawalt, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by KRS Chapter 18A.

The Appellant, Clarence Michael Lawson, 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.

By Interim Order dated April 2, 2019, the issue at the evidentiary hearing was whether or not there was just cause for the Appellant's three-day suspension, and whether such penalty was excessive or erroneous under the circumstances. The Appellee was assigned the burden of proof, which was to be by a preponderance of the evidence.

**BACKGROUND**

1. The Appellant, Clarence Michael Lawson, filed his appeal with the Personnel Board on December 13, 2018, appealing his suspension from duty and pay for three (3) working days from his position as a Highway Superintendent I with the Transportation Cabinet, District 11, in Harlan County, Kentucky.

2. The first to testify at the hearing was **Priscilla McCowan**, who is a Human Resource Administrator with the Transportation Cabinet with 20 years of Human Resources experience. As part of her job duties, Ms. McCowan is charged with investigating requests for disciplinary action and drafting recommended written disciplinary letters for the Appointing Authority's review and execution.

3. According to Ms. McCowan, the Appellant is a Highway Superintendent I at the Harlan County Maintenance Facility. The Appellant's job responsibilities were to ensure that the

roadways in Harlan County are in good repair, free of obstructions, and are otherwise safe for the traveling public. The Appellant knew that part of his job duties required him to be available outside his usual work schedule to handle emergencies. She stated that this was an essential function of his job.

4. Appellee's Exhibit 1 was introduced into the record and is a copy of the Request for Corrective or Major Disciplinary Action, dated October 31, 2018. According to Ms. McCowan, the Appellant's supervisor received a telephone call outside of normal business hours from Kentucky State Police Post 10 dispatch, indicating there were tree limbs in the road that needed to be removed. She testified that the Appellant failed to answer the calls from his supervisor to take care of the tree limb situation, despite knowing he was required to do so. She stated the Appellant had been counseled concerning call outs in August 2018 because a pattern was starting where no one was responding to the call out requests. Basically, the Appellant was told he needed to "fly right" or major disciplinary action would be taken.

5. Appellee's Exhibit 2 was introduced into the record and is a copy of the Appellant's three-day suspension letter, dated December 6, 2018. The suspension letter was drafted by Ms. McCowan and signed by the Appellee's Appointing Authority designee, James R. Dobner. In essence, the Appellant was suspended for three days because he failed to respond to an emergency call out on October 21, 2018. This incident occurred despite the Appellant having been counseled on August 27, 2018, by his second- and third-line supervisors to respond to emergency call outs in a timely manner.

6. Appellee's Exhibit 3 was introduced into the record and is a copy of General Administration & Personnel Policy GAP-801, Employee Conduct, relating to General Conduct. Specifically, the second bullet under the first indented paragraph on the first page of GAP-801 indicates that the Appellant is to carry out assignments as directed by his supervisors.

7. Appellee's Exhibit 4 was introduced into the record and is a copy of the Appellant's previous Written Reprimand dated July 15, 2016. Appellee's Exhibit 5 was introduced into the record and is a copy of the Appellant's Written Reprimand, dated January 25, 2017. Ms. McCowan testified that it was J.R. Dobner's decision regarding the extent of the disciplinary action to be taken against the Appellant. She noted that the Appellant had two previous written reprimands but, more importantly, by failing to timely respond to emergency call outs, the Appellant ran the risk of lives being in jeopardy. As such, it was a major safety issue. In addition, since the Appellant held a supervisory position, he was held to a higher standard of conduct.

8. Appellee's Exhibit 6 was introduced into the record and is a copy of the Job Class Specification for the Highway Superintendent I position. In the section of the document labeled "Typical Working Conditions," it indicates that this position holder must be able to work extended hours and be outside supervising the work units during inclement weather.

9. According to Ms. McCowan, the three-day suspension was chosen as the penalization herein because it involved a supervisor with heightened responsibility and could

have jeopardized the safety of the driving public. She testified that, because of this, the penalization was reasonable and consistent with similar infractions involving other employees that resulted in disciplinary action.

10. Appellee's Exhibits 7 through 11 were introduced into the record as examples of disciplinary actions taken by the Appellee under similar circumstances to that of the Appellant's. These documents speak for themselves.

11. Appellee's Exhibit 12 was introduced into the record and is a copy of General Administration & Personnel Policy GAP-205, Employment Procedures, relating to Work Schedules. Under GAP-205, a supervisor may require employees to work hours and days other than normal, if it is in the best interest of the Cabinet. Ms. McCowan stated that it is the policy and practice of the Transportation Cabinet that employees, including the Appellant, are expected to respond to any call outs during off hours in order to handle emergencies that may crop up.

12. Appellee's Exhibit 13 was introduced into the record and is a copy of 101 KAR 2:095. Section 3 indicates that the Appellant may be required to work hours and days other than regular days and hours, including overtime.

13. Finally, Ms. McCowan testified that this particular matter was taken very seriously because it involved the safety of the driving public and a person in a supervisory position.

14. The next to testify at the evidentiary was **Robert Perkins**, who is the Transportation Engineer for District 11, which covers Bell and Harlan Counties. Mr. Perkins is the Appellant's second-line supervisor. According to Mr. Perkins, Michael Middleton is the Appellant's first-line supervisor.

15. Having reviewed Appellee's Exhibit 1, Mr. Perkins testified that the Request for Corrective or Major Disciplinary Action was taken because no one in Harlan County, including the supervisors, were responding to emergency call outs. In addition, because of this problem, he and his immediate supervisor, David Fuson, had counseled the Appellant previously and told him that call outs were to be addressed in a timely fashion or major disciplinary action would be taken.

16. Mr. Perkins testified that both he and the Appellant were having trouble getting anyone to answer these emergency call outs in Harlan County. At one point, the Appellant did come to Mr. Perkins with the problem and asked him what to do. Mr. Perkins told the Appellant that if he could not get his crew to answer emergency call outs, then he needed to request major disciplinary action against them. According to Mr. Perkins, it was not his place to start major disciplinary actions against the Appellant's crew and, as far as he was aware, he never received a request from the Appellant for major disciplinary action against any of the Appellant's crew. Mr. Perkins testified that the Appellant was singled-out for disciplinary action because he is a supervisor and is responsible for managing his crew. His job was to get his crew to respond to the emergency call outs. Mr. Perkins stated that he just requested the disciplinary action, but the

decision as to the three-day suspension was made in Frankfort. He further testified that since the disciplinary action was taken against the Appellant, there have been no more problems with the taking of emergency call outs.

17. The next to testify was **David Fuson**, who is the Transportation Engineering Branch Manager working out of the Manchester District Office. Mr. Fuson is Robert Perkins' immediate supervisor and is the Appellant's third-line supervisor.

18. Mr. Fuson testified that, in late August 2018, he and Mr. Perkins met with the Appellant regarding his failure to respond to emergency call outs. During the meeting, the importance of responding to these call outs was reiterated. After the Appellant failed to respond to a call out shortly thereafter in October 2018, disciplinary action was taken. According to Mr. Fuson, since the Appellant had been suspended, the problem with employees not responding to call outs appears to have been solved.

19. David Fuson's testimony marked the end of the Appellee's case-in-chief. The next to testify was the **Appellant, Clarence Michael Lawson**. Mr. Lawson is a Highway Superintendent I at the Harlan County Maintenance Garage.

20. Mr. Lawson testified that there are 16 crewmembers in Harlan County. He was having difficulty getting any of his crew to respond to emergency call outs. He went to Robert Perkins and David Fuson at least six months before his suspension looking for help. David Fuson told him to handle it the best way he could. Mr. Lawson stated he also had to rely on his supervisor, Michael Middleton, for help in this area. He further stated that the Harlan County Maintenance Garage used to have meetings with the crew and Michael Middleton and, at one of these meetings, he indicated he was having problems getting people to answer call outs. It was then that Michael Middleton stood up and said, "We don't get paid for call outs." Apparently, a former employee took all the call outs prior to his death, It was only after this employee's death that the problems with the call outs began.

21. Mr. Lawson admitted that he did not take the October 2018 emergency call out. He further testified that he never initiated disciplinary actions against his crew in an attempt to get them to respond to these call outs.

22. The Hearing Officer had considered the entire administrative record, including the testimony and any exhibits therein.

23. 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.

**FINDINGS OF FACT**

The Hearing Officer makes the following Findings of Fact by a preponderance of the evidence.

1. The Appellant, Clarence Michael Lawson, a classified employee with status, timely filed his appeal with the Personnel Board on December 13, 2018, appealing his three-day suspension from duty and pay as a Highway Superintendent I with the Transportation Cabinet, District 11.

2. Pursuant to the Interim Order dated April 2, 2019, the issue before the Personnel Board was whether or not there was just cause for the Appellant's three-day suspension and whether that penalty was excessive or erroneous under the circumstances. The Appellee was given the burden of proof, which was to be by a preponderance of the evidence.

3. As Highway Superintendent I in Harlan County, the Appellant has a duty to adhere to the policy and procedures of the Transportation Cabinet. It is clearly the Transportation Cabinet's policy that all highway maintenance employees, including the Highway Superintendent I, are expected to work additional time outside their ordinary work hours when necessary.

4. On or about August 27, 2018, Robert Perkins and David Fuson held a meeting with the Appellant wherein the importance and expectations regarding responding to emergency call outs outside his usual work schedule was reiterated. On October 21, 2018, David Fuson tried to reach the Appellant outside his usual work schedule for the purposes of removing debris from a roadway within Harlan County. Per his own admission, the Appellant failed to respond to this call.

5. The failure to respond to emergency call outs was an ongoing problem within District 11 and throughout the state. As evidenced by Appellee's Exhibits 7 through 11, the Appellant's three-day suspension was consistent with disciplinary actions taken against other Transportation Cabinet employees under similar circumstances and was otherwise neither excessive nor erroneous under the circumstances.

6. Given the importance of maintaining safe roads for the traveling public, coupled with the Appellant's heightened responsibility as a supervisor to adhere to and administer all of the Appellee's policies and procedures, there was just cause for the Appellee to suspend the Appellant for three days from duty and pay from his position as Highway Superintendent I when he failed to respond to the October 2018 emergency call out without a valid excuse.

**CONCLUSION OF LAW**

The Appellee has demonstrated by a preponderance of the evidence that the three-day suspension of the Appellant herein, Clarence Michael Lawson, was neither excessive nor erroneous and was taken with just cause.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **CLARENCE MICHAEL LAWSON V. TRANSPORTATION CABINET (APPEAL NO. 2018-249)** 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 Greenawalt** this 3<sup>rd</sup> day of October, 2019.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day mailed to:

Hon. William Fogle  
Mr. Clarence Michael Lawson  
Mr. J. R. Dobner