COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-172

SHERI L. LEACH **APPELLANT**

VS.

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

TRANSPORTATION CABINET
MIKE HANCOCK, APPOINTING AUTHORITY **APPELLEE**

** ** ** ** **

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 May 9, 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 18th day of June, 2014.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Fogle
Sheri L. Leach
Kathy Marshall

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-172

SHERI L. LEACH **APPELLANT**

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

KENTUCKY TRANSPORTATION CABINET , MIKE HANCOCK, APPOINTING AUTHORITY **APPELLEE**

** ** ** ** **

This matter came on for an evidentiary hearing on April 4, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Stephen McMurtry, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Sheri L. Leach, was present, *pro se*. The Appellee, Kentucky Transportation Cabinet, was present and represented by the Hon. Will Fogle.

BACKGROUND

1. The Appellant, **Sheri L. Leach**, is a Highway Superintendent II, in the Department of Highways, District 5, of the Kentucky Transportation Cabinet. On May 15, 2013, Tresa Straw, the Appointing Authority, notified Leach she would be suspended from her position for five days beginning May 24, 2013, and ending May 28, 2013, for Lack of Good Behavior and Poor Work Performance in violation of general administration and personnel policy (GAP-801) KRS 18A.145(4) and 101 KAR 1:345.

2. The Cabinet alleged that on November 25, 2011, Leach "falsified (her) timesheets, conducted personal business on state time, and claimed four hours and 13 minutes of time worked to which (she) was not entitled." The Cabinet alleged that Leach failed to properly supervise Gerald Lee, a Highway Superintendent I, by not taking "steps to verify how much time Lee (had) actually used on 'call-outs' during August 2011 and January 2013." The suspension letter alleged Lee had claimed 10 hours and 51 minutes of work time in August 2011, and 27 hours and 40 minutes in January 2013 for which he was not entitled to be paid.

3. Leach filed a timely appeal of these charges and the five-day suspension on July 8, 2013, alleging "I am appealing on the grounds of the G.P.S. system. I to this day have no knowledge of how I am to go about or even have the authority to receive a print out or even see

the G.P.S. system to keep up with an employee's were abouts (sic). As a Sup. II I am now and never had this knowledge. That I could have or could receive such."

4. The relevant policies, KAR and statutes are:

a. GAP-801, (in part) "Conducting Personal Business on State Time" and "Falsifying...Timesheets."

b. 101 KAR 1:345, Section 1. **General Provision.** Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.

c. KRS 18A.145(4), "No person shall make any false statement, record, or report regarding hours...worked by any employee."

5. At the beginning of the evidentiary hearing, Leach stated she did not contest the Cabinet's allegations of her falsifying timesheets and conducting personal business on state time. Rather, she contested the Cabinet's charge that she failed to properly supervise Gerald Lee. Consequently, only the charge of Poor Work Performance will be considered.

6. **Kathy Marshall**, Human Resources Manager for the Transportation Cabinet, and Manager of the Compliance Branch, provided a background to understand the appeal. The duties of a Highway Superintendent II include supervising the timekeeping and reporting of Highway Superintendents I, who are called-out after scheduled work days for highway maintenance problems caused, for example, by storm debris or traffic accidents. Marshall testified the Office of Audits found that employee overtime costs for "call-outs" were excessive, often doubling an employee's annual salary. The Office of Inspector General conducted an investigation, uncovering falsification of overtime during "call-outs" by at least six Department of Highway employees, which resulted in disciplinary actions. Three employees received dismissals, and three received suspensions. The Cabinet followed a rule of thumb to ensure consistency in punishment. That is, 15 hours or less of falsified timesheet reporting warranted five days' suspension. Lee's false reporting of 38 hours and 31 minutes warranted 20 days' suspension.

7. Marshall explained that even without Poor Work Performance on the part of Appellant Leach, her "Lack of Good Behavior" warranted a five-day suspension.

8. Marshall testified the Highway Superintendent II had the obligation to ensure that Highway Supervisors I accurately reported their "call-out" time. But in response to a question on cross-examination, Marshall stated she understood Leach's claim that she (Leach) relied on the honesty and integrity of the supervisors below her to report their time correctly. Marshall stated that the Department of Highways used to pay employees for two hours' overtime any time they were called out, even if the time actually worked was less than two hours. She stated this practice was no longer in operation, and introduced a 2010 e-mail exchange directed to all maintenance employees explaining the policy that maintenance workers would be paid, therefore, only for overtime actually worked. All maintenance workers, she stated, must sign a document that they understood GAP-801, which (in part) requires correct and honest timesheet reporting. The Cabinet introduced such a document signed by Leach.

9. The Cabinet called **Kevin Shipp**, Deputy Inspector General in the Kentucky Transportation Cabinet, who investigated the "top ten" users of overtime. One of the ten was Gerald Lee. Shipp compared the "call-out" logs, timesheets submitted by the "top ten", and GPS records, the latter of which tracked the general location of vehicles used by maintenance workers in traveling to and from "call-out" sites. These vehicles carried electronic locators scheduled to emit signals every 15 minutes which identified a particular vehicle's geographic location, and stored the information. The locator recorded when the vehicle was at the maintenance site, at the worker's home, or on what highway the vehicle was traveling to and from the "call-out" site. The Cabinet introduced Shipp's investigative report which documented the amount of time falsely claimed by Gerald Lee in October 2012 and January 2013.

10. The Appellant, Sheri Leach, did not testify, except to state at the beginning of the hearing that she relied on the integrity and honesty of Gerald Lee to report his time correctly.

FINDINGS OF FACT

1. The Appellant, Sheri Leach, admitted she had violated the timesheet reporting obligations of GAP-801.

2. The Cabinet failed to prove, by a preponderance of the evidence, that Leach failed to supervise Lee, thus contributing to his falsification of timesheets during "call-outs." Kathy Marshall condoned Leach's reliance on the expectation that Lee, who assisted her in supervising timekeeping by maintenance workers, would correctly report his time. She suggested that Leach could have questioned Lee about his time reporting, but offered no reason for Leach to suspect Lee was falsifying his time records or other ways for Leach to discovery Lee's falsification. The Cabinet imposed a vicarious, no-fault liability on Leach for Lee's misconduct.

3. The Cabinet's imposition of a five-day suspension for Leach's falsification of her timesheet on November 25, 2013, was consistent with disciplinary actions given to other employees for similar violations of GAP-801. In other words, the Cabinet would have suspended Leach for five days regardless of the "Poor Work Performance" charge.

CONCLUSIONS OF LAW

1. It is concluded as a matter of law that Sheri Leach's falsification of her timesheets for "call-out" overtime work on November 25, 2013 violated GAP-801 and constituted "Lack of Good Behavior" in violation of 101 KAR 1:345.

2. A suspension of five days for this behavior was neither excessive nor erroneous, in violation of KRS 18A.095(22)(c).

3. The Kentucky Transportation Cabinet failed to prove by a preponderance of evidence that Appellant Sheri Leach's supervision of Gerald Lee pertaining to his false reporting of overtime constituted "Poor Work Performance" in violation of 101 KAR 1:345.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **SHERI L. LEACH V. KENTUCKY TRANSPORTATION CABINET, (APPEAL NO. 2013-172)** 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 Stephen McMurtry** this 9th day of May, 2014.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:
Hon. Will Fogle
Ms. Sheri L. Leach
Ms. Kathy Marshall