

CERTIFICATION OF PERSONNEL BOARD RECORDS

I certify that attached hereto is a true and correct copy of the Findings of Fact, Conclusions of Law, and Recommended Order and Final Order in the case of **CARY LYLE VS. TOURISM, ARTS AND HERITAGE CABINET, DEPARTMENT OF PARKS (APPEAL NO. 2012-135)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 17th day of April, 2013.



MARK A. SIPEK, SECRETARY
KENTUCKY PERSONNEL BOARD

Copy to Secretary, Personnel Cabinet

Hon. Paul Fauri
Hon. Misty Judy

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-135**

CARY LYLE

APPELLANT

VS.

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

**TOURISM, ARTS & HERITAGE CABINET
DEPARTMENT OF PARKS
MARCHETA SPARROW, APPOINTING AUTHORITY**

APPELLEE

*** **

This matter came on for an evidentiary hearing on October 31, November 1, and November 14, 2012, at the Kentucky Personnel Board, 28 Fountain Place, Frankfort, Kentucky, before Hearing Officer Ann M. Sheadel. The proceedings were recorded by audio/video equipment.

The Appellant, Cary Lyle, was present at the hearing and was represented by the Hon. Paul Fauri. The Appellee, Tourism, Arts & Heritage Cabinet, Department of Parks, was present at the hearing by its representative, Laurie Googe, and was represented by the Hon. Misty Judy.

Mr. Lyle has appealed the action of the Tourism, Arts & Heritage Cabinet, Department of Parks, of suspending Mr. Lyle without pay for a period of twenty (20) days. The issue in this case is whether the Tourism, Arts & Heritage Cabinet, Department of Parks, has proven, by a preponderance of the evidence, that it had just cause for suspending Mr. Lyle without pay for twenty (20) days and that the suspension was neither excessive nor erroneous.

The Evidence on the Record of this Case

Pursuant to KRS 13B.090(1), "findings of fact shall be based exclusively on the evidence on the record."

The evidence on the record of this case consists of: (1) the testimony of the witnesses who testified at the hearing in this matter; and (2) the exhibits that were admitted into evidence at the hearing in this matter.

The Appellee, the Tourism, Arts & Heritage Cabinet, Department of Parks, called four (4) witnesses to testify at the hearing in this matter:

1. **Debra Barlow**, Audit Review Specialist, Certified Internal Controls Auditor, Department of Parks [Video Transcript of Hearing (VT) at Day 1, 10:01]. Ms. Barlow testified regarding her position in the Department of Parks, her employment background, her duties as an Audit Review Specialist, the July 2011 annual routine audit of Greenbo Lake State Resort Park, how routine audits are conducted, the deficiencies found at Greenbo Lake State Resort Park, the initial report that she submitted and the findings that she made, the applicable policies of the Department of Parks, the problems that she found with the internal controls over cash, the problems that she found with the pro card purchases, the problems that she found with failure to sign leave forms and timecards, the problems that she found with the schedules, the decision to expand the audit to cover a six-month period, the final report that she submitted regarding her audits, Mr. Lyle's responses to her audits, the audits that she conducted at Greenbo Lake State Resort Park in 2009, her follow-up review after the 2009 audit and the improvements made, and the KHRIS timekeeping system.

2. **Monica Conrad**, Director of Resort Parks, Department of Parks [VT at Day 1, 12:46]. Ms. Conrad testified regarding her employment history, her duties in her present position, her duties at the time of the matters relevant to this appeal, being the first line supervisor for Mr. Lyle during the time relevant to this appeal, the cash handling process in the parks, her review of Ms. Barlow's audits and her concerns connected with the audits, the proper payroll procedures, the process for posting schedules, the Performance Improvement Plan for Mr. Lyle, the applicable policies of the Department of Parks, the issue with the pro card purchases, the 2009 audit that Ms. Barlow had conducted at Greenbo Lake State Resort Park, the issue with the waste water treatment plant, her position that she did not want Mr. Lyle to forward her e-mails to his staff, the scuba diving program and Mr. Lyle's involvement with that, her position that Mr. Lyle was insubordinate in not following directives, her recommendation that Mr. Lyle's employment be terminated, the open door policy in Frankfort that allows all employees to contact officials in the central office in Frankfort, the manager's responsibility for the money coming into the park, the difficulty in staffing the food service area at Greenbo Lake State Resort Park, the manager's responsibility to audit payroll forms, the disciplinary actions taken against Mr. Clay and Ms. Hendricks and her recommendations that they both receive suspensions, Mr. Lyle's 2010 evaluation, the Department of Parks Business Procedure Guide, the duties of a park manager, and the training received by Mr. Lyle.

3. **Steve Brooks**, Deputy Commissioner, Kentucky State Parks, Department of Parks [VT at Day 2, 9:36]. Mr. Brooks testified regarding his position with the Department of Parks, his employment history, his review of audits conducted by Ms. Barlow, his normal procedure of reviewing audit results to Human Resources for appropriate disciplinary action, the fact that Monica Conrad reported to him, his e-mail directive to staff regarding the scuba diving program, his conversations with Ms. Conrad

regarding Mr. Lyle's conversations with individuals concerning the scuba diving program, the expectations listed in Mr. Lyle's evaluation forms, and his recommendation that Mr. Lyle be terminated from his position.

4. **Laurie Googe**, Director, Human Resources, Department of Parks [VT at Day 2, 10:17]. Ms. Googe testified regarding her current position in the Department of Parks, her employment history, her work duties, her maintenance of the policies of the Department of Parks, the policies of the Department of Parks that apply to this appeal, the suspension letter issued to Mr. Lyle, the 2011 payroll audit conducted at Greenbo Lake State Resort Park by Ms. Barlow, her review of the 2011 payroll audit, Mr. Lyle's responsibility as park manager, the issue regarding timecards and payroll forms, the responsibility for preparing schedules, the 2009 audit that Ms. Barlow conducted at Greenbo Lake State Resort Park, her discussions with Mr. Lyle and Ms. Hendricks regarding the payroll process problems, Mr. Lyle's written response to the 2011 audit, the KHRIS system, the audit process by the State Auditor's office, the Payroll Policies and Procedures document, the issue with the pro card purchases, the issue regarding the water sewage operation, her finding that Mr. Lyle was insubordinate, the previous disciplinary actions taken against Mr. Lyle, the recommendations for dismissal that she received from Mr. Brooks and Ms. Conrad, her reasons for suspending Mr. Lyle for 20 days, what she considered in making her decision regarding suspending Mr. Lyle, Mr. Lyle's requests for training, the Department of Parks Policy Guide, the ways in which she found that Mr. Lyle violated the policies of the Department of Parks, the open door policy in the central office in Frankfort that allows employees to contact Frankfort personnel directly, the training programs available to new employees, the written reprimand given to Ms. Hendricks, the suspension given to Mr. Clay, and Mr. Lyle's response to the 2011 audit.

The Appellant, Cary Lyle, called nine (9) witnesses to testify at the hearing in this matter:

1. **Tom Clay**, Business Manager, Greenbo Lake State Resort Park, Department of Parks [VT at Day 1, 3:16]. Mr. Clay testified regarding his work experience, his position and duties at Greenbo Lake State Resort Park, the process used for having employees pay for services above the services provided by the Department of Parks, the reason that he did not pay the pro card bill, his use of an Adecco employee in the business office, the issue regarding internal controls over cash, the suspension that he received, his supervision of Ms. Hendricks, Mr. Lyle's interaction with the business office, the issue regarding failure to sign payroll forms, and his Settlement Agreement with the Department of Parks.

2. **Clyde Robert Adams**, Boat Dock and Campground Manager, Greenbo Lake State Resort Park, Department of Parks [VT at Day 1, 4:33]. Mr. Adams testified

regarding his current position with the Department of Parks, his employment history, the number of employees whom he supervises, and the work schedules that he submits to Mr. Lyle.

3. **William C. Cunningham**, Food Operations Manager, Greenbo Lake State Resort Park, Department of Parks [VT at Day 2, 1:42]. Mr. Cunningham testified regarding his employment history, his educational background, the training that he received when he began work at Greenbo Lake State Resort Park, the employees whom he supervises, difficulties of certain employees in completing time cards and leave forms, difficulties of certain employees in understanding the time clock, confusion regarding completing time cards and leave forms, the need for training, some training that he received, the writing of schedules for the kitchen and the dining room, his schedule for the 7-15-11 pay period, the fact that his supervisor is Mr. Lyle, procedures used for signing time cards and leave cards, and the manner in which the subpoena was served on him.

4. **Brenda Danner**, Housekeeping Supervisor, Greenbo Lake State Resort Park, Department of Parks [VT at Day 2, 2:25]. Ms. Danner testified regarding her employment at Greenbo Lake State Resort Park, the employees whom she supervises, the process that she follows for setting schedules, the process that she follows for completing payroll forms, the training that she received when she was hired, the time clock used, the staff meetings held by Mr. Lyle, her process of turning time cards into the business office, minutes from a staff meeting that she held with her staff, the process she uses for leave forms, the fact that Mr. Lyle is her supervisor, and the manner in which the subpoena was served on her.

5. **Stephanie Poplin**, Sales Representative, Greenbo Lake State Resort Park, Department of Parks [VT at Day 2, 2:41]. Ms. Poplin testified regarding her position at Greenbo Lake State Resort Park, the fact that no employees report to her, the fact that Mr. Lyle is her supervisor, the manner in which the subpoena was served on her, her process for completing her schedule and her time card, the staff meetings held by Mr. Lyle, filling in as front desk supervisor, and the payroll training that she received.

6. **Charles Ray Kitchen**, Waste Water Operator, Greenbo Lake State Resort Park, Department of Parks [VT at Day 2, 2:47]. Mr. Kitchen testified regarding his employment at Greenbo Lake State Resort Park, the jobs that he has held at Greenbo Lake State Resort Park, his present position at Greenbo Lake State Resort Park, his certification as a waste water operator, his e-mail regarding an EPA visit, the EPA inspection of the plant, the notice of violations received and the timely correction of the problems, an e-mail regarding a follow-up visit from the EPA, the manner in which the subpoena was served on him, the fact that he reports to Jeffrey Hall, his current

work hours, his schedule being reduced due to reduction in hours, the process for scheduling, the fact that Mr. Hall reports to Mr. Lyle, and the fact that Mr. Hall schedules his leave time.

7. **Mitzi M. Hendricks**, Accountant II, Greenbo Lake State Resort Park, Department of Parks [VT at Day 2]. Ms. Hendricks testified regarding her employment at Greenbo Lake State Resort Park, the various positions that she has held at Greenbo Lake State Resort Park, the number of employees in the business office, her duties as payroll officer, the 2009 audit, the payroll process used by her, the 2011 audit, the fact that Mr. Clay is her supervisor, the fact that she told Mr. Clay daily about her problems with the payroll process, the fact that she notified Mr. Lyle of her problems with the payroll process, the fact that after the 2009 audit Mr. Lyle told her not to enter any time without having signatures on the forms, her attendance at staff meetings in which the payroll process and procedures were discussed, the number of state employees in each section of the park, the process used by supervisors in getting the payroll information to her, the time clocks at the park, the fact that Mr. Lyle asked Mr. Clay to stay on top of the payroll and work with Ms. Hendricks on it, cash control and the problem found in the 2011 audit, her written response to the 2011 audit, an e-mail in which she forwarded policy to supervisors, Payroll Policies and Procedures received from Frankfort, recent training on payroll procedures, the manner in which the subpoena was served on her, the written reprimand that she received, the individuals directly supervised by Mr. Lyle, her communications with HR in Frankfort regarding problems with the payroll process, her conversations with Mr. Lyle regarding Mr. Lyle's suspension letter, the fact that she did not say some of the things that were attributed to her in Mr. Lyle's suspension letter, her meeting with Ms. Googe regarding the audit, the fact that there are several employees at the park who cannot read and write or who cannot understand the time reporting process.

8. **Jeffrey Hall**, Maintenance Superintendent, Greenbo Lake State Resort Park, Department of Parks [VT at Day 3, 10:40]. Mr. Hall testified regarding his position with Greenbo Lake State Resort Park, the manner in which the subpoena was served on him, the number of people whom he supervises, the positions that are part of maintenance, the time clock that is out of order, the process he follows regarding time sheets, his work hours, the position of waste water operator and his role in that, the fact that he makes Mr. Kitchen's schedule, the fact that he operates the plant in Mr. Kitchen's absence, the reason for scheduling consecutive days off, discussions at staff meetings regarding time reporting problems, the fact that Mr. Lyle is his supervisor, signing leave requests and compensatory time requests, and making out the maintenance schedule.

9. **Cary Lyle**, the Appellant [VT at Day 3, 10:55]. Mr. Lyle testified regarding his position of Park Manager at Greenbo Lake State Resort Park, his employment

history, his supervisors, the fact that Mr. Clay applied for the position of Park Manager at the time that Mr. Lyle applied for the position, the fact that he received no training when he became Park Manager, the annual managers meetings that occur once a year, his requests for training, the instructions given to him when he was hired about the duties of the park manager and the duties of the business manager, Ms. Conrad's suggestion that Mr. Lyle move his office into the business office, the organization of Greenbo Lake State Resort Park, the individuals who report to him, his requests for training, the fact that he has never been trained in the work performed by the business manager, the fact that he supported former Governor Fletcher when he ran against current Governor Beshear, the fact that he had no disciplinary actions taken against him until the current administration, the audit procedures, audits conducted at Greenbo Lake State Resort Park, the 2009 audit and his response to it, what he did to address the problems, the 2011 audit, being short staffed by 3 supervisors and focusing his attention on the guest services in those areas, his delegation to Mr. Clay to audit the payroll records and to let him know if there were any issues that needed to be addressed, family issues that kept him away from the park, his seeking of counseling from KEAP, his community involvement, the charges in the suspension letter, his reliance on Mr. Clay as a business manager for many years, the process and procedures for schedules, the process and procedures for time cards and payroll forms, the specific allegations regarding schedules, his response to the 2012 audit, the allegations regarding the pro card purchases, the allegations regarding lack of oversight, staff meeting minutes that he would forward to Ms. Conrad, the allegations regarding insubordination and improper communication, a press release issued by Fish and Wildlife, the development of a scuba program at Greenbo Lake State Resort Park, his responses to the 2011 audit, the policies and procedures cited by the Department in his suspension letter, the time clocks at Greenbo Lake State Resort Park, e-mails regarding leave forms and timecards, his 2009 evaluation, December 2009 supervisors' training, Mr. Clay's 2009 evaluation, his process for conducting random spot checks or audits of the payroll documents, his 2010 evaluation, his Performance Improvement Plan, training on payroll procedures conducted by Ms. Hendricks, various time sheets for employees who report to him, being short staffed, family problems that he has encountered, his 2011 evaluation, and various e-mails regarding training.

Thirty (30) Appellee's Exhibits were admitted into evidence at the hearing in this matter:

1. Audit Memorandum, October 24, 2011 [Appellee's Ex. 1];
2. Policy 01-01 [Appellee's Ex. 2];
3. Memorandum from Mr. Lyle re: Audit Memorandum [Appellee's Ex. 3];
4. Audit Memorandum, January 25, 2012 [Appellee's Ex. 4];

5. Audit Memorandum, March 24, 2009 [Appellee's Ex. 5];
6. Suspension letter issued to Mr. Lyle (May 29, 2012) [Appellee's Ex. 6];
7. E-mails re: EPA visit [Appellee's Ex. 7];
8. E-mails re: supervisor staff meeting minutes [Appellee's Ex. 8];
9. E-mails re: scuba diving [Appellee's Ex. 9];
10. E-mail re: press inquiry [Appellee's Ex. 10];
11. Mr. Lyle's Annual Performance Evaluation for 2010 [Appellee's Ex. 11];
12. Series of e-mails re: tourism update [Appellee's Ex. 12];
13. E-mails re: scuba diving [Appellee's Ex. 13];
14. Policy 01-02 [Appellee's Ex. 14];
15. Policy 01-03 [Appellee's Ex. 15];
16. Policy 03-02 [Appellee's Ex. 16];
17. Payroll Policies and Procedures [Appellee's Ex. 17];
18. Suspension letter issued to Cary Lyle (June 14, 2010) [Appellee's Ex. 18];
19. Suspension letter issued to Cary Lyle (August 5, 2009) [Appellee's Ex. 19];
20. E-mail re: payroll procedures [Appellee's Ex. 20];
21. Mr. Lyle's Annual Performance Evaluation for 2009 [Appellee's Ex. 21];
22. E-mail re: follow-up on audit [Appellee's Ex. 22];
23. Memorandum from Mr. Lyle re: 2009 supervisors' training [Appellee's Ex. 23];
24. Performance Improvement Plan [Appellee's Ex. 24];

25. Employee time report (Bill Cunningham) [Appellee's Ex. 25];
26. Employee time report (Clyde Adams) [Appellee's Ex. 26];
27. Employee time report (Jeffrey Hall) [Appellee's Ex. 27];
28. Employee time report (Clyde Adams) [Appellee's Ex. 28];
29. Employee time report (Clyde Adams) [Appellee's Ex. 29]; and
30. Employee time report (Clyde Adams) [Appellee's Ex. 30].

Eighteen (18) Appellant's Exhibits were admitted into evidence at the hearing in this matter:

1. E-mails re: supervisor staff meeting minutes [Appellant's Ex. 1];
2. E-mails re: EPA visit [Appellant's Ex. 2];
3. Suspension letter issued to Tom Clay (April 30, 2012) [Appellant's Ex. 3];
4. 2010 Annual Performance Evaluation for Tom Clay [Appellant's Ex. 4];
5. 2009 Annual Performance Evaluation for Tom Clay [Appellant's Ex. 5];
6. Settlement Agreement and General Release re: Tom Clay [Appellant's Ex. 6];
7. E-mails re: scuba public meeting [Appellant's Ex. 7];
8. E-mails re: payroll backup [Appellant's Ex. 8];
9. Written reprimand issued to Mitzi Hendricks [Appellant's Ex. 9];
10. Memorandum from Cary Lyle to Monica Conrad re: audit response (Under Seal) [Appellant's Ex. 10];
11. E-mails re: final audit report on payroll [Appellant's Ex. 11];
12. E-mail re: confusion with procedures [Appellant's Ex. 12];
13. E-mail re: staff minutes [Appellant's Ex. 13];

14. E-mails re: policy updates [Appellant's Ex. 14];
15. E-mail re: KY Fish and Wildlife News [Appellant's Ex. 15];
16. Newspaper article from Greenup Beacon [Appellant's Ex. 16];
17. Mr. Lyle's Annual Performance Evaluation for 2011 [Appellant's Ex. 17];
and
18. E-mails re: payroll-2010 [Appellant's Ex. 18].

FINDINGS OF FACT

1. The Appellant, Cary Lyle, is a Resort Park Manager I with the Department of Parks, Tourism, Arts & Heritage Cabinet. In this position, Mr. Lyle serves as the Resort Park Manager of Greenbo Lake State Resort Park. Mr. Lyle has held this position of Resort Park Manager I since 2001. At all times relevant to this appeal, Mr. Lyle was a classified employee with status. [Testimony of Cary Lyle; Appellee's Ex. 6]

2. Greenbo Lake State Resort Park has 36 lodge rooms, a conference facility, a restaurant, a campground, and a marina. The operation of Greenbo Lake State Resort Park consists of seven different sections: the business office, the boat dock and campground, food service, maintenance, group sales, housekeeping, and the front desk. [Testimony of Cary Lyle]

3. As Park Manager of Greenbo Lake State Resort Park, Mr. Lyle is the person in charge of the daily operations of the Park and is responsible for the overall operation of the Park. Mr. Lyle is the direct supervisor for the individuals who supervise the seven operational sections: Thomas Clay (Business Manager); Clyde Robert Adams (Boat Dock and Campground Manager); William C. Cunningham (Food Service Manager); Jeffrey Hall (Maintenance Superintendent); Stephanie Poplin (Sales Representative); Brenda Danner (Housekeeping Supervisor). The Front Desk Supervisor is on extended sick leave, and Ms. Poplin is helping to cover those duties. [Testimony of Cary Lyle; testimony of Monica Conrad]

4. At the times relevant to this appeal, Mr. Lyle's direct supervisor was Monica Conrad, who is located in the central office of the Department of Parks in Frankfort, Kentucky. Ms. Conrad's supervisor was Steve Brooks, who also is located in the central office of the Department of Parks in Frankfort, Kentucky. [Testimony of Monica Conrad; testimony of Steve Brooks; testimony of Cary Lyle]

5. On May 29, 2012, the Tourism, Arts & Heritage Cabinet issued a letter to

Mr. Lyle, in which the Cabinet indicated that it was taking the action of suspending Mr. Lyle from duty without pay for a period of twenty (20) days. [Appellee's Ex. 6]

6. In its letter of May 29, 2012, the Cabinet stated that it was suspending Mr. Lyle for twenty days without pay for five reasons: (1) violations of internal cash controls; (2) violations of timecards, leave forms, and supervisory approvals; (3) violations of pro card purchases; (4) unprofessional conduct and insubordination¹; and (5) lack of good behavior/insubordination, improper communications. The first three reasons listed by the Cabinet are connected with internal audits that were conducted at Greenbo Lake State Resort Park.

7. Mr. Lyle has now appealed the action of the Tourism, Arts & Heritage Cabinet of suspending Mr. Lyle without pay for a period of twenty (20) days.

8. In reviewing the allegations made by the Department of Parks against Mr. Lyle, the Hearing Officer first will discuss background information regarding the internal audits that were conducted at Greenbo Lake State Resort Park. The Hearing Officer then will address the allegations made against Mr. Lyle by the Department of Parks. Finally, the Hearing Officer will address the penalty imposed on Mr. Lyle by the Department of Parks.

A. Background Regarding Internal Audits.

9. Debra Barlow is an Audit Review Specialist, Certified Internal Controls Auditor, with the Department of Parks. Ms. Barlow conducted audits at Greenbo Lake State Resort Park in 2009 and 2011. [Testimony of Debra Barlow] The Hearing Officer will discuss each of these audits in turn.

A.1. 2009 Audit

10. Some time prior to March 29, 2009, Ms. Barlow conducted audits at Greenbo Lake State Resort Park. On March 29, 2009, Ms. Barlow submitted her report regarding those audits. That report detailed a substantial number of instances in which employees and supervisors failed to submit adequate and complete documentation, as required by Department of Parks' policy, for the payroll process. [Appellee's Ex. 5]

11. The Conclusion section of that report states:

¹The Department of Parks styled its fourth reason as "lack of oversight of daily operations." As discussed below, however, the allegation actually is that Mr. Lyle is guilty of unprofessional conduct and insubordination. Therefore, the Hearing Officer has styled this fourth reason as "unprofessional conduct and insubordination."

Audits found that Greenbo Lake SRP supervisors are not following Department of Parks' policies and procedures regarding signing timecards, properly using Commerce Cabinet Leave Forms, and providing supervisory preapprovals in payroll documentation. Additionally, approved schedules are not always turned in to verify scheduled hours were worked. Although proper payroll documentation has been addressed in numerous Greenbo Lake SRP staff meetings, prescribed payroll policies and procedures are widely ignored. The Park Manager is responsible for the operation of the park and ensuring these policies and procedures are consistently adhered to.

The Recommendation section of that report states:

Audits recommend the Park Manager immediately correct deficiencies and enforce consistent adherence to Department of Parks' prescribed policies and procedures regarding payroll documentation.

[Appellee's Ex. 5, p. 8]

12. At the time of the 2009 audit, Mr. Lyle was the Park Manager at Greenbo Lake State Resort Park. Mr. Lyle received a copy of Ms. Barlow's 2009 audit report. [Testimony of Debra Barlow; Appellee's Ex. 5]

Ms. Barlow did a follow-up review at Greenbo Lake State Resort Park some time after the 2009 audit and found that there was a substantial improvement in following the proper payroll procedures. [Testimony of Debra Barlow]

A.2. 2011 Audits

On October 12, 2011, Ms. Barlow conducted a routine audit at Greenbo Lake State Resort Park for one pay period: July 1 - 15, 2011. [Testimony of Debra Barlow]

13. Ms. Barlow would expect to find five or six missing items in a payroll audit for one payroll period, because things can happen that cause errors. In her payroll audit at Greenbo Lake State Resort Park, however, Ms. Barlow found 84 missing items for the one pay period of July 1 - 15, 2011. [Testimony of Debra Barlow; Appellee's Ex. 1]

14. On October 24, 2011, Ms. Barlow submitted her report regarding her audit of this one pay period. [Appellee's Ex. 1] Because Ms. Barlow was concerned about the number of deficiencies that she had found for this one pay period, she then expanded her audit to cover a six-month period of time. This expanded audit occurred on November 1, 2011, and covered the time period January 1 - June 30, 2011. [Testimony of Debra Barlow; Appellee's Ex. 4]

15. There are two pay periods for each month. Therefore, there were 12 pay periods for the six month period that Ms. Barlow audited. [Testimony of Debra Barlow]

16. Ms. Barlow's final report regarding the audits was submitted on January 25, 2012. That final report included Ms. Barlow's findings, Mr. Lyle's responses to those findings, and Ms. Barlow's replies to Mr. Lyle's responses. [Appellee's Ex. 4]

17. Ms. Barlow's final report indicates that she found 716 deficiencies and/or violations of policy for the six month period of her review. [Appellee's Ex. 4; testimony of Debra Barlow]

18. The deficiencies found by Ms. Barlow all concerned failures to properly complete and sign the required time cards and leave forms. These are Department-wide paper forms that have been in place and used for years. The payroll clerk enters the information from these forms into the KHRIS computer timekeeping system. Although the KHRIS system was new in 2011, the paper forms used to record the information that would be put into the system were the same forms that had been used for years. [Testimony of Debra Barlow]

19. The deficiencies found by Ms. Barlow in her 2011 audits of Greenbo Lake State Resort Park were the same type of deficiencies that she had found in her 2009 audits of Greenbo Lake State Resort Park. [Testimony of Debra Barlow]

B. Allegations Made Against Mr. Lyle

20. The Department of Parks has made five allegations against Mr. Lyle. These allegations concern: (1) violations of internal cash controls; (2) violations of timecards, leave forms, and supervisory approvals; (3) violations of pro card purchases; (4) unprofessional conduct and insubordination; and (5) lack of good behavior/insubordination, improper communications. The Hearing Officer will address each of these allegations in turn.

B.1. Allegation 1: Violations of Internal Cash Controls

21. The first allegation made against Mr. Lyle is that his lack of oversight and

involvement in the daily operations of the business office at Greenbo Lake State Resort Park contributed to causing violations of internal cash controls by the business office employees. [Appellee's Ex. 6, pp. 1-2]

22. This allegation concerns the actions of two employees in the business office at Greenbo Lake State Resort Park regarding internal cash controls. Those two employees are Thomas Clay, the Business Manager at Greenbo Lake State Resort Park, and Mitzi Hendricks, the Accountant II in the business office who reports to Mr. Clay.

23. Each revenue facility at Greenbo Lake State Resort Park (the restaurant, the dock, the campground, the front desk) takes in cash, which is sent to the Park's business office. The business office then reconciles funds and deposits the cash in the bank. [Testimony of Monica Conrad]

24. The Department of Parks procedures for internal control of cash include the requirements that two employees count the cash that has come to the business office, and that the count information is verified on the cash count log sheet by the signatures of the two employees who have counted the cash. This cash count log sheet is completed daily, and is submitted to the central office in Frankfort with the daily business reports. [Testimony of Debra Barlow; testimony of Monica Conrad]

25. The responsibility for this procedure at Greenbo Lake State Resort Park rests with the two employees of the Park's business office: Mr. Clay and Ms. Hendricks. At the time relevant to this appeal, there also was a part-time Adecco employee in the business office. (Adecco is a private employment agency from which the Park hires temporary workers.) [Testimony of Debra Barlow; testimony of Thomas Clay; testimony of Mitzi Hendricks; testimony of Cary Lyle]

26. The business office procedure at Greenbo Lake State Resort Park is to count the cash the first thing each morning. Because there were only two full-time employees in the business office, there were times when both employees were not in the office at the time that the cash was counted. When that occurred, the employee who was there would count the cash and would sign the form indicating that fact. The employee also would sign the name of the second employee, as if the second employee had been in the office to count the cash and as if the second employee had signed the form. Thus, if Ms. Hendricks were the only employee in the business office, she would count the cash, record that figure on the appropriate form, sign her name to the form, and sign Mr. Clay's name to the form. Mr. Clay followed that same procedure when he was the only person in the business office at the time that the cash was

counted. [Testimony of Debra Barlow; testimony of Thomas Clay; testimony of Mitzi Hendricks]

27. Ms. Barlow discovered that this procedure was occurring during her 2011 audits of Greenbo Lake State Resort Park. Ms. Barlow examined cash count log sheets for six months from April 1, 2011, through September 30, 2011, and found the following irregularities:

- Mr. Clay's signature was written by Ms. Hendricks 49 times;
- Ms. Hendricks' signature was written by Mr. Clay 34 times;
- Apparently Ms. Hendricks signed the Adecco employee's name 2 times;
- Apparently the Adecco employee signed Ms. Hendricks' name 20 times;
- The daily cash count log sheets contained no signatures on 16 days.

[Testimony of Debra Barlow; Appellee's Ex. 4]

28. After Ms. Barlow's audit, Mr. Clay and Ms. Hendricks asked Ms. Barlow what they should do when only one of them is in the office. Ms. Barlow said that they should write "no one else here" in the space where the second person's signature would be placed. [Testimony of Thomas Clay; testimony of Mitzi Hendricks] Thus, while there appears to be no dispute that the actions by Mr. Clay and Ms. Hendricks constituted violations of the policies and procedures of the Department of Parks, the violations appear to be limited to their actions of signing each other's names; it does not appear that the action of having only one person counting the cash and signing the form is a violation of Department policy, because Ms. Barlow has told Mr. Clay and Ms. Hendricks that they are in compliance if only one person signs the form and indicates that no one else is present.

29. The allegation made against Mr. Lyle regarding these violations by Mr. Clay and Ms. Hendricks is:

Your lack of oversight and involvement in the daily business operations by insuring your employees had instituted proper institutional controls contributed to your employees disregard for DOP policies and procedures. As the Resort Park Manager you are ultimately responsible for the overall operations of Greenbo Lake SRP. Additionally, as a leader at the Park you are responsible for insuring all processes are followed correctly as to do otherwise would be poor leader-ship. Your lack of oversight in the business operations at Greenbo Lake State Resort Park is unacceptable.

[Appellee's Ex. 6, p. 2]

30. In the suspension letter that the Department of Parks issued to Mr. Lyle, the Department cites no policy or procedure specifically related to internal cash control that it alleges Mr. Lyle violated in this matter. Rather, the Department alleges that Mr. Lyle's conduct violated the general provision of 101 KAR 1:345, Section 1 (lack of good behavior and unsatisfactory performance of job duties) and the general policy of Department of Parks Policy 01-03 (Employee Conduct and Personal Appearance) that states: "Employees are expected to carry out assignments as directed by supervisor(s) if reasonably considered a part of the employee's job duties." [Appellee's Ex. 15; Appellee's Ex. 6] Therefore, as discussed in more detail in the Conclusions of Law, below, the Department's allegations are limited to the specific regulation and policy that the Department cites in the suspension letter.

31. Since the allegation made against Mr. Lyle is that he is guilty of lack of oversight of the operations of the business office at Greenbo Lake State Resort Park, and that this lack of oversight was a failure to carry out the assignments that were given to him, the first thing that must be done is to identify the specific nature of the assignment that was given to Mr. Lyle for oversight of the operations of the business office.

32. Ms. Conrad testified that this assignment for oversight of the business office operations is included in the expectations listed in Mr. Lyle's Annual Employee Performance Evaluations. The specific expectation that she referenced is listed under the duty of "To actively promote positive visitor relations," and states:

Ensures that all park facilities are operated in accordance with approved state park business procedures, standards, and regulations.

[Appellee's Exs. 11, 25; Appellant's Ex. 17; testimony of Monica Conrad] Although Ms. Conrad also stated that it is an inherent responsibility for the Park Manager to be responsible for oversight of the money coming into the Park, she pointed to no specific assignment of that responsibility to Mr. Lyle. [Testimony of Monica Conrad]

33. The Hearing Officer finds that the assignment that was given to Mr. Lyle for the oversight of the operations of the business office was the general assignment to ensure that the business office operated in accordance with approved state park

business procedures, standards, and regulations. While the language of this assignment could be read as assigning absolute liability to Mr. Lyle for any actions in the business office that were not in accordance with approved procedures, standards, and regulations, the Hearing Officer finds that such a standard would be unworkable and, in fact, impossible to meet. The Hearing Officer finds that the more logical reading of this assignment is that Mr. Lyle is responsible for the appropriate oversight of the business office to ensure that all park facilities are operated in accordance with approved state park business procedures, standards, and regulations.

34. The question, then, is whether Mr. Lyle's oversight of the business office was appropriate to ensure that the business office operated in accordance with approved state park business procedures, standards, and regulations.

35. There is no evidence in the record that Mr. Lyle was ever given a more specific assignment, or any specific instructions, regarding what he should do to provide this appropriate oversight of the business office. Although Ms. Barlow testified that the Park Manager should review the Daily Business Report that is submitted to the central office each day by the Business Manager, there is no evidence in the record of any policy that includes this requirement or of any directive that was given to Mr. Lyle in this regard.

36. While Ms. Conrad testified that she had discussed with Mr. Lyle the need for him to be more involved in the business office operations as a whole, there is no evidence that she instructed Mr. Lyle to take any specific action in reviewing or overseeing the operations of the business office. Ms. Conrad did suggest that Mr. Lyle move his office to the business office so that he could be more involved in the business operations of the park. Mr. Lyle did not move his office to the business office, because moving into the business office would have displaced Mr. Clay from his office, and Mr. Lyle thought that such an action might be disruptive to the business office operation and to his relationship with Mr. Clay. (Mr. Clay had applied for the position of Park Manager at the same time that Mr. Lyle had applied for the position; Mr. Lyle was sensitive to the fact that he had been chosen for the position and that Mr. Clay had not been chosen.) [Testimony of Monica Conrad; testimony of Cary Lyle]

37. Mr. Lyle did ask Ms. Conrad for specific training regarding the business office procedures because he had never been trained in those procedures. Ms. Conrad did not supply any training in response to this request, but she did suggest that Mr. Lyle could go to another State Resort Park and shadow a business manager to see how that business manager handled the business office procedures. Mr. Lyle did not do that, because he did not know which business manager would be good to shadow. In addition, Mr. Lyle's primary interest was in receiving training from the officials in the central office who knew how the business office procedures were supposed to be handled. Mr. Lyle never received this specific training in the business office

procedures. [Testimony of Cary Lyle; testimony of Monica Conrad]

38. Mr. Lyle relied on the expertise of Mr. Clay, who has been a business manager for many years, to ensure that the business office operated in accordance with approved state park business procedures, standards, and regulations. Mr. Clay was the business manager at Greenbo Lake State Resort Park when Mr. Lyle began working at the Park in 2001, and has been the Business Manager at the Park for 17 - 18 years. No issues had ever been raised with Mr. Lyle to lead him to believe that Mr. Clay was not operating the business office in accordance with approved state park business procedures, standards, and regulations. [Testimony of Cary Lyle; testimony of Thomas Clay] Indeed, even though Mr. Clay submitted his Daily Business Report, with accompanying documentation, to the central office in Frankfort on a daily basis, no one from the central office ever contacted Mr. Lyle to indicate that Mr. Clay was failing to follow the state park business procedures, standards, and regulations in those submissions. [Testimony of Cary Lyle]

39. Mr. Lyle checked in with the business office two or three times each day to see how things were going and to see if there were any issues that needed to be addressed. Mr. Clay never told Mr. Lyle that there were any problems or issues regarding needing two people to count the cash or to sign the cash control forms. Indeed, Mr. Clay would not have mentioned this as a problem to Mr. Lyle, because Mr. Clay did not think that he and Ms. Hendricks were doing anything incorrectly in the way that they were handling the cash count and the signatures. [Testimony of Cary Lyle; testimony of Thomas Clay]

40. The Hearing Officer finds that these facts indicate that Mr. Lyle was providing oversight of the business office operations on a daily basis, and was justifiably relying on Mr. Clay, an experienced Business Manager, to perform the duties of Business Manager. If a specific type of oversight were required by the Department of Parks, that specific type of oversight would need to be communicated to Mr. Lyle either by policy or by specific directive. Absent such a specific policy or directive to Mr. Lyle, the Hearing Officer finds that Mr. Lyle is not guilty of failing to provide appropriate oversight to the business office operations at Greenbo Lake State Resort Park.

41. In sum, and for all of the reasons stated, the Hearing Officer finds that the Department of Parks has failed to prove, by a preponderance of the evidence, that Mr. Lyle's lack of oversight and involvement in the daily operations of the business office at Greenbo Lake State Resort Park contributed to causing violations of internal cash controls by the business office employees.

B.2. Allegation 2: Violations of Procedures for Timecards, Leave Forms, and Supervisory Approvals

42. The second allegation made against Mr. Lyle concerns the failure of the employees of Greenbo Lake State Resort Park to follow the proper procedures for signing and submitting the necessary forms for the time reporting that is required for the payroll process. The specific allegations made against Mr. Lyle are that he violated the Department of Parks Policy 01-03 (failing to carry out assignments) and is guilty of unsatisfactory performance of job duties in two ways: (1) Mr. Lyle failed to review the payroll process to ensure that the employees of Greenbo Lake State Resort Park were following the proper payroll policies and procedures; and (2) Mr. Lyle failed to identify the cause of the employees' problems with complying with the payroll process and then to address and correct those problems. [Appellee's Ex. 6, pp. 2-4]²

43. In state government, there are two time reporting and payroll periods each month: the first time period is for the 1st through the 15th of the month; the second time period is for the 16th through the 30th of the month. The employees report their time worked, and their leave time taken, on the business day that follows the end of the time period in which the employees worked. The time reported by the employees is then put into the payroll processing system. Employees are paid on the 15th and the 30th of each month for the previous time period, based on the time that the employees have reported and that has been put into the payroll processing system. [Testimony of Debra Barlow; testimony of Laurie Googe]

44. The time reporting requirements for the payroll process in the Department of Parks is set forth in Department of Parks Policy 01-01, which states, in Section A. "Time Reporting":

Schedules

All departments at a park shall have a work schedule posted for a work period of no less than one week at a location accessible to the employees of that department. Schedules shall clearly show

²The portion of the suspension letter that discusses this allegation also includes very general allegations of misconduct, stating: "It is particularly disturbing that several of the instances discovered during the audit were regarding employees that report directly to you. . . Failing to review and sign your employee's timesheets, and failing to require them to turn in their work schedule for your review is unacceptable and against policy." [Appellee's Ex. 6, p. 3] The suspension letter includes no specific details regarding the times and dates of these general allegations of misconduct. Therefore, as discussed in the Conclusions of Law, below, these general allegations do not comply with the requirements of KRS 18A.095(8) that the Department state the date, time, and place of the alleged misconduct, and should be dismissed and stricken from the suspension letter. Accordingly, the Hearing Officer will not address these general allegations.

the arrival and departure times for each employee for each day as well as noting the days employees are not scheduled, indicating RDO [regular day off] or previously approved leave. Schedules will be updated as needed should staffing requirements change and an "as worked" copy shall be submitted with time cards at the end of each pay period. . . .

All hours for which an employee is "at work" must be recorded on either a time card or time sheet. Employees of the Kentucky Department of Parks shall report their time as follows:

Hourly Employees

Hourly employees will use a time clock for time recording. It is expected that any reason for NOT using the time clock will be extraordinary and rare. . . . Both the employee and the supervisor must sign all time cards, and any changes or times written in must be briefly explained by the supervisor and initiated by both the employee and the supervisor. A Tourism, Arts and Heritage Cabinet Leave Form, indicating if and when leave was used or if and when overtime/ compensatory leave was accrued, must accompany all time cards.

[Appellee's Ex. 2]

45. The employees at Greenbo Lake State Resort Park are required to follow this procedure for time reporting. They are required to submit signed time cards, signed leave forms, and signed forms regarding any compensatory leave that was accrued or overtime that was worked. The time cards and the accompanying forms must be signed by the employee and by the employee's supervisor; changes on the time cards must be initialed by both the employee and the employee's supervisor. [Testimony of Debra Barlow; testimony of Laurie Googe; Appellee's Ex. 2]

46. The employees at Greenbo Lake State Resort Park are required to submit the time reporting documentation to Ms. Hendricks in the Park's business office. Ms. Hendricks has the responsibility of payroll clerk, which is the responsibility to enter all of the information from the documentation into the payroll processing system (which is now the KHRIS system). [Testimony of Debra Barlow; testimony of Laurie Googe; testimony of Mitzi Hendricks]

47. As discussed above, the audits conducted by Ms. Barlow in 2009 found that there was substantial non-compliance by the employees at Greenbo Lake State

Resort Park with these Department of Parks policies and procedures regarding time reporting.

48. After the 2009 audit, Mr. Lyle was specifically charged with the responsibility to monitor the payroll process and to correct the time reporting problems that existed at Greenbo Lake State Resort Park. This responsibility was noted in Mr. Lyle's 2009 Annual Employee Performance Evaluation. [Appellee's Ex. 21]

49. Mr. Lyle focused on this problem and generally was successful in correcting the problem, as discussed above. After the problem was corrected, Mr. Lyle delegated the task of continuing to monitor compliance with the policies and procedures to Mr. Clay. Mr. Lyle made this delegation because the payroll process is within the responsibility of the business office, and Mr. Lyle thought that it was logical to assign Mr. Clay, the Business Manager, with the task of monitoring the payroll process to ensure that the policies and procedures were continuing to be followed. Mr. Lyle told Mr. Clay to let him know if any problems arose regarding compliance with the policies and procedures. After this delegation, Mr. Lyle did not at any time review the payroll process to make sure that the appropriate policies and procedures were being followed. [Testimony of Cary Lyle]

50. As discussed above, the 2011 audits indicated that, once again, Greenbo Lake State Resort Park was in substantial noncompliance with the payroll policies and procedures. The problems found were that employees and supervisors were not properly signing and initialing time cards and leave forms, that supervisors were not pre-approving leave and requests for compensatory time to be earned, that the payroll clerk (Ms. Hendricks) was entering time into the KHRIS system that had not been preapproved or was not supported by leave forms, and that the payroll clerk was not maintaining payroll files appropriately. [Appellee's Ex. 4, p. 14] Many of these violations of policy and procedures were the same type of violations that had been discussed in Ms. Barlow's 2009 audits at Greenbo Lake State Resort Park. [Testimony of Debra Barlow; Appellee's Ex. 5]

51. The first part of this allegation against Mr. Lyle is that Mr. Lyle violated Department of Parks Policy 01-03, and was guilty of unsatisfactory performance of job duties, because Mr. Lyle failed to review the payroll process to ensure that the employees of Greenbo Lake State Resort Park were following the proper payroll policies and procedures.

52. Mr. Lyle testified that Mr. Clay did not inform him that the problems with complying with the payroll process and procedures had resurfaced. Mr. Lyle appears to be asserting that, because he had delegated the task of monitoring the payroll process to Mr. Clay, Mr. Lyle was not responsible for conducting any type of review of the payroll process unless Mr. Clay told him that there was some problem with

noncompliance.

53. The Hearing Officer disagrees. Mr. Lyle was responsible for reviewing the payroll process, at least periodically, to make sure that everything in that process was operating correctly. This responsibility had been specifically assigned to him by his supervisor, and he was responsible for following through with that assignment. While the Hearing Officer finds that delegating the primary duty of monitoring the payroll process to Mr. Clay was not inappropriate, that delegation did not absolve Mr. Lyle of his responsibility to review the process, at least periodically, to make sure that everything was running smoothly and according to the appropriate policies and procedures. Mr. Lyle testified, however, that, after he delegated this task to Mr. Clay, Mr. Lyle never reviewed the payroll process.

54. The Hearing Officer finds that Mr. Lyle's failure to review the payroll process, at least periodically, constitutes a failure to carry out an assignment as directed by his supervisor. This is a violation of Department of Parks Policy 01-03 (Employee Conduct and Personal Appearance), which states: "Employees are expected to carry out assignments as directed by supervisor(s) if reasonably considered a part of the employee's job duties." [Appellee's Ex. 15] The Hearing Officer also finds that this violation of policy constitutes unsatisfactory performance of job duties by Mr. Lyle.

55. The second part of this allegation is that Mr. Lyle violated Department of Parks Policy 01-03, and was guilty of unsatisfactory performance of job duties, because Mr. Lyle failed to identify the cause of the employees' problems with complying with the payroll process and then to address and correct those problems.

56. Although Mr. Lyle testified that Mr. Clay did not inform him that the problems with complying with the payroll process and procedures had resurfaced, and appears to assert that he did not know about the resurfacing of these problems, the Hearing Officer finds that the credible evidence is that Mr. Lyle knew that the problems had resurfaced. First, Ms. Hendricks testified that she told Mr. Lyle directly on several occasions that she was having problems with getting the completed documentation and payroll forms from the supervisors and employees. Second, the supervisors who testified at the hearing in this matter all commented on the fact that Mr. Lyle discussed the problem of failing to submit the properly completed payroll forms at numerous staff meetings; Mr. Lyle would not have discussed this problem at those meetings if Mr. Lyle had been unaware of the problems. Third, both Mr. Lyle and Ms. Hendricks testified that Mr. Lyle told Ms. Hendricks not to enter compensatory time worked if the properly completed form was not submitted; Mr. Lyle would not have given that instruction to Ms. Hendricks if Mr. Lyle had been unaware of the problems. Fourth, Ms. Googe testified that she visited Greenbo Lake State Resort Park in 2010, at which time Ms. Hendricks talked to Ms. Googe about the problems that she was having with getting employees to

follow the proper procedures; Ms. Googe then discussed this matter with Mr. Lyle, at which time she told Mr. Lyle that he needed to make sure that supervisors were turning in proper documentation. For all of these reasons, the Hearing Officer finds that the credible evidence is that Mr. Lyle knew that the problems with complying with the payroll process and procedures had resurfaced.

57. The only action that Mr. Lyle appears to have taken to identify the cause of the employees' problems with complying with the payroll process, and then to address and correct those problems, was to discuss this matter at the meetings that he conducted with the supervisors who reported to him. In fact, there is no evidence that he ever determined the cause of the problems, or that he ever took any effective action to address and correct the problems. This responsibility had been specifically assigned to him by his supervisor, and he was responsible for following through with that assignment.

58. The Hearing Officer finds that Mr. Lyle's failure to identify the cause of the employees' problems with complying with the payroll process and then to address and correct those problems constitutes a failure to carry out an assignment as directed by his supervisor. This is a violation of Department of Parks Policy 01-03 (Employee Conduct and Personal Appearance), which states: "Employees are expected to carry out assignments as directed by supervisor(s) if reasonably considered a part of the employee's job duties." [Appellee's Ex. 15] The Hearing Officer also finds that this violation of policy constitutes unsatisfactory performance of job duties by Mr. Lyle.

59. In sum, and for all of the reasons stated, the Hearing Officer finds that the Department of Parks has proven, by a preponderance of the evidence, that Mr. Lyle violated the Department of Parks Policy 01-03 (failing to carry out assignments) and is guilty of unsatisfactory performance of job duties in two ways: (1) Mr. Lyle failed to review the payroll process to ensure that the employees of Greenbo Lake State Resort Park were following the proper payroll policies and procedures; and (2) Mr. Lyle failed to identify the cause of the employees' problems with complying with the payroll process and then to address and correct those problems.

B.3. Allegation 3: Violations of Procedures for Pro Card Purchases

60. The third allegation made against Mr. Lyle concerns pro card purchases not properly reimbursed by Mr. Clay. The Department of Parks alleges that Mr. Lyle is guilty of unsatisfactory performance of his job duties because he failed to put practices in place to ensure that employees in park housing are paying for premium services and staying in compliance with the policies of the Department of Parks. [Appellee's Ex. 6.

pp. 4-5]

61. Housing on the Park premises is provided for some Park employees. At the time relevant to this appeal, several supervisory employees lived on the Park premises, including Mr. Lyle and Mr. Clay. [Testimony of Debra Barlow; testimony of Monica Conrad; testimony of Cary Lyle]

62. The housing provided on the Park premises comes with basic utilities; the cost for the basic utilities is paid by the Park. Any premium services above the basic utilities are required to be paid by the employee who has obtained those premium services. These premium services would include long distance telephone calls and premium television services. [Testimony of Debra Barlow]

63. This policy is stated in the Department of Parks Policy 03-02, which states in "Section 3 -- Utilities":

The Department will supply all necessary utility services, including gas, electricity, local phone service, water, garbage pickup, sewer and cable television (basic service only in eligible areas) or antenna system in areas not served by cable. The employee shall be responsible for long distance charges, premium services on telephone or cable television reception, and any other utilities.

[Appellee's Ex. 16]

64. The procedure followed at Greenbo Lake State Resort Park is that the utility charges are paid for by the Park's pro card, which is a credit card used by the Park to make purchases. If the employee has obtained premium services above the basic utilities paid for by the Park, the bill for those services is placed in the folio, which is a computer listing of the charges that the employee is to pay for those services; this procedure is done at the Park's front desk. Each month this listing of charges is printed out and given to the employee, who then should reimburse the Park for the cost of those services. [Testimony of Debra Barlow; testimony of Cary Lyle]

65. While conducting her 2011 audits at Greenbo Lake State Resort Park, Ms. Barlow discovered that Mr. Clay was not reimbursing the Park for the premium television service for the NFL Sunday Ticket. Everyone else was reimbursing the Park as required. [Testimony of Debra Barlow]

66. The NFL Sunday Ticket is a premium television service that starts in July each year. Mr. Clay has had that premium service for several years and has always

paid for it. In July 2011, Mr. Clay received the television bill, and it indicated that there was no charge for the NFL Sunday Ticket. He thought that he was getting this premium service for no charge. He told other employees at the Park that he was getting this service for no charge. [Testimony of Thomas Clay; testimony of Cary Lyle] Mr. Lyle had seen television advertisements indicating that there was a special promotional program that was offering the NFL Sunday Ticket for no charge. He thought that that was what Mr. Clay had received. [Testimony of Cary Lyle]

67. In August 2011, Mr. Clay had an Adecco employee working in the business office. He let that employee take care of the television bill, but there was some error by the employee in going by the July bill rather than the August bill. Mr. Clay failed to look at the August bill, and so he was unaware that there was a charge on the August bill for the NFL Sunday Ticket. Apparently the charge never got placed in the folio bill for Mr. Clay. Because Mr. Clay was unaware of the charge, he did not pay for the premium service. He thought that he was getting the service for free. He does not know how Mr. Lyle could have been aware of this problem. [Testimony of Thomas Clay]

68. The Hearing Officer finds that Mr. Clay's failure to pay for this premium service was a mistake based on Mr. Clay's belief that he was receiving this premium service for free. Once Mr. Clay learned of this mistake, he reimbursed the Park for this premium service. [Testimony of Thomas Clay]

69. The position of the Department of Parks is that, despite the fact that this was a mistake, Mr. Lyle's failure to ensure that Mr. Clay paid for this premium service is "particularly disturbing" because a 2008 audit had revealed that four employees were receiving premium television services without paying for those services. The Department "would have expected [Mr. Lyle] to be particularly conscientious in ensuring that employees paid for their premium services as instructed in Policy 03-02." [Appellee's Ex. 6, p. 5]

70. The 2008 audit referenced by the Department was either an audit or another type of review conducted by Ms. Barlow, probably in 2008 or 2009. Ms. Barlow discovered that the employees who were living on the Park premises were not paying for the premium television services that they were receiving. When Ms. Barlow informed them that they should be paying for these services, the employees indicated that they were not aware that they were supposed to be paying for the services; the employees thought that this was part of their benefits package for living at the Park. [Testimony of Debra Barlow; testimony of Cary Lyle] After Ms. Barlow brought this matter to their attention, the employees reimbursed the Park for the premium television services. Ms. Barlow conducted a spot check at the Park in 2010 and found that the employees were paying for these services. [Testimony of Debra Barlow]

71. Thus, the problem discovered in 2008 or 2009 existed because the employees did not know that these premium television services were not part of the benefits package provided to people who were living at the Park, and not because the employees were intentionally failing to follow proper procedures to reimburse the Park for the premium services that they received. The Hearing Officer does not find the problem that was discovered in 2008 or 2009 to be of precedential value in requiring the Park Manager to be extra vigilant in his review of the reimbursement procedures followed at the Park; it was an understandable one-time mistake, and it was corrected.

72. There is no evidence in the record that any type of spot check that might have been conducted of these utility bills would have discovered the mistake that had been made by Mr. Clay in this matter. To hold Mr. Lyle accountable, and to find him guilty of unsatisfactory performance of job duties, because he did not discover this mistake, is to take the position either that no mistakes may happen or that, if a mistake does happen, Mr. Lyle is responsible for discovering the mistake. The Hearing Officer finds that that is a standard that would be impossible for any employee to meet.

73. The Department of Parks has cited no policy that requires a Park Manager to take any particular type of action in reviewing the pro card purchases and reimbursements. Mr. Lyle testified that he reviews the folio each month to make sure that the employees are paying their reimbursement bills. The Hearing Officer finds that, absent a policy that requires some other form of action by a Park Manager, Mr. Lyle's action of reviewing the folio each month is an adequate procedure of review.

74. In sum, the Hearing Officer finds that Mr. Clay's failure to pay for his premium television services was a mistake and was not an intentional failure to make the required reimbursement for the services, and that Mr. Lyle's failure to discover the mistake was not an unsatisfactory performance of his job duties.

75. For all of the reasons stated, the Hearing Officer finds that the Department of Parks has failed to prove, by a preponderance of the evidence, that Mr. Lyle is guilty of unsatisfactory performance of his job duties because he failed to put practices in place to ensure that employees in park housing are paying for premium services and staying in compliance with the policies of the Department of Parks.

B.4. Allegation 4: Unprofessional Conduct and Insubordination

76. The fourth allegation made against Mr. Lyle is that Mr. Lyle is guilty of unprofessional conduct and insubordination in disregarding directives of his supervisor, Ms. Conrad, that he should not forward her e-mail requests for information to his staff but should investigate matters himself and respond to her. Although the Department of

Parks has styled this allegation as "Lack of Oversight of Daily Operations," the language in the allegation indicates that this is a charge of unprofessional conduct and insubordination. [Appellee's Ex. 6, pp. 5-6]

77. This allegation stems from an inspection of the waste water plant at Greenbo Lake State Resort Park by the EPA. The Waste Water Operator at the Park is Ray Kitchen. Mr. Kitchen's direct supervisor is Jeff Hall, the Maintenance Superintendent, who acts as the back-up operator for the waste water plant. [Testimony of Ray Kitchen; testimony of Jeff Hall]

78. The EPA had issued a Notice of Violation (NOV) regarding the waste water plant some time prior to February 21, 2012. The EPA inspector made a follow-up visit to the plant on February 21, 2012. [Testimony of Ray Kitchen]

79. Mr. Lyle sent an e-mail on February 21, 2012, to Ms. Conrad and other upper supervisors in the Department of Parks to inform them of this visit. Ms. Conrad responded to that e-mail and asked: "Is Ray and/or Jeff on property today?" Mr. Lyle responded: "Both are and Ray is with them now." [Appellee's Ex. 7; Appellant's Ex. 2]

80. The next morning, February 22, 2012, Mr. Lyle received an e-mail from John Combs, Operational Maintenance, Branch Manager, asking, "Can we expect a good report, considering the work that has been done? Are all components of the plant and the lift stations working properly?" Mr. Combs also stated that he'd like to know what Mr. Kitchen and Mr. Hall think about the situation. Mr. Lyle then forwarded Mr. Combs' e-mail to both Mr. Hall and Mr. Kitchen and asked them to advise on the EPA report and on the questions and concerns raised in Mr. Combs' e-mail. [Appellee's Ex. 7; Appellant's Ex. 2]

81. On that same day, February 22, 2012, Mr. Kitchen responded to the e-mail from Mr. Lyle, with copies to Mr. Combs and Ms. Conrad, among others. In his response, Mr. Kitchen reminded Mr. Lyle that Mr. Kitchen had been off work on Saturday, Sunday, and Monday due to scheduling, and that he came back Tuesday to the follow-up inspection. Mr. Kitchen had been on a reduced work schedule, and he requested to be put back on a full-time schedule. [Appellee's Ex. 7; Appellant's Ex. 2]

82. On Thursday, February 23, 2012, Ms. Conrad sent an e-mail to Mr. Lyle, with copies to Mr. Brooks and Ms. Gooe, stating:

We knew of the issues on Wednesday, 2/15. Why was Ray off again for 3 days in a row? I realize he is at 30 hours but the schedule should be rotated. Was Jeff in charge of the plant over the weekend? If so, why didn't he call Ray in?

I will approve for Ray to have 37.5 hours this week and next week to get the plant back in order but I consider it a lack of scheduling and oversight on your part that we are in this position. The plant operated effectively last year at reduced hours.

[Appellee's Ex. 7; Appellant's Ex. 2]

83. On February 24, 2012, Mr. Lyle responded to Ms. Conrad's e-mail as follows:

Jeff did cover over the weekend and Jeff had Ray scheduled in here when he is needed for testing and sampling. I have copied Jeff on this so he can elaborate. We discussed this issue and Jeff felt he was scheduling Ray appropriately within the 30 hour directive this past week.

As stated in Jeff's email attached, when Ray was off for longer time periods there was never an issue, in my opinion I think it is deeper than a scheduling issue and Jeff seems to feel that way as well, this has never been an issue until the hours were reduced this year, you are correct it did not happen last year during his reduction.

I have spoke with Ray and I have got him scheduled for 37.5 hours the next two weeks and have told him to get this under control ASAP.

Jeff is off today but I will speak to him via phone and let him know what you have approved.

[Appellant's Ex. 2]

84. After he sent this e-mail to Ms. Conrad, Mr. Lyle forwarded Ms. Conrad's last e-mail to Mr. Kitchen, asking him to answer and to copy all on this issue. Later that same day, Mr. Kitchen answered Ms. Conrad's questions as Mr. Lyle had requested him to do. [Appellee's Ex. 7]

85. After receiving Mr. Kitchen's response, Ms. Conrad sent an e-mail on that same day to Mr. Lyle, stating:

I find it unprofessional that you forwarded the e-mail directed to you to your park staff. I need for you to provide a response for why these issues were not addressed by you.

[Appellee's Ex. 7]

86. Later in that same day, Mr. Lyle responded to Ms. Conrad:

I did address these issues with them both personally.

I wanted to get my teams input on exactly what was going on with the waste water plant operation, I felt it was best that they directly communicate this to us all so we are all on the same team.

I was most definitely was not being unprofessional, I felt this was the best way to get to the root of the issue and solve it.

I cannot believe you would think I was being unprofessional in any way Monica, all I am trying to do is get to the bottom of what is going on with the waste water plant and the folks that operate it can explain it best.

Jeff was off today and this was the best way for him to communicate to all of us as well.

[Appellee's Ex. 7]

87. On Sunday, February 26, 2012, Mr. Lyle sent another response to Ms. Conrad, stating:

I did address it initially (attached) with you and this also serves as documentation of such as well as good documentation of what our team has done and tried to do to resolve this issue.

This is a very professional way of handling issues especially when our team is on reduced hours and we can't meet face to face at the time needed to do so.

I spoke to both Jeff (via text and phone) and Ray (face to face) and asked them about these issues, they reported to me what was done and needed to be done, I then in turn, for documentation purposes and to make sure everything was explained properly and nothing was left out, asked them to comment on the email thread. I didn't forward your email to Jeff, I copied him on the thread, I did forward to Ray after I spoke to him face to face and told him I was forwarding and asked him to explain and copy all. This was done

after I addressed this personally with you initially to make sure all of us were on the same team and again, there was no doubts about what was done, how it was done, what needed to be done and who was going to get it done and that it was resolved properly. This serves as excellent documentation and is a professional way of doing such.

This is a very efficient, feasible, adequate and professional way of handling a situation as this during this time frame, to get all of our team on board so we all own the issue and get it resolved properly.

[Appellee's Ex. 7]

88. The Department of Parks alleges that Mr. Lyle's conduct in forwarding Ms. Conrad's e-mail to Mr. Lyle's staff constitutes insubordination, stating:

Ms. Conrad had addressed you before for forwarding emails she has sent to you, on to your staff. As in some cases not all information communicated is appropriate to be shared with your staff. . . .

As the most senior person on the Park, Resort Park Manager I, you continually fail to assume responsibility for issues at your park and you continually put the responsibility on your employees to provide explanations to your supervisor. Your pattern of investigating and responding to issues of concern at GLSRP is unprofessional and exhibits poor leadership. As you have been informed on numerous occasions not to have your employees respond to matters and for you to look into matters directly and respond accordingly, your disregard to follow directives of your supervisor, Ms. Conrad, is insubordination.

[Appellee's Ex. 6, p. 6]

89. There are three issues raised in this allegation. The first issue concerns the very broad language in the allegation: "you continually fail to assume responsibility for issues at your park;" "you continually put the responsibility on your employees to provide explanations to your supervisor;" "your pattern of investigating and responding to issues of concern is unprofessional and exhibits poor leadership." The suspension letter includes no specific details regarding date, time, and place of these broad allegations of misconduct. Therefore, as discussed in the Conclusions of Law, below, these broad allegations do not comply with the requirements of KRS 18A.095(8) that the Department state the date, time, and place of the alleged misconduct, and should

be dismissed and stricken from the suspension letter. Consequently, the Hearing Officer finds that this allegation is limited to the single specific incident described in the allegation. In the event that the Personnel Board decides that these broad allegations should not be dismissed and should remain in the suspension letter, the Hearing Officer finds that the Department of Parks presented no evidence at the hearing in this matter to support these broad allegations of misconduct. The only evidence presented regarding these statements is the uncontroverted testimony from Mr. Lyle that Ms. Conrad never discussed these issues with him prior to the issues being raised in this suspension letter. [Testimony of Cary Lyle] Accordingly, the Hearing Officer finds that the Department of Parks has failed to prove, by a preponderance of the evidence, that Mr. Lyle is guilty of any of these broad allegations of misconduct.

90. The second issue raised in this allegation is the allegation that Mr. Lyle forwarded Ms. Conrad's e-mail to his staff after Ms. Conrad had told him not to forward her e-mails to his staff. Ms. Conrad testified that she had a conversation with Mr. Lyle about not forwarding her e-mails to his staff after an incident in which she thought that he had forwarded her e-mail comments about his staff meeting minutes to his staff; that incident occurred in November 2011. The exact nature of this conversation is unclear. [Testimony of Monica Conrad; Appellee's Ex. 8] Mr. Lyle testified that he has no recollection of ever being told that he was forbidden from forwarding Ms. Conrad's e-mails to his staff. [Testimony of Cary Lyle]

91. The Hearing Officer finds that, while it is more likely than not that Ms. Conrad had a conversation with Mr. Lyle about not forwarding her e-mails to his staff, the evidence in the record does not support a finding that Ms. Conrad gave Mr. Lyle a directive that he was prohibited from forwarding her e-mails to his staff. The Hearing Officer bases this finding on several things. First, Ms. Conrad admitted that there is no directive to Mr. Lyle that she can point to that states that Mr. Lyle is prohibited from forwarding her e-mails to his staff. Second, Ms. Conrad stated that there is no policy that Ms. Conrad knows of that prohibits Mr. Lyle from forwarding her e-mails to his staff. [Testimony of Monica Conrad] Third, Mr. Lyle has no recollection of ever receiving such a directive. [Testimony of Cary Lyle] Fourth, such a directive would be highly unusual given the heavy reliance on e-mail communication in the workplace today. While there might be some e-mails from Ms. Conrad that would be sensitive in nature and inappropriate to forward to staff, the large majority of e-mails would not fit into this category. Indeed, Ms. Conrad admitted in her testimony that there would have been nothing wrong with staff seeing the information in the e-mail that she sent to Mr. Lyle that included her comments on staff meeting minutes. [Testimony of Monica Conrad; Appellee's Ex. 8] Moreover, the Department presented no evidence to support the position that there was anything inappropriate with Mr. Hall and Mr. Kitchen seeing the e-mail that Ms. Conrad had sent to Mr. Lyle about the scheduling of Mr. Kitchen's time off.

92. For all of these reasons, the Hearing Officer finds that the preponderance of the evidence is that (1) Mr. Lyle was not given a directive that prohibited him from forwarding e-mails from Ms. Conrad to his staff; and (2) there was nothing inappropriate with Mr. Hall and Mr. Kitchen seeing the e-mail from Ms. Conrad that Mr. Lyle forwarded to them. Accordingly, the Hearing Officer finds that the preponderance of the evidence is that, when Mr. Lyle forwarded Ms. Conrad's e-mail regarding Mr. Kitchen's work schedule to Mr. Kitchen and Mr. Hall for response, Mr. Lyle was being neither insubordinate nor unprofessional.

93. The third issue raised in this allegation is the allegation that Mr. Lyle did not investigate and respond to Ms. Conrad directly, but rather relied on his staff to respond to Ms. Conrad's concerns. Given the e-mail chain discussed above, this allegation is puzzling. Mr. Lyle clearly responded to Ms. Conrad's concern about Mr. Kitchen's schedule, and provided this response before he forwarded her e-mail to Mr. Kitchen and Mr. Hall for their input. There is no evidence in the record of this case that Ms. Conrad ever replied to Mr. Lyle's response, or that Ms. Conrad informed Mr. Lyle that she thought that Mr. Lyle's response was inadequate. Indeed, after Ms. Conrad's e-mail in which she informed Mr. Lyle that she thought that he had acted unprofessionally by forwarding her e-mail to staff, Mr. Lyle responded at length regarding the discussions that he had had with Mr. Hall and Mr. Kitchen regarding Ms. Conrad's concerns. For these reasons, the Hearing Officer finds that the Department of Parks has failed to prove, by a preponderance of the evidence, that Mr. Lyle did not investigate and respond to Ms. Conrad directly.

94. In sum, and for all of the reasons stated, the Hearing Officer finds that the Department of Parks has failed to prove, by a preponderance of the evidence, that Mr. Lyle is guilty of unprofessional conduct and insubordination in disregarding directives of his supervisor, Ms. Conrad, that he should not forward her e-mail requests for information to his staff but should investigate matters himself and respond to her.

B.5. Allegation 5: Lack of Good Behavior/Insubordination, Improper Communications

95. The fifth allegation made against Mr. Lyle is that Mr. Lyle is guilty of lack of good behavior, insubordination, and improper communication in connection with communication that Mr. Lyle had with a newspaper reporter about a public meeting that had been scheduled to discuss SCUBA diving at Greenbo Lake State Resort Park. [Appellee's Ex. 6, p. 6]

96. Mr. Lyle had been working with others in the community to bring SCUBA diving to Greenbo Lake. This was an area of potential revenue for the Park. During this process, it became known that the Kentucky Department of Fish and Wildlife

Resources actually owns Lake Greenbo. There were fisherman who were concerned about the idea of having SCUBA diving in the Lake. [Testimony of Monica Conrad; testimony of Steve Brooks; testimony of Cary Lyle]

97. On March 19, 2012, Mr. Brooks sent an e-mail to Mr. Lyle and Ms. Conrad, among others, regarding SCUBA diving at Greenbo, stating:

Any more information/correspondence will come out of the Commissioner's Office. Do not discuss or lobby anyone until you hear from the Commissioner.

[Appellee's Ex. 9]

98. Mr. Brooks issued this directive because of the sensitivity of the SCUBA diving issue. Ms. Conrad had come to him and said that Mr. Lyle was giving interviews and continuing to talk to people in the community to promote the SCUBA diving program at Greenbo Lake. Mr. Brooks was trying to control how much was said about the program until the Department knew what it would be doing about the program. [Testimony of Steve Brooks]

99. Mr. Lyle received this directive. His understanding of the directive was that he was not to talk with anyone about the SCUBA diving program until he heard from the Commissioner of the Department of Parks that she was ready to go with it. [Testimony of Cary Lyle]

100. Mr. Brooks never lifted his directive. Mr. Lyle never contacted Mr. Brooks to ask for permission to speak to anyone about the SCUBA diving program. [Testimony of Steve Brooks]

101. On March 28, 2012, the Commissioner of the Department of Parks, Elaine Walker, sent an e-mail to several people, including Mr. Lyle, about the second public meeting that was being scheduled to discuss the SCUBA diving program at Greenbo Lake. That e-mail stated:

Are we set on April 12th? Since that is the date Sen. Webb could attend, I'd like to move forward if it is OK with everyone else.

[Appellant's Ex. 7]

102. On March 29, 2012, the Department of Fish and Wildlife Resources issued a press release, announcing that the Department of Fish and Wildlife Resources would be holding a second public meeting on April 12, 2012, to "further discuss a proposal to allow SCUBA diving within a 10-acre section of Greenbo Lake." The press

release ended by stating: "Any interested parties are urged to attend and participate as input from the meeting will largely influence Kentucky Fish and Wildlife's decision concerning this proposal." [Appellant's Ex. 15; testimony of Cary Lyle]

103. Mr. Lyle received this press release, which he forwarded to his staff and to the County Tourism office. He wanted to be sure that people who were interested in this issue knew about the meeting. [Testimony of Cary Lyle]

104. Members of the media often come to the restaurant at Greenbo Lake State Resort Park unannounced to talk with Mr. Lyle about events at the Park. On April 5, 2012, a reporter named Charles Romans saw Mr. Lyle eating in the restaurant and sat down at Mr. Lyle's table. Mr. Romans is a reporter with the Greenup County Beacon, which is a weekly, free newspaper in Greenup County. Mr. Romans had with him the press release that had been issued by the Department of Fish and Wildlife Resources about the public meeting. He asked Mr. Lyle about what would happen at the meeting, who would be present at the meeting, and where the meeting would be held. Mr. Lyle responded to Mr. Romans by telling him who would be attending the meeting, that the meeting would include what was included in the press release, and that the meeting would be at the Park's conference facility. Mr. Lyle also told Mr. Romans to come to the meeting, and that he was sure that all of Mr. Romans' questions would be answered at the meeting. [Testimony of Cary Lyle]

105. Mr. Lyle's testimony regarding the content of his discussion with Mr. Romans is uncontroverted. Therefore, the Hearing Officer finds that Mr. Lyle's discussion with Mr. Romans about the scheduled public meeting was limited to "time, manner, and place" procedural matters connected to the scheduled public meeting and did not include any discussion of the merits of the SCUBA diving program.

106. As soon as Mr. Lyle finished eating, he went to his office and sent an e-mail to Gil Lawson, the Director of Communications for the Department of Parks, with copies to Ms. Conrad and Mr. Brooks. In the e-mail, Mr. Lyle informed Mr. Lawson that he had been interviewed by Mr. Romans, indicating that he "[j]ust gave him facts," and that Mr. Romans would be at the public meeting. He also stated that the paper wanted to do a positive article on what was being proposed, and that it was possible that the article would appear prior to the scheduled public meeting; he provided the website for the paper. [Appellee's Ex. 10]

107. On April 17, 2012, after the public meeting had been held, the Greenup County Beacon printed an article about the SCUBA diving program at Greenup Lake. The article quoted many people who had attended the public meeting, including Mr. Brooks, Commissioner Walker, the Kentucky Director of Tourism, and Mr. Lyle. All of

these comments came from what was said at the public meeting. [Appellant's Ex. 16; testimony of Cary Lyle]

108. Mr. Lyle did not think that he was violating Mr. Brooks' directive by having a discussion with Mr. Romans about the public meeting, because the Commissioner had scheduled the public meeting, the Department of Fish and Wildlife Resources had issued a press release about the public meeting, and Mr. Lyle had not said anything to Mr. Romans except to state the facts about the meeting attendees and the meeting location. [Testimony of Cary Lyle]

109. The Department of Parks asserts that, by talking to Mr. Romans about the scheduled public meeting, Mr. Lyle was guilty of lack of good behavior, insubordination, and improper communication, because Mr. Lyle failed to follow the directive given to him by Mr. Brooks.

110. The question to address, then, is whether Mr. Lyle failed to follow the directive given to him by Mr. Brooks when Mr. Lyle spoke with Mr. Romans about the scheduled public meeting. Since Mr. Lyle's communication with Mr. Romans was limited to the time, manner, and place of the scheduled public meeting, and did not venture into the question of the merits of the proposed SCUBA diving program, the question to address is whether Mr. Brooks' directive was meant to prohibit such procedural communication.

111. Mr. Brooks' directive clearly was meant to prohibit any discussions of the merits of the proposed SCUBA diving program until the Commissioner gave permission for such discussions. (Since the Commissioner and others from the Department of Parks spoke about the merits of the program at the public meeting that was held on April 12, 2012, Mr. Brooks' prohibition about speaking about the merits of the program clearly ended at that point.) The evidence does not support any finding that Mr. Brooks' directive prohibited procedural discussions regarding the time, manner, and place of a public meeting scheduled to discuss the possibility of this program. Even if such a finding could be made, such a prohibition connected to procedural discussions regarding the scheduled public meeting would have ended with the Commissioner's actions of scheduling the public meeting, just as the prohibition about discussing the merits of the program ended when the Commissioner arranged for Department personnel to discuss the merits of the program at the public meeting. Once the Commissioner indicated that she was scheduling the public meeting with the Department of Fish and Wildlife Resources to discuss the SCUBA diving program, and once the Department of Fish and Wildlife Resources issued its press release scheduling the public meeting and inviting all those interested to attend, any prohibition about discussing the time, manner, and place of the public meeting was lifted by "hearing from the Commissioner." If Mr. Brooks' directive were interpreted as prohibiting Mr. Lyle's discussions with Mr. Romans regarding the time, manner, and

place of the public meeting, then the Department would create an odd situation in which the Commissioner schedules a public meeting to discuss a program that is important to the Department, but the Commissioner's employees are forbidden to tell anyone that the meeting has been scheduled, or to inform anyone of the time, manner, and place of the meeting.

112. The Hearing Officer finds that, in talking to Mr. Romans about the time, manner, and place of the public meeting, Mr. Lyle did not violate Mr. Brooks' directive. Therefore, Mr. Lyle's conduct in talking to Mr. Romans did not constitute lack of good behavior, insubordination, or improper communication.

113. In sum, and for all of the reasons stated, the Hearing Officer finds that the Department of Parks has failed to prove, by a preponderance of the evidence, that Mr. Lyle is guilty of lack of good behavior, insubordination, and improper communication in connection with communication that Mr. Lyle had with a newspaper reporter about a public meeting that had been scheduled to discuss SCUBA diving at Greenbo Lake State Resort Park.

C. Summary Regarding Allegations Made Against Mr. Lyle

114. In sum, and for all of the reasons stated, the Hearing Officer finds that the Department of Parks has proven, by a preponderance of the evidence, that Mr. Lyle violated the Department of Parks Policy 01-03 (failing to carry out assignments) and is guilty of unsatisfactory performance of job duties in two ways: (1) Mr. Lyle failed to review the payroll process to ensure that the employees of Greenbo Lake State Resort Park were following the proper payroll policies and procedures; and (2) Mr. Lyle failed to identify the cause of the employees' problems with complying with the payroll process and then to address and correct those problems.

115. In sum, and for all of the reasons stated, the Hearing finds that the Department of Parks has failed to prove, by a preponderance of the evidence:

a. that Mr. Lyle's lack of oversight and involvement in the daily operations of the business office at Greenbo Lake State Resort Park contributed to causing violations of internal cash controls by the business office employees;

b. that Mr. Lyle is guilty of unsatisfactory performance of his job duties because he failed to put practices in place to ensure that employees in park housing are paying for premium services and staying in compliance with the policies of the Department of Parks;

c. that Mr. Lyle is guilty of unprofessional conduct and insubordination in disregarding directives of his supervisor, Ms. Conrad, that he should not forward her

e-mail requests for information to his staff but should investigate matters himself and respond to her;

d. that Mr. Lyle is guilty of lack of good behavior, insubordination, and improper communication in connection with communication that Mr. Lyle had with a newspaper reporter about a public meeting that had been scheduled to discuss SCUBA diving at Greenbo Lake State Resort Park.

D. Penalty Imposed

116. As indicated above, the Department of Parks has proven one of the five allegations that it made against Mr. Lyle. The allegation that the Department proved against Mr. Lyle is that Mr. Lyle violated the Department of Parks Policy 01-03 (failing to carry out assignments) and is guilty of unsatisfactory performance of job duties in two ways: (1) Mr. Lyle failed to review the payroll process to ensure that the employees of Greenbo Lake State Resort Park were following the proper payroll policies and procedures; and (2) Mr. Lyle failed to identify the cause of the employees' problems with complying with the payroll process and then to address and correct those problems.

117. The question for the Hearing Officer to address is whether the Department of Parks has proven, by a preponderance of the evidence, that imposing a twenty day suspension, without pay, on Mr. Lyle for the allegation that it has proven against Mr. Lyle is neither excessive nor erroneous and is appropriate under the circumstances of the case.

118. Mr. Lyle has been disciplined twice prior to the suspension at issue in this appeal.

119. On August 6, 2009, the Department of Parks issued a letter to Mr. Lyle in which the Department suspended Mr. Lyle without pay for a period of three days. The reasons for this suspension were: (1) the presence of a cash bar at an event at Greenbo Lake State Resort Park; and (2) not following the proper procedure to accept property on loan to be displayed at the Park. [Appellee's Ex. 19]

120. On June 14, 2010, the Department of Parks issued a letter to Mr. Lyle in which the Department suspended Mr. Lyle without pay for a period of two days. The reasons for this suspension were: (1) failure to continue to live in park housing until his request not to live there had been addressed by the Commissioner; and (2) use of a maintenance building in the Park by employees to store personal items. [Appellee's Ex. 18]

121. Ms. Googe testified that it is unusual for the Department of Parks to issue a third suspension to an employee. Usually the third disciplinary measure will be to issue an intent to dismiss letter. In this case, she decided that, because the two prior suspensions had been small suspensions, the appropriate penalty would be a lengthy suspension. [Testimony of Laurie Googe]

122. Ms. Googe also testified that the twenty day suspension was based on all five allegations combined. She indicated that, if there were fewer than five allegations, the suspension might have been reduced by a day or two. [Testimony of Laurie Googe]

123. There is no evidence in the record regarding what the appropriate penalty would be for Mr. Lyle for the one violation that has been proven by the Department of Parks.

124. Ms. Hendricks and Mr. Clay also received disciplinary action for some of the issues included in this appeal. Ms. Hendricks received a written reprimand, and Mr. Clay received a three-day suspension without pay. (Mr. Clay's suspension originally was for 10 days, but it was reduced to 3 days pursuant to a settlement agreement.) [Testimony of Mitzi Hendricks; testimony of Thomas Clay; testimony of Laurie Googe; Appellant's Exs. 3, 6, 9]

125. The fact that Mr. Lyle has two previous suspensions, and the fact that, as the Park Manager, Mr. Lyle has overall responsibility for the operation of Greenbo Lake State Resort Park, indicate to the Hearing Officer that the penalty imposed on Mr. Lyle should be greater than the penalty imposed on Mr. Clay and Ms. Hendricks. On the other hand, the fact that the Department of Parks has proven only one of the five allegations that it has asserted against Mr. Lyle indicates to the Hearing Officer that the penalty imposed on Mr. Lyle should be substantially less than the twenty-day suspension imposed on Mr. Lyle by the Department of Parks.

126. After considering all of the facts in this matter, the Hearing Officer finds that the Department of Parks has failed to prove, by a preponderance of the evidence, that imposing a twenty day suspension, without pay, on Mr. Lyle for the one allegation that it has proven against Mr. Lyle is neither excessive nor erroneous and is appropriate under the circumstances of the case. The Hearing Officer finds that the preponderance of the evidence is that imposing a five day suspension, without pay, on Mr. Lyle for the one allegation that has been proven against him is neither excessive nor erroneous and is appropriate under the circumstances of this case.

CONCLUSIONS OF LAW

1. The Personnel Board has jurisdiction over this matter pursuant to KRS

Chapter 18A.

2. KRS 18A.095 (2) states: "A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause."

3. 101 KAR 1:345, Section 1, states: "Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties."

4. KRS 18A.095 (22)(c) states: "If the [Personnel Board] finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall direct the appointing authority to alter, modify, or rescind the disciplinary action."

5. KRS 13B.090(7) provides that "[t]he agency has the burden to show [by a preponderance of the evidence] the propriety of a penalty imposed."

6. Therefore, the burden of proof in this appeal is on the Department of Parks to prove, by a preponderance of the evidence, that the twenty day suspension, without pay, imposed on Mr. Lyle was for lack of good behavior or the unsatisfactory performance of duties, was not excessive, and was appropriate under all of the circumstances.

Legal Issues Raised by Appellant

7. At the hearing in this matter, Mr. Lyle made certain statements in his testimony that appeared to be assertions that he has been subjected to political discrimination. Such an allegation of political discrimination, however, had not been asserted by Mr. Lyle in his appeal of the suspension at issue in this appeal. Therefore, the Hearing Officer finds that an allegation of political discrimination has not been made in the appropriate manner and is not part of this appeal. Accordingly, the Hearing Officer will not address this allegation.

8. Both prior to the hearing and at the hearing in this matter, Mr. Lyle moved to strike some of the allegations made against him by the Department of Parks for failure to be specific as required by KRS 18A.095(8).

9. KRS 18A.095(8) states:

A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:

- (a) The demotion, suspension, or other penalization;
- (b) The effective date of the demotion, suspension, or other penalization;
- (c) The specific reason for the action including:
 - 1. The statutory or regulatory violation;
 - 2. The specific action or activity on which the demotion, suspension, or other penalization is based;
 - 3. The date, time, and place of the action or activity; and
 - 4. The name of the parties involved; and
- ...
- (d) That he or she has the right to appeal to the board within sixty (60) days, excluding the day that he or she received notification of the personnel action.

10 Mr. Lyle asserts that two of the allegations in the dismissal letter should be dismissed for failure to set forth the specific statutory or regulatory violation alleged. These are the allegations in the suspension letter that the Department of Parks styled "Violations of Internal Cash Controls" and "Lack of Oversight of Daily Operations." [Appellee's Ex. 6]

11. While the discussions of the allegations in those two sections of the suspension letter do not include alleged statutory or regulatory violations, the Conclusion section of the suspension letter sets out specific statutory and regulatory violations for all of the allegations included in the letter. The Hearing Officer concludes that this statement of statutory and regulatory violations meets the requirements of KRS 18A.095(8) that the dismissal letter include the statutory or regulatory violations being alleged. The Hearing Officer also concludes that the allegations in the suspension letter are limited to the statement of statutory and regulatory violations that are listed in the suspension letter.

12. Mr. Lyle also asserts that some of the allegations included in the suspension letter do not meet the requirement in KRS 18A.095(8) that the suspension letter shall state the specific action or activity on which the suspension is based, and shall state the date, time, and place of the action or activity.

13. The Hearing Officer concludes that there are two general allegations in the suspension letter that do not meet the requirement in KRS 18A.095(8) that the suspension letter shall state the specific action or activity on which the suspension is based, and shall state the date, time, and place of the action or activity.

14. The first general allegation is found in Allegation 2, and states: "It is particularly disturbing that several of the instances discovered during the audit were regarding employees that report directly to you. . . Failing to review and sign your employee's timesheets, and failing to require them to turn in their work schedule for your review is unacceptable and against policy." [Appellee's Ex. 6, p. 3] The suspension letter includes no specific details regarding the times and dates of these general allegations of misconduct. Therefore, these general allegations do not comply with the requirement of KRS 18A.095(8) that the Department state the date, time, and place of the alleged misconduct. Accordingly, the Hearing Officer concludes that this general allegation should be dismissed and stricken from the suspension letter.

15. The second general allegation is found in Allegation 4, which states:

As the most senior person on the Park, Resort Park Manager I, you continually fail to assume responsibility for issues at your park and you continually put the responsibility on your employees to provide explanations to your supervisor. Your pattern of investigating and responding to issues of concern at GLSRP is unprofessional and exhibits poor leadership.

[Appellee's Ex. 6, p. 6] The suspension letter includes no specific details regarding the date, time, and place of these broad allegations of misconduct. Therefore, these broad allegations do not comply with the requirements of KRS 18A.095(8) that the Department state the date, time, and place of the alleged misconduct. Accordingly, the Hearing Officer concludes that this general allegation of misconduct should be dismissed and stricken from the suspension letter.

Allegations Made Against Mr. Lyle

16. The Department of Parks has made five allegations against Mr. Lyle. As indicated in the findings of fact, above, the Department of Parks has proven one allegation against Mr. Lyle. Specifically, the Department of Parks has proven, by a preponderance of the evidence, that Mr. Lyle violated the Department of Parks Policy 01-03 (failing to carry out assignments) and is guilty of unsatisfactory performance of job duties in two ways: (1) Mr. Lyle failed to review the payroll process to ensure that the employees of Greenbo Lake State Resort Park were following the proper payroll policies and procedures; and (2) Mr. Lyle failed to identify the cause of the employees' problems with complying with the payroll process and then to address and correct those problems.

17. The Hearing Officer concludes that these violations constitute unsatisfactory performance of duties for which Mr. Lyle may be disciplined pursuant to 101 KAR 1:345, Section 1. Accordingly, the Hearing Officer concludes that 101 KAR

1:345, Section 1, authorizes the Department of Parks to impose discipline on Mr. Lyle for these violations.

18. In addition, as indicated in the findings of fact, above, the Department of Parks has failed to prove, by a preponderance of the evidence, the remaining four allegations that it asserted against Mr. Lyle. Accordingly, the Hearing Officer concludes that the Department of Parks is not authorized to impose discipline on Mr. Lyle for these allegations.

19. As indicated in the findings of fact, above, the Department of Parks has failed to prove, by a preponderance of the evidence, that imposing a twenty day suspension, without pay, on Mr. Lyle for the one allegation that it has proven against Mr. Lyle is neither excessive nor erroneous and is appropriate under the circumstances of the case. Rather, the preponderance of the evidence is that a five day suspension, without pay, is neither excessive nor erroneous and is appropriate under the circumstances of this case.

RECOMMENDED ORDER

Based upon the foregoing findings of fact and conclusions of law, the Hearing Officer recommends that the Kentucky Personnel Board issue a Final Order that:

1. **DENIES** the appeal of Cary Lyle (Appeal No. 2012-135) in that:

a. The Department of Parks has proven, by a preponderance of the evidence, that Mr. Lyle violated the Department of Parks Policy 01-03 (failing to carry out assignments) and is guilty of unsatisfactory performance of job duties in two ways: (1) Mr. Lyle failed to review the payroll process to ensure that the employees of Greenbo Lake State Resort Park were following the proper payroll policies and procedures; and (2) Mr. Lyle failed to identify the cause of the employees' problems with complying with the payroll process and then to address and correct those problems; and

b. The preponderance of the evidence is that imposing a five-day suspension without pay on Mr. Lyle for this conduct is neither excessive nor erroneous and is appropriate under the circumstances of this case.

2. **SUSTAINS** the appeal of Cary Lyle in that:

a. The Department of Parks has failed to prove, by a preponderance of the evidence, that Mr. Lyle is guilty of the remaining four allegations that the

Department of Parks asserted against Mr. Lyle; and

b. The Department of Parks has failed to prove, by a preponderance of the evidence, that imposing a twenty-day suspension, without pay, on Mr. Lyle for the one allegation that it has proven against Mr. Lyle is neither excessive nor erroneous and is appropriate under the circumstances of the case.

ORDERS the Department of Parks: (a) to modify the twenty-day suspension, without pay, that it imposed on Mr. Lyle on May 29, 2012, to a five-day suspension, without pay; and (b) and to reimburse Mr. Lyle for the amount of pay that was withheld from him because of the extra fifteen days of suspension without pay that were imposed on him; to reimburse Mr. Lyle for any leave time he used attending the hearing and any pre-hearing conferences at the Board; and to otherwise make Mr. Lyle whole. 18A.095(25).

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. See *Rapier v. Philpot*, Ky., 130 S.W.3d 560 (2004).

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 Ann M. Sheadel this 6th day of March, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof mailed to:

Hon. Paul Fauri
Hon. Misty Judy