

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-189**

KIMBERLY N. MUDD

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

** ** *

The Board, at its regular October 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 1, 2016, Appellee's Exceptions and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. Delete Findings of Fact paragraphs 3 and 4, and substitute the following:

3. John Dudinskie was the supervising Investigator from the OIG's office assigned to investigate the matter. Mr. Dudinskie requested that SRAA Tony Helm obtain travel vouchers for Ms. Mudd and her subordinate employees to expedite his investigation. Ms. Mudd did not comply with three requests for these travel vouchers from Mr. Helm, and was unable to produce the travel vouchers by January 8, 2015. In addition, Ms. Mudd informed Mr. Helm that Lauren Sanders' travel vouchers were current when, in fact, she had not submitted any travel vouchers since July 2014.

4. Mr. Dudinskie reviewed over 100 travel vouchers and found misrepresentation on two vouchers. One was from travel alleged to have occurred on July 11, 2014, when Mudd and a coworker traveled together from their office in Elizabethtown to

Kosair Hospital in Louisville, but both turned in a travel voucher claiming expenses for the same trip. The other occurred for alleged travel from her office to Radcliffe, Kentucky, on August 13, 2014, a date that office records revealed she was in Richmond, Kentucky, attending training at Eastern Kentucky University. Ms. Mudd testified that these were mistakes due to the fact she relied on her memory in filling out her travel vouchers.

B. Delete Findings of Fact paragraphs 6 through 10 and substitute the following:

6. Mr. Dudinskie testified there were numerous questionable travel vouchers, but he could only verify the two incorrect vouchers, due to the fact there was insufficient documentation that provided verification. He stated the entire office lacked institutional controls, and was out of compliance. From his investigation, he found that Ms. Mudd and her subordinates relied on memories, calendars and cell phones to complete travel vouchers at the end of the month. He stated there were no contemporaneous records produced to verify the travel. He stated there was confusion as to when state vehicles or personal vehicles were used. There were no records of whether employees went on trips alone or were accompanied by other coworkers. No documentation was produced showing what cases or case numbers were associated with any particular travel.

7. Mr. Dudinskie's investigation was hampered by the fact that insufficient documentation existed to prove or disprove the validity of a number of travel vouchers. He found the entire office lacked institutional controls and was out of compliance. He recommended a number of changes in his report.

8. Although the Hearing Officer correctly found no training had been offered regarding travel vouchers, the Board agrees with Mr. Klein's testimony that it is a relatively simple process to contemporaneously document travel. Supervisors such as Ms. Mudd should set the example by keeping timely and accurate travel records, including whether a state vehicle or personal vehicle was used, the purpose of the travel, and whether they

traveled alone or with another employee. In addition, as a Supervisor, Ms. Mudd should ensure her subordinates follow similar practices.

9. The Board finds that because Ms. Mudd and her Social Workers have a lot of work-related travel, it is more important to keep timely and accurate travel records. Reliance on memory and spotty documentation is not adequate, given the amount of travel involved in their work.

10. The Board finds that the Cabinet established just cause for the five-day suspension against Ms. Mudd, based on her failure to keep accurate travel records of her own travel and to ensure her subordinates did the same. In addition, the record reflected Ms. Mudd did not timely respond to her supervisor's request for travel vouchers from all her staff to assist in this investigation. The Cabinet established the penalty of a five-day suspension was neither excessive nor erroneous.

C. **Delete Conclusions of Law paragraphs 3 through 9, and substitute the following:**

3. The Board concludes the Cabinet has established just cause for the five-day suspension against the Appellant, and has shown the penalty was neither excessive nor erroneous. The fact that Ms. Mudd's inaccurate travel vouchers were not turned in intentionally or with the purpose of improperly obtaining financial gain does not mean her conduct does not constitute the lack of good behavior and the unsatisfactory performance of duties.

D. **Delete the Recommended Order and substitute the following:**

IT IS HEREBY ORDERED that the appeal of **KIMBERLY N. MUDD V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2015-189)** is **DISMISSED**.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer as Altered be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 3rd day of November, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Kathleen Hines
Hon. Caleb Bland

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-189**

KIMBERLY N. MUDD

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

This matter came on for an evidentiary hearing on the 28th day of April, 2016, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before E. Patrick Moores, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Present was the Appellant, Kimberly N. Mudd, who was represented by the Honorable Caleb Bland. The Cabinet for Health and Family Services was represented by the Honorable Kathleen Hines, Assistant Legal Counsel for the Cabinet.

I. STATEMENT OF THE CASE

The Appellant, Kimberly Mudd, filed this appeal on August 18, 2015, alleging that she was improperly suspended from work and pay for a period of five working days as a result of submitting falsified and improper travel vouchers for herself and her staff. Ms. Mudd received notice of the suspension by letter dated August 11, 2015, from Howard J. Klein, the Appointing Authority for the Cabinet's Office of Human Resources Management. The letter informed Ms. Mudd that she failed to properly monitor expenditures and maintain records to support the claims and correct inaccuracies in violation of 200 KAR 2:006. She was charged with lack of good behavior and unsatisfactory performance of duties. There were no allegations that the falsified travel vouchers were intentionally or fraudulently submitted. Ms. Mudd submitted a two-page written statement with her appeal explaining the circumstances under which the travel vouchers were prepared and that due to the high volume of cases and investigations under her responsibility it is impossible to identify every incident of travel claims with complete accuracy, and that the incidents in question were nothing more than simple mistakes. The Appellant, Kimberly Mudd, sought to have the suspension expunged from her record, and receive the back pay and be otherwise made whole.

A pre-hearing conference was conducted before the Personnel Board on October 16, 2015. The hearing officer addressed the issues on appeal and discussed the process of obtaining discovery and subpoenaing witnesses for an evidentiary hearing set to take place on December 7, 2015. The hearing was postponed as the parties attempted to reach a settlement. An order was

subsequently entered rescheduling the hearing to April 28, 2016, and the witnesses already served with subpoena were to be notified of the revised hearing date and that they were still under subpoena.

The hearing was conducted at the offices of the Kentucky Personnel Board on the 28th day of April, 2016. The issue on appeal was whether the Cabinet had just cause for the suspension, and that the disciplinary action taken was neither excessive nor erroneous. The Appellee Cabinet had the burden of proof by a preponderance of the evidence. At the conclusion of the presentation of the evidence the matter was placed under submission to the hearing officer for his findings of fact and conclusion of law.

II. SUMMARY OF EVIDENCE PRESENTED

1. **John Dudinskie** was the supervising investigator in the Cabinet's Office of the Inspector General on the matter giving rise to this appeal. An investigation was requested on November 20, 2014, by Bruce Linder, Director of Service Regions of the Department for Community Based Services (DCBS) to investigate travel vouchers submitted by Kimberly Mudd and members of her team, after Tony Helm in the Hardin County office had discovered that improperly completed travel vouchers, showing a duplication of expenditure claims, had been submitted. Dudinskie was instructed to conduct the investigation by Stephanie Hold, Director of the Cabinet's OIG Division of Audits and Investigations.

2. Dudinskie testified that he requested the travel vouchers from Ms. Mudd on November 25, 2014, and that by Christmas he still had not received all the travel vouchers. He said that he finally obtained the last vouchers on January 29, 2015. He conducted interviews of the staff social workers and discovered that the entire office was out of compliance, as controls were not being adhered to, and that there were very few controls in the office at all. Furthermore, there was no sign-out control documentation for the use of state vehicles. The office had a computer program referred to as The Worker's Information System (commonly known as "TWIST"), which contained a complete data base listing of the social worker's cases, notes, calendars, and child involved, but that documentation and controls relating to travel and vehicle usage by the staff in the Hardin County office was lacking. He said that the staff billed their travel vouchers at the end of the month based on memory and information on their cell phones, and that there were discrepancies and non-verifiable trips. He said that the Hardin County office involved a lot of travel, but that the travel vouchers were written so generically that he could not tell the case or the purpose of the trip. He presented an exhibit of several travel vouchers, on which the description of the trip shown in the "purpose" box on the form would only generically state "courthouse" or "home visit" with no reference to a child or case number. He also testified that if a state vehicle was used, there should have been no travel voucher submitted claiming expenses.

3. Dudinskie testified it was difficult to determine the accuracy of the travel vouchers, and that Ms. Mudd could not verify the information on the travel vouchers, despite the

fact that she was the person who signed all the travel vouchers that documented it contained "proper charges in the discharge of official business and that all the data furnished herewith are true and correct." He said that the misrepresentation was substantiated by two vouchers submitted on the same trip and time by Mudd and another social worker, which was brought to his attention by Ms. Mudd.

4. One of the discrepancies Dudinskie found occurred on July 11, 2014, where Mudd and a social worker, Seleste Fielder, both travelled together to the Kosair Hospital in Louisville, yet turned in separate travel vouchers. Another discrepancy arose from a travel voucher Ms. Mudd submitted for August 13, 2014, for travel from Elizabethtown to Radcliffe, when the office records disclosed that she was in training that week at Eastern Kentucky University in Richmond.

5. Dudinskie cited an example of Mudd's lack of controlling the travel vouchers submitted by the staff by referring to the travel vouchers turned in by Lauren Sanders for the months of July through December 2014, which she did not prepare until January 2015. The travel vouchers are required to be submitted monthly.

6. Dudinskie completed his investigation on April 25, 2015 and submitted a 15-page report with several hundred pages of documentation of travel vouchers and emails pertaining to the travel expenses claimed. He wrote in his conclusion "Due to the lack of controls it cannot be determined if Ms. Mudd's acts were intentional or how many other violations may be undiscovered." He testified that he could not determine if the misrepresentations on the travel vouchers were done intentionally or accidentally, as the problem was the lack of documentation not only concerning those submitted by Ms. Mudd, but also those turned in by the employees under her supervision.

7. **Marjorie Schuler** is Regional Manager Associate for the Salt River Trail Region, serving as the personnel associate. She does the disciplinary review on all requests for disciplinary action with Nelson Knight, and they decide jointly whether to submit it to the Office of Human Resources Management, who decides the appropriate disciplinary action to take against the employee. She testified that this investigation predated her job and that she had no personal knowledge of this action until the investigation was completed. She learned that Mr. Klein issued a letter to Ms. Mudd informing her of a five-day suspension for lack of good behavior and unsatisfactory performance of duties.

8. Ms. Schuler testified that the basis of the disciplinary action was that it is the responsibility of the supervisor to review the travel vouchers and to assure the dates of trips and the accuracy of the work performed. The supervisor's responsibility is to certify that the information documented in the travel voucher is accurate, and that it is timely submitted by the 5th day of each month. She testified that she did not know what procedures were in place at the time of the investigation concerning the travel vouchers, but the investigation revealed that there virtually were none, particularly concerning a log for the signing out of vehicles, and

documenting where the social worker was traveling and the purpose of the trip. Ms. Schuler testified that any employee that does not turn in accurate expense vouchers on a timely basis should be given progressive discipline.

9. Ms. Schumer testified that the controls now in place require that the travel vouchers identify the case on which the trip is made in the "purpose" section of the voucher form. She said she does not mandate what people do in performing the documentation responsibilities of their job as that responsibility normally falls on Mr. Knight, but she was not aware of any training concerning the travel vouchers. She testified that she understood the reason for the disciplinary action taken against Ms. Mudd, as it was her responsibility as a supervisor to see that the documentation was accurately and timely submitted, and that all the staff workers were in compliance.

10. **Howard J. Klein** is the Appointing Authority for the Cabinet's Office of Human Resources Management. He acknowledged his signature on the letter notifying Ms. Mudd of the disciplinary suspension being imposed in response to the events that had been brought to his attention. He testified that he analyzed the circumstances of the reason for the request for the disciplinary action, and determined that the appropriate action would be a five day suspension. He said her poor performance would have warranted a termination based on the not providing accurate travel vouchers. He testified that the first two pages of his letter outlined her insubordination by not following the directives of her supervisor concerning the compiling of the travel vouchers for the investigation and her needing to be told three times to comply with her responsibilities concerning gathering the travel vouchers documentation. The remaining pages of his letter of disciplinary action described her unsatisfactory performance of her duties by not directing accuracy of her employees in filling out their travel vouchers, and her failure to accurately complete the travel vouchers concerning her own travels. Klein testified that her record showed a written reprimand five years earlier, but that did not have much impact on this matter before him. Klein said the fact that federal money is involved and reimbursement of travel expenses does not solely involve state money, there is an absolute requirement for accuracy in reporting a claim for the money. For Klein, the factor tipping the balance for the five-day suspension instead of termination is that the investigation could not prove her conduct was intentional.

11. Klein described the review process he had undertaken of the investigation and the duties of the supervisors that were violated. He acknowledged that some of the field offices were stricter in their compliance. He stated that it is an elementary part of being a supervisor to know where your staff is and what they are doing. He testified that the primary reason for the controls necessary for all travel was the Cabinet's need to know where the social worker was located and why the trip was necessary. He stated it was necessary that the controls be fact specific. He explained that the control requirements were a safety factor, as the Cabinet had one instance that it had no documentation of where the social worker was or why, who died and they did not even know where she was or that she had died.

12. **Natalie Bagby** is employed as the Family Services Office Supervisor in Hardin County, where she has served since October 2015. She previously worked as a social worker. She testified concerning the protocol she followed in completing the travel vouchers. She testified that she would occasionally receive an email from the travel branch concerning the travel vouchers, but she never was provided any training by the Cabinet on the requirements for completing the forms, and that she received no instructions on what was to be included in the "purpose" section on the form. She described that there is no uniformity between offices and supervisors on filling out the travel vouchers. However, she testified that she has given a Personal Improvement Plan (PIP) to a social worker under her supervision concerning her improperly documenting her travel voucher.

13. **Kimberly Mudd** is the Family Services Office Supervisor for Hardin County where she has served for the past seven years. She testified that she utilized the method of supervising that she learned from working under her supervisor, Tony Helm. She acknowledged that there were problems with the completion of travel vouchers by members of her team of social workers, mentioning a social worker who had a pattern of not submitting paperwork to support her travel voucher. She testified that the OIG Investigator requested she furnish him with the previous six months of the travel vouchers and those of her social workers, however, no reason was stated as to the reason for the delay in providing the requested travel vouchers.

14. Ms. Mudd also testified that she never received any training or instructions on how to prepare the travel voucher. She also stated that to her knowledge their office never had a "sign out" log on the use of vehicles. She said that as a front-line supervisor, she has social workers that are involved with child abuse issues. This requires them to go wherever necessary in the best interests of the child, and that she still goes out with her staff. She produced her Annual Performance Evaluations for 2011 through 2014, which were reviewed by her supervisor, Tony Helm, in which she was rated in each evaluation as "highly effective."

15. Ms. Mudd said there was a lot of travel involved with the social workers in her office. She testified that her own travel "depends" on what was required to be done on any given day, whether it was to go to court, see a child in a hospital, visit a child at their home, or accompany a new social worker in the field. She said that with no training, instructions or dictated method to the staff members to be followed in completing the travel vouchers, that each person had their own system they used to complete their travel vouchers when they filled them out at the end of the month. Some used their calendars, some used the data on their cell phones, but that all the staff worked long hours, many having to be on the road until up to 8:00 at night in order to get the work done. She testified that it was impossible to predict where a person would have to go and the reason for the travel, as each day and each child's case was different. She said this made it very difficult to remember all the details of each days travel. She acknowledged that this allowed mistakes to be made, but that there was never any intentional misrepresentations made in completing the forms by her or her staff workers. She said there was no way to know where the social workers are on any given day, as the nature of the job required them to make many trips with numerous stops each day and that she had to trust their statements

as to where they were and what they were working on.

III. FINDINGS OF FACT

1. On November 20, 2014, the Director of Service Regions of the Department for Community Based Services (DCBS) requested the Cabinet's Office of the Inspector General to investigate travel vouchers submitted by Kimberly Mudd on her behalf and those of several social workers assigned to her team.

2. Ms. Mudd serves as a supervisor in the Hardin County office located in Elizabethtown. Part of her responsibilities include her reviewing and certifying the travel vouchers of the members of her team as being properly incurred in the discharge of official business and that the data provided on the travel voucher was accurate and true.

3. John Dudinskie was the supervising investigator from the OIG's office assigned to investigate the matter. On November 25, 2014, he requested all the travel vouchers, but for some reason the last group of travel vouchers was not produced until January 29, 2015.

4. Dudinskie reviewed over a hundred travel vouchers, but was only able to find misrepresentation on two vouchers. One was from travel alleged to have occurred on July 11, 2014, when Mudd and a coworker traveled together from their office in Elizabethtown to Kosair Hospital in Louisville, but both turned in a travel voucher claiming expenses for the same trip. The other occurred for alleged travel from her office to Radcliffe, Kentucky, on August 13, 2014, a date that the office records revealed she was in Richmond, Kentucky that week attending training at Eastern Kentucky University. Ms. Mudd testified that these were merely a mistake in her relying on her memory.

5. The incorrect travel voucher turned in for the August 13 trip was voluntarily disclosed by Ms. Mudd.

6. Dudinskie testified that there were numerous questionable travel vouchers but that he could only verify the two incorrect vouchers, due to the fact that there was insufficient documentation that provided verification. He said the entire office lacked institutional controls and was out of compliance.

7. Dudinskie testified that as a result of his investigation of all the travel vouchers and internal office documentation, he was unable to make any determination that the mistaken travel vouchers were intentionally filled in for purposes of improper gain.

8. The testimony presented by Dudinskie, together with that of Appellant Mudd, Marjorie Schuler, Regional Manager Associate for the Salt River Trail Region who also serves as the personnel associate; and from Natalie Bagby, a Family Services Office Supervisor in the Hardin County office, all corroborated the fact that there had been no training given the office

staff on how to properly complete the travel vouchers and the data and source of the information to be included on the form. Nor was there any evidence of protocols to be followed. The evidence also established that the procedure followed varied between offices, and even Mr. Klein testified that some offices were stricter than others in control and compliance. Mudd further testified that she merely followed the procedures put in place by her former supervisor, Tony Helm, who is now retired and was not able to be brought before the hearing.

9. Appellant Mudd testified that she and the members of her team have to do a significant amount of travel on most days, which are directed by changing day-to-day situations arising out of the cases involving the children under their care, and that the travel often involves late hours. She and the workers have to rely on their memories and data stored in their cell phones when completing the travel vouchers at the beginning of each month, and that any misinformation are mere mistakes and not an intentional attempt to obtain fraudulent gain. She further said that because of the workload her workers face she is compelled to trust their information when she is reviewing and certifying their submissions.

10. Klein testified that Mudd would have been terminated but for the fact that the investigation failed to establish any intentional misrepresentations, which tipped the balance toward the five day suspension. No testimony was presented as for the basis of the imposition of the five day suspension. He further disclosed that the written reprimand Mudd received five years earlier had no impact on his decision.

IV. CONCLUSIONS OF LAW

1. KRS 18A.095 (1) provides that a state classified employee with status shall not be suspended or otherwise penalized except for cause.

2. 101 KAR 1:345(1) provides that Appointing Authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.

3. In the matter of *Runner v. Commonwealth*, 323 S.W.3d 7 (Ky. App. 2010), the Kentucky Court of Appeals discussed unsatisfactory performance of duties as being conduct in the manner of misconduct, as utilized in KRS 341.370(6), but which is not defined in the statute. The court cited the oft-quoted opinion of *Boynton Cab Company v Neubeck*, 237 Wis. 249, 296 N.W. 636, 640 (1941), for defining misconduct as being:

conduct evincing such willful or wanton disregard of an employer's interests as is found in deliberate violations or disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design, or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer. On the other

hand mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not to be deemed "misconduct" within the meaning of the statute.

4. Howard J. Klein, the Appointing Authority for the Cabinet's Office of Human Resources Management, stressed a good argument that the Cabinet has to be concerned about the false claims for money that is provided in part from federal funds. He made it clear that he was inclined to terminate Ms. Mudd but for the fact that the investigation could not prove the travel voucher claims were intentionally falsely made, leading him to determine that a five-day suspension was an appropriate penalty to impose on Ms. Mudd.

5. This hearing presented a challenging issue of a management problem concerning a requirement for a reasonable and accurate accounting of expenditures and a failure to show that a uniform protocol was in place on which the staff in all the offices was trained as the procedure to be followed in submitting that accounting. The evidence showed a different form of compliance between the offices, and lack of uniform controls. For Mr. Klein, the "tipping point" in making his determination of the disciplinary action to impose on Ms. Mudd was the lack of evidence that the mistakes in the travel vouchers were intentionally made. However, for this hearing officer the "tipping point" is the complete lack of evidence of any training of the staff concerning a uniform policy to be followed in preparing the travel vouchers, and failure to show controls in place to be complied with by the workers.

6. Dudinskie, Mudd, Schuler and Bagby all hold key positions in the Cabinet and yet all four of them testified that they were not aware of any training or instructions given of a policy or protocols to be followed in preparing the travel vouchers. This is a management issue and if a control system is not in place the fault rests with management, and not with the person in the field doing the services for management, who must face some arbitrary penalty for failing to comply with a policy of which they are unaware. As Ms. Mudd testified, the staff is so overworked and has so many travel requirements that at the end of the month they have to rely on memory and other aids in recording their expenses on a travel voucher, and that she merely made a mistake. The lack of such a control system rests with management.

7. An argument could be made that every person in management and supervision has an obligation to make themselves aware of all regulations and policies that impact their area of responsibility. 200 KAR 2:006 pertaining to "Employees reimbursement for travel" was tendered by the Cabinet and cited by Mr. Klein in his letter of disciplinary action, although there was no testimony concerning said regulation and what steps were taken to place all supervisory personnel on notice that said regulation was to be followed. A review of said regulation shows that it is five pages of very small print that contained several sections this hearing officer found confusing, and that if the Cabinet has an expectation of an employee's failure to follow its terms could result in a disciplinary penalty being imposed of a suspension and loss of pay, then some form of training on this regulation should be provided.

8. On the issue of whether the penalty was excessive, the Appellant argued that it failed to follow the Cabinet's progressive discipline policy. In response, Mr. Klein made reference to his letter which mentioned that Ms. Mudd had received a written reprimand five years earlier, however, he also acknowledged that had no bearing on his decision. It was apparent that the belief existed that if the evidence did not support her termination, a significant penalty was necessary.

9. It is the conclusion of this hearing officer that the Appellee failed to show by a preponderance of the evidence that the penalty imposed on Ms. Mudd of a five day suspension with loss of pay was made with just cause. It is the opinion of this hearing officer, after weighing all the evidence, that the most that Ms. Mudd should be penalized is with a written reprimand, and that her loss of pay should be reimbursed to her.

V. RECOMMENDED ORDER

Having considered and weighed all the evidence and the laws of the Commonwealth of Kentucky, and based upon the foregoing findings of fact and conclusions of law, it is the recommendation of the Hearing Officer that the Personnel Board enter an Order that the appeal of **KIMBERLY MUDD V. CABINET FOR HEALTH AND FAMILY SERVICES** (Appeal No. 2015-189) be **SUSTAINED to the extent** that the decision of the Cabinet be reversed and set aside, to reimburse Appellant for the amount of pay that was withheld from her because of the five-day suspension, to reimburse Appellant for any leave time she used attending the hearing and any pre-hearing conferences at the Board, and to otherwise make Appellant whole. [KRS 18A.105, 18A.095(25), and 200 KAR 12:030.] **IT IS FURTHER ORDERED**, that Appellant be given a written reprimand concerning proper preparation of expenses to be submitted on a travel voucher, together with appropriate instructions of the protocol to be followed and controls to be put in place to assure compliance by her and for her staff, and that this appeal be removed from the docket.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

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

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

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

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

ISSUED at the direction of Hearing Officer E. Patrick Moores this 15th day of August, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Caleb Bland
Hon. Kathleen Hines