

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2024-048**

EDWARD PAGAN

APPELLANT

VS

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

TRANSPORTATION CABINET

APPELLEE

*** *** *** *** ***

The Board, at its regular May 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated April 16, 2025, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer 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 15th day of May, 2025.

KENTUCKY PERSONNEL BOARD

Gordon A. Rowe, Jr.
GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Edward Pagan
Hon. Edwin Logan
Hon. Rosemary Holbrook (Personnel Cabinet)
J. R. Dobner

COMMONWEALTH OF KENTUCKY
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FINDINGS OF FACT, CONCLUSIONS OF LAW
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TRANSPORTATION CABINET

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This matter came on for evidentiary hearing on December 18, 2024, at 9:30 a.m. at 1025 Capital Center Drive, Suite 105, Frankfort, KY before the Hon. Brenda Perry, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Edward Pagan, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Transportation Cabinet, was present and was represented by the Honorable Edwin Logan. Also present was J.R. Dobner, the agency representative.

The issues before the Hearing Officer were whether there was just cause for the five (5) day suspension of the Appellant and whether that penalty was excessive or erroneous.

BACKGROUND

1. The Appellant, Edward Pagan, timely filed his appeal with the Personnel Board on April 1, 2024. He was suspended for five (5) days for failing to appropriately act upon an allegations of intimate touching occurring between two employees, as reported by a third employee.

2. On the day of the hearing, both parties made an opening statement. The Appellee called the Appellant, **Edward Pagan**, as its first witness. After being sworn, the witness stated that he was the Registration Administrative Branch Manager at the Motor Vehicle Licensing Division of the Transportation Cabinet. He stated he supervises about twenty (20) employees in the branch. He testified that, during the period of time at issue, he was working in the office five (5) days per week. He stated his office has a glass wall where he could see one (1) section of staff. To view the remainder, he would need to leave his office and walk around the area. He stated that

it was not a daily activity for him to walk around and see his employees, but he would possibly do so two (2) times per week.

3. The witness testified that he was aware that a new employee, Gina Goodrich, began working on October 2nd and her supervisor (who reports to the Appellant) had assigned that employee's coworker, Justin Carmack, to train her. On one (1) occasion during that period of training, the witness testified that he noticed one (1) of the two (2) of them had the back of their wrist resting against the knee or upper thigh of the other, and that he had seen no other physical interaction between them.

4. On October 25, Ms. Jewell, an employee who was under a Memorandum of Expectations from management to not insert herself into matters of the staff not involving her, made a complaint to the Appellant stating that the Appellant was not doing his job. She further stated, "You're not walking around observing. They are flirting and it's bothering me." The Appellant testified that Ms. Jewell did not identify the individuals about whom she was speaking. The witness testified that he asked her if they were saying anything to her or about her or making sexual innuendo, and Ms. Jewell responded they were not. He testified that he did not recall her saying anything about the two individuals touching, but he did subsequently review his notes and found that Ms. Jewell did make an allegation of the two (2) individuals touching. He testified that Ms. Jewell concluded their discussion by asking the Appellant if he thought that she was doing anything wrong (under the terms of her Memorandum of Expectations) by reporting this, and that, if she had, she wanted the Appellant to let her know. The Appellant testified that he responded by telling her he would think about it. The Appellant identified Appellant's Exhibit 1, the Memorandum of Expectations, and it was entered into the record without objection.

5. The Appellant stated that, later that day, he had a follow-up conversation with Ms. Jewell via Teams messaging and they discussed her report earlier that day. The Appellant stated that he told Ms. Jewell, as long as they are doing their jobs, he had no problem with what was occurring and that he believed she was, contrary to her Memorandum of Expectation, improperly inserting herself into matters that did not involve her. At this juncture, Ms. Jewell reported to the Appellant, that the two (2) employees were even touching each other's bottoms and grabbing crotches. The Appellant testified that he assumed Ms. Jewell was not being truthful, since the conversation was not going her way. He testified that he gave no response to this allegation and ended the communication.

6. The Appellant testified that, on Friday October 27, Mr. Carmack made a complaint about Ms. Jewell, stating that Ms. Jewell had been threatening him, harassing him, and following him. He alleged that she had even followed him toward the restroom. The Appellant testified that Mr. Carmack was in a wheelchair and that he reported that Ms. Jewell had even placed tacks under

his wheelchair tires. The Appellant testified that he did not inquire as to the nature of the threat, whether it was inside or outside of work, but that he reported the matter to his director, Goodwin Onodu, who directed him to put everything in writing. The Appellant stated he did so and included the two (2) conversations he had with Ms. Jewell two (2) days earlier. After putting this in writing to his director and the supervisors of both Mr. Carmack and Ms. Jewell, he forwarded the written account and the written complaint from Mr. Carmack to Priscilla McGowan with the Office of Civil Rights, after reviewing GAP 803.

7. The next witness called by the Appellee was **Tiffany Squire**, who serves as the Staff Assistant in the Cabinet's Department of Civil Rights. She stated that she was an Administrative Branch Manager investigating EEO and Title I Complaints. She testified that she has been with the state for twenty-seven (27) years and with the Cabinet for four (4) years. She has a degree in Social Work and has experience conducting investigations.

8. Ms. Squire testified that she investigated the complaint by Mr. Carmack and, in the course of the investigation, interviewed the Appellant. She stated that, during the interview, she learned that on the Monday just prior to the Wednesday complaint by Ms. Jewell, the Appellant had been informed by Ms. Jewell's supervisor that Ms. Jewell was crying at her desk, that she worked from home on Tuesday because she was so upset and then, on Wednesday, she made the complaint about two (2) people flirting. The witness testified that, according to the Appellant, he assumed Ms. Jewell was complaining about Mr. Carmack and Ms. Goodwin because he knew that Mr. Carmack had been assigned to train Ms. Goodwin and he had seen them touching a leg or a thigh previously. The witness testified that, during her interview with the Appellant, he admitted that during his second conversation with Ms. Jewell, she made an allegation that the two (2) employees who were flirting were grabbing each other's crotches and buttocks, but he did not believe her and made no report of her complaint. The witness testified that the Appellant, however, upon receipt of a complaint from Mr. Carmack two (2) days later, immediately reported the allegations by Mr. Carmack, including the conversations with Ms. Jewell in his outline of the events of that week.

9. Ms. Squire testified that the investigation revealed that there was inappropriate sexual touching between Mr. Carmack and Ms. Goodwin in his cubicle, just as Ms. Jewell had reported. The investigation also substantiated that there had been inappropriate touching between Mr. Carmack and two (2) other employees while at work, including Ms. Jewell, with whom he had an intimate relationship that Mr. Carmack had recently ended. Ms. Squire identified Appellee's Exhibit 1, the investigative report, and it was entered into the record without objection.

10. The next witness to testify was **J. R. Dobner**. He testified that he is the Human Resources Branch Manager in the Officer of Human Resource Management and he is familiar with

the facts of this case. The witness identified Appellee's Exhibit 2, the March 7, 2024 letter to the Appellant effectuating the five (5) day suspension. He also identified Appellee's Exhibit 3, General Administration & Personnel (GAP) Policy 801, Appellee's Exhibit 4, GAP Policy 803 and Appellee's Exhibit 5, the Position Description for the Appellant's position. All were entered into the record without objection.

11. Mr. Dobner testified as to the facts that supported the Cabinet's decision to suspend the Appellant for five (5) days. On Wednesday, October 23, when Ms. Jewell reported to the Appellant allegations of inappropriate sexual groping, he was obligated to act.

12. He testified that GAP Policy 803, page 4, provides the definition of Sexual Harassment, but it is not all inclusive. The witness testified that, if displaying sexually explicit or suggestive photographs is prohibited, then engaging in sexually explicit conduct in-person would also be prohibited. Page 6 of that policy outlines the supervisor's responsibility upon receiving a complaint and the Appellant did not abide by its dictates. The witness testified that the Appellant's Position Description, Appellee's Exhibit 5, Task 4, provides that the supervisor must "investigate and take appropriate measures consistent with the laws, regulations, policies and procedures."

13. Mr. Dobner testified that the Cabinet imposed a five (5) day suspension because first and second-line supervisors, like the Appellant, are in the best position to take remedial action and report. In this case, the Appellant had gone through training relative to Sexual Harassment and his responsibilities. He was the second line supervisor to Ms. Jewell; when she reported the touching occurring between the other two (2) employees, he did nothing. However, when Mr. Carmack made his complaint two (2) days later, the Appellant promptly acted upon it. Mr. Dobner testified that this disparity in the manner in which the two (2) complaints were handled was of significant concern. He testified that, even though the employee (Ms. Jewell) may not have been the best, she deserved to have her complaint acted upon. The witness explained that Ms. Jewell had photographic evidence that what she had alleged was occurring. He stated that, even from Ms. Jewell's initial report to the Appellant, his antenna should have gone up, particularly because he had seen some form of touching between the two (2) employees himself. Mr. Dobner testified that the Appellant's response to the complaint saying, "as long as they are doing their job it doesn't concern me" is not the position of the Cabinet.

14. Mr. Dobner testified that, when supervisors fail to act on reports of employees in accordance with the policy as the Appellant did, it can lead to distraction, detrimentally affect morale, and can result in lost time devoted to work and lost productivity.

15. **The Appellee rested.**

16. The Appellant then returned to the stand to testify on his own behalf. **Edward Pagan** denied, in his strongest terms, that he did anything wrong. He testified that he understood the policy of sexual harassment to apply to activity directed toward the complainant. In this case, Ms. Jewell, the Complainant, was under a Memorandum of Expectations to stop inserting herself into the conduct of her coworkers and the only way that she could have been aware of the flirting that was occurring between Mr. Carmack and Ms. Goodrich would have been to actively insert herself into that situation. He admitted that she reported inappropriate touching occurring between Mr. Carmack and Ms. Goodrich, but he did not recall thinking that it was sexual touching at first. He stated his assumption was that it was just simple touching. Then later, as he spoke with her through Microsoft Teams messaging, she would say she was going to let it go, then she would send another message where she clearly had not let it go. The Appellant testified that, finally, Ms. Jewell wrote they are even grabbing each other's crotches and rubbing each other's bottoms, but he did not find her credible. The Appellant identified Appellant's Exhibits 2, 3, 4, and 5, which were email communications where the Appellant reported Mr. Carmack's complaint, as well as his conversations with Ms. Jewell, to various individuals in the chain-of-command and the Office of Civil Rights. The Appellant testified that he was not given the opportunity to defend himself before the five (5) day suspension was imposed and it was unwarranted.

17. **The Appellant rested.**

18. Each party made a closing statement. The Hearing Officer considered the entire administrative record.

FINDINGS OF FACT

1. The Appellant, Edward Pagan was employed as an Administrative Branch Manager in the Transportation Cabinet's Motor Vehicle Licensing. In this role, he was the second line supervisor of Deidre Jewell and Justin Carmack. (Testimony of Appellant)

2. As an Administrative Branch Manager, the Appellant has certain responsibilities with regard to employees, including, the following from his Position Description:

Task 4: Reviews supervisor subordinates recommendations for corrective and disciplinary action and investigates and takes appropriate measures consistent with laws, regulations, policies and procedures.

See, Appellee's Exhibit 5 page 1.

3. In addition to being made aware of his responsibilities through a Position Description, there were also responsibilities dictated through policy. GAP Policy 803, General Conduct provides as a part of its purpose:

The Transportation Cabinet is committed to maintain a work environment free from discrimination and harassment....

Elsewhere, it provided:

No person shall be subject to or subject another person to unsolicited and unwelcome sexual overtures or conduct, whether verbal or physical, in the workplace. Behavior that may constitute sexual harassment includes but is not limited to: displaying, mailing or emailing sexually explicit or suggestive literature, pictures, photographs or objects.

Supervisors should take steps necessary to prevent harassment, discrimination or other prohibited behavior from occurring by:

- Affirmatively reinforcing the Cabinet's policies prohibiting such behavior
- Expressing strong disapproval
- Developing appropriate sanctions
- Immediately calling the EEO liaison or the EEO liaison/coordinator in OCRSBD
- Informing employees of their right to file a complaint
- Developing methods to sensitize all concerned

(Emphasis Added) See Appellee's Exhibit 4, pages 1, 4, and 6.

4. GAP Policy 801 provides that the Cabinet strives to provide a safe work environment for a healthy, productive workforce. Expectations include showing courtesy, respect, and not disturbing or disrupting other employees. (See GAP 801, page 1).

5. In addition to having been provided these policies, the Appellant had undergone training on the applicable policies. Specifically, he had undergone ODET Anti-Harassment Awareness on September 23, 2022, Discrimination Complaint Procedures on September 23, 2022, KYTC Anti-Harassment Workshop on November 1, 2022, and the Antiharassment and Workplace Violence Prevention on March 1, 2023. (See Page 3 Appellee's Exhibit 2).

6. On Wednesday, October 25, 2023, Deidre Jewell reported to her second line supervisor, the Appellant, that two (2) employees were flirting with each other and that it was bothering her. (Testimony of Appellant)

7. Although Ms. Jewell had not identified the individuals who were engaging in this activity, the Appellant suspected that it was Justin Carmack and the new employee he had been assigned to train, Gina Goodrich, since the Appellant had seen the two (2) employees touch each other, with one's hand on the other's thigh or leg. The Appellant responded to the complaint by advising the Complainant that as long as the two (2) employees were getting their work done, he did not care about this activity. (Testimony of Appellant)

8. Later that day, during a subsequent conversation with the Appellant, Ms. Jewell reported, the two (2) were "touching each other's crotches and bottoms." The Appellant did not respond to this allegation and did not immediately report it, ending the communication with the Complainant, Ms. Jewell. (Testimony of Appellant, Appellee's Exhibit 1)

9. Two (2) days later, Mr. Carmack reported that Ms. Goodrich was following him and engaging in threatening behavior. The Appellant immediately reported this in accordance with the policy, including the allegations leveled by Ms. Jewell two (2) days earlier. (Testimony of Appellant)

10. An investigation arising out of Mr. Carmack's complaint revealed that the allegations Mr. Carmack made against Ms. Jewell were substantiated. However, the allegations Ms. Jewell had made against Mr. Carmack and his engaging in sexual touching in his work area were also substantiated. (Testimony of Tiffany Squire, J.R. Dobner).

11. The Hearing Officer finds that no policy can outline every potential violation in detail. GAP Policy 803 outlines the types of prohibited behavior, but also denotes that the policy is not limited only to those activities listed.

12. The Hearing Officer finds that, in order to aid in a supervisor's understanding of policy violations and their responsibilities, additional training was provided to the Appellant in the course of his employment, prior to the complaint brought to him by Ms. Jewell.

13. GAP Policy 801 requires that employees show courtesy, respect, and not disturb or disrupt other employees. (*See* Appellee's Exhibit 3)

14. The Hearing Officer finds that seeing employees engage in intimate, sexual touching in the workplace is not only discourteous, but disturbing and offensive. Moreover, a

supervisor's failure to respond to complaints in accordance with policy can damage the morale of the complainant and others who are affected by sexually related or disruptive behavior in the workplace. (Testimony of Dobner)

15. The Hearing Officer finds that the Appellant violated the provisions of GAP 803 and his Position Description by failing to immediately act upon and report the complaint made by Ms. Jewell.

16. KRS 18A.095(1) and (8) provide:

- (1) A classified employee with status shall not be dismissed, demoted, suspended without pay, or involuntarily transferred except for cause.
...
- (8) A classified employee with status who is demoted, suspended without pay, or involuntarily transferred shall be notified in writing of:
 - (a) The demotion, suspension, or involuntary transfer;
 - (b) The effective date of the demotion, suspension, or involuntary transfer;
 - (c) The specific reason for the demotion, suspension, or involuntary transfer, including:
 1. The statutory, regulatory, or policy violation;
 2. The specific action or activity on which the demotion, suspension, or involuntary transfer is based;
 3. The date and place of the action or activity; and,
 4. The names of the parties involved; and,
 - (d) That he or she has the right to appeal to the board within thirty (30) calendar days, excluding the day that he or she received notification of the personnel action.

17. 101 KAR 1:345 Disciplinary Actions provides:

Section 1. General Provisions. Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.

Section 4: Suspension.

(1) A suspension shall not exceed thirty (30) working days.

18. The Hearing Officer finds that the Appellant's failure to carry out the duties of his Position Description, specifically his responsibility to investigate and report Ms. Jewell's complaint against Mr. Carmack in accordance with the GAP Policy 803, is poor work performance in violation of KRS 18A.095, and is sufficient to warrant disciplinary action. The nature of his conduct is even more significant in light of the Appellant's appropriate handling of the complaint by Mr. Carmack against Ms. Jewell just two (2) days later.

19. The Hearing Officer finds that discipline imposed, a five (5) day suspension, was appropriate on the spectrum of possible disciplinary measures available to the appointing authority under 101 KAR 1:345.

20. The Hearing Officer finds that, even though Ms. Jewell had previous issues at work and was under a Memorandum of Expectation limiting her involvement with the activities of others, the Appellant was under an obligation to address her concerns, even if she became aware of Mr. Carmack's conduct in a manner that violated the written expectation that she not to involve herself in the activities of others.

21. The Appellant contends that he did not find Ms. Jewell credible when she reported intimate touching occurring between the two (2) employees, and he believed she may have been jealous. However, the Hearing Officer finds that it was not the Appellant's responsibility to determine her credibility. Rather, it was his responsibility to take immediate steps to report and assist in investigating and addressing her allegations. If, in fact, Ms. Jewell was not being truthful or if she was made aware of Mr. Carmack's conduct in manner that violated her Memorandum of Expectation, those facts would be revealed.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes, as a matter of law, that the Appellant, Edward Pagan, failed to abide by his responsibilities as an Administrative Branch Manager when he did not immediately address and report to the appropriate authorities the allegations made by Deidre Jewell in accordance with the requirements of GAP Policy 803, and Task 4 of his Position Description. This constitutes poor work performance in violation of 101 KAR 1:345, Section 1.

2. The Hearing Officer concludes, as a matter of law, that a five (5) day suspension was an appropriate sanction for the Appellant's poor work performance in handling the complaint brought to him by Ms. Jewell, and that the manner in which the Cabinet imposed the letter of suspension met the regulatory requirements.

3. The Hearing Officer concludes that the Transportation Cabinet has met its burden of proof that the five (5) day suspension of the Appellant was for just cause and was neither excessive nor erroneous.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the case of **EDWARD PAGAN VS. TRANSPORTATION (APPEAL NO. 2024-048)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within fifteen (15) 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)

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).

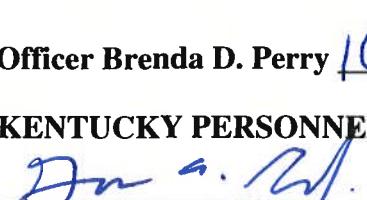
The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov.

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.

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

ISSUED at the direction of **Hearing Officer Brenda D. Perry** 16th day April, 2025.

KENTUCKY PERSONNEL BOARD


HON. GORDON A. ROWE, JR.
EXECUTIVE DIRECTOR

A copy this day emailed and mailed to:

Hon. Edwin Logan
Edward Pagan
Hon. Rosemary Holbrook (Personnel Cabinet)