



**COMMONWEALTH OF KENTUCKY  
KENTUCKY PERSONNEL BOARD  
APPEAL NO. 2015-127**

**DWIGHT D. PARRISH**

**APPELLANT**

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

**TRANSPORTATION CABINET  
MIKE HANCOCK, APPOINTING AUTHORITY**

**APPELLEE**

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This matter came on for evidentiary hearing on Tuesday, November 10, 2015 at 9:30 a.m. at 28 Fountain Place, Frankfort, Kentucky, before Brenda D. Allen, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Dwight D. Parrish, was present and was represented by the Honorable Jonathan Spalding. The Appellee was present and was represented by the Honorable William Fogle. Also present was agency representative J.R. Dobner, Policy Advisor for the Transportation Cabinet.

The Hearing Officer outlined the burden of proof and the issue before the Hearing Officer. The issue was the appropriateness of a ten-day suspension without pay imposed upon the Appellant for lack of good behavior. The burden of proof was upon the Appellee to prove by a preponderance of evidence that the penalty was neither excessive nor erroneous.

**BACKGROUND**

1. The Appellant timely appealed the imposition of a ten-day suspension without pay for lack of good behavior for failing to maintain a valid driver's license during the period of his employment.

2. The Appellee made an opening statement followed by an opening statement by the Appellant.

3. The Transportation Cabinet (the "Cabinet") then called on behalf of the Appellee, **J. R. Dobner** as its first witness. Mr. Dobner testified that he serves as a Policy Advisor in Human Resources Management for the Transportation Cabinet. He testified that in this role he serves as a supervisor for personnel administration, payroll and writes and reviews disciplinary actions. He stated that he became aware of an issue with Mr. Parrish when they received a "flag" from the Division of Driver's Licensing. He testified that the position held by Mr. Parrish is

Transportation Engineer Technologist III, a position in which the employee inspects construction sites and does survey work and bridge inspections. He identified what was marked as Appellee's Exhibit 1, the Commonwealth of Kentucky Job Specification for the position.

4. Mr. Dobner testified that this document outlines that the person applying for the position must have a valid driver's license prior to appointment, and at the time of appointment. He stated that elsewhere in the document the specification provides that the individual "Must maintain a valid Driver's License for the length of employment in this classification. Employing agency is responsible for ensuring employee possesses and maintains a valid driver's license."

5. Mr. Dobner also identified what was marked as Appellee's Exhibit 2, Kentucky Personnel Cabinet Position Description for Transportation Engineering Technologist III, and Appellee's Exhibit 3, Mr. Parrish's Driving History Record. All three exhibits were entered into the record without objection.

6. Mr. Dobner testified that because the agency is responsible for ensuring that those employees maintain a valid driver's license throughout their employment, the driver's license status is checked and the Appellant's license came back with a flag for a suspended license. The driving record, Appellee's Exhibit 3, a document that indicates it was printed on April 23, 2015 revealed the Appellant was cited for a First Offense Driving Under the Influence on April 2, 2015, and had a suspended license order effective from April 21, 2015 to May 21, 2015.

7. As a result of this driver's license suspension, on April 27, 2015 the Appellee issued to Appellant a Notice of Intent to Suspend for Lack of Good Behavior. This document was identified and marked as Appellee's Exhibit 4 and admitted without objection.

8. Mr. Dobner then identified Appellee's Exhibit 5, Mr. Parrish's response to the Notice of Intent. This document was entered into the record without objection. Mr. Dobner testified that in his response, Mr. Parrish cited the fact that he had a doctor's statement excusing him from work for approximately 40 days including the entire 30 days during which his license was to be suspended. Mr. Parrish's letter cited stress and anxiety as the basis for his doctor ordered sick leave.

9. Mr. Dobner testified that the Cabinet issued a letter on May 27, 2015, imposing the ten-day suspension upon the Appellant. This, Appellee's Exhibit 6, was identified, marked and entered into the record without objection. Mr. Dobner testified that in making the determination to suspend Mr. Parrish, the Cabinet took into consideration the number of years of service Mr. Parrish had provided to the Cabinet without incident, the fact that the license is required to be maintained throughout the period of employment and the fact that a suspension was consistent with the manner in which similar disciplinary cases had been handled. He testified that they also considered that a similar case imposing a ten-day suspension without pay was upheld by the Personnel Board. (*Frankie Justice v. Transportation Cabinet*, Appeal No. 2011-086)

10. Mr. Dobner then identified a series of exhibits as evidence in support of the manner in which the Cabinet had disciplined other employees for similar infractions. Mr. Dobner testified that the license is essentially a credential necessary to perform the work and that the Cabinet had taken action against other employees for failure to maintain credentials, whether that credential was a valid driver's license or a professional certification. He testified that the penalty for some had been dismissal depending upon the circumstances and length of time the person was without the required license or certification. He testified that page 2 of Appellee's Exhibit 1, actually detailed that the employee should be removed from the position for a failure to maintain a post employment credential, but that they opted to look at all circumstances including the length of service and lack of prior infractions in making a determination of discipline. Appellee's Exhibits 7, 8, 9 and 10 were marked and entered into the record without objection.

11. Mr. Dobner testified that the fact that Mr. Parrish was on sick leave during the entire time that his license was suspended did not negate the need for discipline. He explained that even though Mr. Parrish was on sick leave, he remained employed and the standard required that the employee maintain the credential during the period of his employment.

12. On cross examination, Mr. Dobner testified that since he had been employed by the Cabinet in 2008, this was the manner in which driver's license suspensions had been handled relative to those employees whose position required it as a credential. The Cabinet rested.

13. The Appellant then called the Appellant, **Dwight Darin Parrish**, as its only witness. Mr. Parrish testified that he had been employed with the Cabinet for twenty-one years without incident. He identified what was marked as Appellant's Exhibit 1, his application for leave, and Appellant's Exhibit 2 his undated doctor's excuse. He testified on direct, cross and upon questioning from the Hearing Officer that he did not drive or perform any work for the Cabinet while his license was suspended because he was on sick leave. When questioned about the timeline of events, he testified that he was charged with DUI on April 2, 2015, submitted his request for leave and his doctor's note on April 16, 2015, and pled guilty and surrendered his license on April 21, 2015. The Appellant rested and each party made a closing statement.

14. The record was closed. The Hearing Officer considered the entire administrative record.

### **FINDINGS OF FACT**

1. The Appellant, Dwight Parrish, was employed as a Transportation Engineering Technologist III with the Transportation Cabinet. (Appellant's testimony, Appellee's Exhibit 1 and 2).

2. The position of Transportation Engineering Technologist III requires that the employees maintain various post-employment credentials, including a valid driver's license during the period of employment. (Appellee's Exhibit 1, Dobner's Testimony).

3. On April 2, 2015, the Appellant was cited for a DUI First Offense, and was convicted and had his license suspended for 30 days on April 21, 2015. (Appellee's Exhibit 3, Testimony of Dobner).

4. The Appellant remained employed, on sick leave, during the period of his driver's license suspension. (Testimony of Dobner, Appellant).

5. The Cabinet issued a Notice of Intent to discipline on April 27, 2015. The Appellant filed a timely response and the Cabinet ultimately imposed a ten-day suspension without pay by letter of May 27, 2015. (Appellee's Exhibits 4, 5 and 6.)

### **CONCLUSIONS OF LAW**

1. In Accordance with KRS 18A.037, the Commonwealth has created a classification and compensation structure to establish the credentials, qualifications and pay of state government positions.

2. The position of Transportation Engineering Technologist III is a position which requires that applicants hold a valid driver's license. Moreover, it requires that employees, once hired, maintain a valid driver's license throughout the period of employment.

3. At all times relevant, the Appellant held the Position of Transportation Engineering Technologist III and was, therefore, required to maintain a driver's license as a condition of maintaining his employment in good standing.

4. In April 2015, the Appellant, Dwight Parrish, engaged in behavior that resulted in the loss of his license, a required post employment credential.

5. In accordance with KRS 18A.095 (8), the Cabinet provided Appellant notice of its intent to suspend him and otherwise met the requirements by outlining the details upon which the intended disciplinary action was to be based.

6. The Cabinet afforded Appellant an opportunity to respond and determined that the fact that the Appellant was on sick leave during the time of the license suspension did not negate the fact that the license was a credential that was required to be maintained throughout the period of employment.

7. The evidence of record reveals that the ten-day suspension without pay imposed upon the Appellant was consistent with the manner in which similar cases had been handled by the Cabinet. The Hearing Officer concludes that the Cabinet has met its burden of proof to show that the ten-day suspension imposed upon Appellant was for just cause and was neither excessive nor erroneous.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **DWIGHT D. PARRISH VS. TRANSPORTATION CABINET (APPEAL NO. 2015-127)** be **DISMISSED**.

**NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4), each party shall have fifteen 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 exception 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 the 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 Brenda D. Allen** this 2nd day of December 2015.

**KENTUCKY PERSONNEL BOARD**

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

A copy this day mailed to:

Hon. William Fogle  
Hon. Jonathan Spalding  
J. R. Dobner