

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NOs. 2016-008 and 2016-015

KEVIN PINKSTON

APPELLANT

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

TOURISM, ARTS AND HERITAGE CABINET,  
KENTUCKY STATE FAIR BOARD

APPELLEE

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The Board, at its regular August 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated June 27, 2016, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeals are 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 17<sup>th</sup> day of August, 2016.

KENTUCKY PERSONNEL BOARD

  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Ellen Benzing  
Hon. Robert Smith  
Mr. Paul Herberg

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2016-008 and 2016-015**

**KEVIN PINKSTON**

**APPELLANT**

**VS.**

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

**TOURISM, ARTS AND HERITAGE CABINET,  
KENTUCKY STATE FAIR BOARD**

**APPELLEE**

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This matter came on for an evidentiary hearing on May 16, 2016, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Kevin Pinkston, was present and represented by the Hon. Robert Smith. Appellee, Kentucky State Fair Board, was present and represented by the Hon. Ellen Benzing. Appearing as Agency Representative was Paul Herberg.

This matter involves the dismissal of the Appellant from his position of Maintenance Supervisor, Event Services Branch of the Kentucky International Convention Center (KICC), by letter dated January 27, 2016. (**Attached hereto as Recommended Order ATTACHMENT A.**)

The burden of proof was placed upon the Appellee by a preponderance of the evidence to show that the dismissal was appropriate under all surrounding circumstances and was neither excessive nor erroneous.

**BACKGROUND**

1. Prior to the dismissal, the Appellant had been placed on special leave with pay by letter dated November 20, 2015, in order to investigate allegations of misconduct.

2. Appellee's first witness was **Tim Richardson**. He has been employed by the Kentucky State Fair Board at the KICC as a Maintenance Operations Section Supervisor over the

Event Services Section since 1996. His duties involve seeing that proper set-up is made for trade shows, business and sports events. He supervises different teams which oversee different sections of the KICC. He testified he has supervised the Appellant since sometime in 2010.

3. The witness testified that Appellant's duties as a Maintenance Worker I, include setting up the rooms and cleaning them. He began his duties as a Maintenance Worker I sometime in 2015. He testified that at various times while under his supervision, the Appellant had called him a "f-ing idiot" and used other similar disrespectful language.

4. The witness stated he had issued a Performance Improvement Plan (PIP) to the Appellant on August 5, 2015, in which he had addressed several performance issues. These were more specifically noted on the Interim Evaluation dated November 3, 2015. The deficiencies noted by this witness for the Appellant included the following:

**JOB TASKS:**

Needs to continue to show more improvement on managing his subordinates and job tasks. Must make his self available to staff at all times. He operates various machinery safely and follows the preventive maintenance schedule. (sic)

**ADAPTABILITY/INITIATIVE:**

Needs to continue to work on adhering to our organizational core values of Integrity, Service, Courage, and Accountability. Be more flexible.

**COMMUNICATION/TEAMWORK:**

Needs to continue to show improvement in - communicate more positively with all facility personnel and our customers.

**SELF MANAGEMENT:**

During this period, Kevin was given a seven day suspension for poor performance and lack of good behavior. In addition to that, a Performance Improvement Plan was establish so that he could correct these deviances.

**ATTENDANCE:**

He has Excellent attendance.

**PUNCTUALITY:**

Needs to continue to shows improvement in: staying on tasks, following-up, and working with his subordinates.

**DEPENDABILITY/RESPONSIBILITY:**

Needs to continue to show improvement in: following time allowed for breaks, arrive at work stations on time and leaves when expected, and comply with all organizational policies and procedures.

**CAREER DEVELOPMENT:**

He attends one or more professional development courses yearly (in-house training). (sic)

5. Following the Interim Evaluation, Richardson then issued another PIP to the Appellant on October 30, 2015, again to address the deficiencies noted earlier. These needed areas of improvement were detailed as follows:

**PERFORMANCE UPDATE:**

**JOB TASKS:**

Needs to drastically improve on managing work task for completion. He seldom answers his radio when called. He needs additional help with completing task and managing subordinates.

**ADAPTABILITY/INITIATIVE:**

He needs to show more empathy and respect for all staff and clients. Needs to adhere to the organizational core values of Integrity, Service, Courage, and Accountability. Can't be trusted to complete assigned tasks.

**COMMUNICATION/TEAMWORK:**

He is very unapproachable and discontent most of the time. Needs to improve on actively communicating with all facility personnel and customers in a professional manner. He cannot use offensive language toward fellow colleagues.

**SELF-MANAGEMENT:**

He arrives at work station on time, but leaves unexpectedly. Has not followed the allowed time for scheduled breaks (abuse breaks). Needs to accept responsibility for his own actions. He needs to continue to attend management seminars and workshops to make improvements in; Interpersonal skills, time management skills, and leadership skills, etc. (sic)

6. Richardson then again emphasized that the Appellant maintained a "bad attitude" during most of the year 2015. He also described his 2015 dealings with the Appellant as "a nightmare." He specifically stressed the foul language and poor job performance exhibited by the Appellant.

7. The witness also noted that following the PIP issued October 30, 2015, Appellant still exhibited performance problems in November and December. He specifically cited complaints received by a religious group who were using the KICC. These complaints centered around the fact that the room was not setup properly and that Appellant was hard to find to address those issues.

8. The witness then introduced Appellee's Exhibit 4, his contemporaneous notes regarding the Appellant's ongoing issues from August through October 2015. These notes reflect the continuing problems with Appellant abusing designating break times and not answering his radio when called upon. His notes of October 2, 2015, reflect that after a meeting to discuss various issues with Richardson, the Appellant called him "a f-ing idiot, now go write that up."

9. Richardson also introduced additional contemporaneous notes dated February 11, 2015, noting that he had spoken with Appellant about not wearing sunglasses in the building. These notes also show that following this discussion, Appellant called this witness and Scott Fluhr, the Director of Operations for the KICC, "ignorant m- f-'s." This altercation was witnessed by Terry Parrish, Glen Coatley, and Aaron Mack. This witness considered these remarks to create a hostile work environment by virtue of the language used.

10. Richardson next identified Appellee's Exhibit 6, a March 8, 2015 email from himself to Director of Operations, Scott Fluhr. This email detailed the failure of the Appellant and two other workers to properly setup a National Field Archery event. The email also shows the attitudes expressed by the Appellant and the other two workers were creating extremely poor morale in their section.

11. Further detailing the poor work performance of the Appellant, Richardson next introduced Appellee's exhibits 7 and 8. These detailed reports from other supervisors that Appellant has been abusing break-time, and clocking out and leaving his workstation without prior approval. Upon close examination, the witness confirmed that regarding the complaints about the failure to properly set-up the Field Archery show, Appellant was the only one written-up and the witness explained that he spoke to the other team members. Richardson also confirmed the Appellant was promoted from Maintenance Worker I to Maintenance Supervisor sometime in 2014. Richardson also denied telling any team members under Appellant's supervision that "they didn't have to follow his directions."

12. The witness also confirmed that on at least two occasions, the Appellant used inappropriate language toward him. He was the only employee to do so.

13. The witness also admitted they “never dropped a show” because of the Appellant’s performance.

**[Hearing Officer Note:** To “drop a show” means the stage or room was not properly set-up at the time that the show was scheduled to occur.]

14. The witness also confirmed that the Appellant was a “great” stage builder, but again stated that he was sometimes hard to locate by radio. Richardson also added that Appellants work performance until 2014 was probably about 50% satisfactory. However, he added his behavior and work performance changed drastically in 2015.

15. Appellee’s next witness was **Aaron Mack**. He is a Maintenance Worker I at the KICC. Mack was a witness to a February 9, 2015, incident between Appellant and Tim Richardson. During this discussion, the witness testified it became heated because Appellant thought that a previous timesheet had been changed by Richardson, which resulted in short-changing him some pay. During this argument, witness testified Appellant called Richardson “an ignorant m- f-.” The witness reported that he was uncomfortable with this exchange.

16. Mack then recalled a November 19, 2015 incident between himself and Appellant. Their duties that day were to remove some miscellaneous equipment in hall 2E. This removal was supposed to be completed by noon. However, he and Appellant received a call at noon to setup another room and had to come back later to finish removing the equipment. At around 5:00 pm. Director Fluhr had called looking for the Appellant, who had been clocked in since 3:00 pm. However, Appellant had clocked out at 5:00 and was unavailable to finish helping the witness. During an exchange, Mack related Appellant had told him he was “the lowest type of nigga.” This exchange occurred in the city side lobby of the KICC, where many people passed by.

17. On cross-examination, the witness denied that anyone in management had ever told him he didn’t have to follow the Appellant’s directions. He also stated that at times Appellant was helpful to him, but at other times could not be found to give help.

18. The witness also admitted that at times, the radios used by the workers to communicate did not work effectively within the KICC.

19. Appellee’s next witness was **Darrell Searcy**. He is employed at the KICC as a Supervisor over the Building Maintenance Section. He and his agency are private contractors, used by the KICC to assist in set-up and cleaning for events.

20. Searcy testified that at times he had witnessed Tim Richardson attempt to call Appellant by radio. He added the radios did not always work well, but when called upon his cell phone, the Appellant usually answered.

21. This witness also added that his only work related issue was that he and Supervisor Richardson did not always know where Appellant was.

22. Appellee's next witness was **Chad Price**. He is employed as a Janitor at the KICC. He offered nothing other than a complaint he had filed in August 2013 about the Appellant's philosophy towards white people. However, the witness stated he did not feel threatened by those comments.

23. Appellee's next witness was **Scott Fluhr**. He has been employed for 30 years with the State Fair Board and serves as Director of Operations for the KICC. He oversees all issues related to maintenance, set-up and cleanliness of the facility.

24. He introduced Appellee's Exhibit 10, an August 6, 2013 document memorializing various problems with Appellant. These included; (1) Not returning from breaks and lunches on time; (2) Leaving his assigned work areas without permission and missing for extended amounts of time; (3) Not following proper call-in procedures when calling off from work.

25. The witness then explained that two-way radios were furnished to each unit to communicate. There were approximately five radios per unit, with an average of two of these usually being out of service. He explained that the Appellant and Darrell Searcy each carry a radio and believes those work most of the time. The witness testified that Tim Richardson had informed him in the Spring of 2015 of an incident in which the Appellant used degrading language against him and the KICC. Fluhr also added that on March 9, 2015, he had called the Appellant into the office because a room had been set-up incorrectly. He added Appellant made excuses about everything, and finally Fluhr ordered Appellant to leave his office. Shortly thereafter, he informed the Personnel Director, Paul Herberg, that the Appellant "had to go."

26. Fluhr then introduced Appellee's Exhibits 11 through 14. These detailed incidents where the Appellant did not answer his radio, complaints from an event manager for a show that Appellant was "nasty" on the radio and could not be found when needed. It also detailed a day in November 2015 in which Appellant had clocked in, but could not be found for two hours.

27. The witness further testified that the Appellant had applied for a promotion in October 2014. The witness explained that although he and Appellant had their differences, he felt like he would give him a chance to seize the opportunity. He testified Appellant did well at first, but his behavior began to decline.

28. On cross-examination, the witness stated that in his opinion, Appellant went “off the rails” in 2015. Fluhr explained he had discussions with the Appellant about stress he might be having and encouraged him to improve his performance. He also confirmed it was possible if the Appellant was called on his radio and is was not working, that he would not necessarily know he had been called.

29. Appellee’s next witness was **Linda Edwards**. She has been employed for 22 years with the State Fair Board, and for the past three years has served as General Manager and Vice President of the KICC. She describes herself as a “hands on” General Manager. She emphasized that she desires to give good services to the clients using the KICC.

30. She stated she often could not find the Appellant and neither could clients who needed him for something. She is aware of the two incidents involving the disparaging comments used towards Richardson and Fluhr. She felt that in doing so, Appellant had disrespected his superiors. The witness explained she was aware of the incident of the disrespectful language used toward Aaron Mack, and he complained to her of being upset by that. She described the Appellant as often being flippant with her whenever she critiqued him. She also added that the morale within the maintenance units is much better since he has been dismissed. She stressed that the language used by the Appellant toward supervisors and within hearing distance of clients and the general public could not be tolerated.

31. On cross-examination, Edwards stated, she feels progressive discipline was followed leading up to the Appellant’s dismissal.

32. Appellee’s next witness was **Paul Herberg**. He has been the Human Resource Director for the previous eight years for the State Fair Board and is the Appointing Authority.

33. He introduced Appellee’s Exhibit 15, a March 9, 2015 letter placing the Appellant on special leave with pay pending an investigation of allegations of misconduct. These allegations concerned a confrontation between the Appellant and Director Scott Fluhr in which loud and aggressive language was used.

34. The witness next introduced Appellee’s Exhibit 17, a May 14, 2015 letter placing the Appellant on a seven-day suspension for lack of good behavior, namely inappropriate and unprofessional conduct toward supervisors Fluhr and Richardson.

35. As justification for his decision to dismiss the Appellant, the witness stated he took into consideration the earlier seven-day suspension, the Performance Improvement Plans, and the Interim Evaluations. He also felt the Appellant still had a bad attitude.



36. The Appellee closed.

37. The Appellant, **Kevin Pinkston**, called himself as his only witness. He testified that he has worked at the KICC since October 2009 and began as a Maintenance Worker I. He confirmed his duties included setting-up for events and cleaning the facility. He was promoted in October 2014 to a supervisory position.

38. The witness explained regarding the Archery event mentioned earlier which he was accused of incorrectly setting-up, that he was given directions in writing to place the chairs in a southerly direction. However, he says the diagram given to him shows the chairs were to be placed in a westerly direction. He maintained that once the discrepancy was pointed out, he arrived early the following morning prior to the event and got the chairs placed correctly. However, he maintains that supervisor Richardson told Fluhr Appellant had set-up the event incorrectly.

39. The Appellant further denied that he ever refused to take a call on his facility issued radio; he also added that he was sometimes called on his cell phone.

40. The witness also explained that he felt people sometimes had trouble finding him because there were faulty elevators in the facility, which caused him problems in getting to different places in a building encompassing two blocks.

41. Regarding his self-management skills, the Appellant expressed he felt he was doing a good job, but maintained instead he received lots of criticism from Richardson and Fluhr. He also maintained that some of the workers on his team were inept, causing him to have to be a working Supervisor. He maintains he was criticized by Fluhr for this.

42. The Appellant also added that he had given a write-up to Aaron Mack, a member of his team, sometime in 2015. This was because Mack had remained in a Starbucks shop for approximately two hours. The witness also maintained that Tim Richardson had told Aaron Mack that he did not have to follow the Appellant's directions.

43. The Appellant explained the March 9, 2015 incident in Scott Fluhr's office. He explained that he had gone to Fluhr to say that something had to be done about Supervisor Richardson. He confirmed the argument became loud and testified that Fluhr cursed, not him.

44. The Appellant closed.

### **FINDINGS OF FACTS**

The Hearing Officer makes the following findings by preponderance of the evidence:

1. The testimony of Tim Richardson, Aaron Mack and Linda Edwards clearly shows the Appellant used extremely inappropriate and disrespectful language directed at both supervisors and a coworker.
2. The interim evaluation of November 2015 and the Performance Improvement Plans (PIP) given to the Appellant detail a person who abused his time, failed to communicate well with coworkers and the public, was often difficult to locate, and appeared discontented much of the time.
3. The Appellant was issued a seven-day suspension May 14, 2015, for lack of good behavior (inappropriate and unprofessional conduct toward his supervisors).
4. The Kentucky International Convention Center (KICC) is a facility which regularly hosts public events. As stated by Linda Edwards, the attitude and language spread by the Appellant within hearing distance of the public should not be tolerated.
5. The Appellant's actions and behavior constituted lack of good behavior and unsatisfactory performance of job duties pursuant to 101 KAR 1:345.

### **CONCLUSION OF LAW**

The Hearing Officer concludes as a matter of law that the Appellee, Tourism Arts and Heritage Cabinet, Kentucky State Fair Board, carried its burden of proof by a preponderance of the evidence to show Appellant's dismissal was appropriate under all surrounding circumstances and was neither excessive nor erroneous.

### **RECOMMENDED ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeals of **KEVIN PINKSTON VS. TOURISM, ARTS AND HERITAGE CABINET, KENTUCKY STATE FAIR BOARD (APPEAL NO. 2016-008 2016-015)** be **DISMISSED**.

**NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13.B.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).

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 Hanson Williams this 27<sup>th</sup> day of June, 2016.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day mailed to:

Hon. Robert Smith  
Hon. Ellen Benzing



# Kentucky State Fair Board

January 27, 2016

CERTIFIED & REGULAR MAIL

Kevin Pinkston

Re: Dismissal

Dear Mr. Pinkston:

Having considered the statements made during your pre-termination hearing held on January 26, 2016, we have determined to move forward with your dismissal from state service. Therefore, based on the authority of KRS 18A.095, you are hereby notified that you are officially dismissed from duty and pay effective January 31, 2016. Additionally, with this action, your administrative leave with pay is hereby concluded, effective January 31, 2016. Further, pursuant to KRS 18A.032, you will not be certified on future registers for employment within the Kentucky State Fair Board unless we so request.

You are being dismissed from your position of Maintenance Supervisor in the Event Services Branch of the Kentucky International Convention Center (KICC) for the reasons outlined in my January 12, 2016 intent to dismiss letter to you; these reasons are again provided to you as follows.

In accordance with KRS 18A.095, 101 KAR 1:345, Sections 1 and 2, cause exists for your dismissal for the following specific reasons:

**Lack of Good Behavior and Unsatisfactory Performance of Job Duties: Inappropriate and Unprofessional Conduct and Failure to Meet Job Expectations.** As reported by your supervisors, Tim Richardson and Scott Fluhr, and despite previous corrective efforts including a suspension and performance improvement plans regarding conduct and performance, you continue to display unacceptable conduct and fail to meet your job expectations as outlined below.

Specifically, since your return from a May 2015 seven (7) day suspension for inappropriate and unprofessional conduct, you have had repeated instances of inappropriate and unprofessional behavior including most recently on November 19, 2015, for which you are currently on paid investigative leave. Additionally, since July 2015, Maintenance Section Supervisor Tim Richardson, Sr. met with you repeatedly regarding your failure to meet job expectations. During this period, Mr. Richardson provided you with three (3) performance improvement plans, dated August 5, 2015; September 25, 2015; and October 30, 2015, intending to correct your work deficits. These plans demonstrate a pattern of you not meeting expectations in all four (4) categories of your job expectations: Job Tasks; Adaptability/Initiative; Communication/Teamwork; and Self-Management.

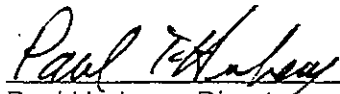
Further, you have displayed particularly egregious and offensive conduct toward your supervisor and co-workers. On October 2, 2015, Mr. Richardson met with you to discuss your abuse of designated break times and reminded you to respond to your radio when called upon. You responded by telling him, "You're a fucking idiot, now go write that up." Then, on November 19, 2015, after speaking with Mr. Fluhr, you confronted a subordinate employee and a co-worker, telling them 'you are all the lowest type niggers I ever saw'; 'you all are pitiful ass niggers'.

P.O. Box 37130 • Louisville, Kentucky 40233-7130 • (502) 367-5000 • FAX (502) 367-5109  
www.kyexpo.org • www.kyconvention.org

Your actions and your work performance are completely unacceptable and will not be tolerated. Expectations of conduct and work performance are outlined to you in your performance plan, which you most recently signed on January 29, 2015. You knew or should have known that your failure to meet expectations of conduct and work performance may result in disciplinary action. You were notified in the May 2015 suspension letter that continued problems in behavior or performance may result in further and more severe disciplinary action, up to and including dismissal. Each Performance Improvement Plan notified you that if you did not improve, you may be subject to disciplinary action. Your repeated pattern of inappropriate and unprofessional conduct and failure to meet job expectations constitutes a lack of good behavior and unsatisfactory performance of job duties, which are subject to disciplinary action in accordance with 101 KAR 1:345, Section 1.

In accordance with KRS 18A.095, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the date notification is received. Such appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

Sincerely,



Paul Herberg, Director  
Division of Human Resources

Attachment: Appeal Form

cc: Tom Stephens, Secretary, Personnel Cabinet  
B. Leigh Powers, Executive Director, Office of Legal Affairs, TAHC  
Laurie Googe, Interim Executive Director Human Resources, TAHC  
Clifford "Rip" Rippetoe, President & CEO, Kentucky State Fair Board  
Ellen Benzing, General Counsel, Kentucky State Fair Board  
Linda Edwards, General Manager, Kentucky International Convention Center  
Personnel File, Kentucky State Fair Board