

CERTIFICATION OF PERSONNEL BOARD RECORDS

I certify that attached hereto is a true and correct copy of the Final Order Altering the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order and Final Order in the case of **JOHN PRICE VS. TOURISM, ARTS AND HERITAGE CABINET, KENTUCKY HORSE PARK (APPEAL NO. 2017-083)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 14th day of November, 2018.



MARK A. SIPEK, SECRETARY
KENTUCKY PERSONNEL BOARD

Copy to Secretary, Personnel Cabinet

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-083**

JOHN PRICE

APPELLANT

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

**TOURISM, ARTS AND HERITAGE CABINET
KENTUCKY HORSE PARK**

APPELLEE

** ** * * *

The Board, at its regular November 2018 meeting, having considered the record, including the Findings of Fact, Conclusion of Law and Recommended Order of the Hearing Officer dated July 25, 2018, Appellee's Exceptions, oral arguments, and being duly advised,

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

A. **Delete Findings of Fact** paragraphs 2 through 5 and substitute the following:

2. At the core of the 20-day suspension currently under challenge, and emphasized throughout the majority of the correspondence directed to Appellant before and following this particular penalization, is management's obvious dissatisfaction with his recordkeeping of the maintenance and repair of the groundskeeping equipment under his responsibility. He has testified that the machines exceed 60 in number, but the proof does not establish the extent or nature of any staff or coworkers to assist him to maintain, service and operate this machinery. The Board finds that the evidence and the testimony indicate that Appellant, or those responsible to him as the case may be, routinely performs the requisite maintenance for the most part, but does not routinely supply the level of recordkeeping which management demands.

3. No proof is presented that Appellant has falsified or deliberately misled management as to whether service was performed, when it was performed, or the nature thereof. He readily concedes that he incorrectly logged one or another maintenance step upon the one chart cited by the Agency as part of the basis for assessing the 20-day suspension. Neither the testimony nor the extensive discussion of the handling of the leased Toro mower in the suspension letter signals whether that episode was an isolated event or part of a larger pattern. However, the suspension letter indicates on page 4 that Appellant had held the Automotive Mechanic IV position since June 1, 2004, with disciplines only commencing in 2016.

4. The testimony and exhibits present somewhat of a “disconnect” between the views of Appellant’s immediate supervisory staff and upper management. Notwithstanding the criticism of Appellant’s performance in the suspension letter, those presumably in a position to observe his daily input, such as his immediate supervisors and at least one coworker, rate his work ethic as excellent. This carries into his evaluations, reflecting him as “Highly Effective” throughout his time with the Agency other than the one exception introduced by Appellee.

5. The two coworkers testifying, one of whom is Appellant’s second-line supervisor and the other having worked in the same vicinity as he for several years, vouch for his truthfulness and work ethic. Neither witness demonstrated any bias in favor of or against him, although one fellow employee viewed Appellant to have been increasingly and unjustifiably mistreated during her tenure with KHP.

B. Delete Conclusions of Law paragraphs 1 and 3 and substitute the following:

1. The Agency’s complaint with Appellant has to do with his asserted “unsatisfactory performance of duties.” 101 KAR 1:345 does not present examples of what should be considered as “unsatisfactory” nor does the regulation (or the underlying statute) provide the level of penalization to accompany the determination of poor

performance, as it cannot. This is left to management's discretion, with the factors deemed relevant thereto ordinarily summarized in the statutorily-mandated, written notice assessing the penalty. The basis for any penalization, and likewise any challenge thereof, must be statutory, regulatory, fact-based, or a combination of these.

3. Although accepting the Agency's interpretation of the facts that the Toro mower required repair, and even considering Appellant's need to improve his communications to be a "given," the 20-day suspension meted to this 14-year employee seems excessive. Such a level of punishment might be deserved if Appellant knowingly and intentionally misled his employer, or deliberately falsified records, not the case here. The Board concludes a five-day suspension properly balances Appellant's long record of good performance with the obvious need to correct Appellant's conceded lack of attentiveness to his duties in recordkeeping and effective communication.

C. **Delete the Recommended Order.**

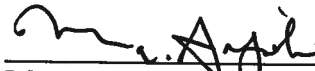
IT IS FURTHER ORDERED that the Hearing Officer's Recommended Order be altered and that the appeal of **JOHN PRICE V. TOURISM, ARTS AND HERITAGE CABINET, KENTUCKY HORSE PARK, (APPEAL NO. 2017-083)** is **SUSTAINED** to the extent herein, the 20-day suspension be rescinded and removed from Appellant's personnel files, and Appellant receive a five (5) day suspension in place thereof. The Appellee/Agency shall also reimburse Appellant for the 15 days of suspension and for any leave time he used attending the hearing and any pre-hearing conferences at the Board, and otherwise make Appellant whole. KRS 18A.105, 18A.095(25), and 200 KAR 12:030.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law, and Recommended Order, as altered, 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 **SUSTAINED to the extent herein.**

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 14th day of November, 2018.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
SECRETARY

A copy hereof this day mailed to:

Hon. Evan Jones
John Price
Misty Judy

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-083**

JOHN PRICE

APPELLANT

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

**TOURISM, ARTS AND HERITAGE CABINET,
KENTUCKY HORSE PARK**

APPELLEE

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

This matter came on for evidentiary hearing on May 23, 2018, at 10:15 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. John C. Ryan, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by KRS Chapter 18A.

Appellant, John Price, was present and was not represented by legal counsel. He was, however, accompanied by his sister, Donna Osborn, to aid him in assembling his documentation. The Agency/Appellee, Tourism, Arts and Heritage Cabinet, Kentucky Horse Park, was present and was represented by the Hon. William H. Adams.

This matter was the subject of at least one pre-hearing conference at which the issues were defined and other matters requiring attention therein dealt with. The parties signaled no interest in mediation.

BACKGROUND

1. By letter of March 8, 2017, over the signature of Laura Prewitt, Executive Director of the Kentucky Horse Park, John Price was suspended from his position of Automotive Mechanic IV in the Buildings Maintenance Section of the Division of Buildings and Grounds at the Kentucky Horse Park (KHP) for a term of 20 working days, commencing on March 10, 2017. A true copy of the four page letter is attached hereto as **Recommended Order Attachment A**. As will be evident from the letter, the suspension was a modification of a more severe action previously announced as considered by two prior mailings to Price of February 27, 2017, placing him on administrative leave with pay preparatory to dismissing him. The Intent to Dismiss letter contained a detailed recitation of essentially the same sequence of events set forth in the suspension letter.

2. Mr. Price took issue with the action by appeal to this Board on April 14, 2017, citing "Disciplinary Fine," "Suspension," and "Discrimination." He further wrote in support of his challenge:

1. On 2/27/17, I was issued an Intent to Dismiss, then suspended for (20) days without pay, which surpasses the (10) day pay limit as a Disciplinary Fine as per 101 KAR 1:345, Sec. 5.

2. All of the performance statements for 2016, 2017 were not done properly as the supervisor did not know how to write them up and was instructed (sic) by the office to be done wrong and to give me a bad write up. Before these 2 years, I have never had a bad write up and I have worked for the Horse Park for 12 years.

3. In the Intent to Dismiss hearing, I told all at that meeting that I had just put the hours in the wrong place on my statement for maintenance, but that all maintenance was done on schedule, and that I do not fuel the Toro – the operator does this. The suspension states that I said something that I did not state. Also, the (sic) in the Dismissal Letter, it states that they had to pay half of the repairs for the Toro, but then stated that they paid 100% of the repairs.

4. The Guard that told my supervisor that I did this, was banned from stepping foot on the Horse Park property because he keeps starting trouble, as in saying that employees at the Horse (sic) were doing this or that for the prisoners that the employees were not doing. (**Hearing Officer Note:** This item relates to a prior, 2-day suspension which Price was assessed in November 2016.)

5. The second and third suspension, as included in the "Intent to Dismiss," were obviously retaliation, as I was given the second one a day after my first hearing in this court. Then I was given the third suspension just as soon as I got back from the appeal hearing in this Court. So, I was given 2 suspensions since the first suspension appeal was ever settled. This was obviously Retaliation.

6. This is also obviously "Age Discrimination" as all this is happening just before I turn (60) sixty (sic) years old this year. The timing is so noticeable.

7. I fear that this Retaliation (sic) and Age Discrimination and lies will continue till they fire me, and I ask the Horse Park give me time to get a transfer.

8. All of the Bevins paperwork was wrong and backwards in the Intent to Dismiss and the office had all the paperworks for Bevin on time, but they didn't match, AGAIN!

3. Upon convening the evidentiary hearing, following brief opening statement by the Agency, it offered the testimony of **Jonathan Lang**, who has served as Deputy Executive Director at KHP for approximately two (2) years. Mr. Lang identified and introduced the 20-day suspension letter, explaining that the action was taken due to failure of Appellant to properly maintain equipment in the custody of the Agency, in this instance a leased Toro diesel-powered mower, his failure to document its maintenance properly, and/or, in the view of management, falsification of the requisite documents.

4. The witness elaborated that initially the perception was that either Appellant or someone under his supervision negligently filled the machine with gasoline instead of diesel fuel, thereby damaging or ruining the engine. Subsequent diagnosis by the dealer indicated that the problems with the machine actually arose due to lack of regular or proper maintenance and, as a corollary, no accurate records were available to determine what care had been administered. He noted that the manufacturer offered to pay one-half of the cost of parts for repair leaving a balance, according to the suspension letter, of \$3,075.04 payable by the Agency. He urged that, due to Appellant's negligence, the Agency could have been required to absorb the entire cost which, again according to the letter, amounted to \$5,352.07.

5. The Deputy Director produced and introduced service records for two items of mowing equipment, including the referenced Toro. He pointed out that maintenance upon these machines is performed based upon hours of operation, with certain steps to be performed at specific readouts taken from a meter on the machine. Relative to the chart reportedly prepared for the mower under scrutiny, he explained that the entries for specified maintenance events do not match up, in that certain entries reflect work done at higher hours in earlier months than in later months. Since the chart was prepared and completed by Appellant, or at least under his supervision, the discrepancies signal, at the least, negligent recordkeeping attributable directly to him. Since these entries for this machine constitute the only information available, management was unable to establish the exact status thereof, notwithstanding its obligation to do so under its Master Lease Agreement with its lessor, which agreement was also made part of his testimony.

6. The witness produced and discussed Appellant's 2016 Employee Performance Plan and 2016 Annual Employee Performance Evaluation. He pointed to express provisions therein detailing Appellant's duties to include performing of maintenance upon Agency equipment, together with the creation and preservation of accurate records relative thereto. Further, as part of the 2016 Performance Plan, management sought improvement of his communications with his supervisor, both as to the status of equipment under his care and when encountering any difficulties in connection therewith. More importantly, the witness continued, it was urged that Appellant improve his recordkeeping and perform all maintenance timely and properly. He viewed that Appellant was abundantly on notice to accomplish these but failed to do so.

7. The Agency produced and introduced certain records detailing prior penalizations, including a two-day suspension in November 2016 and a written reprimand in July 2017, urging that under its progressive discipline policy, the 20-day suspension arising from the cited episode(s) is justified.

8. Under brief cross- and redirect examination, the Deputy Executive Director disavowed any knowledge concerning the source of the makeup or design of the cited maintenance forms. He had no comment as to whether Appellant could have inadvertently entered information in an incorrect box on the form under scrutiny, nor could he comment whether Appellant might deliberately generate false maintenance information. He agreed that one or another mechanic at the equipment dealership surmised the possibility that gasoline was co-mingled with diesel fuel, but insisted that the final analysis was that all damage to the subject mower arose as the result of general lack of maintenance, compounded by failure to properly log and preserve the records to enable the Agency to track its condition.

9. The Agency, having completed its proof-in-chief, **Appellant, John Price**, offered his testimony. He confirmed that management has since demoted him from Automotive Mechanic IV to Automotive Mechanic III, established to have occurred effective August 1, 2017 in the materials which he introduced in the course of his presentation. He asserted that he "works on" more than 60 items of maintenance equipment at KHP, and the Toro mower referenced in the suspension letter constitutes only one of these. Further, he insisted, this mower, as far as he was aware, was the only machine sustaining the kind of problems outlined in the summary. He conceded that the Toro did require repair, urging the reason therefor to be in dispute and never exactly pinpointed.

10. Appellant continued that prior to his demotion he was in charge of all maintenance and the ordering of parts for the machinery. He conceded that he had allowed invoices to accumulate, with delay in logging them and entering them into the relevant computer system. However, he continued, all of the equipment is in use constantly and is extended past its maximum capacity. He viewed that part of the grounds for his suspension arose due to his "holding paperwork too long," namely failing to present the invoices for payment and neglecting to communicate with management in connection therewith. As to the damaged Toro mower, he surmised that one of the KHP groundskeepers did co-mingle gasoline with its diesel fuel, noting that the mechanics at the dealership confirmed this possibility.

11. Appellant submitted that he served the Agency for 12 years without incident or noteworthy complaint. However, unhappiness with his performance has, in his view, escalated within the last two (2) years, during which he commenced being repeatedly "written up," to his bafflement as to the reasons. He felt it more than coincidental that the complaints started when he became 60 years of age, and thus discriminatory, especially given the fact that he has made no changes in his maintenance or recordkeeping procedures other than being directed to create a "bad form," which he did not care for. He conceded he did fail to complete the form correctly in logging the maintenance for this particular machine. However, the maintenance was actually and timely performed. He considered the 20-day suspension to be extreme and undeserved.

12. Appellant produced a quantity of documents as part of his testimony, including copies of several letters from management to him from 2016 and 2017 and nine years of his performance evaluations, all obtained from his personnel file through discovery. He insisted that the letters, the earliest of which is that of May 27, 2016 suspending him for two (2) days (due to his poor recordkeeping) and ranging thru 2017, culminating in that of July 26, 2017 demoting him, established a pattern of discriminatory and unduly harsh treatment toward him.

13. Appellant pointed out that his performance evaluations have been almost uniformly satisfactory throughout his tenure with KHP. He referenced his year-end scores routinely placing him in the "Highly Effective" (the second highest) category since at least 2010, and including 2017, with the exception of the 2016 calendar year, in which he received a score of 234, placing him in the "Needs Improvement" category. (**HEARING OFFICER NOTE:** The 2016 evaluation with its low score was the one document from the group produced by the Agency in support of its position that Appellant is lax in his recordkeeping and in his communications with management. Relative to his 2017 evaluation, materials offered by Appellant, as asserted by him to have come from his personnel file, present a confusing array. Specifically, one portion, or "set", pertains to his position of Automotive Mechanic IV, which contains no rating. The other, a completed evaluation issued on January 18, 2018, affords him a score of 388 in the Automotive Mechanic III position, placing him in the "Highly Effective" range in this new position).

14. Under cross-examination by the Agency, Appellant expressed his understanding of the 2016 Performance Plan to be an outline or blueprint of what his duties were to be for the coming year. Further discussing his method of recording maintenance upon the machinery under his supervision, Appellant urged that previously he utilized a much simpler approach, involving three or four categories of service which did not depend upon any chronological order, but only hours of operation. The form now cited as done incorrectly and thus, part of his failure to properly document was generated at the request of management and, in the one instance complained of, he simply "messed up" and entered incorrect information for the particular month. He insisted that he did produce his own records confirming the work upon request.

15. Appellant conceded that he was lectured that he must improve efforts toward preventative maintenance of the equipment. He asserted that those communications did not concern documentation but, rather, so management could be assured that all equipment was running properly and available as needed. He explained that his long-time standard procedure had been to place oil change stickers on each machine so that anyone could observe when such had occurred; filters were ordinarily dated on the filter unit with a Sharpie instrument to reflect their age and status.

16. Appellant sought the testimony of **Steve Maynard**, Maintenance Branch Manager at KHP and his second-line supervisor. The witness noted in passing that he currently performs Appellant's performance evaluation because his first-line supervisor is not yet trained on the subject. He viewed that Appellant would not intentionally neglect or refuse to maintain any Agency equipment within his responsibility, nor was he aware that he would, or has ever, intentionally falsified maintenance records. He added that no evidence of such had ever come to

his attention. He considered Appellant to have demonstrated sufficient responsibility in the performance of his duties.

17. Under brief quizzing by the Agency, the witness was unable to recall any specific events or episodes that were either favorable or unfavorable concerning Appellant's performance, other than there had been "some issues" with his recordkeeping and documentation of maintenance and repair of certain items of machinery. He acknowledged that the dealership specifically suggested that maintenance appeared to have been lax or neglected upon the Toro mower discussed in the suspension letter. He confirmed that the method of recordkeeping was changed previously, intimating that this may have caused confusion on the part of Appellant as to what entries belonged where.

18. **Wanda Hamilton** was subpoenaed by Appellant and testified over the objection of the Agency upon the grounds that Appellant's witness list was not timely filed. She had held the position of Administrative Specialist III and was employed as a secretary in the Maintenance Section of KHP, serving from September 2009 through August 1, 2017, when she retired. During her time there, she observed no issues with Appellant's work performance, recalling that he was "busy, had a lot of responsibility, with a lot on (him)." She viewed that his work ethic was good and that he gave 40-plus hours every week.

19. The witness continued that, although trained in management career-wise, she was not a member of management at KHP, nor did she perform evaluations. Nonetheless, she worked rather closely with Appellant in preparing and submitting the maintenance materials and invoices, since both he and she were variously responsible for specific portions thereof. She viewed that he absolutely would never falsify documents and that he took care of the maintenance and repairs diligently. She observed that the majority of the equipment was aged and tended to break down often, perceiving that Appellant assigned appropriate priority as needed to the repairs.

20. The witness opined that Appellant was cited over events for which he was not responsible, and that management mistreated him by repeatedly "going after him, but he refused to roll over and play dead," resulting in on-going and escalating accusations.

21. Under brief cross-examination, the witness acknowledged that she was not Appellant's supervisor, nor did she hold any supervisory position in her time with the Agency. Although conceding that she could not speak to what was going on in the minds of the respective managers in the treatment of Appellant, she insisted that she was able to observe what was "going on." There was thereupon concluded the sworn testimony and, following brief closing, the matter stood submitted for recommended order.

22. KRS 18A.095(1) requires that "a classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause."

23. 101 KAR 1:345 is the regulation pertaining to disciplinary actions. Section 1 thereof authorizes appointing authorities to discipline employees for lack of good behavior or the

unsatisfactory performance of duties. Section 4(1) thereof allows, or limits as the case may be, suspensions to a maximum of thirty days.

24. KRS 18A.140(1) prohibits discrimination against any employee within the merit system due to age.

FINDINGS OF FACT

1. At all times germane to this proceeding, Appellant, John Price, was a classified employee with status, holding the position of Automotive Mechanic IV in the employ of the Kentucky Horse Park. In that regard, included in the various items of correspondence directed to him by the Agency is a letter of July 26, 2017 (well after the suspension which is the subject of this appeal), demoting him to Automotive Mechanic III, effective August 1, 2017. This was his status at the time of hearing herein in May, 2018.

2. At the core of the 20-day suspension currently under challenge, and emphasized throughout the majority of the correspondence directed to Appellant before and following this particular penalization, is management's obvious dissatisfaction with his recordkeeping of the maintenance and repair of the groundskeeping equipment under his responsibility. He has testified that the machines exceed 60 in number, but the proof does not establish the extent or nature of any staff or coworkers to assist him to maintain, service and operate this machinery. The evidence and the testimony indicate that Appellant, or those responsible to him as the case may be, routinely perform the requisite maintenance for the most part but do not routinely supply the level of recordkeeping which management demands. What is not so clear is the reason that management has, based upon the escalating level of documents addressed to him starting in 2016, become increasingly critical of his performance in general.

3. No proof is presented that Appellant has falsified or deliberately misled management as to whether service was performed, when it was performed, or the nature thereof. He readily concedes that he incorrectly logged one or another maintenance step upon the one chart cited by the Agency as part of the basis for assessing the somewhat harsh 20-day suspension. Neither the testimony nor the extensive discussion of the handling of the leased Toro mower in the suspension letter signals whether that episode was an isolated event or part of a larger pattern. However, the letter indicates on page 4 that Appellant had held the Automotive Mechanic IV position since June 1, 2004, with disciplines only commencing in 2016.

4. The testimony and exhibits present somewhat of a "disconnect" between the views of immediate supervisor staff and upper management. Notwithstanding the criticism of Appellant's performance in the correspondence, those presumably in a position to observe his daily input, such as his immediate supervisors and at least one coworker, rate his work ethic as excellent. This carries into his evaluations, reflecting him as "Highly Effective" throughout his time with the Agency other than the one exception introduced by Appellee.

5. The two coworkers testifying, one of whom is Appellant's second-line supervisor and the other having worked in the same vicinity as he for several years, vouch for his

truthfulness and work ethic. Neither witness demonstrated any bias in favor of or against him, although one fellow employee viewed Appellant to have been increasingly and unjustifiably mistreated during her tenure with KHP. The Hearing Officer finds the testimony of all those testifying to be credible.

CONCLUSIONS OF LAW

1. The Agency's complaint with Appellant has to do with his asserted "unsatisfactory performance of duties". 101 KAR 1:345 does not present examples of what should be considered as "unsatisfactory" nor does the regulation (or the underlying statute) provide the level of penalization to accompany the determination of poor performance, as it cannot. This is left to management's discretion, with the factors deemed relevant thereto ordinarily summarized in the statutorily-mandated, written notice assessing the penalty. The basis for any penalization, and likewise any challenge thereof, must be statutory, regulatory, fact-based, or a combination of these.

2. In the immediate appeal, the respective parties rely heavily upon differing interpretations of the facts. Management claims possession of proof that "somebody" (i.e. Appellant) neglected to properly maintain a Toro mower, while Appellant admits its condition, but disputes the reason or that he knowingly allowed it to occur. The parties basically agree that Appellant requires improvement in his maintenance record follow-up and in his communications as to the status thereof.

3. Although accepting the Agency's interpretation of the facts that the Torro mower required repair, and even considering Appellant's need to improve his communications to be a "given", the penalty meted to this 14-year employee seems an abuse of discretion. Such a level of punishment might be deserved if Appellant knowingly and intentionally misled his employer, or deliberately falsified records, not the case here.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **JOHN PRICE V. TOURISM, ARTS AND HERITAGE CABINET, KENTUCKY HORSE PARK, (APPEAL NO. 2017-083)** be **SUSTAINED**, the **20-day suspension** be rescinded and removed from Appellant's personnel files and Appellant receive a two (2) day suspension in place thereof. The Appellee/Agency shall also reimburse Appellant for the 18 days of suspension and for any leave time he used attending the hearing and any pre-hearing conferences at the Board, and otherwise make Appellant whole. KRS 18A.105, 18A.095(25), and 200 KAR 12:030.

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 John C. Ryan** this 25th day of July, 2018.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. William H. Adams
Mr. John Price



KENTUCKY HORSE PARK

Matthew G. Bevin
GOVERNOR

Don Parkinson
CABINET SECRETARY

Regina Stivers
DEPUTY SECRETARY

Laura Prewitt
EXECUTIVE DIRECTOR

March 8, 2017

John Price

Employee PERNR:

Dear Mr. Price,

On Friday, March 10, 2017, a pre-termination hearing was held regarding an intent to dismiss letter that was issued to you on February 27, 2017. Having considered all statements that you made on your behalf during your pre-termination hearing, with Deputy Executive Director Jonathan Lang, Director of Buildings and Grounds Chuck Ammons, Maintenance Branch Manager Steve Maynard and Human Resource Manager Stephanie Gibson, I have determined that you committed the charges as outlined in the letter regarding the failure to follow proper recommended service schedule and failure to maintain accurate maintenance records on the leased Toro Z-Master 7000. You admitted in the pre-termination hearing that the records you submitted were not accurate. You denied receiving quotes and/or invoices from Bevins Motors on the invoices that were outlined in the intent to dismiss letter. Therefore, I have determined that a twenty (20) day suspension is the most appropriate disciplinary action.

Pursuant to 18A.095 you are notified that you are suspended from duty and pay for a period of twenty (20) working days, effective beginning of business on March 10, 2017 through the close of business on April 4, 2017. The days you are scheduled to be off work during this time period without pay are March 10, 11, 12, 13, 14, 15, 16, 20, 21, 22, 23, 24, 27, 28, 29, 31 and April 1, 2, 3, 4 of 2017. Your regular scheduled days off are March 9, 17, 18, 19, 25, 26, 30 of 2017. You are to return to work at your regularly scheduled time on April 5, 2017.

Pursuant to 101 KAR 1:345 Section 1 unsatisfactory performance you are being suspended from your position as an Automotive Mechanic IV in the Buildings Maintenance Section of the Division of Buildings and Grounds at the Kentucky Horse Park (KHP), for the following reasons:

On February 8, 2017, the KHP became aware that a KHP leased Toro Z-Master 7000 was at Lexington Outdoor Power Equipment since November 7, 2016. On February 8, 2017, Ms. Gibson contacted Lexington Outdoor Power Equipment and spoke to Ms. McMillen about the Toro. Ms.

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Kentucky

APPELLEE'S
EXHIBIT
A

horsepark.com

employer M/F/D

Recommended Order
Attachment A

McMillen informed Ms. Gibson that the KHP had leased the Toro from Century Equipment on January 15, 2016 and that Century Equipment had requested the horse park to take the Toro to Lexington Outdoor Power Equipment for a diagnostic test.

Ms. McMillen told Ms. Gibson that you requested an estimate and she faxed the estimate to you on November 7, 2016 but she never heard back from you on the estimate. Ms. McMillen further stated that she left several messages for you but that you never returned her call about the estimate on the Toro. Lexington Outdoor Power Equipment conducted a diagnostic test on the Toro and their findings indicated that it had a bad injector, which they replaced. Lexington Outdoor Power Equipment brought the engine up to operating temperature, their mechanic heard a ticking noise, and noted it was running rough. The mechanic pulled the engine out and found that the #1 piston had spun out and was badly galled and the #3 piston was galled. They stated that because the engine had been overheated they believed that gas had been placed in the tank instead of diesel. They concluded that this was the reason the engine overheated and was the cause of the discoloration of the pistons. Meanwhile, Lexington Outdoor Power Equipment sent pictures to Toro on November 18, 2016 in order for them to verify their findings. Because of Lexington Outdoor Power Equipment's findings, Ms. McMillen requested that you provide her your maintenance service records on the Toro. After she reviewed the records that you provided to her, she told Ms. Gibson that the records could not be accurate.

On February 14, 2017, Mr. Lang, Mr. Ammons, Mr. Maynard and Ms. Gibson inquired of you about the Toro. You stated that you knew the Toro went to Lexington Outdoor Power Equipment due to overheating. Mr. Lang asked about the task and hours that were placed on your maintenance service records for the Toro from April through November 2016. The maintenance service records for the Toro for these months indicated for example in July there was 201 hours on the Toro for an oil change but in August, there was 165 hours when you repaired and/or replaced the deck belts. These records could not possibly be accurate because the hours in August would be more than the hours in July. There were several instances on the maintenance service records that you provided showing the same example as above. During the meeting, you admitted that the maintenance service records that you submitted were not accurate because you forgot to write the hours on the report when the services was being completed on the Toro. You stated that you wrote the hours on notes and later went back and completed the form. Lexington Outdoor Power Equipment's estimate for parts, labor and repair on the Toro is \$5,352.07. Toro has offered to pay for ½ the parts therefore; the KHP will have to pay the remainder to fix the Toro totaling \$3,075.04.

Century Equipment

Due to KHP leasing the Toro with Century Equipment, Jim Farmer the Territory Account Manager with Century Equipment sent their Equipment Manager and Technician to examine the Toro's cylinder walls and pistons. Both the Century Equipment Manager and Technician stated that the engine had over-heated due to dirt ingestion and possibly the use of gasoline. Their examination further found that the damage to the Toro were likely caused by not properly following the recommended service schedule for changing filters and oil changes. They could not determine if

gasoline had been placed in the tank instead of diesel. However, the scored cylinder walls demonstrates a sign of dirt and neglect, which caused an overheating of the engine, causing damage to the cylinder walls and pistons. Mr. Farmer stated that because the Toro was a leased mower that it would have to be returned at the end of the lease agreement in proper operating condition per lease terms.

2016 Annual Performance Evaluation

Your 2016 Performance Plan states that your duties include, but are not limited to, supervising and performing automotive mechanic work on either the repair or maintenance of equipment and the expectations for these duties is that you perform such duties and inspect all work of other workers for accurate completeness of repairs. Your Performance Plan further indicates that your duty is to perform appropriately timed maintenance and the expectation is to conduct preventive maintenance on equipment to ensure little/no lapse in use of due to preventive problems. You, Mr. Maynard and Mr. Ammons all signed and dated the Performance Plan on January 27, 2016.

Your 2016 1st Interim Review from the period of January 1 through April 30, 2106 indicates that you need to communicate with supervisor when issues arise on equipment not working properly or if you are having issues with paperwork. It further indicates that you need to develop a means of tracking all equipment that need repaired and need preventive maintenance performed on them. You and Mr. Ammons both signed and dated the 1st Interim Review on May 27, 2016.

Your 2016 2nd Interim Review from the period of May 1 through August 30, 2016 indicates that you need to continue to communicate with supervisor when issues arise on equipment not working properly or if you are having issues with paperwork. It further indicates that you should continue to develop an equipment maintenance schedule. The 2nd Interim Review indicates a suspension during this interim period. You and Ryan Hix Maintenance Section Supervisor both signed and dated the 2nd Interim Review on October 17, 2016.

Your 2016 3rd Interim Review from the period of September 1 through December 31, 2016 indicates a suspension during this interim period. You and Mr. Maynard both signed and dated the 3rd Interim Review on January 30, 2017.

Your 2016 Final Performance Evaluation ratings indicates "barely meets expectations" on the duties of performing appropriately timed maintenance with expectations of conduct preventive maintenance on equipment to ensure little/no lapse in use due to preventive problems. You received "fails to meet expectations" on the duties of performing maintaining inventory with expectations of accurately maintaining vehicle records and inventory of related materials. You received "fails to meet expectations" on the duties of performing associated administrative duties with expectations of accurately completing and submitting material orders and invoices. You received "barely meets expectations" on communication with the expectation of keeping supervisor apprised of any problems. You received "barely meets expectations" with dependability/responsibility with expectations of submitting time records by established deadline.

Your final score for your 2016 Annual Employee Performance Evaluation was 234, which indicate, "needs improvement." You checked disagree with performance evaluation but accepted. You, Mr. Maynard and Mr. Ammons all signed and dated your Final Performance Evaluation on January 30, 2017.

Automotive Mechanic IV Job Duties and Responsibilities

You have been an Automotive Mechanic IV with the Horse Park since June 1, 2004. Your job duties include but are not limited to, responsible for supervising and inspecting the work of other workers assigned to you and (performing duties) in the repairing and maintaining of all equipment and complete and maintain records of such. As an Automotive Mechanic IV, you failed to follow the proper recommended service schedule for the Toro, which resulted in the engine over-heating due to dirt ingestion by not completing preventive maintenance such as air filters and oil changes. Your neglect failing to conduct these preventive maintenance routines has resulted in the park having to pay \$5,352.07 in repairs, parts and labor on the Toro. Furthermore, your failure to maintain accurate maintenance records by indicating that routine service were completed on the Toro when the Lexington Outdoor Power Equipment and Century Equipment state that these routine service schedules could not have been completed due to the neglect of the cylinder walls and pistons is falsifying a record. Therefore, as an Automotive Mechanic IV with the KHP you are being suspended without pay for the unsatisfactory work performance pursuant to 101 KAR 1:345, Section 1.

Your personnel record maintained by the Kentucky Horse Park reflects a two (2) day suspension that was issued to you on May 27, 2016 pursuant to 101 KAR 1:345, Section 1 and a two (2) day suspension that was issued to you on November 17, 2016 pursuant to 101 KAR 1:345, Section 1.

You are advised that retaliation against any individual who makes a complaint or participates in the investigation of a complaint is strictly prohibited. Complaints or claims of retaliation will be considered a separate issue and may result in a disciplinary action up to and including a dismissal.

For your information, the Kentucky Employee Assistance Program (KEAP) is a voluntary and confidential assessment and referral service for state employees. This service may help you with any personnel problems that may be affecting your job performance. KEAP can be reached at 1-800-445-5327 or 1-502-564-5788. There is no cost for information or referral services and all contact is strictly confidential.

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,



Laura Prewitt
Executive Director
Kentucky Horse Park

Attachment: Appeal Form

cc: Secretary Thomas Stephens, Personnel Cabinet
Secretary Don Parkinson, Tourism, Arts and Heritage Cabinet
Legal Services, Tourism, Arts and Heritage Cabinet
Human Resource Director Tourism, Arts and Heritage Cabinet, Laurie Spalding
Employee Personnel File

ACKNOWLEDGEMENT

I have received a copy of this suspension letter and have read and been advised of my right to appeal this action see attached form.

Employee's Signature



Date

3/5/17