

CERTIFICATION OF PERSONNEL BOARD RECORDS

I certify that attached hereto is a true and correct copy of the Settlement Agreement and Final Order in the case of **BRITTNEY SHEPHERD VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2016-027)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 22nd day of November, 2016.



MARK A. SIPER, SECRETARY
KENTUCKY PERSONNEL BOARD

Copy to Secretary, Personnel Cabinet

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-027**

BRITTNEY SHEPHERD

APPELLANT

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

CABINET OF HEALTH AND FAMILY SERVICES

APPELLEE

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

The Board, at its regular November 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 23, 2016, Appellee's Exceptions and Request for Oral Argument, oral arguments and being duly advised,

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

A. **Delete** Background paragraph 1 and substitute the following:

1. The Appellant, Brittney Shepherd, filed her appeal with the Personnel Board on February 16, 2016, alleging she had been penalized when she was dismissed from her position as a Family Support Specialist I, in the Department for Community Based Services (DCBS), North Service Region, on February 3, 2016. At the outset of the evidentiary hearing, the parties stipulated as follows:

- a. The parties stipulated the Appellant plagiarized her first paper.
- b. The parties stipulated the Appellant received help from coworkers on her second paper.

- c. The parties stipulated the Appellant's work load in September 2015 was 12 cases, and in January 2016 was 17 cases.
- d. The parties stipulated the Appellant did more than 20 home visits each month.

B. Delete Background paragraph 6 and substitute the following:

6. On cross-examination, Mr. Klein stated that prior to making his decision to terminate the Appellant, he had reviewed her personnel file, including her evaluations, etc. According to Mr. Klein, the Appellant had been promoted to a Social Service Worker I and was still on promotional probation when the alleged incidents occurred. After the incidents occurred, the Appellant was reverted from promotional probation to her former position as a Family Support Specialist I. The Appellant was dismissed from her Family Support Specialist I position. At the conclusion of Mr. Klein's testimony, the Appellee rested its case.

C. Add Findings of Fact paragraphs 7 through 10, as follows:

7. The Board finds that the Appellant plagiarized her first paper, based on the parties' stipulation and the Appellant's admission during her testimony at the evidentiary hearing. The Board finds that the Appellant did not plagiarize her second paper based on her testimony.

8. In support of its allegation that the Appellant plagiarized the second paper, the Appellee presented testimony that her paper came back a 76% match with another paper. No testimony was offered as to the computer program, which supported this percentage. In addition, no testimony was offered as to whose paper Ms. Shepherd's work was found to match. No credible, admissible, non-hearsay evidence was offered by the Appellee in support of its allegation that the Appellant plagiarized her second paper.

9. The Appellant was dismissed for repeatedly plagiarizing an academy assignment. The Board finds one instance of plagiarism, but no proof of the second alleged incident. For this reason, the Board finds that the decision to dismiss the Appellant was not taken for just cause and was excessive and erroneous. The Board further finds there is nothing in the record to show the Appellant could not perform the work of her previous position as a Family Support Specialist I, which she was reverted to following these alleged incidents.

10. The Board finds the Appellant engaged in misconduct and that disciplinary action is warranted. The Board finds, in light of all the evidence in the record including Appellant's plagiarism, her good work record and the quality of her work as testified to by her supervisor, a suspension of 30 days from her position as a Family Support Specialist I is the appropriate penalty.

D. Delete the Conclusions of Law and substitute the following:

1. Based on the Findings of Fact, the Appellee failed to establish just cause for the termination of the Appellant for repeatedly plagiarizing an academy assignment.

2. Based on the Findings of Fact, the Appellee failed to prove the disciplinary action of dismissal was neither excessive nor erroneous in view of all surrounding circumstances. KRS 18A.095(22)(a).

3. The Appellee established that the Appellant plagiarized the first paper she wrote for the academy assignment. The Board concludes that this action constitutes misconduct pursuant to 101 KAR 1:345 and violated Cabinet for Health and Family Services' Personnel Procedure 2.1, Employee Conduct, and DCBS Standard of Practice 1.1, Ethical Practice. The Board concludes that the appropriate penalty for this action is a suspension of 30 days from the Appellant's position as a Family Support Specialist I.

4. The Board concludes that any evidence offered by the Appellee with respect to the computer program which found plagiarism in this case constitutes hearsay, which is not sufficient in itself to support a Finding of Fact. KRS 13B.090(1).

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

IT IS HEREBY ORDERED that the appeal of **BRITTNEY SHEPHERD V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2016-027)** is **SUSTAINED to the extent** that her dismissal from her position as a Family Support Specialist I be modified to a 30-day suspension. The Appellant should otherwise be reinstated to her previous position as a Family Support Specialist I, and further awarded lost pay and benefits, except for the period of her suspension, and otherwise she should be made whole. [KRS 18A.105 and 200 KAR 12:030.]

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer as Altered be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **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 22nd day of November, 2016.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Lucas Roberts
Ms. Brittney Shepherd
Mr. Jay Klein

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-027**

BRITTNEY SHEPHERD

APPELLANT

VS.

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

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

This matter came on for evidentiary hearing on May 23, 2016, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Geoffrey B. Greenawalt, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Brittney Shepherd, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and was represented by the Hon. Lucas Roberts.

By Interim Order dated March 23, 2016, and Interim Order dated May 3, 2016, the issue at the evidentiary hearing was the dismissal of the Appellant. The Appellee was assigned the burden of proof, which was to be by a preponderance of the evidence, to demonstrate the dismissal of the Appellant was neither excessive nor erroneous and was taken with just cause.

BACKGROUND

1. The Appellant, Brittney Shepherd, filed her appeal with the Personnel Board on February 16, 2016, alleging she had been penalized when she was dismissed from her position as a Family Support Specialist I, in the Department for Community Based Services (DCBS), North Service Region, on February 3, 2016.

2. The first witness to testify at the hearing was **Howard J. Klein**, who is employed with the Appellee's Division of Employee Management and is an Appointing Authority authorized to testify before the Personnel Board, but not authorized to sign disciplinary action letters. As such, Mr. Klein did not sign the actual dismissal letter in this matter, but did attend the Appellant's pre-termination hearing and was otherwise familiar with this case.

3. According to Mr. Klein, the DCBS contacted his offices and requested that Major Disciplinary Action (MDA) be taken against the Appellant. The request was assigned to a branch worker whose responsibility it was to investigate the allegations and report on the same.

4. Mr. Klein stated following the pre-termination hearing, he went forward with the termination because the Appellant's actions, in his opinion, were egregious and her honesty had been called into question. According to Mr. Klein, her actions represent the complete opposite of what the Appellee seeks from its Social Workers.

5. The Appellant's termination letter dated February 3, 2016, was entered into the record through the witness and was marked Appellee's Exhibit 1. In essence, the Appellant was dismissed from her position as a Family Support Specialist I as a result of repeatedly plagiarizing a written assignment in an effort to gain a passing score on a Protection and Permanency (P&P) Academy assignment. According to Mr. Klein, he would have terminated the Appellant after her first offense of plagiarizing her assignment. However, the matter was not brought to his attention until after she had been given a second opportunity to complete her assignment and was deemed to have again plagiarized the same.

6. On cross-examination, Mr. Klein stated that prior to making his decision to terminate the Appellant; he had reviewed her personnel file, including her evaluations, etc. According to Mr. Klein, the Appellant had been promoted to a Social Worker and was still on promotional probation when the alleged incidents occurred.

7. The next to testify was **Rhonda Alexander**. Ms. Alexander testified she is a Social Worker and was hired on the same day as the Appellant (September 1, 2015). According to Ms. Alexander, while she and the Appellant were in Bowling Green for their P&P Academy training, the Appellant was juggling a full caseload and received numerous work related calls. This resulted in the Appellant having to spend her free time after class working on both her caseload and her academy homework.

8. According to Ms. Alexander, with some forty attendees and only two case scenarios to work with, the academy instructor informed the class that inevitably their papers would end up matching others to some degree.

9. Ms. Alexander testified that while the Appellant was working on her assignment for the second time, approximately five of her coworkers helped her complete the same. According to Ms. Alexander, these co-workers did not prepare the Appellant's actual paper, copying word-for-word, etc. Instead, they were there to just help the Appellant with ideas and to encourage her.

10. On cross-examination, Ms. Alexander testified she and the Appellant went to the same classes and had the same assignments while at the academy. She also stated she had her own caseload to work on at the time, but did not find it necessary to plagiarize the subject written assignment. However, she also admitted that due to the volume of work involved with the academy

and her caseload; she had still not completed her academy homework as of the date of the hearing.

11. The next to testify was **Lisa Maybrier**, who testified she started as a Social Worker in August 2015 and attended the same P&P Academy as the Appellant and Rhonda Alexander. Ms. Maybrier testified that during the Appellant's second attempt at completing her assignment paper, she never witnessed anybody actually write the paper for her or saw her copying word-for-word from someone else's work. In fact, according to Ms. Maybrier, all she witnessed was some of the Appellant's coworkers trying to help her because she was clearly struggling. According to Ms. Maybrier, the class instructor informed the class that inevitably a certain percentage of paper content would match others because there were several people in the same class and only two cases to write about. It was Ms. Maybrier's opinion that the Appellant was simply overwhelmed completing her training, keeping up with her job, and raising a newborn baby and needed help. In her opinion, the Appellant is very detail-oriented and worried about her job. She also witnessed the Appellant working after training hours trying to keep up with her own caseload.

12. On cross-examination, Ms. Maybrier stated she was still working on the training assignments and it looked as if she was going to have to take an "F" because she has absolutely no time to keep up with her workload and complete her training assignments. However, despite this, she never had any problem with plagiarizing her assignments.

13. The next to testify was **Eric Martin**, the Family Services Office Supervisor for Fleming and Robertson counties. Mr. Martin is the Appellant's prior supervisor.

14. According to Mr. Martin, after being informed that her first paper was a 99 percent match with someone else's paper, the Appellant immediately came to him and admitted she had plagiarized the same. According to Mr. Martin, other than the subject incident, he is not aware of any other problems involving the Appellant's veracity. Mr. Martin testified that by the time the Appellant started attending the P & P Academy, she had been assigned a very complex medical case that was being reviewed closely by the Service Region Clinical Associate (SRCA), Ms. Anastasia Cooper. According to Mr. Martin, he had no concerns with the Appellant's work product and noted that her documentation was good and that she was very detail-oriented. He also noted the Appellant was skillful with interviewing and working with people, and he was impressed with her written work. According to Mr. Martin, the Appellant was knowledgeable and was an asset to the Appellee.

15. On cross-examination, Mr. Martin testified the Appellant could have asked for "protected" time which would have freed her up from being on the phone and kept other distractions to a minimum so she could concentrate and get her academy assignments and/or caseload caught up.

16. Finally, Mr. Martin testified that during the training in question, the Appellant had been assigned over 30 cases, which is considered to be a heavy caseload. According to him, that was a lot to handle for a Social Worker at her stage of development and that the Appellant had a lot of work to do on top of handling her academy classes and raising her small child.

17. The next to testify was **Sarah Smith**. Ms. Smith is in the Hospice of Hope RN Program and is a Foster Parent. She fosters the two medically fragile children and her case was assigned to the Appellant. According to Ms. Smith, the Appellant was there any time she needed her and could be called upon at any time. Ms. Smith testified she has worked with several Social Workers over the years and the Appellant (and one other worker) were the only ones who were available to her at any time. According to Ms. Smith, the Appellant was an excellent Social Worker. She knew she drove the Appellant crazy with her frequent requests for assistance and said she would call upon her all the time. The Appellant would help with transportation, etc., even if it was on her day off. According to Ms. Smith, the Appellant went above and beyond and is the best Social Worker that has ever been assigned to her. The Appellant even went so far as to provide Ms. Smith with her personal telephone number; when most Social Workers would only give her their work cell number.

18. The next to testify was the Appellant, **Brittney Shepherd**. According to Ms. Shepherd, she had been a Youth Worker at a juvenile prison and then an FSOS and had never had any problems before. According to Ms. Shepherd, when she accepted the new job as a Social Worker, she was given a brief description of the job duties and was told she would be busy. During this time period, she and her significant other split up and she became a single parent of a newborn child. She was also directed to the training academy which she found to be very detailed.

19. Ms. Shepherd admitted she plagiarized her first paper and acknowledged she had been wrong in doing so. According to her, at the time, she had a lot on her plate and was doing what she thought she had to do in order to be able to continue helping her patients, her own child, and otherwise keeping up with her caseload. After admitting she had plagiarized her first paper, her instructor at the academy allowed the Appellant to rewrite her paper. As the second deadline approached, her coworkers were aware of how overloaded she was and wanted to assist her. According to Ms. Shepherd, her coworkers did not write any of her second paper and she did not plagiarize the same. Instead, they were there to encourage her and helped by throwing ideas around. According to Ms. Shepherd, she did not find out about "protected" time until after she had plagiarized the first paper. Since then she has used "protected" time to help her complete other assignments and stated that had she been aware of the "protected" time, she would have used it and avoided the trouble she eventually found herself in.

20. According to Ms. Shepherd, she submitted her first paper online and when it came up that it matched another paper 99 percent, she went straight to her supervisor, Eric Martin, and admitted her mistake. After her second paper was submitted, it was found to be a 76 percent match. Ms. Shepherd reiterated that she never once tried to hide the fact she plagiarized her first paper and readily admitted it was wrong. She obviously did not place enough importance on the paper because at the time she was mostly concerned with her clients and her medically fragile case which was very time-consuming.

21. According to Ms. Shepherd, she was led to believe she would not be assigned her own cases until the academy was over and thought she was to shadow an SRS during her first home visits. Instead, after one week of training, she was thrown into her job doing home visits and case plans and was basically given the whole responsibility of being a Social Worker.

22. By the second phase of training, the Appellant was aware of the “protected” time and used it to help her keep up. By then she had settled into a set schedule and had finally figured out the job. At first, however, she was just overwhelmed. Appellant’s Exhibit 1 was introduced into the record and is a copy of the TWIST records for her medically fragile children case. This exhibit was sealed and was presented for purposes of demonstrating just how involved this particular case had been. She also noted this was just one out of the thirty-plus cases that had been assigned to her.

23. On cross-examination, the Appellant was asked if she had been informed about the job duties of a Social Worker prior to accepting the position. She testified she knew she would be required to attend an academy. However, having attended an academy while working at the Juvenile Detention Center, she had no idea how detailed and demanding the P&P Academy would be. According to the Appellant it ended up being nothing like the academy she had previously attended. Ms. Shepherd also understood that, generally speaking, her supervisor, Eric Martin, did not perform home visits and, in the end; she was responsible for properly filling out the required reports which required her to be honest and trustworthy.

24. This matter is governed by KRS 18A.095(1) which states: “A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.”

25. The Hearing Officer has considered the entire administrative record, including the testimony and statements therein.

FINDINGS OF FACT

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

1. The Appellant, Brittney Shepherd, a classified employee with status, timely filed her appeal with the Personnel Board on February 16, 2016, appealing from her dismissal as a Family Support Specialist I, in the Department for Community Based Services (DCBS), North Service Region.

2. Pursuant to the Interim Orders dated March 23, 2016, and May 3, 2016, the issue before the Personnel Board was the Appellant’s termination and whether the same was neither excessive nor erroneous and was taken with just cause.

3. By the time the subject paper in question first came due, the Appellant had been on the job a very short while and was already handling her own caseload, which included the complex and time-consuming case involving the two medically fragile foster children. Additionally, Ms. Shepherd was experiencing personal problems which resulted in her being a single parent of a newborn child. According to Ms. Shepherd, the P&P academy was considerably more detailed than she initially thought it would be and she failed to give it the importance it deserved.

4. In an attempt to juggle her caseload, her academy assignments and her home life, the Appellant plagiarized her first attempt at completing the subject paper. She quickly and freely admitted her mistake to her supervisor. The Appellant was given an opportunity to redeem herself by her academy instructor and was allowed to rewrite the subject paper. Again, due to time constraints, her second attempt at completing the subject paper came down to the wire. According to the testimony of record, approximately five of the Appellant's coworkers (also in attendance at the academy in Bowling Green) helped her complete her second attempt at the subject paper assignment. The testimony of record indicates this "help" came mainly in the form of encouragement and that ideas were thrown around for the Appellant to consider. The Appellant stated she had not plagiarized her second attempt at writing her paper and the testimony of her coworkers corroborated the same. Despite this, the Appellant's second paper was flagged for being a 76 percent match with another's work product.

5. According to the evidence, there were approximately 40 attendees at the academy and only two case scenarios to write about. So, inevitably, everybody's paper was going to match someone else's paper to some extent. It is assumed that a 76 percent match rate is considered "high" (or proof of plagiarism) by the Appellee or the Appellant would not have been terminated herein. However, there was no direct testimony with regard to exactly what constitutes an excessive match percentage or proof of plagiarism.

6. The Appellant's supervisor, Eric Martin, testified Ms. Shepherd is an asset to the Cabinet, and that she is detail-oriented and her written work impressive. There is nothing to suggest that she was anything other than a caring, thoughtful and hardworking Social Worker. Mr. Martin had also never had any trust issues with regard to her work performance.

CONCLUSIONS OF LAW

1. According to the evidence of record, the Appellant was an asset to the Cabinet, was overwhelmed (at least initially); however, before she could get comfortable with a set schedule, by her job duties, her training assignments, and her responsibilities at home, that led to her cutting corners and plagiarizing her first attempt at completing the subject written assignment. The Appellant fully and immediately admitted to her poor judgment and acknowledged she had been wrong. She was given a second chance to properly complete her training assignment. Frankly, given what was at stake, there can be found very little motivation for the Appellant to risk plagiarizing her paper again.

2. The testimony of record, including that of the Appellant, which the Hearing Officer finds to be credible, demonstrates the Appellant did not copy from anyone else's work when she completed her second paper. The only evidence to suggest otherwise is the matching percentage of 76 percent. However, given that several social workers wrote about just two case scenarios it was inevitable that the matching percentage had the potential to be high. However, exactly what constitutes a matching percentage sufficient to warrant the Appellant's termination was not fully explained. "High enough" to was not fully explained; one must assume this is a high matching percentage only because the Appellee depended on it to terminate the Appellant. There was no direct evidence as to what matching percentage constitutes a presumption of plagiarism. Frankly, that would have been very helpful in deciding this matter, for all the Hearing Officer knows 75 percent may have been the typical cutoff. Or 76 percent might just have been considered "high" given the fact that Appellant clearly plagiarized her first attempt.

3. In addition, by terminating the Appellant for this particular offense indicates that the Appellee follows a zero tolerance policy with regard to veracity issues. Although it is imperative and critical that Social Workers be honest and trustworthy given the incredible responsibility they undertake as Social Workers, it would appear that the Appellee would have requested Major Disciplinary Action after the first plagiarizing incident if that were the case.

4. The Appellee has failed to demonstrate by a preponderance of the evidence that the dismissal of the Appellant as a Family Support Specialist I, in the Department for Community Based Services, North Service Region, was neither excessive nor erroneous and was taken with just cause. Had the Appellant freely admitted to her first mistake and followed the same up with a 99 percent plagiarizing match, then deciding this matter would have been considerably easier. However, although seemingly high, 76 percent matching rate indicates that although the Appellant's paper matched the thoughts of many of her co-trainees, there was also original thought content within her work product. Further, the fact the Appellant was given the opportunity to rewrite her paper demonstrates conclusively that the Appellee does not follow a "zero tolerance" policy when it comes to completing these training assignments.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **BRITTNEY SHEPHERD VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2016-027)** be **SUSTAINED** and that she be reinstated to her previous position and further awarded lost pay and benefits and that she otherwise be made whole. Further, Appellee shall reimburse Appellant for any leave time she used attending the hearing and any pre-hearing conferences at the Board, and to otherwise make Appellant whole. [KRS 18A.095(25), KRS 18A.105, 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).

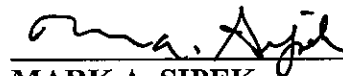
Any document filed with the Personnel Board shall be served on the opposing party.

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 Geoffrey B. Greenawalt** this 23rd day of August, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Lucas Roberts
Brittney Shepherd