

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-126

STEVIE SLONE

APPELLANT

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

TRANSPORTATION CABINET  
MIKE HANCOCK, APPOINTING AUTHORITY

APPELLEE

\*\* \*\* \*

The Board at its regular July 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 27, 2014, 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 appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

**SO ORDERED** this 16<sup>th</sup> day of July, 2014.

KENTUCKY PERSONNEL BOARD

  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Fogle  
Stevie Slone  
Kathy Marshall

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-126

STEVIE SLONE

APPELLANT

VS.

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

TRANSPORTATION CABINET  
DEPARTMENT OF HIGHWAYS  
MIKE HANCOCK, APPOINTING AUTHORITY

APPELLEE

\*\* \*\* \*

This matter came on for evidentiary hearing on February 27, 2014, at 10:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Stevie Slone, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Transportation Cabinet, was present and was represented by the Hon. William Fogle. Also present was the Hon. J.R. Dobner, Agency representative.

The Hearing Officer asked the parties whether they wished to make opening statements, and both declined.

**BACKGROUND**

1. The issue for the evidentiary hearing was the disciplinary action taken against Appellant. Appellant was suspended for five days without pay by letter dated May 20, 2013, for allegations of lack of good behavior. The Appellee bore the burden of proof on this issue. As the party bearing the burden of proof the Appellee proceeded first in the presentation of evidence.

2. The Appellee called the **Hon. J.R. Dobner** as its first witness. Mr. Dobner stated he is the Policy Advisor at the Office of Human Resource Management with the Transportation Cabinet and also had appointing authority.

3. The witness testified that he had been a Policy Advisor for about five days on May 20, 2013, which is the date of the five-day suspension letter imposed on Stevie Slone. Mr. Dobner stated that when he began working on this action for the Appellant he had been a Human Resource Administrator. Mr. Dobner further testified that his role in this case was to review the

Office of Inspector General (OIG) Report, as well as other materials and make a recommendation as to what action to take.

4. At the time the witness reviewed this matter before the disciplinary action was taken, the Appellant was employed as a Highway Superintendent II in Pike County. Counsel for Appellee clarified that Highway Superintendent II is what is referred to informally as Foreman, in this case the Superintendent II being the Chief Foreman.

5. Duties for Appellant included supervision of the Highway Maintenance Crew, which has typical duties such as keeping the roads clear, cutting brush to improve sight distance, etc. One duty is approval of timesheets for his crew. Mr. Dobner noted that as part of the duties relative to highway maintenance that there may be times required when the Appellant would have to work overtime.

6. Mr. Dobner testified that what brought Appellant's case to his attention and to the attention of the Transportation Cabinet was an audit by the Kentucky Transportation Cabinet OIG which showed that some employees salaries were higher than would normally be expected, that is that the overall salary in comparison to the base salary was significantly higher. The witness testified that this was not just in the Pike County area, but apparently extended to other employees in various locations. Appellee's Exhibit 1 is the OIG Report, an investigation into "discrepancies with the Global Position System (GPS) and Daily Attendance and Project Reports (timesheets) data." [Paragraph 1, OIG Report of Investigation, dated October 23, 2012, and admitted as Appellee's Exhibit 1]

7. In reviewing the report, Mr. Dobner testified that he would expect Appellant's salary to go up some when he went from Highway Equipment Operator to the Highway Superintendent series through promotions or reclassifications, but not as much as it did. In reviewing Appellee's Exhibit 1, the witness noted that Appellant's salary was \$38,000 approximately but that the gross take home for that year was over \$75,000.

8. Mr. Dobner testified the allegations where there appear to be possibly some falsification by Mr. Slone of timesheets, based on discrepancies between those timesheets and work records and GPS data. That is, discrepancies between the GPS reports and what was claimed on timesheets. The witness stated that the total time claimed that did not appear to be supported by time worked was 9 hours and 49 minutes.

9. Mr. Dobner testified the issue had to do when called out in an emergency a Transportation employee counting the time from when they received the call to the time they return home. The witness testified he could see where there might be some confusion and did not believe anything was inherently wrong with counting the time from when the call was received to go on an emergency call-out. Mr. Dobner then testified as to the individual instances

set forth in the disciplinary letter dated May 20, 2013, of Appellant claiming time to which the Appellee Transportation Cabinet alleges Appellant was not entitled.

10. Mr. Dobner testified the first eleven instances on the disciplinary letter related to emergency call-outs, and the last five related to normal workdays at the highway barn. Mr. Dobner testified those last five instances in the letter were regular days where the Appellant was signing out at the end of the shift and going home. Mr. Dobner stated he listened to the audio recordings of interviews conducted by OIG with the Appellant. Mr. Dobner testified that one of Appellant's concerns he heard in the audio recording was that the clock would begin running from when one would receive the call-out. (The Hearing Officer understands from Mr. Dobner's earlier testimony that the front-end time was not an issue in the discipline.) The other concern was that he would want to carry the same amount of time as his workers who lived further away and thus did not want them to look bad if they had more time for a call-out than the supervisor (Appellant Stevie Slone) did.

11. The witness testified as to why five days was assessed as the penalty; Mr. Dobner compared the allegations against Appellant to those against other employees – one who had a one-time incident and received apparently a small suspension and another one who had a pattern of such timesheet issues and was ultimately given an intent to dismiss and resigned.

12. Mr. Dobner stated that now with current appointing authorities, including Carol Beth Martin, a slight inaccuracy of time would result in a one-day suspension, but if it became more of a pattern it could result in a five-day suspension. Mr. Dobner stated that Darby Hamilton, a Highway Superintendent II in Pike County, had 29 hours of inaccuracies and was given a thirty-day suspension. In this case, Mr. Dobner testified that the reason a five-day suspension was levied was for the falsification of timesheets and the amount of time claimed.

13. On cross-examination, Mr. Dobner agreed with Appellant that it did not appear there was any evidence that the e-mail advising employees of the change to call-out procedures went beyond Kevin Damron, then the head in District 12.

14. In response to a question from the Hearing Officer, Mr. Dobner stated that none of the timesheets for those employees such as Appellant were audited were corrected.

15. On redirect, Mr. Dobner agreed with counsel for Appellee that Appellant was not being held to the standard that you would only be paid from the time you actually left the house and not when you received the call for the call-out. The witness agreed that Appellant was not being held to that standard expressed in e-mail, but instead to the earlier practice that you were paid from when you received the call.

16. The next witness Appellee called was **David Owen**. Mr. Owen is a retired state trooper and performs investigations for the Transportation OIG. Mr. Owen performed the investigation in this matter. That investigation was admitted as Appellee's Exhibit 1.

17. Mr. Owen described his report and offered testimony describing when Appellant would arrive home and when he would leave home the next day according to the GPS unit attached to Appellant's state vehicle.

18. On cross-examination, Appellant questioned Mr. Owen noting that the address listed in the report as his (Appellant's) home address was incorrect. Appellant thus questioned if the address was wrong, if other data related to the GPS could be inaccurate.

19. Appellant stated that the address listed him at 368\* Road instead of his actual mailing address of 1564\* Road.<sup>1</sup> The witness stated that while the address may be incorrect listed on the GPS data and on the spreadsheet, the location was accurate.

20. At the conclusion of Mr. Owen's testimony, the Appellee rested.

21. Appellant, **Stevie Slone**, called himself to testify. Appellant asserted that he did not see the e-mail from Chuck Knowles until May 20, 2013, when it was presented to him (the same contact day he was given the suspension letter). Appellant stated he would get a call to go out on an emergency and then would call members of his crew attempting to get people to come out and help. Appellant testified that due to the difficulty sometimes of getting people to come out on a call-out, in the past, they had what was called a "4-hour call-out." This went from a "4-hour call-out" to a "3-hour call-out." Appellant testified that he believed the "3-hour call-out" had gone into effect some four years prior to this hearing date. [**Hearing Officer Note:** A "4-hour call-out" and a "3-hour call-out" meant the worker was paid for 3 or 4 hours for any call-out, regardless of how long it took to actually complete the call-out.]

22. Appellant spent some time during his testimony essentially arguing that the difficulty of being able to get workers to respond to these call-outs (not counting snow and ice calls which are mandatory), if they are not going to be paid a certain amount of time.

23. Upon conclusion of his testimony, the Appellant's case was closed, since Appellant failed to file a witness and exhibit list and did not serve subpoenas.

24. The Appellee gave a brief rebuttal.

---

<sup>1</sup> \*The street name is left out due to privacy issues.

**FINDINGS OF FACT**

1. The Hearing Officer finds that Appellant, Stevie Slone, was a classified employee with status during the times in question.

2. The Hearing Officer finds that the Appellee proved the allegations against Appellant as stated in the disciplinary letter, that is, that the times reported on Appellant's timesheets did not match the movements of his state vehicle as reported by the GPS unit.

3. Regarding the GPS, there was evidence the GPS unit was recording the wrong street address for Appellant's residence, there is no doubt in the Hearing Officer's mind that the times in question the Appellant was parking his state truck at his residence. That being said, the Hearing Officer finds it was indeed lack of good behavior for the Appellant to have recorded on his timesheet the instances listed in the disciplinary letter that he was working when the GPS unit showed he was at his residence. The Hearing Officer notes Appellant offered no testimony that he was actually performing work for any of those instances when the GPS unit on his state truck showed it was parked at his residence.

4. The Hearing Officer is aware of Appellant's defense offered in both the filings he made with the Personnel Board and documents introduced at the Personnel Board and in his testimony and argument that he was not made aware of the e-mail sent by Chuck Knowles in June 2010, that made clear that emergency call-out time would be limited to essentially "portal-to-portal," and most especially that the call-out time to be recorded on the timesheet would end when the employee arrived back at his residence.

5. Appellant's claim is that he never received that e-mail until he was given the letter of suspension on May 20, 2013. Appellant also claimed during the course of the evidentiary hearing the reason he reported more work time on his timesheet than what the GPS unit showed (that the state truck was in fact back at his residence) was because he did not want it to look bad for the employees working for him who had been on the call-out to show more time worked than did he, the supervisor.

6. Also, the Hearing Officer is aware that Appellant testified that the practice in District 12, which includes Pike County, was that any call-out was four hours for a number of years and then that changed on about 2006 to three hours. If such was the case, then the Hearing Officer is mystified as to why none of the call-outs that were in question in the disciplinary letter were not claimed as three hours if Appellant truly was unaware that no longer could a set amount of time be claimed for any call-out, but rather the actual time worked.

7. In addition, the Hearing Officer notes that Appellant had several instances in the disciplinary letter regarding claiming time worked when the GPS actually showed the state truck having left the work site that were not related to call-outs and were not implicated at all by the e-mail supposedly changing long-standing policy. Taken together, this leads the Hearing Officer to believe that the Appellant knowingly recorded time for which he did not work, that the explanations that he was not aware of the policy and/or was recording more time worked than actually worked in order to cover for his subordinates simply do not make sense. Likewise, the incidents where Appellant simply left the facility early yet claimed time worked does not lend credence to the credibility of Appellant's testimony in general.

8. The Hearing Officer finds that the Appellant did engage in lack of good behavior as indicated in the disciplinary letter dated May 20, 2013.

#### **CONCLUSION OF LAW**

The Hearing Officer concludes as a matter of law that the Appellee met its burden of proof and that the punishment imposed for Appellant's lack of good behavior was neither excessive nor erroneous and was taken with just cause.

#### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **STEVIE SLONE VS. TRANSPORTATION CABINET, DEPARTMENT OF HIGHWAYS (APPEAL NO. 2013-126)** be **DISMISSED**.

#### **NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within 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 Boyce A. Crocker** this 27<sup>th</sup> day of May 2014.

**KENTUCKY PERSONNEL BOARD**



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

A copy hereof this day mailed to:

Hon. William Fogle  
Stevie Slone  
Kathy Marshall