

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-108, 2019-166, AND 2019-216**

DAVID SPEARS

APPELLANT

V.

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

**TOURISM, ARTS AND HERITAGE CABINET,
DEPARTMENT OF PARKS**

APPELLEE

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

These matters came on for an evidentiary hearing on September 1, 2, and 3, 2021, at 9:30 a.m. EST, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, David Spears, was present and was not represented by legal counsel. The Agency/Appellee, Tourism, Arts and Heritage Cabinet, Department of Parks, was present and represented by the Hon. Evan Jones and the Hon. Donna Schneider. Appearing as Agency Representative was Shawn Estep.

These matters involved a ten (10) - day suspension, a fifteen (15) - day suspension, and a dismissal. The burden of proof was placed upon the Appellee by a preponderance of the evidence to show that the disciplinary actions issued were neither excessive nor erroneous.

These matters were consolidated for all purposes by Interim Order entered on June 8, 2021.

BACKGROUND

1. The Appellant is a Carpenter II with the Department of Parks at Barren River State Park (BRSP). He has been employed close to twenty (20) years. His work history shows a history of absenteeism. As a result, on October 9, 2015, he was issued a memorandum stating that, because of the absenteeism, any future unauthorized absences would require a medical certificate certifying his incapacity or any return-to-work restrictions, if applicable. (Appellee's Exhibit 2)

2. Following a serious automobile accident, the Appellant was detailed to special duty at the Franklin Welcome Center because he was unable to complete his previous carpenter duties. The Appellant received both the ten (10) - day and fifteen (15) - day

suspensions while detailed as a Travel Host at the Welcome Center. He remained at the Welcome Center from February 12, 2019, until sometime in approximately April or May 2020, at which time he was returned to carpenter duties at Barren River State Park (BRSP). Following his return to BRSP in Spring 2020, the Appellant was then dismissed, effective September 26, 2020.

TEN (10) - DAY SUSPENSION

3. The Appellant was issued a ten (10) - day suspension by letter of March 13, 2019, primarily for time and attendance matters and for failing to properly report his absences when they occurred. (Appellee's Exhibit 1). The suspension was based on 101 KAR 1:345, Section 1 (lack of good behavior and unsatisfactory performance of duties), and 101 KAR 2:102 (violation of classified leave).

4. **Shawn Estep** was called as the Appellee's first witness. He has served as the Assistant Director of Human Resources in the Cabinet and has served as the appointing authority. He made the final decision involving these disciplinary actions. He testified that the Appellant had served as a Carpenter II at BRSP until being involved in a serious automobile accident. Upon his return, with certain restrictions, the Appellant was then detailed to special duty at the Welcome Center in Franklin, effective February 16, 2019. He was placed there because, at that time, his physical limitations did not allow him to return to BRSP as a carpenter. The witness stated that, because the Appellant lived some distance away, he was approved to commute with pay each day, one hour to and from his residence to the Welcome Center. The witness explained that, shortly following the detail to the Welcome Center, he received a call from Supervisor Daniel Baker, complaining that the Appellant was not working all the hours he was scheduled for and was not calling in properly. The witness explained that, on February 19, 2019, the Appellant was scheduled to work at the Welcome Center, but failed to report, failed to notify Baker, and failed to request leave. This resulted in 7.5 hours of unauthorized leave without pay. On February 21, 2019, the witness testified that, although the Appellant called into the Welcome Center reporting his intended absence, he did not provide required documentation to cover that absence, resulting in 7.5 hours of unauthorized leave without pay. On February 22, 2019, the Appellant was scheduled to work, but failed to report, failed to notify Baker, and failed to request leave again resulting in 7.5 hours of unauthorized leave without pay.

FIFTEEN (15) - DAY SUSPENSION

5. Estep confirmed the details as cited in the fifteen (15) - day suspension letter of June 10, 2019. He specifically referred to the day of April 15, 2019, as being a scheduled workday, which the Appellant texted Baker to say, "I will not be in today." Because there was no medical documentation provided, pursuant to the time and attendance memo previously issued to the Appellant, the Agency deemed this was unauthorized leave without pay. The witness further added that, on April 18, 2019, the Appellant texted Baker referring to another tire blowout on his car that would result in his absence. This, again, was unauthorized leave without pay, pursuant to the time and attendance memo. The witness

stated that, on April 26, 2019, the Appellant texted Baker saying he would not be in because of various pains. However, because the Appellant failed to provide the required medical documentation upon his return, this day was also considered unauthorized leave without pay.

6. The Appellee's next witness was **Daniel Baker**. He has served as a supervisor at the Franklin Welcome Center, where his duties include making out the work schedules for the Center's employees, performing training, and assisting travelers. In 2019, he routinely scheduled two (2) employees per day to work. He added that he had a full-time employee who had stepped down and the Appellant was to replace him on special leave. He confirmed the testimony given by Estep as to the days of February 19, 21, and 22, 2019. He added that, on February 26, 2019, he questioned the Appellant as to why he did not notify him of his intended absence and the Appellant replied he did not think about it because his father was having serious heart problems. The witness stated that, following the ten (10) - day suspension, the Appellant's time and attendance somewhat improved for a short time. However, Baker stated that, on April 15, 2019, the Appellant texted him stating he would not be in to work and then the Appellant failed to reply to Baker's further questioning. There was no medical documentation provided to justify the absence and, as a result, this was deemed unauthorized leave without pay.

7. The witness further stated that, on April 18, 2019, the Appellant texted him he had a tire blowout and would not be coming to work, resulting in unauthorized leave without pay. On April 26, 2019, the witness stated that the Appellant texted him that he would not be in to work because of various head and neck pain. Once again, since the Appellant did not provide medical documentation as required by the time and attendance memo, this was regarded as unauthorized leave without pay. On June 3, 2019, the witness stated he received a text from the Appellant informing him that he would not be into work. Supervisor Baker informed him of the need to provide a health care statement upon return. The Appellant did not and the absence on June 3, 2019, was unauthorized leave without pay.

8. **Shawn Estep** was then recalled to testify regarding the dismissal action. He testified that, in the Fall of 2019, the Appellant wrote a letter to Executive Director Misty Judy asking to be returned to work at BRSP. (Appellee's Exhibit 9). The Appellant was then returned to BRSP as a carpenter and was there until he was dismissed in 2020. (Appellee's Exhibit 10). The witness explained that, prior to the dismissal, there had apparently been ongoing time and attendance and reporting issues. He introduced Appellee's Exhibit 11, the April 15, 2020 letter from Resort Park Manager Danny Sallee to the Appellant, detailing exactly how the reporting of absences was to be handled. The witness stated that, on April 2, 2020, the Appellant was scheduled to work and failed to do so. The Appellant texted Supervisor Spencer Clemmons that he would be absent, but failed to provide a reason for his absence and failed to respond to subsequent questions about the cause of his absence. Further, he did not provide any medical documentation for his absence, which resulted in an unauthorized leave without pay. On April 3, 2020, the Appellant was scheduled to work but texted Clemmons he would not be in. When asked for a reason, the Appellant responded six (6) hours later that he was worried about the COVID virus. He provided no medical documentation and was given an unauthorized leave without pay.

9. On May 14, 2020, the Appellant was scheduled to work, but did not notify Clemmons of the need to take leave and was given unauthorized leave without pay. On May 15, 2020, the Appellant was scheduled to work but did not notify Clemmons of the need to take leave, resulting in unauthorized leave without pay.

10. On May 28, 2020, the Appellant reported to work, out of uniform, after having been addressed the previous day for being out of uniform. After being directed to go home, change, and return, the Appellant failed to do so. This resulted in unauthorized leave without pay for a portion of his shift that day. The witness stated that, on May 29, 2020, the Appellant was scheduled to work but did not notify Clemmons of the need to take leave, resulting in unauthorized leave without pay.

11. The witness then introduced Appellee's Exhibit 12, Department Policy 01-01, Time Reporting. 01-01 B. Use of Time, which provides:

In accordance with 101 KAR 2:102, the administrative regulation governing leave, all employees MUST use leave for an absence on a regularly scheduled workday. ...an employee's failure to obtain prior approval for use of leave may result in the denial of such leave. The employee shall also be subject to disciplinary action.

12. The witness also introduced Appellee's Exhibit 13, Personnel Cabinet Employee Acknowledgment Form, Accurate Time Reporting. This was signed and acknowledged by the Appellant on April 8, 2015.

DISRUPTIVE BEHAVIOR AND INSUBORDINATION AS PART OF DISMISSAL

13. Estep, as appointing authority, was asked to explain his reasoning for the dismissal of the Appellant. He cited, among other things, various dates wherein he felt the Appellant had exhibited disruptive behavior and insubordination.

14. For example, it was reported to him that, on May 27, 2020, the Appellant appeared at work "out of uniform." The Appellant reported to work wearing a t-shirt with Old Fox Racer logo, shorts (not khaki), Buffalo Bills baseball cap, and deck shoes with no shoestrings or socks. After being questioned by Sallee following an argument with Sallee over whether other Park employees were properly dressed, the Appellant began shouting and yelling over Sallee in a very rude manner.

15. However, on being instructed to return home and change into uniform and come back to work, the Appellant refused to do so. Also, on May 27, 2020, after the altercation with Sallee, the Appellant went into the dining room and began taking pictures of the kitchen and dining room staff. Several employees asked the Appellant to stop, but he refused.

16. Also, on May 27, 2020, the Appellant got into an argument with Dana Johnson, Front Desk Supervisor, regarding whether a door should remain opened or closed. Following the argument with Johnson, the Appellant then walked out the door leaving it open and not following the directive memo posted on the door.

17. The witness reported that, on April 6, 2020, the Appellant was scheduled to work at the Golf Pro Shop, but it was reported by Supervisor Clemmons that he did not do so. Next, on Friday, May 1, 2020, the witness reported the Appellant had gotten into an argument with employee Joe Burke, who was pressure washing. The Appellant questioned Burke why he was apparently violating the dress policy by wearing jeans and this resulted in another verbal assault against Sallee regarding policy.

18. The witness explained he considered these instances just outlined to be in violation of Parks Policy 01-03, Employee Conduct and Person Appearance. This policy states, in pertinent part:

The Department of Parks policy on conduct and person appearance is that employee behavior, dress, grooming, and personal hygiene are to be appropriate for the work situation. Supervisors and managers are expected to communicate and monitor standards of employee conduct and appearance that will provide a professional, positive, and safe environment for employees, guests, and vendors.

1. All employees are expected to conduct themselves in an appropriate and professional manner at all times. Behavior that is disruptive to the workplace will not be tolerated.

2. Employees are expected to carry out assignments as directed by supervisor(s) if reasonably considered a part of the employee's job duties. Refusal of assignments may be considered insubordination on the part of the employee.

3. Employees should at all times exhibit honesty, cooperation, and courtesy with employees, visitors, and other personnel.

4. Employees are not to engage in inappropriate, loud, abusive, profane or threatening language or commit or threaten to commit, acts of violence, whether physical or non-physical.

19. The witness then introduced Appellee's Exhibit 15, a timeline of the progressive discipline previously imposed upon the Appellant. In addition, the witness explained that he had considered the Appellant's year-end 2017 and year-end 2018 Annual Employee Performance Evaluations when deciding the appropriate level of discipline for the Appellant. (Appellee's Exhibit 6 and 7). Both employee evaluations showed a rating of "needs improvement."

20. The Appellant's previous disciplinary actions outlined in Appellee's Exhibit 15 include a November 24, 2009 written reprimand; a September 20, 2010 fifteen (15) - day suspension; a May 19, 2015 two (2) - day suspension; a March 13, 2019 ten (10) - day

suspension; a June 10, 2019 fifteen (15) - day suspension; and a June 1, 2020 special leave with pay pending investigation. The witness then related the September 25, 2020 dismissal letter citing the reasons for dismissal as a lack of good behavior, poor work performance, disruptive behavior, insubordination, and unauthorized leave.

21. Appellee's next witness was **Laurie Spalding** (formally Googe). She has been an Investigator within the Human Resources Department for the prior three (3) years and conducted an investigation into some of the matters contained herein. She related that, in April 2020, she was sent to BRSP to investigate allegations of the Appellant's time and attendance issues and of not performing his job. During the course of her investigation, she took statements from Spencer Clemmons and Joe Burke.

22. On May 27 and 28, 2020, she was again dispatched to look into the time and attendance issues and unprofessional behavior previously related herein. She also investigated the issue of not being in uniform by the Appellant in addition to investigating his claims of harassment against him by others. She found no substantiation of any harassment claims. Regarding being out of uniform, the witness related the Appellant had admitted being out of uniform but claimed that other employees also were not in uniform. She testified that the investigation into the confrontation between Sallee and Appellant over the uniform issue concluded that each of those employees had called the other "an ass."

23. She determined that the incident regarding the Appellant taking pictures of dining room staff was substantiated and also determined, after talking with Spencer and Clemmons, that the confrontation between the Appellant and Sallee had intensified because of escalation by the Appellant.

24. Regarding the incident between Dana Johnson and the Appellant over the open door, this witness interviewed Johnson and she related that she heard a conversation between the Appellant and Sallee in which the Appellant yelled at Sallee, "who do you think you are?"

25. Her conclusion, following her investigation of these matters, was that: 1) the Appellant was not wearing his uniform regularly and 2) the Appellant had not been singled out. The witness also related that it was only upon on the second day of the Appellant refusing to wear his uniform – following specific instructions to do so - that Sallee sent the Appellant home to change and return. She added that, because the Appellant had no leave, this was unauthorized leave without pay.

26. Appellee's next witness was **Danny Sallee**. He has been the Resort Park Manager at BRSP for approximately four (4) years and has over thirty (30) years in the hotel and restaurant hospitality field.

27. He introduced Appellee's Exhibit 11; an April 15, 2020 letter, addressed to the Appellant, detailing the manner in which to call in for leave authorization. This was also signed by the Appellant. The witness felt this letter was necessary because of the Appellee's

Exhibit 10, the Appellant's failure to properly call in to report his absence on May 14 and 15, 2020.

28. The witness commented further on the May 27, 2020 incident in which the Appellant was out of uniform. The witness related the Appellant advised him he wanted new t-shirts, to which the witness replied he already had polo shirts that had been previously issued. After the Appellant became loud, rude, and questioned why the dining room staff were wearing personal clothes, this witness replied to him they were given approval because they were doing dirty cleanup work.

29. The following day, on May 28, 2020, the Appellant again appeared for work without being in appropriate uniform and was directed to leave and return to work in uniform. However, the Appellant did not return to work that day.

30. The next witness was **Mark Spencer**. He has been the Business Manager at BRSP for the past eight (8) years and has many years of management experience. Regarding the May 27, 2020 incident, he related that he had heard Sallee and the Appellant argue over not being in uniform and it became very loud. He also related he was told by dining room personnel that the Appellant was taking their picture without their permission and they had told Appellant to stop.

31. He then related all full-time employees had been issued five (5) new blue polo shirts sometime during April or May of 2020 and those shirts were the official uniform.

32. The next witness was **Spencer Clemmons**. He has been the Maintenance Supervisor at BRSP since 2016 and has worked with the Appellant since 2003-2004. He related that, over that period, the Appellant had missed a lot of work, but that most of the time, if not coming in, he would at least text.

33. The witness also addressed the April 15, 2020 letter of agreement issued by Sallee to Appellant as to how to properly report an intended absence to Clemmons. The witness explained that the Appellant did not follow those directions when calling in.

34. The witness also agreed with Sallee that all full-time employees should have had appropriate blue uniforms. He stated that his uniforms consisted of these blue shirts since 2015; therefore, he disputed the Appellant's claim that he did not have the necessary uniform. He expressly confirmed that he had given the Appellant five (5) blue shirts and a winter coat prior to April 2020.

35. The witness then addressed the April 6, 2020 incident wherein he had directed the Appellant to paint the Golf Pro Shop, but later found out that he did not go do that. On cross examination, the witness denied that he had given the Appellant a green shirt and had told him "that is your uniform." The witness concluded by stating that the Appellant was a very good worker when he chose to work, but that he became stressed very easily.

36. The Appellee's next witness was **Dana Johnson**. She has been the Front Desk Supervisor at BRSP for approximately eighteen (18) years. She addressed the May 27, 2020 "open door" incident and confirmed the conflict she had with the Appellant over whether the door should remain opened or closed.

37. The Appellee's next witness was **Naomi Walden**. She has been a hostess at BRSP for approximately sixteen (16) years. She related that her duties changed during the COVID-19 pandemic and she, among others, were directed to perform heavy cleaning duties during which they could wear personal clothing rather than uniforms. She confirmed the incident wherein the Appellant appeared in the dining room taking pictures of personnel, who objected. Walden also explained that employee Kala Thompson was upset at Spears' actions and this witness expressly heard the Appellant say he was "taking the pictures for the lawsuit."

38. Appellee's next witness was **Kellie Reynolds**. She has been an attendant at BRSP for approximately eighteen (18) years. She also confirmed that the dining room staff had their job duties changed during the COVID-19 pandemic and were assigned to do other duties, such as heavy cleaning. She added that, because of this, they were not required to wear their uniforms. She also confirmed the incident of the Appellant taking unwanted pictures of the dining room staff and she stated that she felt uncomfortable.

39. The Appellee announced closed.

40. The Appellant, **David Spears**, next called himself as his only witness.

TEN (10) - DAY SUSPENSION TESTIMONY

41. Regarding the February 19, 2019 absence, the Appellant stated that his father had recently had a heart attack and the Appellant was more concerned with that situation than with calling in. He added that neither he nor Baker had any contact information with which to call each other at that time.

42. Regarding February 21, 2019, the Appellant explained that he was tending to his father but called the Welcome Center and spoke to employee Erin Booth, telling her he would not be in the following day. He did not dispute the fact that he had no remaining authorized leave to use on those two (2) days. Likewise, he did not contest that, on February 22, 2019, he did not call in to report his intended absence and did not have any authorized leave to use.

FIFTEEN (15) - DAY SUSPENSION TESTIMONY

43. Regarding his April 15, 2019 absence, the Appellant testified that he had texted Baker at 8:04 a.m. advising him he would not be in. He did not deny that he failed to furnish medical documentation and, therefore, suffered leave without pay.

44. Regarding his April 18, 2019 absence, the Appellant testified that he had texted Baker telling him he would, "not be in" because of a second tire blowout that he had suffered that morning. He did not dispute that he had no authorized leave remaining and suffered leave without pay.

45. Regarding April 26, 2019, the Appellant explained that he texted Baker of his intended absence and did not dispute that he did not furnish medical documentation and had no authorized leave, therefore, incurring leave without pay.

46. Regarding June 3, 2019, the Appellant explained he texted Baker and informed him of his intended absence. He again admitted he did not provide medical documentation explaining the absence and suffered leave without pay. As to these four (4) dates referenced above, the Appellant stated that he was under the impression the Agency had already received doctor statements from his physician explaining his need to be absent for the period in question. However, there was no confirmation of this from any of the Agency personnel and they asserted they had never received any such documentation.

DISMISSAL TESTIMONY

47. The dismissal letter (Appellee's Exhibit 10) referred to April 2 and 3, 2020, as dates the Appellant was absent without authorized leave. The Appellant explained that, on the weekend prior, he had gone to Tennessee to check on some of his business interests as he had done routinely during the weekends. Because of his fear of COVID at that time and relying upon what he said was the Governor's Order to the public - "if you go out of state and return you must quarantine for fourteen (14) days" - the Appellant used this explanation as his reasons for absences on April 2 and 3, 2020. Regarding absences on May 14 and 15, 2020, the Appellant disputed Clemmons' previous testimony that the Appellant did not report his intended absences.

48. Regarding the May 28, 2020 "out of uniform" incident, the Appellant admitted he was sent home for being out of uniform and did not return. However, he testified that he had called in to report that he was not coming back. He does not dispute that he was charged with unauthorized leave for a portion of his shift that day.

INSUBORDINATION TESTIMONY

49. The Appellant confirmed that, on May 27, 2020, he was not wearing the proper uniform but insisted there was no policy on the kind of shoes or socks to wear. He added that he did not feel that he had any new shirts, but only old ones.

50. He also disputed previous testimony from Clemmons that he had been issued new uniforms. Regarding the May 28, 2020 incident with Sallee over "not being in uniform," and being ordered go home to change, the Appellant admitted that he did not do so. However, he argues that the park was closed during that day because of the COVID-19 pandemic and there were very few of the public in attendance. He added that he came back the next day,

May 29, 2020, wearing a green shirt that had been given to him by Spencer. Regarding the taking of pictures of dining room staff against their objections, the Appellant admitted he had acted improperly.

51. Regarding the May 27, 2020 incident with Johnson over the “open door”, the Appellant explained that he objected to touching the door because he had felt there had not been enough cleaning involved and he was concerned about his safety.

52. Regarding the failure to report to the Golf Pro Shop on April 6, 2020, the Appellant testified that he had reported to the shop at 7:30 a.m. and had waited thirty (30) minutes because no one was there. He explained that he found out the Golf Pro came in at 10:00 a.m. On cross-examination, the Appellant admitted that he knew the time and attendance policies and knew they were important to management. He further admitted he was aware of the need for medical documentation when requested. He also added that he had worked during the months of November and December 2019 and April through May 2020, wearing a green shirt and jeans because he did not have the uniforms that Clemmons said he had issued to him.

53. The Appellant closed.

APPLICABLE REGULATIONS AND POLICIES

(1) 101 KAR 1:345. Disciplinary Actions

Section 1. General Provision. Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.

(2) 101 KAR 2:102. Classified leave general requirements.

Section 1. Annual Leave.

(2)(e) An employee shall be able to use annual leave for an absence on a regularly scheduled workday.

Section 2. Sick Leave.

(5) Application for sick leave and supporting documentation.

(a) An employee shall file a written application for sick leave with or without pay within a reasonable time.

(b) Except for an emergency illness, an employee shall request advance approval for sick leave for medical, dental, or optical examinations, and for sick leave without pay.

(c) If the employee is too ill to work, the employee shall notify the immediate supervisor or other designated person. Failure, without good cause, to do so in a

reasonable period of time shall be cause for denial of sick leave for the period of absence.

(d) An appointing authority may, for good cause and on notice, require an employee to supply supporting evidence in order to receive sick leave.

(e) A medical certificate may be required, signed by a licensed practitioner and certifying to the employee's incapacity, examination, or treatment.

(3) Department of Parks Policy 01-01B. Use of Leave

In accordance with 101 KAR 2:102, the administrative regulation covering leave, all employees MUST use leave for an absence on a regularly scheduled workday. Except for emergency sick leave an employee must obtain prior approval from their supervisor to use leave. Such approval shall be supported by the TAHC Leave/ADL form, signed by both the employee and the supervisor.

Annual, sick, and compensatory leave must be used in increments of at least one-quarter hours.

An employee's failure to obtain prior approval for use of leave may result in the denial of such leave. The employee will also be subject to disciplinary action.

(4) Department of Parks Policy 01-03 Employee Conduct and Person Appearance.

The Department of Parks policy on conduct and person appearance is that employee behavior, dress, grooming, and personal hygiene are to be appropriate for the work situation. Supervisors and managers are expected to communicate and monitor standards of employee conduct and appearance that will provide a professional, positive, and safe environment for employees, guests, and vendors.

1. All employees are expected to conduct themselves in an appropriate and professional manner at all times. Behavior that is disruptive to the workplace will not be tolerated.

2. Employees are expected to carry out assignments as directed by supervisor(s) if reasonably considered a part of the employee's job duties. Refusal of assignments may be considered insubordination on the part of the employee.

3. Employees should at all times exhibit honesty, cooperation, and courtesy with employees, visitors, and other personnel.

4. Employees are not to engage in inappropriate, loud, abusive, profane or threatening language or commit or threaten to commit, acts of violence, whether physical or non-physical.

FINDINGS OF FACT

1. The Appellant's failure to call in or report to work on February 19 and 22, 2019, properly resulted in being given unauthorized leave without pay (LNPU).
2. Although the Appellant followed proper call-in procedures on February 21, 2019, he failed to provide required medical documentation to support his absence, properly resulting in LNPU.
3. The Appellant's absences on April 15, 19, and 26, 2019, were properly given LNPU because of the Appellant's failure to provide required medical documentation. The same finding is true for June 3, 2019.
4. The Appellant was properly given LNPU for his absences on April 2, 3, 2020, and May 14, 15, 28, and 29, 2020.
5. The Hearing Officer finds the Appellant's actions on May 27 and 28, 2020, in his interactions with Park Manager Sallee regarding the "wearing the proper uniform" issue and the escalation that followed were disruptive and insubordinate, and in violation of DOP Policy 01-03.
6. The Hearing Officer also finds the Appellant's actions on April 6, 2020, in refusing to perform a job at the Pro Golf Shop, was insubordinate.
7. Each of the Appellant's failures to properly call in and failure to provide the medical documentation appropriately required by the Agency's time and attendance memo was a violation of 101 KAR 1:345 and 101 KAR 2:102.

CONCLUSIONS OF LAW

The Hearing Officer concludes as a matter of law that the Appellee carried its burden of proof by a preponderance of the evidence to show the ten (10) – day suspension, the fifteen (15) – day suspension, and the dismissal of the Appellant were neither excessive nor erroneous under all the surrounding circumstances.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **DAVID SPEARS V. TOURISM, ARTS AND HERITAGE CABINET, DEPARTMENT OF PARKS (APPEAL NOS. 2019-108, 2019-166, AND 2019-216)** 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 R. Hanson Williams** this 21 day of October, 2021.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

David Spears
Hon. Evan Jones
Hon. Donna Schneiter
Hon. Rosemary Holbrook (Personnel Cabinet)