

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-107**

BENJAMIN STANLEY

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

** ** ** ** **

The Board, at its regular July 2017 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated April 17, 2017, Appellee's exceptions, Appellant's objection to Appellee's exceptions 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 number 10 and substitute the following:

10. Ms. Miniard confirmed the contents of the statement, which explained that on February 16, 2016 (Appellant's first day back), he was on the second floor getting his personal belongings and looked at her "mean." She overheard Fran Vitatoe instruct the Appellant to leave the second floor and heard him reply that he was getting his personal things. She stated that even though her office was in the back, approximately 50 feet away, she could hear him. In her statement (Appellee's Exhibit 4), Ms. Miniard stated that the Appellant started yelling loudly at Ms. Vitatoe. Ms. Miniard described his tone as "violent." In her statement, Ms. Miniard also described an incident on February 2, 2016, when the Appellant came to her desk complaining that the younger girls were

laughing. Ms. Miniard wrote in her report that she told him just to laugh at them. In addition, she alleges that the Appellant said he would like to see her in something more comfortable outside the office, like in a bedroom. Ms. Miniard stated she was on vacation following this incident, and just returned on February 15, 2016. She included it in her statement on February 16, 2016.

B. **Delete** Background paragraph 43 and substitute the following:

43. Further, regarding the statement and testimony of Traci Miniard, this witness adamantly denied yelling at Vitatoe, or anyone else, or at any time becoming violent and having the look on his face of a madman. The Appellant also denied that he made a statement to Ms. Miniard that he would like to see her in something more comfortable.

C. **Delete** Finding of Fact 5 through 10 and substitute the following:

5. On February 16, 2016, although the Appellant did not curse or become physical towards anyone, he was clearly upset about receiving the written reprimand and being assigned to the first floor. When confronted by Ms. Vitatoe that he had to leave the floor and go to his new workstation, the Appellant became loud and disruptive, and wanted to make sure everyone on the floor knew what was going on. According to the witnesses, he had an angry look on his face, and his behavior disrupted work activities of others in the office. The Board also finds that the Appellant took considerably longer than needed to gather his belongings and report to the first floor.

6. Approximately two hours after receiving the written reprimand from Gary Farmer on February 12, 2016, the Appellant sent a Facebook message to Family Support Specialist II Gwen Arwood, who is the mother of Heather Arwood. The Facebook message from the Appellant to Gwen Arwood specifically addressed the allegations

contained in the written reprimand and violated the instruction the Appellant had been given by Gary Farmer.

7. The Appellant made an inappropriate comment to coworker Traci Miniard on February 2, 2016, when he stated he would like to see her in something more comfortable outside the office, like a bedroom.

8. The Board specifically rejects the Hearing Officer's Finding that Heather Arwood's credibility was questionable regarding the actions on February 16, 2016. Ms. Arwood's emotional state at the hearing was understandable, given the totality of events which occurred in this case. More importantly, however, Ms. Arwood's testimony regarding the events of February 16, 2016, is consistent with her coworkers' who observed the events on that date.

9. The Board finds that under all the surrounding circumstances, the Appellant's actions constituted a lack of good behavior under 101 KAR 1:345.

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

1. The Board concludes that based on the Findings of Fact, the Appellant engaged in inappropriate and unprofessional behavior, and his actions constituted a lack of good behavior for which he may be disciplined, pursuant to 101 KAR 1:345, Section 1.

2. The Board concluded the Appellee carried its burden of proof that there was just cause for the five-day suspension of Appellant, and the penalty was neither excessive nor erroneous.

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

IT IS HEREBY ORDERED that the appeal of **BENJAMIN STANLEY V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2016-107)** is **DISMISSED**.

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 **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 17th day of July, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
SECRETARY

A copy hereof this day mailed to:

Hon. Kathleen Hines
Hon. Otis Doan, Jr.
Mr. Jay Klein

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-107

BENJAMIN STANLEY

APPELLANT

VS.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

** ** *

This matter came on for an evidentiary hearing on February 28, 2017, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Benjamin Stanley, was present and was represented by the Hon. Otis Doan, Jr. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Kathleen Hines. Also appearing as Agency representative was Darlene Staniford.

This matter involves a five-day suspension given the Appellant by letter dated April 15, 2016. (A copy is attached hereto and incorporated herein as **Recommended Order Attachment A.**) In summary, the letter cites the Appellant for lack of good behavior by engaging in a pattern of inappropriate, unprofessional, and insubordinate behavior by failing to follow the directives of his supervisors. The burden of proof was placed upon the Appellee by a preponderance of the evidence to show that the suspension was appropriate and not excessive under all surrounding circumstances.

BACKGROUND

1. Appellee's first witness was **Fran Vitatoe**. She has been employed by the Cabinet in the Harlan County office as the Appeal Service Specialist Supervisor for the past two and a half years. She is not an immediate supervisor of the Appellant, but is one of four co-supervisors who works with him.

2. The witness identified Appellee's Exhibit 1, a February 12, 2016 written reprimand issued to the Appellant by supervisor Gary Farmer. Next, she introduced Appellee's Exhibit 2, the April 15, 2016 suspension letter.

3. The witness explained the basis of the reprimand was a complaint by coworker Heather Arwood against the Appellant for allegedly touching her hair in an unwanted manner during the week of December 14 through December 17, 2015. Additionally, Vitatoe reported that sometime on or about December 22, 2015, the Appellant had made a comment to Arwood of, "Are you going to turn me in for playing with your hair, like you did the trainer?" This resulted in the reprimand by Farmer and a directive given by Farmer for the Appellant to move from the second floor to a vacant office in the back of the first floor. After being off work for approximately two days, the Appellant returned and was found on the second floor packing personal belongings. This witness then instructed him to go to the first floor immediately. She claims that he took some time to pack his personal effects before leaving and became rather loud.

4. On cross-examination, the witness stated that she played no part in investigating the reported incident resulting in the reprimand. Also, she stated while the Appellant was stationed on the second floor, she never heard him say anything to Heather Arwood. Following the collection of his personal items, the Appellant then proceeded to the first floor.

5. The next witness was **Jennifer Fuson**. She is employed by the Cabinet in the Harlan County office, having served 14 years with the Agency and the past four years as a Field Service Supervisor. She was the Appellant's supervisor from December 2015 forward.

6. The witness related she was familiar with Mr. Farmer's directive for the Appellant to move from the second floor to the first floor, and was surprised that on the first day of his return, she was told by other workers that the Appellant was still on the second floor. She related that she contacted Mrs. Vitatoe, who then instructed the Appellant to leave the second floor. The witness stated that, in her opinion, the Appellant appeared angry because he said in a loud voice, "Is everyone hearing this?" referring to the five-minute time limit to collect his personal effects.

7. The witness related that some 15 minutes later, the Appellant was still there, but had appeared calmer and stated that he left after approximately 45 minutes on the floor. The witness explained that while the scene with the Appellant was occurring, other employees had come to her office, causing them to not be able to get their work done.

8. On cross-examination, the witness related that she was not at the February 12, 2016 meeting between Farmer and the Appellant, which resulted in the written reprimand. However, on Appellant's return on February 16, 2016, she also explained she never saw Appellant go anywhere towards Heather Arwood's cubicle. Neither did she hear him curse or see him put his hands on anyone that day.

9. Appellee's next witness was **Traci Miniard**, formerly Traci Joseph. She has been employed at the Agency's Harlan office for approximately the past four years as a Field Service Specialist II. She introduced Appellee's Exhibit 4, her February 16, 2016 written statement.

10. She confirmed the contents of the statement, which explained that on February 16, 2016 (Appellant's first day back), he was on the second floor getting his effects and looked at her "mean." She overheard Fran Vitatoe instruct the Appellant to leave the second floor and heard him reply that he was getting his personal things. She stated that even though her office was in the back, approximately 50 feet away, she could hear him.

11. On cross-examination, the witness confirmed that Appellee's Exhibit 4 statement was the only statement she ever made regarding the incident. She also confirmed that those not on call service, on the first floor, went to the break room during these verbal exchanges.

12. The next witness was **Jay Klein**. He has been designated the Appointing Authority to sign letters and testify on behalf of the Regional Appointing Authority. He introduced Appellee's Exhibit 5, a March 1, 2016 request for Major Disciplinary Action (MDA). He testified that as this type of request arrives, his staff does some investigation and drafts a preliminary response; then in deciding the discipline to be imposed, he looks for similar cases and looks at the seriousness of the issues.

13. He explained that he decided to impose a five-day suspension because of the prior written reprimand and because of the complaint filed by Heather Arwood, in the fear that allowing a continuation of such alleged behavior might have led to sexual harassment.

14. On cross-examination, the witness testified that the request for Major Disciplinary Action (MDA) originated from Darlene Staniford. He also confirmed that Staniford's summary of events stated that Mr. Stanley (the Appellant) had requested to be moved to the first floor, rather than prior testimony that Mr. Farmer had directed same. Also noting the MDA, the witness testified there was nothing in writing informing the Appellant "not to contact others about issues in the written reprimand." This was one of the major basis for issuing the suspension.

15. The witness concluded by stating that after the issuance of an MDA, the Office of Human Resources usually sends a notice to the affected employee saying that he can respond to this. He does not know if this notice was sent to the Appellant in this incident.

16. Appellee's next witness was **Heather Arwood**. She has been employed with the Harlan Office of the Agency since July 1, 2015, as an Appeal Service Specialist II.

17. She testified that the Appellant was her coworker and her cubicle on the second floor was approximately 15 to 20 feet from him.

18. She identified Appellee's Exhibit 6, her February 16, 2016 statement regarding the actions of that morning. She testified that on that morning the Appellant had come to the second floor and asked "where's my stuff" to Bobby Dixon. She stated he then again asked the same question, but was getting slightly louder. She said that while working on the call center with a client, she felt she needed to put the phone on mute so they could not hear what he was saying.

19. She also confirmed that at some point the Appellant had said, "I only have five minutes to get my stuff." She then asked Jennifer Fuson what to do because she was becoming afraid. She testified that she went to her mother's office (Gwen Arwood), until the Appellant left the floor.

20. The witness testified that she felt scared during the time when the Appellant was getting his personal effects and was scared by his speech. On cross-examination, the witness admitted that she did not hear the Appellant say anything to her on February 16, 2016. (**Hearing Officer Note:** At this point, the witness broke down emotionally, began tearing, and stated that she was "scared to be here in the room with him" today, meaning the evidentiary hearing.)

21. The next witness was **Gary Farmer**. He was the Family Support Service Region Administrator Associate in Harlan County office at the time of the incident. He testified that since December 1, 2015, he has supervised the Appellant and done his evaluations.

22. The witness confirmed the February 12, 2016 reprimand and testified that he instructed the Appellant not to have any contact with the others involved in the reprimand issues. He also stated he told the Appellant that he would be moving his workstation.

23. The witness also stated that later that day, he was informed that the Appellant had contacted Gwen Arwood, the mother of Heather Arwood, online. The message from the Appellant to Mrs. Arwood stated, "Gwen, why is your daughter doing this to me? That is not true, I never touched her once, let alone twice, hair. She alleged I touched her hair. I am so hurt, I thought you and your family were my friends." The witness also indicated that on February 18, 2016, a day on which the Appellant had leave time, he did come to the office. The witness instructed him that he would have to leave the building and the Appellant did so.

24. On cross-examination, the witness was directed to the written reprimand and confirmed that there was no mention that the Appellant was to have no contact with anyone and further stated that there was no other directive as to same.

25. The witness then identified Appellant's Exhibit 1, the year-end 2016 evaluation performed by the witness. This was scored as a 406 "Highly Effective." It should be noted that during the first interim evaluation of 2016, the Appellant did receive the written reprimand, a 60-day temporary assignment to Bell County and a five-day suspension.

26. However, the remaining comments for the remainder of the year are under the following:

a. **JOB TASKS:** Ben is currently on call services and back up supportive services, he is able to transition to any job function requested to meet client needs along with the needs of the agency.

b. **ADAPTABILITY / INITIATIVE:** Ben informs supervisor of any problems. He communicates well with clients and is courteous and professional to them. Ben works as a team member and is willing to assist others when requested. Ben has had no refractions for conduct this interim period.

The Appellant's 2015 evaluation (Appellant's Exhibit 2), showed a rating of 376, "Highly Effective." During this period under "ADAPTABILITY", it is routinely noted that:

c) "Ben informs supervisor of any problems. He communicates with clients and staff always being courteous. Ben works well as a team member and willing to assist others when needed. Ben has had no conduct infractions this period."

27. Farmer continued to say that although the Appellant was upset at receiving the reprimand, he took no overt action. He also confirmed that on February 16, 2016, the Appellant said or did nothing that was directed at Heather Arwood.

28. The witness then introduced Appellant's Exhibit 3, the year-end 2014 evaluation on which the Appellant received a score of 446, "Highly Effective."

29. The Appellee's next witness was **Gwen Arwood**. She is employed as a Call Service Worker at the Harlan office of the Agency. She introduced Appellee's Exhibit 8, the undated 2016 online message from the Appellant. She confirmed that in this message the Appellant stated that he had never touched her daughter. She also confirmed that this was the only contact she ever received from him concerning the matter, and has never talked to him about this.

30. Appellee's next witness was **John Robbins**. He was employed as the Field Service Supervisor at the Bell County office in early 2016. He supervised the Appellant there from February through March 2016, while the Appellant was there on temporary assignment. He stated there was one incident with a sign-out log upon the Appellant's first arrival in the office. He confirmed there was a misunderstanding as to why the Appellant had to fill in the sign-in and sign-out log, but it was quickly cleared up.

31. Appellee's next witness was **Darlene Staniford**. She is now a Service Region Administrator Associate (SRAA) in Grayson, Kentucky. During June 6, 2016 through November 1, 2016 she was an SRAA. She confirmed that the MDA originated with her. She testified that, regarding the written reprimand, she had received some information from Heather Arwood about the incident. She testified that Gary Farmer had delivered it to the Appellant since she was some four hour away.

32. The Appellee closed.

33. The Appellant's first witness was **Bobby Dixon**. From March 2014 through October 2016, he was employed as a Family Support Specialist II in the Harlan County office. He is now employed at Berea College as a Service Coordinator. He formerly worked with the Appellant.

34. Regarding the February 16, 2016 incident where the Appellant was on the second floor claiming his personal effects, the witness testified that he was present, and testified that the Appellant did raise his voice some. However, he stated this was after Fran Vitatoe had first raised her voice to him. He added that during the matter, the Appellant never cursed or took physical actions toward Vitatoe. Upon cross-examination, the witness testified that the incident between Vitatoe and the Appellant on February 16 lasted approximately two to three minutes. He testified that he prepared a written statement; however, he no longer has it and does not know what happened to it.

35. Appellant's next witness was **Howard York**. He has been employed with a private enterprise since July 2016. Prior to that time, he was employed with the Agency from June 2014 through June 2016 as a Support Specialist I. He has known the Appellant since 2014.

36. He testified that on February 16, 2016, the Appellant was collecting his personal effects, that he (York) could hear the voices of Vitatoe and Appellant, both slightly elevated. He also testified that he made a written statement concerning the matter and gave it to Fran Vitatoe and to Amber Burkhart. He does not know what happened to his statement. He also added that during his two years with the Agency, he never saw the Appellant say anything inappropriate to anyone.

37) The Appellant, **Benjamin Stanley**, testified on his own behalf. He has been employed by the Cabinet for the past 33 years. From 2010 until present, he has been a Family Support Specialist III.

38) The witness testified as to receiving the written reprimand at approximately 4:15pm on Friday, February 12, 2016. He said he had never heard the allegations before which were contained in the inquiry initiated by Heather Arwood. He freely testified that upon receiving the report, he became upset.

39) He also stated that supervisor Gary Farmer and he agreed he would move to the first floor. He states that he was not told to not contact Gwen Arwood, the mother of Heather Arwood. Instead, he testified that he considered her his friend and, therefore, sent her a Facebook message (Appellee's Exhibit 8) at approximately 6:00 p.m. that day. He went on to say that he never contacted Heather Arwood, nor did he tell her mother to tell her to change her story. He also denied ever touching Heather or ever being in her cubicle. He testified that, as to the request for Major Disciplinary Action (MDA), he was never given a copy from which to respond, contrasting what earlier testimony said should have happened.

40) Regarding February 16, 2016, the Appellant confirmed that he had been told to report to the first floor, but did not know exactly where. Since Gary Farmer was not there to ask, he went to the second floor to begin compiling his personal effects.

41) He added that Jennifer Fuson said nothing, however, Fran Vitatoe came in and told him he had five minutes to leave the floor. He believes it actually took him about 20 minutes to pack and leave.

42) He stated that he was shocked to get the reprimand just days following his yearly evaluation. He also confirmed that on February 18, 2016, his day off, he came to the building to retrieve some things, as there was no rule against it. However, he was told by Farmer to leave the building.

43) Further, regarding the statement and testimony of Traci Joseph, this witness adamantly denied yelling at Vitatoe, or anyone else, nor at any time becoming violent and having the look on his face of a madman.

44) Finally, the witness testified that as to the Facebook post sent to Gwen Arwood, (Appellee's Exhibit 8) he had no threatening intent at all; he was merely expressing his disappointment at her daughter's actions because he thought they were friends.

45) Appellant closed.

FINDINGS OF FACT

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

1. The Appellant was given a written reprimand February 12, 2016, following a complaint by coworker Heather Arwood that he had touched her hair during the week of December 14-17, 2015.
2. This was apparently the first time Appellant was aware of such claims. As a result, Appellant became somewhat upset. He and Supervisor Gary Farmer agreed it would be best if he moved from his second floor office to one on the first floor.
3. After being off from work until February 16, 2016, Appellant returned to work. Farmer was not there, so the Appellant went to the second floor to retrieve his personal effects, not knowing exactly where to report on the first floor.
4. He was soon confronted by Fran Vitatoe, who told him he had five minutes to leave the floor. The voices of both Vitatoe and the Appellant became somewhat raised during this discussion. Vitatoe confirmed that at no time then did the Appellant say anything to or go near Heather Arwood. Nor did she hear him curse or become physical toward anyone.
5. The testimony of Traci Miniard that the Appellant, on his first day back to work, looked at her "with a mean face," borders on laughable, and is irrelevant as a basis for the suspension.
6. Darlene Staniford initiated the request for Major Disciplinary Action (MDA) against the Appellant, based on reports given to her. She acknowledged her knowledge about the written reprimand (initiated by Heather Arwood's complaints) came primarily from Arwood. The reprimand then became the impetus, which brought about the complained of behavior as the basis of the suspension.
7. Another part of the suspension rested upon the Appellant supposedly ignoring a directive from Farmer not to contact anyone involved with the reprimand issues. The Appellant's Facebook contact with Gwen Arwood questioning her daughter's motives was not a violation, as the reprimand was based on Heather Arwood's claims, not her mother's. In addition, Gwen Arwood testified this was the only message she ever received and has never discussed the merits of the reprimand with him.

8. The Hearing Officer seriously questions the credibility of Heather Arwood as to her observation of the Appellant's actions on February 16, 2016. Her emotional state at the evidentiary hearing gives rise as to the reliability of her complaints, which resulted in the written reprimand.

9. The Appellant's year-end evaluations for 2014-2016 were scored, respectively; 446, 376, and 406. All are in the "Highly Effective" range. The latter two were scored by Gary Farmer.

10. Under all surrounding circumstances, the Appellant's actions did not constitute lack of good behavior under 101 KSR 1:345.

CONCLUSIONS OF LAW

The Hearing Officer concludes as a matter of law that the Appellee failed to carry its burden of proof by a preponderance of the evidence to show that the five-day suspension was neither excessive nor erroneous in light of all surrounding circumstance.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **BENJAMIN STANLEY VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2016-107)** be **SUSTAINED**.

The Appellee is directed to rescind the five-day suspension without pay that it imposed on Appellant, **to reimburse Appellant for the amount of pay that was withheld from him because of the five-day suspension, to reimburse Appellant for any leave time he used attending the hearing and any pre-hearing conferences at the Board, and to 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).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

Each Party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer Hanson Williams** this 17th day of April, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Kathleen Hines

Hon. Otis Doan, Jr.



CABINET FOR HEALTH AND FAMILY SERVICES

Matthew G. Bevin
Governor

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Vickie Yates Brown Glisson
Secretary

April 15, 2016

Benjamin F. Stanley

Re: Five (5) Day Suspension

Dear Mr. Stanley:

Based on the authority of KRS 18A.095 and 101 KAR 1:345, you are hereby notified that you are officially suspended from duty and pay for a period of five (5) working days. The effective dates of your suspension are April 18, 2016; April 19, 2016; April 20, 2016; April 21, 2016; and April 22, 2016.

In accordance with 101 KAR 1:345, Section 1, you are being suspended from your position as a Family Support Specialist III with the Department for Community Based Services, East Service Region for the following specific reasons:

Lack of Good Behavior: As reported by Service Region Administrator, Bobbi Jo Frye, despite prior corrective efforts, you continue to engage in a pattern of inappropriate, unprofessional, and insubordinate behavior by failing to follow the directives of your supervisors.

The Cabinet for Health and Family Services' (CHFS) Personnel Procedures 2.1, Employee Conduct, Purpose states in part, "CHFS expects its employees to maintain a high standard of conduct and professional behavior, including outside of work, to maintain the public's confidence in the integrity of its government and public servants. (See Guide to the Executive Branch Code of Ethics) Actions in violation of this duty as a public servant may lead to corrective or disciplinary action, up to and including dismissal." CHFS also expects a "respectful and professional work environment, free from any form of harassment and violence. Violation of policies and procedures, unsatisfactory performance of duties, and/or failure to exhibit good behavior may lead to corrective or disciplinary action, up to and including dismissal."



CHFS Personnel Procedures 2.1, Employee Conduct, *Lack of Good Behavior*, requires employees to "Not engage in inappropriate, disrespectful demeaning, and/or abusive behavior such as, but not limited to (1) loud, abusive, profane, foul, obscene, vulgar, insulting, or threatening language."

CHFS Personnel Procedures 2.1, Employee Conduct, *Duties*, requires employees to "Carry out assignments as directed by supervisors. If employees have questions about assignments, they should request private meeting with their supervisors to explain the problem or seek further information." Also, employees are required to "Remain in their assigned work areas during working hours, not disturb or disrupt other employees, or enter unauthorized work areas without permission."

As a Family Support Specialist III, you are responsible for reviewing the work of Family Support Specialists I and II and also for having program knowledge. You are to behave in a professional and appropriate manner that should set the example for other employees.

On Friday, February 12, 2016, at approximately 4:00 p.m., Service Region Administrator Associate (SRAA) Gary Farmer issued you a written reprimand for inappropriate and unprofessional behavior and instructed you to not contact anyone regarding the issues in the written reprimand. You were aware that Family Support Specialist I (FSSI) Heather Arwood was a party in this issue for which you received the written reprimand. At 6:01 p.m., on this same date, you sent a Facebook message to Family Support Specialist II (FSSII) Gwen Arwood. Further, you knew FSSII Gwen Arwood is the mother of FSSI Heather Arwood. In the Facebook message, you stated, "Gwen why is your daughter doing this to me that is not true I never touched her once let alone twice hair she alleged I touched her hair I am so hurt I thought you and yoiur [sic] family were my friends."

After receiving the written reprimand, SRAA Farmer also notified you that your computer would be moved to the first floor of the Harlan County DCBS office and you were not to be back on the second floor. Mr. Farmer directed you to report to your new work station on the first floor effective Monday, February 15, 2016. Field Services Supervisor (FSSV) Fran Vitatoe was a witness to this directive being issued to you. You were on leave on Monday, February 15, 2016. However, on February 16, 2016, upon arriving for work at 8:00 a.m., you went directly to the second floor. You went back to your old desk on the second floor and sat down. FSSV Jennifer Fuson reported that you came to her office and asked where you were moved to. She reminded you that you were on the first floor. You were then observed walking toward your office by Family Support Specialist I (FSS I) Traci Joseph. She stated that you gave her a very mean look "like you could knock my head off." You continued back to your old desk on the second floor and sat down. FSSV Vitatoe approached you and stated, "You have been moved to the first floor, you need to leave the second floor immediately." You replied, "Are you serious, I have personal things I need to pack." Ms. Vitatoe stated that she could pack your things. You replied to her, "No, I will do it myself." You became very loud at this time. Ms. Vitatoe then advised you to watch your tone, and that you had five (5) minutes to pack up and go to the first floor. You replied, "Is everyone hearing this?" You then walked away.

However, fifteen (15) minutes later, you were still on the second floor. Ms. Fuson told you that you were needed on call services and could move your things later during a break. You replied, "No" you weren't moving your things during your break, you were doing it now. This action was insubordinate in nature as you should have followed the directives of Ms. Vitatoe by going to the first floor and signing on to call services. Further, your actions were inappropriate and unprofessional in nature by causing co-workers to be alarmed and disrupted.

- Family Support Specialist I (FSSI) Teana Burns wrote, "Ben was being very rude and loud, so loud I muted the call I was on so the client could not hear what was going on. Ben's tone of voice was very scary to me."
- FSS I Heather Arwood stated that your interaction caused her to become really nervous. So, she ran out the door to the Annex which is the leased property that adjoins the main building at 115 South Cumberland Avenue.
- You were later observed by Family Support Specialist I (FSS I) Teana Burns on the second floor using the copier after being advised by your supervisors not to be on the second floor.

You continued to exhibit insubordinate and unprofessional behavior as you had requested and were approved for leave on February 18, 2016 and February 19, 2016. However, on February 18, 2016 at 9 a.m., you showed up at work and were observed at your desk by SRAA Farmer going through papers. Mr. Farmer asked you if you were working and you replied, "I am off the clock and getting items that I don't want any of you going through." You continued to state that you were being "railroaded." Mr. Farmer explained that unless you were reporting to work, you would need to exit the building. You were loud, argumentative and stated, "Do I need to bring my attorney?" You were again asked to leave the building unless you were reporting to work. Mr. Farmer was standing by the door to insure that you left the property. You then stated, "OK big guy, I will leave when you quit looking out the door."

- Family Support Specialist III (FSS III) Regina Hall has an office across from your work station. She was in her office and could overhear some of this exchange.

Additionally, the Appointing Authority temporarily assigned you to the Bell County Family Support office effective on February 17, 2016. After this temporary assignment became effective, you continued to send messages to your co-workers in the Harlan County Family Support Office.

- On February 18, 2016 at 8:06 p.m., FSS III Hall received a Facebook message where you asked, Regina do you have any idea why Gary [Farmer] was in my office before I was there two min. today?"
- Family Support Specialist II (FSSII) Tiffany Stewart received messages from you asking if SRAA Farmer had issued a gag order.

While at the Bell County office, you again were insubordinate when you initially refused to sign in on the sign in/out log. Field Services Supervisor (FSS) John Robbins approached you about this issue. You stated, "I misunderstood what the OSA wanted regarding sign in." You then complied with the procedures.

Your inappropriate and unprofessional actions constitute insubordination which violates the DCBS' Standards of Practice (SOP) 1.1, Ethical Practice. Additionally, your actions violate the Cabinet for Health and Family Services' Personnel Procedure 2.1, Employee Conduct. Further, your actions constitute lack of good behavior for which you may be disciplined pursuant to 101 KAR 1:345, Section 1.

Lack of Good Behavior: As reported by Service Region Administrator (SRA) Bobbi Jo Frye, you engaged in inappropriate, unprofessional, and lewd behavior in the workplace.

The Cabinet for Health and Family Services' (CHFS) Personnel Procedures 2.1, Employee Conduct, *Purpose* states in part, CHFS expects its employees to maintain a high standard of conduct and professional behavior, including outside of work, to maintain the public's confidence in the integrity of its government and public servants. (See Guide to the Executive Branch Code of Ethics) Actions in violation of this duty as a public servant may lead to corrective or disciplinary action, up to and including dismissal. CHFS also expects a respectful and professional work environment, free from any form of harassment and violence. Violation of policies and procedures, unsatisfactory performance of duties, and/or failure to exhibit good behavior may lead to corrective or disciplinary action, up to and including dismissal.

Family Support Specialist I (FSSI) Traci Joseph reported that at approximately 9:45 a.m. on February 2, 2016, you came to her desk complaining about the younger female employees laughing. Ms. Joseph told you that they are just young. You then stated that you would like to see Ms. Joseph in something more comfortable outside the office like in a bedroom.

Your actions are inappropriate and unprofessional behavior which violates the DCBS' Standards of Practice (SOP) 1.1, Ethical Practice. Additionally, your actions violate the Cabinet for Health and Family Services' Personnel Procedure 2.1, Employee Conduct. Further, your actions constitute lack of good behavior for which you may be disciplined pursuant to 101 KAR 1:345, Section 1.

You previously received the following action(s):

<u>DATE</u>	<u>ACTION</u>	<u>REASON</u>
February 12, 2016	Written Reprimand	Inappropriate and Unprofessional Behavior
September 26, 2012	Verbal Warning	Inappropriate and Unprofessional Behavior

Further incidents in violation of policy may lead to further and more severe disciplinary action, up to and including dismissal.

Benjamin F. Stanley

April 15, 2016

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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 personal problems that may be affecting your job performance. KEAP can be reached at 1-800-445-5327 or (502) 564-5788.

As you are an employee with status, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the day of receipt. To appeal, you must complete the attached form and direct it to the address indicated on the form. Copies of KRS 18A.095 and 101 KAR 1:365 concerning appeal and hearing procedures are enclosed.

Sincerely,



Tresa Straw
Appointing Authority

TS:jc

Attachments

cc: Secretary Thomas Stephens, Personnel Cabinet
Commissioner Adria Johnson, DCBS
Service Region Administrator Bobbi Jo Frye, East Service Region
Cabinet Personnel File