

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-176**

TIFFANY STINE

APPELLANT

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

**JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF CRIMINAL JUSTICE TRAINING
J. MICHAEL BROWN, APPOINTING AUTHORITY**

APPELLEE

** ** *

The Board at its regular February 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated December 16, 2014, having considered Appellant's exceptions and Appellee's response, 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, 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 20th day of February, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Gerald Ross
Hon. Paul Fauri

Received

JAN 12 2015

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
Appeal Number 2014-176**

Personnel Board

TIFFANY W. STINE

APPELLANT

V.

**JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF CRIMINAL JUSTICE TRAINING**

APPELLEE

**APPELLEE'S RESPONSE TO EXCEPTIONS AND
REQUEST FOR ORAL ARGUMENT**

COMES THE APPELLEE, Justice and Public Safety Cabinet, Department of Criminal Justice Training ("DOCJT"), by Counsel, Gerald Ross, and pursuant to KRS Chapter 18A the following is in response to exceptions and request of oral argument by Appellant Tiffany Stine ("Stine"):

**APPELLANT'S CONTENTION TERMINATION WAS EXCESSIVE AND
ERRONEOUS**

Appellant's first argument contends that the time of her infraction (June 5, 2014 at 4:15 p.m.) combined with injury suffered on previous day requiring light duty (doctor's excuse restricted her use of her right arm) should be considered to mitigate the fact she was observed asleep at her work station prior to end of shift. Appellant's compensation was to complete entire work day and her injury was not alleged to be a factor in her failure to stay awake. Further, her termination was due to multiple infractions of sleeping on the job; not the final incident.

**APPELLANT'S CONTENTION OF ERRORS IN HEARING OFFICER'S
FINDING OF FACTS**

Appellant places undue importance regarding the June 8, 2009 KEAP referral form detailing misuse of medication but also including "dozing on the job"; which she contends was not an issue for the KEAP referral. Her argument fails to recognize the KEAP referral form requests a "list" of behavioral deficits leading to the referral; and is not restrictive to one particular incident (she failed to note that "tardiness" was also listed on the referral). The referral form is designed to assist evaluators to review a myriad of potential behavioral factors that should be addressed so the employee can be better served by collateral programs.

Appellant contends her response to the October 2009 written reprimand contained instances where she was charged with sleeping on the job; but she did not admit to "all". Her response indicated that she admitted to "three, maybe up to five" incidents of sleeping during the time frame indicated in the reprimand are sufficient to warrant the reprimand; and an admission of failing to satisfactory perform her duties during the times she slept at her post. She also contended the agency did not advise her to file for accommodations under the Americans with Disabilities Act (ADA); but the Act requires the employee to initiate the request, not the employer.

The appellant next argues that the agency failed to follow a "progressive disciplinary procedure" in dealing with her infractions. The uncontested evidence is to the contrary. Between October 2009 and February 2014, appellant had received two (2) verbal reprimands (January 12, 2010 by Ms. Masters and December 10, 2013 by Mr. Bowerman); one (1) written reprimand (October 2009 by Ms. Pascal); a five (5) day

suspension (April 2010) and a ten (10) day suspension (January-February 2014). All of the incidents included allegations of sleeping on duty. Appellant filed response only to the written reprimand (in which she admitted to sleeping on duty); and filed no appeals to the suspensions.

Appellant argues that the finding of facts contained errors as to who supervised her at various intervals of her employment; and it is conceded that records indicate she is correct regarding when Mr. Godsey and Mr. Bowerman supervised her. Her contention that Mr. Rader was not her supervisor is an error; Mr. Rader serves as an Assistant Director in the agency and was authorized to take direct supervisory action as needed.

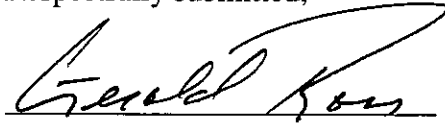
**STINE'S TERMINATION BY DOCJT WAS
FOR JUST CAUSE AND WAS NEITHER EXCESSIVE
NOR ERRONEOUS**

The Department of Criminal Justice Training has met its burden of proof. An employee who is sleeping at work is not performing work. DOCJT exercised progressive discipline including verbal counseling; verbal and written referrals to KEAP; verbal and written reprimands; and suspensions of five and ten days. Appellant Stine was given opportunity after opportunity to improve her behavior at work through progressive discipline, referrals to KEAP, attempts to accommodate her, and attempts to resolve any disputes with any particular supervisor. After attempting to resolve the situation for five years, DOCJT essentially had no choice other than to terminate Stine.

Appellant Tiffany Stine's contention that certain factual errors in the Hearing Officer's Finding of Facts justifies oral arguments is misplaced; the factual errors cited are irrelevant to the issue that she had been counselled, reprimanded and even suspended for several incidents of sleeping on the job.

Ms. Stine has provided no relevant evidence or facts that would change the ultimate issue before the tribunal: that she on multiple occasions had been asleep at her post, which demonstrates "lack of good behavior" and "unsatisfactory performance of duties", terminable acts per 101 KAR 1:345 (Disciplinary actions). Appellant's request for oral argument should be denied and the Hearing Officer's decision should be upheld.

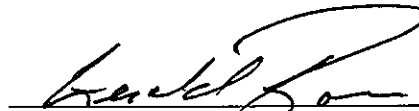
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was mailed to Paul Fauri, PO Box 1304, Frankfort, KY, 40602; and an original was mailed, to be accepted for filing, via United States Postal Service to: Kentucky Personnel Board, 28 Fountain Place, Frankfort Kentucky, 40601 on January 7, 2015.



Gerald Ross
Counsel for Appellee DOCJT