

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NOS. 2012-052 AND 2012-144

LESLIE C. THORN

APPELLANT

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

CABINET FOR HEALTH AND FAMILY SERVICES  
J.P. HAMM, APPOINTING AUTHORITY

APPELLEE

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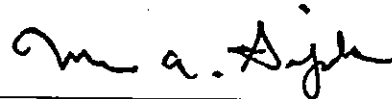
The Board at its regular September 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 1, 2013, and being duly advised,

**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 appeals are 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 17<sup>th</sup> day of September, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Carrie Cotton  
Leslie Thorn  
J.P. Hamm

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NOS. 2012-052 and 2012-144**

**LESLIE C. THORN**

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**VS.**

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

**CABINET FOR HEALTH AND FAMILY SERVICES,  
J. P. HAMM, APPOINTING AUTHORITY**

**APPELLEE**

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This matter came on for an evidentiary hearing on May 8, 2013, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Leslie C. Thorn, was present at the evidentiary hearing and was not represented by legal counsel. She was accompanied by Bo Johnson from ACFSME. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Carrie Cotton. Present as agency representative was Marsha Morganti.

**BACKGROUND**

1. The Appellant, Leslie Thorn, filed Appeal No. 2012-052 from a two-day suspension with the Personnel Board on March 2, 2012. Appellant was suspended from her position of Social Services Clinician II for continuing to fail to complete cases in a timely manner.

2. Appellant filed Appeal No. 2012-144 on June 21, 2012. Appellant claims she had been penalized when she was assessed two hours of leave without pay instead of sick leave with pay, based on a dispute as to whether or not she followed proper call-in procedures.

3. These appeals were consolidated and the burden of proof was placed upon the Appellee to prove the disciplinary action was taken for just cause and was neither excessive nor erroneous and that the two hours' leave without pay was assessed with just cause.

4. The Appellant retained counsel who subsequently withdrew, causing the hearing to be rescheduled.

5. At the evidentiary hearing, both parties waived opening argument. The Appellee called **Marsha Morganti** as its first witness. Morganti is the Service Region Administrator Associate (SRAA) for Human Resources. Through her testimony, she introduced Appellee's Exhibit 1, which was a request for Major Disciplinary Action. This document consisted of a 2-page memo requesting disciplinary action against the Appellant for failure to complete work assignments within time frames. Morganti attached 26 documents, which included extensive training records, 7 verbal reprimands, and one written reprimand.

6. Morganti testified Appellant is employed as a Social Services Clinician II. She stated that under state law, social workers should not carry a case load of more than 20 cases. She testified the Appellant had 3 or 4 supervisors in the last two years.

7. As its second witness, the Appellee called **Renee Buckingham**, who is the SRA for the Lakes Regional Cabinet for Health and Family Services' Department of Community-Based Services. She has held that position since December 1998, and has worked a total of 27 years for the Cabinet.

8. In the past, Buckingham has been both a co-worker and a direct supervisor of the Appellant.

9. Buckingham described the Appellant as a tenacious investigator. She stated she was very personable and comfortable, and makes people comfortable talking to her. She stated the Appellant is a good social worker, other than preparing paperwork and documentation which is required of the position.

10. Buckingham stated that as a frontline investigative worker, the Appellant must meet time limits. It is important to prepare appropriate documentation in order that the investigative unit can either close a case completely, or turn it over to on-going units for appropriate action. If the documentation is prepared late, a family could miss out on programs offered by the Cabinet, court deadlines and have other consequences.

11. During her testimony, Buckingham referred to documents showing that issues regarding meeting deadlines have been discussed with the Appellant from 2008 through 2011. She described a meeting in 2011 when Bruce Linder, the Director of Service Regions, came and met with the Appellant and another social worker to discuss the serious nature of backlogs and the necessity to write up the appropriate documentation in a timely manner.

12. Buckingham made reference to a continuous quality assessment as the basic document which must be prepared, and which must contain all the appropriate information.

13. The Appellant's evaluations have shown that she has had an on-going problem with meeting deadlines and finalizing her investigations. Buckingham testified the Appellant has

had too high a number of past due cases. They have tried to remedy this in the past through performance improvement plans, as well as verbal and written reprimands. Based on the evaluations she has reviewed, Buckingham stated that Appellant's supervisors take into account when there have absences in the office which have increased everyone's caseload numbers.

14. Buckingham testified that in the past, employees such as the Appellant could dictate their documentation and a secretary would type it for them. This has not been available in recent years. Buckingham introduced Appellee's Exhibit 3, which was rating criteria used for performing evaluations based on the percentage of cases and other activities which were completed in a proper time. Buckingham testified that at a staff picnic, the Appellant and employees on her team arrived wearing T-shirts which said "Backlog Queens."

15. Buckingham testified that lock-in time is given sometimes to social workers, including the Appellant, so they can devote their duties to completing case work without other distractions. She stated that this is not a perfect process, and sometimes things happen which interrupt the worker.

16. Buckingham testified that their target for cases is 18. She stated that the Appellant's number could be much higher, such as 150, due to the fact that she is constantly failing to meet deadlines on her cases. She stated that just because she has a backlog does not mean she does not receive her fair share of new cases as they are distributed.

17. On cross-examination, Buckingham stated she is not sure what the shirts worn at the picnic stated.

18. The next witness called by Appellee was **Lisa Eason**, a Service Region Administrative Assistant. Eason has held that position for three years, and has worked for the Cabinet for 14 years.

19. Eason testified that she has served as the Appellant's second-line supervisor, and for a brief period, as her first-line supervisor, when there was a vacancy. She stated the Appellant has had problems with past due cases. These have been reflected in her evaluations for calendar years 2009 through 2010. She stated that 75 percent of the worker's cases should be current. The Appellant's numbers were always lower than that number.

20. In order to assist the Appellant with her past due cases, Eason testified they tried lock-in time, offered her dictation services, and distributed cases. The goal of all these actions was to complete the investigations and clear up the backlog. In addition, Eason testified about performance improvement plans and verbal reprimands which were issued to the Appellant in order to assist and encourage her to finish the investigations, and to limit the number of past due cases.

21. On cross-examination, Eason testified that even when Appellant had lock-in time, some of these days included furlough days, holidays and times when she had to carry the beeper. Eason testified the Appellant was instructed to inform her supervisor if she was prevented from working any lock-in days, so that new days could be scheduled.

22. Eason testified that the Appellant had 152 cases at the time of the major disciplinary action. She agreed the Appellant was required to take some time off in order to avoid getting a Block 50.

23. Eason testified that the Appellant was not current throughout all of 2011.

24. Eason stated her practice as a supervisor is that if somebody needs to call in sick or to request time off, they need to call her personally or send her a text. She was not the Appellant's supervisor in 2012.

25. The Appellee next called **Jay Klein**, who is the Appointing Authority and the Division Director of the Division of Employee Management within the Office of Human Resource Management (OHRM).

26. Klein testified that after receiving the request for Major Disciplinary Action, the matter was assigned to Kim Tucker, who reviewed the information, compared it to similar cases and prepared a draft of a disciplinary letter. Her work was reviewed by Shawn Estep, and signed off on by Klein.

27. Klein introduced the Appellee's Exhibit 4 through his testimony, which was a copy of the two-day suspension letter given to the Appellant. He stated he felt this penalty was warranted, given the number of past due cases the Appellant had, and the length of time this had been a problem for her.

28. Klein verified that a co-worker of the Appellant, Shannon Bower, had been terminated for poor work performance as well as other issues.

29. **Bruce Linder**, the Director of Service Regions, testified next for the Appellee. He testified he met with the Appellant and Shannon Bower on August 10, 2011, to discuss with them the significance of past due cases, and the importance of getting caught up. Linder testified investigations normally should be completed within 45 working days. He stated that workers should have 75 percent of their cases completed in a timely fashion.

30. Linder also discussed various ideas in order to try to get each of the workers to catch up. He stated that 25 cases per worker is the standard. He acknowledged the Appellant had 152 in December 2011. He stated these were due to the past due cases the Appellant had.

He stated that simply because an employee has past due cases does not exempt them from being assigned new cases.

31. Linder was asked a number of questions about cases which apply or which do not apply to an Appellant's case load. He stated the standards are the same for all workers, and that the Appellant had too many past due cases.

32. Linder reviewed Appellee's Exhibit 2 and compared it with the chart on the second page of the Appellant's letter of suspension. He stated these numbers were similar, except that Appellee's Exhibit 2 broke down the numbers of past due cases by week, whereas the chart in the disciplinary letter did it by month. He stated the Appellant was disciplined because her number of past due cases did not improve during 2011, despite efforts to improve her, such as use of protected time, distribution of cases, and the availability of dictation.

33. The Appellee introduced the testimony of **Andrea Day**, who is the Branch Manager for the Complaint Review Branch within the Office of the Ombudsman. She testified regarding two complaints she received regarding the Appellant. Both involved past due cases. In one, a grandmother did not qualify for Kinship Care, because there was not a finding of abuse or neglect when the finding was warranted. This happened because the Appellant had taken too long to complete her case. This issue was resolved and the grandmother was entitled to receive \$300 per child per month for Kinship Care. This testimony demonstrated there are real life consequences to past due cases.

34. **Julie Holmes** was called as the Appellee's last witness. She is an FSOS in the McCracken County A Team. She has held that position for approximately one year. She has been employed with the Cabinet for 14 years, and currently serves as the Appellant's supervisor.

35. Introduced during her testimony was a verbal warning issued to the Appellant on May 4, 2012, as Appellee's Exhibit 7. The Appellant was given a verbal warning for failing to notify her supervisor of an absence on May 1, 2012. It was noted that the Appellant had been informed in an e-mail dated April 20, 2012, that she would not be granted leave time until she had less than 100 past due cases.

36. Holmes testified that the request for leave on May 1, 2012, was denied because the Appellant did not notify Holmes as her supervisor, and because she was requesting sick leave to watch her cousin's children. Holmes testified the Appellant called Lisa Hall, a building secretary. She stated this did not follow the office procedure, which was to actually contact your supervisor. Holmes testified that if she could not be reached by phone, her staff were told they could text her at any time.

37. The Appellant's time sheet revealed she received two hours leave without pay on May 1, 2012. In addition, she received four hours comp time on that date.

38. Holmes testified the Appellant had over 1,000 hours of sick leave. At the conclusion of Holmes' testimony, the Appellee rested its case.

39. Over the Appellee's objection, the Appellant presented the testimony of **Lisa Hall**. Hall is the Office Supervisor, and has worked for the Appellee for 23 years. She stated the sick leave practice used to be that employees would tell whoever answered the phone or leave a message on their supervisor's voice mail if they couldn't come into work. She stated that probably about a year ago the procedure changed to where employees were to get in touch with their supervisor. Hall stated she answers the phone and did not learn of this policy change until after it was already in effect. Hall testified that pursuant to the Personnel Cabinet policy, an employee must notify a supervisor or designee.

40. The Appellant next called **Trish Estes** as a witness. She has worked for the Cabinet for 10 years and is employed as a Social Worker. Estes verified that the previous practice was to tell anyone that you were not going to be into work. She is aware the current practice is to notify your supervisor or designee.

41. The Appellant called **Bridget Frailley**, who has been employed with the Cabinet for 16 and one-half years. She currently works in the Crimes Against Children Unit in Jefferson County. She previously was employed as a worker and supervisor in the McCracken County office. She stated she supervised the McCracken County Intake Team from 2005 through 2010.

42. During this period of time when Frailley was the supervisor of this team, she stated the entire team struggled with past due cases. She stated that on paper they appeared to have six, but they often only had four workers, and she considered them understaffed. She stated that at one point their caseload expanded from 150 to 450 in a short period of time.

43. As a supervisor she stated she tried to assist her workers in any way she could. She felt the team worked well together to do the best they could. Even when there were a number of past due cases, she stated that investigations were initiated, which she described as meeting with children and making an assessment of any potential dangers.

44. Frailley testified there are often interruptions when employees are assigned lock-in or protected time. She stated that she started working in the McCracken County office in 1997, and the Appellant was dictating at that time. Frailley stated she did the same.

45. Frailley testified the Appellant had excellent time and attendance, and never was a problem with respect to those issues. When Frailley was supervisor, her office practice was that employees should notify her of any absences. If Frailley was not available, she asked they contact the Appellant as the next in line as a Social Service Clinician. If neither of them were

available, staff was expected to contact a secretary and leave a message. She stated this information was always communicated to her.

46. Frailley testified as to the difficulty to complete cases. She testified that often it was difficult to track down all family members who needed to be seen in order to complete a case. She also testified that a number of special investigations were assigned to the McCracken County office. Many assignments that workers were asked to do did not show up on the 292, which was the form introduced as Appellee's Exhibit 2.

47. Frailley prepared the Appellant's employee evaluations in 2009 and 2010, which were Attachments 5 and 6 to the Appellant's Exhibit 1. Frailley noted the Appellant's low completion rate of her cases and scored her as 1 or 2 in some categories on the evaluations. The Appellant received an overall rating of Good for both years. Frailley testified the Appellant always had a problem with past due cases.

48. Frailley testified she was instructed by management not to do the year-end evaluations for 2010, even though she supervised the employees from January through November, 2010.

49. The Appellant, Leslie Thorn, offered her own testimony. She stated she has been employed with the Appellee in McCracken County since August 1993. She stated with respect to requesting leave time, the practice has always been to call into the office, and if your supervisor is not available, to leave word with someone that you need to be off. She stated this is what she did on May 1, 2012, after asking for her supervisor, she left word with Lisa Hall. She stated she needed to be off for two hours in order to watch her cousin's children, who were sick that morning. As soon as she got another relative to watch the children, she came in to work. She was approximately two hours late.

50. The Appellant testified she worked overtime that day, which was approved.

51. The Appellant stated that it was only after this incident that an e-mail was circulated describing a new practice or policy of getting in touch with a supervisor if you have to miss work. The Appellant stated these events occurred on May 1, 2012, and then on May 2, 2012, she talked to Julie Holmes about the workplace resolution. She stated she had further contact with Holmes on Thursday, and nothing was discussed regarding these two hours. On Friday, she received a verbal reprimand. The Appellant stated she thought the two hours of leave without pay was unfair and punitive under the circumstances. Under the policy when Holmes was not available, the Appellant is considered the designee.

52. The Appellant did not dispute the allegations in her suspension letter regarding past due cases. She testified that once you get behind, it is difficult to catch up. She testified there are a number of duties and matters which need to be looked into which are not considered



in the case numbers listed for each employee. She testified they had been consistently down two workers during much of the time she is charged with not making progress on past dues.

53. The Appellant stated that the testimony regarding protected time is misleading. She stated that much of the time was taken up with furlough days, home visits, time off to avoid Block 50s, holidays, computers being down and other problems. She also testified that she has continued to receive a normal caseload which makes it difficult to make progress on her past dues.

54. The Appellant testified that she had to conduct a number of interviews during 2011, ranging from 21 in January to 60 in August. She did not believe she had received any special benefit by being able to work overtime, as she stated all social workers are allowed to work overtime. In addition, the Appellant pointed out that she has additional duties of helping out other workers and being in charge when the supervisor is gone.

#### **FINDINGS OF FACT**

1. The Appellant, Leslie Thorn, is employed as a Social Services Clinician II with the Department of Community-Based Services in McCracken County. She has worked for the Cabinet for Health and Family Services since 1993. (Testimony of Marsha Morganti and the Appellant.)

2. The Appellant has been assigned to investigative units for a considerable period of time. The performance standards for the Appellant and other investigative social workers are that they are to complete at least 75 percent of their assessments and investigations in a timely manner. (Testimony of Marsha Morganti, Renee Buckingham, Lisa Eason, Bruce Linder, and Appellee's Exhibits 1 and 4.)

3. The Appellant was informed of this standard in each of her employee evaluations for 2009, 2010, and 2011. (Testimony of Marsha Morganti, Renee Buckingham, Lisa Eason and Appellee's Exhibit 1.)

4. The Appellant has also been provided with performance improvement plans to work on her past due cases on at least seven occasions. (Testimony of Marsha Morganti, Renee Buckingham, Lisa Eason and Appellee's Exhibits 1 and 4.)

5. The Appellant has also been issued seven verbal warnings and one written reprimand regarding her past due cases. (Testimony of Marsha Morganti, Renee Buckingham, Lisa Eason and Appellee's Exhibits 1 and 4.)

6. During the calendar year 2011, the Appellant was given protected time to work on her past due cases. Some of this time was taken up with other matters, including furloughs, holidays, home visits and time off to avoid Block 50s. Nonetheless, the Appellant was given time reserved for working on her past due cases. In addition, she has been offered dictation services, and has had some of her cases distributed to other workers. (Testimony of Marsha Morganti, Renee Buckingham, Lisa Eason and Appellee's Exhibit 1.)

7. Despite these efforts, the Appellant continued to have a considerable backlog of past due cases throughout the calendar year 2011. She did not make any significant progress regarding her past due cases during 2011, despite these efforts by her supervisors and management from the Cabinet. For January 2011, the Appellant had 90.37 percent of her cases as past due. By December 2011, the Appellant had 85.98 percent past due. In order to meet the standard, the Appellant should have had no more than 25 percent of her cases past due. (Testimony of Marsha Morganti, Renee Buckingham, Lisa Eason, the Appellant, and Appellee's Exhibit 4.)

8. The decision to suspend the Appellant for two days based on the lack of progress on her past due cases was for just cause. Although the Appellant had a considerable workload, and other work obligations, she was given the tools she needed to start the process of reducing her backlog. The penalty of a two day suspension was neither excessive nor erroneous given these circumstances. (Testimony of Jay Klein and Bruce Linder.)

9. The Appellant was docked two hours pay on May 1, 2012, when she called in stating she would be late for work. After asking for Julie Holmes, her supervisor, the Appellant left the message with Lisa Hall, the office supervisor who answered the phone. The Appellant was requesting the time off to watch her cousin's children, who were home sick. (Testimony of Julie Holmes, Lisa Hall and the Appellant.)

10. The Appellant was not authorized to use annual or comp leave because of the number of past due cases she had. Sick leave is not allowed to be used to care for family members other than members of an employee's immediate family. (Testimony of Julie Holmes and Appellee's Exhibit 7.)

11. The office policy telling employees they must get in touch with their supervisor in order to report an unscheduled absence went into effect after May 1, 2012. (Testimony of the Appellant.)

12. By all accounts, the Appellant is an excellent worker who has a problem with past due cases. She has a reputation as being an excellent investigator who serves her Cabinet well. In addition, the Appellant has no problem with time or attendance issues, and has over 1,000 hours of sick leave on the books. (Testimony of Renee Buckingham and Bridget Frailley.)

**CONCLUSIONS OF LAW**

1. The Appellee, Cabinet for Health and Family Services, established just case for the two-day suspension of the Appellant based on her chronic issues with past due cases, despite the Cabinet's best efforts. The Appellant offers a number of compelling reasons why it is difficult to reduce her backlog of past due cases, nonetheless, the time has come for the Appellant to make progress regarding these important issues for the Cabinet. The penalty of a two-day suspension was neither excessive nor erroneous. KRS 18A.095(1) and (22).

2. The Appellant was not penalized when she was docked two hours' pay on May 1, 2012, when she requested sick leave. The sick leave time is for taking care of or transporting a member of an employee's immediate family in need of medical attention. In this case, the Appellant requested sick leave in order to care for the children of her cousin, who did not qualify as a member of her immediate family. Thus, the Appellant was not entitled to sick leave pursuant to 101 KAR 2:102, Section 2(2)(a) 3. The Appellant had already been instructed that she could not use annual or compensatory leave because of her number of past due cases. Thus, the Appellant was not penalized when she was denied the use of leave on May 1, 2012. KRS 18A.095(1) and KRS 18A.005(24). (**HEARING OFFICER NOTE:** After hearing the testimony in this case, the Hearing Officer believes the decision to dock the Appellant's pay, while not a penalization for which the Hearing Officer can grant the Appellant relief, was a petty and short-sighted decision. The Appellant, but all accounts, is a good investigator, with her only problem being past due cases. She has no problem with time and attendance, and this matter could easily have been handled by changing the Appellant's work schedule on May 1, 2012, since she was allowed to work four hours overtime on that date.)

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeals of **LESLIE THORN V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2012-052 and APPEAL NO. 2012-144)** 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 Mark A. Sipek** this 1st day of <sup>August</sup>~~July~~, 2013.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day mailed to:

Hon. Carrie Cotton  
Ms. Leslie C. Thorn