



**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2016-303**

**LAURA J. TOWNSEND**

**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 March 16, 2017, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Colleen Beach, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Laura Townsend, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Mona Womack. Also present as Agency representative was Ann Waggoner.

**BACKGROUND**

1. The Appellant was employed as a Family Support Specialist I in the Department for Community Based Services ("DCBS"), Western Region, Hardin County office.

2. On November 2, 2016, under the signature of J. Alan Sisk, Executive Director, Appellant was notified she was being terminated prior to her completion of her initial probationary period. A copy of this letter is attached as **Recommended Order Attachment A**.

3. The Appellant filed a timely appeal with the Personnel Board on December 1, 2016. The Appellant provided the following statement related to this appeal of her dismissal:

Found underlying reasons for my termination involved me referring to 3 workers as KKK. Names are Kari, Kasi, Katrina, everyone called them that.

And reported a WEP worker under the influence was insinuated because she was African American. I was racially profiled even though I have a biracial family, including grandbaby. (Sic)

4. Pursuant to Interim Order dated February 2, 2017, at issue in the evidentiary hearing would be Appellant's claim that her dismissal was the result of race discrimination, for which Appellant would bear the burden of proof.

5. **Appellant, Laura Townsend**, testified on her own behalf. She stated that she began her employment with the Cabinet on May 15, 2016. As a Family Support Specialist I, Appellant was responsible for processing Supplemental Nutrition Assistance Program ("SNAP") benefits (formerly known as "food stamps").

6. Appellant stated that her first supervisor, Petra Barden, retired in July, 2016. Ann Waggoner, SRAA, was then appointed interim supervisor until September, 2016, when Linda Ray was promoted into that position.

7. Appellant testified that one day in August, 2016, she entered the office kitchen and observed a "WEP" worker who appeared to be under the influence of narcotics.<sup>1</sup> The WEP worker was an African-American woman. Townsend stated that the woman could not hold her head up or speak. Appellant concluded that the woman was on drugs.

8. Appellant reported this observation by email to Ann Waggoner, who was Appellant's first-line supervisor at the time. Waggoner's response to Appellant was to ask, "Do you have a personal problem with this worker?" Appellant replied that she did not even know the client, and was merely trying to report what could potentially become a dangerous situation.

9. Later that day, the WEP worker's Caseworker, Rhonda Coleman, confronted Appellant and said, "Ann [Waggoner] told me you have a personal issue with my client." Appellant answered that she was just trying to follow protocol by reporting the situation to her supervisor. Shortly after this exchange, the WEP worker was sent home.

10. Appellant addressed a second incident that happened at a staff meeting on October 27, 2016. A new worker asked who the principals were. Appellant responded, "On my team, it is 'KKK'—Katrina, Kasie, and Kari." (Sic) Appellant added that "Everyone referred to them as the '3Ks.'" <sup>2</sup>

11. Appellant testified that after she made the comment regarding "KKK," Lynda Ray, Appellant's then-supervisor, exclaimed, "I can't believe you just said that!"

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<sup>1</sup> A Work Experience Program ("WEP") worker is a client who is required to perform certain job duties as a condition of receiving public assistance.

<sup>2</sup> Appellant was referring to the Family Service Worker IIIs assigned to review her cases: Kari Biglow, Kasie Connor, and Katrina Wilbanks.

12. Appellant stated that no supervisor during her tenure at DCBS had ever told her that she was struggling with her case work. Appellant added that she was “dumbfounded” by her dismissal.

13. As a new Family Support Specialist I, Appellant was considered a “non-case decision-worker.” This meant that all of her cases had to be reviewed and approved by a “principal” (Family Support Specialist III) or a supervisor. Appellant explained that this review system was meant to be part of her learning process.

14. Appellant prepared a summary of the 13 cases that were not reviewed by a principal during the month of August, 2016. (Appellant’s Exhibit 2.) In Appellant’s estimation, this resulted in a missed opportunity to receive feedback regarding her job performance.

15. On November 2, 2016, Appellant was called into a meeting with Ann Waggoner and Lynda Ray. Appellant was informed that she had “not passed probation.” When Appellant asked them to explain why she was being dismissed, she was told, “We don’t have to tell you why.”

16. After Appellant was separated from employment, she requested a copy of her personnel file. In that file was a memorandum written by Lynda Ray to Ann Waggoner, which recommended that Appellant be terminated at the end of her initial probation period. The memo was written on October 26, 2016. Appellant disagreed with many of the comments in Ray’s memo, and took particular issue with Ray’s notation that Appellant was “argumentative and tries to justify her mistakes.” (Appellant’s Exhibit 1.)

17. Also in her personnel file was a memorandum written by Ann Waggoner on November 15, 2016, addressed to Jessica Peay, SRA, West Region. The subject of this memo is entitled: “Response to Laura Townsend Allegations.” (Appellant’s Exhibit 3.) Appellant stated that some comments contained in this memo were also untrue. Specifically, in regard to Waggoner’s statement that Appellant had “interrupted one interview upon discovery that the client lived at an address [Appellant] had once lived,” Appellant noted that she did not recall that conversation, and had, in fact, lived in the same place for the past 25 years.

18. Appellant also denied Waggoner’s allegation that Appellant corrected workers’ conversations and gave out incorrect information. She also did not agree with Waggoner’s statement that Appellant had not submitted a particular case for review, but had left it to be processed later. Appellant stated that in regard to the case Waggoner was referring to, the client had arrived at 4 p.m. on a Friday afternoon. The client still had documents left to turn in, which she did the following Monday, at which time the case was “picked up by another worker.”

19. Appellant noted that her Notice of Determination from the Education and Workforce Development Cabinet, Division of Unemployment Insurance, found that Appellant's discharge "was not the result of misconduct, defined by KRS 341.370(6) or as willful or intentional disregard of the employer's business interests. The discharge was for reasons other than misconduct connected with the work." (Sic) (Appellant's Exhibit 4.)

20. On cross-examination, Appellant stated that she felt she had been the victim of discrimination because staff members in her office incorrectly assumed that she was a racist, and she believed she had been terminated for this reason. "It is a race issue," Appellant stated. "I was discriminated against because if I had been African-American, I would not be considered a racist and I would not have been dismissed."

21. Appellant admitted that the two letters she wrote to her supervisors after her separation from employment did not mention her perception of being discriminated against. In the first letter, Appellant wrote, "What was done during my employment was a grave injustice and it had nothing to do with any of my three supervisors, principles or coworkers. Every single one of them did what they could with what they time they had. I was a victim of the system. I had been receiving correct 117's with notes on how good my case comments were." (Sic) (Appellee's Exhibit 1.)

22. In the second letter, Appellant stated that she "would like to address issues with my employment and what I feel was an unjust termination..." Specifically, Appellant noted that the "lack of adequate guidance caused me problems." However, after Lynda Ray became her supervisor, mid-September 2016, "things changed drastically....I had the help that I so desperately needed to succeed." (Sic) Appellant noted, however, "[Six] weeks of case work was obviously not enough to make the numbers of July, August, and half of September good enough." (Appellee's Exhibit 2.)

23. Appellant testified that both letters were written after her dismissal, but before she received her personnel file, which changed her impression of what had happened. After she read the memorandum and emails in her file, she determined that she had been the victim of race discrimination.

24. At the end of Appellant's testimony, she rested her case. Appellee Cabinet for Health and Family Services motioned for a directed verdict, which the Hearing Officer denied.

25. Appellee Cabinet called its first witness. **Ann Waggoner** is the Service Region Administrator Associate ("SRAA") for ten counties in DCBS' Western Region. Her office is located in Hardin County, where she has worked for the past twenty-three years. Waggoner described her work in the Family Support division: "We interview people applying for public assistance. Once they are determined eligible, we are responsible for ongoing oversight of their

participation in the benefits program.” Waggoner stated that Appellant was a Family Support Specialist I in the Hardin County office. Because she had just begun her employment in May, 2016, each of her cases were required to be reviewed by a “principal” or Family Support Specialist III. The principals assigned to Appellant were Kari Biglow, Kasie Conner, and Katrina Wilbanks.

26. When Appellant began her employment, Petra Barden was her supervisor. Barden retired in August, 2016, and Waggoner became Appellant’s first-line supervisor for approximately one month, until Lynda Ray was promoted into a supervisory position in September, 2016.

27. Waggoner was asked to address the incident with the WEP worker. Waggoner recollected that during a smoke break one afternoon, she heard Appellant discussing this woman, saying specifically that she thought the woman was under the influence of drugs. Waggoner said to Appellant “Please be really careful about accusing someone of being under the influence. That should be something for her Caseworker to address.” Waggoner did not recall receiving an email from Appellant regarding this issue, nor did she recall discussing the WEP worker with Rhonda Coleman, the client’s Caseworker.

28. Waggoner was asked what she looks for when determining if a Family Support Specialist I has successfully completed her probationary period. She answered that she looks for timely submission of cases, accuracy, and procedural knowledge.

29. Waggoner received an email from Lynda Ray (who became Appellant’s first-line supervisor on September 1, 2016) on October 26, 2016, recommending that Appellant be terminated before the end of her initial probation period. In the memorandum, Ray stated that Appellant “continues to make issuance errors and repeats the same errors...She has not been successful in decreasing her interview time....I have worked extensively with her since 1 September and have been available to answer questions and have observed that [she] is not listening to the instructions I have given her....” (Appellee’s Exhibit 3.)

30. Waggoner stated that prior to receiving this memorandum, she and Ray had discussed Appellant’s lack of progress. Waggoner denied that Appellant’s comment regarding the WEP Worker had anything to do with her separation from employment. “I didn’t even think about it,” Waggoner testified. She also denied that she thought Appellant was a racist.

31. Waggoner was asked to address Appellant’s job performance as documented in the “117s” (SNAP Case Review and Summary Sheet). Waggoner explained that 117s are a tool supervisors use to monitor the accuracy and types of errors workers make in their case documentation. According to the 117s for the dates of August 1, 2016 to October 26, 2016,

Appellant's "issuance error rate" was 9.23%. (Appellee's Exhibit 3.) According to federal SNAP program guidelines, an acceptable error rate is 5% or lower.

32. On cross-examination, Waggoner admitted that several of Appellant's cases were not reviewed by a principal or supervisor.

33. **Lynda Ray** is a Field Services Supervisor in the Hardin County DCBS office. She has been employed by the Cabinet for over 20 years.

34. Ray was promoted into a supervisory position on September 1, 2016, and became Appellant's first-line supervisor at that time. She testified that on October 26, 2016, she recommended to Waggoner that Appellant be terminated before the completion of her probationary period. She made that decision because Appellant "had not been progressing in her work." Ray also spoke to the three principals assigned to Appellant, and asked for their feedback regarding Appellant's job performance. Based on the principals' feedback and Ray's own observations, Ray concluded that "it was difficult for Appellant to follow policy if she didn't agree with it. She was also argumentative."

35. Ray denied that Appellant's termination had anything to do with a discriminatory reason. She was not aware of the "WEP worker" incident, or Appellant's comment about "KKK" when she recommended Appellant be separated from employment.

36. On cross-examination, Ray was asked to address the "Wounded Warrior" client Appellant was assigned late on a Friday afternoon. Ray stated that the case would take a little bit longer than a case already in the system, but it should not have taken three hours to process.

37. Ray agreed that Appellant had cases that were closed, but not reviewed by a principal. Ray noted, however, that this also happened to other workers. Ray stated that during the time Appellant was employed in the Hardin County office, a statewide procedure had been implemented that required principals to work the front desk. This new job assignment did not leave principals as much time to review other staff member's cases. However, after Ray became Appellant's supervisor, she amended the case review process and assigned four more principals to read Appellant's cases.

38. **Jay Klein** is a Staff Assistant in the Cabinet's Office of Human Resource Management ("OHRM"). His job duties include the oversight of disciplinary and Equal Employment Opportunity ("EEO") matters.

39. Klein received an email from Marjorie Shular, SRAA, Salt River Trail Service Region, on October 31, 2016, "seeking [Klein's] consideration of separation" for Appellant. Shular attached emails, casework notes, and error reports regarding Appellant's job performance.

(Appellee's Exhibit 3.) Klein testified that he reviewed this documentation, and saw no reason not to grant Shular's request.

40. The letter informing Appellant of her termination was written on November 2, 2016, under the signature of J. Alan Sisk, Executive Director. (Appellee's Exhibit 4.)

41. **Kari Biglow** is employed in the Family Support Section of the Hardin County DCBS office, where she has worked for the past nineteen years. She is a Family Support Specialist III, also known as a principal.

42. Biglow was assigned to review some of Appellant's case work, and then direct Appellant to make any needed corrections. Lynda Ray asked Biglow's opinion of Appellant's job performance. Biglow told her she thought Appellant "was not going to be able to do the job. She was making too many mistakes, and making the same mistakes over and over."

43. As for Appellant's referring to the three principals as "KKK," Biglow stated she had not been aware Appellant had called them that, and it played no part in Biglow's recommendation that Appellant be terminated.

44. On cross-examination, Biglow was asked if she ever worked "one-on-one" with Appellant. She stated that she felt the normal feedback procedure should have been sufficient.

45. **Kasie Connor** is employed by the Family Support section of the Hardin County DCBS office, where she has worked for ten years. She is a Family Support Specialist III. She was assigned as one of Appellant's principals. She explained that she reviewed Appellant's cases and, when needed, would bring Appellant into her office to discuss necessary corrections. Connor stated, "I would give her direction, and I tried to mentor her. Sometimes she called me into her office and asked for assistance."

46. In Connor's opinion, Appellant did not take direction well. Sometimes Connor gave Appellant corrections and she would not make them, or she would not finish them completely. When Ray asked Connor her opinion of Appellant's job performance, she answered that she did not think Appellant "was a good fit—she made so many errors."

47. Connor testified that she had not heard that she, Biglow and Wilbanks had been referred to as "KKK" by Appellant until she was preparing for Appellant's Personnel Board appeal.

48. On cross-examination, Connor agreed that not all of Appellant's cases were reviewed by a supervisor or principal. When asked if the error rate on the "117s" might have been different if they had been reviewed, Connor answered "Possibly."



49. **Katrina Wilbanks** is a Family Support Specialist III in the Hardin County DCBS office. She was one of the principals assigned to review Appellant's casework.

50. Wilbanks testified that during the period of time Appellant worked in her office, "it was a tough time for the Family Support Specialists III," due to extra responsibilities assigned to them. She assisted Appellant by helping her with log-ins, systems procedures, and managing passwords. She also periodically helped Appellant with Department policies, and providing feedback on her cases.

51. Ray asked Wilbanks her opinion of Appellant's job performance. Wilbanks recommended that Appellant be separated from employment before the end of her probationary period.

52. **Ann Waggoner** was recalled to the witness stand. She was asked why she wrote a memorandum to Jessica Peay, SRA, West Region, on November 15, 2016. (Appellant's Exhibit 3.) Waggoner answered that Appellant had written two letters (Appellee's Exhibits 1 and 2) after her dismissal, and Peay had asked Waggoner to respond to the allegations they contained.

53. At the end of Waggoner's testimony, the Cabinet rested its case.

54. **Lynda Ray** was recalled by Appellant on rebuttal. Ray testified that she only sought feedback on Appellant's job performance from the three principals that had reviewed Appellant's casework prior to Ray's promotion into the supervisor position. "I needed to know what happened prior to my coming aboard," she stated.

55. KRS 18A.111(1) is the provision providing for probationary period preparatory to entering the classified service in the Commonwealth. It states:

Except when appointed to a job classification with an initial probationary period in excess of six (6) months, and except as provided in KRS 18A.005 and this section, an employee shall serve a six (6) months probationary period when he is initially appointed to the classified service. An employee may be separated from his position, reduced in class or rank, or replaced on the eligible list during this initial probationary period and shall not have a right to appeal, except as provided by KRS 18A.095. The employee may be placed on an eligible list but shall not be certified to the agency from which he was separated unless that agency so requests. Unless the appointing authority notifies the employee prior to the end of the initial probationary period that he is separated, the employee shall be deemed to have served satisfactorily and shall acquire status in the classified service.

56. KRS 18A.005(19) defines "Initial probation" as:

"Initial probation" means the period of service following initial appointment to any position under KRS 18A.010 to 18A.200 which requires special observation and evaluation of an employee's work and which must be passed successfully before status may be conferred as provided in KRS 18A.110 and by the provisions of this chapter. If the appointee is granted leave in excess of twenty (20) consecutive work days during this period, his initial probation shall be extended for the same length of time as the granted leave to cover such absence;

57. KRS 18A.140(1) is the provision against discrimination within the classified service. It requires that:

No person shall be appointed or promoted to, or demoted or dismissed from, any position in the classified service, or in any way favored or discriminated against with respect to employment in the classified services because of his political or religious opinions, affiliations, ethnic origin, sex, race or disability. No person over the age of forty (40) shall be discriminated against because of age.

58. KRS 18A.095(12) reads as follows:

Any classified employee may appeal to the board an action alleged to be based on discrimination due to race, color, religion, national origin, sex, disability, or age forty (40) and above. Nothing in this section shall be construed to preclude any classified or unclassified employee from filing with the Kentucky Commission on Human Rights a complaint alleging discrimination on the basis of race, color, religion, national origin, sex, disability, or age in accordance with KRS Chapter 344.

### **FINDINGS OF FACT**

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

1. The Appellant, Laura Townsend, was employed as a Family Support Specialist I in the Department for Community Based Services, (DCBS), West Service Region, effective May 16, 2016. Appellant began her initial probationary period on that date.

2. As a Family Support Specialist I, Appellant was responsible for processing Supplemental Nutrition Assistance Program benefits ("SNAP"). As a non-case decision-maker, all of Appellant's work was to be reviewed by a Family Support Specialist III ("principal"). From

May 16, 2016 until September 1, 2016, the three principals assigned to work with Appellant were Kari Biglow, Kasie Conner, and Katrina Wilbanks.

3. Appellant testified that one day in August, 2016, she saw a WEP worker (a client) in the office kitchen. In Appellant's estimation, the woman, who was African-American, looked to be under the influence of narcotics. Appellant emailed her first-line supervisor at the time, Ann Waggoner, to inform her of this. According to Appellant, Waggoner responded, "Do you have a personal problem with this worker?" Later that day, the client's Caseworker, Rhonda Coleman, told Appellant that Ann Waggoner informed her Appellant had a personal issue with the client.

4. Ann Waggoner testified she had heard about the WEP worker from Appellant during a smoke break one afternoon while at work. Waggoner heard Appellant describe the woman as being under the influence of drugs. Waggoner cautioned Appellant about making such statements, and advised her to speak to the woman's Caseworker directly. Waggoner denied Appellant's comment had any influence on the decision to dismiss Appellant.

5. At an October 2016 staff meeting, Appellant referred to her three principals as "KKK." Appellant testified that her supervisor at the time, Lynda Ray, exclaimed, "[I] can't believe you just said that!"

6. It is Appellant's contention that the two comments she made (regarding the WEP worker and "KKK") caused the staff in the Hardin County DCBS office to regard her as a racist. She felt that staff members would not have regarded her as such if she were African-American. Appellant, a Caucasian, concluded that her dismissal was the result of race discrimination.

7. According to Appellant's assigned principals, Wilbanks, Conner, and Biglow, none of them were aware Appellant had referred to them collectively as "KKK." All three women testified that the comment played no role in their determination that Appellant's job performance was unsatisfactory.

8. Appellant's supervisor, Lynda Ray, testified that it was the consensus among the three principals that Appellant's error level was not improving, and that she was not progressing sufficiently in her work. Appellant's SNAP Case Review and Summary Sheet (117s) for August 1 through October 26, 2016, documented that Appellant's "issuance error rate" was 9.23%. According to federal SNAP program guidelines, an acceptable error rate is 5% or lower.

9. Because Appellant was dismissed during her probationary period, the sole issue before the Hearing Officer is not whether Appellant was dismissed for cause, but whether she was dismissed for a discriminatory reason. Appellant asserted that staff members considered her a racist due to a comment she made regarding an African-American client and a reference to

“KKK.” The testimony of record established that these comments had no influence on the decision to terminate Appellant. What was developed at the evidentiary hearing was that Appellant’s job performance was unsatisfactory, and showed no signs of improving.

### **CONCLUSIONS OF LAW**

1. KRS 18A.111 clearly provides that an employee who has not successfully completed her initial probationary period may be separated from her position, without the right to appeal except under KRS 18A.

2. To successfully challenge any failure to survive probationary status, the employee must claim and prove, by a preponderance of the evidence, that her rights under KRS 18A.140(1) were violated and that she is, therefore, before the Personnel Board under KRS 18A.095(12).

3. Appellant failed to sustain her burden of proof to show that her dismissal from the position of Family Support Specialist I during her initial probation period was based on her race.

4. Appellant has not met her burden of proof to establish that her failure to complete probation was due to any illegal or prohibited action toward her on the part of the Agency.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **LAURA TOWNSEND V. CABINET FOR HEALTH AND FAMILY SERVICES, (APPEAL NO. 2016-303)** 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 Colleen Beach** this 17<sup>th</sup> day of May, 2017.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day mailed to:

Hon. Mona Womack  
Ms. Laura Townsend

Received

DEC - 7 2016

Personnel Board



**CABINET FOR HEALTH AND FAMILY SERVICES**

**Matthew G. Bevin**  
Governor

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**Vickie Yates Brown Glisson**  
Secretary

November 2, 2016

Laura J. Townsend

PERNR:

Re: Separation

Dear Ms. Townsend:

Pursuant to KRS 18A.111, you are advised that you will be terminated from your position as a Family Support Specialist I, in the Department for Community Based Services (DCBS), West Service Region, effective November 3, 2016. Your last working day will be November 2, 2016. You shall not be certified on future registers for employment within DCBS unless DCBS so requests.

As an employee serving an initial probationary period as provided by KRS 18A.111, you do not have the right to appeal this action to the Kentucky Personnel Board. However, KRS 18A.095 provides that you may file a claim of discrimination with the Kentucky Personnel Board if you believe the action was based on unlawful discrimination. In accordance with KRS 18A.095, any claim of discrimination must be filed within thirty (30) days, excluding the date notification is sent. Such appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

Sincerely,

  
J. Alan Sisk  
Executive Director

JAS:arc

Attachment: Appeal Form

c: Secretary Thomas B. Stephens, Personnel Cabinet  
Executive Director Mark Sipek, Personnel Board  
Commissioner Adria Johnson, Department for Community Based Services  
Service Region Administrator Jessica Peay, West Service Region  
Cabinet Personnel File

**RECOMMENDED ORDER**  
**ATTACHMENT A**