

CERTIFICATION OF PERSONNEL BOARD RECORDS

I certify that attached hereto is a true and correct copy of the Findings of Fact, Conclusions of Law and Recommended Order and Final Order in the case of **KENNETH TRAMONTIN VS. CABINET FOR HEALTH AND FAMILY SERVICES, (Appeal No. 2008-166)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 18th day of February, 2010.



MARK A. SIPEK, SECRETARY
KENTUCKY PERSONNEL BOARD

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2008-166

KENNETH TRAMONTIN

APPELLANT

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

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

APPELLEE

* * * * *

The Board at its regular February 2010 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated December 11, 2009, having noted Appellee's Exceptions, Appellant's Exceptions, Appellant's Reply to Exceptions, 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 **SUSTAINED**.

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 18th day of February, 2010.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Brent Irvin
Hon. Donald Duff
John P. Hamm

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2008-166

KENNETH TRAMONTIN

APPELLANT

V. FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER

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

APPELLEE

* * * * *

This matter came on for an evidentiary hearing on January 20, 2009, at 9:30 a.m. ET, 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.

Appellant Kenneth Tramontin was present and represented by the Hon. Donald Duff. Appellee Cabinet for Health and Family Services was present and represented by the Hon. D. Brent Irvin. Also present for the Appellee was agency representative Doug LeFevers.

The hearing continued on January 21, February 17, February 19, and March 16, 2009.

BACKGROUND

1. The Appellant filed his appeal with the Personnel Board on May 28, 2008. He appealed from his dismissal by the Appellee. On his appeal form, the Appellant stated as follows, "[A]ppellant, Kenneth W. Tramontin, was charged with improperly removing confidential Social Security Disability documents from 236 files from its office in violation of state regulations and laws. A pre-termination was held on March 18, 2008, and a notice of termination was issued on April 1, 2008. Appealing (sic) is filing his appeal from the April 1, 2008 notice of dismissal." A copy of the dismissal letter dated April 1, 2008, is attached hereto as **Recommended Order Attachment A**.

2. At the first pre-hearing conference on August 5, 2008, counsel for the Appellant stated, in addition to appealing his dismissal, the Appellant was also alleging that the investigative process was contrary to law, and that the Appellant was never informed of his Fifth Amendment rights. In addition, he felt his client had been coerced into cooperating in the investigation.

3. At the conclusion of the pre-hearing conference, the Hearing Officer determined that the issue for the evidentiary hearing was whether or not there was just cause for the dismissal of the Appellant and whether the penalty was excessive or erroneous. The burden of proof was assigned to the Appellee and was to be by a preponderance of the evidence. Additional issues raised by the Appellant were ruled by the Hearing Officer to be subsumed into the just cause issue.

4. An additional pre-hearing conference was held on October 21, 2008. On December 22, 2008, the parties signed an Agreed Protective Order allowing confidential Social Security records to be inspected by counsel for the Appellant in order to prepare for the evidentiary hearing.

5. The evidentiary hearing was convened on January 20, 2009, before the Hon. Geoffrey Greenawalt. At the outset of the hearing, it was determined that Stewart Burch would be a witness, at least by affidavit. Mr. Greenawalt revealed to the parties that Mr. Burch was representing him in a private legal matter. As a result, counsel for the Appellant requested that Hearing Officer Greenawalt recuse himself, and he agreed to. At that point, Mark A. Sipek was assigned to hear the case. Mr. Sipek had conducted the two previous pre-hearing conferences.

6. The Appellee presented its opening statement, which closely followed the allegations contained in the dismissal letter, which was introduced as Appellee's Exhibit 11. The Appellant, who was employed as a Disability Adjudicator involved with making recommendations regarding Social Security disability claims, was accused of taking confidential information to his home where it was found in his garage by his ex-wife. The Cabinet determined that the Appellant had removed these confidential documents from the workplace and dismissed him. Counsel for the Appellee stated this matter would come down to a credibility contest between the Appellant and his ex-wife, Lee Ann Snelling¹. Counsel stated the evidence would reveal that the most logical explanation was that the Appellant had brought the records home against policy and that dismissal was appropriate under the circumstances.

7. Counsel for the Appellant stated in his opening statement that this was not a simple case. He discussed the investigation, which started with a January 2007 anonymous letter. He argued that the documents in question had no relevance to any particular work assignment and were randomly picked up. He stated that many of the documents were not confidential. Counsel also stated that the investigating officer's report showed there was no known fraud and there had been no monetary impact and, thus, no indication the documents had been used in any type of identity theft. He also pointed out that these documents had been in custody for one and a half years of Lee

¹ Ms. Snelling was previously Lee Ann Tramontin. She was referred to by both names in the testimony and exhibits. She will be referred to as Snelling throughout this Order.

Ann Snelling's attorney. He argued the Appellant should not be disciplined at all and that certainly firing was too severe a penalty because there were too many unanswered questions as a result of a poor investigation of this matter.

8. **Adam Collins** was called as the Appellee's first witness. Mr. Collins is a Special Agent with the Social Security Administration Office of Inspector General, Office of Investigations, performed this job for three years. He had 12 years previous experience as a Postal Inspector.

9. In March 2007, Collins met with the Resident Agent in Charge in Memphis and was asked to look into allegations regarding the Cabinet for Health and Family Services in Kentucky. These allegations were based on an anonymous letter received in January 2007 indicating that certain records from the Department of Disability Determination (DDS) may have been compromised from a confidentiality standpoint.

10. A copy of the anonymous letter was introduced as Appellee's Exhibit 2 and is attached to this Order as **Recommended Order Attachment B**. This letter contained the allegations that a law enforcement officer had observed in excess of 500 pages of medical records obtained by the Department of Disability Determinations at Ken Tramontin's home. The Appellant was mentioned specifically by job title and agency. In addition, the letter made reference to violations of the Health Insurance Portability and Accountability Act (HIPAA) and several Cabinet policies. Lastly the letter (which was sent to J. P. Hamm, appointing authority for the Appellee) stated the records were in the possession of attorney "Steve Birch" (sic).

11. Over a hearsay objection, the investigative report prepared by Agent Collins was admitted into evidence as Appellee's Exhibit 3. Mr. Collins report reveals that DDS Security Officer Doug LaFavers informed Collins' supervisor that the Appellant was not allowed to take files or records home. In addition, he revealed the records are in the possession of attorney Stewart Burch, who represented Mr. Tramontin's ex-wife in a divorce proceeding.

12. Mr. Collins' supervisor also spoke with Mr. Burch who, based on attorney/client privilege, would not confirm or deny possession of those records. Mr. Collins' boss pointed out that he did not see how these records would have any bearing on a divorce proceeding, and he stressed the documents were the property of the DDS. He stated that while the Appellant did not have a right to have those documents at his home, neither did Mr. Burch or his client have a right to maintain the documents. Burch stated he would talk to his client about signing a release allowing him to discuss these documents with the investigators.

13. On May 11, 2007, Mr. Collins met with Assistant United States Attorney, who informed him that he had declined federal prosecution citing his belief there was no

federal offense evident. He stated the subject records were not federal records and were outside the realm of the applicable federal statutes.

14. On June 6, 2007, Mr. Burch gave the DDS' records to Mr. Collins. Mr. Burch stated these records were given to him by Lee Ann Snelling in August of 2005.

15. Mr. Collins reviewed the records, which revealed numerous documents with Appellant's name on them.

16. On June 19, 2007, Mr. Collins interviewed Lee Ann Snelling in the presence of her attorney. Ms. Snelling reviewed the DDS records and confirmed these were the records she found in her garage on or about August 2005. She stated the garage was located at a residence she shared with the Appellant until he moved out in June 2005. She stated she did not know why the Appellant had these records at home, and she was aware that he was not allowed to have these records at home. Ms. Snelling stated she knew this because she worked for DDS from 1992 through 1997.

17. In July of 2007, Mr. Collins met with DDS Commissioner Stephen Jones and Security Officer LeFevers in Frankfort. During this meeting, Mr. Collins showed Commissioner Jones the recovered documents, and Jones verified these were DDS records. On this same date, Mr. Collins attempted to interview the Appellant; however, the Appellant declined to be interviewed stating he wished to have an attorney present.

18. On October 3, 2007, Mr. Collins attempted to again interview the Appellant. At the start of the interview, Mr. Collins gave the Appellant a Kalkines warning. This warning is to remind individuals they have a duty to cooperate in an investigation and that disciplinary action (including dismissal) may be taken if there is a refusal to cooperate. According to Mr. Collins, the Appellant declined to sign the Kalkines warning form and would not answer questions or provide a written statement. On the face of the Kalkines warning form, the Appellant stated he wished to be represented by an attorney. The Kalkines warning form is attached to Appellee's Exhibit 3.

19. On November 6, 2007, Mr. Collins returned the records to DDS Security Officer LeFevers by registered mail.

20. Mr. Collins stated he did not look to determine the source of the anonymous letter. He testified that Ms. Snelling stated she discussed these records with an attorney, Steve Bolton, who advised her to give them to her attorney. She also discussed them with Pat Melton, a deputy sheriff.

21. On cross-examination, Mr. Collins stated he did not believe it would be efficient to try and track down the source of the anonymous letter. He also stated he did not interview Mr. Bolton or Mr. Melton.

22. During Mr. Collins' testimony, Appellee's Exhibit 1 was identified. (It was later introduced into evidence by stipulation.) This exhibit consists of redacted samples from the documents Stewart Burch turned over to Mr. Collins. These documents were divided into 17 categories and were identified as 1A through 1Q. The categories were described, as follows:

1A	E-mails	79 pages;
1B	View/Maintain Note	2 pages;
1C	DDS Case Tracking System	2 pages;
1D	Consultation Request	4 pages;
1E	Previously Seen	5 pages;
1F	Office of Hearings and Appeals Query	5 pages;
1G	Form Completion letters	10 pages
1H	Case Processing Question	11 pages;
1I	Case Worksheet Display	11 pages;
1J	Form Letters	13 pages;
1K	Letters requesting reports	30 pages;
1L	Examiner Summary Display	30 pages;
1M	Case Development Sheet	36 pages;
1N	Overtime/Makeup/Volunteer Action Sheet	177 pages;
1O	Report on case tracking	3 pages;
1P	Timesheets and Misc. personnel documents	22 pages;
1Q	Miscellaneous documents	46 pages

23. The Cabinet called as its next witness **Lee Ann Snelling**. Ms. Snelling testified that she married the Appellant in September 1994, and they separated in June

2005. At this time, they are legally divorced; however, there are debt, custody, and property issues outstanding.

24. Ms. Snelling testified that on June 30, 2005, the Appellant moved out of their home on Wickliffe Road. The following day, she had the locks changed. The Appellant did not have a key to the home.

25. Attached to the home was a 2½ car garage. Ms. Snelling testified that the garage was full of items. Late in August 2005, while cleaning out the garage, in a pile of newspapers and other extraneous documents, she found a good sized stack of documents from DDS. She knew the Appellant should not have these documents at home. She spoke with Steve Bolton, a local attorney and friend, and Pat Melton, a deputy sheriff. Both advised her to take the documents to her attorney's office the next morning.

26. Ms. Snelling testified that the following morning she took the documents to her divorce attorney's office (Stewart Burch). She stated at the time she and the Appellant were involved in a heated custody battle. Ms. Snelling felt these documents would be helpful to her in that they showed the Appellant's character by having confidential records at home that he was not supposed to take from the workplace. She testified she did not divulge the existence of these records to anyone else.

27. Ms. Snelling testified that she followed the advice of her attorney and never used these documents in her divorce proceeding. She stated it was her understanding that this would not be in her best interest to bring out the existence of these documents, which might cause the Appellant to lose his job and prevent him from being able to pay child support.

28. Ms. Snelling testified that she worked at Disability Determinations from 1992 through 1997. She stated she is not close friends with anyone who still works there.

29. Ms. Snelling testified that the documents she found in the garage were interspersed between newspapers and other extraneous documents. She did not find anything like a complete case file, only various documents involving cases, timesheets, memoranda, etc.

30. Snelling denied that she sent the anonymous letter. She testified that she saw the letter for the first time during the evidentiary hearing.

31. During her testimony, she looked through a number of documents and discovered that the Appellant's handwriting was on some of them. Ms. Snelling advised she rarely went to the building to visit the Appellant while they were married. She stated that some of his friends from work used to visit at home.

32. Ms. Snelling testified she worked for various state agencies other than the Appellee. She stated that she bought five years' time and retired in August 2005.

33. Ms. Snelling testified that when she found these documents she did not call the Cabinet nor did she call the Appellant. She stated she followed the advice of her attorney.

34. The Appellee presented as part of its case the affidavit of **Stewart C. Burch**, which was admitted into evidence as Appellee's Exhibit 4. Appellant did not object to the introduction of this affidavit.

35. Mr. Burch stated, as follows, with respect to the documents coming into his possession, as follows:

During July of 2005, the Affiant began his representation of Lee Ann Tramontin, now Lee Ann Snelling, in connection with a divorce and custody proceeding in Franklin Circuit Court. The Affiant and Lee Ann Snelling soon thereafter began preparation for a temporary support and custody hearing conducted before the Franklin Circuit Court. In connection with the preparation for the hearing, Lee Ann Snelling delivered to the Affiant certain documents and correspondence which Ms. Snelling claimed to have found in the garage at the marital residence of the parties. When asked about the relevance of the documents, the Affiant was advised that the documents should not have been in the possession of Kenneth Tramontin and reflected adversely upon his character.

36. Mr. Burch stated in his affidavit that he did not believe the documents were relevant to the divorce and that introducing these documents would not be helpful to Ms. Snelling's case, as they could reduce the chance of Ms. Snelling receiving child support if Mr. Tramontin did not have meaningful employment.

37. Mr. Burch also discussed contact from Adam Collins in 2007. Mr. Burch stated that he never communicated to anyone about the documents, other than his client, with the possible exception of the Appellant's attorney in the divorce proceedings. Burch stated he discussed the matter with Ms. Snelling and after receiving threats from Mr. Collins that criminal charges would be forthcoming if the documents were not produced, Ms. Snelling waived the attorney/client privilege and Burch released the documents to Mr. Collins.

38. **Patty Carter** testified for the Appellee. She retired from her work with the Appellee (DDS) in December 2007, having worked as a Staff Advisor on personnel issues.

39. Ms. Carter received a copy of the anonymous letter from Jay Klein, showed it to the Commissioner, and met with the Appellant about it. Ms. Carter testified that the Appellant denied having taken the documents out of the office. She could not recall whether Commissioner Jones gave the Appellant a copy of the anonymous letter.

40. Ms. Carter stated that when the Appellant was told about the contents of the anonymous letter, he was concerned about police officers being in his house.

41. The Cabinet's next witness was **Michelle Kent**. She took over as Staff Advisor after Ms. Carter retired. She stated that Jay Klein and his staff worked on the disciplinary action against the Appellant. She was assigned to work with Shawn Estep. Ms. Kent drafted the request for disciplinary action and attended the pre-termination hearing. Ms. Kent examined the documents turned over by Agent Collins and prepared a list which showed the case number, name, receipt date, date of assignment or transfer, closure date, and examiner's initials when the case was closed (Appellee's Exhibit 6).

42. Questions were raised during the hearing regarding cases with assignment dates for the Appellant after June 30, 2005, when he moved out of his home. Thereafter, Ms. Kent provided a revised list to correct such entries. (See Appellee's Exhibit 8).

43. One of the case files on Appellee's Exhibit 6 showed that it was assigned and transferred to the Appellant on July 21, 2005, which would have been after the Appellant moved from his home. Appellee's Exhibit 8 showed a case involving the same claimant was filed on October 24, 2004, assigned/transferred to Mr. Tramontin on April 1, 2005, and closed on April 29, 2005.

44. Ms. Kent explained the difference between Appellee's Exhibits 6 and 8, as the difference between a spreadsheet showing the most recent case involving a particular claimant (Exhibit 6) versus a spreadsheet showing any and all cases involving a particular claimant (Exhibit 8).

45. During Ms. Kent's testimony, the Appellee introduced Appellee's Exhibit 7, which was a compilation of various policies, memoranda, agreements, statutes, and regulations which the Cabinet believed the Appellant violated in this case. Included in this exhibit were the following:

(a) Employee Privacy and Security of Protected Health, Confidential and Sensitive Information Agreement (signed for by Appellant on January 25, 2007);

(b) Employee Privacy and Security of Protected Health, Confidential and Sensitive Information Agreement (signed for by Appellant on April 21, 2005);

(c) CHFS-219, effective date 1-1-99, revised date 1-26-05 (signed for by the Appellant on January 27, 2006 and April 19, 2005, respectively).

(d) CFC-219, effective date 1-1-99, rev. 10-08-02 (signed for by the Appellant [no date]).

(e) Location for access to SSA systems (signed for by the Appellant on 3-25-02).

(f) KRS 18A.095;

(g) 101 KAR 1:345

(h) Cabinet for Health and Family Services 2.10, Privacy and Security of Protected Health, Confidential and Sensitive Information, effective 11-1-04; last rev. on 4-16-07.

(i) Cabinet for Health and Family Services 2.1, Employee Conduct, effective date 11-1-04, date last rev. 4-16-07; and

(j) The last policy contained a statement that "[E]mployees shall: Not remove official documents from the workplace or from an official file without proper authorization."

46. The Appellee's next witness was **Stacey Cain**. Ms. Cain was employed by DDS for 17 years. She served as the Appellant's supervisor and left the Cabinet in December 2008.

47. Ms. Cain testified about various documents which were introduced as part of Appellee's Exhibit 1, a sample of the documents which were alleged to have been found in the Appellant's garage. She testified these documents included Case Review sheets, which were filled out by the Appellant and reviewed by Ms. Cain daily. She stated her practice was to meet with the Appellant and then put the Case Review Sheets in the file. She stated that Case Development sheets (1M) were timelines of cases that were kept in the file. Consultation Requests (1D) were also kept in the case files.

48. Ms. Cain stated the Appellant might have taken documents home for purposes of identity theft or to keep documents relating to personnel issues.

49. Ms. Cain knew Lee Ann Snelling when she was married to the Appellant. She stated she never worked with her and they were not friends. The only time she talked to her was when she would call in when the Appellant was sick.

50. During cross-examination, Ms. Cain stated that many of the documents found in the Appellant's garage do not contain personal or confidential information. She specifically testified that some of the documents were e-mails (1A), and it was not a violation for the Appellant to take them home.

51. The Appellee called Appellant Kenneth Tramontin as its next witness. The Appellant acknowledged receipt of the intent to dismiss letter (Appellee's Exhibit 10) and the dismissal letter (Appellee's Exhibit 11). He recalled attending a pre-termination conference and stated he thought Mr. Irvin was present for the Appellee as counsel. He was corrected and reminded that it was Amber Arnett who represented the Appellee.

52. The Appellant admitted his history of disciplinary action including a written reprimand in 2003, a one day suspension in 2003, a verbal reprimand in 2004, a written reprimand in 2005, and a five-day suspension in 2005.

53. The Appellant admitted that he saw the documents in question in preparation for this hearing. He admitted that he would have had access to them. He stated he did not take any of these documents out of the office. He stated he never removed anything with private, confidential information. He stated he may have taken some e-mails home. He testified the overtime sheets were in his handwriting. He referred to an e-mail that he wrote to Stacey Cain regarding overtime on April 21, 2005. There was a yellow "Post It" note with his handwriting. He acknowledged he put it there. He stated this was something he wanted to speak to Commissioner Jones about. He stated he had a drawer at the office that he kept documents like that in. He also discussed documents, including case review sheets and View/Maintain notes. He stated he kept papers such as this at his office to show what he was doing. He stated he was saving documents like these to talk to the Commissioner. He did not feel he was being treated fairly by his supervisor.

54. The Appellant stated that he believed his ex-wife came into the office and took these documents home. He stated she was in and out of the office all of the time. He stated the security guard recognized her and would let her in the office. Appellant stated his ex-wife had lied most of the time while she was on the witness stand. He stated he was shown the anonymous letter by Commissioner Jones and Ms. Carter, although he felt there may have been another letter. He thought it was handwritten and not typed. He stated the mistakes in the letter were deliberate and that his ex-wife drafted the anonymous letter. He also testified that he believed his ex-wife lied to her attorney.

55. The Appellee called **Shawn Estep** as its next witness. Mr. Estep is a Human Resources Administrator with the Office of Human Resource Management. He stated his duties in this action were to review potential disciplinary actions and draft a letter for the signature of the appointing authority. He stated the request for disciplinary action went to Jay Klein, who then assigned it to him. The recommended action that he prepares is reviewed by both the Appellee's legal and EEO offices.

56. Mr. Estep testified that he recommended dismissal in this case after reviewing the facts, the Appellant's disciplinary records, and a review of comparable cases. He specifically mentioned that a DDS employee had been recommended for dismissal after e-mailing a social security number to her home computer.

57. Mr. Estep testified that the pre-termination conference was attended by Jay Klein, Paul Herberg, Shawn Estep, Amber Arnett, Commissioner Jones, Michelle Kent, Theodore Berry (attorney for the Appellant), and the Appellant. Mr. Estep stated the Appellant stated there was a conspiracy to get rid of him. The Appellant stated his ex-wife was involved and this was all a result of their hotly-contested divorce. Mr. Estep testified the Appellant was not willing to name any other individuals at the time of the pre-term conference. Mr. Estep stated it was a unanimous decision to dismiss the Appellant, and that he drafted the dismissal letter which was signed by Jay Klein.

58. At the start of day five of the hearing, the parties stipulated into evidence Appellee's Exhibit 1, which contained representative copies of the documents which were found in the garage.

59. The Appellee's next witness was **Jay Klein**, the acting Division Director of the Division of Employee Management within the Office of Human Resource Management. Mr. Klein testified that he serves as an appointing authority, along with his boss, J. P. Hamm, who is the Executive Director of the Office of Human Resources Management. Mr. Klein stated that he has the authority to take all actions except for layoffs. With respect to dismissals, he testified that he can either sign them or sign J. P. Hamm's name. In this instance, he signed J. P. Hamm and then put his initials (J. K.).

60. Mr. Klein stated that he received the request for disciplinary action from DDS, and assigned the matter to Shawn Estep. Mr. Klein stated he approved the notice of intent to dismiss. Mr. Klein stated he conducted the pre-termination conference and remembers that the Appellant denied taking the records home. He stated that his wife had gotten into DDS or his wife had a buddy take the records out of the office and gave them to her divorce attorney.

61. On cross-examination, Mr. Klein stated that he signs all of the dismissal letters. He stated that Secretary Miller had delegated appointing authority to J. P. Hamm, and that J. P. Hamm had delegated the authority to Mr. Klein. Mr. Klein reiterated that he thought the misuse of confidential documents was worthy of dismissal

in this case. He felt there was circumstantial evidence that Appellant took these documents home.

62. Mr. Klein stated that he believed the reason the Appellant would want to take these documents home were that they were related to his five-day suspension. He felt these documents were directly related or at least similar in nature.

63. The Appellee's last witness was **Doug LeFevers**. Mr. LeFevers is an Internal Policy Analyst IV who serves as the Security Officer for DDS. He stated that DDS works closely with the Social Security Administration and is obligated to protect social security numbers, medical records, claimant's name, and other private information. The Cabinet has a strict policy not to remove official documents from the building.

64. Mr. LeFevers stated that in March 2007, he learned from Patty Carter about the existence of the anonymous letter. He prepared a fax sheet and sent it to the Social Security Administration's regional office in Atlanta. This led to the investigation by Adam Collins.

65. Mr. LeFevers testified about the importance of keeping this information confidential, including social security numbers. He testified about the dangers of identity theft and the efforts that the agency takes to protect its confidential records.

66. Mr. LeFevers testified that he was present on both occasions when Mr. Collins attempted to interview the Appellant. He stated on both occasions the Appellant did not wish to discuss the documents without having an attorney present. Mr. LeFevers stated that the Appellant denied that he had anything to do with taking these documents out of the office. He also stated that the Appellant declined to schedule another interview with his attorney present.

67. Mr. LeFevers testified that the Appellee's records involved some of the most vulnerable people in the population. He stated these are some of the poorest and sickest individuals who can least afford to be the victims of identity theft.

68. At the conclusion of Mr. LeFevers' testimony, the Appellee rested.

69. **Appellant Kenneth Tramontin** testified as his own first witness. He stated that he lives on Shelby Street in Frankfort and moved there in July 2005. Prior to that, he lived on Wickliffe in Frankfort with his now ex-wife. At the present time, he is not employed. He started with state government in 1998 with the Division of Drivers Licensing. In 2001, he moved to DDS where he worked as an Examiner. His actual title was Adjudicator II at the time of his dismissal. He has a bachelor's degree in Marketing from the University of Kentucky (obtained in 1987). The Appellant is currently

divorced, although the case is not closed, and there are property and custody issues which remain.

70. The Appellant testified that during the summer of 2007, he was shown a letter by Commissioner Jones, which was the anonymous letter. He stated he was confused when he saw the letter and thought the reference to his home was his home on Shelby Street. He stated the police had not been there and that he checked with the city and state police. As a result, he made an open records request a day or so later. He was never placed on investigative leave. The Appellant testified that he appealed his open records request to the attorney general's office who told the agency to give him the letter. He stated he thinks he was given a different letter. He felt the letter might have been handwritten instead of typed. He did not have a copy of the letter he was referring to.

71. With respect to this matter, the Appellant stated he had two meetings with Patty Carter and Commissioner Jones. The Appellant denied (to Commissioner Jones) taking these records home.

72. The Appellant testified that he was called into a meeting with Special Agent Collins and Doug LeFevers. He stated he was on his way to lunch when he was called into a small conference room and read his Miranda rights. He asked if he needed counsel. He was told that there were investigations similar to murder investigations and investigations similar to jaywalking. He was informed that he had the right to counsel. The Appellant stated he left after he stated that he wanted counsel present in order to continue with the meeting. He stated this entire meeting last 10-15 minutes.

73. The Appellant stated he had a second meeting with Agent Collins and LeFevers. He stated that he did not wish to discuss the documents without having an attorney present. He stated that he recalled the Kalkines Warning and stated the meeting lasted about 10-15 minutes.

74. At one of these meetings, Appellant stated that Mr. Collins showed him the documents "from a distance." He stated he never got a chance to look at a set of the 500 documents until discovery in this current appeal after he had been fired.

75. The Appellant stated his ex-wife had given an incorrect description of the garage. He stated it was a 2-car garage with a pool table. He stated he often had friends from work meet him in the garage.

76. The Appellant was aware of the document policy. He was aware that he could not take documents out of the office, especially any involving sensitive, personal identifying information.

77. The Appellant stated that after reviewing the representative documents contained in Appellee's Exhibit 1 that he never introduced any similar documents in the appeal of his one day suspension. He also stated that he did not appeal his five-day suspension and that there was no connection between the documents in this case and the issues involved in that suspension. According to the Appellant, the five-day suspension involved an incident when he left his supervisor's office and thought he had leave for the rest of the day. He found out his leave was unexcused, which led to him being suspended.

78. The Appellant testified regarding the anonymous letter (Appellee's Exhibit 2). He stated that he was not aware of any law enforcement officer and not aware of any third party who had knowledge of these documents. He stated that Lee Ann Snelling did this. He testified that he knew she was going to have his job next. He stated he had a voice mail where she stated she was going to cause him some problems at work during the divorce proceedings. He stated that at some point there was an offer to release him from a child support obligation, if he would give up any claims to his share of his ex-wife's retirement. He stated it was his ex-wife's position that he would have difficulty keeping up with the child support payments once he lost his job.

79. The Appellant testified his ex-wife remains friends with some of the people at DDS, especially at the time of their separation. He stated that she knew the security officer and she could get in the office.

80. The Appellant stated that he typically left things on his desk. He stated his desk always had clutter, and he saved many documents for work which he kept in a drawer on the lower right hand side of his desk. He stated that a lot of the documents in Appellee's Exhibit 1 were the type of documents he kept at his desk. He testified that they were randomly ordered.

81. The Appellant denied that he stored these documents at his home. He denied that he removed them from the workplace and he denied that he disclosed any confidential information to any third parties.

82. On cross-examination, the Agency asked the Appellant about his work performance leading up to the time when he and his wife separated. He was asked questions about his one day suspension and a Work Performance Improvement Plan. In addition, the Appellant acknowledged a verbal reprimand in November 2004, a major disciplinary action on March 24, 2005, for continual poor work performance, an intent to suspend dated May 10, 2005, and a suspension dated May 18, 2005. His workstation was involuntarily moved on May 16, 2005. He acknowledged that June 30, 2005 was the date that he moved out of his home and separated from his ex-wife. He stated his ex-wife hired Stewart Burch as her attorney in July 2005 and that she claimed she found records in the garage in August 2005.

83. The Appellant was asked about the anonymous letter and the fact that it came to the Cabinet in January of 2007. He stated he did not think so, and he recalled it as being during warm weather.

84. The Appellant stated that he pays \$580 per month in child support, and he is about \$400 behind.

85. The Appellant was asked if anybody tried to contact him from October 3, 2007 (the date of his second interview with Agent Collins) until February 28, 2008 (the date of his intent to dismiss letter). He stated that they did not.

86. The Appellant testified that he did not take these documents home and that they would not have done him any good at home. He stated that the documents he kept in his desk were for meetings with his supervisors to explain his work performance. He did not believe they would help him if he had the documents at home.

87. The Appellant stated that his ex-wife was "out for blood" and that she does not lose. He stated that she is as thorough as could be.

88. The Appellant next called **Jonathan Garrison**. Mr. Garrison, who lives in Henry County, works as a Disability Adjudicator for DDS and was testifying by subpoena. He stated he was the Appellant's coworker. Mr. Garrison stated that he has been an Adjudicator for seven years, and previously worked for a few months in the Highway Department.

89. Debbie Hayden was his supervisor the entire time he has worked for DDS. He stated he is friends with the Appellant and socializes outside the workplace two or three times per week. He stated he went to the Appellant's home and it was not unusual to go once or twice per week. Sometimes others from work went during lunch. They would eat lunch and play pool. Other times, they went there and worked on a car.

90. Mr. Garrison stated the Appellant had a pool table and refrigerator in his garage. He stated that a week or two before June 30, 2005, when the Appellant moved out, he was in the Appellant's garage. He did not remember seeing any stacks of paper on the floor; nothing like that. He said it was easy to move around in the garage and the garage was not cluttered.

91. Mr. Garrison stated that Appellant's ex-wife had stopped working before he was hired at DDS.

FINDINGS OF FACT

1. Kenneth Tramontin was employed by the Cabinet for Health and Family Services, Department of Disability Determination, as a Disability Adjudicator II (Appellee's Exhibit 11, Testimony of Kenneth Tramontin, et al.).

2. In 2003, the Appellant received a one day suspension for lack of good behavior for poor time and attendance. On May 18, 2005, he received a five day suspension for unsatisfactory performance of duties and lack of good behavior. The Appellant also received two written reprimands and a verbal reprimand. (Appellee's Exhibit 11; Testimony of Kenneth Tramontin, et al.).

3. The Appellant was married to Lee Ann Snelling, and they lived with their children in a home on Wickliffe Road. The Tramontin's separated in June 2005 and the Appellant moved out of their home on Wickliffe Road on June 30, 2005. The following day, Ms. Snelling had the locks changed and the Appellant did not have a key to the home. (Testimony of Lee Ann Snelling.)

4. Attached to the home on Wickliffe Road was a 2½ car garage. After the Appellant had moved out, Ms. Snelling began the task of cleaning out the garage. In late August 2005 while cleaning the garage—in a pile of newspapers and other extraneous documents—she found a good-sized stack of documents from the Office of Disability Determinations. Ms. Snelling knew the Appellant should not have had these documents at home. She had previously worked for the same agency. She spoke with local attorney (and friend) Steve Bolton and Pat Melton, a local Deputy Sheriff. Both advised her to take the documents to her attorney's office the next morning. (Testimony of Lee Ann Snelling.)

5. Ms. Snelling took the documents to the office of her divorce attorney, Stewart Burch. At that time, she and the Appellant were involved in a heated custody battle. Ms. Snelling felt the documents were helpful to her in this custody battle by showing the Appellant's character by having confidential records at home he was not supposed to have taken from the workplace. Ms. Snelling denied she divulged the existence of these records to anyone else. Mr. Burch disagreed the documents would be helpful to Ms. Snelling, and they were never used by Ms. Snelling in her divorce proceeding. Mr. Burch felt it was not in their best interest to present this documentation, which could cause the Appellant to lose his job and prevent him from being able to pay child support. (Testimony of Lee Ann Snelling and Affidavit of Stewart Burch; Appellee's Exhibit 4).

6. In January 2007, the Appellee received an anonymous letter reporting that about 500 pages of DDS medical records had been observed in Appellant's residence. (Testimony of Patty Carter and Jay Klein; Appellee's Exhibits 2 and 5.) Commissioner Steven Jones and Patty Carter discussed the allegations in the anonymous letter with

the Appellant. The Appellant denied having taken the documents out of the office. (Testimony of Patty Carter.)

7. The investigation was assigned to Special Agent Adam Collins. He obtained the records from attorney Stewart Burch after he informed him that there would be no federal prosecution. After reviewing the records, Agent Collins interviewed Ms. Snelling on June 19, 2007. Agent Collins attempted to interview the Appellant on July 24, 2007 and again on October 3, 2007. On both occasions, the Appellant stated he would like to have counsel present during the interview. Thereafter, Agent Collins returned the documents to DDS and completed his report. (Testimony of Adam Collins and Appellee's Exhibit 3.)

8. The Appellant was asked on another occasion by Doug LeFevers if he wished to make a statement on his own behalf, either with or without counsel. The Appellant declined. (Testimony of Doug LeFevers.)

9. On February 29, 2008, the Appellee issued an intent to dismiss letter to the Appellant. The Appellant requested a pre-termination hearing, which was held on March 24, 2008. He was accused of unauthorized storage and disclosure of documents containing confidential information. Specifically, it was alleged that the documents included client names, social security numbers, telephone numbers, and confidential information of a medical nature. The records related to 236 different clients. (Appellee's Exhibit 10; testimony of Shawn Estep, Michelle Kent, and Jay Klein).

10. At the pre-termination conference, the Appellant denied he removed the records from the office and stated that there was a conspiracy to get rid of him. He stated that he thought his ex-wife was involved as a result of their hotly contested divorce. The Appellant did not name the other individuals he thought were involved in the conspiracy. (Testimony of Shawn Estep, Michelle Kent, and Jay Klein).

11. The decision to terminate Appellant was a unanimous decision by the cabinet officials present at the pre-termination conference. Those officials were Jay Klein, Paul Herberg, Shawn Estep, Amber Arnett, Commissioner Steven Jones, and Michelle Kent. Shawn Estep drafted the dismissal letter, which was signed by Jay Klein. (Testimony of Shawn Estep and Jay Klein).

12. Jay Klein is the acting Division Director of the Division of Employee Management within the Office of Human Resource Management for the Cabinet. He also serves as an appointing authority, along with his boss, J. P. Hamm, who is the Executive Director of the Office of Human Resource Management. In this instance, Mr. Klein signed J. P. Hamm's name and then put his (Klein's) initials "J. K." Mr. Klein stated that Secretary Miller had delegated appointing authority to J. P. Hamm and that Mr. Hamm had delegated the authority to Mr. Klein. (Testimony of Jay Klein).

13. The Hearing Officer finds that Secretary Janie Miller is the agency head for the Cabinet for Health and Family Services. She properly delegated appointing authority to J. P. Hamm, pursuant to KRS 18A.005(1).

14. The Hearing Officer finds that Jay Klein was not an appropriate appointing authority, as he had not been delegated this authority by the agency head. Mr. Klein had been delegated appointing authority by J. P. Hamm, who had, in turn, been delegated the authority by Secretary Miller, who was the agency head. This delegation of appointing authority to Mr. Klein does not meet the criteria of KRS 18A.005(1).

15. The actual written delegation of authority was not entered into evidence in this case. The only evidence on this point was the testimony of Jay Klein.

16. The Hearing Officer finds that the Appellant removed the confidential records from the workplace where they were found by his wife in their garage. The Hearing Officer finds the Appellant is the most likely person who removed these records from the office for the following number of reasons:

(a) The Appellant had access to all of the records which were found in the garage on Wickliffe Road;

(b) The Appellant acknowledged that many of these documents were original and contained original handwriting notes and post-it notes from him. He admitted that he saved and maintained several of these documents in his desk at work. He admitted that he saved these documents for purposes of discussing matters with his supervisors. The testimony was uncontroverted that the Appellant was questioned at times by his supervisors about the manner in which he performed his duties.

17. The Hearing Officer finds that Lee Ann Snelling was a credible witness. Her testimony at the hearing was consistent with the statement she gave to Agent Collins. She was candid about marital difficulties with the Appellant; however, she did not appear to have any motive for taking these documents out of the workplace in order to "set up" her husband. Ms. Snelling showed through her testimony that she had a good command of the facts, and her statements were not contradicted by other sources.

18. The Appellant alleged that Ms. Snelling was involved in a conspiracy to "set him up," and either took these records herself or had someone take them for him. The Appellant did not present any proof beyond his allegations that this is what occurred. He established that Ms. Snelling on one occasion had access to the office when he had given her permission to get a cell phone from his desk when he was not there. He presented no evidence that Ms. Snelling left the office with 500 pages of documents on this or any other occasion. He presented no evidence that he ever recognized that any documents were missing until he was confronted during the investigation leading to his dismissal.

19. The Appellant did not present any evidence that Ms. Snelling was friends or acquaintances with anyone who worked at the office at the time the records were found in their garage. The one time the Appellant testified Ms. Snelling had gained access to the office, he was aware of that fact. Based on all these facts, the Hearing Officer finds that it is unlikely that Ms. Snelling (or anyone acting on her behalf) removed these documents from the workplace so that they would wind up in the garage at Wickliffe Road.

20. In contrast to Ms. Snelling, the Appellant was not a credible witness. His testimony was scattered and unsupported by easily ascertainable details, e.g. when the anonymous letter surfaced.

21. The removal of these documents from the workplace was a violation of numerous Cabinet policies. (Testimony of Michelle Kent, Shawn Estep, and Appellee's Exhibit 7).

22. The Appellant's actions constituted just cause for his dismissal, if the action had been taken by an appointing authority. The penalty of dismissal was neither excessive nor erroneous under all the surrounding circumstances. These include—but are not limited to—the severity of the violation of Cabinet policy and his previous disciplinary record at work in this area of location.

CONCLUSIONS OF LAW

1. The dismissal of the Appellant should be set aside because it was not taken by one who had appointing authority pursuant to KRS 18A.005(1). According to this statute, only the agency head had the authority to delegate appointing authority. KRS 18A.005(1) reads, as follows:

“Appointing authority” means the agency head or any person whom he has authorized by law to designate to act on behalf of the agency with respect to employee appointments, position establishments, payroll documents, register requests, waiver requests, requests for certification, or other position actions. Such designation shall be in writing and signed by both the agency head and his designee. Prior to the exercise of appointing authority, such designation shall be filed with the secretary.

2. The Hearing Officer concludes that pursuant to KRS 18A.005(1) Secretary Janie Miller was the agency head for the Appellee. Secretary Miller properly delegated

this appointing authority to J. P. Hamm, the Executive Director of the Office of Human Resource Management. (See Findings of Fact 12 and 13).

3. The Hearing Officer concludes, as a matter of law, that Jay Klein was not an appropriate appointing authority, as he had not been so delegated by the Agency head. KRS 18A.005(1) is clear that the agency head is the only person with the authority to designate someone to act on his/her behalf with respect to "position actions." The Hearing Officer concludes that dismissal is such a position action which requires that the action be taken by an appointing authority. The statute goes on to say that any designation of appointing authority from the Agency head must be in writing and must be signed by both the Agency head and the designee. Lastly, the written designation must be filed with the Secretary of the Personnel Cabinet. Based on the testimony in this case, the designation of Jay Klein as an appointing authority does not meet any of the criteria of the requirements of KRS 18A.005(1). (See Findings of Fact Nos. 12, 13, and 14).

4. In its Post-Hearing Reply Brief, the Appellee presented several arguments on this issue. The Appellee points out that the designation of appointing authority from J. P. Hamm to Jay Klein was filed with the Personnel Cabinet. The Appellee further argues this type of delegation of appointing authority by the head of the Department or Office of Human Resources has long been accepted by the Personnel Cabinet, the Personnel Board, and reviewing Courts.

(a) In support of this argument, the Appellee cites to prior Personnel Board appeals including: Bates v. CHFS, Personnel Board Appeal No. 2008-181 (2008 WL 5601007). In this case, Mr. Klein presented testimony that he routinely signed documents under his own authority or under the authority of J. P. Hamm, each individual being a duly authorized appointing authority. No testimony was offered regarding who had delegated the appointing authority, nor was any argument made that this authority was not properly delegated.

(b) The Appellee also cites Smith v. CHFS, Personnel Board Appeal No. 2007-426 (2008 WL 4329629). In this case, Mr. Klein testified that he conducted the pre-termination hearing in his capacity as appointing authority. He also testified that he signed the dismissal letter for J. P. Hamm, as Mr. Hamm had given him approval to be the appointing authority. No argument was made in this case that this delegation of authority was not consistent with KRS 18A.005(1).

(c) The Appellee also cites the case of Church v. CHFS, Personnel Board Appeal Nos. 2005-415 and 2006-092 (2006 WL 5838108). In this case, Mr. Klein presented testimony that he signed J. P. Hamm's name with his own initials and that he is also an appointing authority. No argument was made regarding the delegation of this authority.

(d) The Appellee has cited cases in which the Board has approved Jay Klein acting as the appointing authority. They do not present any cases where an Appellant argued that Mr. Klein did not act properly as an appointing authority because the delegation came from J. P. Hamm, who was not the agency head.

(e) Thus, the Hearing Officer concludes that the cases cited by the Appellee are distinguishable from this case.

5. The Appellee next argues that the plain language of KRS 18A.095 authorizes the designee of an agency head to conduct a pre-termination hearing and to determine whether to alter, amend, or rescind the dismissal after such hearing.

The Hearing Officer believes, however, that KRS Chapter 18A must be read as a whole and that the language contained in KRS 18A.095(3) through (7) must be read in conjunction with the definition of appointing authority contained in KRS 18A.005(1) and that the cabinet head, agency head, or designee must be one with the authority to take the action. This reading of the statute is also consistent with previous decisions of the Personnel Board.

(a) In re: The Matter of Lana D. Morgan (Justice Cabinet) (1984 WL 919571) Under its investigative authority, the Personnel Board set aside the dismissal of Ms. Morgan because the action was taken by the Deputy Commissioner of the Kentucky State Police without a written delegation of appointing authority. In this decision, the Personnel Board also cited the matters of Woodson Mills v. Kentucky Horse Park and Kerry K. Cravens v. Transportation Cabinet, both of which are referenced in the Personnel Board's 1983 minutes.

(b) In William T. White, Jr., et al. v. Transportation Cabinet, Appeal No. 84-167 (1985 WL 1091869), the Personnel Board set aside the temporary assignment of various motor vehicle enforcement officers because the letter notifying them of their temporary assignment was signed by Robert Byrd, the Director of the Motor Vehicle Enforcement Division. The Board held that the temporary assignments were void *ab initio* because Director Byrd did not have the authority to make these temporary assignments because the Cabinet had failed to comply with the designation requirements set forth by regulation 101 KAR 1:010, Section 1(6), which provided a definition of "appointing authority" very similar to the definition currently contained in KRS 18A.005(1).²

² 101 KAR 1:010, Section 1(6) defined "appointing authority" and reads, as follows: "(6) '[A]ppointing authority' means the agency head or any person formally designated by him as authorized to act on behalf of the agency with respect to employee appointments, position establishments, payroll documents, register requests, waiver requests, requests for certification, position actions, dismissals, suspensions, layoffs, and disciplinary actions. Such designation shall be signed by the agency head and by the designee and shall be filed with the Commissioner of Personnel prior to exercise of the delegated

(c) In Sharon L. Briton (92-360), Linda F. Courtney (92-361), Martha E. Welch (92-370) v. Cabinet for Human Resources (1993 WL 13648401), the Personnel Board found the attempted involuntary transfer of the Appellants to be null and void and of no force and effect because the Appellants were not provided proper notice and advised of their right to appeal, as required by regulation. The Hearing Officer also noted that the notice the Appellant might be subject to transfer came from someone without appointing authority.

(d) In Steven J. Addison v. Natural Resources and Environmental Protection Cabinet, (Appeal No. 97-287) (1998 WL 35270981), the Personnel Board found that the Deputy Security for NREPC had the authority to conduct a pre-termination hearing based on the designation of authority he received from the Cabinet secretary.

6. The Appellee argues that the Personnel Board and the Personnel Cabinet have treated dismissals signed under the authority and approval of an appointing authority by designees other than the appointing authority as a long-standing practice that has been approved. The Hearing Officer does not find any such long-standing practice in the cases cited by the Appellee and, in fact, the Hearing Officer's own research has proven the exact opposite. The Board has a long-standing practice of carefully reviewing allegations that the individual that signed a letter lacked the authority to take the action in question.

7. In this case there was no evidence that either J. P. Hamm or Secretary Janie Miller reviewed the allegations or approved the dismissal of the Appellant.

8. The Hearing Officer concludes that had the action been taken by an appointing authority, the record supports there was just cause for the dismissal pursuant to KRS 18A.095(1), and the penalty of dismissal was neither excessive nor erroneous. KRS 18A.095(22)(c). The sole basis for this Recommended Order is that Jay Klein lacked the authority to take this action.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **Kenneth Tramontin v. Cabinet for Health and Family Services** (Appeal No. 2008-166) be **SUSTAINED**, that he be reinstated to his previous position or a position of like pay and status without loss of pay for the period of his penalization, to reimburse the Appellant for any leave time he used to attend the evidentiary hearing and any pre-

authority by the designee. Such authorization shall remain effective only during the incumbency of the agency head making the designation. (Effective 6-28-84)."

hearing conferences at the Personnel Board, and to otherwise make the Appellant whole. KRS 18A.105, 18A.095(26), 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).

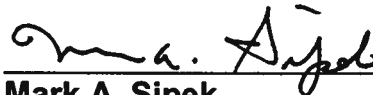
Any document filed with the Personnel Board shall be served on the opposing party.

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 11th day of December, 2009.

KENTUCKY PERSONNEL BOARD



Mark A. Sipek
Executive Director

A copy hereof this day mailed to:

Hon. Donald Duff
Hon. Brent Irvin



CABINET FOR HEALTH AND FAMILY SERVICES
OFFICE OF THE UNDERSECRETARY
ADMINISTRATIVE AND FISCAL AFFAIRS
OFFICE OF HUMAN RESOURCE MANAGEMENT

Steven L. Beshear
Governor

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www.chfs.ky.gov

Jamie Miller
Secretary

April 1, 2008

Kenneth W. Tramontin
[REDACTED]
[REDACTED]

Re: Dismissal

Dear Mr. Tramontin:

After considering your statements presented at the pre-termination hearing held on March 24, 2008, we have not found sufficient reason to rescind or alter the intent to dismiss dated February 29, 2008. You are hereby notified that you are officially dismissed from your position as a Disability Adjudicator II with the Department of Disability Determination Services effective April 1, 2008.

In accordance with KRS 18A.095 and 101 KAR 1:345 (copies attached), you are notified that cause exists for your dismissal based on the following specific reasons:

Lack of Good Behavior. As reported by Commissioner Stephen Jones, you breached confidentiality by your unauthorized use of DDDS documents and records.

Specifically, in January 2007, the Cabinet for Health and Family Services (CHFS) received an anonymous letter reporting that approximately 500 pages of DDDS medical records had been observed in your residence. CHFS forwarded this letter to the Social Security Administration's Office of Inspector General (SSA OIG) for investigation. SSA OIG Special Agent (SA) Adam Collins reported that on June 6, 2007, your ex-wife's attorney, Stewart Burch, delivered to him approximately 500 pages of official DDDS documents that had been stored in the garage of your former residence at 224 Wickliffe Drive, Frankfort. These documents included case development sheets, case worksheet displays, emails, examiner summary displays, SSA Forms 1774-U5 Request for Corrective Action, SSA-416 Case Analysis, SSA 4734-BK, and SSA-3380-BK, which contained client names, social security numbers, telephone numbers, and confidential information of a medical nature for Clients *1 - *236.

As a Disability Adjudicator II, you knew or should have known that your unauthorized storage and disclosure of documents containing confidential information violated CHFS Personnel Procedures Sections 2.10 on Privacy and Security of Protected Health, Confidential, and Sensitive Information, 2.1 on Conduct; the CHFS-219 security and confidentiality agreements you signed on January 25, 2007; January 27, 2006; April 21, 2005; April 19, 2005; and

Kenneth W. Tramontin

Page 2 of 7

April 1, 2008

November 4, 2002; and the Social Security Administration's Application for Access to SSA Systems, form SSA 120-U3, which you signed on March 25, 2002. Further, your actions constitute lack of good behavior for which you may be disciplined as outlined in 101 KAR 1:345, Section 1.

You previously received the following disciplinary action(s):

<u>DATE</u>	<u>ACTION</u>	<u>REASON</u>
May 18, 2005	5 Day Suspension	Unsatisfactory Performance of Duties & Lack of Good Behavior
January 12, 2005	Written Reprimand	Unsatisfactory Performance of Duties
November 18, 2004	Verbal Reprimand	Unsatisfactory Performance of Duties
October 28, 2003	1 Day Suspension	Lack of Good Behavior, i.e. Poor Time and Attendance
July 14, 2003	Written Reprimand	Lack of Good Behavior

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.

A copy of this notice is being furnished to the Personnel Cabinet in accordance with personnel rules. As 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. Appeals must be made by completing the attached form and directing it to the address indicated on the form. (See KRS 18A.095 and 101 KAR 1:365, Appeal and Hearing Procedure.)

Sincerely,



J.P. Hamm
Appointing Authority

JPH:ste

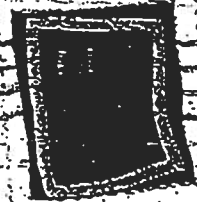
Attachments: Personnel Board Appeal Form; KRS 18A.095; 101 KAR 1:365 and 101 KAR 1:345

cc: Secretary Nikki Jackson, Personnel Cabinet
Executive Director Mark A. Sipek, Personnel Board
Commissioner Stephen Jones, Department for Disability Determination Services
Cabinet Personnel File

To Whom It May Concern:

It has come to my attention that a law enforcement officer recently notified a third party that they observed in excess of 500 pages of medical records obtained by the Department of Disability Determinations in the home of Ken Tramontin. Mr. Tramontin is a Disability Adjudicator with the Department of Disability Determinations. This is in obviously violation of HIPAA and several cabinet policies. These records are apparently in the possession of an attorney, Steve Birch.

LEXINGTON KY 405



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Attn: J.P. Hamm
Cabinet for Health and
Family Services
Office of Human Relation Services
275 East Main Street
Frankfort, KY 40602

40601+2321

