

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-175**

MATT T. TRUE

APPELLANT

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

KENTUCKY TRANSPORTATION CABINET

APPELLEE

*** **

The Board, at its regular May 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated April 5, 2016, 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 19th day of May, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Fogle
Mr. Matt T. True
Mr. J. R. Dobner

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-175**

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VS.

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

TRANSPORTATION CABINET

APPELLEE

** ** ** ** **

This matter came on for an evidentiary hearing on February 24, 2016, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Matt True, was present and not represented by legal counsel. Appellee, Transportation Cabinet, was present and represented by the Hon. William H. Fogle. Appearing as Agency Representative was Eddie Bowman.

This matter involves a 15-day suspension given the Appellant by letter dated May 28, 2015. Attached hereto as **Recommended Order Attachment A**. This suspension involves the Appellant's alleged lack of good behavior on Friday March 13, 2015. In summary, the Appellant supposedly failed to report to work as scheduled, failed to carry out assignments as directed by his supervisor, and failed to comply with leave procedures established by his supervisor.

The Appellee was assigned the burden of proof, which is by a preponderance of the evidence, to demonstrate just cause for the suspension.

BACKGROUND

1. Appellee's first witness was **J. R. Dobner**. He is an Executive Advisor for the Cabinet within the office of Human Resource Management. At the time this letter was issued, he was one of several designated Appointing Authorities. He testified that he reviewed this letter, but it was actually signed by another Appointing Authority, Carol Beth Martin.

2. On the day in question, the witness testified that the Appellant was a Heavy Equipment Operator IV (HEO IV) on the Fayette County maintenance crew. He also testified that the Appellant later resigned sometime in 2015.

3. The witness introduced Appellee's Exhibit 1, an exhibit consisting of several documents, including a request for major disciplinary action initiated by the Appellants supervisors, Kelly Baker and Cory Wilson. Contained within this exhibit is a document entitled "Leave Requesting and Reporting Procedures – Fayette County Maintenance Facility." In pertinent part the leave procedure states as follows:

To report unplanned, unexpected or urgent leave (tardiness, emergency sick, annual or compensatory leave, adverse weather leave, etc.) you as the employee are required to communicate such with your supervisor, Eddie Bowman at (859) 475-2124, by the start of your daily work schedule, which begins at 7:30 a.m.

For example, if you are scheduled to start work at 7:30 a.m., then you shall call in no later than 7:30 a.m. each day you need to request unplanned, unexpected, or urgent leave.

4. The witness then explained that it had been related to him that the Appellant had left a message for Bowman stating that he would be late because he was donating blood that day at the District office. He went on to explain that he was told the Appellant appeared at the maintenance barn at 7:42 a.m. and went out with the crew at 8:15 a.m. to begin potholing. The witness was further informed that after the crew began their duties, it began to rain, whereupon the crew returned to the maintenance barn and, after a period of time, again went back at approximately 11:30 a.m. to continue potholing, and then the project was eventually stopped at 12:19 p.m. because of heavy rain.

5. In essence, the witness explained that the Appellant was suspended for failure to call in or request leave properly. A part of this reasoning involved the Appellant's failure to seek prior approval for donating blood. Such a donation results in an employee receiving four hours off for that donation. The other part of Appellant's failure to request leave properly was not calling prior to 7:30 a.m. and speaking to supervisor Bowman.

6. The witness then introduced Appellee's Exhibit 4, the General Administration and Personnel Policy (GAP) involving Employee Conduct. This policy provides in pertinent part that the Agency attempts to ensure that the work of the Cabinet is efficiently and effectively accomplished by:

- Reporting for work, leaving work, and taking breaks as scheduled.

- Carrying out assignments as directed by their supervisors or requesting meetings with their supervisors to seek further direction or to discuss problems with the assignments.
- Complying with leave procedures as established by both the Cabinet and the employee's supervisor.

7. Mr. Bowman testified that the 15-day suspension was issued after a review of the Appellant's personnel file, his evaluations, and previous disciplinary actions. These previous disciplinary actions involved four suspensions dated: August 22, 2000, for three days; October 18, 2007, for three days; March 4, 2009 for four days; and February 6, 2015, for ten days.

8. Three of these four suspensions involved relatively minor instances of lack of good behavior.

9. On cross-examination, the witness confirmed that subsequent to the suspension at issue here, on the day the Appellant resigned, he told this witness and another Personnel person, Kathy Marshall, if they had done their job and had investigated the Fayette County barn operations, he wouldn't have had to resign. He then asked this witness to investigate the Fayette County barn.

10. The Appellee's next witness was **Eddie Bowman**. He has been a Highway Superintendent II in Fayette County since November 2014. He previously was an HEO IV, and a colleague of the Appellant. At the time of the actions herein, he was the Appellant's supervisor.

11. The witness explained that as Foreman of the maintenance barn, his duties involved planning the crew's duties, which included; snow and ice removal, ditching, and pothole patching. He further added that he had had no issues with the Appellant previously and termed him "an excellent operator."

12. Bowman testified that on March 15, 2015, he was sending out a maintenance crew to repair potholes after a major snow storm. He explained that he got a message on the answering machine at the office after 7:30 a.m., from the Appellant, explaining that he would be arriving late because he was donating blood. He then went on to state that once the Appellant arrived, he then presented a leave request form to get four hours off. This witness explained, because the Appellant arrived late, it caused the crew to be delayed leaving the barn to begin potholing.

13. The witness went on to testify that sometime later, after it had begun to rain, the Appellant returned to the barn bringing the rest of the crew with him. Apparently there was a

discussion at that point between the Appellant and this witness as to whether the potholing should continue in the rain and as to whether the Appellant would be able to take his four hours off for blood donation.

14. At one point, apparently another member of the crew (Weaver) became irate, this witness then called Supervisor Cory Wilson to the barn for a discussion. After this discussion, which lasted approximately one hour, the crew then returned to the field to continue the potholing. However, after another heavy rain, the crew returned for good and the Appellant was granted two hours of leave because of the blood donation.

15. This witness also confirmed the Appellant had taken the lead in calming Mr. Weaver, who apparently was upset because he thought Bowman had changed the instructions regarding having to continue potholing.

16. The Appellee's next witness was **Cory Wilson**. He has been the Engineering Supervisor over Section 7, at the Lexington office, for approximately one year. His duties include supervising the staff, which includes; Engineers, Construction Specialists, and the maintenance supervisor, Eddie Bowman, in the Fayette County barn.

17. He testified that on March 15, 2015, he was called to the maintenance barn by Bowman, who stated he was having a problem with the Appellant and Mr. Weaver. He explained that upon arriving at the maintenance barn Mr. Weaver was yelling about a change in instructions. He then met with both Mr. Weaver and Appellant, and stated that he informed the Appellant of his need to follow the leave procedures. He explained that the Appellant should have requested in advance leave time for giving blood. He also added that Mr. Weaver was not disciplined, but later resigned.

18. On cross-examination, the witness admitted that at the conclusion of his meeting with the Appellant that day, he did tell him that as far as he was concerned, the issue was over. He then denied having told supervisor Bowman to write up Appellant so that they could attempt to terminate his position. The Cabinet then closed.

19. The Appellant, **Matt True**, called himself as his only witness. He testified that he had worked for the Transportation Cabinet in excess of 14 years as an HEO IV. Subsequent to this latest suspension, he resigned in 2015.

20. He explained that on the day in question, he donated blood just as he had always done in the previous nine years, including time when Bowman worked with him, both as a colleague and as a supervisor. He also stated that he had told Bowman at the beginning of the week to remember that Friday was going to be blood donation day and that he was going to donate blood.

21. Appellant testified that earlier that morning, he had called the office landline rather than Bowman's cell phone. He left a message after no one answered the phone, stating that he would be slightly delayed because of the blood donation. Regarding the rest of the day's events, he testified that he arrived at the maintenance barn at 7:42 a.m. (12 minutes late) and that the hot box was not filled and the signs were not ready, therefore causing a slight delay in the crew leaving to begin their potholing. He denied that his late arrival caused any delay.

22. Appellant testified that upon requesting of Bowman that he be approved four hours leave that afternoon, he was told that it would not be approved and the potholing operation was stopped due to the rain. The crew then left to begin their duties at approximately 8:15 a.m. and at approximately 10:30 a.m. the Appellant and the rest of the crew returned to the barn because it had begun raining. The Appellant felt at that point he would be able to utilize his leave since he assumed the potholing would cease for the rest of the day. However, he testified that Bowman informed him that they would need to continue the potholing and after supervisor Wilson had been called and a discussion ensued, the crew was then sent out again to begin potholing. At approximately 12:19 p.m., the potholing was stopped for the day because of the heavy rain fall. The Appellant was then allowed to take two hours of the requested four-hour leave time.

23. Regarding his involvement in the alleged hostile environment cited by Bowman, the witness explained that it was Mr. Weaver who became irate and actually caused Mr. Wilson to be called to the barn. He again stated that he was the one who had calmed Mr. Weaver and followed Mr. Bowman's directives to go out the second time to continue potholing. The Appellant then closed.

FINDINGS OF FACTS

1. On Friday March 13, 2015, the Appellant called the maintenance barn in Fayette County on its landline, rather than Supervisor Bowman's cell phone to inform him by voice mail that he would be slightly delayed. He arrived 12 minutes late after having donated blood. The actions were harmless. Bowman did not deny receipt of the message.

2. The Appellant informed Bowman on Monday of the same week that he would be donating blood on Friday.

3. The Appellant's 12-minute tardiness was not the cause of any delay in beginning the potholing work of the crew.

4. Any miscommunication between Bowman and the Appellant appears to have arisen because of the uncertainty of whether, and for how long, the crew would be performing potholing repairs in the rain.

5. The Appellant did not fail to follow Bowman's directions regarding the pothole repairs. Indeed, he went out when the work began, and after returning to the maintenance barn due to heavy rain, he went back out a second time before rain halted work for the day shortly after noon.

6. Any hostile environment existing on the day in question was most likely caused by Mr. Weaver's demeanor because of how he felt toward Bowman's changing directions regarding whether the potholing duties would continue in the rain.

CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law the Agency failed to carry its burden of proof by a preponderance of the evidence to show the Appellant failed to report to work as scheduled, failed to carry out assignments as scheduled, and failed to carry out established leave procedures.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusion of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **MATT TRUE VS. TRANSPORTATION CABINET (APPEAL NO. 2015-175)** be **SUSTAINED** and that the 15-day suspension be rescinded and expunged from his record, that he be awarded back pay, and other benefits to which he is entitled for the 15-day suspension which are being restored to him, and that he otherwise be made whole. KRS 18A.105, and 200 KAR 12:030.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13.B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not

specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

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

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

ISSUED at the direction of **Hearing Officer Hanson Williams** this 5th day of April, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. William Fogle
Mr. Matt True
J. R. Dobner