

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-230**

CECILIA TURLEY

APPELLANT

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

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

APPELLEE

** ** *

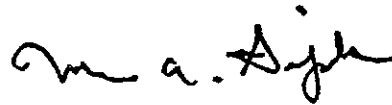
The Board at its regular November 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated October 21, 2014, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeal is therefore **DISMISSED**.

The parties shall take notice that this Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 19th day of November, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Edward Baylous
Hon. Kevin Palley
Bobbie Underwood

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This matter came on for an evidentiary hearing on August 20, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Roland P. Merkel, Hearing Officer. The proceedings were recorded by audio/video equipment and authorized by virtue of KRS Chapter 18A.

Appellant, Cecilia Turley, was present and represented by the Hon. Kevin Palley. Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Edward Baylous, II. Also present was Ms. Ann Smith, Paralegal, and as Agency representative, Warden Janet Conover.

The issue in this matter concerns the suspension of the Appellant from duty and pay, from her position with the Department of Corrections for a period of three days: August 14, 15, and 16, 2013. The burden of proof was on the Appellee to show by a preponderance of the evidence that the disciplinary action was taken with just cause and was neither excessive nor erroneous.

The rule separating witnesses was invoked and employed throughout the course of the proceedings. Each party presented an opening statement.

BACKGROUND

1. The first witness for the Appellee was the Appellant, **Cecilia Turley**. Since 2002, the Appellant has been employed as a Correctional Sergeant at the Kentucky Correctional Institution for Women (KCIW).

2. She was requested to review her own Personnel Board Appeal Form and recall the incident of May 2, 2013. She testified she had no idea Officer Brandon Woods had been looking at confidential files on the computer's H-drive until it was later brought to her attention. In her

appeal statement filed in this matter, she had stated, "Once was made aware of his actions, I commanded him to stop and log off."

3. Officer Woods had asked Appellant to give him the computer password to Appellant's SMU Supervisor's Account so he could log on to the computer and examine the information and training schedule for the Corrections Emergency Response Team (CERT). Appellant told him "no," but offered to log him onto the computer.

4. Appellant logged-on to the SMU Supervisor Account, then left Woods in the room while she went downstairs to conduct her fifteen-minute walk-through. She returned to the room and asked Woods if he was done. He said, "Yes." Appellant told him to log off. Woods said he wanted to show her something. She responded, "You don't need to show me anything." She then hit the button on the computer and logged him off. When she first logged him onto the computer, she had not accessed any files on the H-Drive.

5. Sgt. Turley does, in the course of her duties, have to access the computer H-Drive through her SMU Supervisor computer account. The H-Drive contains operations information pertinent to her duties. She had not been aware at that time that there were confidential files on the H-Drive.

6. A month after the incident with Officer Woods, Captain Adkins asked Appellant if she had accessed the H-Drive. She told him she had been on the H-Drive to obtain evaluations. She was asked if she had any idea who accessed other parts of the drive. She told Adkins about Brandon Woods' access.

7. Appellant testified that supervisors have "always allowed people on" the computers by logging them in and letting them access information, usually for on-line training.

8. Deputy Warden Hargis subsequently advised Appellant she would be suspended three days for leaking confidential information. She asked what confidential information they meant. To this day, Appellant is still not certain what confidential information was involved.

9. She gave a written statement to Capt. Adkins. At the time she forgot to add that she "immediately" turned the computer off when she told Officer Woods she did not need to know how to access the H-Drive.

10. She testified that she had:

(1) Authorized Officer Woods to use her log-in information to check his CERT training schedule;

- (2) Officer Woods did check his schedule and proceeded to peruse confidential H-Drive files that included folders of the Deputy Warden of Security (as this information was imparted to her subsequently by Capt. Adkins);
- (3) that she was not initially aware of his (Woods') actions;
- (4) that once she was made aware of his actions, she commanded Woods to stop and log-off;
- (5) that she had filed an Occurrence Report the following day with her supervisor. However, she corrected herself and stated the Occurrence Report was filed sometime in June.

11. The next witness was **Heather Cook**. For the past two years Ms. Cook has been the KCIW Network Analyst II. Warden Conover had asked her to sift through the data regarding the SMU Supervisor Account. Cook took various screenshots of recently accessed file folders and system audit logs from the computer at the SMU. She also went into the server and took screen shots of the system audit logs with time and date stamps. The subject computer is located in the SMU Assessment Room.

12. Ms. Cook reviewed the June 17, 2013 memorandum report of Shawn Adkins. From that report she identified the picture of the start-up menu, as well as a list of files accessed and date time stamped consisting of about nine pages. She had given these documents to Capt. Adkins. This information is stored on the local hard-drive under the user's profile.

13. At that time there was a flaw in the security of some files on the H-Drive. There were files that were supposed to be confidential and should have been set up for secured access by specific individuals. That had not been done and these files were accessible to anyone who accessed the H-Drive. She corrected the security problem in five minutes by adjusting the security settings on the server.

14. **Shawn Adkins** was the next witness. Since May of 2012, Captain Adkins has been employed as the Internal Affairs Captain at KCIW. He gave a general description of his duties.

15. He conducted the investigation into the unauthorized access of information through the SMU Supervisors account. That account had been created for use by SMU supervisors to help them conduct disciplinary report investigations. The account was to be accessible only by those supervisors. Correctional Officers who worked on the floor were not supposed to have access.

16. Captain Adkins had received an Occurrence Report from Lt. J.D. Osbourne. A staff member had reported to Osbourne that they were able to access some confidential folders on the H-Drive. Adkins was asked to look into the matter.

17. Records provided by IT showed some of the folders had been accessed by the 12 midnight to 8 a.m. shift on May 2, 2013. Sgt. Turley was assigned to that shift. Adkins examined the shift rosters to determine who might be involved.

18. He identified Appellee's Exhibit 1 as his June 17, 2013 Memorandum report of his investigation. The report was delivered to Warden Janet Conover, along with the attached documents. Such documents included Occurrence Reports he asked various individuals to provide during the investigation. There were also nine pages of screen shots provided by IT Supervisor Heather Cook.

19. He found that some of the confidential information that had been accessed included the Deputy Warden's security folder, interview questions for different institutional positions, and Internal Affairs folders. Access to such confidential files resulted in institutional staff feeling their confidentiality had been betrayed. This particularly affected the Internal Affairs Division which depends on individuals providing confidential information.

20. He spoke with the Appellant on June 4 and 6, 2013, and showed her a list of some of the folders that had been accessed. He asked her if she accessed the Deputy Warden's security folder. Appellant said, "No," but that if she did it was an accident as she had been looking for evaluation folders. She was asked if she accessed any more folders. She said she did not. Adkins then asked her to write a detailed Occurrence Report.

21. Appellant submitted her Occurrence Report dated June 5, 2013. The report was discussed between Adkins and the Appellant. Sgt. Turley said Officer Woods had asked her for her password to log onto the SMU supervisor account so he could look up information on the CERT team and the scheduled upcoming trainings. She told Captain Adkins she was "stupid" for logging him on and leaving, and she apologized.

22. When Adkins had shown the third page of screen shots to Officer Woods, Woods said he had accessed these folders. The report showed access occurred from 1:37 a.m. to 2:01 a.m. and again from 4:21 a.m. to 4:28 a.m. Woods reported, however, that he had only accessed the computer one time that night.

23. On June 6 when Adkins spoke to Appellant, she told him that Officer Woods told her she could access the H-Drive and showed her how to do it. He asked Appellant if she reported that incident and she replied she did not.

24. Sgt. Turley has authority to access the H-Drive as part of her duties. Correctional Officer Woods had no business accessing the H-Drive. Turley would have known this because it is an SMU supervisor account. Woods did not have access or a password to log onto that computer. She would have had to have logged him on. It was not common for a supervisor to log an officer on and then leave the computer.

25. In his investigation he concluded Turley had committed a violation by allowing a staff member to access files through the SMU supervisor account and having failed to report that confidential folders had been examined. Log-ins and access were made solely for SMU supervisors.

26. He cited the general guidelines for staff, KCIW 03-02-01, as having been violated and that Appellant failed to report any rule infraction, having allowed Woods to access the account. He also cited a violation of the Code of Ethics, Policy No. 3.1, in that there had been a release of confidential information including the Deputy Warden's security folders that held questions for the promotional position to which Woods had applied. Because Appellant provided the means of access to Woods through the computer, this was a violation.

27. During his interview of Officer Woods, Woods told him that Sgt. Turley had been in the room with him the entire time he was on the computer. Capt. Adkins testified that CERT information is nowhere on the H-Drive. However, the records show Woods to have been on the H-Drive. Once one was, at that time, logged on through the account, there was no barrier to access the H-Drive.

28. **Janet Conover**, who since January of 2010 has served as the Warden of KCIW, was the next witness. She described her duties which included determining disciplinary actions at the institution. She is also the Appointing Authority

29. She identified Appellee's Exhibit 2 as KCIW Policies and Procedures, Policy No. KCIW 03-02-01, General Guidelines for Staff. A violation of this policy occurred when Appellant logged Officer Woods onto the supervisors' account (a supervisor only account not accessible to Correctional Officers), and thereafter Woods told Appellant he could access the H-Drive, which Appellant failed to report.

30. She identified Appellee's Exhibit 3 as Kentucky Corrections Policies and Procedures, Policy No. 3.1, Code of Ethics. Both policies played a part in her decision to discipline the Appellant.

31. She confirmed that the CERT team information, including Training schedule is not and has never been on the computer H-Drive. There is nothing on the computer through SMU Supervisor account access that would show CERT information or training activities. Trainings are communicated verbally or through written memoranda.

32. She identified Appellee's Exhibit 4 as the July 25, 2013 intent to suspend letter she had issued. Pursuant to the instructions in that letter, Appellant requested and participated in an interview with the Warden. At the interview, Appellant related what happened. The Warden testified that Appellant did not appear to have realized the extent of her responsibility for logging on a non-supervisor to that account. Appellant minimized her actions with relation to the incident. She did, however, realize she should not have done this.

33. She identified Appellee's Exhibit 5 as the August 7, 2013 letter suspending Appellant from duty and pay for a period of three days. Before having drafted this letter, the Warden took into account the Appellant's responses, her previous discipline, the seriousness of the nature of having a subordinate log on to a supervisor account and the possible consequences from such act. The progression in discipline normally runs from a written reprimand to a three-day suspension, and so the suspension was proper in this case. The Warden was also aware that for matters pertaining to other unauthorized access of confidential accounts in this particular timeframe, one probationary employee had been dismissed, and Officer Woods, having unfairly accessed privileged information to gain advantage to a promotion, was demoted from his promotional position of Sergeant back to Correctional Officer. Woods later resigned his position from the institution.

34. Correctional Officers do enter inmate disciplinary reports onto the computer, but through a separate account. Correctional Officers do not have general access to the H-Drive. They have computer access through the Operations Center where the computer screen is pulled up for them by another individual.

35. It is the Warden who has sole approval authority to assign an SMU Supervisor account to an appropriate employee. Such account is set up for the supervisors to access and use forms for the SMU.

36. In issuing the suspension letter, Warden Conover also cited and considered KRS 11A.990, Computer User Internet Agreement.

37. Appellee's case was closed. The first witness for the Appellant was **Brandon Woods**. Mr. Woods is currently and for the past year has been employed as a Health Specialist with Our Lady of Peace. Previously he had worked one week as a Sgt. at KCIW until August 1, 2013. He had been a Correctional Officer at the institution the previous four years.

38. On May 2, 2013, he was at work at KCIW on the 12 midnight to 8 a.m. shift. In the past he had asked supervisors to log him onto the SMU Supervisors account so he could do work. Appellant had done this for him on a couple of occasions. Access had also been granted to him by Sgt. Kinney, Lt. Carter and Lt. Woods. He utilized such access to look up information for on-line training, view shift rosters, and to view inmate disciplinary write-ups. He would also check the CERT training schedule and obtain blank log pages. When supervisors had logged him onto the account, they stayed in the room with him the majority of the time.

39. On May 2, 2013, between 1 and 1:30 a.m. he asked Sgt. Turley to log him onto the SMU Supervisor account. He told her he needed a blank page to add to the SMU logbook. He had previously been told by another Correctional Officer that such log pages were on the H-Drive and passed this information to Sgt. Turley. Often times, he also checked the CERT training schedule to plan ahead, as "everything's on the H-Drive" including the CERT training. Sgt. Turley told him it was alright and logged him in through her account.

40. Appellant sat beside Woods while he was on the computer. He then did a check of his own personnel file and the promotion interview questions. Turley left the room to conduct her rounds. Woods continued searching on the computer and accessed files on the H-Drive. Turley returned about ten minutes later while Woods was still in the confidential folders. He immediately closed out the folders as Appellant walked in the door. He had looked for blank logbook pages. He was on the computer at that time until two or three a.m.¹

41. While Appellant was in the room, he started to reopen files until the time the two of them left. He recalled having offered to tell her he knew how to access the H-Drive.

42. Rounds are scheduled thirty minutes apart. Woods did not know how long Appellant had been gone when she conducted rounds.²

43. Upon his review of Appellee's Exhibit 1 and a print-out of the access logs, he confirmed this was one of the documents previously shown to him. He accessed questions for the promotional interview and while he had done so, Appellant had been sitting next to him. He admitted that none of the files accessed and shown on the log pertained to CERT files.

44. Woods and Sgt. Kinney both knew before May 2, that once one could access the computer through the supervisor account they could also access confidential information.

¹ He acknowledged that he did submit an Occurrence Report where he stated the Appellant had been with him in the room the entire time.

² He had testified earlier, and later on, that when Turley first left the room to conduct her rounds, she returned ten minutes later.

45. He subsequently testified that while he was on the computer, Appellant had conducted two separate sets of rounds lasting about ten minutes each. Appellant was not in the room with Woods at 1:37 a.m. because she had been conducting her 1:30 rounds.

46. Upon his review of the last page of Appellee's Exhibit 1, Woods confirmed this was the Occurrence Report he had completed and submitted. He had told Capt. Adkins at that time that he had accessed the NCIC and PREA accounts. Upon his review of the access log, he confirmed through testimony that the logs show access to those files between 4:21 a.m. and 4:28 a.m. His memory having been refreshed, Woods testified that he had been on the computer a second time. He returned to that room by himself. The computer had not been logged-out and he was alone when he accessed those files.

47. The Appellant, **Cecilia Turley**, was recalled to the stand. She testified that when she returned to the room from having completed her first set of rounds, she asked Woods if he was through. He said yes and continued, "Let me show you . . ." Appellant said, "No," went over and logged the computer off by hitting the "delete" button which cut the computer completely off.

48. Appellant denies having given Woods access to the computer a second time later that morning. She does not know how Woods got back on the computer.

49. She also stated she had not sat next to Woods at all times during his time on the computer. Once she logged him on, she left the room. When she returned, she logged him off. There was no one else present that morning on the shift that could have logged Woods back in after 4:00 a.m. Appellant did not access any files after Woods left the computer.

FINDINGS OF FACTS

1. At the time of the subject disciplinary action, the Appellant, Cecilia Turley, was employed as a Correctional Sergeant at the Kentucky Correctional Institution for Women (KCIW). She was a classified employee with status.

2. On May 2, 2013, during the twelve midnight to 8:00 a.m. shift at KCIW, Officer Brandon Woods asked Appellant to give him her SMU Supervisor's account password to allow him to log onto the SMU Supervisor's computer to examine information and the training schedule for the Corrections Emergency Response Team (CERT). This specific computer account was accessible only by SMU supervisors, such as the Appellant. Appellant refused this request, but did log onto the SMU Supervisor's account and allowed Woods to sit at the computer to freely access and examine files. The computer was located in the SMU Assessment Room.

3. At this time, there had been no computer security in place to prevent one from examining files on the computer H-Drive, once they had logged on through the SMU Supervisor's account. The H-Drive contained, among its many files, some files that were supposed to be confidential and accessible only by certain individuals at KCIW. Such confidential files included the Deputy Warden's security file, Internal Affairs folders, and files containing interview questions for different institutional positions.³

4. Woods accessed files on the H-Drive, including his own personnel file, promotional interview questions, and the NCIC and PREA accounts. At that time Woods had made application for promotion to Sergeant.⁴ He was on the computer and as reported by him to Capt. Shawn Adkins, had accessed the files from 1:37 a.m. to 2:01 a.m. Officer Woods then offered to show Appellant how to access the H-Drive. He did not access CERT files. Later, Woods returned to the SMU Assessment Room on his own. The computer account had not been logged out and he accessed the NCIC and PREA accounts between 4:21 a.m. and 4:28 a.m.

5. Access to the computer through the SMU Supervisor's account does not allow one to view any CERT team information or training schedule. That information is communicated verbally or through written memoranda. It is not on the H-Drive or among the computer's files.

6. No employee other than Appellant was present during the twelve midnight to 8:00 a.m. shift on May 2, 2013, that could have logged onto the computer through the SMU Supervisor's account.

7. KCIW Internal Affairs Captain Shawn Adkins had been assigned to investigate the unauthorized access of information through the SMU Supervisor's account. This investigation was begun after Lt. J. D. Osborne submitted an Occurrence Report in which he stated a staff member had told him confidential folders on the computer's H-Drive could be openly accessed.

8. The materials examined by Adkins showed some of the subject folders had been accessed on May 2, 2013, between twelve midnight and 8:00 a.m.

9. Appellant submitted an Occurrence Report dated June 5, 2013 (Appellee's Exhibit 1, p. 10). In the report, Appellant stated in part:

³ Since this incident, the security settings were adjusted by Heather Cook, KCIW Network Analyst II, in order to limit access.

⁴ Brandon Woods did receive a promotion to Sergeant. Once the investigation into unauthorized computer access was completed, Woods was demoted to Correctional Officer. He later resigned his employment with KCIW.

So I logged him on and went downstairs to check on the 15 minutes watch. When I returned to the adjustments room, I asked Officer Woods if he was finished with computer. He said yes and asked me 'if I know that I could access the H drive from here?' I said, 'No, I didn't know that.' He then proceeded to show how to do it.

10. In the Supervisor Comment it is stated, "Sgt. Turley stated Woods didn't show her anything on the H:Drive but only showed her how to access it. Sgt. Turley states that Woods was on the computer for approximately 5-10 minutes."

11. Woods also provided an Occurrence Report dated June 5, 2013 (Appellee's Exhibit 1, p. 30). In his report Woods stated in part:

Sgt. Turley was with me the entire time while I looked under the security folder for approx. 15 minutes before giving up on finding the blank pages. This was the last time I was on the H:Drive. I Sgt. Woods #203 explained to Capt. Adkins that I have not told anybody how to get in those folders or what was in those folders. I Sgt. Woods #203 did view my folder under DW Security folder out of curiosity and did view NCIC and PREA folder just because I didn't know what it was.

12. On May 2, 2013, the following policies and procedures were in full force and effect:

- KCIW Policies and Procedures, Policy No. KCIW 03-02-01, General Guidelines for Staff (Appellee's Exhibit 2).
- Kentucky Corrections Policies and Procedures, Policy No. 3.1, Code of Ethics (Appellee's Exhibit 3).

13. Following completion of his investigation, Capt. Adkins tendered his June 17, 2013 Memorandum containing his finding to Warden Janet Conover (Appellee's Exhibit 1). He determined that Appellant, by her acts, had violated Policy No. 03-02-01 and 3.1 (Appellee's Exhibit 1, pp. 7-8).

14. KCIW employed a progressive schedule of disciplinary action.

15. On July 25, 2013, Warden Conover issued a letter of intent to suspend the Appellant for three working days. (Appellee's Exhibit 4). Appellant requested, and thereafter participated, in an interview with the Warden.

16. Following the interview, and on August 7, 2013, Warden Conover issued a three-day suspension to the Appellant based on allegations of poor work performance and violation of IPP 03-02-01 and CPP 3.1, as well as KRS 11A.990. (Appellee's Exhibit 5). At that time, Appellant had a disciplinary history of a written reprimand in February 2008 for poor work performance.

17. Appellant timely filed her appeal of this disciplinary action with the Kentucky Personnel Board on September 17, 2013.

CONCLUSIONS OF LAW

1. A classified employee with status shall not be suspended except for cause. KRS 18A.095(1). Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties. 101 KAR 1:345, Section 1. A suspension shall not exceed thirty days. 101 KAR 1:345, Section 4(1).

2. Cecelia Turley, the Appellant, is a classified employee with status in her position as a Correctional Sergeant at the Kentucky Correctional Institution for Women (KCIW).

3. The evidence shows that prior to this disciplinary action, Appellant's disciplinary history included a February 14, 2008 written reprimand for poor work performance.

4. Appellee employs a progressive disciplinary program with its employees.

5. On May 2, 2013, during the 12 midnight to 8:00 a.m. shift at KCIW, Appellant, as a supervisor in the SMU, logged onto the institution's computer through her own SMU Supervisor's Account. She then allowed Correctional Officer Brandon Woods to utilize her access to examine files without restriction. Woods accessed a number of files, including his own personnel file, promotional interview questions, and the NCIC and PREA accounts. Only certain authorized personnel were to access these files. Woods was not so authorized.

6. The Hearing Officer has taken into account the credibility of the witnesses. Appellant's testimony conflicted with documentary evidence, making such testimony less than fully credible, in view of the following:

- She testified she had no idea Officer Woods had accessed confidential files until it was later brought to her attention.
- On the Appeal Statement she filed with the Personnel Board, Appellant stated that once she became aware of his (Woods') actions, she commanded him to stop and log off.

- She testified that while on the computer, Woods had offered to show her something, but she hit the button and logged him off.
- In her June 5, 2013 Occurrence Report, Appellant wrote Woods had asked her if she knew she could access the H-Drive from the computer. She answered, "No." "He then proceeded to show how to do it." (Appellee's Exhibit 1.)

Brandon Woods, called by the Appellant, through the substance of his testimony, and exhibiting hesitation and reluctance, was even less credible.

- Woods initially lied to Turley when he told her he wanted access through her SMU Supervisor's Account to view CERT information and the training schedule. He testified he had accessed CERT information in this manner in the past. He testified later that the CERT training schedule was on the H-Drive.
- Both Warden Janet Conover and Captain Shawn Adkins testified there was no CERT information on the computer's H-Drive.
- Woods testified that once Appellant logged him onto the computer, she left the room to go on her rounds.
- In his June 5, 2013 Occurrence Report, Woods wrote "Sgt. Turley was with me the entire time while I looked under the Security folder." (Appellee's Exhibit 1.)
- Woods later testified that Turley had conducted two separate inspection rounds and left the room each time.
- Woods testified he had returned to the computer room a second time, by himself, later that morning, and accessed confidential files.

7. Appellee has shown by a preponderance of the evidence that disciplinary action taken against the Appellant was for just cause, that is, misconduct.

A. Sgt. Turley violated KCIW Policies and Procedures, Policy No. KCIW 03-02-01, A. General Work Rules, 1(d), which requires an employee to report any infraction of the rules to the supervisor and prepare a written report as necessary. She allowed Officer Woods the ability to gain unauthorized access to confidential files on the computer H-Drive. She left Woods alone and unsupervised on the computer at least on one occasion during the shift, when she went on her rounds. Without such access Woods would not have been able to open and examine confidential files, including his own personnel file and the interview questions for the promotional position to which he had applied.

B. Sgt. Turley violated Kentucky Corrections Policies and Procedures, Policy No. 3.1, Code of Ethics, II. Policy and Procedures, C. Confidential Information, (2) and (3). She allowed Officer Woods the ability to gain unauthorized access to confidential files on the computer H-Drive. Woods did access and examine confidential information.

He would not have been able to do so had Sgt. Turley not allowed him such access through her SMU Supervisor's Account. Confidential information was released by Turley granting open access to Woods without having obtained the prior consent of the appropriate authority within Corrections.

8. Appellee has shown by a preponderance of the evidence that the disciplinary action taken against the Appellant was neither excessive nor erroneous. Appellee employs disciplinary measures in a progressive manner. At the time of this discipline, Appellant had a prior disciplinary history of a 2008 written reprimand for poor work performance. Prior to issuing this three-day suspension, Warden Janet Conover interviewed the Appellant, took into account Appellant's responses and her previous disciplinary history, as well as the seriousness of the nature of Appellant's acts.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Personnel Board that the appeal of **CECILIA TURLEY VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2013-230)** be **DISMISSED**

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 Roland Merkel** this 21st day of October, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Edward Baylous
Hon. Kevin Palley