

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2012-255**

**PAULA WATTS**

**APPELLANT**

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

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

**APPELLEE**

**\*\* \*\* \***

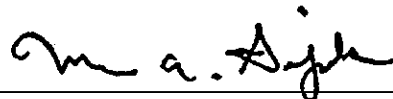
The Board at its regular January 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated September 12, 2013, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby are approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's 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 14<sup>th</sup> day of January, 2014.

**KENTUCKY PERSONNEL BOARD**



**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. Jennifer Wolsing  
Hon. Justin R. Morgan  
J. P. Hamm

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**FINDINGS OF FACT,  
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This matter came on for an evidentiary hearing on July 15, 2013, at the Kentucky Personnel Board, Fountain Place, Frankfort, Kentucky, before Hearing Officer Ann M. Sheadel. The proceedings were recorded by audio/video equipment.

The Appellant, Paula D. Watts, was present at the hearing and was represented by attorney Justin R. Morgan. The Appellee, the Cabinet for Health and Family Services, was present at the hearing by its representative, Cathy Gay, and was represented by attorney Jennifer Wolsing.

Ms. Watts has appealed the decision of the Cabinet for Health and Family Services to place Ms. Watts on directed sick leave. The issue in this case is whether the Cabinet for Health and Family Services has proved, by a preponderance of the evidence, that there was just cause for the decision to place Ms. Watts on directed sick leave, and that the decision was neither excessive nor erroneous.

**The Evidence on the Record of this Case**

Pursuant to KRS 13B.090(1), "findings of fact shall be based exclusively on the evidence on the record."

The evidence on the record of this case consists of: (1) the testimony of the witnesses who testified at the hearing in this matter; and (2) the exhibits that were admitted into evidence at the hearing in this matter.

The Appellee, the Cabinet for Health and Family Services, called three (3) witnesses to testify at the hearing in this matter:

1. Cathy Gay, Family Support Office Supervisor, Division of Protection and Permanency, Department of Community Based Services, Cabinet for Health and Family Services [Video Transcript of Hearing (VT) at 9:43]. Ms. Gay testified regarding her position and duties in the Department of Community Based Services, her supervisory role with Ms. Watts, the problems that she noticed in Ms. Watts' behavior and ability to complete her work, Ms. Watts' title and job duties, the difficulties that Ms. Watts was exhibiting in the work place in performing her job duties, the concerns expressed by other employees, meeting that Ms. Gay had with Ms. Watts regarding Ms. Watts' problems, her meeting with Ms. Watts to discuss Ms. Watts' performance issue, sending Ms. Watts for additional training, placing Ms. Watts on a Performance Improvement Plan, her discussions with her supervisor regarding the difficulties that Ms. Watts was experiencing, how she learned that Ms. Watts was being placed on directed sick leave, whether she believed that Ms. Watts was under the influence, when and how she became the supervisor in Wolfe County, concern expressed by a community partner regarding Ms. Watts' job performance, her knowledge of Ms. Watts' husband, leave taken by Ms. Watts, her knowledge of Ms. Watts' medical condition, the fact that Ms. Watts is applying for a new position, Ms. Gay's opinion of Ms. Watts' work since Ms. Watts has returned to work, use of leave time while on directed sick leave, process for filing petitions in court, the TWIST system, and the sign in and sign out policy.

2. Howard J. Klein, Appointing Authority, Cabinet for Health and Family Services [VT at 11:22]. Mr. Klein testified regarding his position with the Cabinet for Health and Family Services, his decision to direct Ms. Watts to take sick leave, the fact that directed sick leave is not disciplinary action, the letter that he sent to Ms. Watts directing her to take sick leave, the letter that he included for Ms. Watts' health care provider, the regulation regarding directed sick leave, the background information that he received regarding Ms. Watts that he considered in deciding to direct Ms. Watts to take sick leave, his determination that Ms. Watts' behavior would jeopardize the health of herself or others, his receipt and review of the letter from Ms. Watts' health care provider, Ms. Watts' returning to work, other cases in which the Cabinet has directed an employee to take sick leave, and information that is kept in personnel files.

3. Linda Sue Richardson, Social Service Clinician, Division of Protection and Permanency, Department of Community Based Services [VT at 11:55]. Ms. Richardson testified regarding her position in the Cabinet, her job duties, the fact that she is one of Ms. Watts' coworkers, an e-mail that she wrote regarding Ms. Watts' behavior, her contacts with Ms. Watts in the workplace, her observations of Ms. Watts' behavior, and the fact that she finds Ms. Watts wonderful to work with since Ms. Watts has returned from the directed medical leave.

The Appellant, Paula D. Watts, called one (1) witness to testify at the hearing in this matter:

1. Paula D. Watts, the Appellant [VT at 1:30]. Ms. Watts testified regarding her feelings regarding being placed on directed medical leave, her feelings about her

work since she has returned from directed medical leave, her medical conditions, and the process used to place her on directed medical leave.

One (1) Joint Exhibit was admitted into evidence at the hearing in this matter:

1. Agreed Order [Joint Exhibit 1]

Eight (8) Appellee's Exhibits were admitted into evidence at the hearing in this matter:

1. Two e-mails [Appellee's Ex. 1];
2. Training record [Appellee's Ex. 2];
3. Letter directing sick leave [Appellee's Ex. 3];
4. Letter to health care provider [Appellee's Ex. 4];
5. Regulation (101 KAR 2:102) [Appellee's Ex. 5]
6. Series of e-mails [Appellee's Ex. 6];
7. Doctor's statement [Appellee's Ex. 7];
8. E-mail statement from Linda Richardson [Appellee's Ex. 8].

No Appellant's Exhibits were admitted into evidence at the hearing in this matter.

### **Findings of Fact**

1. The Appellant, Paula D. Watts, is a Social Service Clinician in the Division of Protection and Permanency, Department of Community Based Services, Cabinet for Health and Family Services. At all times relevant to this appeal, Ms. Watts was a classified state employee with status. [Testimony of Cathy Gay]

2. At the times relevant to this appeal, Ms. Watts worked in Wolfe County, Kentucky. Ms. Watts' immediate supervisor was Cathy Gay, Family Support Office Supervisor. Ms. Gay's immediate supervisor was Jenny Claxon, Service Region Administrative Associate. [Testimony of Cathy Gay]

3. As a Social Services Clinician in the Division of Protection and Permanency, Ms. Watts' responsibilities are to investigate allegations of abuse, neglect, and dependency of children and to handle an on-going case load. When Ms. Watts is assigned a case to investigate, it is her responsibility to make a determination of whether the allegation of abuse, neglect, and dependency should be substantiated or unsubstantiated. These investigations can result in a petition being filed with the court for action to be taken in connection with the abuse, neglect, and dependency, in which

case it is Ms. Watts' responsibility to file such a petition and to appear in court. Ms. Watts' responsibilities include the obligation to make home visits; this responsibility requires that Ms. Watts drive herself to the homes that she is visiting. In addition, a regular part of Ms. Watts' job duties is the responsibility to transport children, in which case she is responsible for driving the children to their destinations. [Testimony of Cathy Gay]

4. Cathy Gay became Ms. Watt's supervisor in late February, 2012. She became concerned about Ms. Watts' behavior in the work place. [Testimony of Cathy Gay]

5. On September 19, 2012, Ms. Gay sent an e-mail to her supervisor, Ms. Claxon, expressing her concerns about Ms. Watts' behavior in the work place. Those concerns included Ms. Watts' difficulty with the completion of sentences, having a slow and delayed thought process, failing to remember what she was going to say, stumbling over her words, failing to follow the policy in requesting overtime, failing to sign in and sign out properly, and difficulty with completing assigned tasks and following instructions given to her by Ms. Gay. In addition, Ms. Gay related that she was receiving almost daily complaints about Ms. Watts' failure to handle her work assignments correctly, including failure to make required home visits, failure to return calls from clients, and scheduling home visits and then not showing up for the scheduled visits. [Appellee's Ex. 1; testimony of Cathy Gay]

6. Prior to sending this e-mail, Ms. Gay had met with Ms. Watts several times to discuss the problems that Ms. Watts was having. Ms. Watts was sent for additional training. In addition, Ms. Watts requested daily work plans, which Ms. Gay provided. Ms. Gay also placed Ms. Watts on a Performance Improvement Plan. None of these things seems to help to alleviate Ms. Watts' difficulties in performing her job duties. [Testimony of Cathy Gay; Appellee's Ex. 2]

7. In addition, several employees had expressed concerns to Ms. Gay regarding Ms. Watts' behavior in the work place. Ms. Gay asked them to put their concerns in writing, which they did. The concerns included Ms. Watts' having trouble staying alert, having a slow speech and thought process, seeming to be overly sleepy, having a hard time saying what she is thinking, being slow in her responses when she is spoken to, being "out of it," as if she had been medicated, having an unsteady gait, having slurred speech, having difficulty staying awake, having glassy eyes, and being unable to stay focused on work tasks. [Joint Ex. 1; Appellee's Ex. 8; testimony of Cathy Gay; testimony of Paula Richardson]

8. Community partners also had expressed concerns to Ms. Gay about Ms. Watts' work performance. [Testimony of Cathy Gay]

9. Ms. Watts was aggravated, frustrated, and embarrassed by the difficulties that she was having in performing her job duties. She told Ms. Gay that this was not her normal work performance, or the way that she was used to performing her job duties. Ms. Gay felt that Ms. Watts was motivated and wanted to do a good job, but that something was standing in the way of Ms. Watts being able to do a good job. [Testimony of Cathy Gay]

10. One of Ms. Gay's specific concerns was that one of Ms. Watts' job duties was to be responsible at times for transporting foster children. Given Ms. Watts' difficulties in maintaining her train of thought, Ms. Gay was concerned Ms. Watts could jeopardize the safety of herself or the children in her car while she was driving the car. [Testimony of Cathy Gay]

11. The information regarding the problems with Ms. Watt's difficulties in performing her job duties provided by Ms. Gay and the other employees was provided to Howard J. Klein, the appointing authority for the Cabinet for Health and Family Services. [Testimony of Howard J. Klein; Appellee's Ex. 6; Joint Ex. 1]

12. After reviewing the information provided to him, Mr. Klein determined that Ms. Watts would jeopardize the health of herself or others if she remained at work. For example, one of Ms. Watts' duties was to drive an automobile on a regular basis for her work; Ms. Watts' difficulties in keeping her balance, losing her train of thought, and exhibiting slow and sluggish actions indicated that she would be a danger to herself and others by driving an automobile at work. [Testimony of Howard J. Klein]

13. On September 20, 2012, the Cabinet issued a letter to Ms. Watts, informing Ms. Watts that the Cabinet was placing Ms. Watts on sick leave pursuant to 101 KAR 2:102, Section 2. The directed sick leave was effective on September 20, 2012. The stated reason for this decision to place Ms. Watts on sick leave was that Ms. Watts' behavior "may endanger yourself or others." The letter also stated that "[p]rior to your return to work, you must submit an acceptable report from a licensed professional health care provider which verifies that you are fit to return to work and perform your assigned job duties." [Appellee's Ex. 1]

14. Attached to this September 20, 2012, letter was a letter addressed to Ms. Watts' health care provider, which Ms. Watts was to give to her health care provider. This letter stated:

Your patient, our employee Paula Watts, has been directed off on sick leave due to concerned about the employee's behavior, health, and ability to perform her job duties. Ms. Watts is employed as a social service worker and her job duties include driving regularly for work purposes, interviewing clients and witnesses, and writing reports concerning Cabinet clients. She was placed on sick leave effective September 20, 2012, for she demonstrated behavior that caused concern for this employee's health. The recent behaviors that prompted this action include: slurred speech, unsteady gait, unable to keep her balance, glassy eyes, slow and sluggish actions, unable to finish sentences and losing her train of thought as she spoke.

Before Ms. Watts can return to work, we respectfully request that you answer the following questions in regards to her condition:

1. Is the behavior described above likely due to a medical condition?
2. If the behavior is attributable to a medical condition, is it possible to treat the condition to alleviate this type of behavior?
3. If this type of behavior can be alleviated with treatment, is Ms. Watts able, in your opinion, to safely return to the workplace?
4. What is the anticipated duration of the employee's condition?
5. When, in your opinion, will Ms. Watts be able to return to work?

[Appellee's Ex. 4; testimony of Howard J. Klein]

15. Directing Ms. Watts to take sick leave was not done as any type of disciplinary action against Ms. Watts. Rather, the action was taken to give Ms. Watts the time and opportunity to take care of what appeared to be medical issues. [Testimony of Howard J. Klein]

16. On November 28, 2012, J. Toby Arnold, D.O., wrote a letter on behalf of Ms. Watts, stating:

Please be advised that Ms. Paula Watts is under my medical care. She is currently undergoing work up for medical condition which may explain the recent behavioral changes noted at her work places.

It is my medical opinion that she is stable and able to perform her job duties without any difficulty at this time.

[Appellee's Ex. 7]

17. After Mr. Klein received and reviewed this letter, Ms. Watts was permitted to return to her employment on December 10, 2012. [Testimony of Howard J. Klein]

18. Ms. Watts has been diagnosed with, and is being treated for, uveitis (an eye condition), tachycardia (irregular heart rate), an auto immune disorder, and vitamin B-12 deficiency. [Testimony of Paula Watts]

19. Since Ms. Watts has returned to work, Ms. Watts has been an excellent employee. Since that time, Ms. Watts has been one of the best social workers with whom Ms. Gay has ever worked. In addition, Linda Sue Richardson, a coworker, has found Ms. Watts to be wonderful to work with since Ms. Watts' return to work; Ms.

Richardson was one of the employees who had expressed concerns about Ms. Watts' behavior prior to Ms. Watts being placed on directed sick leave. [Testimony of Cathy Gay; testimony of Linda Sue Richardson]

20. Based on the foregoing facts, the Hearing Officer finds that the Cabinet for Health and Family Services has proved, by a preponderance of the evidence, that, prior to September 20, 2012, Ms. Watts had demonstrated behavior that might endanger herself or others, which would jeopardize the health of herself or others. Specifically, Ms. Watts' behavior in having difficulty in expressing herself (confusion, slurred speech, inability to express herself) indicated that she might have difficulty in making the crucial decisions that she was required to make concerning the protection of children, as well as in supporting and justifying those decisions; this difficulty placed the health and well-being of those children in jeopardy. In addition, Ms. Watts' behavior in her physical demeanor (sleepiness, unsteady gait, slurred speech) as well as in her lack of mental acuity indicated that she might have difficulty in driving safely; this difficulty placed the health of herself, and of those children who were passengers in her vehicle, in jeopardy.

### **Conclusions of Law**

1. The Personnel Board has jurisdiction over this matter pursuant to KRS Chapter 18A.

2. KRS 18A.095 (2) states: "A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause."

3. "Penalization" is defined in KRS 18A.005(24):

"Penalization" shall include, but not be limited to, demotion, dismissal, suspension, fines and other disciplinary actions, involuntary transfers; salary adjustments; any action that diminishes the level, rank, discretion, or responsibility of an employee without proper cause, including a reclassification or reallocation; and the abridgement or denial of other rights granted to state employees[.]

4. The Cabinet has the authority to require an employee to use sick leave pursuant to 101 KAR2:102, Section 2(2)(a). Ms. Watts asserts that the Cabinet did not apply this regulation correctly, and placed her on directed sick leave inappropriately. The Hearing Officer concludes that, if Ms. Watts is correct, the action of the Cabinet would constitute a penalization that Ms. Watts is entitled to appeal.

5. KRS 18A.095 (22)(c) states: "If the [Personnel Board] finds that the action taken by the appointing authority was excessive or erroneous in view of all the surrounding circumstances, the board shall direct the appointing authority to alter, modify, or rescind the disciplinary action."

6. KRS 13B.090(7) provides that "[t]he agency has the burden to show [by a preponderance of the evidence] the propriety of a penalty imposed."



7. Therefore, the burden of proof in this case is on the Cabinet for Health and Family Services to prove, by a preponderance of the evidence, that there was just cause for the Cabinet's decision to place Ms. Watts on directed sick leave, and that the decision was neither excessive nor erroneous.

8. 101 KAR2:102, Section 2(2)(a) states, in pertinent part:

An appointing authority . . . may require the use of sick leave with or without pay if an employee:

. . . . 4. Would jeopardize the health of himself or others at his work station because of a . . . demonstration of behavior that might endanger himself or others.

9. As indicated in the findings of fact, above, the Hearing Officer has found that the Cabinet has proved, by a preponderance of the evidence, that, prior to its decision to place Ms. Watts on directed sick leave, Ms. Watts demonstrated behavior that might endanger herself or others, which would jeopardize the health of herself or others.

10. Accordingly, the Hearing Officer concludes that the Cabinet for Health and Family Services complied with the requirements of 101 KAR 2:102, Section 2(2)(a), in placing Ms. Watts on directed sick leave, and, therefore, that the Cabinet had just cause for the Cabinet's decision to place Ms. Watts on directed sick leave. In addition, the Hearing Officer concludes that this decision by the Cabinet was neither excessive nor erroneous.

11. For all of these reasons, the Hearing Officer concludes that Ms. Watts' appeal should be dismissed.

### **Recommended Order**

Based upon the foregoing findings of fact and conclusions of law, the Hearing Officer recommends that the Kentucky Personnel Board issue a Final Order that **DISMISSES** the appeal of **Paula D. Watts (Appeal No. 2012-255)**.

### **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. *See Rapier v. Philpot*, Ky., 130 S.W.3d 560 (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 Ann M. Sheadel** this 12<sup>th</sup> day of September, 2013.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof mailed to:

Hon. Justin R. Morgan  
Hon. Jennifer Wolsing