

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-022

ANGELA WILSON

APPELLANT

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

TOURISM, ARTS AND HERITAGE CABINET

APPELLEE

*** **

The Board, at its regular January 2018 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated December 7, 2017, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer 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 18th day of January, 2018.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Adams II
Ms. Angela Wilson
Hon. Misty Judy

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PERSONNEL BOARD
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**V. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

TOURISM, ARTS & HERITAGE CABINET

APPELLEE

** ** * * * * *

This matter came on for an evidentiary hearing on August 22, 2017, at 11:00 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Geoffrey Greenawalt, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Angela Wilson, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Tourism, Arts and Heritage Cabinet, was present and represented by the Hon. William Adams.

By Corrected Interim Order dated June 2, 2017, the issue for the evidentiary hearing was the disciplinary action taken by the Appellee, the same being the Appellant's 30-day suspension from duty and pay from her position as Food Operations Manager with the Kentucky Artisan Center as well as the Appellant's claim of retaliation. The Appellee was assigned the burden of proof as to the suspension and the Appellant was assigned the burden of proof as to the claim of retaliation, both of which were to be by a preponderance of the evidence.

BACKGROUND

1. The Appellant, Angela Wilson, filed her appeal with the Personnel Board on January 25, 2017, appealing from a 30-day suspension from duty and pay from her position as Food Operations Manager with the Kentucky Artisan Center (the "Artisan Center" or "Center"). The 30-day suspension was effective beginning of business on January 17, 2017, through close of business on Saturday, February 25, 2017.

2. The first witness to testify at hearing was **Teresa Parrett**, who is the Assistant Director of the Kentucky Artisan Center located in Berea, Kentucky. She has served in that capacity for approximately four years and has been employed at the Artisan Center for over 10 years. Ms. Parrett serves as the Human Resource representative at the Center and is involved with hiring and disciplinary matters.

3. Appellee's Exhibit 1 was introduced into the record and is a copy of the Appellant's Second Interim Review for 2016. The same indicates that the Appellant was issued a written reprimand and Performance Improvement Plan (PIP) on July 5, 2016, and the corrective action needed thereunder is set forth on the said review. Appellee's Exhibit 2 was introduced into the record and is a copy of the Performance Improvement Plan (PIP) issued to the Appellant on July 5, 2016. The PIP is self-explanatory and was signed off on by the Appellant, Ms. Parrett, and Todd Finley, the Executive Director of the Artisan Center. Appellee's Exhibit 3 was introduced into the record and is a reiteration of the items needing improvement per the PIP issued to the Appellant on July 5, 2016. Appellee's Exhibit 4 was introduced into the record and is a copy of the written reprimand issued to the Appellant on July 5, 2016. The written reprimand is self-explanatory and sets forth various areas where the Appellant was deficient in her employment duties.

4. According to Ms. Parrett, the Appellant was having difficulty keeping sufficient stock of various items. The Appellant was also having difficulty meeting cleaning standards. It was also noted that the door leading to the outside from the kitchen area had been taped apparently in an effort to allow the Appellant and the Center's cook to get back into the kitchen from the outside without ringing the bell. This represented a security issue.

5. Appellee's Exhibit 5 was introduced into the record and is a copy of the 2-day suspension issued the Appellant on September 8, 2016. Again, the suspension letter is self-explanatory, but, in essence, indicates the Appellant was being disciplined for failing to keep the premises sufficiently clean and for being dishonest regarding the reporting of employee meetings. Ms. Parrett testified that the Appellant was suspended for two days for not complying with her PIP. She also testified that following the 2-day suspension, the same problems with the Appellant's work product persisted.

6. Appellee's Exhibit 6 was introduced into the record and contains copies of photographs taken by Ms. Parrett on October 30, 2016. These photographs were taken for purposes of demonstrating that dishes were left out overnight instead of being put away as required; that the kitchen floors were unclean; and that various temperature logs were not being kept properly. Appellee's Exhibit 7 was introduced into the record and also contain copies of photographs taken by Ms. Parrett on November 6, 2016. The purpose of these photographs were also to demonstrate the uncleanliness of the dining room, that clean dishes were not put away as required, and that the freezer temperature log was not being properly maintained.

7. Appellee's Exhibit 8 was introduced into the record and contains photographs taken on December 7, 18, 22, and 29, 2016 of various temperature logs. The purpose of these photographs were to demonstrate that the said logs were not being properly maintained. In addition, the last four pages of Appellee's Exhibit 8 are copies of the fully completed logs eventually turned in to Ms. Parrett. According to Ms. Parrett, the dates and information which had not been filled in previously had suddenly and miraculously been completed by the time these logs were turned in to her by the Appellant.

8. Appellee's Exhibit 9 was introduced into the record and is a copy of the Appellant's timesheets from September 1, 2016, through January 31, 2017.

9. Appellee's Exhibit 10 was introduced into the record and is a copy of various logs turned in to Ms. Parrett by the Appellant. The last two pages of Appellee's Exhibit 10 are copies of the same logs and their various levels of completion as of September 11 and 22, 2016. Again, according to Ms. Parrett, these temperature logs were not filled in on September 11 or September 22, but were turned in to her on October 5, 2016, miraculously completed.

10. According to Ms. Parrett, it is imperative that these temperature records be accurately maintained. The temperature of the various coolers, refrigerators and freezers had to be checked each morning to be certain nothing had happened to them during the evening which would jeopardize the safety of the food intended to be served. Ms. Parrett also noted that, when comparing the Appellant's time records (See Appellee's Exhibit 9) to the completed temperature logs, it was apparent the Appellant had initialed some of the log entries on days she was actually off work.

11. Appellee's Exhibit 11 was entered into the record and contains copies of various temperature logs turned in by the Appellant in November 2016 for the month of October 2016. In addition, the last page of Appellee's Exhibit 11 contains photographs of these logs in their various state of completion on October 17, 2017. Again, Ms. Parrett referred to Appellee's Exhibit 9, the Appellant's timesheets, to note that the Appellant had initialed some of the log entries on days she was off from work. According to Ms. Parrett, several of these entries appear to have been made after the fact and were not made on the mornings indicated on the logs.

12. Appellee's Exhibit 12 was introduced into the record and also demonstrates that temperature logs for November 2016 were turned in to Ms. Parrett fully completed and initialed while photographs of these same logs taken just nine days previously indicated several gaps in the records.

13. Appellee's Exhibit 13 was introduced into the record and is a spreadsheet kept by Ms. Parrett regarding the Appellant's adherence to the PIP she was issued on July 5, 2016. The purpose of the spreadsheet was to demonstrate the Appellant's ongoing inability to turn in required documentation in a timely manner.

14. Appellee's Exhibit 14 was introduced into the record and is a copy of the Appellant's 30-day suspension from duty and pay dated January 16, 2017. Said letter is self-explanatory. However, Ms. Parrett testified that the bases for the suspension were several. According to Ms. Parrett, the Appellant was still having issues maintaining stock levels; adhering to cleaning standards; and was turning in questionable temperature logs. The Appellant was also accused of allowing an employee to take home food, which is a violation of the Artisan Center's rules. Ms. Parrett stated that on October 22, 2016, the Appellant emailed her and told her an order had been placed with their food supplier, but when Ms. Parrett took it upon herself to talk with the supplier a couple of days later, she was told that no such order had been placed.

In addition, the Appellant failed to provide Ms. Parrett with her daily cleaning records. According to Ms. Parrett, she discussed this particular problem with the Appellant initially, but finally just stopped after a while. Regarding the allegation that an employee took leftover food home, Ms. Parrett testified that one of the cooks came to her with concerns regarding an employee taking food home. Ms. Parrett stated that the reason employees are not allowed to take food home is, among others, to prevent the kitchen from preparing more food than needed on purpose so the leftovers could be taken home. In other words, it had to do with portion control and waste management, which are a major concerns at the Center and part of the reason a waste disposal log is to be kept. According to the information received, employee Mike Holbrook had taken two pieces of bread pudding home and inquired about taking leftover soup home as well.

15. According to Ms. Parrett, she did not believe the Appellant was satisfactorily performing her job. Ms. Parrett believed there had been no improvement in job performance at all since the Appellant's 2-day suspension. As such, it was Ms. Parrett's belief that a 30-day suspension was reasonable.

16. On cross-examination, Ms. Parrett testified she had a meeting with the Appellant and Todd Finley, the Executive Director at the Artisan Center, where Mr. Finley used an inappropriate word. According to Ms. Parrett, she told the Appellant to ask Mr. Finley directly to quit using the word "damn" which, according to her, she did and Mr. Finley subsequently quit using the word in front of the Appellant.

17. The next to testify at the hearing was **Todd Finley**, the Executive Director of the Kentucky Artisan Center since January 2016. Mr. Finley oversees the entire operation of the Artisan Center and is the Center's Appointing Authority.

18. According to Mr. Finley, he issued the 30-day suspension letter marked as Appellee's Exhibit 14 and was involved in the decision to do so. Mr. Finley stated the suspension was justified based on Appellant's lack of good work.

19. The next witness to testify at the hearing was **Misty Judy**, the Executive Director of Human Resources, for the Tourism, Arts and Heritage Cabinet. Ms. Judy testified she became the Executive Director of Human Resources on August 16, 2017, and was, therefore, not acting as such during the time in question. However, she did review the Appellant's personnel record and, in her opinion, the actions taken by the Artisan Center were consistent with the Cabinet's policy of progressive discipline. Starting with a PIP or a written reprimand, then moving on to higher levels of disciplinary action, including suspension, based upon the severity of the conduct. In the event additional suspension(s) become necessary, they are usually progressively more severe. Ms. Judy admitted that jumping from a 2-day suspension to a 30-day suspension was quite a leap, but given the Appellant's leadership position and the short timeframe between her ongoing work product issues, the 30-day suspension was reasonable under the circumstances. According to Ms. Judy, the Appellant did not appear to be "getting it." In addition, failing to keep accurate temperature logs constituted a potentially public health issue and "fudging" them was obviously extremely dishonest. The Agency then closed its case-in-chief.

20. The Appellant, Angela Wilson, began presentation of her evidence by calling herself. According to Ms. Wilson, her job was difficult to complete each day. She stated the Artisan Center café was always short-staffed and she only had two workers to help her most days. On occasion, when they were busy or during lunch, she would get additional help with the cash registers. She further testified that each day at 4:00 p.m., the cash registers had to be closed. This took 15 to 20 minutes, leaving very little time to accomplish her remaining cleaning duties. According to Ms. Wilson, it was the Cook II's job to ensure the kitchen was clean. Ms. Wilson complained that no one had ever come to her regarding problems with stocking the café or keeping it cleaner until she received her first 2-day suspension. Finally, Ms. Wilson admitted to having falsified various temperature logs. She explained she simply did not know any better. Again, the Appellant complained that she was never instructed not to complete the logs in that manner. Instead, Ms. Parrett just took photos of the logs and the kitchen and "nailed her" without any warning.

21. Ms. Wilson testified that the café is open to the public 24 hours a day, so it is impossible to keep the dining area clean at all hours.

22. With regard to pots and pans left out in the kitchen, Ms. Wilson stated that some of them were soaking overnight because they had been burnt. Other dishes were clean but were not put away because they did not have enough time to wait for them to dry.

23. Finally, Ms. Wilson opined that the 30-day suspension was excessive and that Ms. Parrett went behind her back to find problems to justify her eventual termination because Todd Finley did not like her. The Appellant then closed her case-in-chief.

24. This matter is governed by KRS 18A.095(1), which states that a classified employee with status shall not be dismissed, demoted, suspended or otherwise penalized, except for cause.

25. The Hearing Officer has considered the entire administrative record, including the testimony and exhibits therein.

FINDINGS OF FACT

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

1. The Appellant, Angela Wilson, a classified employee with status, timely filed her appeal with the Personnel Board on January 25, 2017, appealing from her 30-day suspension from duty and pay from her position as a Food Operations Manager with the Kentucky Artisan Center. The suspension was to be served beginning of business on January 17, 2017, through close of business on February 25, 2017.

2. Pursuant to the Corrected Interim Order dated June 2, 2017, the issues before the Personnel Board was the Appellant's 30-day suspension and the Appellant's claim of retaliation.

3. On July 5, 2016, the Appellant was issued a written reprimand (Appellee's Exhibit 4). At that time, the Appellant was having difficulty performing her job duties, and supervising and training her staff. The written reprimand was issued based mainly upon the Appellant's failure to properly stock certain items for the café along with her inability to maintain proper cleaning standards required by the health department.

4. Also on July 5, 2016, the Appellant was issued a Performance Improvement Plan (PIP) (Appellee's Exhibit 2 and 3). This required the Appellant to keep an adequate food inventory on hand and to otherwise keep the café adequately supplied. She was also required to provide Ms. Parrett with a daily cleaning and checklist documenting what areas of the café had been cleaned. She was also tasked with communicating with her staff to ensure all such duties were taken care of in a timely manner.

5. As demonstrated by the testimony of Ms. Parrett, the Appellant and the photographs contained on Appellee's Exhibits 6 and 7, there were times when the standard of cleanliness at the café were not being met. In addition, the various temperature logs, etc., contained on Appellee's Exhibits 6, 7, 8, 10, 11, and 12 were clearly being falsified, a fact freely admitted to by the Appellant herself.

6. The record makes clear the Appellant, who also had supervisory duties, continually failed to perform important job tasks, falsified important temperature logs, and otherwise did not adhere to the terms of her PIP between July 2016 and January 16, 2017. In fact, with the exception of allowing food to be taken home by an employee, the Appellant did not deny the allegations included in her interim review, her written reprimand or both of her suspensions. Rather, she simply complained that her job was too hard and the café too understaffed to be able to complete her job duties each day.

7. Based upon the preponderance of the evidence, it is found the 30-day suspension of the Appellant from duty and pay from her position as Food Operations Manager at the Kentucky Artisan Center was neither excessive nor erroneous and was taken with just cause.

8. Finally, there is no credible evidence of record to support a finding the Appellee was ever retaliated against by the Appellee.

CONCLUSIONS OF LAW

1. The Appellee has demonstrated by a preponderance of the evidence that the 30-day suspension of the Appellant from her position as Food Operations Manager with the Kentucky Artisan Center was neither excessive nor erroneous and was taken with just cause.

2. The Appellant has failed to demonstrate by a preponderance of the evidence that she was retaliated against by the Appellee.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of ANGELA WILSON V. TOURISM, ARTS AND HERITAGE CABINET, (APPEAL NO. 2017-022) be DISMISSED.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

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

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

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

ISSUED at the direction of Hearing Officer Geoffrey Greenawalt this 7th day of December, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. William Adams
Ms. Angela Wilson