

**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 **ODA BARNES VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2018-107)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 12<sup>th</sup> day of March, 2019.

  
\_\_\_\_\_  
**MARK A. SIPEK, SECRETARY**  
**KENTUCKY PERSONNEL BOARD**

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2018-107

ODA BARNES

APPELLANT

VS.

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

\*\*\* \*\*

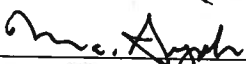
The Board, at its regular March 2019 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 13, 2019, and being duly advised,

**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 **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 12<sup>th</sup> day of March, 2019.

KENTUCKY PERSONNEL BOARD

  
\_\_\_\_\_  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Lucas Roberts  
Hon. Steven Bolton  
Mr. Jay Klein

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2018-107**

**ODA BARNES**

**APPELLANT**

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

**CABINET FOR HEALTH AND FAMILY SERVICES**

**APPELLEE**

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

This matter came on for evidentiary hearing on January 10, 2019, at 9:30 a.m., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Oda Barnes, was present at the evidentiary hearing and was represented by the Hon. Steven Bolton. The Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Lucas Roberts. Appearing as agency representative was Christina Stewart.

This matter involves a 3-day suspension given to the Appellant by letter dated May 15, 2018 (Appellee's Exhibit 8). The Appellee was assigned the burden of proof by a preponderance of the evidence.

The Appellant was cited under 101 KAR 1:345 for a lack of good behavior in that she allegedly lied to management in order to disparage a coworker.

**BACKGROUND**

1. The Appellee's first witness was **Brittany Ledet**. She is an Administrative Specialist III whose duties include areas of personnel and payroll timesheets. Her duties at the pertinent time included manually checking and entering timesheets into the computer system. The timesheet in question here was that of the Appellant from March 16 through March 30, 2018.

2. The witness stated that she reviewed Appellant's timesheet and found that there was an error in that Appellant had claimed 1.5 hours of sick leave taken rather than the actual 2.5 hours taken. Since the Appellant's supervisor, Christy Heilman, was absent on April 2, 2018, the witness stated that she took the Appellant's timesheet directly to her office for correction. She

stated that the Appellant was absent and she placed the timesheet in the Appellant's chair in that office. She stated she did not receive the corrected timesheet back until the following day, April 3, 2018. However, as of 8:00 a.m. on April 3, 2018, having not received the corrected timesheet then, the witness discussed the situation with supervisor Jeff Sparks, and told him she had not received it at that time.

3. This witness was later informed that the original timesheet had been found in the Appellant's recycle box.

4. The Appellee's next witness was **Jeff Sparks**. He is a Administrative Section Supervisor in the Division of Vital Statistics. He oversees several units, one of which includes the "death" unit, also known as the unit which processes death certificates. He testified that early in the morning of April 3, 2018, after having been approached by Brittany Ledet concerning a missing timesheet, he sent an 8:47 a.m. email to the Appellant and others asking for assistance in finding the lost timesheet of the Appellant. After his discussion with Ledet, the witness stated he then approached the Appellant inquiring about the timesheet, to which the Appellant replied, "[she] had never seen the timesheet from Ledet." Sparks then sent an April 5, 2018 memo (2 days later) at 8:47 a.m. to the Appellant and various others again seeking assistance for locating Appellant's timesheet. In this email, he specifically requested everyone check in and around the desk area, filing cabinets and drawers, trash cans, recycle boxes, and overhead bins.

5. On April 6, 2018, at 8:12 a.m., this witness received an email from supervisor Christina Stewart. (Appellee's Exhibit 5). This email informed Sparks that Stewart had, that morning, gone to the Appellant's office, pulled her recycle box out, and found the missing timesheet. This occurred after the Appellant had previously told this witness that she had gone through everything in her office in a fruitless attempt to find the timesheet.

6. On cross-examination, the witness admitted that he had never seen the Appellant physically receive the timesheet from Ledet. He admitted that he knows of no one with any personal knowledge that the Appellant actually received the timesheet. He confirmed that, in light of the minor mix-up in hours recorded, he did not think the Appellant attempted to fraudulently attempt to collect money not due her.

7. At this point, Appellee's Exhibit 6 was placed into the record. It is security camera footage showing Ms. Ledet entering the Appellant's office cubicle on April 2, 2018, at 10:22 a.m. Within a minutes, Ledet exited and, from 10:22 a.m. to 10:35 a.m., no one is seen entering the Appellant's office. The Appellant then returned to her office at 10:35 a.m.

8. The Appellee's next witness was **Christina Stewart**. She is the Administrative Branch Manager within Vital Statistics. The witness stated that she had, at some point, found out about the apparent missing timesheet of the Appellant, and was told it could not be found. She verified she pulled Appellant's recycle box out, thereby finding the missing timesheet. She stated that immediately upon finding the timesheet, she took a picture of it. After watching the

video footage, this witness also confirmed Ledet's entry into the Appellant's office at 10:22 a.m. and almost instantaneous exit. She confirmed that no one had entered until 10:35 a.m. when the Appellant re-entered her office.

9. On cross-examination, the witness admitted that her only knowledge involving this matter was through emails from Jeff Sparks. She added that, of course, she found the timesheet in the recycle box. She also confirmed that the Appellant did file a corrected timesheet and was paid. The witness expressed the thought that she believed the Appellant's actions in the handling of this timesheet was an attempt to get Brittany Ledet in trouble, as they had had some previous history in February 2012, which resulted in a written reprimand for the Appellant.

10. The Appellee's next witness was **Jay Klein**. He is now designated as the Appointing Authority for the Cabinet, but testified that, in May 2018, J. Alan Sisk served in the same role. However, Mr. Klein oversaw the drafting of the suspension letter.

11. The witness added that, following the suspension, the Appellant had made an open records request for surveillance videos. He furnished the video footage covering only working hours, and not after hours footage. The witness was then queried as to whether the entire sequence of events was, in fact, entrapment. The Appellant's question was premised on the fact that a timesheet supposedly delivered to the Appellant on April 2 and returned corrected on April 3 necessitated going through the charade of sending at least two other emails continuing to seek assistance in finding the lost timesheet. Of course, the timesheet was found by Christina Stewart in the Appellant's recycle box on April 6.

12. The Appellee then recalled **Brittany Ledet** for the sole purpose of confirming that it was the Appellant's actual, original timesheet shown in the aforementioned video footage, which she carried into the Appellant's office and placed in the chair.

13. The Appellee closed. The **Appellant, Oda Barnes**, called herself as her first witness. She has been employed since 2001 with the Office of Vital Statistics.

14. The Appellant confirmed the error cited in her original timesheet (Appellee's Exhibit 1). It showed she had claimed 1.5 sick leave hours taken on March 27, rather than the 2.5 hours actually taken. Shown the second page of the timesheet, the Appellant noted that the changes noted there had been made by Brittany Ledet. She stated that she had turned in her original timesheet on Monday, April 2, 2018. She went on to say that she never saw another timesheet on her chair and, until receiving an April 3 email from Jeff Sparks, she did not realize there was an error. She added that her chair is located very close to the recycle bin.

15. After first being questioned by Sparks, she informed him (after he had been told by Stewart) that her timesheet could not have been found in the trashcan because it was emptied every day. She related that Sparks said, "Well, I meant that it was found in the recycle bin." The witness then added that the recycle bin was under her desk.

16. The witness was adamant that between March 30 and April 5, 2018, she had no knowledge that there was a question with her missing timesheet. In fact, she added that she and Sparks both looked in her office for the timesheet. The witness also noted that, when first contacted by Sparks, she had looked in the recycle bin for the timesheet, but did not see it. She then gave Sparks the corrected timesheet on Tuesday, April 3. She then did not understand why he sent an April 5 email to multiple people asking for help in locating the timesheet.

17. The witness also explained that she, at some point, was told by supervisor Christina Stewart that she had seen her timesheet in the recycle box while walking by her door. The Appellant explained this could not have been seen from the door, as the recycle box was underneath her desk.

18. Prior to issuance of the suspension, the Appellant met with both Christina Stewart and Jeff Sparks, during which time they told her they felt she had lied to management about not seeing her timesheet. The Appellant then introduced Appellant's Exhibit 3, the year-end 2017 Annual Employee Performance Evaluation given her. The overall score was 359, "Highly Effective" and was signed by Sparks. The Appellant noted that this evaluation was given to her less than 60 days prior to the April 2018 incident.

19. Returning to the request for video footage made by the Appellant or her counsel, the Appellant was not satisfied with the working hours only footage and requested from the Commonwealth Office of Technology (COT) the tapes throughout the period of April 2 through April 6, 2018. In any event, she was not given, or the footage could not be obtained for, any 24/7 coverage that might have existed.

20. The witness then explained that on Friday, April 6, her supervisor Christy Heilman told her that Jeff Sparks had found her timesheet in the trash can, but then changed his story to say it was the recycle bin. He told Heilman he wanted to see the Appellant. During that meeting with Sparks, the Appellant insists he did not tell her Christina Stewart had found the timesheet, but first told her that he had found it.

21. The Appellant further testified that upon her return from suspension, her first day back was May 19, 2018, and she made a request from Jay Klein for the video footage. He responded May 30, 2018, saying that he needed 10 more days to compile a copy. At that point, the Appellant was under the impression that there was 24/7 coverage, but in a December 4, 2018 response to Appellant's counsel, there was no reference made to 24/7 coverage being available.

22. The Appellant then firmly denied doing anything to attempt to get Brittany Ledet into trouble. She also denied lying to Christina Stewart about Ledet.

23. The Appellant then referenced the following sequence of events: on April 4, she met with Stewart and Sparks and was first told that Stewart had discovered her timesheet; on April 5, another email was issued by Sparks asking for help in locating the missing timesheet;

and on April 6, before office hours, Sparks informed her he had entered her office and told her he had found her timesheet.

24. On cross-examination, the witness admitted that Jeff Sparks told her on April 3 that Ledet had put the timesheet in her chair. She again insisted that this was the first knowledge she had of a possible error. The Appellant then admitted she had filed a grievance against Brittany Ledet on April 11, 2018, protesting the mishandling of her timesheet, which she claims contained personal and confidential information. (**Hearing Officer Note:** It was also established at some point by Jay Klein that the timesheet in use at that time contained no personal or confidential information.)

25. The Appellant's next witness was **Christy Heilman**. She is Appellant's first-line supervisor and testified that, after not being at work on April 2, 2018, she next received an email from Sparks attempting to find the original timesheet. She stated that no one had ever talked to her prior to issuance of the suspension. She also added that the Appellant is a competent employee, whom she describes as "quiet."

26. **David Boswell** was next called as the Appellant's witness, but offered no useful information. The Appellant closed.

#### **FINDINGS OF FACT**

1. The Appellant, a 17-year employee with the Agency, was issued a 3-day suspension by letter dated May 15, 2018, for lack of good behavior under 101 KAR 1:345. The basis of the charge was management's feeling that Appellant had lied in order to disparage a co-worker, Brittany Ledet.

2. The Appellant timely submitted her timesheet covering the period of March 16-30, 2018. Ledet, whose duties included checking timesheets for accuracy, noticed a minor error on the Appellant's timesheet. In the absence of the Appellant's supervisor, Ledet stated that, on April 2, 2018, she took the original timesheet back to the Appellant for correction. This was supported by her testimony and video footage.

3. Although the timesheet was supposedly placed in her office chair, the Appellant credibly testified she never saw it. Regardless, Ledet received a corrected timesheet from the Appellant on April 3, 2018, after she learned of her original error.

4. The Hearing Officer finds puzzling the Agency's actions between Tuesday, April 3 and Friday, April 5, 2018. With a corrected timesheet in hand one day after notifying the Appellant of her error, it makes little sense why management would continue a charade of emails and meetings subsequent to find a missing document. Although this was purportedly for the

purpose of retrieving personal and confidential information on the timesheet, the testimony of Jay Klein established no such information existed.

5. The account of finding the missing timesheet, as detailed by Christina Stewart and Jeff Sparks in emails and conversations with each other and with the Appellant, are confusing at best, and suspicious at worst.

6. The Agency's reliance on a February 2012 written reprimand received by the Appellant due to a minor incident with Ledet cannot seriously be perceived as a reason why, six years later, the Appellant would lie about not receiving the timesheet from Ledet to disparage her.

### CONCLUSION OF LAW

The Hearing Officer concludes as a matter of law that the Agency failed to carry its burden of proof by a preponderance of the evidence.

### RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **ODA BARNES V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2018-107)** be **SUSTAINED**, that Appellant be reimbursed for the 3 days' of suspension, and otherwise be made whole. Further, this matter shall be expunged from Appellant's personnel records. The Appellee is **ORDERED** to reimburse the Appellant for any leave time she used attending the evidentiary hearing and any pre-hearing conferences at the Personnel Board. (KRS 18A.105, KRS 18A.095(25) 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 R. Hanson Williams** this 13<sup>th</sup> day of February, 2019.

**KENTUCKY PERSONNEL BOARD**



---

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

A copy hereof this day mailed to:

Hon. Lucas Roberts  
Hon. Steven Bolton