

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-054

RANDY HALE

APPELLANT

VS.

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

* * * * *

The Board, at its regular April 2017 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 8, 2017, Appellee's Exceptions, Appellant's Response to Exceptions and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

- A. **Delete** Background paragraph 2, and substitute the following:
 2. Specifically, the allegations of failure to supervise stated:
 - Failure to supervise Phaedra Bailey, who had 70 past due cases, four assigned by Hale during 2014 and the remainder assigned by Hale in 2015. Additionally, 35 of the assigned cases which had not been initiated,

- Failure to have “the required consultation documentation” as more fully explicated in Standard of Practice 1.5, Supervision and Consultation, in 133 of 148 active cases,
- Failure to supervise to ensure that case workers had completed Adult Protective Service investigation folders in 90 of 148 active cases,
- Failure to supervise to ensure that case workers had conducted consultations with Hale within 72 hours of receipt of a newly assigned case,
- And generally, failure to meet monthly to strategize with each case worker to ensure that Social Service Workers had completed tasks as discussed, to document why a task was not completed, to remove barriers to completion of cases, to strategize to complete expected dates of completion of cases and to assess completion of tasks at the next consultation.

B. **Delete** Findings of Fact paragraphs 1 and 2, and substitute the following:

1. The facts as stated in the background are largely not in dispute. The dispute arises in the interpretation of those facts, and to what extent Hale should be disciplined. The testimony and

record of case consultations compiled by Baize of Hale's active cases from October 2014 through November 2015 (introduced into the record as Appellee's Exhibit B) demonstrates that the data did distinguish among the different categories of cases in the column labeled "Assessment Type." All categories of cases require consultations and, as a supervisor, Hale was required to conduct case consultations monthly. Pursuant to DCBS Standards of Practice (SOP 1.5), Supervision and Consultation, Hale was required to meet monthly with each worker to discuss and strategize specific issues for each CPS and APS case. (See Appellee's Exhibit F, pages 1 and 2.) Baize's case review demonstrated that Hale did not conduct monthly case consultations of all of Ms. Bailey's cases, including her past due cases. In addition, Hale did not conduct a consultation on one past due case of Social Service Worker Luke Hamlin (Appellee's Exhibit B, page 7), and five cases of Social Service Clinician Aaron Penrod (Appellee's Exhibit B, pages 8 and 10). Hale's lack of supervision did not catch that Phaedra Bailey had failed to initiate 34 of her 70 past due cases.

2. Hale made some efforts to supervise Phaedra Bailey and worked with his supervisor, Mary Cook. They used the supervisory tools available to them to attempt to prod Bailey to perform her duties and responsibilities without success. These efforts included a Performance Improvement Plan, mandatory

overtime requirements, verbal and written warnings and, eventually, her dismissal. Nonetheless, the fact that Hale failed to conduct monthly consultation of Bailey's cases resulted in a number of cases assigned to her being completely ignored for months before being caught by anyone at the Cabinet. While Bailey may have been responsible for the 34 cases which had not been initiated, Hale was at fault for not conducting the monthly consultations.

C. Delete Findings of Fact paragraphs 5 and 6, and substitute the following:

5. The Cabinet suspended Hale, a 12-year outstanding employee with no disciplinary record, for his failure to perform his duties as a supervisor by conducting monthly case consultation for the workers assigned to him:

6. For these reasons, the Hearing Officer finds that the Cabinet established by substantial evidence that Appellant, Randy Hale, performed his job duties as a Family Services Office Supervisor in violation of 101 KAR 1:345, Section 1, Standards of Practice 1.5 and 922 KAR 1:330 by failing to conduct monthly consultations. The Cabinet failed to establish that Hale failed to meet the Region's 72-hour rule, because the Cabinet failed to produce any evidence of notification. Likewise, the Cabinet failed to provide evidence that Hale should be disciplined for failure to implement the folder system, when it was clear that this system

was not being implemented by many supervisors who were not disciplined.

D. **Add Findings of Fact paragraph 7:**

7. The Board finds that the failure to conduct monthly consultations is worthy of a five-day suspension, regardless of the 72-hour rule or the failure to implement the folder system. The Cabinet has established just cause for the five-day suspension, and the suspension is neither excessive nor erroneous.

E. **Delete the Conclusion of Law and substitute the following:**

The Cabinet for Health and Family Services established by substantial evidence that the Appellant, Randy Hale, performed his job duties in violation of 101 KAR 1:345, Section 1, the Department for Community Based Services' Standards of Practice and 922 KAR 1:330, and there was just cause for his five-day suspension which was neither excessive nor erroneous.

IT IS HEREBY ORDERED that the appeal of RANDY HALE V. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2016-054) is DISMISSED.

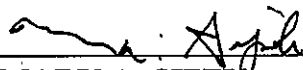
IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as altered, are approved, adopted and

incorporated herein by reference as a part of this Order and that the Appellant's appeal is DISMISSED.

The parties shall take notice that is 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 April, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPER
SECRETARY

A copy hereof this day mailed to:

Hon. Kathleen Hines
Hon. Michael Boylan

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-054

RANDY HALE

APPELLANT

VS.

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

CABINET FOR HEALTH AND FAMILY SERVICES

APPELLEE

** ** * * *

This matter came on for an evidentiary hearing on October 7, 2016, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Stephen T. McMurtry, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Randy Hale, was present and was represented by the Hon. Michael L. Boylan. Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Kathleen Hines.

Briefs were submitted by both parties simultaneously on November 18, 2016.

BACKGROUND

1. Randy Hale is a Family Services Office Supervisor with the Department for Community Based Services, Two Rivers Service Region. On January 26, 2016, Tresa Straw, Appointing Authority for the Cabinet, Office of Human Resource Management, notified Hale that he would be suspended for five working days, from February 22, 2016, through February 26, 2016, for violation of 101 KAR 1:345, Section 1, unsatisfactory performance of duties; more specifically, violations of Department of Community Based Service Standards of Practice (SOP) 1.1, Ethical Practice; (SOP) 1.5, Supervision and Consultation; (SOP) 2.10, Initiating the Report; Personnel Procedure 2.1, Employee Conduct; and 922 KAR 1:330. Essentially, these charges accused Hale of failing to supervise Social Service Workers who were assigned to investigate "reports of alleged adult abuse and neglect and provide ongoing family-based services."

2. Specifically, the allegations of failure to supervise stated:

- Failure to supervise Phaedra Bailey, who had 70 past due cases, four of which were assigned by Hale, and 35 of which had not been initiated,
- Failure to have “the required consultation documentation” as more fully explicated in Standard of Practice 1.5, Supervision and Consultation, in 133 of 148 active cases,
- Failure to supervise to ensure that case workers had completed Adult Protective Service investigation folders in 90 of 148 active cases,
- Failure to supervise to ensure that case workers had conducted consultations with Hale within 72 hours of receipt of a newly assigned case,
- And generally, failure to meet monthly to strategize with each case worker to ensure that Social Service Workers had completed tasks as discussed, to document why a task was not completed, to remove barriers to completion of cases, to strategize to complete expected dates of completion of cases and to assess completion of tasks at the next consultation.

3. **Mary Michelle Baize**, a Service Region Clinical Associate, and Hale’s supervisor for several months immediately prior to Hale’s five-day suspension, testified that she performed a survey of the cases assigned to the social workers Hale supervised. She testified that the survey produced the numbers stated in paragraph two, above. Baize said she was asked initially to investigate Phaedra Bailey to obtain information to discipline her. In doing so, she realized that the other eight Social Service Workers supervised by Hale did not have the “consultation documentation required by Standard of Practice 1.5; Supervision and Consultation.” This led, in part, to the disciplinary action taken against Hale.

4. One of the complaints against Hale was his failure to ensure that his Adult Protective Services case workers were following the “folder” system explained at an October 21, 2014 regional meeting, which Hale attended. The folder system was designed to ensure an organized and documented file in an active case so that it could be easily transferred with its extensive history and documentation to another Social Services Worker. Baize testified that she could not remember if the presenters at the October 21, 2014 regional meeting discussed the 72-hour rule, which Hale was charged with violating. Baize testified that other supervisors of similar rank with Hale were not implementing the folder system. Baize also testified that there were four categories of cases handled by Adult Protective Services case workers, namely: 1)

domestic violence, 2) guardianship assessment, 3) general adult, and 4) vulnerable adult investigations.

5. **Kevin Foley**, Service Region Administrator Associate for the Two Rivers Service Region, described the steps of the disciplinary process. He said the proposed disciplinary action and supporting facts were referred to the Office of Human Resource Management for review. Foley testified that the office's major concern was the 35 cases assigned to Phaedra Bailey which were not initiated. Foley recalled a conversation to which he was privy about confusion among the Adult Protective Service workers and supervisors regarding the folder system. He did remember talk in a November 17, 2015 staff meeting about "folks not following the consultation procedure." Foley authenticated and introduced the relevant Standards of Practice on which Hale's discipline was based.

6. **Jay Klein**, Position Director, Division of Employee Management, Office of Human Resource Management in the Cabinet for Health and Family Services, stated that he was authorized to testify in place of the Appointing Authority, Tresa Straw. He explained the process for major disciplinary action. He justified Hale's suspension because of the "sheer volume of cases involved." He said, "so many cases made Hale's failure to supervise egregious." He was unaware of any other similarly situated supervisor of Hale's rank having been disciplined for failure to supervise.

7. **Randy Hale** testified that he had been employed by the Cabinet for 12 years, the last four years as a supervisor of Adult Protective Services case workers. He said the categories of cases identified by Mary Baize - domestic violence, guardianship, assessment, general adult, and vulnerable adult investigations - are different in the services required. For example, vulnerable adult cases require more personal contact and perhaps more consultations. He said the fact compilation and analysis of Mary Baize made no distinction between those cases that required more work and consultation and those that required little and were, as a result, misleading. For example, domestic violence investigations often do not require personal contact and, as a result, fewer, if any, consults. He testified that with all of his case workers he required at least one "consult" in working a case and the workers were always welcome to consult with him at any time. He testified that he preferred consultations later in the case investigation so that he could see the "full body of work and make changes as necessary." He testified that, except for Phaedra Bailey's, all of the case files reviewed by Mary Baize were current and active, and if they did not have "consults" documenting the file that would have been done in due course. He said that if all of the requirements including consults had not been completed and documented in the file, the case could not be finally closed out in TWIST, the computer system that stores the final record. He said his review of TWIST revealed that Phaedra Bailey had 90% of the total past due Adult Protective Service referrals for the Two Rivers Region.

8. He denied that he was ever made aware of the 72-hour consult requirement by his supervisor, Mary Cook, or at a regional staff meeting on October 21, 2014, or by his present supervisor, Mary Baize, until this disciplinary charge. He stated that throughout the last months of 2014 and during 2015, his supervisor, Mary Cook (until she retired) approved of his supervision as she would routinely “pull random folders...for review to ensure that he was utilizing the system correctly.”

9. He testified that he worked closely with Mary Cook to present to Phaedra Bailey Performance Improvement Plans, mandatory overtime requirements, verbal and written warnings, and, finally, dismissal in an effort to get her to perform her work responsibilities.

10. Hale introduced a December 2, 2015 email from Dawn Crabtree of the Cabinet to Mary Baize and ten other supervisors of similar rank that reported, “seems most are not utilizing the consultation forms per SOP 1.5.”

11. Hale testified and responded in writing to the disciplinary action that his caseload had “blossomed.” He said he became an Adult Protective Services Supervisor in 2011 with the understanding that he would cover Warren County and have six workers to supervise. He said that had expanded in 2014-2015 to five counties and nine workers. He said in 2015 two of his workers resigned, one was transferred, and two went on sick leave. And, Mary Cook denied his request for assistance.

FINDINGS OF FACT

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

1. The facts stated in the Background are not disputed. The dispute arises in the interpretation of those facts, and, if Hale’s interpretation of the facts is accepted, to what extent should he be disciplined or disciplined at all. The record of case consultations compiled by Baize, Hale’s active cases from October 2014 through November 2015, and her interpretation of the data were somewhat misleading and perhaps misinterpreted by Jay Klein and Tresa Straw. The data were misleading for these reasons:

- The data did not distinguish among the different categories of cases handled by Adult Protective Services workers as some required many consultations and others none.

- The data may not have accounted for Hale's consultations late in the case development, a practice obviously approved by his supervisor, Mary Cook.
- The data did not account for the fact that all Phaedra Bailey's cases were assigned to Hale, perhaps unfairly discrediting the quality of his supervision.
- The data did not account for the Department's failure to notify Hale of the 72-hour rule that required case consultations within 72 hours of a case assignment.

2. Hale did not fail to supervise Phaedra Bailey. Hale diligently worked with his supervisor, Mary Cook, during most of 2015 in an effort to bring Phaedra Bailey back into good standing and to process the 34 uninitiated cases. Hale and Mary Cook used the supervisory tools available to them to attempt to prod Bailey to perform her duties and responsibilities without success. They tried Performance Improvement Plans, mandatory overtime requirements, verbal and written warnings, and, finally, dismissal. Hale was not to blame for Bailey's 34 uninitiated cases.

3. The Two Rivers Regional Office did not notify Hale of that Region's 72-hour rule. The Cabinet's witnesses failed to produce any evidence of notification.

4. There was much confusion and failure by other Social Service Workers and their supervisors to implement the folder system introduced and discussed in the October 21, 2014 FSOS meeting. The Cabinet made no attempt to determine the extent and seriousness of that confusion so that equal treatment and proportionality could be extended to Hale.

5. The Cabinet gave Hale, a 12-year outstanding employee with no disciplinary record, a five-day suspension because of 1) the sheer volume of missing consultations, an allegation which upon closer scrutiny was questionable and 2) that Phaedra Bailey had failed to initiate 34 cases assigned to her, a failure that should not be blamed upon Hale's lack of supervision.

6. For these reasons, the Hearing Officer finds that the Cabinet has failed to establish by substantial evidence that the Appellant, Randy Hale, performed his job duties as a Family Services Office Supervisor in violation of 101 KAR 1:345, Section 1, the Standards of Practice, previously cited, and 922 KAR 1:330.

CONCLUSION OF LAW

The Cabinet for Health and Family Services has failed to establish, by substantial evidence, that the Appellant, Randy Hale, performed his job duties in violation of 101 KAR 1:345, Section 1, the Department for Community Based Services' Standards of Practice, and 922 KAR 1:330.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **RANDY HALE VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2016-054)** be **SUSTAINED**, and that the **5-day suspension be rescinded and expunged from his record, that he be awarded back pay, and other benefits to which he is entitled for the 5-day suspension which are being restored to him. Further, to reimburse Appellant for any leave time he used attending the hearing, and any pre-hearing conferences at the Board, and that he otherwise be made whole. 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).

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 Stephen T. McMurtry** this 8th day of February, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Kathleen Hines

Hon. Michael L. Boylan