

CERTIFICATION OF PERSONNEL BOARD RECORDS

I certify that attached hereto is a true and correct copy of the Final Order Sustaining Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order and Final Order in the case of **JOHN PRICE VS. TOURISM, ARTS AND HERITAGE CABINET, KENTUCKY HORSE PARK (APPEAL NO. 2016-123)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 18th day of May, 2017.



MARK A. SIPEK, SECRETARY
KENTUCKY PERSONNEL BOARD

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-123

JOHN PRICE

APPELLANT

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

**TOURISM, ARTS AND HERITAGE CABINET,
KENTUCKY HORSE PARK**

APPELLEE

*** **

The Board, at its regular May 2017 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated April 19, 2017, 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 **SUSTAINED to the extent** therein.

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 May, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK SECRETARY

A copy hereof this day sent to:

Hon. William H. Adams
Mr. John Price

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-123**

JOHN PRICE

APPELLANT

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

**TOURISM, ARTS AND HERITAGE CABINET,
KENTUCKY HORSE PARK**

APPELLEE

** ** *

This matter came on for an evidentiary hearing on February 28, 2017, at 9:30 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Roland P. Merkel, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, John Price, was present and was not represented by legal counsel. He was accompanied by his sister, Donna Osborn, who is a paralegal. The Appellee, Tourism, Arts and Heritage Cabinet, Kentucky Horse Park, was present and represented by the Hon. William H. Adams, II. Also present as Agency representative was Ms. Stephanie Gibson.

The issue under consideration is the suspension of the Appellant from duty and pay from his position as an Automotive Mechanic IV in the Division of Buildings and Grounds, for two working days, effective beginning of business June 1, 2016, through the close of business June 2, 2016. The burden of proof was on the Appellee to show, by a preponderance of evidence, that there was just cause for such disciplinary action, and that a 2-day suspension was neither excessive nor erroneous.

The rule separating witnesses was invoked and employed throughout the course of the hearing. Each party presented their respective opening statement.

BACKGROUND

1. The first witness for the Appellee was **Steve Maynard**. For the past 18 years, Mr. Maynard has been employed as Maintenance Branch Manager by the Kentucky Horse Park. He oversees employees and assigns projects. He is Mr. Price's first-line supervisor.

2. Mr. Maynard described the procedure employed by Appellant as part of his duties to make purchases on behalf of the Kentucky Horse Park. Mr. Price receives a purchase quote from a vendor, and delivers the quote to the office to be reviewed and approved by Chuck

Ammons, Director of Maintenance. Once the quote is approved, it is sent on to the Procurement Department. The Procurement Department then either approves or denies it. The paperwork comes back to Maintenance accompanied with a purchase order and the Branch proceeds with the purchase as quoted. Appellant then orders the parts or service. Once the parts are received or the services provided, the vendor is to send in its invoice. Appellant then turns the invoice in to Wanda Hamilton for payment.

3. No less than once every month, Appellant uses the conference room table at the Maintenance Branch to spread out his paperwork, matching up invoices to their corresponding quotes, in order that vendors may be paid.

4. Mr. Maynard was made aware there was a problem of quotes matching certain vendor invoices. Prior to that time, Appellant had never approached him to advise there were problems matching invoices to quotes.

5. Invoices should be paid as soon as possible, within 30 days. Appellant deals with 30 or more vendors. This suspension resulted from a problem encountered with Bevins Motor Company. That company sent an invoice on items they had shipped. They had not been paid.

6. Mr. Maynard participated in a meeting with Darren Ripley, the Deputy Director, Chuck Ammons and Stephanie Gibson. After looking at this problem, it was discovered there were other vendors' invoices that were also overdue. Mr. Maynard believed there were also matching problems with those invoices.

7. Part of the Appellant's job requires him to make sure the invoices match the quotes. If a vendor does not cooperate, Appellant should so advise Maynard. He identified Appellant's Exhibit 1 as a group of invoices requesting payment, all dated February 15, 2016. The invoice on page 1 shows Mr. Ripley's signature of approval. Other invoices in the exhibit show a stamp at the bottom placed by Wanda Hamilton, signifying she received such invoice, which was to be paid. He surmised all these invoices apparently came from Bevins Motor Company.

8. **Mr. Chuck Ammons**, who, since January 2015 has been employed by the Kentucky Horse Park as Director of Facilities, was the next witness. He is Appellant's second-line supervisor.

9. It was either Darren Ripley, Mr. Ammons' boss, or the business office that called him to advise there was a problem with invoices being in payment arrears from nine to ten months. They started pulling files to identify where the issues existed. If these issues existed, Mr. Ammons should have been made aware of it at that time.

10. He participated in the meeting where the discipline of the Appellant was discussed with Darren Ripley and Stephanie Gibson. He made a disciplinary recommendation. The group concurred with issuance of a two-day suspension. A two-day suspension was

reasonable based on the magnitude of invoices, amounts outstanding, and the time period of arrears.

11. The Division tries to have invoices paid within 30 days. If there is a discrepancy in pricing, a reasonable time is allowed to investigate and straighten the matter out, usually up to 90 days. If there were problems with invoices not being paid anywhere from six months to a year, Ammons should have been made aware of it in a timely manner. Up until this particular incident, he had never been advised there were any outstanding invoices exceeding six months' arrears. The matter should have been "elevated" to his attention either by Appellant or the business office. Or Appellant should have gone to his immediate supervisor. He had no knowledge whether Appellant asked Bevins Motor Company to change the date on their revised invoices.

12. He identified Appellee's Exhibit 1 as the May 27, 2016 letter which placed the Appellant on suspension. The Kentucky Horse Park became aware of the Bevins Motor Company invoice problem on February 4, 2016, when the vendor telephoned the Horse Park.

13. The next witness was **Betty Dews**, who, for the past 11 years, has been employed by the Kentucky Horse Park in Accounts Payable. She is the contact person who handles purchase orders and invoices for the Maintenance Branch.

14. In February 2016, she received a telephone call from Bevins Motor Company, which inquired about the status of several old invoices. She asked them to send a statement of any open invoices.

15. Upon receipt of the invoices, she removed those she already had or which already had been paid. She sent the remainder to Wanda Hamilton for approval of payment.

16. Following the telephone call from Bevins Motor Company, Ms. Dews' boss asked her to look at other invoices that might also be late for payment. She discovered and collected invoices from other companies that had not been turned in for payment (which she identified as Appellee's Exhibit 2). She took them to the Appellant to determine if these items had been purchased or the services already provided. These invoices were not previously on the books and comprised most of the list of unpaid invoices identified on page 2 of the suspension letter.

17. Bevins Motor Company told her that certain invoices had been reconciled with their quote, pursuant to a recent request by the Appellant, who physically visited the Bevins' premises. Those invoices are identified in the suspension letter with an asterisk. The total of all unpaid invoices cited in the suspension letter came to \$9,655.10.

18. Appellant had visited Bevins Motor Company and asked them to change their invoices to match the original quotes. When Bevins Motor Company changed the invoices, it also changed the invoice date. No one from Bevins advised her that Appellant had asked them to change the invoice date. To her knowledge, Mr. Price did not request the date be changed.

19. **Stephanie Gibson** was the next witness. Since 1990, she has been employed by the Kentucky Horse Park as Human Resource Manager, and is also the Appointing Authority designee.

20. She, Betty Dews and Darren Ripley had personal discussions with representatives of Bevins Motor Company. They went to the vendor's premises to apologize about the invoice arrears. They were told John Price had already visited them asking to change the invoices so they matched the original quotes. Bevins complied. However, the new invoices gave an appearance that that was the date the goods or services were provided. Bevins indicated they were uncomfortable about changing the invoices.

21. Mr. Price had told her he had a stack of unpaid invoices which he was unable to reconcile with the vendors' original quotes. She asked him if he had asked anyone for help with the matter. He replied no.

22. She was involved in the disciplinary process. That process included a discussion about the severity of the total of the unpaid invoices exceeding \$9,000 while the payment process and procedure had always been the same. When an invoice comes in, Mr. Price was to submit it immediately so the vendor could be paid. All employees were aware of a prior performance audit done regarding the Kentucky Horse Park, where vendor payment was an issue. Appellant had also stated he was aware of the procedures, and that he had "dropped the ball" by not having turned in the invoices and not asking for help. In that discussion, she recommended Appellant be given a five-day suspension. It was decided that a two-day suspension would be issued, due to the number of invoices involved and the dates of same.

23. Appellant's Performance Improvement Plan (PIP) outlines the duties and expectations of his job. He was required to submit invoices in a timely manner. Appellant had been buying goods and services for many years. Gibson was never advised Appellant had problems with invoices prior to this incident. The group had reviewed Mr. Price's personnel file. During the time of his employment, he has never had any prior disciplinary actions.

24. Bevins Motor Company adjusted the charges on their invoices because Mr. Price was concerned the quotes did not match the invoices. "You have to understand that when you reach out to ask for a part, it may cost \$20. But when you actually order it, it may be \$24." When Appellant got the quote, it may have been \$20, and when he later got the invoice it may have been \$24. That's where the problem was. Mr. Price never came forward to ask for help when an invoice did not match the original quote. It is a problem he should have brought to his supervisor's attention or to the business office. "A quote does not have to match an invoice, is my understanding."

25. The duty to reconcile invoices to the original quote lies with Steve Maynard, Chuck Ammons or Ms. Dews. It has always been Appellant's duty to receive the invoice as is and pass it up the chain. It is someone else's responsibility to reconcile it. She then testified she was not sure who was supposed to reconcile the invoice to the quote or contact the vendor about the problem.

26. The Appellee's case-in-chief was closed. Appellant presented his case. Appellant requested he be allowed to submit a letter statement from an individual who was not present at the hearing (marked for identification by the Hearing Officer as Appellant's Exhibit 2). The Appellee objected to admission of that document. After consideration of arguments by the parties, the Hearing Officer **SUSTAINED** the objection and did not admit Appellant's Exhibit 2.

27. The **Appellant, John Price**, gave his testimony. For the past 11 years, he has been employed by the Kentucky Horse Park as a Mechanic IV. He believes the disciplinary action taken was a little extreme, and that the write-up contained some lies. He did not ask Bevins to change the dates on the invoices.

28. He thought it was part of his duties to make certain that the invoices matched the quotes before he submitted them in a timely manner. He deals with more than 30 vendors. Sometimes those companies do not send invoices in a timely manner, and he has to call the company to ask for an invoice. There are times he does not get invoices for three to four months.

29. He told his supervisors that he "dropped the ball" because he believed he could not turn the invoices in until they were reconciled. "But it was not because I did not try." "My understanding was that I had to have an invoice that matched a quote." "I had one company in particular that was the worst, and that was Bevins." He thought it was his responsibility to go to Bevins and have it fixed. That is what he did.

30. He believes his bosses were aware that he was having problems with the paperwork to match the quotes, as he had that paperwork spread out over the conference room table. He had been working with purchasing and invoices for about 12 years. He knows invoices are to be paid within 30 days, if everything is correct. He does not know whether the list of invoices, shown on page 2 of the suspension letter, is accurate.

31. He worked on invoices on a continuous basis. Invoices are mailed to the Maintenance office, and those that pertain to his area are placed in his in-box. He takes the invoices and matches them to the quotes. He attaches the invoice to all the paperwork on that purchase and turns it in.

32. Appellant closed his case. The Appellee offered no evidence in rebuttal. The matter was submitted to the Hearing Officer for his recommended order.

FINDINGS OF FACT

1. Appellant, John Price, is a classified employee with status. He is employed as an Automotive Mechanic IV by the Tourism, Arts and Heritage Cabinet, Kentucky Horse Park, Division of Buildings and Grounds. He has held this position for 11 years and has no prior disciplinary history.

2. Part of Appellant's duties include purchasing from vendors on behalf of the Kentucky Horse Park. Once a purchase quote is approved, it is returned to Appellant, who then orders the quoted parts or services.

3. After parts are received or services provided, the vendor sends a billing invoice, which Appellant turns in to Wanda Hamilton for payment. At least once per month, Mr. Price matches the invoices to the previously-approved quote to confirm they are correct and match. Appellant regularly deals with 30 or more vendors.

4. While there was some confusion from the testimony whether it was a part of Appellant's duties to reconcile invoices with original, approved quotes, it appears Appellant had been performing this act for several years. Complicating such reconciliation are attempts by vendors to charge the Commonwealth more through their invoice than the amount approved in the original quote. There was no evidence presented to show whether this was an authorized billing practice.

5. According to the testimony of Stephanie Gibson, the Appointing Authority designee, when an invoice arrives from a vendor, Appellant is to immediately submit it for payment. If he is unable to reconcile an invoice with the original approved quote, he is to immediately notify his supervisors.

6. Appellee is required by statute to pay vendor invoices within 30 working days of receipt of goods and services, or a vendor's invoice. KRS 45.433. Failure to timely pay results in an additional interest penalty to the purchasing agency of one percent of any amount approved and unpaid for each month, or fraction thereof, after the 30 working days. KRS 45.454.

7. Appellant, in an attempt to reconcile certain invoices from Bevins Motor Company, visited Bevins' premises. Bevins agreed to, and did, reissue certain invoices, once same were reconciled with previously-approved quotes. When those invoices were reissued, the date shown on such new invoices was that of the reissue date.

8. On February 4, 2016, Betty Dews, employed in Accounts Payable for the Kentucky Horse Park, received a telephone call from Bevins Motor Company. She was advised they were owed payment from several overdue invoices. She reviewed Bevins' invoices and, with others, discovered overdue invoices where payment was also owed to other vendors. The total of all unpaid invoices for which Appellant was responsible came to \$9,665.10 (Appellee's Exhibit 2).

9. After consideration of the amount of unpaid invoices, the length of time such had remained unpaid, the unchanged procedures for reconciliation and payment, Appellant's lack of a prior disciplinary history and the fact Appellant failed to bring notice of the problems to his supervisors, Appellee issued Appellant a two-day suspension, effective June 1 and 2, 2016, for unsatisfactory performance of duties under 101 KAR 1:345, Section 1. (Appellee's Exhibit 1.)

10. Appellant filed a timely appeal of his suspension with the Kentucky Personnel Board.

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 and for the unsatisfactory performance of duties. 101 KAR 1:345, Section 1. A suspension shall not exceed 30 days. 101 KAR 1:345, Section 4(1).

2. Appellant, John Price, was issued a two-day suspension from his employment position by letter of May 27, 2016 (Appellee's Exhibit 1). That suspension was based on an allegation of unsatisfactory performance of duties (101 KAR 1:345, Section 1). Mr. Price testified that all through his employment he believed it was part of his job responsibility to reconcile vendor invoices with vendors' original quotes, prior to submitting the documents up the chain for payment. There was some confusion as a result of testimony of several witnesses whether Mr. Price was, indeed, responsible for reconciliation of the invoices to the original quotes.

3. Page 3 of the May 27, 2016 suspension letter stated:

Your performance plan for 2015 job tasks, includes, but is not limited to, perform associated administrative duties and expectation of this job task is to accurately complete and submit material orders and invoices. Your failure not to submit invoices and/or quotes upon your receipt is in direct violation of 101 KAR 1:345 Section 1 the unsatisfactory of work performance as an Automotive Mechanic IV. (Sic)

4. The Hearing Officer was not provided a copy of Mr. Price's Performance Improvement Plan for 2015 and, thus, reconciliation of the allegation in the suspension letter to that performance plan was not possible. However, in a subsequent paragraph of the suspension letter, Stephanie Gibson, Human Resource Manager, stated:

Your job responsibilities in regards to quotes and invoices are as follows: upon receipt of quote(s) and invoice(s) you are required to sign and date by stating that the services have been rendered or goods have been received by you. You are further required to submit quote(s) and invoice(s) upon receipt to the Business Office. Further failure to comply with this procedure may result in disciplinary actions up to and including a dismissal.

5. This more specific reading of the job duties pertaining to quotes and invoices indicates that the Appellant's duty was, immediately upon receipt of an invoice, to sign and date both the invoice and quote and state that the services had been rendered or the goods had been received by Appellant. There is absolutely no indication that he was to do anything in the

manner of reconciliation of the invoice to the original quote. He was "further required" to submit the quote and invoice, **upon receipt**, to the Business Office. It appears Mr. Price may have been under the continuing mistaken assumption that it was his responsibility to reconcile invoices to original vendor quotes, prior to sending them on for payment. While the testimony did not make this duty clear, it is recommended the parties, as soon as possible, meet to discuss whether Mr. Price's duty is limited to what is described on page 4 of the suspension letter, or whether he is to first reconcile those documents.

6. Appellant's confusion and his not having made inquiry with his superiors, led to an undue delay in his submission of the invoices up the chain. Regardless of whether reconciliation was part of his duties, Mr. Price had a responsibility to immediately tender such invoices upon receipt, but failed to do so.

7. The Hearing Officer further concludes that the allegation of Appellant having requested Bevins Motors to reissue certain invoices, was correct, limited to reconciliation of the invoice amount to the original quote. However, there was a lack of evidence to support the allegation that he had, in any way, requested Bevins Motors change the date on the new invoices to give the appearance that the Kentucky Horse Park had not received those invoices until February 15, 2016.

8. It is undisputed that Mr. Price, over the course of his career at the Kentucky Horse Park, has had no prior disciplinary history. Furthermore, the testimony of individuals on behalf of the Appellee, including supervisors in Appellant's chain of command, did not indicate that reconciliation of invoices was indeed Appellant's responsibility.

9. Appellee has shown by a preponderance of the evidence that there was just cause for disciplinary action. However, in view of the confusion of the duties imparted on the Appellant, and in view of Appellant's spotless disciplinary record prior to this incident, a two-day suspension was excessive and erroneous.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **JOHN PRICE V. TOURISM, ARTS AND HERITAGE CABINET, KENTUCKY HORSE PARK, (APPEAL NO. 2016-123)** be **SUSTAINED to the extent** that Appellee has not met its burden of proof to show that the two-day suspension was not excessive nor erroneous and was appropriate under all circumstances. **IT IS RECOMMENDED** that the disciplinary action be reduced to a written reprimand, that Appellant be accorded his rights to submit as part of his personnel file a response to that written reprimand, and he may attach to his response a copy of these Findings of Fact, Conclusions of Law and Recommended Order. The Appellee is directed to rescind the two-day suspension without pay that it imposed on Appellant, to reimburse Appellant for the amount of pay that was withheld from him because of the two-day suspension, to reimburse Appellant for any leave time used attending the hearing and pre-hearing conferences at the Board, and to otherwise make Appellant 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).


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 Roland P. Merkel this 19th day of April, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. William H. Adams
Mr. John A. Price