

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-088**

TAMARA SAPP

APPELLANT

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

**PUBLIC PROTECTION CABINET,
DEPARTMENT OF CHARITABLE GAMING**

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 March 23, 2017, Appellant's Exceptions to Findings of Fact, Conclusions of Law and Recommended Order, 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 19th day of April, 2017.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Katherine Bennett
Hon. Jonathan Spalding

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-088

TAMARA SAPP

APPELLANT

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

PUBLIC PROTECTION CABINET,
DEPARTMENT OF CHARITABLE GAMING

APPELLEE

** **

This matter came on for an evidentiary hearing on January 23, 2017, and on February 13, 2017, at 9:30 a.m., at 28 Fountain Place, 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, Tamara Sapp, was present at the evidentiary hearing and was represented by the Hon. Jonathan Spalding. The Appellee, Public Protection Cabinet, was present and represented by the Hon. Katherine Bennett. Appearing as Agency representative was Sherry Butler.

This matter involves the rating given to Appellant on the 2015 year-end evaluation. The rating given was "Needs Improvement." Accordingly, the burden of proof was placed upon the Appellee, by a preponderance of the evidence, to show there was just cause for such rating.

BACKGROUND

1. In opening statements, the Appellant's counsel cited personal bias on the part of Charles Brock as the reason for the low score on Appellant's 2015 year-end evaluation.

2. The Appellee's first witness was **Robin Birdsell**. She has been employed by the Department of Charitable Gaming (DCG) since 1997, and has been an Auditor IV since May 2016. She has a Bachelor of Arts degree in Accounting from Western Kentucky University, and is a Certified Fraud Examiner. Such position involves the investigation of embezzlement and the falsifying of documents.

3. As an Auditor, Birdsell works with various organizations which operate gaming activities, such as bingo, raffles, and pulltabs. Her job is to make sure the organizations involved are compliant with the rules and regulations. In so doing, she obtains records from those organizations.

4. As an Auditor IV, she also reviews the work of other auditors in their reviews. This includes examining tables, seeing that the math is correct, and that the organizations are compliant with the relevant rules and regulations.

5. Birdsell began doing these “in-depth” reviews in 2015. Her in-depth reviews included looking at data entries and spreadsheets. She testified she performed three reviews of audits done by the Appellant. Her comments and findings were later used in the rating given the Appellant for 2015. These reviews were for audits of the American Legion 88 [Audit No. 14-007]; the El Hasa Shrine Temple [Audit No. 14-021]; and for the Nazareth Literary and Benevolent Institution [Audit Nos. 15-014, 15-015, 15-106 and 15-040].

Audit for American Legion #88

6. The witness testified that as to Appellee’s Exhibit 1 (the American Legion audit), she began her review during 2015, and after finishing, she went to Appellant and Audit Manager Charles Brock with her findings. She testified that her review of the initial data entries revealed many errors. As first noted, many of the errors were of a minor nature, such as failure to put a proper space between words or using singular rather than plural nouns.

7. Other errors appeared to be more substantive, such as a comment that the “Audit file was disorganized. Pages were backwards, out of order and upside down throughout the file.” It was also noted that no distributor invoices were included in the audit, and there was no electronic invoice information from the distributors in the audit spreadsheet. On one such gaming session, there was noted a \$4 difference in the gross receipts versus the Auditor’s total. Another session revealed a \$50 difference in total payouts versus what the Auditor recorded.

8. Other errors involved the bingo paper data entries. On three sessions held on 1/3/13, 1/7/13 and 2/7/13, there was a discrepancy in the amount of bingo paper sold as recorded by the Auditor versus the organization’s records.

9. In this audit, there also appeared to be discrepancies in the bingo paper inventory as reported by the organization versus that found by the Auditor. The witness indicated that these discrepancies could be an indication that the beginning inventory used in the audit was unreliable.

10. The witness also found that Appellant had failed to include bad check collections in the expected deposit amount. She noted that including the bad check collections in the actual deposit amount would create what would appear to be an over-deposit. This type of activity occurred on at least three occasions in 2013. Birdsell testified that regarding a petty cash account, an amount of \$11,761.49 was unaccounted for in the audit from the general account. However, the Auditor failed to consider that a portion of this money appeared to be re-deposited into the general account.

11. Birdsell testified that the fact the Auditor reported inaccurate bingo paper sales resulting in bingo paper unaccounted for, which could have resulted in an additional fee due to the Department.

12. Finally, regarding the American Legion audit, the witness noted, "The auditor failed to note the deficiencies with reporting bingo paper serial numbers in this audit report. Even in the auditor's bingo paper inventory audit report, the auditor noted, 'The Auxillary failed to list serial numbers on all their session records or listed the serial numbers excessively.'" (Sic)

13. The witness then stated that after she had sent her review findings back to the Appellant, corrections were made. However, after a second review, Birdsell still found some corrections were needed on the actual review itself. She sent her findings both to Audit Manager Charles Brock and the Appellant.

Audit For El Hasa Shrine Temple

14. Birdsell testified that her review showed that the organization did not have a deposit reconciliation worksheet as required by 820 KAR 1:058, Section 1(3)(d). She reported that other errors found in this audit included the fact that the pulltab cash payout section of the deposit reconciliation did not match the total pulltab cash payout section of the pulltab activity. Also, the auditor incorrectly recorded a \$35 amount in the deposit reconciliation unclaimed section, when \$35 was the profit amount and \$75 was the payout amount, and should have been the amount of the unclaimed pulltab prize recorded in this section.

15. The witness also noted that on 4/25/13, deposits of \$700 and \$300 were made into the organization's charitable gaming checking account. However, no explanation could be found in the organization's records and these unexplained deposits were not addressed in the audit report.

16. Likewise, on 6/20/13, a deposit of \$200 was made into the organization's charitable checking account. However, no explanation could be found in their records and this was not addressed in the audit report. An additional finding in the Shrine Temple audit was that the audit report states it was a raffle audit for the period of January 23, 2013, through July 23, 2015. However, it was noted that the audit appeared to only focus on one raffle, a drawing held on July 15, 2013. There is no explanation for the other raffles during this time period, and it is unclear whether they were reflected in this audit.

Audit for the Nazareth Literary and Benevolent Institution

17. Birdsell conceded that the errors involving this audit were primarily minor. She testified that she returned her review to Auditor Manager Brock, who in turn forwarded it to the Appellant. However, her second review after the corrections were made, still showed two more corrections were needed.

18. On cross-examination, the witness conceded that she did not know how many audits the Appellant performed in 2015, or how many the Charitable Gaming Division did in total. She confirmed that when she began her reviews in May 2015, most of the audits she did included the Appellant.

19. The witness also conceded that there was more than one way to conduct an audit, and there can be differences in how audits are interpreted.

20. Regarding Appellee's Exhibit 1 (the American Legion Audit), she noted that of the 45 notations mentioned in the four audits, that many involved "presentation, extra spaces and font size."

21. Regarding a finding on page 8 of this audit, involving the \$11,761.49 in petty cash that was unaccounted for, the witness had taken issue with the fact that the finding was written that the auditor considered a portion of this money "appeared to be redeposited" into the general account. The witness conceded that the organization's records did support the fact that they were redeposited.

22. Regarding the issue of "returned checks," Birdsell stated it was unclear whether the organizations themselves have a standard for listing these as "an expected deposit" or "a returned check."

23. The witness then confirmed that the Appellant had been placed under a Performance Improvement Plan (PIP) from March 25, 2015, through August 30, 2015 (Appellee's Exhibit 6). However, Birdsell testified she was not directly involved in this and Auditor Manager Brock was the originator of the PIP.

24. The witness then introduced Appellee's Exhibit 4, the Job Class Specification for an Auditor II, the position held by the Appellant. The witness detailed the characteristics of this job, which included, "Performs professional audits in the analysis of financial and statistical records, reports and statements, and accounting policies and procedures of agency internal operations or of third-party providers for compliance with federal and/or state laws, regulations and policies; and performs other duties as required."

25. The witness emphasized that these characteristics involved doing audits in a professional manner and she did not feel that misspelling the name of the organization or other minor errors were indicative of a professional audit.

26. The Appellee's next witness was **Charles Brock**. He has been the Audit Manager for the Department of Charitable Gaming since October 2000. He has been employed by state government since 1990, and previously served as an Auditor at the Transportation Cabinet.

27. His duties as Audit Manager include overseeing outside audits, both field and office. He stated he keeps his Auditors "audited." He has supervised the Appellant for a period covering the last five evaluations. He not only conducts her evaluations, but has had two training sessions involving her.

28. Brock introduced Appellee's Exhibit 5, the first Interim Review covering the period of January 1, 2015, through April 30, 2015. This interim evaluation noted only one mistake made, that being a timesheet error which was immediately corrected. He also testified the Appellant worked under a PIP since mid-March 2015.

29. The witness then testified that Appellant had been placed under a PIP in late March due to the fact that, in 2014, she had worked on an audit involving two organizations in Floyd County. He stated that she met with the defendants and law enforcement, as these audits involved criminal cases involving the sale of pulltabs from unlicensed vendors. The witness testified these could have been important, because it is possible for organizations to sell unlicensed pulltabs, and then pocket the money.

30. The witness further detailed that on one audit sheet, the Appellant had made changes and told him that was all the information she had. On a second sheet, Appellant had apparently found a mistake she had made and corrected it without telling Brock. He stated that the results of these changes were that the sheets which were to be used in the criminal court proceedings were incorrect. It is unclear as to whether the Appellant's meetings with the defendants and law enforcement in Floyd County were any kind of violation in and of itself.

31. Brock then stated it was reported to him by a retired police detective, Plunkett, who attended the meetings in Floyd County, that the Appellant became contentious and acted in an unprofessional manner. This led to the imposition of the PIP for her; however, he stated she appeared to be following this "pretty well."

32. Brock next addressed the second Interim Review covering the period from May 1, 2015, through August 31, 2015. Evaluator Brock noted during this period that Appellant "Overall, has failed in the performance of her job tasks." He cited as problems during this period, the fact that Appellant got into an argument over a parking space at her office in Campbellsville, and she did not help a Cabinet attorney to prepare for a license denial hearing. Brock also referred to an issue involving pulltabs with an organization in Ashland. He stated that she had contacted the compliance officer for that region, and was given directions on how to resolve the audit. However, he claims she did not do so.

33. The witness also stated that he felt the Appellant was not punctual on her audit assignments, partly because some organizations did not send in their records timely. He faulted the Appellant for not following-up with the organizations to get the information as needed.

34. The witness again cited the audit of the Fraternal Order of Eagles' case. This involved a request by the Cabinet attorney for certain information in preparation for a hearing.

Brock detailed that she was unable to give the attorney four checks totaling \$12,000, as this was not on her information list. However, the witness stated it was on his list, and was important because it could be used as evidence in a criminal case.

35. The witness then referred to Appellee's Exhibit 8, the third Interim Review ending year-end 2015. He merely stated that during this period, Robin Birdsell had begun her review of Appellant's audits. It was noted that no specific evaluation was made during this period because additional documentation relating to Appellant's performance [which would be forthcoming from Birdsell] could affect the overall rating.

36. Finally, Brock introduced Appellee's Exhibit 9, the final page of the 2015 year-end evaluation. Appellant was given a score of 155, which correlates to "Needs Improvement." He stated this was out of a possible score of 500.

37. He also testified that he judged Appellant on her errors, her failure to follow directions, and her failure to show initiative.

38. The witness then introduced Appellee's Exhibit 12, a 12-page memo prepared by him for upper management detailing the actions and responsibilities performed by the Agency and the actions of the Appellant. He stated this memo was prepared in November 2015.

39. The memo prepared by Brock shows two different sides of the Appellant. On page 2, he noted that the previous Auditor who was training the Appellant did not make any negative comments regarding her ability to perform her position responsibilities. However, Brock related that the summary reports prepared by the Appellant following meetings in Floyd County indicated, according to her, that she was always in control of the situation and was the calming influence. However, in December 2014, Investigator Plunkett contacted Enforcement Director Bryant Smith regarding Appellant's behavior at the final Floyd County meeting. According to Plunkett, a retired Lexington detective, most of the behavioral problems at those meetings were caused by Sapp's behavior. Plunkett also detailed Appellant's refusal to re-check or provide information to the Commonwealth Attorney. Brock's memo also details further instances of insubordination and refusal to accept responsibility for her actions. The witness related that after performing his year-end evaluation, the Appellant had requested reconsideration. He refused to change his rating, and after this was referred to newly-appointed Commissioner Cannon Armstrong, who also refused to change the rating.

40. Finally, the witness summarized that the Appellant has worked for the Agency for approximately 16 years in an off-site location. Until December 2014, she had appeared to be doing a good job based on her reports. However, he stated this was based on a prior customary way of doing only cursory reviews of her reports and audits.

41. On cross-examination, Brock stated that in 2014 he did not know how many audits the Appellant performed. In 2015, he testified that she completed audits on two agencies and submitted them. One of these had four separate reports and the other involved three reports.

42. Brock then identified Appellant's Exhibits 1, 2 and 3. Appellant's Exhibit 1 was a 2013 year-end evaluation with a score of 492. Appellant's Exhibit 2 was a first Interim Review in 2014, where all remarks involving the Appellant indicated she was doing a good job. Appellant's Exhibit 3, the second Interim Review for 2014 gave all positive comments regarding her job tasks and dependability.

43. The witness then stated that it seems like the problems which came to light involving the Appellant began with the Prestonsburg audits. These were the audits previously referred to in the reports furnished by retired detective Plunkett.

44. Brock testified that as a result of the Floyd County audits, the ramifications were that the Division Director was upset and Brock was "dumbfounded" by her behavior. He also added that prior to 2014, he had heard from upper management that the Appellant was taking too long to finish her audits.

45. Brock testified that in a 2015 meeting held in Prestonsburg, attended by then-Director Smith, the Appellant and himself, she became contentious after being questioned regarding her audit findings.

46. Brock concluded by saying that the audit involving the Nazareth organization had small errors which were fixed and there were no consequences as a result. He also stated that both the American Legion and El Hasa Temple audits had been corrected and sent out.

47. The Appellee's next witness was **Commissioner Cannon Armstrong**. He has been the Commissioner for approximately one year with the Agency. He was formerly an attorney with the Public Protection Cabinet.

48. Armstrong merely confirmed he had reviewed the Brock's evaluation of Sapp and the request for reconsideration by the Appellant, and had decided not to make any changes.

49. On cross-examination, the witness stated that the concerns referenced by Brock and Birdsell were not the same concerns as found with other auditors. The in-depth review conducted by Birdsell has now begun a more strenuous review process than was done previously. He added that no other auditor was found to require such a level of scrutiny as was the Appellant.

50. The Cabinet closed.

51. The Appellant's first witness was **John Bailey**. Bailey has been the Compliance Officer for the Agency for the past 12 years. His responsibilities include checking with organizations in 19 counties to ensure their compliance with the rules and regulations. He testified the Appellant has asked him questions in the past relating to why certain games are reported a certain way. These include both progressive and cumulative games.

52. He also added that he has provided training for both the Compliance and Auditing Sections, including the Appellant. He added that he has never had any problems with the Appellant, although some other auditors have been rude in his dealings with them.

53. Appellant's next witness was **Robert Edwards**. He is currently employed with the Department of Community Based Services with the Cabinet for Health and Family Services in Louisville. His job there is a Contract Monitor. He has a Bachelor of Science degree in Accounting from the University of Kentucky.

54. Edwards previously worked with the DCG for 10 years, until approximately 2007. He expressed that he felt uncomfortable as the reason for leaving DCG, and felt his meetings with manager Charles Brock were often hostile.

55. While at the Agency, the witness testified he had worked with the Appellant and other auditors. His impression was that she was a good auditor.

56. The next witness was **Ervinia Hall**. Ms. Hall is now retired from the IRS. Previously she worked with the Appellant at DCG. She stated she left that Agency because of certain actions taken by Charles Brock.

57. The next witness was **Tammy Downey**. She has been employed by the Agency for the past 17 years, and for the previous 9 years has been an Administrative Branch Manager. She previously worked with the Agency as a Licensing Branch Reviewer. Her office is in Frankfort.

58. Her duties include overseeing four Audit Reviewers, who review other auditors' work. She testified that she attended a meeting between Brock and the Appellant sometime in 2014. This meeting concerned an interim evaluation being given to the Appellant. Downey testified that in this meeting Brock was hostile; was loud, shaking his fists and was openly aggressive. She testified the Appellant did nothing to provoke him.

59. She testified that Director Smith was also in this meeting, but after 10 minutes he dismissed Downey from the meeting. She had attended because she had been directed to by Commissioner Sparrow. She further stated that the issue in this interim evaluation was the Appellant's performance in her audits. The witness also testified that the Appellant would sometimes call her with questions about certain procedures. She also stated that at another time, date uncertain, Brock had one of her employees upset and crying. He later apologized to this employee in the Commissioner's office.

60. Appellant's next witness was **Lorene Jackson**. She has been employed for the past 12 years with the Agency, with the last four years acting as Enforcement Section Supervisor III.

61. Director Mike McFarlin is her direct supervisor. This witness works with auditors in the Agency and knows the Appellant by virtue of her coming to the office from her field office in Campbellsville.

62. She described her interaction with Charles Brock as there being one incident where he was not very pleasant with her over some unknown matter. This occurred within the last two years.

63. She recited an incident where the Appellant came in the side door with a batch of records. In the discussion with Brock, the witness related that he became angry and red in the face. She stated that the Appellant looked scared.

64. The Appellant's next witness was **Angela Hardin**. She has been employed at the Department of Revenue as an Auditor I for the previous six months. Prior to that, Ms. Hardin was employed at the Department of Charitable Gaming from March 2009 through July 2012. There she began as an Auditor I and left, having obtained the rank of Auditor II. Her office was in Frankfort.

65. The witness testified that her supervisor at the Agency was Charles Brock. She further explained that there were major differences between the audit side and the compliance side within the Agency.

66. During her time at the Department of Charitable Gaming, she observed that Brock was "hard" on the Appellant. She cited an instance, in June 2012, while Brock was doing the Appellant's interim evaluation, he gave the Appellant a bad rating. She testified that at that meeting, Brock showed anger toward the Appellant and cited her for not doing enough work.

67. The witness testified that during the previous year, Appellant had performed 50 audits, while she (Hardin) had performed 12.

68. She further stated that the Interim Review concerning the Fraternal Order of Eagles audit caused Brock to become angry at Appellant because he claimed she did not leave all the records following the audit. Later, it was found that the missing records were actually in Brock's office.

69. **Appellant Tamara Sapp** called herself as the next witness. Appellant testified she has been employed since 2000 (16 years) with the Department of Charitable Gaming (DCG). Prior to this, she was employed with the Auditor of Public Accounts. She has a Bachelor's in Business Administration with an emphasis in Accounting.

70. Part of her duties involve the training of various charitable organizations in helping them to properly record their sales records and the handling of money, some of which is given to charitable organizations and the remainder containing fees which are owed to DCG. Her office is in Campbellsville, Kentucky.

71. She testified that all paper (games) which are sold at the events must be data entered. She states this is very time consuming and requires attention to detail. She also testified that to do a comprehensive audit, it normally takes two and a half to three months because of all the data to be reviewed.

72. Appellant then introduced various exhibits showing some of her prior year-end evaluations. Her 2010 evaluation showed a score of 491; the 2011 evaluation was scored 492; the 2012 evaluation was scored 479; the 2013 evaluation was scored 492. The evaluator in each of these evaluations was Charles Brock, the Appellant's supervisor. It should be noted that the highest possible score on these evaluations is 500.

73. The Appellant also introduced Appellant's Exhibits 2 and 3, which are the first two Interim Reviews in 2014. These covered the period from January through August 2014. Pertinent comments from the evaluator, Brock, will be cited below relative to portions of these evaluations:

Job Tasks: The employee has attended multiple meetings with both investigators and management. Also meetings with the legal authorities and defendants with their legal counsel. Employee continues to do an excellent job with all aspects of her duties, whether shifting through records or compiling reports and is a very valuable asset of the Department of Charitable Gaming. (Sic)

Adaptability/Initiative: Employee continues to competently handle several tasks simultaneously, while producing quality work. Consistently copes with change without incident, while exhibiting optimism and enthusiasm. Completes high quality and complex assignments.

Communications/Teamwork: Has excellent verbal and written communication skills.

74. Appellant then explained that following these first two complimentary interim evaluations, her final 2014 year end score was some 200 points lower than the previous year. The final year-end evaluation score was not introduced into the record. She explained that before this time period, she had made errors on her timesheet involving two days. She also explained that she had fixed those and sent them to Mr. Brock, who returned them saying they

were "not correct." Appellant stated she re-sent them to Brock, and they were returned claiming there were still errors.

75. Because she was under a deadline to submit the timesheets, she attempted to again contact Mr. Brock, who was unavailable. Facing a deadline, she then went to Mr. Brock's supervisor, where she was told that she had attempted to correct the wrong date. However, she claims that Mr. Brock had not told her that she was working with the wrong date.

76. The Appellant also explained that on one day, involving the Eagles audit spreadsheet, Brock sent her a demand at 10:30 a.m. for submission of the audit at 11:00 a.m. She explained she did not have time to check all her data, and as a result, made two errors. This spreadsheet was subsequently sent to the Boyd County Attorney's office, who noted the errors.

77. The Appellant also detailed instances where she continued to make a request for records from various organizations and, after a time, when the organizations told her they did not have the records, Mr. Brock directed her to "don't ask" any more. However, she claimed Brock reported to her that Stella Pluckett, a fellow investigator, had told him that Sapp declared to Pluckett that she would not work on this audit again. The Appellant denied this.

78. The Appellant detailed another incident in which she attempted to tell Mr. Brock that she was sorry for the timesheet mix-up. She stated that Brock said to her, "You'll pay for this, it will cost you" in a vehement manner. Apparently, Appellant felt Brock was upset because he felt she had gone over his head to his supervisor.

79. Also, the witness explained that sometime in 2014, some format changes were made to the audits. One such change was the particular font used. Appellant testified that she was written up for using the same style font as the other auditors used. She also claimed she was written-up in 2014 for "poor teamwork." However, she claims that her coworkers told her these remarks were not true.

80. The witness was then directed to Appellee's Exhibit 9, her 2015 year-end evaluation. She received a score on this of 155, which is in the "Needs Improvement" category. Sapp claims this score explains Brock's earlier comment of "...it will cost you." She further stated that other people in the office are not held to the same standard as she.

81. The Appellant cited another instance at the end of 2014/beginning of 2015 where Auditor III Robin Birdsell took all of her boxes and records and proceeded to re-audit them. She distinguished them from reviews. She explained that another Auditor, Dave Woellert, said to her that no one had ever asked for his records to review. The witness also explained that during these re-audits done by Birdsell, she would do as many as three re-audits on the same primary audit and continue to find errors each time.

82. The Appellant feels that Brock is having Birdsell pick her audits apart, and does not do this with other auditors. She claims that he is holding her to a "zero" error rate, which she says is impossible to attain.

83. Appellant then introduced Appellant's Exhibits 8 and 9, 2014 and 2015 audit lists for the DCG. These appear to support her claim that she is involved with more audits than any other auditors.

84. Appellant cited another instance of Mr. Brock's alleged bias against her. She claims he allows other field auditors to estimate their travel time and turn this in after getting home. However, she states she must go to her field office and log in her time on the computer before going home. The witness also claimed that Brock has frequently refused to help her when she has questions of him.

85. On cross-examination, Appellant was referred to Appellee's Exhibit 1, the audit review notes for the American Legion audit. She noted that she had made the corrections noted, although most all were small errors. Some were "Bingo data entry" citations. One of these errors was cited because of a four dollar (\$4) difference and another because of a fifty dollar (\$50) difference.

86. The Appellant was also directed to Appellee's Exhibit 2, the audit review notes for the El Hasa Shrine Temple audit. She stated that at the Performance Improvement Plan (PIP) meetings, after reviewing her audits, Robin Birdsell will give her notes to Mr. Brock, who then gives these to the Appellant and tells her to make the changes. She claims there are no discussions about whether these noted errors are correct or not. The witness also explained this was the one audit where Birdsell re-audited her audit three different times, finding errors each time.

87. The Appellant was then directed to Appellee's Exhibit 17, emails from Brock to her, noting timesheet errors on three different days. The Appellant admits to these.

88. The Appellant also addressed Appellee's Exhibit 18, a September 4, 2015 email from Brock to her. She admits that because of confusion in attempting to get approval for sick leave, she did not exactly follow procedure. However, she admits that the tone of the email sent by Mr. Brock is considerate of her situation.

89. Finally, the Appellant was directed to Appellee's Exhibit 19, a February 2, 2016 email from Robin Birdsell to her. In this email, the Appellant apologizes for all the errors she made on the Nazareth Literary and Benevolent Institution audit which Birdsell was reviewing.

90. On re-direct, the Appellant introduced a Certificate of Appreciation given to her by the El Hasa Shrine Temple following her audit of that institution.

FINDINGS OF FACT

1. Supervisor Charles Brock gave the Appellant a rating of 155 (Needs Improvement) on her 2015 year-end evaluation. He has evaluated the Appellant on the past five year-end evaluations.

2. Her ratings from 2010 through 2013 were 491, 492, 479 and 492 (of a possible 500), respectively. The first two Interim Reviews of 2014 were highly complimentary of the Appellant's work. Appellant testified her 2014 year-end score was approximately 200 points lower than 2013, although nothing was introduced into the record.

3. It appears the Appellant's problems began in late 2014, which revolved around her inaccurate furnishing of records to, and interactions with, Floyd County, Kentucky law enforcement officials.

4. During the second Interim Review of May thru August 2015, Brock noted other problems with Appellant's performance, including failing to assist a Cabinet attorney prepare for a hearing.

5. Brock and Robin Birdsell cited meaningful errors made by the Appellant in at least two audits, the American Legion #88 and the El Hasa Shrine Temple. Although an unusual number of minor errors were detected by Birdsell relating to font size, spacing and spelling, the major errors involving cash discrepancies, discrepancies in bingo paper inventory and lack of explanation in failing to explain several audits in 2013 were substantial.

6. Appellant's witnesses generally painted an unflattering portrait of Brock as a harsh, demanding and sometimes unforgiving supervisor. However, the testimony of Robert Edwards, Angela Hardin and Ervinia Hall was too general and distant in time to be meaningful. The more recent testimony of Tammy Downey and Lorene Jackson was supportive of the portrait of Brock.

7. Appellant emphasizes the critical re-audits of her work performed by Birdsell in 2015 held her to a higher standard than previously. However, fair or unfair, it is quite likely the standard which should be applied. Commissioner Armstrong indicated it will be the standard of the future.

8. The Hearing Officer is unable to find personal bias on the part of Charles Brock, although he may be short-tempered and demanding.

CONCLUSIONS OF LAW

The Hearing Officer concludes, as a matter of law, that the Appellee has carried its burden of proof by a preponderance of the evidence to show the 155 (Needs Improvement) rating given on Appellant's 2015 year-end evaluation was neither excessive nor erroneous.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of TAMARA SAPP V. PUBLIC PROTECTION CABINET, (APPEAL NO. 2016-088) 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 R. Hanson Williams this 23rd day of March, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Katherine Bennett
Hon. Jonathan Spalding