COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-282

ROBERT JOHNSON **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 July 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated June 2, 2016, Appellant's Exceptions, Cabinet's Response to Exceptions, oral arguments, 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 **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 13th day of July, 2016.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Kathleen Hines
Mr. Robert Johnson
Mr. Jay Klein

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2015-282

ROBERT JOHNSON **APPELLANT**

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

CABINET FOR HEALTH AND FAMILY SERVICES **APPELLEE**

** ** ** ** **

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

Appellant, Robert Johnson, was present and was not represented by legal counsel. Appellee, Cabinet for Health and Family Services, was present and represented by the Hon. Kathleen Hines. The Agency Representative present for the Appellee, Cabinet for Health and Family Services, was Ms. Darlene Staniford.

The burden of proof was placed with the Appellee, Cabinet for Health and Family Services. The subject matter of the appeal was a four-day suspension without pay that had been issued by letter dated November 2, 2015, for allegations of lack of good behavior and unsatisfactory performance of duty, and Appellant's claim of retaliation. The burden of proof in all instances and as to all issues was by a preponderance of the evidence.

BACKGROUND

1. At the outset of the evidentiary hearing, counsel for Appellee asked to clarify some matters from the pre-hearing conference, specifically, what she believed to be Appellant's admission to the events described on page eight of the disciplinary letter. Specifically, this is in the paragraph that states "lack of good behavior" and continues for the rest of page eight of that letter. Appellant agreed to the conduct as described in those paragraphs on page eight of the disciplinary letter and had no objections to the entry of the entire disciplinary letter as Appellee's Exhibit 1.

2. Thus, based on Appellant's statement at the evidentiary hearing, the Hearing Officer will accept as stipulated and agreed to the "lack of good behavior" allegation as stated in those paragraphs on page eight of the disciplinary letter marked as Appellee's Exhibit 1.

3. During the relevant times, the Appellant was a classified employee with status employed as a Family Support Specialist with the Department for Community Based Services, East Service Region, for the Cabinet for Health and Family Services.

4. Appellee's first witness was **Mr. Chris Carpenter**. Upon being properly sworn, Mr. Carpenter offered the following testimony.

5. Mr. Carpenter testified he is a Supervisor in the Boyd County Office for the Department of Community Based Services (within the Cabinet for Health and Family Services, hereinafter "CHFS"). The witness stated he has been a supervisor for two plus years and supervises approximately 11 employees. He testified he has 16 years total state government experience. Mr. Carpenter stated the primary function of the employees he supervises is call services. As the Hearing Officer understands it, members of the public place telephone calls to CHFS seeking guidance or assistance. He stated his primary function is to make sure that everybody is "on the phones." Some of the employees he supervises are termed "call monitors," and they listen in to phone calls, presumably to ensure quality.

6. Mr. Carpenter stated that in relation to this action, he was asked to run audit reports for the Appellant's calls from August 2 to September 18, 2015, and then asked to go back further to run the audit for Appellant's calls from July 6 to August 1, 2015. Mr. Carpenter stated the Appellant, Robert Johnson, had begun on the phones as a Call Specialist on July 6, 2015.

7. By way of background, the witness testified that call services is just as it sounds, and allows clients of CHFS to make telephone calls to CHFS for services instead of coming in person. He described this as being a statewide system, and any call services worker could get a call from anywhere in the state or anyone calling into the number. He stated there are approximately 500 workers a day answering phones and that they are manned 8 a.m. to 6 p.m. every day.

8. A program called "Interaction Client" is how the calls are actually handled, that is, they are placed into a queue and then the client's calls are answered in that order off the queue by the workers. Calls are assigned randomly from the queue to workers.

9. The witness estimated that approximately 400 to 450 Call Specialists would be staffing the phones on any given day (statewide) with a goal of 500, which often was met.

10. The calls are assigned to a worker based on what service was selected by the caller, and the workers make themselves "available" in the system by electronically checking a box. Mr. Carpenter described the process as follows: The worker would have to manually click the "pickup" button on the screen while in the program to answer the phone call through the headset. The Hearing Officer also notes that once an employee actually completes taking a call, they would automatically be placed into a "follow-up" status for 90 seconds.

11. Mr. Carpenter testified he first became involved in creating the reports admitted as Appellee's Exhibit 3 and Appellee's Exhibit 4 on or about September 16, 2015. He testified that another CHFS employee, Dana Hall, was training a new employee on the call system and randomly picked Appellant Robert Johnson's system to listen into for purposes of training. As discussed at the evidentiary hearing, employees such as Hall and/or Carpenter had the ability to

listen into phone calls of Call Specialists, such as the Appellant, for training or quality control purposes.

12. As Carpenter understood it, Hall heard nothing on the line even though the system showed Appellant should have been on a phone call with a client. The only conversation being recorded was the client saying "hello" and Appellant saying nothing. The witness became involved in this situation at that time when he was asked to listen to phone calls, stated he listened to approximately 679 phone calls, leading to the creation of Appellee's Exhibit 3 and the print out of Appellee's Exhibit 4. Carpenter stated that on or about September 16, 2015, he had listened to several of Appellant's phone calls with clients on the system, and the clients would be saying "hello" and Appellant would not be recorded as saying anything. After listening to these phone calls, the witness began the process of going through the entire audit as described above, listening to some 679 calls.

13. Reviewing the report the witness had created (which was admitted as Appellee's Exhibit 3), he stated that the "hold" feature was available from August 2 to August 20, 2015, at which time it had been discontinued (not just for the Appellant). The witness testified that when the "hold" feature was available, the worker had to manually transfer the client's call back into the queue, as well as using hold. Mr. Carpenter stated that the mute button, when activated, records sound from both parties. When the mute button is active, the client cannot hear the worker, however, the worker can hear the client, but cannot speak to the client.

14. Reviewing Appellee's Exhibit 3, the witness agreed that the high volume of calls on some days where the Appellant was not speaking with a client showed a problem. The witness testified that the protocol to be used if the worker realized there was a problem (not being able to take client calls) is he should notify his local supervisor or Call Center supervisor, such as the witness.

15. To reiterate, Mr. Carpenter testified that a call from a client is answered by clicking the "pick-up" button, and if the call is not answered, then the call is reassigned into the queue or to another worker. The witness also stated that an employee should be aware that a call is actually occurring because after the worker clicks the "pick-up" button he should be able to hear the client.

16. On cross examination, the Appellant questioned when the witness was first brought in to review the calls. The Appellant stated he had never answered a call by clicking the "pick-up" button, but a yellow box would flash. The witness also testified that there is also a pop-up box, a flashing yellow box that can be clicked on with the mouse to answer a phone call.

17. Once again for clarification, the Hearing Officer confirmed with Mr. Carpenter that when the mute button is selected by the worker, that the caller hears nothing, but the worker can hear the caller and cannot communicate with the caller, but the recording should be occurring either way to pick up both the caller and the worker. Part of Appellant's cross-examination of the witness was his expression of disbelief that he could have been on all these calls and never talked to any clients, per the recordings. The witness pointed to Appellee's Exhibit 4, saying if you did not listen to the recordings and looked at the exhibit then everything

looked fine – Appellant's calls were being placed and it was only when you listened to the recordings that the problems became apparent.

18. On brief redirect, Carpenter testified that the second floor at Boyd County was noisy, but the offices had doors which could be closed.

19. The next witness called by the Appellee CHFS was **Dana Hall**. Upon being properly sworn Ms. Hall offered the following testimony.

20. Ms. Hall stated she is a Call Services Program Specialist and has held that position at the time of this hearing for about two years. Her job functions are to monitor and assist Call Service Workers, and she would monitor (listen in) to ten live calls a month. [**Hearing Officer Note**: Part of Ms. Hall's testimony was visual in that she was attempting to demonstrate the process of monitoring calls by showing the same as projected on a screen which was not visible on the camera in the hearing room.]

21. Hall explained that in the Interaction Client program, a Call Service Program Specialist, such as she, can listen into the call which allows her to hear both the client and the worker, or she can select a "coach" option which allowed her to talk to the worker without the client hearing. Hall testified how it was she actually had listened to one of Appellant's calls, which led to the review of his calls, and ultimately, the disciplinary action. Hall stated she was working in another region, in Johnson County, showing a new employee how to use the system and, as she had described in her testimony, when she chose what call to listen to, she would pick one with the most "follow up" time. In this case, the witness testified it just happened to be a call the Appellant was on. Hall testified that, at first, she thought there was a problem with her system, but then she kept seeing the status change for the Appellant. Hall reiterated that after the follow-up (the 90 seconds period) ends, then the worker is placed back into available status to receive a phone call, and once a worker would be connected to a call, it would go to "ACD." Hall testified she could see this for the Appellant as she was monitoring. She testified that she saw this sequence follow-up to "ACD" to occur with Appellant a couple of times, and she knew something was going on.

22. The witness testified she was finally able to listen to the calls and not just see the data on the computer screen; she could listen to both sides of the calls, and she stated as she listened in, but all she heard was dead silence. Hall wondered if something was wrong, but then she heard a noise, and she knew at that point she was, in fact, connected. Once the witness became aware the problem was happening more than once, she knew it was something with Appellant's system, because she could see he was actually connecting with the clients; that is, the calls were being answered. The witness testified that at that point she had contacted Mr. Carpenter, and told him "we have a problem," and began pulling the Appellant's earlier recordings. At some point during this, Hall had sent Appellant an email asking him if something was wrong. She stated Appellant replied that there was no problem that he was aware of, and on the next call she could hear the Appellant actually interacting with the client.

23. Reviewing what was admitted as Appellee's Exhibit 6, Ms. Hall testified as to some of the hold times (when the hold function was available prior to August 20, 2015) and

commented on one in particular, in which it appeared the phone call lasted some 36 minutes and 55 seconds and the client was on hold for 36 minutes and 31 seconds. The witness also discussed the protocol for when a client's call might be placed on hold, but stated there was no reason for a call to be on hold for 36 minutes and 31 seconds. The witness stated that if a caller were to be on hold for an extended period of time, the worker should communicate with the client (the caller), to let them know why they were on hold and how long it would be.

24. Hall also testified about "wrap-up codes." A wrap-up code is a code that a worker would enter into the interactive system upon completion of a call to essentially state what the call was about. Hall testified that Appellant would select wrap-up codes for most calls, but there were a few "N/S" (none selected) codes on his calls. For example, Hall stated that most of the calls for September 17, 2015, had wrap-up codes. This was the day testified to earlier where Hall had reviewed that Appellant had 81 "ACD" calls. The Hearing Officer notes that September 17, 2015, is the date Chris Carpenter testified to at the hearing (and also through Exhibit 3), that he had listened to the calls, and Appellant took 81 calls, but had only spoken to one client.

25. Hall testified that if there was a call where a worker never spoke with a client, then a wrap-up code would merely be "a guess" because no interaction had taken place. Hall testified that a high number of calls in the "family-related" queue (which Appellant worked on) would be 50, and usually that number would be less. Hall stated that an average number of calls a worker in the "family-related" queue would have is 40 to 45 per day, and she had never seen 80 calls from any worker.

26. Hall then testified about technical issues workers might have with their headsets Hall testified that the standard protocol if a worker was having problems with the headset would be to restart, then "provision" or "re-provision" the headset, then call Xerox if it does not work further (Xerox being the contractor in charge of such). The witness reiterated that if a worker was having a problem with calls or the equipment, then the supervisors should be notified.

27. The Appellee, through the witness, played recordings of several calls as examples. Including the first call played, Appellant's voice is heard briefly at the start, and then the client is heard repeatedly saying "hello" and uttering other expressions. The witness testified that the Appellant had this call on "mute" and, as noted before (when that function was available), the worker could hear the caller, but the caller could not hear the worker, however, the call was being recorded.

28. There were two other phone calls where Hall identified the Appellant had neglected to use the mute button when the client was on the line, and the client could hear the Appellant. Hall testified that the Appellant, or any worker, would be aware there was a call on the line because the Interactive Client program would show that, and if he was not on a call, he would be getting calls, because that is how the program works.

29. On cross-examination, the Appellant made clear with Ms. Hall that the audio files played during the evidentiary hearing were not being played through the Interactive Client program, but rather something such as Real Player or some other program. Hall confirmed this

by saying you could pull those files from Interactive Client and email them and play them another way. The witness agreed with the Appellant that she may have sent him a Lync message questioning why the system showed him being "available" and also "on call" at the same time. The Appellant also questioned the witness about wrap-up codes, and that those were instituted August 25, 2015. In response to Appellant's question as to "how he could have gotten away with this" for five weeks, Ms. Hall replied that her catching the call which alerted her to an issue was purely accidental. The witness testified that if the headset had been messed up, that is, if it was not operational, there would have been no way to have heard both sides of any particular phone call made through the system.

30. The next witness called by the Appellee was **Ms. Darlene Staniford**. Upon being properly sworn, Ms. Staniford offered the following testimony.

31. Ms. Staniford stated that she is the Acting Service Region Administrator Associate (SRAA) for Personnel, and has been so since May 2015. She has worked with the Appellee CHFS for 19 years. As the Acting SRAA for Personnel during the time in question, the witness testified she was responsible for causing the investigation to begin, that is, for the supervisors to begin reviewing the Appellant's phone calls. Ms. Staniford stated that after she reviewed the results of the investigation, the Appellant was asked to come to the regional office to discuss. Subsequent to that, Ms. Staniford asked for a Major Disciplinary Action (MDA) with the Office of Human Resources Management (OHRM) in Frankfort.

32. The witness recalled the Appellant had denied there could have been so many calls that he did not actually participate in. She stated that she and supervisors reviewed protocols with the Appellant as to what to do if problems occurred with the calling system.

33. Appellant had brief cross examination of the witness.

34. The next witness that was called to testify by the Appellee was **Mr. Jay Klein**. After being properly sworn, Mr. Klein offered the following testimony.

35. Mr. Klein stated he is currently employed as the Division Director of Employee Management, Office of Human Resources Management, within CHFS.

36. Mr. Klein outlined the process for how a MDA is handled by OHRM. The witness testified OHRM would compare cases trying to find an analogous case to the conduct alleged, then he would review the final product and sign the letter of suspension, if it met his approval. Klein explained why the four-day suspension was assigned, noting that the phone system for DCBS was somewhat new and, for the first time, allowed DCBS to track phone calls coming in to its workers.

37. Klein also explained the impact of failure to answer the clients' calls would have on both the Cabinet and the clients. Klein explained to the Appellant on cross-examination that they do not necessarily interview the employee who is accused of the misconduct, because the Agency may not require the employee's input to make a decision. The witness explained he did believe a four-day suspension was appropriate for these infractions, as Appellant did not have any previous disciplinary actions. They did not want to start out "too high" for a first infraction.

38. Upon conclusion of Mr. Klein's testimony, the Appellee indicated it had no other witnesses.

39. Appellant called himself as his only witness. Upon being properly sworn, **Appellant Robert Johnson** offered the following testimony.

40. Mr. Johnson detailed his early service with CHFS as a CPS Investigator in Louisville. Mr. Johnson was assaulted on the job in 2010 and was away from work for a long while (two to three years as the Hearing Officer recalls). He went back to work in 2014 in Boyd County, but was not able to perform the CPS duties because of physical limitations. Appellant mentioned specifically that the parking lot in Boyd County was "ungodly" and that he had been injured there. Appellant testified he had fallen in the parking lot and torn his shoulder and when he was able to return to work, he had been placed on desk duty. Appellant stated he believed there was pressure from his superiors that he could not just "sit there" on desk duty, so he voluntarily demoted to Family Support Specialist, where one of his duties was being a Call Service Worker.

41. Appellant stated that on September 16, 2015, he had returned from running errands at lunch and was not able to find a parking space close by. He had to park in the Revenue lot, which they were not supposed to do. Appellant said he was angry and it was hot that day and he had sent an email to Kyle Kinney (his supervisor) about the parking. Appellant stated he had no problems until September 16, 2015, when he made this report, and that for the first 21 days when he was taking calls, he had no problems. Appellant stated he took many calls, and nothing was ever brought up to him about the hold button issue, and he never heard a thing about it until November 2, 2015. Appellant stated he did have some problems with the phone system.

42. Appellant reiterated that out of the 670 plus recordings listened to by Mr. Carpenter, the Agency should have had more than four recordings with background noise. Appellant stated this because he is not the type to keep quiet for long periods of time. The Appellant also went over some of the documents attached and marked as Appellant's Exhibit 2. For example, Appellant pointed to the document tabbed as number 5 of Appellant's Exhibit 2, that showed a "double wrap-up code," where one code would be normal.

43. In his testimony, Appellant pointed to documents that were part of Appellant's Exhibit 2, where he discussed problems with the system and his attempts to report those. Appellant stated that the system malfunctioned constantly, and there was "not a single day when the system didn't crash and burn on any worker that works on it." Appellant also disputed he did not transfer calls properly, claiming again that this was something he was accused of only after they got mad at him in September 2015. Appellant disputed Dana Hall's testimony or the characterization he believed was made when she had emailed him after she had listened in to his call in September 2015. Appellant states he believes the implication is that he was worried the Cabinet was listening, so he had better get to work. The Appellant stated he had responded to Ms. Hall and told her that based on her email, he had re-provisioned his headset and then had an active call.

44. Appellant then discussed how he had sent his request, which was basically an ADA request, to his supervisor on September 16, 2015 and, in his mind, the next day (September 17, 2015) is when he got this email from Dana Hall asking if he had a problem with the system.

45. Appellant testified about going to the regional office in Carter County on September 18, 2015, that he went home after the meeting, and he came back to work on Monday, September 21, 2015. He stated his computer should have showed, when he came back to work on that date, that he had been logged out for over two days, but instead it showed he had been logged out for one day, eight hours. To that end, Appellant testified in regards to an email attached as part of Appellee's Exhibit 5 that Appellant sent to Kyle Kinney, Dana Hall, Bobbi Jo Frye and Darlene Staniford, in which Appellant mentioned he should have been logged out longer than what his computer was showing, and stated, "I do not claim any responsibility for changes made to my computer without my knowledge." Appellant stated he believed that he had possibly been "set up" to some degree. Appellant stated after this, he had been directed by Kyle Kinney to call Xerox, and he had talked to Richard Spencer, a technician. At this time, Appellant also mentioned he did, in fact, commit the allegations as indicated on page eight of the November 2, 2015 four-day suspension letter entered as Appellee's Exhibit 1.

46. While talking to Mr. Spencer with Xerox, Appellant stated he was told his computer was configured wrong. Appellant also stated that when he worked with Mr. Spencer, he was able to fix several settings that were wrong, such as speakers and headphones, etc.

47. Appellant testified on direct that in October 2015 CHFS divided the calls into two regions, and there was a plan for this, but ultimately it did not work. He further testified that on December 16, 2015, he logged onto the Interactive Client program for the first time in months. Appellant states that when he noticed the program was still acting up, he demanded help as opposed to what he did the first time, when he stated he sent nice emails and messages and, of course, was ultimately suspended. Appellant reiterated that the Interactive System was riddled with errors and he regretted that no one ever talked to him about these issues. Appellant also observed that, based on the report, this would be the first time he ever would have been accused of being silent and getting in trouble for that.

48. On cross-examination, Appellant stated he believed the recordings that were the subject of Appellee's Exhibit 4 were not accurate, but did not know about the report itself.

49. Again, Appellant stated that out of all the calls which were the subject of the report, only four of the calls apparently had any trace of him on the calls, that is, his voice being recorded. Appellant stated that since this has occurred when he was working in the call center, he would keep his own list with the important information recorded. He did not know he had to do that before, because he believed the system would be accurate. Appellant again denied he did not answer phone calls as shown in Appellee's Exhibit 4, and stated he did, in fact, answer the phone calls after he had logged into the system every morning at work and would do what he could. Appellant concluded his testimony by expressing his disappointment that CHFS employees did not know each other anymore, that they were spread out, "broken up," and that numbers, technology and impersonal things seem to count more than the personal relationships between the employees.

50. Upon conclusion of Appellant's testimony, he had no further witnesses and his case was complete.

51. The parties both made closing statements.

52. KRS 18A.095(8) states:

> (8) A classified employee with status who is demoted, suspended, or otherwise penalized shall be notified in writing of:
>
> (a) The demotion, suspension, or other penalization;
>
> (b) The effective date of the demotion, suspension, or other penalization;
>
> (c) The specific reason for the action including:
>
> 1. The statutory or regulatory violation;
>
> 2. The specific action or activity on which the demotion, suspension, or other penalization is based;
>
> 3. The date, time, and place of the action or activity; and
>
> 4. The name of the parties involved; and
>
> (d) That he or she has the right to appeal to the board within sixty (60) days, excluding the day that he or she received notification of the personnel action.

53. 101 KAR 1:345 states:

101 KAR 1:345. Disciplinary actions.

Section 1. General Provision.

> Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.

Section 2. Dismissal.

> (1) The notice required by KRS 18A.095(6) and (7) may be combined provided all requirements are satisfied.
>
> (2) When the employee is notified, copies of the notice of intent to dismiss and the notice of dismissal or other penalization shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

Section 3. Demotion.

When the employee is notified, copies of the notice of demotion shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

Section 4. Suspension.

(1) A suspension shall not exceed thirty (30) working days.

(2) An employee without status may also be suspended for a period not to exceed thirty (30) days and shall be entitled to the same provisions of notice contained in KRS 18A.095(8) with the exception of the right of appeal.

(3) When the employee is notified, copies of the notice of suspension shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

Section 5. Disciplinary Fine.

(1) A disciplinary fine shall not exceed ten (10) days pay The fine shall be computed on the basis of the employee's current salary.

(2) Prior to imposition of a disciplinary fine, the employee shall be notified by the appointing authority in writing of the amount of the fine.

(3) An employee without status may also be fined for a period not to exceed ten (10) days and shall be entitled to the same provisions of notice contained in KRS 18A.095(8) with the exception of the right of appeal.

(4) When the employee is notified, copies of the notice of disciplinary fine shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

FINDINGS OF FACTS

1. During the relevant times, the Appellant was a classified employee with status employed as a Family Support Specialist with the Department for Community Based Services, East Service Region for the Cabinet for Health and Family Services.

2. The Hearing Officer finds it is undisputed that the allegations contained on page eight of Appellee's Exhibit 1, the four-day suspension letter issued November 2, 2015, did occur.

At the pre-hearing conference and again at the evidentiary hearing, Appellant admitted to behavior which consisted of inappropriate behavior and language in the workplace in the presence of coworkers.

3. The Hearing Officer finds credible the testimony of Dana Hall and how she happened to listen in on a client call with Appellant while Hall was training another employee. The Hearing Officer finds credible the sequence of events described by Hall after she listened to this call, contacted the Appellant, and made others aware of the situation.

4. The Hearing Officer finds credible the testimony of Chris Carpenter, who actually listened to 679 client phone calls which he memorialized in a report (Appellee's Exhibit 3), and also was fully documented at Appellee's Exhibit 4. The Hearing Officer finds credible and persuasive the testimony Carpenter offered with regards to this investigation and the documents that were generated as a result of it, especially Appellee's Exhibit 3.

5. The Hearing Officer finds credible the testimony of the Appellant, Robert Johnson, as to how frustrated he was with the Interactive Call System, but does not find persuasive Appellant's explanation that what was documented by Carpenter in Appellee's Exhibit 3 had to be the result of computer problems, because of problems with the Interactive Client System.

6. The Hearing Officer does find that the Interactive Client System apparently experienced problems, but also finds this was taken into account by Appointing Authority Jay Klein when imposing a penalty.

7. To the extent the Appellant was making a claim of retaliation for having requested ADA accommodations, the Hearing Officer finds Appellant did not present any evidence showing that witnesses Hall or Carpenter even knew of the accommodation request. The Hearing Officer finds that Appellant made this request, as he testified, to his Supervisor, Kyle Kinney.

8. The Hearing Officer finds that the four-day suspension penalty imposed in light of the charges, was not excessive, was not erroneous and, in fact, agrees with witness Jay Klein that it was appropriate.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes as a matter of law that the Appellee, Cabinet for Health and Family Services, met its burden in demonstrating that the penalty imposed in Appellee's Exhibit 1, (which is attached hereto as **Recommended Order Attachment A)** was appropriate, not excessive and it was not erroneous. In fact, the Hearing Officer concludes that for the conduct the Appellant admits occurred on September 21, 2015, a four-day suspension may have been appropriate for that alone. Appellee's Exhibit 3 is attached hereto as **Recommended Order Attachment B.**

2. The Hearing Officer concludes as a matter of law that the Appellant failed to demonstrate any facts, to the extent he made a claim of retaliation, linking his request for ADA accommodation to the disciplinary action.

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 **ROBERT JOHNSON VS. CABINET FOR HEALTH AND FAMILY SERVICES (APPEAL NO. 2015-282)** be **DISMISSED.**

NOTICE OF EXCEPTION AND APPEAL RIGHTS

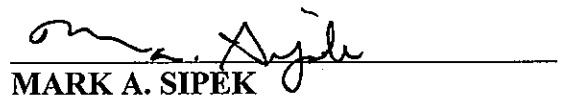
Pursuant to KRS 13.B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that 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 Boyce A. Crocker** this 2nd day of June, 2016.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Kathleen Hines
Mr. Robert Johnson

EXHIBIT
1

CABINET FOR HEALTH AND FAMILY SERVICES
OFFICE OF HUMAN RESOURCE MANAGEMENT

Steven L. Beshear
Governor

275 East Main Street, 5C-D
Frankfort, Kentucky 40621
(502)564-7770
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www.chfs.ky.gov

Audrey Tayse Haynes
Secretary

November 2, 2015

Robert B. Johnson

PERNR: 305192

Re: Four (4)-Day Suspension

Dear Mr. Johnson:

Based on the authority of KRS 18A.095 and 101 KAR 1:345, you are hereby notified that you are officially suspended from duty and pay for a period of four (4) working days. The effective dates of your suspension are November 4, 2015; November 5, 2015; November 6, 2015; and November 9, 2015.

In accordance with 101 KAR 1:345, Section 1, you are being suspended from your position as a Family Support Specialist I with the Department for Community Based Services (DCBS), East Service Region, for the following specific reasons:

Lack of Good Behavior and Unsatisfactory Performance of Duties: As reported by acting Service Region Administrator (SRA) Shannon Hall and SRA Bobbi Jo Frye, you repeatedly failed to provide notice of issues with your phone, resulting in a failure to properly provide to clients efficient and effective customer service.

The Guide to the Executive Branch Code of Conduct, *General Standards of Conduct*, states in part, "It is the public policy of the Commonwealth that a public servant works for the benefit of the people of the Commonwealth. The Executive Branch Code of Ethics recognizes that public office is a public trust where government is based upon consent of its citizens. Those citizens are entitled to have complete confidence in the integrity of their government. Thus, the following provisions provide general statements of required behavior of executive branch employees...Employees' actions should promote public confidence in the integrity of government."

DCBS' Division of Family Support's Standard of Practice (SOP) Volume I, MS 0015, Ethics Policy for Family Support Employees, states in part, "The Department for Community Based Services (DCBS) and its employees must recognize the vulnerability of their clients and the serious responsibilities associated with the provision of public assistance. The behavior of human service professionals shall reflect an

emphasis on integrity, professional trustworthiness, and on the values of respect for persons, competence, loyalty, diligence, honesty and confidentiality."

DCBS' Division of Family Support's Standard of Practice (SOP) Volume I, MS 1200, Right To Apply states in part, "Individuals can apply for programs offered by the agency either in-person or by telephone."

The Cabinet for Heath and Family Services' (CHFS) Personnel Procedures 2.1, Employee Conduct, *Purpose*, "CHFS expects its employees to maintain a high standard of conduct and professional behavior, including outside of work, to maintain the public's confidence in the integrity of its government and public servants. (See Guide to the Executive Branch Code of Ethics.) Actions in violation of this duty as a public servant may lead to corrective or disciplinary action, up to and including dismissal. CHFS also expects a respectful and professional work environment, free from any form of harassment and violence. Violation of policies and procedures, unsatisfactory performance of duties, and/or failure to exhibit good behavior may lead to corrective or disciplinary action, up to and including dismissal."

Specifically, on February 16, 2015, you voluntarily demoted from a Social Service Worker I to a Family Support Specialist I. You were assigned to the Boyd County Family Support Office with job duties of determining eligibility for Public Assistance Programs utilizing Eligibility Enrollment (face to face), Supportive Services (working from the dashboard), or Call Services (via telephone).

On September 17, 2015, Public Assistance Program Specialist (PAPS) Dana Hall, acting in her capacity as the Call Services Program Specialist, randomly monitored your client telephone calls. Ms. Hall discovered that numerous calls were recorded but nothing was being said to the clients. Ms. Hall reported that on September 17, 2015, you "took" eighty (80) calls but only assisted one (1) client. Three (3) of the calls recorded the client talking, but you could be heard in the background also talking as if you were having a conversation with someone else. One of these calls, you could be heard talking to someone, apparently on your cell phone.

When employees are experiencing issues with the Call Services system, they have been directed to notify the PAPS, Ms. Hall, or the call services supervisor. Ms. Hall has directed employees to first attempt to correct any issue by restarting the computer and reprovising their headset. If that did not solve the issue, employees would then contact Xerox for their support. The employee should place his/her status into Tech Support during this time period to help the PAPS and the supervisor identify issues. If the issue is extensive, this allows the PAPS and to assign another backup employee to ensure the region has the allotted amount of workers on call services. In your September 21, 2015 email response, subject My Statement to 09-18-15 Allegations, you admitted you had also received the same instructions from Ms. Hall during August 2015 and September 2015 when experiencing issues with the system.

Tech Support records show that you contacted them on August 4, 2015; August 5, 2015; and August 27, 2015, when you experienced difficulty with your phone. Field Services Supervisor (FSSV) Chris Carpenter, the Call Center Supervisor, completed a review of your call recordings and reports for the period of July 6, 2015 (your first day answering calls in Boyd County) through August 2, 2015 (random sample) and August 3, 2015 through September 17, 2015. His review revealed no problem during the July 6, 2015 through August 3, 2015 period but found the following for the August 4, 2015 through September 17, 2015 period:

- On August 6, 2015, you took four (4) calls and spoke with one (1) client. The other three (3) calls were transferred back into the queue. Your voice was not recorded on these three (3) calls. According to the User Availability Report, you were on ACD calls for eighteen (18) minutes (out of office for eight (8) hours twelve (12) minutes), becoming available for calls at 8:00 a.m. You were logged into the system for one (1) hour ten (10) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS. Your first call lasted on ten (10) seconds. The other three calls lasted ten (10) minutes fourteen (14) seconds, four (4) minutes fourteen (14) seconds, and three (3) minutes fifty-three (53) seconds.

- On August 7, 2015, you took thirty-nine (39) calls, made three (3) outbound calls, and had one call to the supervisor's queue that is not recorded. You spoke with nineteen (19) clients. Most of these nineteen (19) clients were placed on hold at the beginning of the call for two (2) to fourteen (14) minutes before you spoke with them. The other twenty-three (23) calls were also placed on hold at the beginning of the call and remained on hold until they were transferred back into the queue. Your voice was not recorded on these twenty-three (23) calls. According to the User Availability Report, you were on ACD calls for four (4) hours thirty-one (31) minutes, becoming available for calls at 8:00 a.m. You were logged into the system for seven (7) hours forty-one (41) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On August 10, 2015, you took fifty-one (51) calls and spoke with three (3) clients. The recordings of four (4) calls demonstrate the clients are repeatedly saying hello until they hang up. The clients on the other forty-four (44) calls were placed on hold at the beginning of the call and remained on hold until they were transferred back into the queue. Your voice was not recorded on these forty-eight (48) calls. According to the User Availability Report, you were on ACD calls for four (4) hours fifty-six (56) minutes, becoming available for calls at 8:00 a.m. You were logged into the system for eight (8) hours forty-eight (48) minutes. You recorded zero (0) time in Tech Support.

- On August 11, 2015, you took six (6) calls and spoke with one (1) client. The clients on the other five (5) calls were placed on hold at the beginning of the call and remained on hold until they were transferred back into the queue. Your voice was not recorded on these five (5) calls. According to the User Availability Report, you were on ACD calls for fifty-seven (57) minutes, becoming available for calls at 8:00 a.m. You were logged into the system for two (2) hours twenty-five (25) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On August 12, 2015, you took thirteen (13) calls but did not speak with any of the clients. All thirteen (13) calls were transferred back into the queue. Your voice was not recorded on these thirteen (13) calls. According to the User Availability Report, you were on ACD calls for thirty-three (33) minutes, becoming available for calls at 8:00 a.m. You were logged into the system for two (2) hours twenty-three (23) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On August 13, 2015, you took nine (9) calls but did not speak with any of the clients. All nine (9) calls were transferred back into the queue. Your voice was not recorded on these nine (9) calls. According to the User Availability Report, you were on ACD calls for thirty-eight (38) minutes, becoming available for calls at 8:00 a.m. You were logged

into the system for two (2) hours eight (8) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On August 14, 2015, you took fifty-three (53) calls and spoke with two (2) clients. The other fifty-one (51) calls were transferred back into the queue. Your voice was not recorded on these fifty-one (51) calls. According to the User Availability Report, you were on ACD calls for three (3) hours six (6) minutes, becoming available for calls at 8:00 a.m. You were logged into the system for eight (8) hours seven (7) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On August 17, 2015, you took twenty-one (21) calls but did not speak with any of the clients. The recordings of four (4) calls demonstrate the clients are repeatedly saying hello until they hang up. The other seventeen (17) calls were transferred back into the queue. Your voice was not recorded on these twenty-one (21) calls. According to the User Availability Report, you were on ACD calls for five (5) hours seventeen (17) minutes, becoming available for calls at 8:00 a.m. You were logged into the system for seven (7) hours twenty-nine (29) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On August 18, 2015, you took twelve (12) calls but did not speak with any of the clients. The recordings of two (2) calls demonstrate the clients are repeatedly saying hello until they hang up. The other ten (10) calls were transferred back into the queue. Your voice was not recorded on these twelve (12) calls. According to the User Availability Report, you were on ACD calls for fifty-six (56) minutes, becoming available for calls at 8:00 a.m. You were logged into the system for two (2) hours seven (7) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On August 19, 2015, you took twenty-one (21) calls but did not speak with any of the clients. The recordings of four (4) calls demonstrate the clients are repeatedly saying hello until they hang up. The other seventeen (17) calls were transferred back into the queue. Your voice was not recorded on these twenty-one (21) calls. According to the User Availability Report, you were on ACD calls for thirty-six (12) minutes, becoming available for calls at 8:00 a.m. You were logged into the system for two (2) hours four (4) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On August 20, 2015, you took twenty-five (25) calls but did not speak with any of the clients. The recording of one (1) call demonstrates the client was repeatedly saying hello until the client hangs up. The other twenty-four (24) calls were transferred back into the queue. Your voice was not recorded on these twenty-five (25) calls. According to the User Availability Report, you were on ACD calls for four (4) hours thirty (30) minutes, becoming available for calls at 8:00 a.m. You were logged into the system for seven (7) hours forty-two (42) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

Note: After August 20, 2015, the hold feature was no longer available to call center workers.

- On August 21, 2015, you took eleven (11) calls but did not speak with any of the clients. It appeared that the mute button had been pushed on your headset or on Interaction Client. The recordings of the eleven (11) calls demonstrate the clients are repeatedly

saying hello until they either hang up or were, after two to three minutes, transferred back into the queue. Your voice was not recorded on these eleven (11) calls. According to the User Availability Report, you were on ACD calls for fourteen (14) minutes, becoming available for calls at 8:01 a.m. You were logged into the system for two (2) hours thirteen (13) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On August 24, 2015, you took forty-nine (49) calls but did not speak with any of the clients. It appeared that the mute button had been pushed on your headset or on Interaction Client. The recordings of the forty-nine (49) calls demonstrate the clients are repeatedly saying hello until they either hang up or were, after two to three minutes, transferred back into the queue. Your voice was not recorded on these forty-nine (49) calls. According to the User Availability Report, you were on ACD calls for one (1) hour, becoming available for calls at 8:00 a.m. You were logged into the system for four (4) hours thirty-six (36) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On August 25, 2015, you took twelve (12) calls but did not speak with any of the clients. It appeared that the mute button had been pushed on your headset or on Interaction Client. The recordings of the twelve (12) calls demonstrate the clients are repeatedly saying hello until they either hang up or were, after two to three minutes, transferred back into the queue. Your voice was not recorded on these twelve (12) calls. According to the User Availability Report, you were on ACD calls for fifteen (15) minutes, becoming available for calls at 8:00 a.m. You were logged into the system for two (6) hours one (1) minute. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On August 26, 2015, you took thirteen (13) calls but did not speak with any of the clients. It appeared that the mute button had been pushed on your headset or on Interaction Client. The recordings of the thirteen (13) calls demonstrate the clients are repeatedly saying hello until they either hang up or were, after two to three minutes, transferred back into the queue. Your voice was not recorded on these thirteen (13) calls. According to the User Availability Report, you were on ACD calls for fifteen (15) minutes, becoming available for calls at 8:00 a.m. You were logged into the system for one (1) hour twenty (20) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On August 28, 2015, you took twenty-two (22) calls but did not speak with any of the clients. It appeared that the mute button had been pushed on your headset or on Interaction Client. The recordings of the twenty-two (22) calls demonstrate the clients are repeatedly saying hello until they either hang up or were, after two to three minutes, transferred back into the queue. Your voice was not recorded on these twenty-two (22) calls. According to the User Availability Report, you were on ACD calls for twenty-two (22) minutes, becoming available for calls at 8:00 a.m. You were logged into the system for two (2) hours seven (7) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On September 2, 2015, you took eighty-six (86) calls but did not speak with any of the clients. It appeared that the mute button had been pushed on your headset or on Interaction Client. The recordings of the eighty-six (86) calls demonstrate the clients are

repeatedly saying hello until they either hang up or were, after two to three minutes, transferred back into the queue, except for one client who remained on the line for forty-three (43) minutes before hanging up. Your voice was not recorded on eighty-five (85) calls, but was heard on one (1) call talking to another worker. According to the User Availability Report, you were on ACD calls for three (3) hours twenty-one (21) minutes, becoming available for calls at 8:00 a.m. You were logged into the system for seven (7) hours thirty-six (36) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On September 3, 2015, you took twenty-six (26) calls but did not speak with any of the clients. It appeared that the mute button had been pushed on your headset or on Interaction Client. The recordings of the twenty-six (26) calls demonstrate the clients are repeatedly saying hello until they either hang up or were, after two to three minutes, transferred back into the queue. Your voice was not recorded on these twenty-six (26) calls. According to the User Availability Report, you were on ACD calls for forty (40) minutes, becoming available for calls at 8:00 a.m. You were logged into the system for two (2) hours twenty-three (23) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On September 4, 2015, you took eleven (11) calls but did not speak with any of the clients. It appeared that the mute button had been pushed on your headset or on Interaction Client. The recordings of the eleven (11) calls demonstrate the clients are repeatedly saying hello until they either hang up or were, after two to three minutes, transferred back into the queue. Your voice was not recorded on these eleven (11) calls. According to the User Availability Report, you were on ACD calls for fifty-two (52) minutes, becoming available for calls at 8:00 a.m. You were logged into the system for one (1) hours fifty-four (54) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On September 14, 2015, you took twenty-four (24) calls but did not speak with any of the clients. It appeared that the mute button had been pushed on your headset or on Interaction Client. The recordings of the twenty-four (24) calls demonstrate the clients are repeatedly saying hello until they either hang up or were, after two to three minutes, transferred back into the queue. Your voice was not recorded on these twenty-four (24) calls. According to the User Availability Report, you were on ACD calls for thirty-four (34) minutes, becoming available for calls at 8:01 a.m. You were logged into the system for one (1) hours fifty-nine (59) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On September 15, 2015, you took twenty (20) calls but did not speak with any of the clients. It appeared that the mute button had been pushed on your headset or on Interaction Client. The recordings of the twenty (20) calls demonstrate the clients are repeatedly saying hello until they either hang up or were, after two to three minutes, transferred back into the queue. Your voice was not recorded on these twenty (20) calls. According to the User Availability Report, you were on ACD calls for forty (40) minutes, becoming available for calls at 8:01 a.m. You were logged into the system for two (2) hours twenty (20) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On September 16, 2015, you took seventeen (17) calls but did not speak with any of the clients. It appeared that the mute button had been pushed on your headset or on Interaction Client. The recordings of the seventeen (17) calls demonstrate the clients are repeatedly saying hello until they either hang up or were, after two to three minutes, transferred back into the queue. Your voice was not recorded on sixteen (16) calls, but was heard on one (1) call talking to someone other than the client on another telephone or a cell phone. According to the User Availability Report, you were on ACD calls for one (1) hour one (1) minute, becoming available for calls at 8:02 a.m. You were logged into the system for two (2) hours. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

- On September 17, 2015, you took eighty (80) calls and spoke with one (1) client. Three (3) calls record the client and you talking, but not to each other. The first of these three (3) calls you appear to be talking to another worker in the office. On the other two calls, you appear to be voice texting on your cell phone. On two (2) of these calls, the clients hear you talking but you do not respond. On the remaining seventy-six (76) calls, the clients either hang up or were transferred back into the queue. Your voice was not recorded on these seventy-six (76) calls. According to the User Availability Report, you were on ACD calls for two (2) hours forty-two (42) minutes, becoming available for calls at 8:19 a.m. You were logged into the system for seven (7) hours two (2) minutes. You recorded zero (0) time in Tech Support and did not contact your supervisor or the PAPS.

In summary, other than making three (3) calls to Tech Support, you failed to report any problem with the system to any manager during the time period from August 6, 2015 through September 17, 2015. According to FSSV Carpenter, you must manually click on the "Pickup Button" to answer a call; click on the "Hold Button" to put a caller on hold (no longer available as of August 21, 2015); and click on the "Transfer Button" to transfer a call. During FSSV Carpenter's review of the recordings of calls answered by you between August 6, 2015 and September 17, 2015, at least one (1) if not all of these actions were found on the calls.

On September 18, 2015, SRA Frye and acting Service Region Administrator Associate (SRAA) Darlene Staniford met with you concerning your failure to assist clients. You denied not speaking with clients and suggested the problem must be an issue with the phone system. You alleged that you sent emails and lync messages to Ms. Hall concerning your system issues. However, there are no emails prior to September 17, 2015 from you to PAPS Hall outlining your alleged continual system issues and PAPS Hall does not recall any lync message from you outlining any problems. In addition, you failed to notify your supervisor of the issues with your phone.

Your claim was also addressed by Business Analyst Jason Brewer who ran a system check on your computer and found the phone system was operating correctly. Mr. Brewer also consulted with Technical Manager Ross Grant and DCBS Account Manager Dale Proctor from Xerox who also did not detect any provisioning issues. While you did have an issue with your headset on September 21, 2015 (see second charge below), Mr. Ross explained that your headset would still have worked properly using the settings you had prior to the change made on September 21, 2015.

Your repeated failure to notify Tech Support, the PAPS, or your supervisor on twenty-three days spanning from August 6, 2015 through September 17, 2015; your repeated failure to act, resulted in delayed services to numerous clients. Your actions are contrary to the mission of DCBS and the Division of Family Support. Your actions violate The Guide to the Executive Branch Code of Conduct;

DCBS' Division of Family Support's Standard of Practice (SOP) Volume I, MS0015, Ethics Policy for Family Support Employees; SOP Volume I, MS 1200, Right To Apply; and the Cabinet for Health and Family Services' Personnel Procedure 2.1, Employee Conduct. Further, your actions constitute lack of good behavior and unsatisfactory performance of duties for which you may be disciplined pursuant to 101 KAR 1:345, Section 1.

Lack of Good Behavior: As reported by acting Service Region Administrator (SRA) Shannon Hall and SRA Bobbi Jo Frye, you engaged in inappropriate and unprofessional behavior when you used loud and inappropriate and unprofessional language in the presence of a co-worker and your supervisor.

On September 21, 2015, Family Support Specialist III Stacy Carpenter was assigned to assist you with any issues you were having with the system while taking calls. When she entered your office, you alleged to Ms. Carpenter that you were "being targeted" because you had made a complaint concerning the parking lot on Wednesday, September 16, 2015. You further informed Ms. Carpenter that on Thursday, September 17, 2015, "they" had "monitored his (your) calls and tried to say he (you) had taken over 80 calls, but they were only able to hear about half of them." You claimed this was due to your "many system issues," which you claimed you had "reported many times."

Ms. Carpenter informed your supervisor, Field Services Supervisor (FSSV) Kyle Kinney of the problem with your phone. When Mr. Kinney entered your office, your voice started elevating and you told FSSV Kinney that your computer was "messed up," and "they" had obviously been in your computer over the weekend and that you "felt betrayed." You further stated that it "was not f****** fair that after all he (you) had went through for the state that they were not giving him (you) the benefit of the doubt as a veteran worker and were taking the word of Xerox over him (you)." FSSV Kinney advised you to call Xerox's help desk concerning your present problem. After you called Xerox, they were able to get the sound to come correctly through your headphones. When you hung up with Xerox, you stated that you "f****** knew there was a f****** (problem) with the computer..." You voice had become so loud that PAPS Reba Manning heard your inappropriate and unprofessional language in her office which is located next to yours. According to PAPS Manning, you were "using the "F" word over and over again..." PAPS Manning further stated that she "could hear Stacy's (Family Support Specialist III Stacy Carpenter) voice trying to calm (you).

Later, you went to FSSV Kinney's office to explain that your system seemed to be working properly after conferring with Xerox. Your voice began to elevate as you related your misconception of how you "had a target" on your back. FSSV Kinney had to advise you to lower your voice three times before you complied. FSSV Kinney then instructed you to go back to your work station but to keep him advised of any problems with the system.

As written in the Cabinet for Health and Family Services' (CHFS') Personnel Procedure 2.1, Employee Conduct, CHFS expects a "respectful and professional work environment, free from any form of harassment and violence. Violation of policies and procedures, unsatisfactory performance of duties, and/or failure to exhibit good behavior may lead to corrective or disciplinary action, up to and including dismissal."

Your inappropriate and unprofessional behavior violates the CHFS' Personnel Procedure 2.1, Employee Conduct. Further, your actions constitute lack of good behavior for which you may be disciplined pursuant to 101 KAR 1:345, Section 1.

Further incidents in violation of policy may lead to further and more severe disciplinary action, up to and including dismissal.

For your information, the Kentucky Employee Assistance Program (KEAP) is a voluntary and confidential assessment and referral service for state employees. This service may help you with any personal problems that may be affecting your job performance. KEAP can be reached at 1-800-445-5327 or (502) 564-5788.

As you are an employee with status, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the day of receipt. To appeal, you must complete the attached form and direct it to the address indicated on the form. Copies of KRS 18A.095 and 101 KAR 1:365 concerning appeal and hearing procedures are enclosed.

Sincerely,

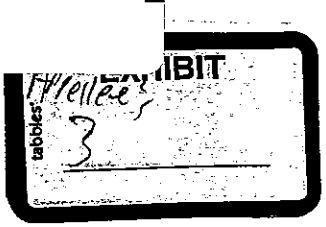
Howard J. Klein
Appointing Authority

HJK:jcb

Attachments

c: Personnel Cabinet Secretary
Executive Director Mark Sipek, Personnel Board
Commissioner Teresa James, DCBS
Service Region Administrator Bobbi Jo Frye, East Service Region
Cabinet Personnel

Recommended Order
Attachment B



From: Carpenter, Christopher (CHFS DCBS NSR Boyd)
Sent: Thursday, September 24, 2015 8:59 AM
To: Frye, Bobbi Jo (CHFS DCBS NSR Carter); Staniford, Darlene (CHFS DCBS NSR Carter)
Subject: Robert Johnson Calls from July Through September
Importance: High

I have completed the call audit on Robert Johnson from 7/1/15 through 9/17/15. Results are below:

Robert came back to Boyd County on 7/1/15. He was given phone access on 7/6/15 and took his first call that day. I randomly pulled several calls from 7/6 -8/2 and did not found any issues. On 8/3 was when the issues was first noticed.

- 8/3/15: Robert took 7 calls, and spoke to 3 clients. The other 4 calls only has the client repeatedly saying Hello until they hung up or was transferred back into the queue. Robert was not recorded on those 4 calls.
- 8/4/15: Robert took 20 calls and had 3 Callbacks. He spoke with 9 clients. The other 11 calls only has the client repeatedly saying Hello until they hung up or was transferred back into the queue. Robert was not recorded on those 11 calls.
- 8/5/15: Robert took 17 calls, and spoke with 10 clients. The other 7 calls only has the client repeatedly saying Hello until they hung up or was transferred back into the queue. Robert was not recorded on those 7 calls.
- 8/6/15: Robert took 4 calls, and spoke with 1 client. The other 3 calls were transferred back into the queue. Robert was not recorded on those 3 calls.
- 8/7/15: Robert took 42, and spoke with 19 clients. Of those 19 clients that he spoke with, almost all of them were put on hold at the beginning of the call before Robert spoke with them. These hold times ranged from 2 minutes to 14 minutes. The other 23 calls were put on hold at the beginning of the call and transferred back into the queue. Robert was not recorded on those 23 calls.
- 8/10/15: Robert took 51 calls, and spoke with 3 clients. 4 of the remaining calls only has the client repeatedly saying Hello until they hung up. The other 44 remaining calls were put on hold at the beginning of the call and transferred back into the queue. Robert was not recorded on those 48 calls.
- 8/11/15: Robert took 6 calls, and spoke with 1 client. The other 5 calls were put on hold at the beginning of the call and transferred back into the queue. Robert was not recorded on those 5 calls.
- 8/12/15: Robert took 13 calls, but did not speak with any clients. All 13 calls were transferred back into the queue. Robert was not recorded on those 13 calls.
- 8/13/15: Robert took 9 calls, but did not speak with any clients. All 9 calls were transferred back into the queue. Robert was not recorded on those 9 calls.
- 8/14/15: Robert took 53 calls, and spoke with 2 clients. All of the other 51 calls were transferred back into the queue. Robert was not recorded on those 51 calls.
- 8/17/15: Robert took 21 calls, but did not speak with any clients. 4 of the calls only has the client repeatedly saying Hello until they hung up. The other 17 calls were transferred back into the queue. Robert was not recorded on those 21 calls.
- 8/18/15: Robert took 13 calls, but did not speak with any clients. 2 of the calls only has the client repeatedly saying Hello until they hung up. The other 11 calls were transferred back into the queue. Robert was not recorded on those 13 calls.
- 8/19/15: Robert took 14 calls, but did not speak with any clients. All 14 calls were either put on hold until they hung up or transferred back into the queue. Robert was not recorded on those 14 calls

- 8/20/15: Robert took 25 calls, but did not speak with any clients. 1 of the calls only has the client repeatedly saying Hello until they hung up. The other 14 calls were transferred back into the queue. Robert was not recorded on those 25 calls.

(NOTE: After 8/20/15, the Hold Feature was no longer available to CSWs)

- 8/21/15: Robert took 11 calls, but did not speak with any clients. It appears that the Mute Button had been pushed on the worker's headset or on Interaction Client. All 11 calls either has the client repeatedly saying Hello or they were unaware that a worker had picked up the call. After 2-3 minutes they either hung up or was transferred back into the queue. Robert was not recorded on those 11 calls.

- 8/24/15: Robert took 49 calls, but did not speak with any clients. It appears that the Mute Button had been pushed on the worker's headset or on Interaction Client. All 49 calls either has the client repeatedly saying Hello or they were unaware that a worker had picked up the call. After 2-3 minutes they either hung up or was transferred back into the queue. Robert was not recorded on those 49 calls.

- 8/25/15: Robert answered 12 calls, but did not speak with any clients. It appears that the Mute Button had been pushed on the worker's headset or on Interaction Client. All 12 calls either has the client repeatedly saying Hello or they were unaware that a worker had picked up the call. After 2-3 minutes they either hung up or was transferred back into the queue. Robert was not recorded on those 12 calls.

- 8/26/15: Robert answered 13 calls, but did not speak with any clients. It appears that the Mute Button had been pushed on the worker's headset or on Interaction Client. All 13 calls either has the client repeatedly saying Hello or they were unaware that a worker had picked up the call. After 2-3 minutes they either hung up or was transferred back into the queue. Robert was not recorded on those 13 calls.

- 8/27/15: Robert answered 13 calls, but did not speak with any clients. It appears that the Mute Button had been pushed on the worker's headset or on Interaction Client. All 13 calls either has the client repeatedly saying Hello or they were unaware that a worker had picked up the call. After 2-3 minutes they either hung up or was transferred back into the queue. Robert was not recorded on those 13 calls.

- 8/28/15: Robert answered 22 calls, but did not speak with any clients. It appears that the Mute Button had been pushed on the worker's headset or on Interaction Client. All 22 calls either has the client repeatedly saying Hello or they were unaware that a worker had picked up the call. After 2-3 minutes they either hung up or was transferred back into the queue. Robert was not recorded on those 22 calls.

- 9/2/15: Robert answered 86 calls, but did not speak with any clients. It appears that the Mute Button had been pushed on the worker's headset or on Interaction Client. All 86 calls either has the client repeatedly saying Hello or they were unaware that a worker had picked up the call. After 2-3 minutes they either hung up or was transferred back into the queue except for 1. 1 client appears to think they are still on hold and waits 43 minutes before hanging up. Robert was not recorded on 85 of the calls, but was heard in the background on 1 call talking to another worker (Recording Attached).

- 9/3/15: Robert took 26 calls, but did not speak with any clients. It appears that the Mute Button had been pushed on the worker's headset or on Interaction Client. All 26 calls either has the client repeatedly saying Hello or they were unaware that a worker had picked up the call. After 2-3 minutes they either hung up or was transferred back into the queue. Robert was not recorded on those 26 calls.

- 9/4/15: Robert took 11 calls, but did not speak with any clients. It appears that the Mute Button had been pushed on the worker's headset or on Interaction Client. All 11 calls either has the client repeatedly saying Hello or they were unaware that a worker had picked up the call. After 2-3 minutes they either hung up or was transferred back into the queue. Robert was not recorded on those 11 calls.

- 9/14/15: Robert took 24 calls, but did not speak with any clients. It appears that the Mute Button had been pushed on the worker's headset or on Interaction Client. All 24 calls either has the client repeatedly saying Hello or they were unaware that a worker had picked up the call. After 2-3 minutes they either hung up or was transferred back into the queue. Robert was not recorded on those 24 calls.

- 9/15/15: Robert took 20 calls, but did not speak with any clients. It appears that the Mute Button had been pushed on the worker's headset or on Inte(ion Client. All 20 calls either has the clier(peatedly saying Hello or they were unaware that a worker had picked up the call. After 2-3 minutes they either hung up or was transferred back into the queue. Robert was not recorded on those 20 calls.

- 9/16/15: Robert took 17 calls, but did not speak with any clients. It appears that the Mute Button had been pushed on the worker's headset or on Interaction Client. All 17 calls either has the client repeatedly saying Hello or they were unaware that a worker had picked up the call. After 2-3 minutes they either hung up or was transferred back into the queue. Robert was not recorded on 16 of the calls, but was heard in the background on 1 call talking to someone else on his office phone or cell phone (Recording Attached).

- 9/17/15: Robert took 80 calls, but only spoke with 1 client. 3 calls record him and the client talking, but not to each other. On the 1st call he appears to be talking to another worker that came in the office. On the other 2 calls it appears he is Voice Texting on his cell phone. Additionally on 2 of these calls it appears the clients do hear him but he does not respond.

Total Calls from 8/3-9/17:	679
Total Clients talked to:	43
Total Clients not served:	636

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