COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NOS. 2013-292 AND 2014-021

JENNIFER LYNCH **APPELLANT**

VS.

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

JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF CORRECTIONS
J. MICHAEL BROWN, APPOINTING AUTHORITY **APPELLEE**

** ** ** ** **

The Board at its regular September 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 14, 2014, 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 appeals are 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 17th day of September, 2014.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Angela Cordery
Jennifer Lynch
Bobbie Underwood

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
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** ** ** ** **

This matter came on for evidentiary hearing on May 6, 2014, and June 2, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Stephen T. McMurtry, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Jennifer Lynch, was present and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was also present and represented by the Hon. Angela Cordery.

BACKGROUND

1. Jennifer Lynch was a Correctional Officer with the Kentucky Department of Corrections at the Blackburn Correctional Complex (BCC) in Lexington, Kentucky. On November 12, 2013, Warden Steve Haney suspended Lynch for violation of BCC Policy 03-02-01, General Guidelines for BCC Employees, Section F.(1) and BCC Post Order #15, Transportation, #4. The first violation appearing under "General Guidelines for BCC Employees" prohibited "employees from conducting an argument or using threatening, demeaning, offensive, profane, abusive, or vulgar language toward another staff member." The second violation under BCC Post Order #15, #4, stated, ". . . A ballistic vest shall be issued to all transportation officers in the vehicle whether they have a weapon or not. The vest must be worn at all times. . ."

2. The language allegedly used by Lynch was in one instance directed against Sgt. Helmburg, who was involved in having Lynch re-count the inmates in a dormitory supervised by her. After learning that she was required to re-count the inmates she is accused of saying, "That fat bastard has been trying to get me for a long time." In the second instance involving the vest, not part of the misconduct charge, she allegedly said, referring to Capt. Betts, who wanted a report of an incident, "It ain't none of his fucking business. Fuck it, I'll write myself up. I'm

leaving anyways." A copy of the suspension letter is attached hereto as "**Recommended Order Attachment A.**"

3. Lynch appealed the suspension on December 18, 2013. Her appeal was in essence a counter-claim in which she alleged retaliation by Deputy Warden Brandy Harm for her (Lynch's) refusal to spy on staff members. She also alleged that she did not commit the offenses associated with the "inmate count" and did not conduct the count improperly. She alleged the officers who were involved in requiring her to perform a re-count "sought out to humiliate and correct me in front of inmates which is against policy."

4. Lynch filed a second appeal of the suspension on February 3, 2014, alleging a penalization of constructive discharge caused by the suspension, as well as the failure of Deputy Warden Harm, prior to the suspension, to follow policy and procedure in prosecuting a harassment/discrimination charge she filed against Capt. Lawrence Betts and a refusal by the Department of Corrections to reasonably accommodate her by placing her in a position outside the supervision of Deputy Warden Harm, Capt. Sizemore, Capt. Betts, Lt. Abshear and Sgt. Helmburg. The Personnel Board consolidated the appeals for all purposes on February 10, 2014.

5. **Roger Kilgore**, a Control Center Officer, testified that he was manning the Control Room during the time Lynch made her dormitory bed count and was required to repeat it because her supervisor said it was done incorrectly. Kilgore said he maintains a Count-Control Sheet of all prisoners in the facility, including their names, assigned numbers, and dormitories where they sleep. His task is to receive the counts from the dormitory officers which include names and identification numbers. If the counts do not list every inmate, he checks to see if the missing inmates are excused from the bed counts. He "clears" the count when all inmates are accounted for, which he did at 12:57 p.m. on October 9, 2013. He said a proper count occurs when the inmate stands at the foot of his dormitory bed with his photograph and ID number displayed and the dormitory officer compares the inmate's photo ID with the face of the inmate and the number on the ID card to the number on the count sheet.

6. Kilgore testified that Sgt. Helmburg told Lt. Abshear that Lynch had not conducted her count as required prompting Abshear to send two Sergeants to recount with her. He said profanity at the facility was not unusual and he could not recall a previous demand for a recount.

7. **Sgt. Kevin Carter** testified that Lt. Abshear and Sgt. Helmburg sent him, along with Correctional Officer Conner, to show Lynch how to conduct a proper dormitory count and to do it with her. He said Lynch refused and complained they were disciplining her in front of the inmates in violation of practice and procedure. Carter said he completed the count according to the procedures described in the "Inmate Handbook." Carter said Lynch demanded that they talk to her in the hallway outside of the presence of inmates. He said he could not be sure that the inmates did not hear his conversation with Lynch, but he thought it was private. Carter said he hears a lot of profanity at the complex, but not directed at any particular person.

8. **Sgt. Todd Conner** testified that he was Lynch's supervisor. He did not regard her as a good employee because "she made her own rules," although she "was good at some things." He observed that she did not make the dormitory count properly because she failed to check the inmates' assigned numbers. He never counseled Lynch on her language and often heard Helmburg, Betts and Abshear use profanity, but never in a context directed at any particular person. He denied correcting Lynch in front of inmates when he and Carter were sent by Abshear and Helmburg to have Lynch do a proper count.

9. The Department of Corrections played the video of Lynch's dorm count. It showed Lynch walking quickly down a row of beds with some inmates standing and some not at the foot of their beds. Lynch did not walk down the entire aisle of beds and did not match faces to ID cards or assigned numbers on the cards to numbers on the count sheet.

10. **Lt. Steve Abshear** testified that Sgt. Helmburg called him about Lynch's improper count. He sent Carter and Conner to supervise Lynch in a re-count and viewed the video to conclude that Lynch failed to compare the inmate's IDs with their faces and the assigned numbers on the ID cards to the count sheet. He said there were three counts, the first two done improperly by Lynch and the last done properly by Carter and Conner after Lynch refused to accompany them. He said that he, Helmburg and Harm had a brief discussion with Lynch before she left for the day. Lt. Abshear testified that Sgt. Conner recommended that Lynch be disciplined. He said he hears a lot of profanity at the Complex and that he has never ordered a re-count after the entire Complex count has been cleared by the Control Center Officer. He explained why the dorm counts were important. He said the BCC is a minimum security facility where inmates have a lot of freedom of movement. Without correct counts inmates have opportunities to walk out.

11. **Sgt. Joel Helmburg** is the Complex's Fire and Safety Officer, but he fills in from time-to-time as the Day Shift Supervisor. He described Lynch as a difficult employee who does a good job and knows how to conduct a proper dormitory count, but has a hard time taking discipline. He always brings a third party to any conversation he has with her. Helmburg said the complex had recently re-started using the camera system and there was a new emphasis on security procedures. Helmburg referred to the "Inmate Handbook" as the source for the dorm count procedure, admitting, however, that all of the procedures of face and assigned number verification are not spelled out. All of the procedures are taught in orientation and are practices required by the facility to be followed. He said Lynch knows how to do it. He did emphasize that Lynch was not suspended for an improper count, but because of her behavior after the count.

12. **Capt. Lawrence Betts**, who supervised the lieutenants and sergeants, testified that on September 10, 2013, he overheard Lynch talking to Officer Bowling about who wrote her up for not taking a vest on a trip to a medical facility. Bowling told Lynch that Capt. Betts told Sgt. Ward to write her up. Lynch then replied, "It ain't none of his fucking business. Fuck it, I'll write myself up. I am leaving anyways." Betts said the write-up was over the language and not her failure to wear the vest.

13. **Deputy Warden Brandy Harm** testified that she investigated Lynch's actions on September 9, 2013, when she transported an inmate to a medical facility. She concluded that Lynch checked out a gun, but not a ballistics vest as required by BCC Post Orders. Harm confirmed with Officer Bowling that Lynch in fact said what Betts had reported. In her interview with Lynch, she (Lynch) complained that staff had told her Betts had said, "I can't believe that bitch took a weapon on a medical trip." Deputy Warden Harm tried to find the person who heard Betts make the "bitch" statement, but Lynch said she could not remember who the witnesses were. Harm concluded that Lynch "acted unprofessionally" in making her statement about Betts and could find no evidence that Betts referred to Lynch as a "bitch." Harm further testified that she conducted a post-dorm count "sit down" with Lynch attended by Abshear and Helmburg. Lynch's response to her behavior was that Helmburg and Abshear were trying to embarrass and harass her. Harm said Lynch would not have been disciplined but for her behavior after the dorm count. She also authenticated Post Order documents regarding wearing vests and the BCC Policy 15-04-01 on "Population Counts and Count Documentation."

14. **Warden Steve Haney** testified that sexual harassment complaints are regarded seriously by BCC to the extent that they go all the way to the Warden and the investigations are carefully done. He said the results of investigations "don't happen immediately." He said that had Lynch not resigned, her complaints of sexual harassment and retaliation would have been carefully investigated. Lynch made a written complaint of harassment against Deputy Warden Harm, a female, and Joel Helmburg, and Lawrence Betts on November 21, 2013, then gave a two-week notice of resignation on December 27, 2013.

15. Haney acknowledged that there was a difference in the seriousness of profanity directed toward another person and profanity not so directed. Haney said that on the day Lynch was required to do a re-count, she did not request videos of other inmate counts made that same day. Haney said that he had been concerned with improper counting procedures and had ordered the supervisors to begin viewing the inmate counts on camera. He said Lynch's complaint that Harm asked her to spy on other prison guards, Sandy and Harless, made no sense because she (Lynch) had a continuing obligation to report any illegal activity by the guards without being asked to spy. He testified there was no blanket prohibition against correcting a prison guard in front of an inmate, as it all depended on how it was done.

16. **Deputy Warden Brandy Harm** testified that she did not give Lynch an unconditional promise that she would get weekends off if she would take the kitchen post. Harm said that was the plan, but the kitchen staff complained about her, so she was re-assigned. According to Harm, she had to stay in the kitchen for a certain period of time to get weekends off.

17. **Teresa Harris**, Human Resources Branch Manager with the Department of Corrections, testified that she began an investigation on December 3, 2013, into Lynch's complaints that Harm had been dishonest in promising her weekends off if she would take the kitchen post, a promise she failed to keep, and that Harm had asked her to watch certain staff members in return for help in getting a promotion to sergeant. Lynch made the allegation that when she refused, Harm said she would remember her "lack of cooperation."

18. **Sgt. Kevin Carter** testified that one of the duties of a Correctional Officer is to "maintain proper counts." He said that prior to October 9, 2013, he had never had a problem with Lynch's inmate counts. However, on that day, Sgt. Todd Conner, Sgt. Joel Helmburg and he were watching "camera feeds" when they observed that Lynch was not properly conducting a standing ID count. Lynch was not looking at inmate IDs while she was making her count. He said Lt. Abshear asked him and Sgt. Conner to re-count the dorm with Lynch, but she refused.

19. The Cabinet introduced evidence of past conduct to corroborate Lynch's propensity to use profanity directed at fellow correctional officers as follows:

- On October 27, 2008, Warden Robert Howerton suspended Lynch for ten days for telling Sgt. Helmburg, "You need to send someone down here to relieve me and you can kiss my fucking ass." And, "You are an asshole and you don't deserve to have me working for you."

- On April 12, 2012, Warden Don Bottom suspended Lynch for three days for saying to Lt. Betty Sorenson, after a dispute over a work assignment, "Fuck it, I'm going home. This is bullshit."

- On August 12, 2011, Warden Don Bottom issued Lynch a written reprimand for calling Officer Jonathan Faulkner an "asshole."

20. The Cabinet introduced a copy of BCC Post Order #15, Transportation, Section (4), that required in part, "A ballistic vest shall be issued to all transportation officers in the vehicle whether they have a weapon or not. The vest must be worn at all times." The Cabinet introduced as Joint Exhibit 1, the BCC "Inmate Handbook" that required that weekday 12:45 p.m. counts be taken with an inmate standing by the bed. [The handbook does not state a requirement of matching faces to photographs and IDs to count sheets.]

21. Appellant, **Jennifer Lynch**, introduced a copy of BCC 03-02-01, "General Guidelines for BCC Employees," Section F(1) on which the Cabinet based its charge of misconduct, which states: "The following conduct shall be prohibited: Conducting an argument or using threatening, demeaning, offensive, profane, abusive, or vulgar language toward another staff member. This includes written and electronic communications."

22. On December 18, 2013, Jennifer Lynch filed an appeal of her three-day suspension (Appeal No. 2013-292) appealing (1) suspension and (2) also – political retaliation and harassment/discrimination, stating in pertinent part:

> . . . i (sic) did not commit the offenses for which i (sic) am suspended, this is retaliation from Brandy Harm because i (sic) would not 'spy' on two staff members for her. Furthermore, the information contained in my disciniplinary (sic) was unethically gained.
>
> 1. Count procedures: (1) I did not violate policy.
>
> 2. Offensive language – i (sic) did not offend the person I was talking to.
>
> 3. The involved supervisors sought to humiliate and correct me in front of inmates, which is against policy. . ."

23. On February 3, 2014, Lynch filed a second appeal of her three-day suspension (Appeal No. 2014-021) and affirmatively asserted that she had been constructively discharged. She alleged these facts:

> I filed a harassment/discrimination complaint with Deputy Warden Brandy Harm on Lt. Lawrence Betts. Ms. Harm did not follow policy and procedure in regards to my complaint. Furthermore, I was harassed further after this incident, resulting in a three day suspension. I asked for reasonable accommodation and did not receive it. I was moved to third shift at my request but this caused hardship to myself and family and did not stop concerns for harassment.

24. Lynch testified that the harassment against her started long before she was suspended for violation of BCC policy prohibiting vulgar language directed at a staff member. She claims, since her hire at BCC, she has filed three harassment complaints against her supervisors each of which resulted in retaliatory disciplinary action against her. This retaliation, she alleges, is proof of gender and political *animus* against her.

25. She documented two of her complaints. On May 6, 2011, Lynch made a complaint against Capt. Eric Sizemore alleging that he said she was arrogant and she thought she could get away with anything because of her breast size. Warden Don Bottom assigned the matter to Lt. Glen Robinson, Internal Affairs, who conducted the investigation. Robinson determined there was friction between Sizemore and Lynch, but found no evidence that Robinson commented on Lynch's breast size. No disciplinary action appears from the report to have been taken against Sizemore. On August 12, 2011, Warden Bottom issued Lynch a written reprimand for calling Officer Faulkner an "asshole." There is no evidence in the record that the incident was or was not substantiated.

26. Lynch made complaints of harassment to Teresa Harris, Human Resources Manager, against Deputy Warden Brandy Harm, Sgt. Joel Helmburg and Capt. Lawrence Betts. Harris began her investigation on December 3, 2013. Lynch complained that Harm lied to her about getting weekends off if she would work the kitchen post and improperly tried to persuade her to spy on fellow officers. She complained that Betts called her a "bitch" and Helmburg harassed her by forcing her to do a re-count of inmates in the dormitory she supervised. Harris found that Deputy Warden Harm told Lynch she could have weekends off if she worked the kitchen post and determined that Lynch was granted the accommodation of being switched to a different shift where she would not have to work with Helmburg and Betts. In response to Teresa Harris' finding, Deputy Warden Harm said she disagreed with Harris and stated that Lynch did not get the weekends off because she failed to work the requisite time before she was reassigned after kitchen staff complained about her. Harris made no other findings.

27. Lynch testified that Deputy Warden Harm discriminated against her when she (Harm) refused to let her view the videotapes of the October 9, 2013 inmate counts. Lynch introduced a document generated by Lt. Abshear reporting that Lynch on 11/28/13 stated over the "open radio" she wanted "y'all to keep hold of the tape" to be used as evidence in her harassment suit.

28. **Captain Eric Sizemore**, an Internal Affairs Officer, testified that the tapes were "rolled over" every two weeks erasing the previous electronic recording. The tape of Lynch's October 9, 2013 inmate count was preserved before being "rolled over" to be used in the disciplinary action against Lynch.

29. **Deputy Warden Harm** testified that she did not show Lynch the video of her October 9, 2013 inmate count because the charge was "cussing, swearing and throwing a fit" at fellow correctional officers not whether the count was properly done.

30. It appears from the record that Lynch's third harassment/discrimination complaint arose out of the incident of her failure to wear a ballistics vest. She accused Capt. Betts of calling her a "bitch." Teresa Harris investigated this incident and reported that Betts denied making the statement, "that bitch left without a vest, she won't get away with it," but made no finding that Betts made the statement.

31. **Jennifer Lynch** introduced a May 18, 2009 letter from BCC Warden Robert Howerton suspending Joel Helmburg for three days for inappropriate behavior when he referred to visitors at the BCC as largely comprised of single mothers with ten kids from different fathers who are incarcerated for non-support costing the facility $16,500 per person to house them. He said these people were "assholes." She testified that this was evidence of Helmburg's gender *animus*. Lynch testified that she conducted the inmate count as she always had, the way all other correctional officers conduct them. Criticizing her and no other correctional officer was proof of harassment and retaliation. She said Deputy Warden Harm's request that she spy on Sandy and Harless constituted political discrimination. She admitted to "flying off the handle" but denied calling Sgt. Helmburg an "asshole."

FINDINGS OF FACT

1. On October 9, 2013, Lynch, upon being asked to perform an inmate re-count, used profanity by referring to Sgt. Helmburg as an "asshole" and stating "That fat bastard has been trying to get me for a long time."

2. On September 9, 2013, Lynch failed to check out and wear a ballistic vest while transporting an inmate to a University of Kentucky clinic as required by written policy.

3. On October 9, 2013, Sgt. Helmburg notified Lt. Abshear that Lynch was not performing inmate counts as required by the custom and practice taught all correctional officers. Lt. Abshear ordered that she repeat the count and do it correctly. He ordered officers Conner and Carter to accompany her while she did a proper re-count. She refused and left work. Warden Haney had recently ordered that the supervisors start watching live video feeds of how the officers conducted inmate counts to assure they were performed correctly. Warden Haney preserved the video tape of the Lynch count which showed that she failed to have all the dormitory inmates stand at the foot of their assigned beds where she was required to compare faces to photographs on ID cards and numbers on ID cards to numbers on the count sheet.

4. Lynch has filed three gender/sex harassment and retaliation charges against her supervisors during her employment at the Blackburn Correctional Complex (BCC). On May 6, 2011, Lynch accused Capt. Eric Sizemore of commenting on her "breast size." Lt. Glen Robinson, Internal Affairs, performed what appears to have been a thorough investigation absolving Sizemore. There is no evidence that a subsequent written reprimand imposed by Warden Don Bottom was in retaliation for Lynch's complaint or motivated by gender/sex *animus*.

5. Lynch, shortly after Capt. Betts reported her for not wearing a ballistic vest, filed a complaint against him for referring to her as a "bitch." On November 12, 2013, Warden Haney informed Lynch that he intended to suspend her in part for not wearing a ballistic vest when transporting a prisoner. On December 3, 2013, Teresa Harris, Human Resources Branch Manager, investigated Lynch's complaint against Betts along with her complaints against Deputy Warden Harm and Sgt. Joel Helmburg. According to Harris' report, Capt. Betts denied that he called Lynch a bitch. Harris' report refers to Correctional Officer Albert Moseley, who would have heard Betts state that he could not recall that Betts made such a statement and "would not in a situation like that use that language." Harris' report appears to be fair and thorough. Harris makes a finding that Deputy Warden Harm had promised Lynch weekends off if she would work the kitchen post, but that did not occur. The investigation appears to have been thorough and fairly conducted, not biased or in retaliation for Lynch's complaint against Betts or motivated by gender/sexual animus. There is no evidence that Deputy Warden Harm discriminated for political reasons against Lynch by asking her to spy on Correctional Officers Sandy and Harless. Harm and Warden Haney explained that Lynch was under a continual duty to report improper

activity by any correctional officer. Furthermore, there is no evidence that asking someone to spy on another, if true, had a political purpose.

6. There is no direct or persuasive circumstantial evidence that the charges of vulgar language directed against Helmburg or the failure to wear a ballistic vest were motivated by sex/gender *animus* against Lynch. Warden Haney had a responsibility to prosecute the charges and in view of her record of past disciplinary action a three-day suspension was a moderate punishment.

7. There is no direct or persuasive evidence that (1) the November 12, 2013 disciplinary action against Lynch, (2) the results of Teresa Harris' investigation of Lynch's complaints against Deputy Warden Harm, Capt. Betts, and Sgt. Helmburg; (3) the result of Lt. Glen Robinson's May 6, 2011 investigation of Lynch's charge against Capt. Sizemore; (4) the above described actions of Sgt. Helmburg, Deputy Warden Harm, Warden Haney and Capt. Betts and (5) Lynch's August 12, 2011 written reprimand were a concerted effort to illegally discriminate and retaliate, so as to cause Lynch to resign her employment. Instead the record reveals an otherwise intelligent, competent correctional officer who is verbally abusive, incapable of accepting criticism, subject to emotional outbursts and irrationally afraid of conspiracies directed against her.

CONCLUSIONS OF LAW

1. There was no evidence from which a fact-finder could conclude that the Cabinet's actions and conduct including, the disciplinary actions against her, were sufficiently severe or pervasive to have been motivated by gender/sexual animus or political animus, so as to alter the conditions of her employment and create an abusive environment. *Myers v. Chapman Printing Co., Inc.*, 840 S.W.2d 814 (Ky. 1992); KRS 344.040; KRS 18A.095(22)(2).

2. Lynch's hurdle is even higher in her attempt to prove constructive discharge. To prove constructive discharge, she must show that the conditions of her employment were so intolerable that a reasonable person would feel compelled to resign and, secondly, the employer intended and foresaw that the conditions created by the employer's actions [were] so intolerable that a reasonable person would feel compelled to resign. *Ping v. Bailey Machinery Movers and Fabricators, Inc.,* 2005-CA-000954-MR (Ky. Ct. App. May 18, 2007); *Brooks v. Lexington-Fayette Urban County Housing Authority*, 132 S.W.3d 790 (Ky. 2004). Lynch has not met these burdens.

3. The disciplinary action against Lynch was not excessive or erroneous in view of all the surrounding circumstances.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the consolidated appeals of **JENNIFER LYNCH VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NOS. 2013-292 and 2014-021)** 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).

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).

Any document filed with the Personnel Board shall be served on the opposing party.

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100.

ISSUED at the direction of **Hearing Officer Stephen T. McMurtry** this 14th day of August, 2014.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Angela Cordery
Jennifer Lynch

APPELLEE'S EXHIBIT

6

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF CORRECTIONS
BLACKBURN CORRECTIONAL COMPLEX
3111 Spurr Road
Lexington, KY 40511
Telephone (859) 246-2366

LaDonna Thompson
Commissioner

Steve Haney
Warden

November 12, 2013

Jennifer Lynch

Dear Ms. Lynch:

This is to advise you of the intent of the appointing authority to officially suspend you from your position at Blackburn Correctional Complex for a period of five (5) working days.

Based on the authority of 101 KAR 1:345, there is reason to believe this suspension is justified based on the following specific reasons:

Misconduct, etc., and since receiving a three (3) day suspension in April 2012 for a similar infraction, you have failed to make improvements in this area. Specifically, on October 9, 2013, at approximately 12:45pm, Sgt. Joel Helmburg reviewed camera footage of inmate counts being conducted by officers. Sgt. Helmburg discovered that you were not conducting your counts as trained and directed. Lt. Steven Abshear contacted you and advised you to conduct a recount. At this time, you contacted Sgt. Helmburg and asked, "Why do I need to do a recount?" Sgt. Helmburg responded by saying, "You did not do the first count properly." As the Sgt. and Lt. watched you perform the recount, via cameras, they concluded that you were not properly conducting the inmate recount. Lt. Abshear directed Sgt. Kevin Carter and Sgt. Todd Conner to report to your dorm so that you could be instructed on the proper way to conduct a count. Upon their arrival to your dorm, you refused to conduct a recount and stated to Sgt. Carter that they should "just send you home." While both sergeants were present, you began to use profanity while referring to Sgt. Helmburg. On this same day, you also contacted Officer Kilgore and stated to him, "That fat bastard has been trying to get me for a long time."

Poor Work Performance, etc., you checked out a weapon for a transportation trip and did not have the ballistic vest on your person as required. Specifically, on September 9, 2013 you checked out a weapon before transporting an inmate to UK clinic. In a written statement submitted by you, you admitted that you, "forgot to check out the vest", as required. On September 10, 2013 you approached Officer Christie Bowling and asked her why she made such a big deal about the vest. Officer Bowling replied that she had not made a big deal about it but that Lt. Betts had wanted a report from Sgt. Ward regarding the incident. You then replied to Officer Bowling by saying, "It ain't none of his fucking business. Fuck it, I'll write myself up. I'm leaving anyways."

Your actions are in violation of BCC 03-02-01, General Guidelines for BCC Employees, Section F(1), which prohibits employees from conducting an argument or using threatening, demeaning, offensive profane abusive, or vulgar language toward another staff member." In addition, your actions are in direct violation of Blackburn Correctional Complex Post Order #15, Transportation, #4, which states, "A ballistic vest shall be issued to all transportations officers in the vehicle whether they have a weapon or not. The vest must be worn at all times."

A review of your personnel file reveals a written reprimand for Misconduct dated March 25, 2008, a ten (10) day suspension for Misconduct dated October 27, 2008, a ten (10) day suspension for Misconduct dated December 22, 2009, a written reprimand for Misconduct dated August 2011 and a three (3) day suspension for Misconduct dated April 12, 2012.

You have the right to request an interview with myself or to present a written statement regarding the proposed disciplinary action. If you choose to have an interview, your request shall be submitted to the Warden within two (2) working days from receipt of this notice of intent, not including the date of the receipt. If you choose to submit a written statement, it must be provided to the person who presented this letter to you within the same time frame. Please indicate your preference on the attached form.

Sincerely,

Steve Haney, Warden

Attachment

CC: Tim Longmeyer, Secretary-Personnel Cabinet
LaDonna Thompson, Commissioner-Department of Corrections
Stephanie Appel, Director-Division of Personnel

Personnel File

Attachment 1

In response to the Intent to Suspend, you may choose one of the options listed below:

_____ I waive the right to have an interview or to make a written response to the intended disciplinary action.

_____ I request an interview with regard to the intended disciplinary action within two (2) working days, excluding the date of receipt of this letter.

_____ I choose to make a written response with regard to the intended disciplinary action within two (2) working days, excluding the date of receipt of this letter.

✓ I choose to have both an interview and make a written statement regarding the intended disciplinary action within two (2) working days, excluding the date of receipt of this letter.

✓ I plan to appeal this.

Employee Signature 11.12.13
Date

Supervisor Signature 11/12/2013
Date

Witness Signature 11/12/13
Date

NOTICE: If you elect to waive the right to an interview or to provide a written statement regarding the intended disciplinary action, the allegations stated in this letter may be taken as true, and a formal action will be issued.