COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NOs. 2015-219, 2015-258, 2015-268 and 2015-269

RONALD C. NUNEMAKER **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 **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 15, 2016, 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. Catherine Stevens
Mr. Ronald C. Nunemaker
Mr. Rodney E. Moore

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
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RONALD C. NUNEMAKER **APPELLANT**

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

JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS **APPELLEE**

* * * * *

These consolidated matters came on for an evidentiary hearing on March 2 and 3, 2016, and on April 12, 2016, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Colleen Beach, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Ronald C. Nunemaker, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Catherine Stevens.

BACKGROUND

1. As the Appellee had the burden of proof regarding the three- and five-day suspensions, it went first in the presentation of proof.

2. **Stephanie Boyd** is a Correctional Recreation Supervisor at Northpoint Training Center, a position she has held since October 16, 2014. Prior to working at Northpoint, Boyd was a bilingual supervisor at a call center in Winchester.

3. As a Correctional Recreation Supervisor, Boyd's job duties include the supervision of four Recreation Leaders, and general oversight of the facility's recreation programs, as well as the safety maintenance of the gymnasium, which includes a weight shed, band room, video program, health and wellness room, barber shop, cardio room and a pool table area.

4. Boyd also oversees a number of inmates who work in the gymnasium area as clerks, janitors, and sports referees.

5. Boyd is Appellant's first-line supervisor. Until recently, one of Appellant's job duties was the management of the institution's intramural and varsity basketball programs. As

manager of that program, Appellant was responsible for getting inmates to sign up for the league, getting inmates to coach and referee, creating schedules, and conducting tryouts. When Boyd first became Recreation Supervisor, Appellant was also responsible for the weight shed and band room.

6. Boyd was asked to describe the incident that occurred on August 6, 2015, in the gymnasium. Boyd stated that at approximately 1:30 p.m. that afternoon, Appellant was supervising an intramural basketball game. The game had just finished when Inmate Oreece Chestnut, who had acted as a referee, came up to Boyd and said, "You have got to do something about the basketball program. [Appellant] is overturning calls that the referees are making." Boyd testified that she told Chestnut Appellant had the right to do that. Chestnut then listed three calls that he thought were not right. At this time, Appellant approached the group and said, "Don't go running to my boss. If you need to say something, say it to me." Boyd stated that Appellant and Inmate Chestnut began arguing.

7. Boyd then said, "Let's go talk about this in the 'Rec' office." Appellant and Chestnut followed Boyd into her office. Appellant told Boyd (referring to Chestnut), "He needs to leave. We cannot talk about this. He needs to leave the gym."

8. Boyd stated that she wanted to hear both sides of the story, and allowed Chestnut to stay. "I think communication is important," Boyd stated.

9. Appellant and Chestnut began arguing about whether Chestnut should remain in the Rec office. Appellant took a whistle and threw it at the area where Inmate Chestnut was standing. Appellant then "started walking aggressively toward the inmate. He was pointing his finger, saying 'Boy, boy, boy.' The two of them then began talking about whooping each other's ass." Boyd stated that the inmate gave her a look which she interpreted as "Are you seeing this?" Then the two men "bumped chests."

10. At this point, Boyd pushed the men apart and kicked the door open. She asked an inmate standing outside her door to call for help. A group of inmates came in, some standing by Inmate Chestnut, some by Appellant. Correctional Officer Heath came in. Appellant and Chestnut had calmed down. Boyd took the inmate to her office and told him to write a report about what happened, then return to his dormitory. After the inmate left, Boyd asked Appellant what happened. Appellant answered that he would write it down in his report.

11. In Appellant's report describing the incident, he stated that after he removed Chestnut as a referee, "Inmate Chestnut started cussing me and threatening to whoop my ass. He then grabbed ahold of my arm and called me a bitch and I jerked my arm away from him and told him that if he touched me again there would be serious consequences. He again told me to f- myself and once again said that he would whoop my ass. No inmate will ever lay a hand on me. We then went to Mrs. Boyd. Me and Inmate Chestnut got close together and touched each other's chest. At that time he said I chested bumped him but it was a mutual thing when we were arguing. I have a witness of Maximo Reytor." (sic) (Appellee's Exhibit 3.)

12. Boyd stated that she watched the security video footage of the gymnasium while the game was played, but did not see Chestnut touch Appellant.

13. After the incident, Boyd called Deputy Warden of Security, Julie Thomas, who told her to write a report. She also informed her first-line supervisor, Mr. Rowlette, about the events that transpired.

14. Boyd was asked if anything else had happened with Appellant that day. She stated that when he first came in on his shift, at 12:00 p.m. (Appellant worked the noon to 8:00 p.m. shift), "he seemed out of it – his sentences weren't real clear. I kept asking him, 'Are you okay?'" Later that afternoon, when Boyd spoke with Deputy Warden Julie Thomas about the incident between Appellant and Inmate Chestnut, Boyd mentioned to Thomas that something seemed "off" about Appellant. Boyd learned later that Thomas had Appellant drug tested that day.

15. Boyd was asked to describe the events that took place on October 7, 2015. Boyd testified that she had been making rounds, and walked by the band room. She looked through the plexiglas door and saw that Appellant was in there, sitting with his head down. There were several inmates in the band room playing drums and guitars. Boyd stated that it was "fairly loud." She estimated there were four or five inmates in the room with Appellant.

16. Boyd walked into the band room and began calling Appellant by his first name. The drummer made a kind of drum roll to get Appellant's attention. Finally, Boyd approached Appellant and touched his arm. This caused him to raise his head. Boyd asked him, "Are you okay?" Appellant answered "Yes." She then asked him if he was praying. He responded, "No." Boyd said, "It looks like you were sleeping. Don't do that. Stand up."

17. Boyd then left the band room and walked by the weight shed where Recreational Leaders Daniel Ray and Marty Long were standing. Boyd testified that Ray said to her, "You know you got to do what you go to do. We saw it too." Boyd responded, "What do you mean?" Ray answered, "We know you saw him sleeping. We saw it too. You need to report it."

18. Boyd then called either Deputy Warden Thomas or Deputy Warden Brad Adams; she could not remember which. She was instructed to write a report, and to have Ray and Long do so as well.

19. Boyd had no involvement in deciding the disciplinary actions taken against Appellant for either the August 6, 2015, or October 7, 2015 incidents.

20. On cross-examination, Boyd was asked if she undertook her own investigation into Appellant's relationship with the gay community. Boyd answered, "No." She also denied coercing Inmate Turley into signing a report against Appellant on this matter.

21. Boyd denied ever threatening to fire Appellant.

22. Boyd was asked why she did not radio for help on August 6, 2015, when Appellant was having a difficult time with Inmate Chestnut. Boyd answered, "In the past we have been able to resolve our issues. I did not think things would escalate."

23. Boyd admitted that she was told by Internal Affairs to stop playing sports with the inmates. She was asked how she broke her finger. She responded that she was observing varsity softball tryouts. One of the balls went out of bounds and she thought she could catch it.

24. Boyd was asked "When you first started working at Northpoint was I [Appellant] hostile?" Boyd answered, "No," and agreed that Appellant "had helped her out" when she was new to the institution.

25. Boyd was asked if it was feasible that Appellant was actually awake in the band room, but merely had his eyes closed to better listen to the music to relieve stress. Boyd answered, "You are not supposed to close your eyes when you are with inmates."

26. On further cross-examination, Boyd was asked questions by Appellant regarding her attitude and relationship with him.

27. Boyd admitted that one time, when a group of Recreation Leaders and herself had been discussing their past relationships, she did make a comment about her sex life. She added that "everyone was talking about that. I was trying to build rapport and come down to their level to show I was human too."

28. On one occasion, Boyd and the Recreation Leaders had a conversation regarding why Appellant was single. "[Appellant] said he doesn't understand why he doesn't have a girlfriend. I said I didn't know why either – I said 'You have so much going for you. If I was single, I would date you.'" Boyd stated she was only trying to help Appellant by making this comment.

29. Boyd denied that she had ever asked Appellant to rub her back or that she had ever grabbed his inner thigh. On April 21, 2015, Deputy Warden Adams informed Boyd that Appellant had filed sexual harassment charges against her, and that Adams would be conducting an investigation into the matter.

30. Boyd denied that she had ever told Appellant to drop the charges or she would have an inmate "take care of him."

31. In Boyd's opinion, her working relationship with Appellant began to deteriorate when she told him she did not think he was adequately performing his duties at "OSD" (Outside Detail Unit).

32. Boyd explained that OSD is a housing unit outside the fence perimeter of Northpoint where 40 or so non-violent inmates live. There is a gym there, and two dorms. One of Appellant's job duties at the time was oversight of the OSD gym facility. Boyd testified that

Appellant had not been attending to it. When she mentioned the situation to Appellant, he responded, "I don't give a f—about OSD." She instructed him to go down there weekly and report back to her how he had spent his time.

33. Boyd also felt that Appellant was upset when she told him to hold off on a purchase order. Appellant replied that a "40-year-old man did not need to be micromanaged," and then told her she was not a good supervisor. Boyd estimated that occurred sometime in the Spring of 2015.

34. On another occasion, on the day of a staff meeting on March 31, 2015, she and the Recreation Leaders were discussing upcoming summer events. She had asked for suggestions. Appellant told her, "You are not listening. You don't know. You have never done this before." Boyd admitted that she said to Appellant, "You are aggrevating the f—out of me." Appellant got up to leave. Her chair was in the way. He threw it aside.

35. **Daniel Lee Ray** is a Recreation Leader at Northpoint Training Center, and Appellant's co-worker.

36. Ray was asked to describe the events that occurred on August 6, 2015, in the gym. Ray responded that he was making rounds through the gymnasium and observed that the basketball game was getting out of control. Appellant had to overrule some referee calls and the inmates were not happy about it. He saw Inmate Wade and Inmate Chestnut shove each other. Ray heard Chestnut say, "F--, I'm going to kick your ass." Supervisor Boyd arrived and Ray told her to take Chestnut away from the game. Ray took Inmate Wade to the cardio room. He denied that he saw Chestnut lay his hands on Appellant.

37. Ray was not present in the Rec office when the argument between Appellant and Chestnut occurred.

38. Ray was asked to refer to the events that transpired on October 7, 2015. He testified that while he was making rounds that day, he looked into the band room. He observed Appellant sitting on a chair with his head down and eyes closed. "I thought he was asleep," Ray concluded. He looked in, but did not enter the room.

39. Shortly thereafter, he saw Marty Long exit the band room. Ray asked him, "What did you see?" Long responded, "What did <u>you</u> see?" Ray stated, "Head down, eyes closed." Long answered, "Me too."

40. Boyd then approached the two men and asked them what they had observed in the band room. They told her and she said, "I want reports."

41. On cross-examination, Ray stated that he heard Appellant tell Boyd to separate the inmates and call security. Appellant told Boyd, "We need to get Chestnut out of here and put him in a hot box." Ray did not hear Boyd's reply.

42. Ray was asked what a Rec Leader's first response should be if two people "have an incident with each other." He stated that the two individuals should be separated, security called and then a report written.

43. Ray explained that Rec Leaders are not security, "We are at the institution to provide the inmates recreation. We are like gym teachers more than Correctional Officers." Rec Leaders can verbally stop a "small scuffle," but if a more serious incident breaks out, Rec Leaders call for security personnel to assist.

44. Ray agreed that sometimes Rec Leaders duck into the band room. He agreed that he can hear the music better when his eyes are closed. He stated that in hindsight he should have written in his report that Appellant appeared to be asleep, but he did not know that for certain.

45. Ray has had a troubled relationship with his supervisor, Stephanie Boyd. Ray testified that she kept threatening to fire him. He complained to Internal Affairs about that and then it stopped. He has appealed Boyd's evaluation of him, and written reports against her. "I felt she was evaluating me according to her personal feelings, not my job performance," he stated.

46. According to Ray, in the past Boyd has become too friendly with inmates. She has also said inappropriate things in front of them such as her "stomach and boobs were hurting." Boyd has also told Ray to "shut his damn mouth and keep it shut for the rest of the day." Ray reported that comment to Mendalyn Cochran, his second-line supervisor, but "nothing was done about it. It was my word against hers."

47. Boyd had also made the following inappropriate comments, Ray stated, "She said once that her husband wasn't the best sex she's ever had."

48. Through Ray's testimony, his request for reconsideration of his job performance evaluation, dated January 17, 2016, was introduced into the record as Appellant's Exhibit 1. Ray's request included complaints that Stephanie Boyd "cannot make decisions on her own," and that she "blames everything on us and never accepts any blame. She feels she is perfect and does no wrong."

49. Ray was asked to recount the events of the day when Boyd broke her finger. Ray recounted that they were watching softball when Boyd said "If I am going to play, I need a glove." She put on a glove then went to catch a ball, but fell and broke her finger.

50. **Marty Long** is a Recreation Leader at Northpoint Training Center, a position he has held for the past nine years.

51. Long was asked to address the events that transpired when Boyd broke her finger. He stated that during varsity softball tryouts, she went to catch a ball that had gone off in the left field. She stumbled, fell and broke her finger. Long denied that she was participating in tryouts or trying to play in the game.

52. Long was not at Northpoint on August 6, 2015, the day Chestnut and Appellant got in an argument after a basketball game.

53. Long recalled the events on the day of October 7, 2015. He was making rounds in the gymnasium. He peeked into the band room and saw Appellant, who appeared to be asleep. Appellant "had his eyes shut and he was bent over." Long estimated that there were three or four inmates in the band room with Appellant. A minute later, Boyd approached him and Danny Ray. She asked, "Did you see [Appellant] asleep?" They stated what they had seen and she asked them to write a report.

54. Long was asked how the job environment was with their previous supervisor, Ron Melton. Long answered, "Good." When asked how the environment is now, Long responded, "With me it is fine. I haven't had any problems."

55. Long stated that he did hear Boyd say to Appellant once, "You are aggravating the f--- out of me." Boyd made that comment after Appellant took a chair that was in his way and threw it.

56. As for her comment about dating Appellant if she was single, Long clarified that she "said nice things" about [Appellant] and said that if she was not married, [Appellant] would be the type of guy she would go out with." Long was asked if he would be upset if Boyd made that kind of comment to him. He answered, "It wouldn't bother me." Long added that Boyd's comment was said during a conversation regarding Appellant's not having a girlfriend or wife. "She said she did not know why he wouldn't have one. I took it as a respectful thing to say."

57. **Brad Adams** is Deputy Warden of Programs at the Northpoint Training Center, a position he has held for five months. Prior to assuming that position, he was an Administrative Section Supervisor.

58. After the event that transpired between Appellant and Inmate Chestnut on August 6, 2015, Adams was assigned by Warden Bottom to conduct an investigation into the matter.

59. Adams' investigation included interviewing Recreation Leader Daniel Ray, Officer Michael Heath, Supervisor Stephanie Boyd, the Appellant and several inmates; reviewing incident reports, reviewing Appellant's training record, and watching the video footage of the basketball game. His investigation report was introduced into the record as Appellee's Exhibit 3.

60. The conclusion to Adams' investigation can be summarized as follows:

> It is confirmed that during the incident with [Appellant] and inmate Chestnut, the two were brought into the same office together. It is the opinion of the investigator that there should have been assistance called prior to that and Ms. Boyd should have heard [Appellant's] side of the story prior to bringing the two together... The stories between Ms. Boyd

> and inmate Chestnut are closely identical; however, it is unclear if a whistle was thrown during the incident as [Appellant] is not seen on video possessing a whistle and denies the allegation... There is conflicting information regarding the "chest bump" between [Appellant] and inmate Chestnut... In [Appellant's] report written on August 6, 2015 (but dated by him August 4, 2015), he states "at that time he said I chested bumped him but it was a mutual thing when we were arguing." (sic)...it is the opinion of this investigator that [Appellant] and inmate Chestnut did chest bump during an argument. This type of behavior toward an inmate is not allowed." (Appellee's Exhibit 3.)

61. Adams stated that pursuant to Northpoint Training Center Policy No. 03-02-01(7)(a), a staff member is prohibited from "Conducting an argument or using threatening, demeaning, offensive, profane, abusive or vulgar language toward another staff member or inmate." (Appellee's Exhibit 6.)

62. **Warden Don Bottom** has been the Warden of Northpoint Training Center for the past three and one-half years. Prior to assuming that position, he was a Warden at another institution. He has been with the Department of Corrections for over 24 years.

63. Warden Bottom is the Appointing Authority for Northpoint and is responsible for overseeing all disciplinary actions.

64. Through the Warden's testimony, the Intent to Suspend letter (dated September 17, 2015), and the Suspension letter (dated September 28, 2015) for the August 6, 2015 incident which resulted in a three-day suspension, were entered into the record as Appellee's Exhibits 5 and 7, respectively.

65. Warden Bottom testified that Appellant's behavior toward Inmate Chestnut on August 6, 2015, was a violation of the following Northpoint Training Center policies:

> #03-02-01(5)(d): The following is prohibited: Physically abusing or directing abusive, vulgar or profane language toward an inmate.
>
> #03-02-01(7)(a): Staff Prohibited Conduct:
>
> (a) Conducting an argument or using threatening, demeaning, offensive, profane, abusive or vulgar language toward another staff member or inmate.
>
> (k) Engaging in any other activity that might endanger the security of staff, inmates or the institution.

66. In deciding to suspend Appellant for the August 6, 2015 incident, Warden Bottom considered the investigation report, Northpoint Training Center policy, and Appellant's prior

disciplinary action which was a written reprimand for poor work performance on August 30, 2013. Bottom also reviewed the video footage of the basketball game, which, Bottom testified, did not show that Chestnut had touched Appellant in any way.

67. Warden Bottom added that it is against policy for a staff member to argue with an inmate. "Inmates try to argue with staff constantly. You do not argue with them, you just issue a report. You tell them to stop or leave. The inmate is removed from the area. Arguing with an inmate has the potential to create a security risk."

68. Warden Bottom was asked to address the incident that occurred on October 7, 2015, when Appellant was observed to appear to be sleeping. Warden Bottom stated that even if Appellant had not actually been asleep, he was not being observant to his surroundings. "With his head bowed and his eyes closed, while loud music was playing, he was not being observant." Bottom stated that Appellant's actions violated the following Northpoint Training Center policies:

> #03-02-01(7): Staff Prohibited Conduct:
>
> (k) Engaging in any other activity that might endanger the security of staff, inmates or the institution.
>
> (l) Sleeping while on duty.

69. Through the Warden's testimony, the Intent to Suspend letter (dated October 14, 2015), and the Suspension letter (dated November 12, 2015), for the October 7, 2015 incident, which resulted in a five-day suspension, was introduced into the record as Appellee's Exhibits 8 and 9, respectively.

70. Warden Bottom stated that he considered a five-day suspension to be the appropriate level of discipline because Appellant had created a potentially dangerous situation for himself and others. It did not matter whether or not he was officially supervising the inmates in the band room. Warden added that he also "used the progressive model of discipline: [Appellant] already had a three-day suspension. This was the next step."

71. On cross-examination, Warden Bottom was asked if another staff member, Chad Shearer, had also been disciplined for falling asleep while on post. Bottom stated that he considered all the surrounding circumstances when Shearer's ten-day suspension was amended to a three-day suspension. Shearer's Suspension letter, dated May 5, 2014, was introduced into the record as Appellant's Exhibit 8.

72. Through Warden Bottom's testimony, the disciplinary violation report, prompted by a charge Appellant filed against Inmate Chestnut, was introduced into the record as Appellant's Exhibit 3.

73. In the report, Appellant described the incident with Inmate Chestnut:

> Appellant wrote that Chestnut "grabbed a hold of my arm and called me a bitch…he again told me to f--- myself and once again said that he would whoop my ass. No inmate will ever lay a hand on me. We then went to Mrs. Boyd where me and inmate Chestnut got close together and touched each others chest. At that time he said I chested bumped him but it was a mutual thing when we were arguing. I have a witness of Maximo Reytor." (sic) (Appellant's Exhibit 3, page 1.)

74. Inmate was charged with a "7-01," a "physical action against an employee." The action was assigned to Investigator Teresa Esque. A hearing regarding the matter was held on September 22, 2015. Lt. Jason Perkins, Chairman/Adjustment Officer, found Chestnut guilty of the "7-01" violation and assigned Chestnut to 90 days of disciplinary segregation.

75. However, upon Warden Bottom's review of the sanction imposed, the Warden amended the charge to a "3-20" – "Abusive/Disrespectful/Vulgar/Obscene or Threatening language/gestures/actions toward or about an employee, visitor or non-inmate." He amended the discipline to 60 days GTL (Good Time Lost).

76. Warden Bottom explained why he amended Chestnut's disciplinary action: "When Lt. Perkins looked at the video footage, he did not see anything. You could not make the conclusion that the inmate touched [Appellant]. The threshold for finding a 7-01 is 'some evidence.' There was nothing to indicate a 7-01 occurred." Bottom added that even if Chestnut had touched Appellant, Appellant would still have been disciplined: "He was being reactive – he was arguing with an inmate."

77. On questioning by the Hearing Officer regarding Boyd's actions the day of August 6, 2015, Warden Bottom testified, "If she took Chestnut and [Appellant] into her office at the same time, that is not the preferred method."

78. At the end of Warden Bottom's testimony, Appellee rested its case.

79. Appellant called his first witness. **George Wilson** is a Recreation Leader at Northpoint, where he has been employed for approximately a year. He is Appellant's coworker.

80. Wilson was asked if he had ever heard Stephanie Boyd make an inappropriate comment of a sexual nature. Wilson answered that one time he, Appellant and Marty Long were talking and "joking" in the Recreation office when Boyd walked in. Wilson stated, "She felt the need to contribute to the story. She said something about her sex-life with her ex-boyfriend." Wilson felt the comment was made by Boyd as a way of "fitting in." He stated that the remark did not bother him at all.

81. Wilson was asked if he ever heard Boyd say she would date Appellant if she was single. Wilson answered, "Yes, but not in that context. She was coming to your defense."

Wilson explained that Marty Long had been giving Appellant a hard time about being single. Boyd said she would date Appellant if she was single as a way to make Appellant feel better.

82. Wilson was asked to recount the occasion when Boyd said "F--- you" to Appellant. Wilson stated that after Boyd said that, Appellant stood up and asked Boyd to move a chair out of his way. She replied, "You can move it yourself." Appellant then threw or kicked the chair out of his way.

83. Wilson was asked to describe the work environment as a Recreation Leader. He answered, "I try to stay out of trouble, so it is okay by me. I cannot speak for anyone else..."

84. Wilson stated that he had witnessed Appellant squeeze Boyd's shoulder on two occasions when she first started working at Northpoint. He described these interactions as having been done "in a joking way."

85. As for whether he had seen Boyd touch Appellant, he testified that one time the lights went out at the facility and Boyd grabbed Appellant's and Wilson's arm "in safety" until the lights came back on.

86. **Captain Jonathan Beasley** is the 3 p.m. to 11 p.m. Shift Captain at Northpoint.

87. Captain Beasley was asked if the institution was short-staffed. He responded, "We are a few short, but not as bad as some other institutions."

88. As for what a supervisor should do when there is an "incident" between a staff member and an inmate, Captain Beasley stated, "Separate them, then call on the radio."

89. **Lieutenant Jason Perkins** is a Correctional Lieutenant at Northpoint. He was the "Adjustment Officer" at the September 22, 2015 hearing of the 7-01 (Physical action against an employee or non-inmate) charge against Inmate Chestnut.

90. Lt. Perkins stated that he had acted as an Adjustment Officer for three years. During that time many of his findings were overturned.

91. In the case of Inmate Chestnut, Lt. Perkins testified that he interviewed the inmate and witnesses identified by the inmate. He also reviewed the video footage. Lt. Perkins found Chestnut had committed the actions Appellant stated in his "Description of the Incident," and found Chestnut guilty of a "7-01."

92. Two months after Lt. Perkins wrote his findings in the Chestnut case, he was relieved of his duties as an investigator.

93. Appellant recalled **Daniel Ray** as a witness. Ray stated that at the second monthly staff meeting for recreational leaders after Stephanie Boyd had assumed her position as Supervisor, staff were informed to "follow Rowlette and Boyd. If we didn't, we were not going

to be happy." [Rowlette was then Deputy Warden over recreation and Appellant's second-line supervisor.]

94. One or two months later, Rowlette called Ray into his office and told him, "I need you to step up and help Boyd do her job. If you don't, it is not going to be very good for you."

95. Ray was asked to address an incident that had occurred with the institution's gay population. Ray answered that "Several of our openly gay population got together and told me that Boyd was going around interviewing them, asking them which staff they liked." Later Inmate Turley told Ray that Boyd had asked him to "write a report" on Appellant.

96. Once, Ray requested a day off and Boyd responded, "I am going to be denying that. You can file things in Frankfort, and I can do things too."

97. Appellant recalled **Marty Long**. Long testified that he got new glasses six months ago. He had his close distance vision adjusted, but his farsighted prescription "remained about the same."

98. **Julie Thomas** is Deputy Warden of Security at Northpoint. She was asked to recall the events that took place on August 6, 2015. Deputy Warden Thomas testified that she received information that day that Appellant seemed to be slurring his speech. She asked Appellant to go to her office and, after speaking to him, Thomas could tell something was different in Appellant's demeanor. She asked him to take a drug test based on a reasonable suspicion that he was under the influence of alcohol or an illegal substance.

99. Deputy Warden Thomas stated that Appellant did inform her that he was taking medication prescribed by his physician, but she did not know what kind of medication.

100. Deputy Warden Thomas agreed that she made a "bad call" when she put Appellant back to work after the drug test. She stated that she should have sent him home for the remainder of the workday.

101. The drug test came back positive, and Appellant was sent home on paid leave until he could produce documentation from his physician that the substance he tested positive for was prescribed for his use.

102. Deputy Warden Thomas was asked if she had ever said to Appellant, "I am tired of your threatening me." Thomas responded that she was not sure if she had ever said that, but that she was tired of Appellant "constantly harassing me and throwing that in my face. I do not need anyone to threaten me with attorneys."

103. **Michael Heath** is a Correctional Officer at Northpoint. Heath was asked to recall the events that transpired on August 6, 2015. Heath stated that he was making rounds and saw Appellant and Inmate Chestnut "arguing and cussing." When asked who exhibited that behavior,

Heath answered, "Both of them." Heath denied that he saw any physical contact between the men.

104. **Brandon Lynch** is a Procedures Officer at Northpoint. Lynch stated that Appellant had been to his office several times to inquire about certain policies and procedures.

105. Lynch was asked to address the policy regarding logbooks. Lynch stated that logbooks are meant to document major incidences and normal institutional practices such as recording the time an inmate count was conducted, when an officer arrives and leaves his post, and any unannounced supervisory rounds.

106. By agreement of the parties, **Marcos Faulkner** appeared telephonically. Faulkner is a Training Coordinator and Instructor I.

107. Faulkner was asked what steps he would take if an inmate and staff were arguing. He stated that he would call for help and wait for staff to arrive to help him break up the fight.

108. Faulkner testified that Appellant did not get his annual in-service training in 2014 because Appellant's work area was short-staffed and Appellant had been on an extended leave for part of the time. He did complete his computer-based training that year.

109. **Mendolyn Cochran** is a Deputy Warden at Northpoint. Appellant came to her office to discuss his concerns about his supervisor's behavior. Deputy Warden Cochran advised Appellant to act professionally, and told him he needed to get along with his supervisor.

110. Appellant wrote a report complaining that Boyd told him that if he did not drop the "sexual harassment appeal," she would have an inmate "take care of him." Deputy Warden Cochran stated that, to the best of her recollection, she turned that report over to Internal Affairs.

111. Appellant recalled **Deputy Warden Julie Thomas**. Thomas stated that Appellant contacted her on her personal Facebook page to ask if he could speak to her. She was going to respond, "Yes, anytime," but she unintentionally did not send that message back to Appellant. Thomas stated the better way to contact her is through her work email, phone or to just stop by her office.

112. **Warden Bottom** was recalled. Bottom testified that an investigation is not necessarily conducted every time an employee receives a disciplinary action. In the case of Appellant's five-day suspension, an investigation was not warranted because there were written reports documenting the incident. Warden Bottom added that he did not discuss the event with other inmates because he does not like to involve inmates with staff issues.

113. **Brad Adams** is a Deputy Warden at Northpoint. Adams stated that on April 20, 2015, Appellant came to his office and told them that his supervisor, Stephanie Boyd, was making him uncomfortable. Adams stated that he and Appellant had a lengthy conversation. He could not remember all the details, but he recalled that Appellant told him Boyd had touched his

leg, scratched his back, and said that if she was not married she would date him. Adams directed Appellant to write a report about the behavior.

114. Appellant's report was forwarded to the Warden, who directed Adams and Tracy Nietzel to investigate. Adams and Nietzel interviewed all the Recreation staff and concluded that Appellant's claim of sexual harassment by Boyd was unsubstantiated. Through Adams' testimony, Appellant's Exhibit 7 was introduced into the record.

115. **Stephanie Boyd** was recalled. Boyd described her working relationship with Daniel Ray as "difficult."

116. Boyd was asked if she had ever said Marty Long was her favorite. She testified that she had said it "jokingly."

117. Boyd described the work environment in the Recreation Department as "really hard." She stated that Appellant "terrified" her when he threw the chair. She stated that Appellant is not the same person he was when she first started working there.

118. On cross-examination, Boyd was asked to address the issue of the logbooks. Boyd stated that the logbooks are used, basically, for passing information onto other staff members. Appellant, however, continued to write about his feelings in the logbooks, which was not the appropriate use of those records.

119. Boyd discussed Appellant's continued inappropriate use of the logbooks with her supervisor, Rick Rowlette. Appellant was given a memorandum by Boyd, dated August 18, 2015, informing him to "no longer utilize the Recreation Staff logbook to document any of your personal differences..." (Appellant's Exhibit 5.)

120. **Marty Long** was recalled by the Appellant. Long was asked to review the investigative report prepared by Adams regarding Appellant's claims against Stephanie Boyd. The report stated that Long alleged that "Leaders Ray and Nunemaker had a problem with her (Boyd) ever since she started." (Appellant's Exhibit 7, page 4.)

121. Long testified that he did not recall making that specific statement to Brad Adams. In his opinion, Appellant and Ms. Boyd had a good working relationship initially. It was not until Boyd had been employed at Northpoint a couple of months that she and Appellant began having problems getting along.

122. **Daniel Ray** was recalled by Appellant. Ray was asked if he and coworker George Wilson had a conversation about appearing at the Personnel Board to testify. Ray answered that he explained to Wilson how the process would go, and advised him to tell the truth. Ray stated that Wilson told him, "he [Ray] was worried about getting promoted and would either not go to the hearing or go and say nothing at all."

123. Ray was asked the score of his 2015 job performance evaluation. He stated that his supervisor, Stephanie Boyd, gave him the score of 390, which fell in the "Highly Effective" category. Ray appealed the score to his second-line supervisor, Ms. Cochran, Deputy Warden of Operations, who gave him the final score of 400, which is also in the "Highly Effective" category. Ray concluded, "Personally, Stephanie Boyd does not like me."

124. Ray recalled a conversation he had with George Wilson, who recounted to Ray that Boyd had once told him [Wilson] that at her old job men groveled at her feet, but that was not the case at Northpoint. Ray went to Boyd and asked her if she had, in fact, said that. Boyd admitted she had, but stated that comment "was taken out of context."

125. On cross-examination, Ray denied that he had ever said he would make sure Boyd "did not make it off probation."

126. **George Wilson** was recalled. Wilson stated that once Boyd told him that at her old job men groveled at her feet, but at Northpoint staff was more confrontational, and she was not used to people being rude.

127. Wilson could not recall if he discussed going to the Personnel Board with Ray. He denied telling Ray he was worried about telling the truth at the hearing.

128. **Stephanie Boyd** was recalled. Through her testimony, the Recreation Department Organizational Chart she created was introduced as Appellant's Exhibit 6. According to the chart, one of Appellant's job duties is listed as "Maintaining security control of inmates."

129. Boyd was asked if she accomplished that task on August 6, 2015, the day of Appellant's and Inmate Chestnut's altercation. Boyd answered that it is her job to delegate the duties involved with the facility's programs, and Appellant was charged with supervision of the basketball game. "I was not in the gym at that time to oversee the inmates. That was [Appellant's] job," Boyd stated.

130. Boyd was asked if she had a good working relationship with Daniel Ray. She answered that they have had their difficulties. Boyd was asked why she gave Ray an "Excellent" evaluation. She responded, "Just because he and I do not get along does not mean that he does not do a good job."

131. Boyd was asked if she and Appellant started having problems in their working relationship after Appellant filed sexual harassment charges against her on April 22, 2015. Boyd stated that they had begun having problems much earlier than that, the end of February or early March 2015. In her estimation, the trouble in their working relationship began when he was not performing all the duties assigned to him, specifically not going down to monitor OSD. Boyd added that she specifically remembered he threw the chair during a staff meeting on March 30, 2015.

132. **Brad Adams** was recalled. Adams was asked to address his findings contained in his investigative report regarding the August 6, 2015 incident. Adams stated that Stephanie Boyd should have called for assistance before bringing Appellant and Inmate Chestnut into her office. "Any time you have an alleged assault or an upset inmate, you need to separate him out."

133. Adams stated that he observed no chest bumping or arguing between Appellant and Chestnut on the video (taken of the basketball game played in the gymnasium). When asked if he relied solely on Boyd's account of the incident, Adams replied, "No, it was in [Appellant's] report. He admitted he had chest bumped and argued with Chestnut."

134. Adams admitted he could not confirm that Appellant threw a whistle. Adams stated that as Appellant's supervisor, it was Boyd's responsibility to make sure Appellant had taken all the necessary in-service classes.

135. Adams stated that he was not aware of any complaints against Appellant by the institution's gay inmate population.

136. **Appellant, Ronald "Coy" Nunemaker**, testified on his own behalf.

137. Nunemaker testified that he had never been in trouble at Northpoint before the date he filed a sexual harassment charge against Stephanie Boyd on April 21, 2015.

138. Nunemaker stated he was feeling very stressed from his job prior to that, but on April 21, 2015, he "could not take it anymore," and went to Brad Adams. Nunemaker noted that even after he filed the charge, he and Boyd were not separated, which created a "hostile work environment."

139. Nunemaker stated that Warden Don Bottom "had lied on me before. I haven't got an interview for any job I have applied for."

140. Nunemaker testified that Boyd told him that if he did not drop his appeal, "she would have an inmate take care of him."

141. Appellant stated, "Sexual harassment has a lot of different meanings. I initially did not call it that. I told Adams that Boyd made me uncomfortable. Adams called it sexual harassment first."

142. As for the five-day suspension for allegedly sleeping on the job, Appellant stated that he was not sleeping, he was meditating. "If the job gets too stressful," Appellant stated, "I have always been told to step away."

143. As for the written reprimand that is the subject of Appeal No. 2015-269, Appellant stated that he needed a written statement from Inmate Chestnut. Warden Bottom had warned Appellant that he [Appellant] could not get the statement from Chestnut. Appellant took a "legal aide" (an inmate) to the Special Management Unit (SMU) where Chestnut was housed in

an effort to speak to Chestnut without violating the Warden's directive. The Warden deemed that action "insubordinate."

144. A video recording of the Warden's conversation with Appellant was introduced into the record as Appellee's Exhibit 12. During that conversation Appellant asked if he could go to the SMU to get a statement from Chestnut. Warden Bottom answered, "No."

145. Appellant stated that all the disciplinary actions taken against him – the three-day suspension, the five-day suspension and the written reprimand – all occurred after he filed the sexual harassment charge against Boyd.

146. Appellant added, "I am not going to quit. I was pushed to the side as a little man because I am not part of their group. I just want my record cleared. I do not care about the money. I am standing up for what is right."

147. On cross-examination, Appellant denied that he had complained of other employees creating a hostile work environment except Stephanie Boyd.

148. Through Appellant's testimony, Appellee's Exhibit 11, an Information Report filed by Appellant on November 23, 2014, was introduced into the record. In the report, Appellant stated:

> It's been around 1 1/2 years that I went to Ron Hilton and told him that I was having problems with Recreation Leader Daniel Ray... Daniel Ray continues to harass me along with Ms. Boyd. He would harass Jimmy Anderson when he work here also. When Mr. Ray didn't get the Recreation Supervisor job, he said "that he wouldn't allow Ms. Boyd to get off probation because he would get her fired." I had wrote Mr. Ray a letter on Facebook to let him know that I didn't like him and that not to talk to me unless it was work related. I sent this email about four months ago. Probably about a month ago Mr. Ray told me that he was going to get his vengeance on me and that he planned on getting me in trouble so that I would get fired. Within the last 2 weeks 4 inmates have come up to me to let me know that Ray told them to file grievances on me... I am done with being talked to and treated like crap at work. I am done with being threatened and harassed by Mr. Ray. He has created a hostile work environment and a very unsafe environment..." (sic)

149. Appellant admitted that he and Mr. Ray "have not always gotten along," but they have resolved any issues between them.

150. Appellant has been on Worker's Compensation leave since March 13, 2016.

151. KRS 344.040(1)(a) reads as follows:

Unlawful discrimination by employers -- Difference in health plan contribution rates for smokers and nonsmokers and benefits for smoking cessation program participants excepted.

(1) It is an unlawful practice for an employer:

(a) To fail or refuse to hire, or to discharge any individual, or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment, because of the individual's race, color, religion, national origin, sex, age forty (40) and over, because the person is a qualified individual with a disability, or because the individual is a smoker or nonsmoker, as long as the person complies with any workplace policy concerning smoking;

152. KRS 18A.095(14)(a) provides:

Any employee, applicant for employment, or eligible on a register, who believes that he has been discriminated against, may appeal to the board.

153. KRS 18A.095(1) states:

(1) A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.

154. 101 KAR 1:345, Section 1, states:

Section 1. General Provision.

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

FINDINGS OF FACT

1. Appellant is employed by the Justice and Public Safety Cabinet, Department of Corrections. He is employed as a Correctional Recreation Leader at Northpoint Training Center. On August 31, 2015, Appellant filed Appeal 2015-219, alleging discrimination and "Other Penalization," specifically: "Harassment, Retaliation, Defamation, Sexual Harassment/Hostile Work Environment."

2. Appellant's Appeal No. 2015-258 was filed with the Personnel Board on October 5, 2015. The subject of that appeal is a three-day suspension without pay Appellant received by letter dated September 28, 2015, for an allegation of misconduct. Appellant disputes the allegation, and further contends it was issued in retaliation for his having filed a sexual harassment claim against his supervisor.

3. Appellant's Appeal No. 2015-268 was filed with the Personnel Board on October 19, 2015. The subject of that appeal is a five–day suspension without pay Appellant received by letter dated October 14, 2015, for an allegation of misconduct. Appellant disputes the allegation, and further contends it was issued in retaliation for his having filed a sexual harassment claim against his supervisor.

4. Appellant's Appeal No. 2015-269 was filed with the Personnel Board on October 19, 2015. Appellant indicated he was appealing a written reprimand he believed was issued solely as a means of retaliation and harassment, again relating to the earlier appeals and actions.

5. Pursuant to an Interim Order dated November 16, 2015, and with no objection by the parties, the four appeals were consolidated. The burden of proof was established as follows:

> The burden of proof is upon Appellant for his claims of sexual harassment, retaliation, and of having to work in a hostile work environment. The burden of proof is upon the Appellee to show just cause for the three- and five-day suspensions.

6. On April 22, 2005, Appellant filed an "information report" with Administrative Section Supervisor Brad Adams claiming that his supervisor, Stephanie Boyd, had created a hostile work environment. In the report, Appellant alleged that Boyd had "…stated before that if she was single that me and her would be going out and my response to her was that I would never go out with her because she is not my type. Mrs. Boyd asked me on several occasions to scratch her back and 2 days ago while setting on the bleachers in the gym she started scratching my back…this makes me very uncomfortable. Mrs. Boyd has also made remarks around staff members that her ex-boyfriend was the best sex she ever had. Yesterday…she put her hand on my inner thigh and smiled and said 'let's talk'……" (sic) (Appellant's Exhibit 7.)

7. After receiving the report, Adams forwarded it to Warden Bottom, who directed Adams and Captain Tracey Nietzel to investigate. According to their "Internal Affairs Office Report," submitted to Warden Bottom on August 24, 2015, Adams and Nietzel first interviewed Appellant's three co-workers: Daniel Ray, George Wilson, and Marty Long. The men's statements were consistent that they had not observed Boyd doing anything inappropriate.

8. Adams and Nietzel also interviewed Ms. Boyd, who denied touching Appellant's leg. Boyd did admit she had been involved in conversations of a personal nature with the Recreation staff but that no one "had ever expressed a problem with that."

9. In their interview with Appellant, he reiterated the allegations in his information report and added that he "wasn't happy about her receiving the Recreation Supervisor position. She was never employed at NTC and all the other Leaders that put in for the position had been employed here for at least a few years." (Appellant's Exhibit 7.)

10. Based on their interviews, Adams and Nietzel concluded that they "believed that there is a problem with Ms. Boyd and [Appellant] that is affecting their ability to work together in the gym. There is no evidence that she is retaliating against anyone, but perhaps a little tension is present due to the allegations made by [Appellant]." Mediation between Boyd and Appellant was suggested. The case was determined to be unsubstantiated. (Appellant's Exhibit 7.)

11. Appellant filed Appeal No. 2015-219 on August 31, 2015. In his statement relating to the appeal, Appellant wrote: "I had an investigation for 18 weeks against my boss Stephanie Boyd and Don Bottom dismissed the entire case. During these 18 weeks I've worked in a hostile work environment, was harassed, sexually harassed and retaliated against and no one would ever help me during this process. They left me and my boss together and never separated us. I'm in the process now of getting an attorney for class action lawsuit. I also have 3 co-workers who are witnesses of these events." (Appeal Form 2015-219.)

12. At the evidentiary hearing, Appellant's coworkers, George Wilson and Marty Long, testified that Boyd had said, in effect, that if she were single, Appellant was the kind of man she would date. According to the witnesses, however, it was clear from the context of that conversation that Boyd was merely attempting to reassure Appellant after his coworkers teased him about not having a significant other. George Wilson described the interaction as Boyd coming to Appellant's defense. Marty Long characterized the comment as a "respectful thing to say." Boyd's testimony regarding the statement was that she was "trying to help [Appellant] out."

13. The testimony of record also demonstrated that Boyd had once described her relationship with an ex-boyfriend as the "best sex she had ever had." That comment was described by George Wilson as an attempt by Boyd to "try to fit in." Boyd's explanation of the statement was that she was "trying to build rapport, and come down to their level to show I was human."

14. According to Boyd's testimony, which the Hearing Officer found to be credible, her relationship with Appellant began to deteriorate when she criticized Appellant's job performance sometime in early Spring 2015. According to Boyd, she instructed Appellant to do a better job overseeing the Outside Detail Unit gym facility; on another occasion she told him to hold off on a purchase order. Appellant's response to Boyd was "a 40 year old man does not need to be micro-managed," and that she was not a good supervisor.

15. By Boyd's own admission, she swore at Appellant during a staff meeting held on March 31, 2015. Boyd explained that she had been discussing upcoming summer events and asked for suggestions. Appellant's response was to tell her: "You are not listening. You don't

know. You have never done this before." Boyd told Appellant that he was "aggravating the f--- out of her." Appellant got up to leave the meeting, and threw a chair that was blocking his exit. Boyd described the incident as "terrifying."

16. The Hearing Officer finds that while some of Boyd's behavior was unprofessional and inappropriate, it does not rise to the level of sexual harassment. For harassment to be actionable, "it must be sufficiently severe or pervasive to alter the conditions of [the victim's] employment and create an abusive working environment." *Meritor Savings Bank v. Vinson*, 477 U.S. 57, 67; 106 S. Ct. 2399, 2405; 91 L.Ed.2d 49, 59 (1986).

17. What was developed at the evidentiary hearing is that Boyd, a female supervisor with no experience in the prison setting, had a difficult time assuming a supervisory relationship over two Recreation leaders, Appellant and Daniel Ray. While Boyd may have demonstrated incidences of poor judgment, Appellant played an equal role in the difficulty of their relationship. By Appellant's own admission, he has had a hard time accepting Boyd as his supervisor, and his attitude toward her—amply displayed at the evidentiary hearing—is contemptuous and insubordinate.

18. While some of Boyd's comments may have been unprofessional, under no analysis can one find that Boyd's comments were severe or pervasive enough to alter the conditions of Appellant's employment.[1] The Hearing Officer finds that Appellant failed to meet his burden of proof to prove his claims of sexual harassment and of having to work in a hostile work environment.

19. The incident that was the subject of the three day suspension occurred on August 6, 2015, at approximately 1:30 p.m. when Appellant was supervising a basketball game the inmates were playing. When the game ended, Inmate Oreece Chestnut complained to Stephanie Boyd, about some of Appellant's referee calls. Appellant approached Chestnut and told Chestnut: "Don't go running to my boss. If you need to say something, say it to me." Appellant and Chestnut began arguing. Boyd directed the two men to continue the discussion in the Recreation office. Appellant responded to Boyd: "He [Chestnut] needs to leave. We cannot talk about this. He needs to leave the gym." Boyd stated that she wanted to hear both sides of the story, and allowed Chestnut to stay. "I think communication is important," Boyd stated.

20. The testimony of record is conflicting regarding what happened next. Boyd testified that Appellant threw a whistle and walked aggressively toward Inmate Chestnut, pointing his finger at him, saying "Boy, boy, boy." According to Boyd, the two men began threatening to "whoop each other's ass," and then chest-bumped. At this point, Boyd kicked the office door open and called for help. A group of inmates came in, along with Correctional Officer Heath. The two men calmed down, and later each of them wrote an Incident Report regarding what had occurred.

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[1] The Hearing Officer finds unsubstantiated Appellant's claim that Boyd touched him inappropriately. That allegation was not corroborated by any witness, and was denied by Boyd.

21. According to Appellant's written report, Inmate Chestnut had begun "cursing" Appellant, who had removed him as a referee. Appellant admitted that when they moved into the recreation office, the two men "got close together and touched each other's chest. At that time he said I chest bumped him but it was a mutual thing when we were arguing." (sic) (Appellee's Exhibit 3.)

22. Correctional Officer Heath testified that he had observed Appellant and Inmate Chestnut "arguing and cursing."

23. The Hearing Officer finds that Appellant was arguing and using profanity toward Inmate Chestnut on August 6, 2015. The two men also engaged in physical contact by bumping chests. Appellant's behavior is a violation of two Northpoint Training Center policies:

A) Policy # 03-02-01(5)(d): The following employee conduct is prohibited:

Physically abusing or directing abusive, vulgar or profane language toward another staff or inmate

B) Policy # 03-02-01 (7)(a) and (k): Staff Prohibited Conduct:

(a) Conducting an argument or using threatening, demeaning, offensive, profane, abusive or vulgar language toward another staff member or inmate

...

(k) Engaging in any other activity that might endanger the security of staff, inmates or the institution.

24. While the Hearing Officer acknowledges that Appellant's supervisor, Stephanie Boyd, made an error in taking Appellant and Chestnut directly into the Recreation office[2], that did not relieve Appellant of his duty to follow institutional policies mandating that staff refrain from argumentative conduct with an inmate.

25. The incident that was the subject of the five-day suspension occurred on October 7, 2015. That day Stephanie Boyd was making rounds in the gymnasium when she looked through the plexiglass door into the band room and observed Appellant sitting in a chair with his head down. Several inmates were in the band room playing instruments at the time. According to Boyd, Appellant appeared to be asleep. Boyd then walked into the room and called Appellant's name several times without rousing him. Boyd approached Appellant and touched his arm which caused him to raise his head.

[2] According to the investigative report prepared by Brad Adams, Deputy Warden of Programs, assistance should have been called for prior to Boyd taking Chestnut and Appellant into the Recreation office.

26. Appellant denied he was asleep. He testified that he was "meditating" in an effort to relieve stress.

27. Recreation Leaders Daniel Ray and Marty Long both corroborated Boyd's testimony that Appellant appeared to be sleeping.

28. The Hearing Officer finds that Appellant's behavior on October 7, 2015, is a violation of Northpoint Training Center policy #03-02-01(7)(k)(1).

Staff Prohibited Conduct:

(k) Engaging in any other activity that might endanger the security of staff, inmates, or the institutuion;

(1) Sleeping on duty.

29. Appellant received a written reprimand on October 12, 2015, for insubordination, specifically, for disobeying Warden Bottom's order not to go the the Special Management Unit (SMU) to get a witness statement from Inmate Oreece Chestnut.

30. By Appellant's own admission, he went to the SMU in an attempt to contact Chestnut. Even though Appellant brought an inmate deemed a "legal aide" to accompany him, this does not change the fact that he disobeyed Warden Bottom's clear directive not to go to SMU.

31. The Hearing Officer finds that the written reprimand was issued due to Appellant's violation of Warden Bottom's order, and was not done in retaliation for any earlier complaints or actions taken by Appellant.

CONCLUSIONS OF LAW

1. The Appellant, Ronald Nunemaker, failed to satisfy his burden of proof on his claims of retaliation, sexual harassment, or hostile work environment.

2. The Appellee, Justice and Public Safety Cabinet, was not excessive or erroneous in its decision to suspend Appellant three days for misconduct.

3. The Appellee, Justice and Public Safety Cabinet, was not excessive or erroneous in its decision to suspend Appellant five days for misconduct.

4. Appellant's misconduct meets the just cause requirements of KRS 18A.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **RONALD C. NUNEMAKER V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NOs. 2015-219, 2015-258, 2015-268 and 2015-269)** be **DISMISSED.**

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

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

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

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

ISSUED at the direction of **Hearing Officer Colleen Beach** this 15th day of June, 2016.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Catherine Stevens
Mr. Ronald C. Nunemaker