

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2022-166

PATRICIA ALLEN

APPELLANT

V. **FINAL ORDER
SUSTAINING THE HEARING OFFICER'S
FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER AS ALTERED**

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

APPELLEE

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The Board, at its regular June 2025 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated April 28, 2025, Appellant's Exceptions, Appellee's Exceptions, Appellee's Response to Exceptions, and Appellant's Response to Exceptions, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** Background paragraph 96, footnote 4 and substitute the following:

4. [See 10-22-2024 Interim Order setting post-hearing deadlines for briefs.] At the request of the Appellee, with no objection from the Appellant, the deadline for the submission of the Appellee's brief was extended [See 01-04-2025 Interim Order Extending Due Dates]. The Appellee filed its post-hearing brief on February 3, 2025, but it was inadvertently omitted from the Hearing Officer's review.

Patricia Allen
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B. **Delete** Background paragraph 99 and substitute the following:

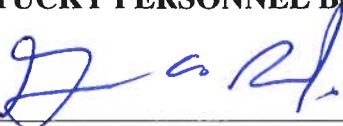
99. The Appellee filed its post-hearing brief on February 3, 2025. However, due to an administrative error, the Hearing Officer did not consider the Appellee's post-hearing brief.

IT IS FURTHER ORDERED that the Recommended Order of the Hearing Officer, as Altered, be 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 24th day of June, 2025.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

A copy hereof this day emailed and mailed to:

Hon. D. Wes Sullenger
Hon. Jesse Robbins
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney Moore

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-007**

PATRICIA ALLEN

APPELLANT

v.

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

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

APPELLEE

* * * * *

This matter came on for an evidentiary hearing on October 21 and 22, 2024 at 9:30 a.m. ET at 1025 Capital Center Drive, Suite 105, Frankfort, KY, before the Hon. Roland P. Merkel, Hearing Officer. The proceedings were recorded by audio/video equipment and authorized by virtue of KRS Chapter 18A.

The Appellant, Patricia Allen was present and represented by the Hon. D. Wes Sullenger. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present by its Agency representative, Laura Plappart, and represented by the Hon. Jesse L. Robbins, accompanied by Paralegal, Deanna Smith.

This appeal was filed January 11, 2023. The issue is whether the Appellee has proven by a preponderance of the evidence that the discipline for the Appellant, Patricia Allen, which included demotion and involuntary transfer, was taken for just cause and was neither excessive nor erroneous.

At the evidentiary hearing the rule separating witnesses was invoked and employed throughout the course of the proceedings. The parties agreed to the admission of Joint Exhibits 1 through 13, which shall be set out in greater detail in the Findings of Fact below. Admitted during the course of the hearing were: Appellee's Exhibit 1; Appellant's Exhibits 1, 2, 3, 4, 5, 6 and 7.

The parties also agreed the testimony of former Warden Scott Jordan could be taken via ZOOM. Due to such agreement, the Hearing Officer was authorized to sustain the taking of such testimony by ZOOM. KRS 13B.080(7).

The parties announced they were each ready to proceed. Each party gave an opening statement.

BACKGROUND

1. **Daniel Statum** was the first witness called by the Appellee on the first day of hearing. He started employment with the Department of Corrections as a Corrections Officer (“CO”) and had been at the Kentucky State Penitentiary (“KSP”) in Eddyville, Kentucky for five (5) years [09.26.34.991](T: 0:59).¹ For thirty (30) years prior to such employment, he had worked for various litigation law firms in Los Angeles, California (T: 1:45).

2. Officer Statum’s DOC training included Academy training, policies and procedures, handling inmate situations and how to talk to them, and firearms training (T:1:58, 2:10). At KSP, he worked on the day shift, 6 a.m. to 6 p.m. [9.38.49.872](T: 2:55).

3. When a fight breaks out at KSP, it is first called out by radio and available security responds. Inmates are then placed in handcuffs and escorted to the Segregation Unit [9.29.38.724] (T: 0:21, 0:30). Information reports are then completed by staff witnesses. The time, date, and series of events, the identity of those who responded and in what manner, and who was taken into custody, is to be included in the staff information report (T: 0:50).

4. On the afternoon October 2, 2022, a fight was “called out.” Statum was posted in a wall stand in the middle of the yard. The event started as a two (2) man fight when another officer responded. It quickly became a thirteen (13) man fight in the yard at the pavilion (T: 1:40, 2:20). Officer Caleb Alverio deployed OC (pepper spray) and used his taser. Statum became involved and fired three (3) rounds from his forty (40) mm launcher to break up the fight. The 40 mm was used for crowd control and was a “less than lethal weapon.” (T: 2:36, 2:56). He deployed one (1) round each of rubber bullets, gas, and a marker round (dry powdered paint). [9.32.42.493] (T: 0:03). By the time he fired the 3rd round, the fight had broken up (T: 0:30).

¹ The video recording from the evidentiary hearing appears on the computer flash drive as broken down into a series of three (3) minute segments of the proceedings. Until such time as the recording technique is changed/modified, the citation method to the record utilized herein remains: the information shown in brackets “[]” is the chapter/file number and the information shown in parentheses “()” is the time such statement(s) occur within the identified chapter/file.

5. Statum spoke to no one for more than a month after the incident. On the afternoon of November 28, 2022, he received a telephone call from Captain Berton Bare (T:0:45). The Captain asked if anyone spoke to Statum during the investigation of the previous October fight. Statum told him "No." (T: 1:03). He testified that he did not recall ever talking to the Appellant about the fight (T: 1:15).

6. Capt. Bare read part of a report to Statum and asked him if it was his true and fair statement.² Statum told him there were some things in it he did not say or put into his report. Bare told him not to speak to anyone about this and directed Statum to write a new report and turn it in. [9.41.53.594] (T: 01:48).

7. Statum identified Joint Exhibit 5E (p. 75) as the report of the fight he wrote on November 28, 2022, following his conversation that day with Capt. Bare (T: 0:27). CO Statum then read his report into evidence (T: 1:05).

8. He identified Joint Exhibit 5 at p. 25 as a description of the incident. He read parts of that document into the record. [9.38.49.872] (T: 0:00 - 0:22). Once a staff member completes a report and hands it in, it is scanned into the system (T: 0:40).

9. He read into the record parts of Joint Exhibit 5C (p 25), a statement that the Appellant had spoken to Officer Statum. At the hearing, he denied having spoken to the Appellant [9.44.57.316] (T: 0:45, 1:15). He had not seen any inmates "running from everywhere;" it was just all of a sudden there was a pile of human beings on each other (T:1:34).

10. The next witness was **Darren LaRue**. LaRue is currently a Captain (for the past month). He started employment as a Correctional Officer in 2016 and was promoted to Sergeant two (2) years later. About one (1) year later he was promoted to Lieutenant. As a Lt., he was assigned to Internal Affairs [9.48.00.979] (T: 2:38); [9.51.04.708] (T: 0:02, 0:16). While in Internal Affairs, he investigated alleged policy violations by inmates and/or staff (T: 0:45). Disciplinary Reports are issued when one is alleged to have violated a rule or policy (T: 1:25). An "adjustment hearing" is held to decide the outcome of disciplinary reports issued against inmates (T: 1:11).

² That statement refers to Officer Statum and appears in Joint Exhibit 5C, p 26.

11. He identified Joint Exhibit 3 as Policy CPP 15.6; the policy that governs the entirety of the adjustment proceeding process. A part of the policy requires an investigator to speak with the inmates when inmates are involved in an incident [9.54.08.385] (T: 0:03, 0:28).

12. He identified Joint Exhibit 4 as KSP Policy 0301-01, which are general guidelines for KSP employees, applicable to everyone working at KSP [9.57.12.150] (T: 0:20, 1:14). An employee is required to be truthful in the performance of an investigation [10.00.16.029] (T: 0:35).

13. In October of 2022, at the request of Warden Scott Jordan, LaRue's supervisor, Capt. Berton Bare, asked LaRue to investigate an incident involving the Appellant (T: 1:10). Inmate WB had appealed the discipline he received through the adjustment process and claimed he had not spoken with the investigator during that investigation. That appeal had been examined by the Warden and sent for re-investigation (T:1:16). LaRue reviewed the entire previous investigative process, watched video footage and interviewed the Appellant (T: 2:07). He kept notes and recorded interviews (T: 2:28).

14. He identified Joint Exhibit 5A as his investigative report (T: 3:02); [10.03.19.773]. The report contained all the documents and information he assembled during his investigation. It was entered into the KOMS system and submitted to the Warden. The Warden decided what action to take based on the investigation (T: 0:57).

15. During his investigation, LaRue became concerned that previous reports stated the inmates had been spoken to. Following the first interview with the Appellant, LaRue determined that she had not spoken to the inmates; she had instead sent paperwork and a report to the inmates and they signed it. (T: 1:50). There was one incident where she had spoken to one inmate at the showers who asked her to get their "disciplinary done" (T: 2:28).

16. The Appellant's report was the previous "Report of Investigative Officer" [10.06.23.472] (T: 0:10). LaRue examined videos of inmates' cells to see if the Appellant had spoken to them during the time in question. He saw that she had not been to any of their cells in the three (3) day period surrounding the time in question. During one interview he had with the Appellant, she stated she had not spoken with any inmates (T: 1:17). He believes the Appellant

had also stated she that had not spoken to any staff, although her prior report stated she had spoken to Officer Statum, Officer Worley, Officer Alverio, and Lt. Anderson (T: 1:30, 1:40, 2:18). When he interviewed those staff members, all but Worley told him they had not spoken with the Appellant (Worley said he did not recall) (T: 2:36). Anytime LaRue interviewed someone he had them fill out an information report about what they said. That report was then attached to the chronology that was sent to the Warden [10.09.27.182] (T: 1:09, 1:22).

17. On November 23, 2022, the Appellant provided an information report, which Larue identified as Exhibit 5D (T: 2:25).

18. During October and November of 2022, the Appellant worked the “midnight” shift. [10.12.30.923](T: 2:05). She should have been able to interview staff during the shift change (T: 2:20).

19. When writing an investigative report, it is important to do every step of the process, particularly in this case. Disciplinary reports can result in inmates losing “good time” which affected the length of their sentences. Skipping steps could have taken time away from an inmate. By hastily doing an investigation, it could have “put us in a bad spot” by being sued due to procedures not being performed correctly [10.15.34.631] (T: 0:22).

20. Investigators have the ability to dismiss an investigation when there is a lack of supporting evidence [10.18.38.367] (T: 2:00). In this instant case, the Appellant admitted during the course of her four (4) interviews that she made false statements when she wrote in her report that she had spoken to the inmates [10.15.34.631] (T: 1:12); [10.21.42.094] (T: 1:58, 2:29). The reports she wrote for the first three (3) inmates were “false” statements; all her other inmate reports were not “false”. (T: 2:45). She never corrected the reports for the first three (3) inmates (T: 2:56). She could have told someone she needed a “redo” [10.24.45.809] (T: 0:01). After reviewing the transcript of the Appellant’s third interview, taken 11-22-2022, LaRue agreed that the Appellant said she had spoken to all the inmates at the showers (T: 2:25); [10.27.49.581] (T: 0:47). During the 12-01-2022 interview, the Appellant said Captain Charles Roberts had spoken to the inmates (T: 2:55). There was no indication in Appellant’s

investigation report that she had spoken to the inmates at the showers. That should have been included in her report [10.46.11.349] (T: 0:01, 0:31).

21. The Appellant said she gave forms to the inmates for their review and signatures. She did not give the forms to them personally (T: 2:00, 2:15, 2:20).

22. The adjustment process starts with receipt of disciplinary report(s), followed by an investigation and compilation of an investigative report. The investigating officer's supervisor then conducts and writes up the supervisor's review. It is then sent to the adjustment committee for hearing and decision [10.37.00.631]. An adjustment procedure is for an inmate [10.58.26.728] (T: 1:00).

23. LaRue agreed that any report written preceding the adjustment process is required to be clear and concise. If it is not clear and concise it can be sent back for a rewrite or the matter may be dismissed (T: 1:26). Generally, the Adjustment Committee decides whether a rewrite is required, such as if there was written an incorrect date, usually "simple stuff like that will be sent back and fixed." Things like that are a "mistake" and not a "false statement". (T: 1:44).

24. The Appellant wrote an investigative report [10.55.23.149] (T: 1:30). As an investigating officer, the Appellant was to obtain statements and evidence from others [11.07.37.774] (T: 1:10, 2:30).

25. If an inmate is not spoken to, they do not have a clear understanding of what they are being charged with. [11.01.35.445] (T: 1:50).

26. After LaRue's investigation was completed and submitted, the facility went back and "re-did all the disciplinaries." (T: 2:18).

27. The Appellant "said" she spoke to multiple inmates as well as multiple staff [11.19.52.466] (T: 1:30). During her first interview with LaRue, she never said she did not conduct the investigation, nor did she say Lt. Anderson conducted the investigation. (T: 2:00). She did say she asked Roberts to speak with the staff (T: 2:15). None of the staff subsequently reported that Roberts spoke to them (T: 2:25).

28. An employee who submits a report in KOMS and realizes an error has been committed is able to request the document be sent back to allow correction [11.22.56.301] (T: 0:33).

29. The next witness was **Berton Bare**. [12.33.19.730]. Captain Bare has been employed in the Kentucky Department of Corrections since 2017 [12.33.19.730] (T: 2:07). For the past few months, he has been employed as the Internal Affairs Captain for the Commonwealth. He has been an Internal Affairs Captain in rank for three (3) years and has engaged in Internal Affairs since 2019 (T:2:50). He was previously employed as Internal Affairs Capt. at the Kentucky State Penitentiary (T:2:54) where he was in charge of KSP Internal Affairs' investigations of violations of policies and procedures by inmates, contractors, visitors and staff [12.36.23.140] (T: 0:01).

30. Investigations of matters involving inmates requires a systematic process to determine the facts. One reviews disciplinary reports, all supporting evidence, interviews with inmates and those staff that were involved. The report he generates is then sent on to the Adjustment Committee (T: 0:21). He speaks to the subject inmate to get his side of the story in order to determine an appropriate charge (T: 0:45). He stated Policy 15.6 applies to Adjustments (T: 1:00).

31. He read into evidence parts of Joint Exhibit C1. The **disciplinary report** is authored by the person(s) who saw the action as it occurred (T: 2:12, 2:33). The **investigative report** is written up by the investigator (T: 2:50). He also read subsection 2 of the Policy and stated "a" through "e" applies to the investigator. [12.39.26.763] (T: 0:25).

32. Bare had been called into the Warden's office. An inmate filed an appeal following an adjustment hearing. The inmate claimed the investigator never spoke to him and never told him about his write-up until after the investigation (T:1:05). Bare then assigned the investigation to Lt. LaRue (T: 1:33). In answer to a question, Bare stated he never asked the Warden to investigate the Appellant (T: 1:50). Bare became involved in the actual investigation after LaRue had twice interviewed the Appellant (T: 2:22).

33. After all interviews of the Appellant were concluded, it was decided the inmate investigations (that resulted in Adjustment Committee discipline) required new investigations (T: 2:22). Bare referred the matter back to the Warden [12.42.30.419] (T: 0:03). The Warden subsequently called Bare in and handed him a stack of memoranda that had specific questions to ask the Appellant regarding each disciplinary report and each of the eleven (11) inmates. He identified Joint Exhibit 5 “a” through “f” as the memoranda handed to him by the Warden (T: 1:05). The Warden requested another interview of the Appellant be conducted so she could be asked the memoranda questions. Bare complied and wrote down the Appellant’s answers. (T: 0:10, 0:32).

34. Bare also obtained statements from several staff members [12.45.34.230] (T: 0:05). His own signature appears in the supervisor’s review. (T: 0:20) Capt. Anderson told him she had never spoken with the Appellant during the investigation. None of the staff mentioned they had spoken with the Appellant (T: 0:49).

35. The Appellant might have told Bare she received an email from Lt. Anderson that stated “true and accurate” referring to her (Anderson’s) prior statement in the matter (T: 1:23). Bare asked the Appellant for a copy of the email but it was never provided (T: 2:16).

36. He identified Exhibit 5 as a true, complete and accurate copy of the entire report he assembled and sent to the Warden (2:32), [12.48.37.985] (T: 0:38). The recordings to which Bare had access and to which the Warden would have had access, were not sent to the Warden (T: 0:50). Bare indicated he did not make any recommendation to the Warden on discipline; he reported the facts that he found from the investigation (T: 1:13, 1:24). The ultimate decision whether policy was violated is made by the Warden [12.51.41.752] (T: 0:58).

37. The Appellant “...didn’t document the word “spoke” in these investigations.” [13.03.56.818] (T: 0:06). Also, by stating the inmate had “no comment” implied there was a conversation or communication with the inmate during the investigation. (T: 1:05). Although the Appellant said she spoke to staff, she did not. (T: 1:31). He believed his own use of the word “communication” qualified that the Appellant said she spoke to an inmate (T: 2:25).

38. By agreement of the parties the next witness, **Thomas Wyatt**, for the Appellant, was taken out of order. For over two (2) years, Wyatt was employed by the Kentucky Department of Corrections, Eastern KY Correctional Complex as Restrictive Housing Unit Captain. (T: 1:30). Previously, he had been a Captain at KSP for about 1 year and left in October 2022 (T: 1:58, 2:12). He had been employed with DOC a total of eight (8) years, two (2) months (T: 2:08). As a Captain, he was also an Adjustment Hearing Officer [13.13.08.213] (T: 0:18).

39. Counsel for the Appellee objected to the line of questioning. The witness was excused from the hearing room while the parties argued the objection. The Hearing Officer sustained the objection based on relevance and allowed witness questioning along the lines begun by the Appellant, to be continued by avowal. The witness then retook the stand.

Beginning of Avowal:

40. Wyatt conducted an investigation of Lt. Anderson. It was brought to his attention that Lt. Anderson was accused of falsifying documents, turning in investigatory reports in violation of policy; that she had reported in her investigation statements that were not accurate [13.19.15.747] (T: 2:20, 2:35). She wrote things that were completely different from what was reported to her by staff [13.22.19.545] (T: 0:20). Once Wyatt learned this, he brought it to the attention of Deputy Warden Thompson (T: 0:28). It was “shrugged off” the first couple of times Wyatt brought it to Thompson’s attention (T: 0:32). Immediately prior to his separation from employment with KSP, Wyatt submitted a formal complaint documenting each time he had personally looked into Anderson’s falsification of documents. Anderson said she had collected evidence and delivered it to the evidence room but it was nowhere to be found (T: 0:38). The statements made by Anderson led Wyatt, as Adjustment Chair, to convict inmates of wrong-doing or policy violations, thus possibly extending their times in prison (T: 1:02). Wyatt turned in all that information to Deputy Warden Thompson prior to his (Wyatt’s) leaving KSP (T: 1:25).

41. Wyatt never spoke with Warden Jordan about this matter (T: 1:40). He did not know whether anything resulted from his reports (T: 1:57).

42. Once Anderson found out that Wyatt looked into these incidents, she filed a complaint against him and alleged inappropriate touching and comments. These allegations were investigated. As a result, Wyatt received a written reprimand for “horseplay” (T: 2:25).

43. Lt. Anderson was never removed from her position for her own “safety” [13.25.23.305] (T: 0:48). Wyatt was only aware Anderson had been removed from her position once for medical reasons (her wrist) but had not been removed from performing investigative duties (T: 2:10). The incidents he had reported occurred March 18, 2022, April 23, 2022, June 20, 2022, June 27, 2022 and July 20, 2023. (T: 2:45). Mr. Jordan was Warden at that time [13.28.27.046] (T: 0:15).

End of Avowal (2:15)

44. The transcript of the November 17, 2022 interview of the Appellant was marked as Appellant’s Exhibit 4 and admitted into evidence [13.44.38.682]. **Day 1** of the evidentiary hearing concluded.

45. When the hearing reconvened on the second day, counsel for the Appellee called the Appellant, **Patricia Allen**, as a witness. At that date and for the preceding year, the Appellant was employed by the Kentucky Department of Corrections as a Probation Officer [9.21.40.804] (T: 2:57). Her workstation is in Morganfield, KY [9.24.50.201] (T: 0:01). Immediately prior to working as a Probation Officer, she was employed as a Correctional Officer at the Western Kentucky Correctional Complex (T: 0:13) and, before that, had been employed about three (3) years as a Captain at the Kentucky State Penitentiary (T: 0:51). Her pay grades in the various positions were: Captain-grade 14; Correctional Officer-grade 10; Probation Officer-grade 14 (T: 1:10).

46. She identified Joint Exhibit 1 as the December 12, 2022 demotion letter she received. At that time, Mr. Jordan was the Warden (T: 2:45).

47. The Appellant’s previous training included annual training, training on policies, a leadership workshop, and Adjustment Committee training [9.28.01.192] (T:0:34, 1:15). Although she did not receive formal training as an investigator, she did attend a class presented by a lieutenant (T:1:43).

48. She identified Joint Exhibit 2 as Kentucky Corrections Policies and Procedures, Policy Number 3.1, Code of Ethics/Social Media Use, and stated it applied to her in her former position and applied to all DOC employees [9.31.12.045] (T:0:16). She identified Joint Exhibit 4 as Kentucky State Penitentiary, Policy Number KSP 03.01.01, General Guidelines for KSP Employees, and agreed such policy applied to her (T: 0:40).

49. She read the definition of an “Adjustment Officer” into evidence (T: 1:59). She stated the **Adjustment Officer** obtains facts during an investigation, speaks to inmates, views video footage, and reaches a decision based on the evidence (T: 1:13). An **Investigative Officer** collects evidence, reviews camera footage, obtains statements from inmates and staff [9.34.22.962] (T: 0:13).

50. The Appellant stated she did not receive information directly from the inmates through interviews. She admitted it was an error to state in her report that she had spoken with the inmates. None of the inmates spoke to staff about the incident. [9.37.33.956] (T:1:21, 1:38).

51. The Appellant worked on the night/midnight shift and there were only certain times she could call staff witnesses. At that time, staff were working six to seven (6-7) full shifts per week and, when they got off work, did not answer their telephones to avoid being called back in to work. (T: 2:00). She enlisted help from an officer/supervisor on day shift, Captain Charles Roberts, to obtain answers to questions she had for staff witnesses (T: 2:28, 2:30).

52. The Appellant typed her reports into KOMS. After having typed her third (3rd) report of the incident, “I caught myself” as she could not say she spoke to the inmates to get their statements. She did not go back to try and correct the first three statements she entered in KOMS [9.40.44.872] (T: 0:00, 1:17).

53. She testified that there had been a write-up against Capt. Bare: an inmate reported Bare was “blackmailing” him by ordering the retention of letters received for the inmate. The inmate requested the Appellant speak to someone in the mail room. (T: 0:43). She spoke to Tammy Bower who worked in the mail room. Bower confirmed the inmate’s allegation (T: 1:01). Bower stated Bare would sometimes come into the office and directed that no mail be

given to that inmate; other times he came into the mail room to advise it was alright for that inmate to receive letters addressed to him. (T: 2:30).

The Appellant approached Bare and told him she needed evidence of the letter as what the inmate alleged had been confirmed by Bower (T: 1:09). Bare responded to the Appellant by email with an attached letter, however, it was the wrong letter (T: 1:34). She told Bare the matter pending against the inmate should be dismissed as Bare did not produce the correct letter (T: 1:38). Bare responded that neither the Warden nor he wanted the matter dismissed (T: 1:45). When requested again to produce the letter, Bare later responded he could not find it (T: 1:54). The Appellant dismissed the matter due to a lack of evidence (T: 1:54).

54. The Appellant investigated the matter of the October 2, 2022 inmate fight in the yard. [9.43.55.900] (T: 2:00). In reviewing Exhibit 10, p. 406, she stated that when one makes entries into KOMS, you can sign it by hand or use a “saved” electronic signature (T: 2:57). She wrote a separate report for each of the eleven (11) involved inmates. After she wrote and entered the third (3rd) report, she realized she had written that she “spoke” to the inmates. From that point forward, the reports she wrote and entered for the remainder of the inmates did not state that she “spoke” to the inmates [12.49.10.848] (T: 0:38, 0:46, 0:51). Once she submitted the first three (3) reports, she could not retrieve those documents in the system to make corrections. The documents would have to be sent back to her by the Adjustment Committee (T: 1:10).

55. As shift supervisor, she had to review the reports submitted in the investigation by others then sign off on them within twenty-four (24) hours [9.47.05.846] (T: 2:00). She had placed a “paper” on each involved inmate’s cell door and used the statements they wrote, she did not interview them [9.50.13.999] (T: 2:32).

56. Anderson had, at times, provided staff assistance at the front gate when there was a shift change. The Appellant stated it was more than likely she had spoken to Anderson at the front gate regarding the investigation [9.53.24.075] (T: 2:47). The Appellant later stated she either spoke to Anderson at the front gate or obtained her information by email [9.56.34.980] (T: 0:44). She had not spoken to any other staff members (T: 1:13). She enlisted the help of

Charles Roberts to speak with staff when he came to work one morning to relieve the Appellant (T: 1:23, 1:41). When the Appellant returned to her shift later that night, Roberts handed her the staff statements and advised they all had written “true and accurate” in their statements (T: 1:50). The staff did not supply any additional reports or information during the investigation [12.52.19.867] (T: 2:09).

57. Once an investigation is completed, the investigator prints out a copy and mails it to the inmate and, if legal aid had been requested, it is sent to the legal aid person. The box indicating the document is to be sent to the Adjustment Committee is checked and it becomes part of the Committee’s workload [9.56.34.980] (T: 2:20).

58. She identified Joint Exhibit 5D as her information report [9.59.45.887] (T: 0:38). Such a report is required when there is an investigation conducted by Internal Affairs (T: 1:00). The report does not mention that the Appellant never spoke to staff (T: 2:32).

59. Charles Roberts was the Adjustment Officer for this investigation. If he participated in the investigation, it could have disqualified him from acting as Adjustment Officer [10.02.56.802] (T: 2:30). The Appellant read into evidence from Joint Exhibit 3 the section on disqualification [10.06.07.694].

60. It was Deputy Warden Thompson, Deputy Warden of Security, who read the demotion letter to the Appellant. The Appellant was a member of “Security” [10.09.18.589] (T: 2:25). The letter stated she would be transferred to another facility as she would be a target of the inmates if she stayed. Although no inmates attempted any harm against her up to the time of her transfer, she was transferred to the Western Kentucky Correctional Complex. [10.12.29.484] (T: 0:17). She was demoted December 12 or 13, 2022, and was transferred December 13 (T:0:35, 2:57).

61. The Appellant had no prior discipline, other than a Performance Improvement Plan that was given to all the Captains because tracking incident reports was lagging. [10.15.38.674] (T: 1:48). All her performance evaluations were in the top two (2) categories (T: 2:14). Her evaluation for the year in which she was demoted had an overall rank of “very good”

(T: 2:25). She identified Appellant's Exhibit 6 as her mid-year and year-end evaluations. She read the ratings into evidence [10.18.47.121] (T:0:52), [10.21.57.512].

62. When staff members review their written statements upon request, they often respond that such prior statements are "true and accurate", saying nothing more (T: 3:01).

63. She said that none of the statements she made in her report contained false information from the inmates or staff. "My mistake was that I put I spoke to them when I did not." [10.28.19.294] (T: 1:57). The facility was "really short-handed;" investigations were piling up and she was asked to help; she did what she did just to get that investigation "in" (T: 2:10).

64. She confirmed the adjustment procedure (and its policy) were in four parts: the Disciplinary Report, Supervisor's Review, Investigator's Review, and the Adjustment Hearing [10.31.30.274] (T: 0:25), Joint Exhibit 3. The Appellant was involved in the Investigator's Review (T:0:40). The person(s) who witnessed the action prepares the Disciplinary Report (here, whoever saw the fight) (T: 0:46). In this matter the reporting employee was Caleb Alverio [10.44.11.746] (T: 1:18). Lt. Anderson was selected as the Investigator. However, the Appellant got involved by request of the Major and by Deputy Warden Thompson because the write-ups "were so far behind" [10.34.41.340] (T: 0:08). Anderson made no contributions to this investigation; the work was primarily performed by the Appellant [12.46.02.219] (T: 0:27, 0:30).

65. When an investigation occurs, the inmate must be made aware of the charges against him [10.37.52.308] (T: 0:01). If an investigator had "more time" one could talk face to face with an inmate and answer their questions, ask them if they want legal aid, do they have any statements, and to get the basic information from them that is to be entered on the contact form (T: 0:12, 0:25). It is not necessary that the write-up be read to the inmate. When an inmate is placed in segregation after an incident, he receives a Detention Order that tells him the reason he was placed in segregation. (T: 0:38). The Detention Order must be read to the inmate within 24 hours of placement in restrictive housing (T: 1:30).

66. During the collection of evidence, the Appellant also viewed camera footage and typed her incident report with factual statements about the incident. (T: 1:50). When she was stationed at the upper gate and the involved inmates came out from the showers, they asked the Appellant to investigate their write-ups. (T: 2:35). She asked them if there was anything they specifically wanted to add. None of the inmates responded affirmatively as they knew they faced a major charge and under such circumstances, seldom make comments before the court call [10.41.02.975] (T: 0:55). She testified the reason LaRue did not see the Appellant on camera footage speaking to inmates was that no camera was pointed in the direction that would show her at the upper gate, nor did it show the entry to the showers. She stated that she did not need to go onto the walk as the inmates were all coming out from the showers. (T: 1:22). Those cameras do not record audio (T: 2:38).

67. The Appellant sent each involved inmate a copy of "Part 1" of the report through institutional mail and a separate copy to any legal aid representatives. [10.50.31.327] (T: 0:24). The investigative contact form was delivered to each involved inmate's cell; she gave the forms to one of the officers who worked in three (3) Cell House. To each form she had attached a "sticky note" with her cell phone number [10.53.42.320] (T:1:33, 1:42). In past investigations, the Appellant let inmates read the write-up. She never read the write-up to them [11.03.15.262] (T: 0:08). She believed she was not required to read the physical copy to the inmate, as long as the inmate was advised of the charges against him. [11.09.36.828] (T: 2:10). She opined that policy did not say the document had to be read to the inmate, nor had anyone previously told her to do so. She did not learn this was required until she herself was interviewed in the subsequent investigation. She realized during her own third (3rd) interview that it was wrong not to read the document to the inmates [11.15.54.789] (T: 1:18).

68. She stated she made a mistake typing up that she had spoken to Carlton Worley. She believed Worley's report was justifiable and through it she had gained all the possible facts from him. (T: 1:40, 2:06). She also admitted her mistake of having typed up that she had spoken to Officer Alverio. She was told Alverio responded his prior statement was "true and

“accurate” and so she relied on the report he wrote (T: 2:20, 2:58). She stated she did not need to speak to Daniel Statum as she could also rely on his report (T: 0:33).

69. The Appellant’s goal was to get the reports done. It was not easy correcting mistakes on reports once entered in KOMS. She would still have to send the report up to the Adjustment Committee which, upon notice of the mistake, would have sent it back for reinvestigation. She would have to provide justified reason why the report should be sent back. She would have to involve multiple individuals to correct the documents. She stated what she wrote did not change any of the facts [11.00.04.201] (T: 1:42, 2:05, 2:23).

70. She stated she could not, during a shift change, secure statements from officers who were not on her shift. When one reports for their shift, the first task required is to conduct the count. At that time, the Appellant did not have a “count officer” who would have prepared the paperwork from the count. She had to print out the count sheet and record on it as officers called in their count [11.03.15.262] (T: 2:05). She could not come in for her shift earlier or stay later to interview staff because she was already working between seventy-two to eighty-four (72-84) hours per week. Likewise, due to those hours also worked by others, she could not ask day shift staff to request overtime to be interviewed [12.36.29.753] (T: 0:01, 0:08).

71. If the Appellant is granted relief in this appeal, she would like to stay employed at Probation and Parole.³ She also requested that the “conflicts” be lifted and removed from her record to allow her to work overtime. She also believed having such “conflicts” notation limits her promotional opportunities. [11.31.49.247] (T: 1:05, 1:47). She stated that the Appellee had placed a “staff conflict” on her with the eleven (11) involved inmates to prevent the inmates from being transferred to her current worksite while she is there; if one (1) of those inmates is transferred to a facility where she serves as a Parole Officer, she would no longer be able to serve that facility (T: 2:10, 2:45). She also requested she be awarded back pay [12.33.19.125] (T: 2:20).

³ Her attorney indicated she should be given the option of reinstatement to her prior position and rank.

72. Counsel for the Appellee moved to introduce documents showing the Appellant's salary history. There was no objection. The documents were marked by the Hearing Officer as Appellee's Exhibit 1 and admitted [12.33.19.125].

73. The demotion letter (Joint Exhibit 1) indicates that all eleven (11) involved inmates received a new investigation conducted by a new investigator as well as a new Adjustment Committee and Chair [12.55.30.805].

74. The next witness called by Appellee was **Scott Jordan**. Since January of 2024, Jordan has been employed as Deputy Commissioner of Adult Institutions in the Department of Corrections. In the previous four (4) years, he had been the Warden of the Kentucky State Penitentiary ("KSP"). [13.02.07.856](T: 0:39). Previously, he served four (4) years as the Warden of the Luther Luckett Correctional Complex (T: 1:05) and the two (2) years prior to that, he was the Warden of the Ross Kass Center (T: 1:05, 1:12). He is familiar with the Code of Ethics, the Adjustment Procedures, and with KSP Policy 3.1.1 (T: 1:50). At KSP, all employees were trained on the Adjustment Procedures as it was a part of their duties (T: 2:40). He explained the process of inmate proceedings (T: 2:57).

75. Over the past thirteen (13) years, Jordan was involved in thousands of investigations. Any employee may issue a disciplinary write-up against an inmate [13.05.18.465] (T: 0:01, 0:20). The write-up is reviewed by a shift supervisor, then assigned to an investigator (T: 0:30). The assigned investigator conducts the investigation and in so doing, is required to talk to every person named in the disciplinary process, all witnesses, and any person who authored the write-up (T: 0:45, 1:02). Policy "...says you "shall" interview everybody." (T: 1:02). The investigator then decides whether all the evidence is sufficient to assign a charge. If sufficient, a charge is assigned and forwarded to the Adjustment Committee for a final hearing (T: 1:28).

76. When the investigation is completed, usually it is Internal Affairs that tenders a report of findings to the Warden. [13.08.29.293] (T: 2:52). If in review the Warden needs additional information, he will request same from the investigator. [13.11.40.365] (T: 0:41).

77. When considering the level of discipline for an employee, the Warden considers the following: Was the action/omission ethical; did it violate policy; was any statement or anything the staff member did truthful or dishonest [13.08.29.293] (T: 0:35). The seriousness of the incident is considered as well as that employee's history (T: 1:18). If an employee of Sergeant rank or above has violated policy, the incident is taken a little more seriously as such staff member is responsible for teaching and leading other staff (T: 1:55). He also considers whether the employee has dedicated time and energy into the Department; is there anything we can do, short of taking their career away, and then to do that "in order to save them" (T: 2:05). When this is determined the Warden, as the appointing authority, can issue discipline ranging from a written reprimand, to suspension, demotion, relocation, or dismissal (T: 0:55).

78. Most mornings Warden Jordan reviewed inmate appeals that had been delivered to him [13.11.40.365] (T: 1:40). On average, he received about fifteen (15) inmate appeals per day (T: 2:30). An inmate who has been found "guilty" on a charge during the adjustment process may file an appeal. In the instant matter an inmate reported that the Appellant never spoken to him or approached his cell. That allegation sparked the investigation into the Appellant (T: 1:58).

79. The investigation of the Appellant was conducted by Lt. LaRue of Internal Affairs, assisted by Capt. Bare [13.14.51.254] (T: 1:42). He identified Joint Exhibit 10 as the series of inmate appeals of the category 7.7 that had been investigated by the Appellant (T: 0:28).

80. In this case, the inmate was correct that the Appellant never spoke to him or approached his cell (T: 2:46).

81. He identified Exhibit 5 ("a" through "f") as a copy of the investigative report concerning the Appellant. After reviewing it, he had a few concerns: the Appellant said she spoke to or interviewed witnesses; it was "...nothing but a fabrication of the truth." When she placed the statements in official documentation, they were falsified documentation. [13.21.08.868] (T: 0:43, 1:05). An employee must tell the truth one hundred percent (100%) of the time, otherwise anything less sets an example to those below you that the truth or being

honest does not matter. "If you document that it happened then that's the way it must have happened." (T: 2:25, 2:33).

82. The inmates involved in the fight on the yard lost seven hundred thirty (730) days of good time. (T: 3:00). It extended their sentences up to two (2) years [13.24.19.362] (T: 0:25). Under such circumstance, "There's a real possibility that you're in danger because you did not tell the truth and your messing with a person's freedom." (T:0:40). "It's a huge deal." (T: 0:55).

83. Based on his review of the investigation, Warden Jordan did not believe the Appellant spoke to any of the inmates (T: 2:45) or to any staff [13.27.30.492] (T: 0:07). If Charles Roberts interviewed staff, the Appellant's report should have so stated. She reported she had interviewed staff and, therefore, submitted a false report (T: 1:00). Furthermore, Charles Roberts could not interview anyone if he was going to chair that particular write-up. Such would have disqualified him as Chair due to potential conflict. That conflict was never made known to Jordan (T: 1:25, 1:38, 1:45).

84. Warden Jordan did review the interviews taken of the Appellant during the investigation of her actions (T: 2:16). In the interview conducted 12-01-2022, the Appellant answered that she had gotten Mr. Roberts to get a statement for her from Officer Alverio [13.30.41.178]. He did not believe it changed his analysis of what happened as once she provided false information in a report, she could not go back and change it. "None of that changes anything." (T: 0:28, 0:45). What it did change was the particular incident reports would have to be vacated, which they were. Every involved inmate was given a new investigation and hearing (T: 0:49).

85. After his review, Jordan believed discipline against the Appellant was warranted. There was a violation of policy and false documentation. It was within his authority to issue a termination. He believed termination was warranted. However, he examined the Appellant's time and service to the Department and concluded most of her service was satisfactory (T: 1:57, 2:10, 2:50). By issuing the demotion, he felt he had extended the Appellant some grace, rather than termination ([13.33.52.147] (T: 0:12).

86. He testified that KSP is the most volatile prison in the Department; it houses inmates who cannot follow rules, or who assaulted other inmates or staff at other prisons. (T: 0:45). “It is a dangerous prison” (T: 1:23). All of the inmates who appealed said the Appellant never spoke to them (T: 1:47). Jordan was concerned about her safety (T: 1:51). Part of the reason for the transfer was to protect the Appellant; the other reason was to return some stability to this group of inmates who felt they had been lied to. A safe, secure facility environment was to be restored (T: 2:11). It also gave the Appellant a fresh start with staff (T: 2:35). He thought it was the best and safest thing for her career (T: 3:00).

87. Written reports do not lie. What the Appellant had reported was a false report, not a mistake. [13.37.03.168] (T: 1:00).

88. Warden Jordan agreed a disciplinary report entered into KOMS can be corrected. One could advise the Adjustment Officer that modifications were needed to correct the statements. Or one could contact someone in their supervisory chain and the report could have been sent back to the investigative phase (T: 2:10, 2:30).

89. He identified Joint Exhibit 1 as the demotion letter he issued to the Appellant [13.40.13.981] (T: 0:20). The letter and the investigative report together show there was just cause for the discipline. Demotion was not excessive as he believed termination could also have been warranted (T: 1:26, 1:30). If you make one (1) incorrect statement, “everybody in this room” has done that. “If you do it eleven (11) times, I think it’s a pattern of falsehood.” [13.43.24.604] (T: 0:40).

90. In reviewing Joint Exhibit 1 (letter to the Appellant) Jordan agreed Capt. Bare was not present at the November 17, 2022 interview [13.46.33.448] (T: 2:36). The audio file of the interview (Appellant’s Exhibit 4) and the transcript show Larue and English conducted that interview (T:0:34).

91. When investigations and hearings were redone for the involved inmates, all eleven were found guilty (T: 0:41).

92. Prior to issuance of the discipline against the Appellant, there were reviews of the level of discipline conducted in two phases: how other employees were treated under similar

circumstances, from both his own experience and per review of the Personnel Administrator [13.56.04.089] (T: 2:12). Central Office also reviewed the matter and agreed with the Warden's recommendation [13.59.15.021] (T: 0:18).

93. The witness was questioned whether a "staff conflict" notation had been added to the Appellant's personnel file or records. Warden Jordan stated a "staff conflict" and "inmate conflict" are different. The demotion letter does mention an "inmate conflict" which is a conflict an inmate may have with staff. A "staff conflict" is conflict between staff members. The Appellant is not prevented from serving in any other institution. The prohibition is against certain inmates, that they do not contact the Appellant even if such inmate should transfer to a facility where the Appellant works. [14.02.25.826] (T: 0:16, 1:00, 1:40).

94. The Appellee rested its case. The Appellant requested the deposition of inmate **Charles Washington** (inmate previously identified as "CW") be admitted and read into the record. The Appellee had no objection. The entirety of the deposition was read into the record. The deposition transcript was marked by the Hearing Officer as Appellant's Exhibit 7 and admitted. [14.09.17.158]. In the deposition, Washington testified that no investigator or officer came to talk to him about the October 2022 incident (p. 8); he did not remember ever talking to the Appellant (p. 8); the second investigation was conducted by Ms. Primovich and he remembers she talked to him in his cell; she talked with him about what had happened, handed him a form and he signed it (pp. 9-10); that prior to his first hearing, an investigation form had been placed in the tray slot of his cell - he filled it out and put it back in the tray slot to be picked up by an officer - "...that's not how it's supposed to go." "We're supposed to talk to a sergeant or whoever is assigned, and they fill it out, and not me personally. I was basically doing their job. I'm not an officer in KSP." (p. 10).

95. No additional witnesses were called by either party and the presentation of evidence was closed.

96. The parties agreed to a briefing schedule.⁴

⁴ See: 10-22-2024 *Interim Order*. At the request of the Appellee, with no objection from the Appellant, the deadline for submission of the Appellee's brief was extended-see: 01-04-2025 *Interim Order Extending Due Dates*. The Appellee failed to

97. The briefing schedule was extended at the request of the Appellee, with no objection by the Appellant.

98. The Appellant timely filed her written closing argument and post hearing brief.

99. The Appellee did not submit either a written closing argument or post hearing brief.

100. The matter stood submitted to the Hearing Officer for his Recommended Order.

FINDINGS OF FACT

1. Patricia Allen, the Appellant, is a classified employee with status. She is employed by the Justice and Public Safety Cabinet, Department of Corrections (the Appellee). At the date of the inmate fight on October 2, 2022 (described in greater detail below), she held the rank of Captain with a paygrade of Grade 14 and her worksite was the Kentucky State Penitentiary (KSP). She worked the night shift and was part of "Security."

2. The Hearing Officer finds all the testimony of the witnesses to have been credible, with some exceptions to the testimony of the Appellant, which is described in greater detail below.

3. On October 2, 2022, at approximately 12:38 p.m., a fight involving eleven (11) inmates occurred in the yard at KSP.

4. Although Lt. Anderson had been named as the Investigator of the fight, the KSP investigative workload was so heavy that the Major and Deputy Warden Thompson requested the Appellant conduct the investigation.

5. When an incident occurs involving an inmate, such as a fight, an Adjustment Procedure begins pursuant to Kentucky Corrections Policies and Procedures, Policy No. 15.6, Adjustment Procedures and Programs (Joint Exhibit 3). The Adjustment Procedure consists of four (4) parts: (1) Disciplinary Report, (2) Supervisor's Review, (3) Investigator's Review, and (4) Adjustment Hearing. Staff member Caleb Alverio, who witnessed the fight, prepared the

Disciplinary Report. The Appellant, as the Investigative Officer, conducted the Investigator's Review.

6. During the course of the Investigator's Review, the Investigator **shall**:
 - (a) Collect evidence, documents and statements.
 - (b) Interview witnesses, unless a witness is clearly irrelevant to the issues presented and record a brief statement of what the witness reports.
 - (c) Assign the most appropriate violation.
 - (d) List witnesses the inmate indicates he wishes to have at the hearing.
 - (e) Advise the inmate of his right to consult with an assigned legal aide of his choice at least twenty-four (24) hours prior to the hearing...
 - (f) Record on the form and advise the inmate of the anticipated date, time, and place of the hearing...
 - (g) Advise the inmate of his right to waive his presence at the hearing.
 - (h) Nothing in this policy shall prohibit a disciplinary report from being re-investigated if deemed appropriate or necessary. Policy No. 15.6 (emphasis added).

7. The Appellant worked the night shift. The relevant staff members worked on day shift. Due to the long hours worked by staff, there were limited times available to the Appellant that she could have communicated with such staff.⁵

8. The Appellant enlisted the help of Captain Charles Roberts who worked on day shift.⁶ One morning when Roberts arrived for work, the Appellant handed him a set of written questions on forms to distribute and collect from the relevant day shift staff members. Roberts

⁵ The Appellant testified that, at that time, staff worked between six to seven (6-7) full shifts each week; when staff members were off work they usually did not answer their phones in order to avoid being called back into work.

⁶ Testimony revealed Roberts at that time had also been assigned as Adjustment Officer for this incident. Certain questions were posed to witnesses whether Roberts, in assisting with the investigation, created a conflict of interest and, as Adjustment

thereafter returned the completed forms to the Appellant and told her the staff members had written “true and accurate” in these statements. “True and accurate” indicated they had nothing further to add to their original written reports.

9. The Appellant did not personally interview any of the relevant staff members. She admitted this in the fourth interview of her conducted December 1, 2022 (Appellant’s Exhibit 2). She may, however, have communicated with Lt. Anderson either through email or in-person at the front gate (Appellant’s Exhibit 2), [9.53.24.075] (T: 2:47), [9.56.34.980] (T: 0:44).

10. Instead of personally interviewing the involved inmates, the Appellant placed a “paper” on each inmate’s cell door. She thereafter used the statements written by each inmate.

11. The Appellant, while on station outside the shower area, had been asked by a few of the inmates to do their write-ups. Inmate WB (name redacted) was one of those inmates.

12. When an investigation is completed, the Investigative Officer prints out a copy and mails it through institutional mail to each inmate. If the inmate previously indicated he wanted assistance from legal aide, the document was mailed to that legal representative. The form becomes a part of the Adjustment Committee’s workload.

13. As a result of the Appellant’s investigation and the report that followed, all eleven (11) inmates involved in the incident were charged with “7-07-Inciting to Riot or Rioting”. All eleven (11) inmates requested a hearing and to be present at same, in the adjustment procedure. Following the adjustment hearings, Inmate WB was one of the inmates who appealed the “guilty” decision and the discipline he received. He claimed he had never spoken with the Appellant during the investigation.

14. In four (4) of the ten (10) reports among the Exhibits signed by the Appellant, she wrote that she “spoke” to the inmate. Those reports were for inmates WB, MP, DJ and ST (Joint Exhibit 10). On the remainder of the reports, she wrote the inmate “had no comment” or “chose to save his comments.”

15. The Appellant had falsely reported she had spoken to inmates MP, DJ and ST (Joint Exhibit 10; Appellant's Exhibit 2). She had spoken to inmate WB on more than one occasion about his "write-up" but details about such contacts appeared insufficient to satisfy the due process requirements of applicable policies.

16. The Appellant testified she typed her reports into the KOMS system and, after the third report was submitted, she discovered she had made a "mistake" by typing that she "spoke" to the inmates, because she had not spoken to them; she did not make an attempt to secure any corrections to those statements. [9.40.44.872] (T: 0:00, 1:17). Her testimony did not accurately reflect she had typed "spoke" on four (4) inmate reports instead of three (3).

17. In all ten (10) reports the Appellant signed, she stated she "spoke" with staff members Worley, Alverio, Statum, and Anderson (Joint Exhibit 10).⁷

18. The Appellant had communicated with Lt. Anderson either by email or in-person at the facility's entry gate. [9.53.24.075] (T: 2:47), [9.56.34.980] (T: 0:44).

19. In all of the reports signed by the Appellant, she falsely reported she had spoken to staff members Worley, Alverio and Statum (Joint Exhibit 10, Appellant's Exhibit 2).

20. All eleven (11) inmates involved in the incident were found "guilty" of the charges against them at their respective Adjustment hearings. The inmates' sentences included a loss of seven hundred thirty (730) days of "good time" which extended their sentences by two (2) years. [13.21.08.868] (T: 3:00), [13.24.19.362] (T: 0:25). During the period of November 14-17, 2022, all eleven (11) inmates appealed the "guilty" decisions pursuant to KY Corrections Policies and Procedures, Policy Number 15.6, II, F. (Joint Exhibit 10).

21. The appeals were directed to and examined by Warden Scott Jordan of the KSP [13.11.40.365] (T: 1:40); KY Corrections Policies and Procedures, Policy Number 15.6, II, F. 2 (Joint Exhibit 10).

22. In one of the inmate's appeals, that person alleged that the Appellant had never spoken to him or approached his cell. That allegation gave cause for the Warden to order a

⁷ Joint Exhibit 10 provided to the Hearing Officer had the appeal typed by inmate BJ but did not have attached a copy of the original report written by Allen.

re-investigation of the previous adjustment process and the Appellant's actions during that process [13.11.40.365] (T: 1:58). The investigation was assigned to Lt. Darren LaRue of Internal Affairs on November 15, 2022, assisted by Captain Bert Bare [13.14.51.254] (T: 1:42); (Joint Exhibit 5A, p 1).

23. During this investigation the Appellant, Patricia Allen, was interviewed by Lt. LaRue and Sgt. English on November 17, 2022 (Joint Exhibit 6, Appellant's Exhibit 4); by Lt. LaRue on November 19, 2022 (Joint Exhibit 7, Appellant's Exhibit 3); by Capt. Bert Bare and Lt. LaRue on November 22, 2022 (Joint Exhibit 8, Appellant's Exhibit 1) and again on December 1, 2022 (Joint Exhibit 9, Appellant's Exhibit 2).

24. Lt. LaRue completed and submitted his investigative report on November 17, 2022 (Joint Exhibit 5).

25. After his examination of the inmates' appeals, Lt. LaRue's investigative report, and the interviews of the Appellant, on December 7, 2022, Warden Jordan sent a memorandum to each of the inmates who had filed an appeal, advising: he had removed the previous findings and penalties; sent the Investigative Report back to the investigation stage; "...a complete and proper investigation and rehearing" will be conducted; the inmates would have the right to appeal the findings of the rehearing to the Warden's office (Joint Exhibit 11).⁸

26. Warden Jordan was the appointing authority and the person who considered whether disciplinary action would be taken against the Appellant and, if so, the nature of such discipline.

27. Warden Jordan considered the following before making his decision about the issuance and nature of disciplinary action against the Appellant:

- the Appellant's time and service to the department; her disciplinary history; that most of her service was "satisfactory" [13.30.41.178] (T: 1:57, 2:10, 2:50);⁹

⁸ Following submission of the re-investigation report, the eleven (11) inmates were charged again and all found "guilty" at their new Adjustment hearings of charge 7-07: Inciting to riot or rioting".

⁹ The Appellant testified she had no history of discipline with the exception of receiving a Performance Improvement Plan; that PIPs had been given to all Captains as the tracking of incident reports had been "lagging" [10.15.38.674] (T: 1:48); that all her performance evaluations had been in the top two categories (T: 2:14, Appellant's Exhibit 6); her evaluation for the year she was demoted had an overall rank of "very good" (T: 2:25).

- Consideration of how other employees had been treated under similar circumstances [13.56.04.089] (T: 2:12)
- Whether the Appellant's action/omission was ethical-did it violate policy-was any statement or action by the employee truthful or dishonest [13.08.29.293] (T: 0:35);
- The seriousness of the incident;
- If there is anything that may be done, short of taking the employee's career away and if so, to employ that "in order to save them" [13.08.29.293] (T: 2:05)
- Whether the employee's acts/omissions expose the employee to possible danger or retaliation within the facility from inmates [13.24.19.362] (T: 0:40, 0:55);
- Review of the matter by the Personnel Administrator and once the Warden makes their decision, review by Central Office [13.56.04.089] (T: 2:12), [13.59.15.021] (T: 0:18).

28. Warden Jordan decided that the Appellant:

- had violated applicable policies;
- had made false statements in her Investigative Report of the inmates (specifically, that she had spoken to 4 of the inmates; that she had spoken to 3 staff members in the investigation of each of the eleven (11) involved inmates, when she had in fact not spoken to these individuals);
- the act/omissions were serious and as such resulted in adding to the time to be served by 11 inmates, placing her in danger within the facility.

29. In consideration of the Appellant's employment time with the Department and that it was mostly "satisfactory", and that both the Personnel Administrator and Central Office agreed with the level of discipline he suggested, Warden Jordan decided that the Appellant

should be involuntarily demoted to Correctional Officer and, for her safety, transferred to the Western Kentucky Correctional Complex.

30. On December 12, 2022, Warden Scott Jordan issued a letter to the Appellant in which he set out that the Appellant would be involuntarily demoted/transferred for cause to the position of Correctional Officer at Western Kentucky Correctional Complex effective beginning of business December 13, 2022. (Joint Exhibit 1). Such action was based on “the review of reports submitted, by your own admissions, and based on the authority of 101 KAR 1:345, Sections 1 and 4...” specifically for alleged misconduct.

31. The “demotion” letter at first is based on an inmate appeal of a disciplinary report when the inmate alleged that the Appellant, as the assigned investigator, had not spoken to him during the investigation; and that the Appellant had signed her investigation report wherein she stated she had spoken with the inmate.

32. The “demotion” letter is also based on the following:

A. “On November 17, 2022, Captain Bare and Lieutenant LaRue spoke with you; and you admitted that you did not speak with this inmate.” The November 17, 2022 interview was, in fact, conducted by Lt. Larue and Sgt. English. Capt. Bare was **not** present. (Appellant’s Exhibit 4). The inmate was WB. In this Audio File transcript (as well as the actual recorded interview), while the Appellant stated she did not go to the inmate’s cell to read him the write up and have him sign it, she answered she had told him about it, what the write up was; she had a paper sent to him to fill out; and that “I’ve spoken to him about it before because he asked me to do it. Write up. He’s one of the ones that asked me, but I didn’t read him the write up face to face that day.” The inmate did not tell the investigators that he had filled out a paper showing how he pled, whether he had any comments or any witnesses for his hearing; the inmate had signed that paper. “It has the write up category he’s being charged, it has the opportunity for him to write down witnesses. Any kind of statement he wants to make.”

B. That the Appellant had “...falsely documented eleven (11) investigations from the dates of 11-2-22 until 11-10-22”.

- C. That the Appellant had "...falsely documented that you had spoken with all three (3) of these staff members".¹⁰
- D. That the Appellant had "...falsely documented that you spoke with Lieutenant Anderson."
- E. "On November 29, 2022, you admitted during an interview with Captain Bare and Lieutenant LaRue that you did not speak to any inmates or staff as you falsely documented, the detail of each investigation is listed below". There was no interview conducted on November 29, 2022 (Appellant's Exhibits 1, 2, 3, 4, Joint Exhibit 9). The letter continues to describe investigations pertaining to inmates: "A" through "K."

In the fourth (4th) interview (conducted 12-01-2022 by Captain Bare and Lt. LaRue) the inmates discussed were: MP, DJ, WB, ST, LF, BR, AR, BD, CW, ET, and JH. (Appellant's Exhibit 2, Joint Exhibit 9).

33. The letter advised the Appellant:

- A. Her acts were in violation of "Corrections Policy and Procedure 15.6 "Adjustment Procedures and Programs", Corrections Policy and Procedure 3.1 "Code of Ethics/Social Media Use", and KSP 03-01-01 "General Guidelines for KSP Employees";
- B. She was demoted from Correctional Captain at Kentucky State Penitentiary to Correctional Officer at Western Kentucky Correctional Complex, effective beginning of business December 13, 2022;
- C. Her monthly salary would be reduced from \$4,240.38 to \$3,533.66;
- D. The transfer to another facility was "...necessary for your protection as the false statements made about inmates that will be revealed in this report places a target on your (sp) and prevents you from any further involvement with these inmates..."; and,

¹⁰ Correctional Officers Carlton Worley, Caleb Alverio and Daniel Statum.

E. "A conflict between you and each inmate will also be entered to ensure that these inmates are not transferred to WKCC to further protect you."¹¹

34. The following Policies and Procedures were in full force and effect at all times relevant to the matters involved in this appeal:

- Kentucky Corrections Policy and Procedures, Policy Number 3.1, Code of Ethics/Social Media Use (Joint Exhibit 2);
- Kentucky Corrections Policy and Procedures, Policy Number 15.6, Adjustment Procedures and Programs (Joint Exhibit 3);
- Kentucky State Penitentiary, Policy Number KSP 03-01-01, General Guidelines for KSP Employees (Joint Exhibit 4).

35. Patricia Allen timely filed her appeal of the demotion and transfer with the Kentucky Personnel Board (Joint Exhibit 13).

CONCLUSIONS OF LAW

1. A classified employee with status shall not be dismissed, demoted, suspended without pay, or involuntarily transferred except for cause. KRS 18A.095(1). Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties. 101 KAR 1:345, Section 1. At the time of her involuntary demotion and transfer the Appellant, Patricia Allen, was a classified employee with status.

2. On December 12, 2022 (Joint Exhibit 1) Scott Jordan, Warden of Kentucky State Penitentiary, issued a letter to the Appellant, advising her that she was, by authority of KRS 18A.095, involuntarily demoted and transferred for cause from her position as Correctional Captain at the Kentucky State Penitentiary to the position of Correctional Officer at the Western Kentucky Correctional Complex, effective beginning of business December 13, 2022, for

¹¹ Warden Scott Jordan gave a clarification in his testimony regarding the entry of a "conflict" between Allen and the involved inmates: it was an "inmate conflict" which is a conflict an inmate may have with a staff member; Appellant is not prevented from serving in any institution other than KSP; the "inmate conflict" prohibits the involved inmates from having contact with Appellant should that inmate transfer to any facility where Appellant works. [14.02.25.826] (T: 0:16, 1:00, 1:40).

violation of 101 KAR 1:345, Section 1 (poor work performance) "...based on the review of reports submitted, by your own admissions..." and the specific reasons set out in the letter.

The letter also cited the Appellant's actions as violations of the following, which were in full force and effect at all times relevant herein:

- Kentucky Corrections Policy and Procedures, Policy Number 3.1, Code of Ethics/Social Media Use (Joint Exhibit 2);
- Kentucky Corrections Policy and Procedures, Policy Number 15.6, Adjustment Procedures and Programs (Joint Exhibit 3);
- Kentucky State Penitentiary, Policy Number KSP 03-01-01, General Guidelines for KSP Employees (Joint Exhibit 4).

3. The preponderance of evidence shows that the Appellant, Patricia Allen, by her actions, in the manner by which she conducted the investigation of the inmate incident (fight) of October 2, 2022, and falsely included in her report that she had spoken to four (4) inmates and three (3) staff members while conducting that investigation, and by taking no action to make corrections before such reports were submitted into KOMS and processed through the Adjustment Procedures and inmate hearings held for each of the involved inmates, violated applicable policies and procedures:

- A. Kentucky Corrections Policy and Procedures, Policy Number 3.1, Code of Ethics/Social Media Use, II, A., 5. by having provided false information on the investigative report she entered into the KOMS system, thus constituting "...a violation of the standards of ethical conduct.;"
- B. Kentucky Corrections Policy and Procedures, Policy Number 15.6, Adjustment Procedures and Programs, II - failure to fairly process alleged violations of rules and regulations by certain inmates involved in the October 2, 2022 fight, thereby resulting in a failure to "fully" protect an inmate's due process rights; and II. C, Adjustment Procedures, 4. Investigation, b. Investigator's Review, (2)(b): "Interview witnesses...and record a brief statement of what the witness reports." Appellant failed to meet with the inmates to conduct interviews and thereafter failed to report she did not meet

each in person to conduct an interview; she falsely reported she “spoke” with four (4) of the inmates and that she “spoke” with three (3) of the staff members. An “interview” is commonly defined as: “A meeting at which information is obtained from a person.” *Webster’s Ninth New Collegiate Dictionary*, 1990, p 633; “1. A formal meeting in person, especially one arranged for the assessment of the qualifications of an applicant. 2. a. A conversation, such as one conducted by a reporter, in which facts or statements are elicited from another.” *The American Heritage Dictionary of the English Language*, Fifth Edition; “1 transitive : to question or talk with (someone) to get information : to conduct an interview with (someone) *Merriam-Webster* online dictionary.

C. Kentucky State Penitentiary, Policy Number KSP 03-01-01, General Guidelines for KSP Employees, II. Procedure, L. 3. q:

Engaging in any activity that is deemed detrimental to the proper discharge of your duties as an employee of Corrections and KSP or that conflict with the attainment of the goals or mission of Corrections and KSP.

The misconduct set out in the above Findings of Fact were properly deemed by Appellee to be detrimental to the proper discharge of the duties of a security Captain at KSP in the Department of Corrections.

4. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, has proven by a preponderance of the evidence (KRS 13B.090(7)) that there was just cause for the involuntary demotion/transfer of the Appellant, Patricia Allen, and that such penalty was neither excessive nor erroneous.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **PATRICIA ALLEN V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL No. 2023-007)** 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 fifteen (15) 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).

The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov

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.

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

ISSUED at the direction of the Hearing Officer Roland Merkel this 28th day of April, 2025.

KENTUCKY PERSONNEL BOARD

GORDON ROWE
EXECUTIVE DIRECTOR

A copy hereof this 28th day of April, 2025 was emailed and mailed to:

Hon. D. Wes Sullenger
Hon. Jesse L. Robbins
Hon. Rosemary Holbrook (Personnel Cabinet)