

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-100

MONIQUE ANTHONY

APPELLANT

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

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

APPELLEE

** ** *

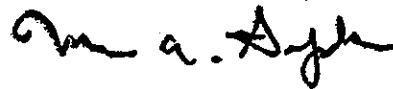
The Board at its regular April 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 26, 2015, and being duly advised,

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 21st day of April, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Stafford Easterling
Hon. Chip Hayward
Bobbie Underwood

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-100**

MONIQUE ANTHONY

APPELLANT

VS.

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

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

APPELLEE

** ** ** ** **

This matter came on for an evidentiary hearing on December 1, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Roland P. Merkel, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Monique Anthony, was present and was represented by the Hon. Chip Hayward. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Stafford Easterling. Present as Agency representative was Warden Ravonne Sims.

The issue in the case was whether there was just cause for the disciplinary action taken against the Appellant, that is, suspension from duty and pay for a period of three days, April 28, 29, and 30, 2013, from her position as a Correctional Sergeant in the Department of Corrections, Roederer Correctional Complex, and whether such penalty was excessive or erroneous. The burden was on the Appellee to prove its case by a preponderance of the evidence.

The rule separating witnesses was invoked and employed throughout the course of the proceedings.

Appellee proposed the parties stipulate to all facts pertaining to the events of the case and that the witnesses testify as to whether Appellant's behavior was a violation of policies. Appellant did not agree to such stipulation. The parties then waived presentation of opening statements.

BACKGROUND

1. The first witness for the Appellee was **Mark Rice**. Mr. Rice is employed as a Captain at the Roederer Correctional Complex (hereafter RCC).

2. In April 2012, Appellant came to RCC from the Kentucky State Reformatory as an officer. She transferred to the 8:00 a.m. to 4:00 p.m. shift. Thereafter, she was assigned to the 4:00 p.m. to 12 midnight shift. While Appellant was on the 8 to 4 shift, Captain Rice also transferred to that shift and became the Operations Captain. He was the one required to perform Anthony's 2012 Annual Employee Performance Evaluation.

3. Appellant had received a written reprimand on May 23, 2012, for misconduct. In performing the 2012 Annual Evaluation, Captain Rice noted there had been no mention of this written reprimand in either of her interim reviews. He made mention of the reprimand in the third interim review. On the Annual Evaluation he had given Appellant scores of "3s across the board," as she met expectations.

4. On February 3, 2013, he met with Appellant to review her third interim evaluation and explain his scoring on her Annual Evaluation. Appellant would not stay in the room. She looked at the scores and told him she would not sign the evaluation. She wanted to take the matter straight to the Warden. She did not give any reason why she was entitled to higher scores. She did say that in the past she had always been awarded scores in the "Exceeds" category. She started the meeting in a normal tone of voice but as they progressed, Appellant began to control the meeting. Her voice got loud, she refused to listen to Capt. Rice and walked out of the room. She was agitated to the point that it drew attention from the Captain's Office next door. Appellant was argumentative and told Captain Rice he needed to get his act together.

5. At the conclusion of that meeting, Capt. Hunt wanted to review a memorandum with Sgt. Anthony. While Capt. Hunt read the memo, Appellant paced back and forth, told him she was not illiterate, that she did not want to deal with it now, and that he could not make her sign that document.

6. Rice knew Appellant had been reinstated to Sergeant after having won a Personnel Board appeal against the Kentucky State Reformatory (KSR). That event however, had no bearing on his evaluation and he had no knowledge of the underlying facts. Appellant's behavior during that meeting was inappropriate as she failed to show respect for a supervisor and was unprofessional.

7. Capt. Rice and Appellant met again on February 8, 2013 to review the third interim evaluation. This meeting was held in the presence of CUA Becky Barker, Deborah Payne, and Lt. Christina Daugherty. Sgt. Anthony conducted herself in the same demeanor as the previous meeting. She was loud and refused to let Capt. Rice finish what he was saying. He gave her a copy of the Personnel Regulations that explained the evaluation procedure. She told Capt. Rice he needed to get himself together. She also cut off any discussion by Lt. Daugherty

and again refused to sign the evaluation. Appellant was insubordinate and failed to show respect to the higher ranking staff. Appellant herself had been a supervisor at KSR and should have known the evaluation procedure.

8. On February 17, 2013, Captain Rice had another meeting with the Appellant, this time in the presence of Senior Capt. Brierly and Lt. Daugherty. The Senior Capt. explained the procedure for completing the interim evaluation and asked Appellant to sign the document. He explained an Annual Evaluation would then occur in five days. He also explained the reconsideration and appeals process.

9. When Appellant made certain statements directed to Lt. Daugherty, the Senior Capt. directed her to keep on track with the subject matter at hand. Lt. Daugherty had offered Appellant a seat off the arm of the couch. Appellant replied, "What difference does it matter to you where I sit?" Appellant was at times loud and argumentative with Lt. Daugherty. She never offered examples why she deserved higher scores. The meeting ended after Appellant signed the interim evaluation.

10. On February 19, 2013, Capt. Rice and Lt. Daugherty met again with Sgt. Anthony in a reconsideration meeting. They addressed her job tasks. Appellant did not give any examples why she should receive higher evaluation scores.

11. The next witness was **Chris Hunt**. Mr. Hunt has been a Captain at RCC for the past nineteen years. Appellant's first-line supervisor on the 4 – 12 shift had been Lt. Daugherty. Capt. Hunt was Appellant's second-line supervisor over a period of five to seven months.

12. The Senior Capt. had directed Capt. Hunt to read a memorandum to all supervisors on the 4-12 shift. That memorandum dealt with guidelines for supervisors in evaluating employees. He read the memo to each of his supervisors. When he started to read the memo to Sgt. Anthony, in the presence of Lt. Herrell, Appellant left the office and went out of view into the clerk's office. Capt. Hunt stopped reading. When Appellant reentered the room, Hunt began to read the memo again. Sgt. Anthony left the room two or three times. She also turned her back on him. This was not appropriate.

13. Sgt. Anthony told Capt. Hunt she knew how to read and she could read the memo herself. He told her he understood that, but it was the order of the Senior Capt. Sgt. Anthony had spoken to Capt. Hunt in an elevated tone during that meeting and was argumentative. She refused to sign the memo, which had been signed by other supervisors. She stated he could not make her sign what she had not read. There was a separate copy of the memo left on the table for her to read. Capt. Hunt wrote down that Anthony refused to sign the document. He believed her behavior was disrespectful, inappropriate, unprofessional, and insubordinate. He has observed that anytime Appellant is told something she does not agree with, she becomes loud and argumentative.

14. **Janet Herrell**, who for the past twelve years has been a Lieutenant at RCC, was the next witness. On one occasion she walked into the Captain's office to conduct some of her own duties while others had been conducting the Appellant's evaluation. Capt. Rice had Appellant's evaluation folder spread out on the clerk's desk and was talking to Appellant. Appellant said she did not like the score and would not sign the evaluation. Appellant turned around, went past Lt. Herrell and entered the Captain's office.

15. Capt. Hunt was in the office and told Appellant he had something he had to read to her. He started reading a memorandum. Appellant seemed to get upset. She turned her back on him and walked away. Appellant then walked back and told the Captain, "You don't have to read that to me. I can read perfectly well." Capt. Hunt said he had to read this memo to all of his supervisors and that she was required to then sign it.

16. Capt. Rice had at one point started to explain the rationale of Appellant's evaluation. Appellant walked out. Capt. Rice signed the bottom of the evaluation and asked Lt. Herrell to sign as a witness. Lt. Herrell observed the Appellant to have interrupted Capt. Rice a couple of times in the two to three minutes the Lt. was present.

17. **Deborah Payne**, who had been employed for twenty years with the Department of Corrections, was the next witness. She is a Captain and currently employed at RCC. Captain Payne had been working on the 8 to 4 shift when Appellant first came to that shift. She was the Appellant's third-line supervisor.

18. On one occasion, about February 8, 2013, she had gone to the Captain's office to do her own work. She was present for about half an hour and had observed Capt. Rice and Lt. Daugherty trying to get Appellant to sign that she was getting a copy of her evaluation. Appellant said she did not agree with any of the evaluation. She was advised that her signature was not an agreement to the evaluation, but acknowledgement of receipt of that document. Appellant got louder and louder, talked over the individuals and interrupted them. Each time Capt. Rice tried to explain something Appellant interrupted in an "ugly tone." She would not give them a chance to explain anything. She was angry and very disrespectful to the supervisors. It was not professional.

19. The next witness was **Rebecca Barker**. Since June of 2012, Ms. Barker has been a Unit Administrator at RCC. Appellant had, for awhile, been on the same shift as Barker in that unit.

20. In early February 2013 Barker had been asked by Capt. Rice to be a witness as he performed an evaluation with the Appellant. Sgt. Anthony disagreed with several points of the evaluation. They attempted to have a dialog with her. Rice explained the appeal process to the Appellant. "She seemed pretty angry, aggressive." She observed Rice kept an even tone throughout. Appellant was loud, argumentative, unprofessional, angry, disrespectful, and aggressive.

21. Barker was also present at a meeting when Lt. Daugherty tried to discuss issues of time and attendance with Appellant. Appellant disagreed with most of the points brought up by the Lieutenant. Again, Appellant appeared angry, aggressive, stood the entire time of the meeting, was disrespectful and unprofessional.

22. During both incidents, Barker believed Appellant's behavior was insubordinate. There is a way to have dialog and discourse when one disagrees, without being aggressive about it.

23. The next witness was **Christina Daugherty**. Ms. Daugherty has been employed at RCC for about four years. She is currently an officer. In 2013 she was Appellant's first-line supervisor. Appellant was a supervisor in Unit 1.

24. At the end of 2013, Daugherty, who was a Lieutenant, was to become Appellant's supervisor. In view of that upcoming position, Daugherty was allowed to sit in on the 2012 Annual Evaluation meeting Appellant had with Capt. Rice. This was the second meeting Capt. Rice had with Appellant. Appellant refused to sign the evaluation, was very hostile, and tried to talk over everyone.

25. Appellant said she would not sign it because she never previously received anything less than a "Highly Effective" score on her evaluations. It was explained to her she could check off the box that she did not agree with the evaluation, but would then have to sign it to acknowledge the evaluation took place. Appellant refused. She gave no reasons why she deserved a higher score.

26. Appellant left before the meeting ended. Capt. Rice had been speaking when Appellant left the room. Appellant was very loud, spoke over everyone, and was very defensive. She kept saying we needed to "get our stuff together" and that Capt. Rice did not know what he was doing. This was not appropriate nor was it professional. She did not let anyone speak and explain things. She was insubordinate. Daugherty signed the document as a witness that Appellant had refused to sign.

27. Daugherty was present at the February 13, 2013 meeting Appellant had with Capt. Rice and Senior Capt. Brierly. The evaluation by that time had already been reviewed by the Warden who supported the original score. The Appellant had been brought in to the Sr. Captain's office to explain to her the status of the procedure and to attempt to have Appellant sign the document.

28. Daugherty asked her to have a seat, but Appellant refused. Capt. Brierly asked her to have a seat, but she refused. Appellant stated she could not believe this and called everyone "outrageous."

29. Appellant's behavior at this meeting was disrespectful, unprofessional, and insubordinate. She had been excessively loud and argumentative.

30. Capt. Hunt had previously read a memorandum to Daugherty regarding guidelines for supervisors conducting evaluations. Daugherty was requested to and did sign that document acknowledging Capt. Hunt had read the memo to her.

31. Hunt then attempted to read the memo in a subsequent meeting with the Appellant. That meeting did not go well and Appellant would not sign the document.

32. During one of the interim evaluation meetings Daugherty had with Appellant, they discussed a memorandum Appellant had refused to sign regarding the operation of the unit. Daugherty discussed the guidelines for running the unit. Appellant told her she was going to run the unit the way she wanted to and no Captain or Unit Administrator was going to tell her how to do it. She had refused to give the inmates written warnings for certain infractions of rules. She displayed a pattern of refusing orders.

33. Daugherty had previously conducted a counseling session with Appellant about her time and attendance. Appellant argued and said she had been at a Personnel Board hearing. Daugherty asked her to bring proof so the record could be corrected. Appellant never brought the information. Daugherty recalled that during that meeting, Appellant told her, "... to get myself together before I come at her with that." Appellant asked for copies of everything she had. Daugherty gave her the copies and asked her to sign for that. After Appellant received the copies she walked out of the room without signing.

34. In February of 2013, Daugherty had been a Lieutenant. She had been demoted to officer for failure to call a response team to respond to an incident. She briefly described that incident.

35. The parties agreed and stipulated that the Hearing Officer take judicial notice of the fact that an employee's evaluations constitute one of the "five factors" required to be given appropriate consideration according to statute and regulation, during a promotional process.

36. **Ravonne Sims**, who since August of 2013 has been Warden at RCC, was the next witness. Prior to that, and since February 1, 2011, she had been Deputy Warden at KSR.

37. Warden Sims had reviewed the disciplinary letter issued to Appellant by Warden Granado, and adopted the discipline that had been issued. Based on that letter, and having heard today's previous testimony, Warden Sims does not believe Appellant acted properly during the evaluation process. There is a civil way and process to handle such matters. It appeared Appellant was unprofessional and discipline was appropriate. A three-day suspension was proper due to Appellant's previous written reprimand.

38. Refusing to sign an evaluation alone, would not warrant discipline. The discipline was employed because of consecutive days of unprofessional conduct and insubordination. That same behavior had been exhibited by Appellant in the incident involving her refusal to sign the memorandum of guidelines. The issue is not whether or not she signed, but her behavior.

39. She identified Appellee's Exhibit 1 as the April 15, 2013 intent to suspend letter issued to Appellant by Martin D. Granado, Warden. Attachment I to that letter shows Appellant refused to sign for the document, but checked off that she chose to make a written response. She had also written that she would like an interview with the Warden.

40. She identified Appellee's Exhibit 2 as the April 26, 2013 letter from Warden Granado that placed Appellant on a three-day suspension. From the letter it appears Warden Granado gave consideration to Appellant's written response to the intent to suspend, which had been submitted by Appellant on or about April 16, 2013.

41. She identified Appellee's Exhibit 3 as RCCs Policies and Procedures, Policy No. RCC 03-01-01. This policy was in full force and effect during the time of the alleged incidents. The suspension letter cited Appellant's behavior as violating Section N, Employee Conduct, 4., c., which states:

Conducting a heated discussion or argument with another staff member or civilian in front of staff or inmates. These matters shall be dealt with privately and in a professional manner.

Warden Sims agreed that although Appellant had been cited with violation of another section of this policy, Appellant's behavior did not violate Section N, Employee Conduct, 4. r.

42. In issuing disciplinary action, an employee's previous disciplinary history is reviewed. Appellant had a prior written reprimand in 2012 for similar behavior. The next step in the progressive discipline process was issuance of a three-day suspension. The current discipline was appropriate.

43. The first and sole witness for the Appellant was the Appellant, **Monique Anthony**. Ms. Anthony is currently employed at Kosair Children's Hospital. She had been employed by the Department of Corrections at KSR for about eight years when in 2005 she transferred to RCC. At the time of her transfer she was a Sergeant.

44. She had progressed up through the ranks. During her employment she had been sent to leadership classes, and meetings, and taught those below her. She asked why they would select her to go to such meetings if she was so aggressive?

45. Since 2005 her Annual Evaluations had all been scored at either "Highly Effective" or "Outstanding." It was very important to her to have good evaluations to allow her to progress through the ranks.

46. At one point Sgt. Anthony had been demoted. She appealed that demotion and won her appeal before the Kentucky Personnel Board. She was then restored to the rank of Sergeant.

47. Capt. Rice had never been her supervisor so long as Appellant had been a supervisor.

48. While at KSR, Anthony had never experienced any disciplinary actions. She had never been aggressive or insubordinate with anyone nor did she yell or curse people out.

49. In her role as a Sergeant, she conducted several evaluations of subordinates, as well as having instituted disciplinary action. She was trained in conducting evaluations. She testified that had she signed her Annual Employee Performance Evaluation it would have skipped the Senior Captain and the Deputy Warden, as well as the Warden, "And have gone straight to Frankfort."

50. After her review at the hearing of the last page of a sample annual evaluation form, she agreed that form included: 1) a box to check off that the employee agrees with the evaluation; 2) a box to check off that the employee disagrees with the evaluation, but accepts it; 3) a box to designate the employee disagrees with the evaluation and requests reconsideration within five days of a certain date signed below. Appellant testified she did not sign the evaluation as she wanted to take it straight to Frankfort. She was not asked to check any boxes on the evaluation. She was just asked to sign the form saying whether she agreed or disagreed with it.

51. She wanted this matter to follow through the chain of command so that she could tell her side of the story. They sent it to the Senior Captain and then it came straight to Frankfort. After the second-line review, however, nothing changed. She wanted it to get to the Warden so she could speak to him about this matter. "Clearly they were already against me." She did not want to debate it back and forth.

52. During her meeting with Capt. Rice in February, Capt. Hunt "just jumped up out of the clear blue sky and he just started reading a piece of paper." Appellant did not know who he had been talking to. They all just "sort of ganged up on me." Capt. Rice was conducting the evaluation; Lt. Daugherty wanted to talk to her about time and attendance; and Capt. Hunt wanted to talk to her about a memorandum.

53. "Once they are out to get somebody they'll keep going until they get 'em. I . . . experienced a lot of that." "As soon as I started my case in Frankfort everyone was against me. . . it was a whole 360° change." She stated that once she won her appeal "they" did everything they could to see she would not get promoted again.

54. Appellant felt she had conducted herself throughout with a great deal of dignity. She did not yell, curse anybody, or jump in anybody's face. She was not insubordinate.

55. She stated she had never been counseled about being loud or obnoxious. Upon a question from the Hearing Officer about her May 23, 2012 written reprimand, Appellant explained she had a meeting at the Payroll Department to correct a situation with her check. She had gotten written up because the Payroll Clerk did not like her tone of voice. Appellant had submitted a two-page response to the written reprimand.

56. Counsel for Appellee requested admission of the Findings of Fact and Conclusions of Law from the previous Personnel Board appeal of the Appellant, for purposes of rebuttal of Appellant's current testimony. That request was taken under advisement by the Hearing Officer and specifically addressed in his December 2, 2014 Interim Order¹.

57. Upon her review of Appellee's Exhibit 2, the last paragraph on p. 1, Appellant denied such allegation. She testified that while she was talking to Capt. Rice about her evaluation, Capt. Hunt began reading a memorandum. He asked her to sign the paper. She told him she wanted to take it to the Warden because she did not agree with it. At first, she did not know who Capt. Hunt had been talking to. She said to just give her the paper, she would read it and come back and sign it. She believed everyone there had been ganging up on her.

58. On February 2, 2013, Lt. Daugherty had asked Appellant to sign the evaluation. Appellant denied having told the Lieutenant to get it together or that no Captain could tell her what to do. Appellant refused to sign on that occasion.

59. The Hearing Officer requested receipt of a copy of Appellant's 2012 Annual Employee Evaluation to be submitted and admitted into the record as Hearing Officer Exhibit 1, including all attached interim evaluations. Appellant objected to the document that had been tendered by Appellee during the hearing. The Hearing Officer took the matter under advisement and more specifically addressed the issue in his December 2, 2014 Interim Order².

60. Ms. Anthony identified Appellee's Exhibit 4 as the May 23, 2012 written reprimand she had received for misconduct. She denied the allegations contained in that document. With reference to the May 4, 2012 meeting referenced therein, Appellant stated she was in that meeting for about ten seconds and that "None of this ever occurred. . . . It's ridiculous." She identified Appellee's Exhibit 5 as the May 23, 2012 written response she submitted to the written reprimand.

¹ The request was sustained per the 12-29-2014 Interim Order.

² Such document was admitted per the 12-29-2104 Interim Order.

61. Appellant stated that during all the meetings in February 2013 she had conducted herself appropriately. She knew "they" were after her and she just kept her cool. They had tried to gang up on her so that they could get her fired. Since they could not get her fired, they accused her of being loud. No one had ever told her to calm down or that she needed to tone it down. She just stated her point of view in her normal tone of voice. No one ever told her that she was unruly.

62. The Hearing Officer inquired why, if everyone in the Department was out to get her, did Appellant seek out the Warden to have a meeting with him? Appellant testified it was because he was all she had left. She thought he would at least listen. However, he rejected her as well. He told her that if she wanted to experience promotions, to let it go. Her evaluation did not proceed up the chain like it was supposed to.

63. Appellant's Exhibit 1, an Evaluation Agreement dated February 8, 2013, was admitted into evidence.

FINDINGS OF FACT

1. The Appellant, Monique Anthony, was a classified employee with status. She had been employed as a Sergeant by the Justice and Public Safety Cabinet, Department of Corrections, stationed at the Kentucky State Reformatory (KSR) when in April 2012 she was transferred to the Roederer Correctional Complex (RCC).

2. On May 23, 2012, Appellant received a written reprimand for misconduct (Appellee's Exhibit 4). She filed a written response that same day (Appellee's Exhibit 5).

3. Sgt. Anthony received her 2012 first interim review on June 29, 2012; and her second interim review on September 14, 2012. She had signed acknowledgement of the first and second interim reviews. (Hearing Officer's Exhibit 1.) Such review documents state clearly above the employee's signature line:

This is to certify that I have met with my evaluator to discuss my job performance during the first review period, as outlined in my performance plan. I understand that by signing below does not indicate my agreement with the above.

4. As a supervisor, Sgt. Anthony had previously conducted interim and annual performance evaluations for employees she supervised.

5. Captain Mark Rice met with Appellant to conduct her third interim review and annual performance evaluation for 2012. Sgt. Anthony told him she would not sign the evaluation. As the meeting progressed Appellant's voice grew louder, she exhibited agitation,

was argumentative, and told Capt. Rice he needed to get his act together. She then left that meeting.

6. As she was leaving, Capt. Hunt told her he received a memorandum he had been directed to read to all supervisors, including Appellant. As he read the memo aloud, Appellant paced back and forth and told him she was not illiterate. She turned her back on him and walked away from the Captain. She left the room a few times. When Capt. Hunt asked her to sign acknowledgement that the memo had been read to her, she refused. She then walked out of the meeting.

7. On February 8, 2013, Capt. Rice, Lt. Christina Daugherty, CUA Becky Barker, and Capt. Deborah Payne met with Appellant to review the third interim review. Appellant's tone of voice at the meeting was loud. She refused to let Capt. Rice finish his sentences. She cut off discussion by Lt. Daugherty. She failed to show respect for higher ranking staff.

8. On February 11, 2013, Capt. Rice, Lt. Daugherty, and Senior Capt. Brierly met with Appellant to review the third interim review. Brierly explained the procedure for completing the interim review, and that once Appellant signed that document, an annual evaluation could be conducted within five days. He also explained the evaluation reconsideration and appeal process.

9. During this meeting Appellant was loud and argumentative, particularly with Lt. Daugherty. Appellant did sign the interim evaluation and checked the box that she had attached additional pertinent comments (Hearing Officer's Exhibit 1).

10. On February 17, 2013, Appellant met with Capt. Rice to review her 2012 Annual Employee Performance Evaluation. She had been given a score of 280 which was in the "Good" category. During that meeting certain changes were made to raise her score to 295, also in the "Good" category. She indicated on the form she disagreed with the evaluation and requested reconsideration. She then signed the document. (Hearing Officer's Exhibit 1.)

11. Capt. Rice and Lt. Daugherty met with Appellant about February 19, 2013, after the reconsideration had been conducted. There was no change in the evaluation. Sgt. Anthony disagreed with the results and requested reconsideration by the next-line supervisor. Capt. Rice had attached an explanatory memorandum of the same date (Hearing Officer's Exhibit 1).

12. The annual evaluation was reconsidered by Senior Capt. Brierly. He indicated on March 1, 2013, that no changes would be made. He attached an explanatory memorandum dated February 28, 2013. (Hearing Officer's Exhibit 1.)

13. The parties stipulated that an employee's evaluation is one of the "five factors" required to be given appropriate consideration, according to statute and regulation, during a promotional process.

14. Appellant displayed unprofessional and insubordinate conduct to employees of superior rank during the 2012 third interim review process and Annual Employee Performance Evaluation process. By such behavior she violated RCC Policies and Procedures, Policy No. RCC 03-01-01, Section N, Employee Conduct, 4.c., which policy was in full force and effect during that time. (Appellee's Exhibit 3.)

15. On May 23, 2012, Appellant had been issued a written reprimand for past similar behavior. (Appellee's Exhibit 4.)

16. The next step in the progressive disciplinary procedure was issuance of a suspension.

17. On April 15, 2013, Warden Martin D. Granado issued his letter notifying Appellant of his intent to suspend her for three days. Appellant refused to sign for the letter, but indicated she chose to make a written response and requested an interview with the Warden. (Appellee's Exhibit 1.)

18. After his review of Appellant's written response, Warden Granado issued his April 26, 2013 letter placing Appellant on a three-day suspension (Appellee's Exhibit 2).

19. Appellant timely filed her appeal of this disciplinary action, with the Kentucky Personnel Board.

CONCLUSIONS OF LAW

1. A classified employee with status shall not be suspended 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. A suspension shall not exceed thirty days. 101 KAR 1:345, Section 4(1).

2. The Appellant, Monique Anthony, was a classified employee with status. At the time of the alleged incidents, she had been employed as a Sergeant by the Justice and Public Safety Cabinet, Department of Corrections, Roederer Correctional Complex.

3. As a result of incidents that occurred on February 3, 8, 17 and 19, 2013, while Appellant met with various superiors to review her third interim review meeting documentation and her 2012 Annual Employee Performance Evaluation, results of the initial reconsideration, and to review the Senior Captain's directive, Appellant was suspended from duty and pay for a period of three days, April 28, 29 and 30, 2013. She was alleged to have violated Roederer Correctional Complex, Policies and Procedures, Policy Number RCC 03-01-01, N. Employee Conduct, 4. Prohibited Activities and Conduct: c., and r.

4. RCC 03-01-01, N. 4. c. prohibits employees from:

Conducting a heated discussion or argument with another staff member or civilian in front of staff or inmates. These matters shall be dealt with privately and in a professional manner.

5. RCC 03-01-01, N. 4. r. prohibits employees from defacing log book entries. There was no evidence of any incident pertaining to log book entries. Appellee's witness, Warden Ravonne Sims, conceded Appellant had not violated this section of the General Guidelines for Employees.

6. The evidence from several witnesses personally involved in the incidents is overwhelming. Appellant, in those meetings with her supervisors and employees of superior rank, raised her voice, had been unreasonably argumentative and insulting, displayed a lack of respect for superiors, and displayed unprofessional conduct. Despite being a supervisor herself, she displayed a lack of understanding of the employee evaluation process. The descriptions given by the witnesses included Appellant having exhibited: agitation; refusal to listen or allow others to complete sentences; walking out of a room prior to conclusion of meetings; insubordination; angry and aggressive tone.

7. Appellant had prior disciplinary action on May 23, 2012, when she had been issued a written reprimand "for the same type of behavior." (Appellee's Exhibit 2; Appellee's Exhibit 4.)

8. Appellee has shown by a preponderance of the evidence that Appellant, by her actions, violated RCC 03-01-01, N., 4. c., thereby justifying institution of disciplinary action.

9. Appellee has also shown by a preponderance of the evidence, that in view of Appellant's prior disciplinary history, and the progressive nature of discipline employed by the Department, issuance of a three-day suspension was neither excessive nor erroneous.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **MONIQUE ANTHONY VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2013-100)** 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 Roland P. Merkel** this 26th day of February, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof mailed this date to:

Hon. Stafford Easterling
Hon. Chip Hayward