

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-171

RICARDO ARANDA

APPELLANT

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

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

APPELLEE

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The Board at its regular June 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated April 29, 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 24<sup>th</sup> day of June, 2015.

KENTUCKY PERSONNEL BOARD

  
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MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Edward Baylous  
Ricardo Aranda  
Bobbie Underwood

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-171**

**RICARDO ARANDA**

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**VS.**

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

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

**APPELLEE**

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

The Appellant, Ricardo Aranda, was present and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and was represented by the Hon. Edward Baylous.

The issue at the evidentiary hearing was the Appellant's claim that he was discriminated against because of his military status when he was reverted from the position of Correctional Lieutenant to that of Correctional Sergeant with a resultant loss of pay. The burden of proof was upon the Appellant to demonstrate that he had been discriminated against. The burden of proof was to be by a preponderance of the evidence.

**BACKGROUND**

1. The Appellant, Ricardo Aranda, was reverted from his position as Correctional Lieutenant at Northpoint Training Center to Correctional Sergeant with a resultant loss of pay on July 1, 2014, for failing to satisfactorily complete his promotional probationary period.

2. The Appellant timely filed his appeal with the Personnel Board on July 22, 2014, alleging that he had been discriminated against when he was reverted from a Correctional Lieutenant to a Correctional Sergeant as a result of his military status.

3. The first to testify was Appellant, **Ricardo Aranda**. Appellant's Exhibit 1 was introduced through the witness and is a letter explaining the Appellant's claim. It is self-explanatory, but in essence, Mr. Aranda complains that on May 21, 2014, Deputy Warden Rick Rowlette pulled him aside and suggested that because his presence at work was limited due to his military leave he should consider taking a reversion back to Sergeant where there was less responsibility. He further suggested that Mr. Aranda should consider choosing between the National Guard and the Department of Corrections as a career. Mr. Aranda told Captain Gilliland about this conversation. The following morning Mr. Rowlette indicated to Mr. Aranda that the conversation they had was supposed to be strictly between the two of them.

4. Mr. Aranda testified that just prior to his reversion he had gone on a fifteen-day training in late May to early June, 2014, was back at work for a few days, and then left for an additional fifteen-day training which ended June 30, 2014. When he came back to work on July 1, 2014, he had been reverted.

5. Appellant's Exhibit 2 was introduced into the record and is a copy of Mr. Aranda's first Interim Review for 2014. Mr. Aranda noted that although it was signed off on by Stefany Hughes, his first-line supervisor, the information contained on his review was actually based on information received from Mr. Rowlette because the combination of Ms. Hughes' maternity leave and Mr. Aranda's military leave only allowed him to work under Ms. Hughes for a few days in early 2014. The Interim evaluation indicates that the Appellant failed to ensure that sanitation standards were consistently maintained and that he needed to improve his communication and accept more responsibility for his new role as Lieutenant of the Special Management Unit (SMU).

6. Appellant's Exhibits 3, 4, 5 and 6 were introduced into the record through the witness. Mr. Aranda pointed out that through these meetings the only time anything was mentioned about his area of responsibility in the SMU is found in Appellant's Exhibit 6 regarding logs not being completed. Appellant's Exhibit 7 was introduced into the record through the witness and sets forth the periods Mr. Aranda was required to be away from work as a result of his military training.

7. Mr. Aranda explained that in the SMU there was not much you could do to inmates to get their attention. Keeping the unit clean and preventing the prisoners from putting their mattresses on the floor of their cells was constantly at issue. He noted that the only way you can get the attention of an SMU prisoner is to either spray them or taser them and the only way that can be done is by going up the chain of command.

8. The Appellant acknowledged that Deputy Warden Rowlette would occasionally bring up problems with sanitation, but he also noted that occasionally he would tell him that things look good. As stated previously, maintenance in the SMU was an ongoing issue. Mr. Aranda also stated that Mr. Rowlette never told him his new position was in jeopardy.

9. On cross-examination, Appellee's Exhibit 1 was introduced into the record. This demonstrates that on March 11, 2014, the Appellant was put on time and attendance restriction, which required him to provide a medical statement certifying his inability to perform his duties in the future. The Appellant acknowledged that this was a job performance issue.

10. Appellee's Exhibit 2 was introduced into the record and outlines the Appellant's responsibilities as the SMU Shift Supervisor. The same also requires the Appellant to ensure that all rules, regulations and policies are enforced, including time and attendance. The Appellant acknowledged that having a supervisor put on time and attendance is not a good sign of leadership.

11. Appellee's Exhibit 3 was introduced into the record and demonstrates that on May 1, 2014, the Appellant violated his time and attendance requirements. The Appellant testified that his mother-in-law had been taken to the hospital and was unresponsive. He claimed that he attempted to call NTC as early as 5:00 a.m. However, he acknowledged that he never did provide documentation as required under his time and attendance.

12. Appellee's Exhibit 4 was introduced into the record and is a copy of the Appellant's reversion letter. The Appellant testified that Warden Bottom, the Appointing Authority for NTC, hand-delivered the letter to him on July 1, 2014. The Appellant acknowledged he had no information or proof that Warden Bottom had any prejudice against any employee at NTC who served in the military. The Appellant also testified that he understood he was required to perform all the duties of his job and that while he was on probation he was being scrutinized. He also agreed there has to be a sense of urgency regarding prisoner discipline and actions especially when dealing with SMU inmates.

13. A review of Appellant's Exhibit 7 demonstrated that the Appellant's military service requirements pre-dated his promotion to Lieutenant which occurred on January 16, 2014. The Appellant admitted that his military leave and/or status did not hinder his ability to advance in his career with the Department of Corrections. The Appellant also admitted he had no proof anyone said anything to Warden Bottom which might have improperly influenced his decision to revert him. He also admitted that his being placed on time and attendance could be a good reason for Warden Bottom to revert him.

14. Appellee's Exhibit 5 was introduced into the record. This e-mail communication reveals that on this particular occasion, the Appellant did not complete his duties as requested and failed to carry out the order in a timely manner. The Appellant admitted that it was a performance problem that was brought to his attention.

15. The next to testify was **Senior Captain Bridget Gilliland**. Captain Gilliland testified that on or about May 21, 2014, the Appellant came to her regarding the comments Deputy Warden Rowlette made concerning the effect his military leave had on his being able to perform his duties as Lieutenant of the SMU. Captain Gilliland could not remember the exact words, but agreed that the gist was essentially as stated on Appellant's Exhibit 1. Captain Gilliland testified that Deputy Warden Rowlette stopped her and asked her into his office and confirmed what the Appellant had told her by telling her he thought the Appellant might be spending too much time with the military and that if he could not do his job he should consider stepping down. Captain Gilliland later told Deputy Warden Prestigiacomo what the Appellant had told her and that Deputy Warden Rowlette had confirmed the same in a subsequent conversation. According to Captain Gilliland, she did not prepare an Occurrence Report as a result of this conversation.

16. The next to testify was **Warden Don Bottom**. Warden Bottom reviewed Appellee's Exhibit 4. He testified he prepared the document and as the Appointing Authority at NTC, it was his decision to revert the Appellant. Warden Bottom testified that this decision was based upon the information contained in the memorandum entered into the record and marked as Appellee's Exhibit 6.

17. Warden Bottom stated that adhering to the time and attendance policy at NTC was very important and that staffing the NTC was critical. He further noted that as a supervisor, the Appellant sets an example for his staff. Warden Bottom testified that he tries to hold everyone strictly accountable, but especially supervisors so they do not set a bad example for their staff. He also testified that when a supervisor does not show up for work there is a smaller pool in which to draw from when attempting to cover his or her absence.

18. Warden Bottom testified that cell inspections, especially in SMU, are very important. He noted that these particular prisoners have already demonstrated they do not care about the rules. He noted that inmates can hide weapons very easily if inspections are not held as needed. He also testified that adhering to detention orders is critical because he only has 72 hours to review them and determine whether the order should continue. In addition, as it is a part of the accreditation process, failure to adhere to a detention order could adversely affect the facility. He also pointed out that the problems which were occurring in the SMU were taking place while the Appellant was present at work and not just while he was on military leave. Finally, Warden Bottom testified no one mentioned anything about the Appellant's military

leave to him and that he never considered that as a reason to terminate Appellant's probation and revert him to a Sergeant.

19. This matter is governed by KRS 18A.111(4) which states:

(4) An employee with status, who has been promoted, shall serve a promotional probationary period of six (6) months, except for those employees granted leave in excess of twenty (20) consecutive work days during this period. Such probationary periods shall be extended as prescribed in KRS 18A.005. During this period, he shall retain the rights and privileges granted by the provisions of this chapter to status employees.

20. 101 KAR 1:325, Section 2, as follows:

Section 2. Promotional Probationary Period.

(1) An employee who satisfactorily completes the promotional probationary period shall be granted status in the position to which he has been promoted. Unless an employee receives notice prior to the end of his promotional probationary period that he has failed to satisfactorily complete the promotional probationary period and that he is being reverted, the employee shall be deemed to have served satisfactorily and shall acquire status in the position to which he has been promoted.

(2) An employee who fails to satisfactorily complete a promotional probationary period shall be reverted to his former position or to a position in the same job classification as his former position. A written notification shall be sent to the employee to advise the employee of the effective date of reversion. A copy of the notice of reversion shall be forwarded to the Secretary of Personnel on the same date notice is delivered to the employee.

(3) The promotional probationary period shall be computed from the effective date of promotion to the corresponding date in the appropriate month following promotion, as required by KRS 18A.005(27), except as provided in KRS 18A.111.

(4) The promotional probationary period shall be the same length as the initial probationary period for each job classification.

21. The Hearing Officer has considered the entire administrative record, including the testimony and statements therein.

**FINDINGS OF FACT**

1. The Appellant, Ricardo Aranda, was promoted to Correctional Lieutenant at Northpoint Training Center (NTC) over the Special Management Unit (SMU) on or about January 16, 2014. On July 1, 2014, the Appellant was reverted to his former position of Correctional Sergeant and his salary was reduced from his current rate of \$2,724.22 per month to his prior salary of \$2,594.48 per month.

2. The Appellant, a classified employee with status, timely filed his appeal with the Personnel Board on July 22, 2014, claiming that he was discriminated against when he was reverted to his former position as a result of his status in the military.

3. The Appellant's first Interim Employment Evaluation for the year 2014 indicated he needed to show more initiative in keeping the sanitation up in the SMU, that he needed to improve his communication of policies to his subordinate staff, and that he needed to accept more responsibility for his new role as a Lieutenant in the SMU. It also demonstrated that the Appellant was placed on time and attendance on March 12, 2014. [See Appellant's Exhibit 2 and Appellee's Exhibit 1.]

4. The Appellant is an active member of the Army National Guard and, as a result, was required to be off work on occasion for training purposes. [See Appellant's Exhibit 7.]

5. While on time and attendance restrictions, the Appellant was not paid for an unauthorized absence on May 1, 2014, because he failed to produce a medical statement as required. [See Appellee's Exhibit 3.]

6. The Appellant failed to timely carryout a detention order on or about May 21, 2014. [See Appellee's Exhibit 6.]

7. The Appellant was an active member of the Army National Guard prior to his promotion to Lieutenant of SMU which also required him to take leave from work for purposes of training. [See Appellant's Exhibit 7.] The Appellant's status as an active member of the Army National Guard does not appear to have affected his ability to advance in his career with the Department of Corrections.

8. Prior to the subject reversion, Deputy Warden Rowlette initiated a conversation with the Appellant in which he suggested the Appellant might want to consider reverting back to his former position as sergeant in order to lessen his job responsibilities or that he might want to concentrate on either his military career or his DOC career. The Appellant went on to share this conversation with Sr. Captain Gilliland who was able to confirm it took place after speaking with Deputy Warden Rowlette. Sr. Captain Gilliland testified she passed this information along to Deputy Warden Prestigiacomo. Although indicative of Deputy Warden Rowlette's opinion on the matter, there is no evidence of record indicating that this conversation/information was ever forwarded to Warden Bottom or that Warden Bottom took the same into consideration when he chose to revert the Appellant.

9. The memo marked as Appellee's Exhibit 6 sets forth numerous instances where the Appellant failed to properly perform his duties as the Lieutenant of the SMU at NTC. The Appellant did not provide any evidence to rebut the same and the same does not indicate that his military status negatively affected his performance as the Lieutenant of the SMU at NTC.

10. The testimony of Warden Don Bottom provides that it is critical that NTC be fully staffed and that when a supervisor misses work there is a smaller pool in which to draw from in order to cover such absence. Further, that having a supervisor on time and attendance restrictions is not indicative of effective leadership and does not set a good example for subordinate staff. Warden Bottom's testimony also demonstrates that cell inspections are critical, especially in the SMU where the inmates have already demonstrated their indifference to the rule, and that keeping up with the inventory and the shadow board is likewise very important. Finally, detention orders must be adhered to in a timely manner and that the failure to do so could adversely affect the NTC's accreditation. Finally, Warden Bottom noted that the problems with the Appellant's job performance during his probationary period, as set forth on the record and in Appellee's Exhibit 6, occurred while the Appellant was present at work and not while he was on military leave. It is also noted that the Appellant's military status did not negatively affect his career mobility and that he was promoted to Lieutenant while he actively serving for the Army National Guard. The preponderance of the evidence demonstrates that the reasons given for the Appellant's reversion during his promotional period were not pre-textual and were based upon the Appellant's actual inability to consistently perform his job duties properly.

### **CONCLUSION OF LAW**

The Appellant has failed to offer any evidence that his military status was the basis for his reversion and has failed to demonstrate by a preponderance of the evidence that he was discriminated against due to the same when he was reverted to his previous position of Correctional Sergeant.



**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **RICARDO ARANDA VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2014-171)** 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 Geoffrey B. Greenawalt** this 29<sup>th</sup> day of April, 2015.

**KENTUCKY PERSONNEL BOARD**

  
**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Edward Baylous  
Ricardo Aranda