

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-238**

ANTOINE BLAND

APPELLANT

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

**JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF JUVENILE JUSTICE**

APPELLEE

** ** *

This matter came on for an evidentiary hearing on March 15, 2017, at 9:30 a.m., at the office of the Personnel Board, 28 Fountain Place, Frankfort, Kentucky before the Hon. Darren L. Embry, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Antoine Bland, was present at the evidentiary hearing and was not represented by counsel. Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was present at the evidentiary hearing and represented by the Hon. Adam Adkins.

The Hearing Officer notes this appeal was filed with the Personnel Board, and received on August 29, 2016. Appellant was suspended for three days without pay by letter dated June 27, 2016, for allegations of poor work performance. In this appeal, Appellant does not deny the allegations, but feels the punishment was too harsh, given his extensive history with the Department. As relief, Appellant seeks to have the matter expunged from his record and to receive any back pay due.

This matter came on for a pre-hearing conference on December 7, 2016, at 9:30 a.m., ET. Following the pre-hearing conference, an Interim Order, dated December 12, 2016, was issued scheduling the evidentiary hearing to be held March 15, 2017, at 9:30 a.m., ET. The issue set forth in the Interim Order was the disciplinary action taken against the Appellant. The Appellee was assigned the burden of proof, which is by a preponderance of the evidence, to demonstrate the disciplinary action taken was neither excessive nor erroneous and was taken with just cause.

The Appellee filed a Motion to Consolidate Personnel Board appeals 2016-238 and 2016-171, dated February 8, 2017. An Interim Order, dated March 6, 2017, was filed denying the Motion to Consolidate.

BACKGROUND

1. The Appellant has been employed by the Department of Juvenile Justice ("DJJ") as a Juvenile Service District Supervisor ("JSDS") since 2013, and has worked for DJJ for 24 years.

2. The Appellant received a letter, dated June 27, 2016, indicating he was to be suspended from employment for three days (July 11, 12, and 13 of 2016), pursuant to KRS 18A.095(1) and (8) and 101 KAR 1:345, Section 4. [Exhibit 7]

3. The letter of suspension specifically alleges that the Appellant had knowledge of Ms. Welch's gross negligence in case management, but failed to adequately supervise her by failing to: 1) ensure that required case management contacts were made prior to transfer; 2) conduct audits and transfer summaries on all cases transferred to ongoing teams; 3) ensure that cases were transferred/assigned for ongoing case management in a timely manner; 4) approve and sign initial case plans and conduct thirty (30) day case plan reviews; and 5) ensure that incident reports were completed on an alleged shooting and an AWOL. [Exhibit 7] The poor work performance outlined above constitutes violation of the Department of Juvenile Justice Policy #104, "Code of Conduct," IV.(B.); Department of Juvenile Justice Policy #602, "Individual Client Record," IV.(I.)(1.), IV.(L.)(1. and 2.); Department of Juvenile Justice Policy #604, "Case Planning and Participation in Treatment Planning," IV.(D.)(11.); and Department of Juvenile Justice Policy #617, "Incident Reports", IV.(A. and D.). [Exhibit 6]

4. The Appellant filed a timely appeal, received on August 29, 2016, alleging that his three-day suspension was not proper as the action taken against him was, "erroneous and not justifiable." He further stated, "The suspension I received was excessive and not warranted in view of all circumstances under KRS 18A.095. I am asking to be made whole for my suspension." [Appellant's Appeal Form].

5. Appellee called **Cynthia A. Watson** as its first witness. Ms. Watson serves as a Human Resource Branch Manager. She has worked in this position for 2 years, and her job duties include: disciplinary actions, personnel, payroll, worker's compensation, sick leave sharing, and evaluations. She has been with DJJ since 1998, and she previously worked in personnel, special projects, evaluations, and tuition assistance. Ms. Watson's current role in the disciplinary process specifically includes drafting charges outlined in Major Corrective Action Requests received from the field. She reviews the request, looking at a database, to see what past discipline has been administered for similar actions. She also completes a review of the employee's past discipline as to comply with progressive discipline. Once reviewed, a recommendation is made to the Commissioner.

6. Ms. Watson reviewed the Major Corrective Action Request, admitted as Exhibit 1. Ms. Watson stated that all policies stated in the request are examined in terms of the conduct alleged and supplemented as needed. The Major Corrective Action Request at issue alleges violation of DJJ Policies: 104, 602, 604, and 617, which were respectively admitted as Exhibits 2, 3, 4, and 5¹. Ms. Watson stated, pursuant to those policies, a draft of the personnel action was completed, admitted as Exhibit 6, by Mary Caldwell, who was then serving as Human Resource Administrator over discipline. Ms. Caldwell has since retired. After the draft was completed, she reviewed the content. The draft summarizes the major corrective information provided. The draft is sent for review to the Commissioner. Once it has been approved, it is then copied and pasted into the letter advising the employee of the action. Ms. Watson stated, in this case, her office recommended a one to three-day suspension. [**Hearing Officer Note:** Exhibit 6 contains a handwritten note that says “3 day suspension.” Ms. Watson testified that the note was written by the Commissioner.]

7. Ms. Watson was presented with the letter notifying the Appellant of the three-day suspension, which was admitted as Exhibit 7. Ms. Watson stated that Miranda Denny, Deputy Commissioner, who has signature authority of the commissioner, gave final approval of the three-day suspension. Ms. Watson affirmed that the three-day suspension was decided by the Commissioner’s office. Considering all relevant factors, Ms. Watson stated that the Appellant’s suspension was in line with discipline administered for similar conduct of similarly situated employees.

8. Appellant had no questions for Ms. Watson.

9. The Appellee called **Samantha Woods** as the next witness. Ms. Woods has served as the Division Director of Community and Mental Health Services since 2014. Prior to 2014 she served as a Regional Manager.

10. Ms. Woods stated that, over the weekend, she became aware of a shooting that took place at the Pegasus Parade in Louisville on Thursday, May 5, 2016. Upon arriving to work the following Monday, she was informed by the Regional Manager, Vicki Kohus, that one of their youth, D.J., was involved in the shooting. After an incident like this, protocol requires action including review of cases assigned to the worker responsible for the youth in the shooting, to ensure policy compliance. She found that Ms. Welch, the caseworker assigned to D.J., was not policy compliant, as she had, “basically done none of the work that she should have done.”

¹ Exhibit 2 refers to DJJ 104
Exhibit 3 refers to DJJ 602
Exhibit 4 refers to DJJ 604
Exhibit 5 refers to DJJ 617

11. Ms. Woods stated that when she pulled D.J.'s case file she found that no entries had been made until the night of the shooting. D.J. was probated to DJJ on February 25, 2016. The shooting occurred in May 2016. Ms. Woods stated that Ms. Welch should have completed a Case Management Needs Assessment, which would have produced a Case Plan. Then she would have entered all of their electronic management screens, and a supervisor would have audited the case and transferred it to the ongoing team, who would then finish all of the case management services. High risk youth are supposed to be transferred to the ongoing team and, because of Ms. Welch's failures, D.J. was never transferred.

12. Upon reviewing Ms. Welch's record, they found two other cases where Ms. Welch had failed to follow protocol. Ms. Woods stated that Ms. Welch documented the probate of youth D.S. to their department, and a Case Plan was improperly completed for the youth on October 1, 2016. Ms. Woods noted that Ms. Welch also failed to properly transfer that case to the appropriate department. Ms. Woods stated that the youth had gone AWOL and no documentation was provided to the court.

13. According to Ms. Woods, Ms. Kohus completed the Major Corrective Action Request marked as Exhibit 1. She then reviewed the document and made corrections. Ms. Woods stated that page 5, section 2, "Specifics on Incident," was an accurate recitation of the information as Ms. Kohus relayed to her.

14. Ms. Woods stated that the Appellant should have been auditing one case per worker each month per DJJ policy. Also, pursuant to DJJ Policy, he was required to audit all transfer cases. Ms. Woods stated that he had failed to do so, and the failures outlined on page 6 of Exhibit 1 have no reasonable justification. DJJ Policy 104, marked as Exhibit 2, requires that an employee complete their job competently. Appellant violated DJJ Policy 104 when he failed to ensure that case management services were provided to the three youth. Appellant had knowledge that Ms. Welch was failing to meet the monthly case management contacts, and was failing to submit cases to him for transfer, which is further violation of DJJ Policy 104. Ms. Woods stated that Appellant should have handled the case himself, coached Ms. Welch, or held a case conference. Ms. Woods stated that if Appellant did coach Ms. Welch and she was still failing to meet expectations, he should have "sent it up the chain."

15. Ms. Woods stated that if Appellant had been complying with DJJ policy, he would have been aware of the situation earlier and, upon learning of it, he should have taken more severe action.

16. At some point, Mr. Bland was incorrectly informed that a case was transferred. Ms. Woods stated that Appellant should have audited the case and sent it to the ongoing team himself. DJJ is under a court order to provide the youth case management services, including a Needs Assessment and Case Plan. Upon completion of the Case Plan, services for the youth are referred to an outside provider. Case Plans are then reviewed every thirty days. When a case is transferred, it is audited by reviewing the electronic record and physical case file. Then the case is uploaded to an online folder for the department, and transferred to the other team. Ms. Woods stated that Appellant failed to audit thirty-six transferred cases.

17. Referencing Exhibit 3, DJJ Policy 602, Ms. Woods stated that Appellant was responsible for auditing and transferring cases. The policy also requires that the Appellant complete a transfer summary. Appellant failed to do both. Ms. Woods stated that the Appellant violated DJJ Policy 602, IV.(L.)(2.), as he did not complete proper records of contact with a youth within the ten working days allotted per DJJ Policy 602. Appellant was in violation of DJJ Policy 602 as there was no contact documented for May.

18. Referencing Appellee's Exhibit 4, DJJ Policy 604, Ms. Woods stated that Appellant was required to sign off and approve every case plan that his subordinates completed. Appellant failed to do so for the three youths referenced in Appellee's Exhibit 1. Ms. Woods stated, in reference to Exhibit 5, DJJ Policy 617, "Incident Report", Appellant failed to complete an incident report for D.J. or D.S.

19. Ms. Woods confirmed that she recognized Appellant's Response to Discipline Action, which was marked as Appellee's Exhibit 8. Ms. Woods stated that, in the response, Appellant reported that he had failed to properly enter the work into the system. Ms. Woods confirmed that failing to enter the work is in itself a policy violation. Ms. Woods stated that nothing in Appellant's response would have led her to change her previous recommendation. Ms. Woods confirmed that Appellant did not competently supervise Ms. Welch.

20. Appellant attached emails to Exhibit 8. Those emails were entered into record as Exhibit 9. Ms. Woods stated that she saw nothing in the emails that would have changed her recommendation or led her to believe that Appellant supervised Ms. Welch competently.

21. Ms. Woods stated that the department currently has 900-1000 cases; there are 20 DSJSs and 176 JSWs. She stated that it has been her practice to suspend employees who are accused of similar conduct. Appellant had no further questions.

22. Appellant began cross-examination. Ms. Woods confirmed that the court support team was the only staff in the state to perform that function. Ms. Woods stated that, until approximately January 1, 2016, Jefferson County did not follow the policy to enter back-end cases. However, she noted that Jefferson County was not exempt from this policy, and the County has historically violated this policy. Ms. Woods affirmed that the emails did not present

a competent handling of the case and, if anything, they made the Appellant more culpable, as they show that he knew about the violation and did nothing about it. Ms. Woods stated, per policy, Appellant should have immediately addressed the issue if an employee failed to respond to verbal guidance.

23. Appellee, on re-direct, examined the witness. Ms. Woods stated that after the incident at issue the department has enacted a policy requiring DSJS to audit cases. However, these policy changes are irrelevant as they were enacted after the incident.

24. Appellant had no questions for re-cross examination.

25. Appellant, **Antoine Bland**, then took the stand. A document containing DJJ Policy 617 and emails was admitted as Exhibit 10. A document containing Team Meeting Agendas was admitted as Exhibit 11.

26. Appellant stated he has been a DSJS since 2004, and has handled cases for different teams and different districts for high risk youth without issue. He stated that he took offense to being called incompetent. He further stated that on the day of the incident he was off from work, and, in that situation, other staff are supposed to complete the report. He felt that based on his past history, the penalty was excessive.

27. Appellee then began cross examination. Appellant agreed, as it pertains to the three youth in question, he could have moved faster on a Performance Improvement Plan or other discipline. He agreed that he had previously stated this was an oversight on his part, and this situation was truly a mistake. Appellant stated that D.J.'s case was not transferred, and it should have been. Appellant stated that he had noticed a delay in D.J.'s case, and had emailed Ms. Welch about it, and reminded her that it needed to be completely verbally.

28. Appellant reviewed Exhibit 9, and stated that emails to Ms. Welch in May contained subtle requests for her to complete necessary steps in the D.J. case. Appellant stated that he emailed Ms. Welch in April with subtle requests that she complete the necessary steps in the D.S. case. Appellant agrees that the five-day and thirty-day requirements were not met. Appellant stated that he emailed Ms. Welch in March asking her when M.P. would be ready for transfer.

29. Appellant stated that Ms. Welch did not competently complete anything for the three cases at hand. Appellant agreed that his responsibility included supervising Ms. Welch. Appellant stated that he reviewed hard files on some occasion, but the form indicates that it is then given to the back-end team, so he does not have possession of it.

30. Appellant stated that he had been put on a Performance Improvement Plan when a worker did not release a youth from a program in a timely manner. However, he stated that they did release the youth, and the program claiming that they did not is currently under federal investigation for falsifying records. Appellant stated that upon completion of that investigation he plans to object to that Performance Improvement Plan.

31. Appellant stated that he directed the staff about expectations in May 2015, recorded in Exhibit 11. The next page of Exhibit 11 contains instruction to the staff regarding deadlines, which was reviewed at a February 16, 2016 team meeting. Appellant stated that this training indicated that if the thirty-day deadline was surpassed, a thirty-day review was to be completed.

32. On re-cross examination, Appellant stated that M.P. has been in their system since the youth was 14 years old, and the parent has always been uncooperative. The youth was turning 18 very soon, and the youth had been picked up in Indiana and was being tried as an adult. As a result, Ms. Welch felt it was best to maintain custody of the case rather than moving it forward. Appellant stated that the D.S. case was an oversight on his part and Ms. Welch's. He stated that he asked Ms. Welch to complete the D.J. case, but she failed to do so.

FINDINGS OF FACT

1. Appellant, Antoine Bland, was the Juvenile Service District Supervisor.
2. On May 6, 2016, Director Samantha Woods was notified that a youth probated to the Department of Juvenile Justice had been involved in a shooting in Jefferson County.
3. This incident prompted a review of Social Service Clinician I Jennifer Welch's Juvenile Offender Record Information (JORI) documentation. The review verified that she had failed to transfer three (3) youth's cases to the ongoing team and that the youth had not received appropriate services by the Department.
4. The case documentation further revealed that Ms. Welch had not timely completed: (1) reporting of a youth's arrest and an AWOL, (2) conducting Case Management Needs Assessments, (3) conducting initial case plans and case plan reviews, (4) conducting phase contacts and phase reviews, (5) conducting face-to-face contacts and phone contacts with family, (6) contacting the family counselor to schedule an Individual Treatment Plan conference, (7) submitting the preliminary supervised placement home evaluation report at the Individual Treatment Plan conference, or (8) developing a list of approved visitors and documenting casework services in the JORI system. [Exhibit 7]

5. Following the discovery of Ms. Welch's gross negligence in case management, a review of Appellant's process of supervisory oversight for the court team on case assignments and transfers began.

6. Based on this review, it was discovered that Appellant failed to adequately supervise Ms. Welch by failing to: (1) ensure that required case management contacts were made prior to transfer; (2) conduct audits and transfer summaries on all cases transferred to ongoing teams; (3) ensure that cases were transferred/assigned for ongoing case management in a timely manner; (4) approve and sign initial case plans and conduct thirty (30) day case plan reviews; and (5) ensure that incident reports were completed on an alleged shooting and an AWOL. [Exhibit 7]

7. As a result of these policy violations Appellant was suspended for three days without pay on July 11, 12, and 13, 2016.

CONCLUSIONS OF LAW

The Hearing Officer concludes as a matter of law that Appellant committed misconduct so egregious as to justify a three-day suspension without pay [101 KAR 1:345].

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **ANTOINE BLAND V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2016-238)** 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 part 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 Darren L. Embry** this 19th day of May, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Adam Adkins
Mr. Antoine Bland