

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-078

LESLIE BROWN

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

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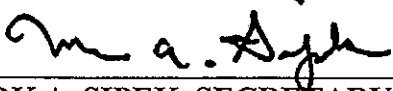
The Board at its regular July 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated June 11, 2014, and being duly advised,

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 16th day of July, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Amber Arnett
Leslie Brown
Stephanie Appel

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* * * * *

This matter came on for an evidentiary hearing on February 13, 2014, and for a second day on April 15, 2014, at 9:30 a.m., each day, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Colleen Beach, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Leslie N. Brown, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Amber Arnett.

BACKGROUND

1. The Appellant, Leslie N. Brown, was a classified employee with status who was employed as a Correctional Sergeant at Kentucky Correctional Institute for Women (KCIW). On April 1, 2013, she filed a timely appeal with the Personnel Board from her dismissal effective February 25, 2013. Appellant was notified of her dismissal by letter dated February 22, 2013. A copy of this letter is attached hereto and incorporated herein as **Recommended Order Attachment A**. Appellant provided the following statement of facts relating to her appeal:

"On January 5, 2013, to alleviate the odor of urine which was causing another inmate to become physically sick I sprayed germicidal into a cell with an inmate. I took precautions not to hit the inmate with the substance. I have not been

previously trained on the chemical agents. The inmate did not complain to me or medical staff (in my presence) of any burning sensation. Inmate was accessed (sic.) three different times by medical staff. I followed orders to leave my post from a shift supervisor. Later an altercation occurred in which I responded without being properly trained. More details needed."

2. By Interim Order dated May 20, 2013, it was established that the issues for the evidentiary hearing were whether or not there was just cause for Appellant's dismissal and whether that penalty was excessive or erroneous. As the burden of proof on this issue was placed upon Appellee, it went first in the presentation of proof.

3. **Shawn Adkins** is an Internal Affairs Captain at Kentucky Correctional Institution for Women (KCIW), a position he has held since May 2012. His job duties include the investigation of all alleged improper activity by inmates and staff.

4. Adkins was assigned (by Deputy Warden Wes Dawson) to look into an incident which occurred at KCIW on January 5, 2013, in which it was alleged that a staff member had assaulted a resident. In performing his investigation, Adkins reviewed the Staff Occurrence reports, the Extraordinary Occurrence report filled out by Deputy Warden Dawson, camera footage of the incident, and the log book. Adkins also interviewed all staff involved, as well as two inmates.

5. Adkins stated that KCIW houses female inmates from the lowest security level ("Community Custody") to Death Row. The incident in question occurred in the Lonnie Watson Center Unit, Cell 2.

6. After conducting his investigation, Adkins concluded that the Appellant had violated the following procedures:

- CPP 10.2 Special Management Inmate
- IPP 09-03-03 Forced Cell Entry
- IPP 14-01-02 Inmate Rights

7. In addition to the videotape of the incidences that occurred on January 5, 2013, regarding the Inmate referred to as "M.F.," Adkins reviewed the documents admitted to the evidentiary record collectively as Appellee's Exhibit 2, which were comprised of an "Extraordinary Occurrence Report" written by Deputy Warden Wes Dawson; "Occurrence Reports" written by the Appellant, Mark Hazard, Gladys Metcalf, Christy Bailey, Justin Lynch, Kellie Logsdon, LPN; and Nursing notes regarding Inmate M.F. for the date of January 5, 2013.

8. Based upon the above information, Adkins summarized his opinion of what transpired on January 5, 2013 at KCIW, Lonnie Watson Center. Inmate M.F. had

"had a rough day," and the wing smelled of her urine. Inmate Observer Sarah Sprecker asked the Appellant to do something about the odor. Appellant asked LPN Tuell if she could spray something to freshen the air. Tuell said "okay." At about 4:35 p.m., the Appellant sprayed a liquid known as "germicidal" around Inmate M.F.'s door, and into the cell through the tray slot. Inmate M.F. was sprayed in the face and became upset. She yelled at Appellant to leave.

9. Later that evening, at approximately 8:30 p.m., Inmate Observer Sprecker informed Officers Metcalf and Bailey that Inmate M.F. was having a seizure. Both officers responded to assess M.F., who was unresponsive. The officers called the medical department and notified Shift Supervisor Lt. Woods at 8:55 p.m. He told them to wait until the Appellant returned to the unit, which she did at 8:58 p.m. At this time, M.F. was secured in wrist restraints and had been assessed by the medical team. Appellant stated she saw evidence that M.F. had coffee in her room, which is against regulation. Appellant began going through M.F.'s belongings and started collecting the trash she found in order to dispose of it. M.F. woke up and started screaming for Appellant to get out of her things. Officer Bailey entered the cell to help Appellant restrain M.F.'s legs. Additional staff responded and Appellant left the cell. M.F. calmed down. When Appellant returned a few minutes later, M.F. became agitated again, and spat on Appellant. A "spit mask" was placed on M.F. and Appellant instructed staff to place M.F. in a restraint chair, which they did at 9:32 p.m.

10. Adkins testified that Appellant's actions were improper and against policy for the following reasons: First, the substance Appellant sprayed was "Germicidal," a liquid used for general cleaning purposes. When M.F. complained of being sprayed in the face, medical attention should have been sought. Secondly, after M.F. had been placed in a wrist restraint, the officers should have been pulled out of the cell and proper "cell entry" protocol should have been followed, specifically, the staff should have "suited up" in protection gear, a nurse should have been present, and a video camera should have been recording the entry.

11. Through Adkins' testimony, a videotape of the spraying incident outside M.F.'s cell beginning at 4:58 p.m. on January 5, 2013, and the cell entry into M.F.'s cell at 9:14 p.m. on January 5, 2013, were identified and watched by the parties and the Hearing Officer. (The tapes were marked as Appellee's Exhibits 3 and 4, respectively.)

12. **Appellant Leslie Brown's** testimony was taken out of order so that she could provide her comments of the events as they appeared on the videotape. Her testimony is summarized as follows: Appellant explained that before the events occurred Inmate Observer Sprecker (who was sitting across the hall from M.F.'s cell) had told Appellant earlier that she was feeling nauseated from the smell emanating from M.F.'s cell. The video shows Appellant unlocking the tray slot and spraying germicidal spray into it. [Appellant stated she had switched the bottle to "stream"

mode to shoot the liquid germicidal in a stream in the back of M.F.'s cell four or five feet so as to avoid spraying M.F.]

13. M.F. tells Appellant that the other inmates are complaining about her. M.F. does not mention that she has been sprayed. Appellant sprays germicidal outside the cell, then goes to get air freshener to spray around the outside of M.F.'s cell to further eliminate the odor. The video shows M.F. wiping her face with her blanket and then beating her head against the wall. Appellant looks inside the cell and then radios LPN Tuell for assistance. Appellant waves her arms trying to get the attention of Tuell and the other officers.

14. LPN Tuell approaches. M.F. continues to beat her head against the wall and blood appears on the wall. M.F. falls over and reveals that she is naked from the waist down. Appellant asks Tuell what they should do, and Tuell answers, "there is nothing we can do."

15. Appellant states she then tells M.F. to stop hitting her head. M.F. falls over. Appellant monitors M.F.'s breathing by watching her chest go up and down.

16. The videotape was re-wound to the section where M.F. is wiping her face with the blanket. Appellant admits that the top of her head may have been exposed to the germicidal mist when Appellant sprayed it in her cell.

17. **Shawn Adkins** resumed the witness stand. He was asked what Appellant had done wrong regarding M.F. and the germicidal spray. Adkins responded that Appellant, as Unit Supervisor, should have requested additional staff to come assist her. The inmate should have been taken out of her cell, and then the cell should have been cleaned, rather than spraying germicidal to mask the smell. Adkins stated that spraying germicide into a cell was not normal operating procedure.

18. The second video, which begins at 9:14 p.m. (not the correct time; the clock on the video was off by a few minutes) on January 5, 2013, was admitted into the record as Appellee's Exhibit 4. Appellant's testimony was taken out of order so that she could provide her commentary of the events as they transpired on the videotape. Her testimony is summarized as follows:

Appellant was in the "Operations" room, writing a report when she finds out M.F. has had a seizure. The Medical Unit had been notified. Appellant and Officer Metcalf speak to M.F. through the tray slot. Appellant says to M.F., "Wake up. Are you okay?" The Medical Unit's response is delayed because they are doing "Medical Call" on the Special Medical Unit.

Nurse Logsdon arrives. Because of M.F.'s past history of aggressive behavior, Appellant and Metcalf go into the cell first. They put a blanket under M.F.'s legs and put her into handcuffs. M.F.'s seizure is over, but she is unresponsive. Nurse Logsdon uses ammonia capsules to awaken M.F.. M.F. responds to the capsules, but is groggy. She wants to go back to sleep.

Appellant begins to pick up some of M.F.'s clothing, which is soaked in urine. Appellant establishes that M.F. is breathing and she instructs Officer Bailey to get another blanket to keep M.F. warm. Appellant begins throwing out old milk cartons and other trash. She finds an envelope with coffee in it (which is considered contraband). Appellant continues to search for any dangerous items.

At this juncture in the tape, Appellant states, "I do admit this is not the best practice to look through her things at this time. I made a mistake."

M.F. wakes up and starts moving. M.F. kicks her. Appellant straddles M.F.'s legs. M.F. does not have leg restraints at this time, but is handcuffed. Appellant radios that she needs assistance.

Officer Bailey places leg restraints on M.F. Officer Hazzard arrives. Appellant instructs the officers to stay with M.F. while she goes to discuss the situation with Lt. Woods, who is in the Operations room. She calls Woods.

Woods tells Appellant that M.F. needs to be "stripped out," that is that all property needs to be removed from the cell, inventoried, and cleaned. Woods further instructs Appellant that "if M.F. fights or struggles, put her in the restraint chair."

At 9:41 p.m., Appellant returns to M.F.'s cell. Appellant tells M.F. that her room is going to be stripped out, and if she struggles, she will be put in the restraining chair.

Officer Bailey picks up some of M.F.'s belongings. The male officers restrain M.F. as a precaution. M.F. begins to struggle. The officers apply some pressure to M.F. to keep her down.

Appellant retrieves the restraint chair and asks Officer Bailey to get the spit mask. At this time, M.F. is yelling and cursing. Appellant is standing outside the cell, supervising. Bailey returns with the spit mask and Officer Metcalf places it on M.F.. M.F. pulls on the mask and it breaks. Another mask is retrieved.

Appellant states that she is trying to console M.F., and calm her down. The second mask is placed on M.F.. Appellant places the restraint chair in the cell.

19. **Shawn Adkins** resumed the witness stand. On cross-examination, Adkins was asked why Lt. Woods, as Shift Supervisor, did not fill out an Occurrence Report. Adkins answered that he didn't know, but Deputy Warden Dawson filled out an Extraordinary Occurrence Report. When asked why Lt. Woods didn't do it, Adkins stated, "I can't speak to that."

20. **Justin Lynch** is currently a Corrections Officer at Blackburn Correctional Complex. In January 2013, he was employed as a Corrections Officer at KCIW. On January 5, 2013, he was working second shift. Appellant was his first-line supervisor that shift.

21. Lynch testified that on that evening, at approximately 8:45 p.m., he had been patrolling with Correctional Officer Metcalf when he saw (through a window looking into C wing) Inmate Observer Sprecker waiving her arms. He and Metcalf went to C wing and observed M.F. in her cell. She was having an apparent seizure and became unresponsive. Lynch added that M.F. had a history of seizures, and in fact, "it happened often."

22. Lynch stated that someone called Operations - where the Shift Supervisor is stationed - but he could not recall who made the call. Officer Bailey contacted the Medical Unit, specifically Nurse Kellie Logsdon. Appellant, who was also in Operations at this time, instructed them not to open the cell until she got back. At 8:58 p.m., Appellant and Nurse Logsdon entered the unit. M.F.'s cell was opened and Logsdon, Appellant and Metcalf entered. Logsdon found there to be no emergency and left. M.F. began screaming and flailing her arms and legs. Appellant, Bailey and Metcalf remained in the cell and Appellant restrained M.F.'s legs and Metcalf restrained her arms. Appellant radioed for assistance. At 9:20 p.m., Appellant asked Lynch to radio for Medical, which he did. By 9:30 p.m., M.F. was in her cell, in the restraint chair. Nurse Logsdon arrived at 9:33 p.m., and checked M.F.'s restraint straps. After Logsdon left, Lynch closed M.F.'s cell.

23. On cross-examination, Lynch was asked if he recognized the bottle of germicidal spray. He said he did, and that while he had never used it, he was familiar with it because inmates were given the spray to clean their bed areas.

24. **Gladys Metcalf** appeared by telephone. She is currently employed in Arizona. She worked at KCIW as a Correctional Officer from 2012 to 2013. On January 5, 2013, she worked second shift and Appellant was her first-line supervisor.

25. Metcalf was asked to recall the incident she wrote about in an Occurrence Report dated January 5, 2013. Metcalf stated that she was doing a "tour" of the Lonnie Watson Center when the inmate observer came to the door, waving and saying that Inmate M.F. was having a seizure. Metcalf testified that Correctional Officer Bailey called Medical, and was told by Lt. Woods that Appellant was on her way. When Appellant arrived, they proceeded to M.F.'s cell. Metcalf restrained M.F.'s legs, and Appellant restrained her hands. Nurse Logsdon checked her vitals and gave her ammonia capsules to rouse her. Appellant then went through M.F.'s belongings and threw things away. M.F. woke up screaming. Appellant left to call Lt. Woods. Approximately ten minutes later, the nurse returned.

26. Metcalf was asked if she had been trained on how to enter a cell. She said she was, and that she should have been "fully dressed and gowned up." She stated that there was blood and urine in the cell, and that urine had soaked through her uniform. Metcalf added that the inmate observer should have been removed from the hall before they entered the cell.

27. On cross-examination, Metcalf was asked if she had told Appellant that M.F. was compliant. Metcalf responded, "I started to tell Appellant she was compliant, but I was quickly told to start the process of restraint."

28. **Warden Janet Conover** is the Warden of KCIW. She began her tenure at KCIW as a Correctional Officer in 1989, and was promoted up the ranks to Warden, a position she has held for the past four years. Her job duties include the oversight of an \$11 million dollar budget, and the supervision of all facility operations. She is also Appointing Authority, and oversees all hiring and disciplinary actions.

29. Warden Conover stated that Appellant first began working at KCIW as an intern from Eastern Kentucky University. She was later hired as a Corrections Officer and subsequently promoted to Sergeant in October 2011.

30. Warden Conover explained that KCIW has three shifts: 8:00 a.m. to 4:00 p.m.; 4:00 p.m. to 12:00 a.m.; and 12:00 a.m. to 8:00 a.m. Each shift is supervised by a Captain or Lieutenant. The Sergeants on each shift are responsible for managing their unit, including the Correctional Officers. She added that if an incident occurs during the shift, the Sergeant in the unit communicates to the Shift Supervisor regarding what has occurred.

31. Warden Conover stated that the incident regarding M.F. had occurred over a weekend. She first learned of the incident when she arrived to work on Monday, January 7, 2013. She also received a letter from the inmate, dated January 14, 2013, stating that Appellant had "sprayed her in the face, and had gone through her things."

32. Warden Conover stated she has known Inmate M.F. for her entire incarceration. M.F. has a "long history of mental illness and acting out. She is assaultive at times."

33. Warden Conover directed Deputy Warden Dawson to complete the "Extraordinary Occurrence Report." Conover stated that normally the Shift Supervisor would fill that out, but due to the seriousness of the charge, she had the Deputy Warden do it.

34. Warden Conover then reviewed the video footage of both the incidents (spraying the germicidal spray and the forced cell entry). Based on the video, Conover decided to issue an Intent to Dismiss letter to Appellant, which she signed on February 22, 2013.

35. As to the incident with the germicidal spray, Conover stated that "it is a cleaning product - you spray it and wipe it off a surface to kill germs. It is typically used on toilets and door knobs. Its purpose is not to deodorize the air. If there was an odor, there were other options to follow rather than spray into the cell by M.F.'s head right by the tray slot. According to the product's "Material Safety Data" sheet, germicidal spray is corrosive in concentrate. Conover stated that even if diluted, it can be harmful. M.F. told Appellant she was getting sprayed with the germicide, but Appellant kept spraying. "To me, that is abuse," Conover stated.

36. After M.F. was sprayed, she began banging her head. Conover stated that when an inmate causes self-harm, the proper procedure is to contact a mental health officer, the Shift Supervisor, and a medical staff person to assess the inmate's condition. "In most cases we would have put her in a stripped cell and put on a suicide vest. If the head banging continued, we would put her in a restraint chair after staff had properly suited up. We have a duty to protect inmates from self-harm," Conover stated.

37. Warden Conover was asked to address what Appellant did wrong later that evening, when M.F. was having a seizure. Conover testified that after M.F. had been assessed, the staff should have left the cell. Instead, Appellant began going through M.F.'s belongings, and that is when M.F. became agitated. As for putting her in the restraint chair, Conover stated that the officers did not have on protective gear when they went in the cell, which was a violation of KCIW policy on forced-cell entry. Conover added that an inmate should never be in a restraint chair without a suicide vest on.

38. Warden Conover stated that she did not think Lt. Woods knew that Appellant had directed the officers to assist in a forced cell entry without their protective gear on.

39. On cross-examination, Warden Conover was asked to refer to the letter written to her by Inmate M.F. Conover was asked if she believed the validity of everything in the letter. Conover answered, "Her letter had nothing to do with the dismissal. She is mentally ill, and I receive a lot of letters discussing staff."

40. Warden Conover was asked why she concluded that M.F. was sprayed in the face by Appellant. Conover responded she watched the video and saw Appellant spray into the tray slot, that she saw M.F.'s face by the slot, and she saw M.F. wiping her face. She added that she did not believe Appellant intentionally sprayed M.F. in the face, but was trying to cover up the smell. However, Appellant knew M.F.'s head "was right in the line of the spray." Conover stated that she was not aware of M.F. complaining of any burning from the germicidal spray.

41. Warden Conover was asked to review the Lonnie Watson Center Unit log for January 5, 2013. At 4:43 p.m., the log states, "I/M M.F. banging head." At 4:46 p.m., the log states, "Fell backward shaking." At 4:47 p.m., the log states, "Rolled over crying. Operations notified. (LB). LPN Tuell aware (LB)."

42. Warden Conover stated that the log entries showed that Appellant "interacted but didn't follow up. She was the unit supervisor. It was her job to ensure the safety of the inmate."

43. Warden Conover was asked why Appellant had been dismissed instead of demoted. Conover answered the Appellant "showed a total lack of judgment. She made bad decision after bad decision over the course of several hours, and I don't have faith in her abilities." Conover added that Appellant "was still in M.F.'s cell after the medical assessment, which she wasn't supposed to be. And then, when the scene went bad, she left her staff in there unprotected."

44. The Appellant, Leslie Brown, testified on her own behalf, out of order. She began her employment at KCIW on June 7, 2010, as a Correctional Officer. She was promoted to Correctional Sergeant in October 2011.

45. After her promotion, Appellant attended basic Supervisors' training, a week-long program, in January 2011. She was also assigned to the Special Management Unit and Lonnie Watson Center at this time.

46. The Special Management Unit (SMU) houses inmates who are on death row, are in protective custody, have disciplinary actions pending against them, or are under investigation.

47. Lonnie Watson houses inmates that have health issues. There is a medical wing, ("A"), and two wings ("D" and "E") for lower-functioning inmates. Wing "B"

houses inmates from county jail who have medical issues, and "C" houses inmates who have mental health issues that require segregation. There are ten cells in "C" wing, and only one inmate per cell. Inmates are placed in "C" wing because they have displayed aggressive or self-harming behaviors.

48. After her promotion to Sergeant, Appellant was trained by Correctional Officer Monroe at SMU, and by Sgt. Thomas Marks in Lonnie Watson. Marks taught Appellant how to write and investigate disciplinary reports. He also showed her how to supervise a cell-entry. Correctional Officer Moore taught Appellant basic inmate management, such as how to supervise shower and recreation time.

49. Appellant worked in both SMU and Lonnie Watson Center after her promotion.

50. Appellant stated that she had participated in approximately 15 cell-entries as a Correctional Officer, and about 10 as a Sergeant. Cell entries by KCIW staff are generally done when an inmate is acting in an unsafe manner, or if an inmate needs to be transported. Appellant stated that the gear normally worn in a cell entry includes: helmet with a shield, vest, gloves, Kevlar sleeves, and knee and shin guards.

51. When asked if all staff members should wear this gear when doing a cell-entry, Appellant replied: "Yes, if it is being done by the book." She elaborated that she considered a "Not by the book" cell entry to be when an officer enters a cell because an inmate needs medical attention, and then the inmate becomes assaultive. She added that that is what happened with Inmate M.F. Appellant elaborated: "When an inmate needs emergency medical attention, that is not a cell entry. A cell entry is when an inmate is combative -- not following directions but is aware of what is going on."

52. Appellant stated that she received a three day suspension in October, 2012, for behavior misinterpreted by a Correctional Officer as sexual harassment. She explained that she asked a Correctional Officer to look at a spider bite, which was on Appellant's leg, and the Correctional Officer misunderstood her intent.

53. Appellant addressed the first incident that occurred on January 5, 2013 that was the subject of her dismissal. When she arrived for second shift that day, Sgt Wells informed Appellant that Inmate M.F. refused to take a shower and medical did not want to give her a forced shower. That afternoon, every time Appellant did her "15 minute watch" (to ensure that the inmates were not self-harming or displaying erratic behavior), on C wing, she would speak to Inmate M.F. She visually ascertained that M.F. was breathing. When she tried to talk to her, M.F. would not respond. She saw that M.F. was lying against the wall.

54. At 4:31 Nurse Tuell came in to the unit, and Appellant asked her if she thought the germicidal spray would help with the strong odor emanating from M.F.'s cell. Tuell answered that "it couldn't hurt."

55. Appellant began spraying the germicidal into the tray slot of M.F.'s cell. M.F. told Appellant that the other inmates "would not leave her alone," and began to yell and scream. Appellant asked if she could help, but M.F. told her to leave her alone. M.F. began beating her head against the wall.

56. Appellant next retrieved air freshener and sprayed the hallway. She then heard a thump, and saw M.F. had fallen over. Appellant waved to Nurse Tuell to come back. She asked Tuell what to do. She answered: "There is nothing we can do." Appellant stood at the door and watched to make sure M.F. was breathing. Appellant could see that M.F. was moving her fingers and legs. Appellant watched her for approximately a minute and a half.

57. Appellant added that "C" wing has cameras in the unit which are always running. The Control Unit monitors the footage, and when M.F. fell backwards, staff in the Control Unit should have seen it.

58. Appellant next went into the office and called Lt. Woods to notify him of what had occurred. She asked him what to do and he responded: "Leave her alone. Don't upset her."

59. Appellant admitted that in hindsight, she should not have used the germicidal. She discussed the situation with Lt. Woods, and he advised her to write up an Occurrence Report.

60. Appellant next addressed the second incident that occurred on January 5, 2013 that was the subject of her dismissal. At 8:48, Lt. Woods asked her to leave Lonnie Watson and come to Operations because he needed assistance writing an Extraordinary Occurrence Report concerning an event at the facility that Appellant had not participated in. (Woods wanted Appellant to proof-read and edit his report.) He sent Officer Bailey to Lonnie Watson to relieve her.

61. While Appellant worked on the report, Officer Metcalf called and stated that M.F. was having a seizure. Appellant ran back to the "C" wing of Lonnie Watson. Appellant and Metcalf entered M.F.'s cell. They placed M.F. in handcuffs, and placed a safety blanket around her legs. Nurse Kelly Logsdon administered an ammonia capsule, and M.F. awoke. She was very groggy. While the nurse attended to M.F., Appellant noticed that there was a large amount of trash lying about M.F.'s cell. Appellant testified: "My thought was that we could easily take soiled items and trash out of the cell. We could wash the items and return them to her later." At this time,

Appellant and Metcalf were not wearing cell-entry gear, but they did have on latex gloves.

62. As Appellant cleaned the cell, she noticed that certain items appeared to be "out of place." She then saw an envelope that appeared to have contraband in it, either coffee or tobacco. Appellant then began searching the cell for other contraband.

63. At this time, M.F. became upset and kicked Appellant below the knee. Appellant radioed for assistance. Officers Hazard, Clark and Bailey arrived. Leg irons were placed on M.F.'s ankles. Appellant then left the cell and immediately notified Lt. Woods of what had just transpired. He told her that if M.F. could not control her aggression, that her cell should be stripped and she should be placed in a restraint chair.

64. Appellant returned to the cell. Appellant told Officers Metcalf and Bailey to strip M.F.'s cell. All items were removed except her mat and safety blanket. M.F. continued to be upset and act aggressively. She spat at Appellant.

65. A spit mask was put on M.F., which she was able to pull off and rip (M.F.'s hands were handcuffed in the front). A second spit-mask was put on. Then Appellant retrieved a restraint chair. Appellant couldn't get the chair all the way in the cell because M.F.'s mattress blocked the door. M.F. was put in the chair. When she was fully restrained, Appellant ensured that a blanket covered M.F., who was naked. M.F.'s mattress was removed from the cell, and the chair was pushed fully into the cell. Appellant instructed Officer Clark to turn the chair sideways so that M.F. could more easily be monitored.

66. Medical was notified that M.F. had been placed in a restraint chair. Medical had been passing out medications in SMU, and it took them approximately 13 minutes to arrive. Nurse Kellie Logsdon arrived at 9:33 p.m.. She checked that M.F.'s restraints were properly administered, and that M.F. was not in "acute distress." During this time, Appellant went back into the cell and removed the spit-mask, and pulled the blanket back up. She and the nurse left the cell, and Appellant debriefed with her staff (the officers), and thanked them for their assistance. She also instructed the officers to write up an Occurrence Report.

67. Later that night, M.F. was removed from the restraint chair. Appellant stated that entering M.F.'s cell to do this was a "typical" cell-entry, that is, that it was "planned." Consequently, she directed her staff to wear protective gear while M.F. was removed from the restraint chair. However, Appellant herself did not wear protective gear because she was in the hallway, supervising.

68. Through Appellant's testimony, her 2012 Performance Evaluation was introduced into the record.

69. At the end of her testimony, Appellant rested her case.

70. The Appellee next called **Lt. Robert Woods**. (By agreement of the parties, Woods was called out of order due to a scheduling conflict). Woods had been employed by the Department of Corrections for over 5 years. He began his career as a Correctional Officer and was promoted to Sergeant, and later, Lieutenant, at KCIW. The second day of the hearing, April 15, 2014, Woods stated that April 15 was actually his last day of employment at KCIW.

71. Woods' duties as Lieutenant included the general oversight of either Lonnie Watson Center or SMU, depending on his shift assignment. If the Captain was absent, Woods could be assigned the oversight of the entire facility.

72. Woods explained that the Appellant's job duties as Sergeant was the oversight of her assigned unit, including the Correctional Officers. Woods had worked with Appellant, when she was a Correctional Officer, and later as a Sergeant. Appellant had completed an 8-hour course in managing "mental health inmates," before she could work on "C" wing. Woods stated he had also done a few cell-entries with Appellant, in full gear, when she was a Correctional Officer.

73. Woods was asked to recall the events of January 5, 2013. Woods stated that he was the Lieutenant on shift that evening and his work station was in the Operations room. Appellant was responsible for supervising Lonnie Watson Center. Woods denied that Operations had running camera video footage of Lonnie Watson Center.

74. Appellant informed Woods at around 9:30 p.m. that she had sprayed germicidal in and around Inmate M.F.'s cell earlier that day. Woods told her to never spray chemicals while an inmate is in a cell, and further instructed her to write up an Extraordinary Occurrence Report. When asked how Appellant should have known not to spray in a cell, Woods answered: "It's common sense -- it's just like cleaning an inmate's cell. In Lonnie Watson, you always pull inmates out of their cell first. We clean their rooms while they shower." Woods explained that Lonnie Watson inmates must be prevented from getting access to chemicals.

75. As for Appellant telling him that M.F. was banging her head against the wall, Woods testified that he told her: "If she doesn't stop, do a cell entry." He denied that ever advised Appellant to "just leave her alone."

76. As for Appellant and an officer's entrance to M.F.'s cell, Woods stated: "I knew they went in because of M.F.'s seizure, and that is normal. However, I did not know that they were still in the cell when M.F. became combative." When Appellant radioed him that M.F. had kicked her, he did not know that officers were still in the cell. "I assumed they were outside," he stated. He instructed Appellant that if M.F. did not comply with Appellant's commands, to put M.F. in the restraint chair. "If I knew that the cell door was open and officers were in M.F.'s cell, I would have told everyone to get out, and get suited up before they went back in."

77. As for Appellant's searching M.F.'s cell while she was unconscious, Woods stated emphatically: "You do not do cell searches during a medical emergency. Inmates should not be in the cell during a search—you put them in the shower area. We don't want them to act out while you do the search."

78. At the end of Lt. Woods' testimony, the Appellee rested its case."

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

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

80. 101 KAR 1:345, Section 1, states:

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

FINDINGS OF FACT

1. Appellant was a classified employee with status who was employed as a Correctional Sergeant with the Department of Corrections at Kentucky Correctional Institute for Women (KCIW).

2. On February 22, 2013, Appellant was informed by letter under the signature of Janet Conover, Warden, that she was dismissed from her position, due to misconduct.

3. Appellant was promoted from Correctional Officer to Correctional Sergeant in October 2011. She was assigned to the Special Management Unit, and Lonnie Watson Center.

4. On January 5, 2013, at approximately 4:30 p.m., Appellant sprayed a cleaning fluid called "germicidal" into the tray slot of the cell of inmate M.F. By all accounts, M.F. was laying, half-naked, in urine-soaked bedding. A strong odor emanated from her cell.

5. Appellant conferred with Nurse Tuell to discuss whether germicidal would help mask the odor. Tuell answered, "It couldn't hurt."

6. While Appellant sprayed the cell, M.F. became upset and yelled to Appellant to leave her alone. M.F. began hitting her head against the wall.

7. After she finished spraying M.F.'s cell with germicidal, Appellant sprayed the hallway with air freshener. Appellant looked into M.F.'s cell and radioed for assistance. There was blood on the wall where M.F. had been hitting her head. Nurse Tuell then arrived. According to Tuell's "patient progress notes" (Tuell was not present at the evidentiary hearing), M.F. refused medical treatment. Appellant asked M.F. to stop banging her head. M.F. then fell over, and lay still on her mat. Appellant checked to make sure that she was breathing.

8. About 4 hours later, Appellant was in the "Operations" room, proofreading a report of Lt. Woods, who had sought her assistance with editing it. At 8:45 p.m., Officer Metcalf called to inform Appellant that M.F. was having a seizure.

9. Appellant quickly returned to "C" wing of Lonnie Watson Center, where M.F. was housed. She, along with Officer Metcalf, entered M.F.'s cell. Appellant placed a safety blanket on M.F.'s legs while Nurse Kelly Logsdon applied ammonia capsules. Neither Appellant nor Officer Metcalf were wearing cell entry gear. Their only protective equipment was latex gloves.

10. M.F. awoke but was groggy. Appellant, looking around the cell, noticed that there was trash and soiled linen in M.F.'s cell. Appellant proceeded to go through M.F.'s belongings with the idea, she testified, of cleaning out the cell. During this time, Appellant noticed an envelope with a brown substance in it, perceived by Appellant to be either tobacco or coffee, both of which are forbidden from inmates to have in their cell. Appellant proceeded to search for other contraband.

11. As Appellant searched the cell, M.F. became visibly upset, and kicked Appellant. M.F. was placed in leg irons, and then Appellant went to contact Lt. Woods to ask him how she should proceed. Woods directed Appellant to strip M.F.'s cell, and instructed Appellant that if M.F. did not comply or became combative, to place her in a restraint chair. According to Woods' testimony, he was unaware at this time that officers were still in M.F.'s cell when he spoke to Appellant. Lt. Woods stated: "If I had

knew that the cell door was open and officers were in M.F.'s cell, I would have told everyone to get out and get suited up before they went back in."

12. Appellant returned to M.F.'s cell, directed Officers Metcalf and Bailey to strip M.F.'s cell. M.F., who remained in the cell, became angry and spat at Appellant. A spit mask was put on M.F., which she tore off. A second mask was put on and M.F. was maneuvered into a restraint chair. Medical staff was notified and approximately 13 minutes later, Nurse Logsdon arrived. She inspected M.F.'s restraints and noted that M.F. was not in "acute distress." The spit mask was removed, and at 9:36 p.m., all staff left the cell and the door was closed. M.F. was placed on a "one on one" watch.

13. At 11:34, Appellant briefed her cell entry team, which consisted of Officers Morgan, Bailey, Metcalf, Clark, and Hazzard. The officers suited up in cell-entry gear and M.F. was removed from the restraint chair and placed on her mat.

14. It was uncontroverted that on January 5, 2013, Appellant sprayed germicidal into the tray slot of M.F.'s cell, while she lay on a mat on the floor, her face inches from the opening. While the Hearing Officer does not necessarily assign a harmful intent or motivation on the part of the Appellant for this action, the spraying of a cleaning fluid close to, and possibly on, the inmate's body is a violation of KCIW Policy and Procedure 14-01-02, Inmates' Rights, Right 7, the right to a "healthful, safe, and sanitary environment."

15. Appellant improperly conducted a cell search on January 5, 2014, while Inmate M.F. was being treated by medical staff for a seizure. According to her direct supervisor, Lt. Woods, cell searches should never be conducted during a medical emergency, nor should inmates be present in the cell during a search.

16. Appellant improperly conducted a forced cell entry on January 5, 2014, without following KCIW Policy #09-03-03. As numerous witnesses testified, Appellant and Officer Metcalf should have been wearing protective gear while inside M.F.'s cell, after the medical emergency had been attended to. This gear includes: riot helmet, vest, knee and elbow pads, and a body shield.

17. Appellant and Metcalf were dangerously unprotected, with latex gloves as their only safety equipment. The very incident this gear is designed to protect against—the assault of a staff member by an inmate—occurred when M.F. kicked Appellant during the cell search.

CONCLUSIONS OF LAW

1. Appellant's actions on January 5, 2013 satisfied the elements of poor work performance and misconduct pursuant to 101 KAR 1:345. While the Appellant sought to blame many of her actions on the faulty advice of others, what was developed at the evidentiary hearing was that Appellant was woefully unprepared to assume the leadership of a supervisory position. Corrections Sergeants must act with a high level of professionalism to ensure the safety of the both the prison population and its staff. Appellant's poor judgment in handling Inmate M.F. violated both common sense and facility policy. As Warden Conover noted, Appellant "made bad decision after bad decision over the course of several hours. I don't have faith in her abilities."

2. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, satisfied its burden of proof to show that Appellant's dismissal was for just cause.

3. The actions of the Agency were neither excessive nor erroneous.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **LESLIE N. BROWN V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2013-078)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

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

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

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

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

ISSUED at the direction of Hearing Officer Colleen Beach this 17th day of June, 2014.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Amber Arnett
Ms. Leslie N. Brown



DEPARTMENT OF CORRECTIONS

LaDonna Thompson KENTUCKY CORRECTIONAL INSTITUTION FOR WOMEN
Commissioner
P.O. Box 337
Pewee Valley, Kentucky 40056
Telephone: (502) 241-8454

Janet Conover
Warden

February 22, 2013

Leslie Brown

Dear Ms. Brown:

After careful consideration of the statements made on your behalf at your pre-termination hearing held in my conference room on February 20, 2013, I have determined that the clear weight of evidence establishes that you did commit the charges as outlined in the letter of Intent to Dismiss dated February 5, 2013. Therefore, based on the authority of KRS 18A.095, you are hereby notified of my decision to dismiss you from your position of Correctional Sergeant with the Department of Corrections, Kentucky Correctional Institution for Women, in accordance with the provisions of KRS 18A.095. This action is effective close of business February 25, 2013.

You are dismissed pursuant to the authority of 101 KAR 1:345, Section 1 and 2, and KRS 18A.095, for the following specific reason(s):

Misconduct, i.e., as reported by Internal Affairs Captain Shawn Adkins, on January 14, 2013 he concluded an investigation into allegations that you used excessive force by spraying a cleaning chemical on and around inmate Mary Fletcher 4964. This incident occurred on January 5, 2013.

Between 5:04:07 and 5:11:09 pm, you sprayed germicidal cleaning chemical into Inmate Mary Fletcher's cell. You sprayed the walls and property of inmate Fletcher. You also had germicidal spray hit inmate Fletcher in her face. You stopped spraying germicidal into the cell after Inmate Fletcher appeared to wake up. You then began to spray germicidal outside of Inmate Fletcher's cell door. You stopped spraying outside of cell door and retrieved a bottle of air freshener. You began to spray the hallway with air freshener. Inmate Mary Fletcher sat up and began banging her head against the cell wall. You stopped spraying the hallway and returned to Inmate Fletcher's cell. You began to spray the hallway outside Inmate Fletcher's cell while Fletcher continued to hit her head against the cell wall. You stopped spraying. Inmate Fletcher continued to hit her head against the wall. LPN Leslie Tuell entered the wing and

looked inside cell with you while Inmate Fletcher continued to bang her head. LPN Leslie Tuell left the wing. You were still standing at Inmate Fletcher's cell watching her bang her head. Inmate Mary Fletcher 4964 fell over in the cell. There was a visible blood mark on the cell wall. You then walked away from Inmate Fletcher's cell.

At approximately 9:05:58 Inmate Mary Fletcher 4964 appeared to have a seizure in her cell. You returned to LWC Unit from operations after being out of your unit for 48 minutes. Inmate Fletcher was left in a state of seizure for approximately 15 minutes before you, Officer Gladys Metcalf, Officer Christy Bailey and LPN Kelly Logsdon enter Inmate Fletcher's cell. Medical completed an assessment of inmate Fletcher and left the cell and wing. You began a cell search while the inmate was still in the cell and unrestrained. Inmate Fletcher awoke and began to kick at you. You called for assistance. Additional staff arrived and placed leg restraints on inmate Fletcher. You then left the cell. You returned to the wing after an 8 minute absence leaving your staff in the cell with an unruly inmate and no protective equipment on. You had the property in inmate Fletcher's cell removed while you retrieved the restraint chair. Inmate Fletcher was carried out of cell while nude by staff into hallway and placed into restraint chair with no medical staff present and an inmate observer sitting in hallway. You directed inmate Fletcher placed into cell while in restraint chair nude and not covered. It was not until 9:57:54 LPN Kelly Logsdon arrived in wing/cell and medically assessed inmate Fletcher. The incident ended at 10:00:17 pm.

Your actions were violations of the following policies:

CPP 10.2 Special Management Inmates II. Policy and Procedure D. If the inmate was involved in a use of force or physical altercation, or has any suspected injury, a medical examination shall be conducted immediately. You observed inmate Fletcher bang her head against the wall for (2) two full minutes until she knocked herself out and fell over leaving a visible blood spot on the wall of her cell. You did not put together a cell entry team to secure the inmate and have her medically assessed and showed total disregard for the inmate's safety and well-being. Additionally, you left your unit for 48 minutes -- inmate Fletcher began to seize and was not medically assessed for (15) fifteen minutes due to your absence from your post.

IPP 09-03-03 Forced Cell Entry in a Housing Unit or Special Management Unit I. Policy and Procedure D. Equipment. You instructed your staff to enter inmate Fletcher's cell, you began a cell search while the inmate was still in the cell and unrestrained. After inmate Fletcher awoke and became unruly you left your staff unprotected in the cell after they placed restraints on her while you left the cell for 8 minutes. Your staff should have exited the cell with you and given the opportunity to dress into cell entry gear.

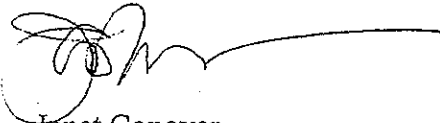
IPP 14-01-02 Inmate Rights, A. Inmate Rights 9. The right to be protected from personal abuse, corporal punishment, personal injury, disease, property damage and harassment. You sprayed germicidal cleaning fluid into inmate Fletcher's cell, spraying her property, linens, walls and her face. After she told you sprayed her in the face and it was burning her, you made no attempt to give her medical attention or check

the MSDS sheet on the proper disinfecting procedures for this chemical. Additionally, you left an Inmate Observer in the wing of Lonnie Watson C-Wing while you and your staff placed inmate Fletcher into the restraint chair which placed her safety in jeopardy during this cell entry.

As a supervisor and employee in the Department of Corrections, you are held to stringent policies and procedures to protect the employees in our Department and offenders in our care. Additionally, your conduct towards inmate Fletcher does not meet the ethical standards established by the Kentucky Correctional Institution for Women and places both in a litigious situation.

In accordance with KRS 18A.095, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the date notification is received. Such appeal must be filed in writing utilizing the attached appeal form and in the manner prescribed on the form.

Sincerely,



Janet Conover
Warden

Attachment (Appeal Form)

cc: LaDonna Thompson, Commissioner – Department of Corrections
Tim Longmeyer – Secretary - Personnel Cabinet
Jim Erwin, Deputy Commissioner - Office of Adult Institutions
Stephanie Appel, HR Director – Justice and Public Safety Cabinet
Mark Sipek, Executive Director – Personnel Board
Personnel File

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REGULAR MAIL