

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2012-250

JACQUELYN CECIL

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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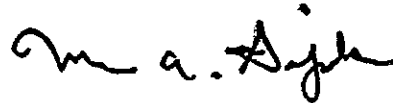
The Board at its regular July 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated June 10, 2013, having considered Appellant's exceptions and Appellee's response and being duly advised,

**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 16<sup>th</sup> day of July, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Angela Cordery  
Hon. Michael Boylan  
Stephanie Appel

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This matter came on for an evidentiary hearing on May 14, 2013, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Jacquelyn Cecil, was present at the hearing, and represented by the Hon. Michael Boylan. Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and was represented by the Hon. Wesley Duke. Appearing as Agency representative was Warden Clark Taylor of the Kentucky State Reformatory.

This matter involves the dismissal of the Appellant from her position as a Correctional Officer at the Kentucky State Reformatory by letter dated September 4, 2012; a copy attached hereto as **Recommended Order Attachment A**.

Essentially, the Appellant was dismissed for misconduct, i.e., smoking on institutional grounds; misconduct, i.e., promoting contraband; and misconduct, i.e., testing positive for Methadone.

The burden of proof was placed upon the Appellee by a preponderance of the evidence to show that the dismissal was appropriate under all surrounding circumstances and was neither excessive nor erroneous.

**BACKGROUND**

1. The Appellee's first witness was **Michael Williams**. He is now a Captain at the Kentucky State Reformatory (hereinafter "KSR"), but on June 27, 2012, was acting as the Internal Affairs Lieutenant at the facility.

2. He testified that Captain Wooldridge informed him that he had seen the Appellant outside smoking in her car. This witness then followed Wooldridge back inside KSR and conducted an investigation, which included questioning of the Appellant. He stated that she did not deny that she was smoking in a car, but did deny being in possession of contraband.

3. The witness then stated that Lieutenant Julie Thomas examined the Appellant for contraband and during a search of the car she was in, discovered a pill bottle with a prescription issued for the Appellant. The pill bottle indicated the contents contained Vicodin.

4. The Appellant's explanation to Lieutenant Thomas was that she thought her girlfriend had put these pills into a bottle, but did confirm the bottle was hers. The Appellant added that she suffered from high blood pressure.

5. The witness then asked the Appellant to take a drug test at the facility consisting of a urine sample. He then introduced into evidence Appellee's Exhibit 2, a lab report from Phamatech Laboratories, who contracts with the facility to perform its drug tests. The results of this test showed positive for Methadone. The witness then added that violations charged against the Appellant included:

- (1) Smoking;
- (2) having medicines not in the original container;
- (3) leaving her post without supervisor approval;
- (4) having Vicodin inside the institution.

[Hearing Officer Note: The Appellant was not charged in the dismissal letter with leaving her post without supervisor approval; therefore, the Hearing Officer will give no attention to this matter as a basis for dismissal.]

6. On cross-examination, the witness admitted that he did not know what kind of medicines or drugs the Appellant was tested for, and he only knows what she said she was taking. He also added that the pills which she had were marked with an "M357" and that she had identified these pills to him as being Vicodin.

7. The Appellee's next witness was **Julie Thomas**. She has been a Lieutenant at KSR for sixteen years. On June 27, 2012, she was called upon by Captain Wooldridge to conduct a physical search of the Appellant. She stated the Appellant emptied her pockets and two Tylenol pills were discovered, and were not in the original package. This witness then gave the pills to Captain Michael Williams. She stated the officers are allowed to bring their medicines into KSR, but that they have to be in the original package and can only contain enough for two shifts.

8. Appellee's next witness was **Clark Taylor**. He has been the Warden at KSR since June 2012 and has worked for the Agency for approximately twenty-four years. He stated that on June 27, 2012, Captain Wooldridge informed him that he suspected an officer had been going outside to smoke. Later, Captain Williams told him that the Appellant had been found with meds inside the institution. After the lab report came back showing the Appellant testing positive for Methadone, she was given a chance to tell her side of the story at a pre-termination hearing. These actions concluded the investigation. Based upon these findings, the witness stated that he made the decision to issue an intent to dismiss letter which was issued August 13, 2012 [Appellee's Exhibit 3]. The warden stated that he came to the conclusion to dismiss the Appellant based upon the fact that she was smoking, had introduced pills into the facility, and had tested positive for Methadone.

9. He considered these actions to be violation of institutional policy KSR 03-00-14 and Corrections Policies and Procedures 9.6 and 3.11 [Appellee's Exhibits 4, 5 and 6].

10. KSR 03-00-14 states in pertinent part:

I. DEFINITIONS

'Contraband' means any article or thing which a person confined in a detention facility is prohibited from obtaining or possessing by statute, departmental regulation, or posted institutional rule or order.

...

III. Tobacco Products

A. All areas of KSR shall be free from tobacco use and no tobacco products, cigarette rolling papers, matches or lighters shall be permitted past Gate 1 or through any gate accessing the prison yard.

B. Tobacco at the Kentucky State Reformatory shall be considered contraband as defined in KRS 520.010.

11. Corrections Policy and Procedure 9.6 [Contraband], states in pertinent part:

I. DEFINITIONS

'Contraband' is defined by KRS 520.010 and includes items described in II.B below.

...

II. B. Contraband

...

7. Prescribed authorized medication not taken at time of issue and not authorized and maintained as required through an institutional self-administration program.
8. Any prescription medication not considered a controlled substance.

12. Corrections Policy and Procedure 3.11 states in pertinent part:

I. DEFINITIONS

'Illegal drug' means any controlled substance classified as Schedule I, II, III, IV, V in Chapter 218A.040 through 218A.130 of the Controlled Substance Act, Kentucky Revised Statutes that have not been specifically prescribed by a licensed physician or dentist.

II. J. Final Action

1. As defined in CPP 3.1 D(1), Ethics Policy, the Department of Corrections has a zero tolerance for the use of or being under the influence drugs or alcohol in the workplace. Any employee testing positive for an illegal drug or any drug without a current prescription shall be dismissed.

...

13. The Warden added that regarding the charge of promoting contraband, this was based upon the fact that the two pills found on the Appellant were not in the original container and she had not notified Captain Williams that they were on her person in the facility. He also stated that officers can take medications inside the facility, but must follow protocol, such as informing supervisors they possess them. He concluded by saying that at the pre-termination hearing held with Appellant and her counsel, the Appellant stated that on the morning in question, her girlfriend had given her two pills, which she thought were Tylenol. She did not deny smoking outside the facility or being in possession of these pills.

14. On cross-examination, the witness was questioned as to certain provisions of CPP 3.11, specifically, II.I.(3) Drug Screen Procedures. This policy calls for certain actions to take place prior to a drug screen, so as to ensure the integrity of the specimen obtained. These include escorting an employee to a private office for pre-test interviews; placing blueing in the toilet tanks; there being no other sources of water where the specimen is collected; no unnecessary garments being left outside the collection area; instructing the individual to wash and dry their hands prior to urination; the necessity for two staff trained to carry out the drug screening procedures; and the wearing of latex gloves by the designated staff at all times during the collection process. The witness testified that he had no personal knowledge of whether these requirements had been complied with. The policy mandates these procedures are to be followed by use of the word "shall."

15. The Warden further testified that a nurse on the medical staff verified the two pills found in the Appellant's possession were Vicodin. He also testified that he is not aware of whether Nyquil can cause a false positive for Methadone. He also admitted that the Appellant was not charged with any crime.

16. The Appellee then briefly called the Appellant, **Jacquelyn Cecil**, as its fourth witness. She commented on her statement in the Internal Affairs report. She stated that she had two Lortabs, but later realized that these were not the Tylenol she thought they were. The prescription bottle for her medications was in the truck that she arrived in for work. She then added that her girlfriend had told her the pills she had given her were "pain medicine." The Agency then rested.

17. The Appellant, **Jacquelyn Cecil**, called herself as her first and only witness. She testified that she gained employment on August 8, 2011, as a Correctional Officer and that she worked on first shift from 7:45 a.m. through 3:45 p.m. She again testified that on the morning of June 27, 2012, she had left home where her girlfriend had given her what she thought were Tylenol. She added that she had a Lortab bottle in the truck for a ruptured eardrum she suffered from. She stated that the pills stamped M357 were Lortab, which is a generic for Vicodin.

18. She testified that as all officers enter the facility, they are pat-searched and all items found go through X-ray. She stated that two pills were in her shirt pocket and she simply forgot she had them. She then stated that she left her post at 12:30 to go out to her truck. When she reentered the facility, she was again patted down and again forgot that the two pills were there. These were not found by the pat-down. She added that the two pills were first found when Lieutenant Thomas did the physical search for her and required her to empty her pockets.

19. After the lab tests came back showing her positive for Methadone, Lieutenant Williams asked her if she was taking any medications that could cause a false positive. The witness testified that she had done some research, which showed to her that Nyquil and Phenergan could possibly cause a false positive for Methadone. She stated that she is taking both of these substances. However, no documentation of this research was introduced to support her testimony. The Appellant then stated that she had conducted further research into the

Phamatech lab's test results, which she claims show a 27 percent rate of false positives. Again, no documentation or foundation was produced to support this testimony.

20. On cross-examination, the witness admitted entering the facility three different times with a controlled substance, those times being arrival at first shift at 7:45 a.m.; going out at 9:45 a.m. to take blood pressure medicine and returning; and following Captain Wooldridge back into the facility at approximately 12:55 p.m. She freely admitted that she was smoking and had a controlled substance in her possession in the facility.

21. On redirect, the Appellant stated that she has been diagnosed with cancer since her termination and is undergoing chemotherapy. She stressed that she has chosen a narcotic-free form of chemotherapy and was taking a narcotic for her ear infection. In an effort to convince the Hearing Officer that she unintentionally had a narcotic on her possession on June 27, 2012, she raised the question of why she would take a narcotic for three weeks as needed versus taking an unlimited supply of a narcotic-free chemotherapy for several months.

22. She also testified that other officers had been caught smoking, but not terminated. No names were offered. She again stressed that she did not purposely bring any narcotics into the facility.

### **FINDINGS OF FACT**

1. The Appellant admitted that on June 27, 2012, she was smoking on the grounds of the Kentucky State Reformatory (KSR).

2. Appellant also admitted that she had two pills in her possession which were Lortab, a generic for Vicodin. She maintains she thought these were Tylenol. Regardless, these pills were not in the original container and the Appellant failed to inform her supervisors they were in her possession until Lieutenant Thomas discovered them during a search.

3. The Appellant admitted smoking was a violation of KRS 03-00-14, III, since the tobacco is defined as contraband.

4. The possession of two pills of Vicodin constituted a violation of CPP 9.6, II.B. (7) & (8), as they were not in the original container and are also considered contraband.

5. The two violations listed above constitute misconduct under 101 KAR 1:345.

6. Regarding the Appellant's positive test for Methadone, CCC 3.11, II.1., provides that any employee testing positive for an illegal drug "shall" be dismissed. To the Hearing Officer's knowledge, Methadone is considered an illegal drug under KRS Chapter 218A. However, the drug screening procedure under CPP 3.11, II.1.(3), also uses the word "shall" to ensure the integrity of the specimen collected. Warden Taylor had no knowledge of whether the procedures were followed and no other proof was introduced.

7. No evidence was introduced regarding the disciplinary history of the Appellant.

### **CONCLUSIONS OF LAW**

1. The Appellee carried its burden of proof to show the Appellant violated KSR 03-00-14 and also violated CPP 9.6, II.B.(7) & (8).

2. The Appellee failed its burden of proof to show the Appellant tested positive for Methadone, and thus failed to show she violated CPP 3.11.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **JACQUELYN CECIL VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2012-250)** 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).

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 R. Hanson Williams** this 10<sup>th</sup> day of June, 2013.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof mailed this date to:

Hon. Wesley Duke  
Hon. Michael Boylan



## DEPARTMENT OF CORRECTIONS

LaDonna H. Thompson  
Commissioner

Kentucky State Reformatory  
3001 W. Hwy 146  
LaGrange, Kentucky 40032  
Telephone: 502/222-9441  
www.kentucky.gov

Clark Taylor  
Warden

September 4, 2012

Jacquelyn Cecil

Dear Ms. Cecil,

After careful consideration of the statements made on your behalf at your pre-termination hearing, held in my office on August 31, 2012, 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 August 13, 2012. Therefore, based on the authority of KRS 18A.095, you are hereby notified of my decision to dismiss you from your position of Correctional Officer with the Department of Corrections, Kentucky State Reformatory. This action is effective September 4, 2012.

Pursuant to 101 KAR 1:345, Section 1 and 2, I find probable cause to believe that your dismissal is justified based on the following specific reason:

**Misconduct, i.e., smoking on institutional grounds.** As reported by Captain Jamie Wooldridge and yourself, on June 27, 2012, at approximately 12:30 pm, Captain Wooldridge approached you in the parking lot of KSR, which is located on institutional grounds. You were sitting in a vehicle smoking a cigarette.

**Misconduct, i.e., Promoting Contraband.** As reported by Internal Affairs Lieutenant Michael Williams and Lieutenant Julie Thomas, on June 27, 2012 at approximately 1:30 pm, inside the secure perimeter of the institution, Lieutenant Thomas conducted a search of your person and you were in possession of two unknown pills. The pills were located in the upper right pocket of your uniform. You claimed the pills were Tylenol; however after Lt. Williams searched the vehicle you were sitting in, the pills that were found in your uniform pocket were identical to the pills in a prescription bottle with your name on it and the contents were listed as Vicoden.

**Misconduct, i.e.,** on June 27, 2012, you consented to a urinalysis drug screen based on reasonable suspicion. The results from the drug testing company Pharmatech Laboratories were received at the Department of Corrections, Division of Personnel, on June 29, 2012, revealing a positive test result for Methadone. The results of the drug screen were reported in the ordinary course of business by Pharmatech Laboratories., pursuant to its contractual obligations and were relied upon by me in making this decision. You were informed that you would need to provide a prescription for all medications in which you were currently taking. On July 10, 2012, you

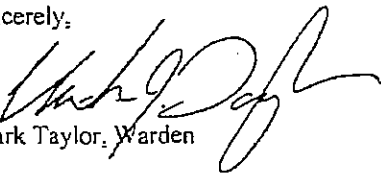
provided a list of your prescriptions to the Regional Personnel Office via fax. Your prescriptions were reviewed and it was verified by Dr. Harold Crall, Medical Director, that none of the prescriptions you were taking would cause a positive result for Methadone.

Your actions are in direct violation of the Department of Corrections Drug Free Workplace Employee Drug Testing Policy CPP3.11, the DOC Code of Ethics, CPP 3.1, and constitutes misconduct pursuant to 101 KAR 1:345.

Your failure to adhere to the prescribed policies by remaining free of illegal or unauthorized drugs trivializes the importance of the regulations of the institution and in fact puts the institution at risk. Moreover, I am unable to place reliance in your ability to interdict the introduction of illegal drugs into the institution when your behavior demonstrates your lack of concern for the laws prohibiting the use of illegal or unauthorized drugs. KSR IPP 03-00-14 Section 3-A, which states "All areas of KSR shall be free from tobacco use and no tobacco products, cigarette rolling papers, matches or lighters shall be permitted past Gate 1 or through any gate accessing the prison yard". CPP 9.6 section II states, "Anyone who promotes contraband or dangerous contraband may be subject to the administrative disciplinary procedures outlined in CPP 15.2 or may be prosecuted as provided in KRS 520.050 or 520.060. Section a of CPP 9.6 list Dangerous Contraband and A-3 states "Any amount of a controlled substance or any quantity of marijuana" is dangerous contraband.

By the provisions of KRS 18A.095, as a classified employee with status, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice of dismissal, 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,



Clark Taylor, Warden

cc: LaDonna Thompson, Commissioner -- Department of Corrections  
James Erwin, Deputy Commissioner -- Department of Corrections  
Tim Longmeyer, Secretary - Personnel Cabinet  
Stephanie Appel, Director - Division of Personnel Services  
Regional Personnel File