

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2012-113

BOYD CLEMONS

APPELLANT

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

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

APPELLEE

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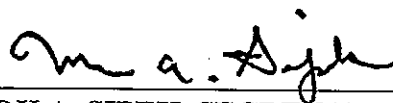
The Board at its regular September 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated June 20, 2013, having considered Appellant's exceptions, Appellee's response, oral arguments, and being duly advised,

**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 17<sup>th</sup> day of September, 2013.

KENTUCKY PERSONNEL BOARD

  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Adam Adkins  
Hon. Gary S. Logsdon  
Joslyn Olinger Glover

**COMMONWEALTH OF KENTUCKY  
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**VS.                      FINDINGS OF FACT, CONCLUSIONS OF LAW  
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**APPELLEE**

\* \* \* \* \*

This matter came on for an evidentiary hearing on March 25, 2013, at 9:30 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Boyce A. Crocker, Hearing Officer. The Appellee Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and represented by the Hon. Adam Adkins. The agency representative was Ms. Kasandra Phillips. The Appellant, Boyd Clemons, was present at the evidentiary hearing and was represented by the Hon. Gary Logsdon. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Hearing Officer notes this appeal was filed with the Personnel Board on May 14, 2012. Appellant was suspended for one day without pay by letter dated March 19, 2012, for allegations of poor work performance and misconduct. In his appeal, Appellant denies the allegations. 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 at 10:30 a.m., ET, on July 25, 2012. Counsel for the Appellant stated there may be questions as to how the disciplinary matter was handled and whether it comported with procedures. One day was deemed sufficient for an evidentiary hearing.

This matter was scheduled for evidentiary hearing by Interim Order dated December 21, 2012. The issue set forth in an Interim Order entered on July 27, 2012, was the disciplinary action taken against Appellant. The Appellee was assigned the burden of proof, which is by a preponderance of the evidence, to demonstrate the disciplinary action was neither excessive nor erroneous and was taken with a just cause.

Subsequent to the pre-hearing conference, a delay was requested by counsel for the Appellee for good reason, and the actual hearing date of March 25, 2013, was set.

## BACKGROUND

1. At the outset of the evidentiary hearing, counsel for the Appellee indicated it had no pre-hearing motions. Counsel for the Appellant however, did want to preserve a possible procedural due-process error which he believes may have been committed by the Appellee when it did not afford him the rights as listed in the employee handbook of a grievance and an opportunity to meet with his supervisor prior to taking disciplinary action. Counsel also claimed two other employees in the same incident were treated differently.

2. Subsequent to counsel's motion, the parties made opening statements. As the burden of proof rested with the Appellee, the Appellee proceeded first with the presentation of evidence and called its first witness.

3. The Appellee called **Erik Dandy** as its first witness. Upon being properly sworn, Mr. Dandy offered the following summarized testimony:

4. Dandy is a Youth Worker Supervisor filling in as a counselor, and has been with the Department of Juvenile Justice (DJJ) for three years at the time of the hearing. Dandy was a Youth Worker Supervisor at Lincoln Village (where this incident occurred and where he was Appellant's supervisor at the time of this incident.)

5. Dandy testified that the Appellant had come on the shift on February 19, 2012, after the previously AWOL Youth had been placed in isolation. Dandy testified that the Appellant had gone to this cottage to supervise the previously AWOL Youth in isolation take a shower. Dandy said that Appellant was observed not supervising the resident in the showers, but was observed walking around the cottage and performing such activities as spraying chemicals.

6. The witness testified that the Appellant was working as a "float" on the evening of February 19, 2012, and as the term would have one believe, a "float" essentially does different jobs. For instance, one of the jobs of the float would be to watch an isolation "placement" when the juvenile would be in the shower. Dandy testified there is "lots of info" about a resident in isolation, such as an isolation package and a shift briefing. The witness also testified that the Appellant should have known the resident in question was in isolation because he had been placed in a white jumpsuit, which would tell staff that the resident had gone AWOL from the facility.

7. Dandy stated the cottage logbook would also have information about the individual in isolation.

8. Dandy testified that to be placed in isolation, a youth would have either had to be involved in AWOL, assault or some other serious issue. Once in isolation, the youth, or resident, is required to have 15-minute checks visually, and is, in general, more closely supervised.

9. As to when a youth in isolation would take a shower, Dandy testified a staff person should be positioned between the shower and the outer door, to make certain the youth

doesn't attempt to go somewhere else when exiting the shower. He further testified the standard shower time would be ten minutes. Dandy testified that the Appellant was doing everything other than supervising the youth taking the shower. He noted that Appellant had also let the resident shower longer than he was supposed to. Dandy stated he had seen this on the videotape later. **(Hearing Officer Note: At this point counsel for the Appellee reviewed a videotape of the incident in question with this witness. The parties and the Hearing Officer gathered around the notebook computer placed on the witness table to view the videotape as counsel for the Appellee led Dandy through a series of questions.)**

10. In reviewing the videotape, Dandy noted that the Appellant allowed the youth to take more clothes than necessary into the shower; Dandy testified the proper protocol would be to hand the youth the white mesh bag, which would have clothes the youth would be permitted, and no more. However, Dandy testified that by allowing the youth to take extra clothes, the Appellant had not broken any rules.

11. Dandy offered that he believed the Appellant should have either called for staff assistance or verbally warned the youth when he took extra clothes with him into the shower. While reviewing the DVD recording of the incident in question, Dandy commented the Appellant had walked to the day room down a side corridor instead of remaining between the shower door and the front door. **(Hearing Officer Note: The Hearing Officer, having observed the recording, notes the shower door was in a straight line to the outside door.)**

12. It was noted that the youth went into the shower at approximately 18:11 p.m. as reflected on the recording. Dandy testified as of 18:21 p.m., when the youth had been in the shower for ten minutes, that the Appellant should have been knocking on the door, asking the resident what is going on and telling him to hurry up. Instead, Dandy stated the Appellant was not viewed as being near the shower door. Dandy testified in reviewing the recording that it was fourteen minutes (18:25 p.m.) until the Appellant made an appearance back in the hallway directly adjacent to the shower room. Dandy stated that the correct position, as he had testified earlier, would have been in the hallway near the shower door, so that if the resident attempted to do anything the Appellant would be in a position to hopefully stop him.

13. After a further review of the videotape, Dandy stated it took the Appellant approximately 17 minutes from the time the youth entered the shower room until the Appellant placed himself in the proper position near the shower room. At the 21-minute mark of the recording, witness Erik Dandy stated that the Appellant had only made one appearance outside of the shower room at that time. Dandy further observed, at about the 21-minute mark, Appellant taking what appeared to be a spray bottle of chemicals around the day room, commenting that is not something that a "float" assigned to watch a resident in isolation taking a shower should do. Dandy testified that Appellant placed the spray bottle of chemicals back into the janitorial cart in the hallway at approximately the 21-minute mark of the recording (18:32). At the 18:32:29 mark the resident was observed by Dandy to have run out the shower room door and run out the outside door with the Appellant chasing behind.

14. Dandy stated that had the Appellant had been able to maintain visual observation of the shower room, even standing a little way down the side corridor towards the day room, would have been acceptable.

15. On cross-examination of Dandy, he said he did not make notes of his interview with the Appellant. He did state the Appellant was defensive and he was not in the proper position and did not follow written protocol in how he supervised the youth in question. Dandy stated that the Appellant had stated he had not been informed by his supervisor this youth had been AWOL and he believed that. In fact, Dandy stated that the Appellant's supervisor, Mr. Sanders, told Dandy that he had not informed the Appellant that the resident had gone AWOL the night before. Dandy testified that the AWOL youths are housed in one of the four cottages at Lincoln Village in one of the four isolation cells (each cottage has one isolation cell.)

16. Dandy also testified the front doors to the cottages which lead to the outside are locked, but if you put enough force to the doors, they will open. Dandy stated he did not conduct any investigation as to why the doors were not secured and did not talk to the maintenance personnel about whether the locks were working. The witness was not aware whether the supervisor in that particular cottage had made a written report that evening that the locks on the doors were not functional. Dandy stated the security provided on those outside doors would be if one pushed the bar, an alarm would go off. The witness was not clear or did not know that the supervisor in that cottage, Newby, had made a report that the locks were not working.

17. In response to a question on cross-examination, as to the truthfulness of Appellant when he made his statement to Dandy, Dandy testified that Clemons was not truthful when he stated that he did not allow the youth to take extra clothes into the shower and that he maintained constant visual on the shower door. Dandy testified that the white jumpsuit the youth was wearing identifies him as a youth who has gone AWOL. Dandy testified it may not be a written protocol, but only the shower bag goes with the youth into the shower and that is standard practice.

18. Dandy testified that the "ten minute rule" for the time length an isolation youth is allowed to shower is in the handbook and the "fifteen minute rule" is written.

19. Dandy also testified that the only reason that Appellant Clemons was in Clay Cottage on the evening in question was to shower that AWOL youth so that Ms. Newby, the cottage supervisor, could supervise the other nine youths. Dandy agreed that the resident's clothes were there in the nook of the hallway outside of the isolation cell door, and that staff had placed them there. Dandy stated the clothes should have been picked up at some point, but had not been.

20. Dandy said the Appellant had said he was not spraying the rooms down with a disinfectant as it appeared on the video.

21. On re-direct, Dandy testified that the Appellant would not have been able to see the shower door looking into the oblong convex mirror at many points during the video, when he was either down the hall or in the game room or in the day room. Dandy agreed with a question

from counsel for the Appellee that had the Appellant done his job in being properly positioned to watch the shower door, that it wouldn't have mattered whether the outside door locks functioned or not; the youth would not have gone AWOL again.

22. On re-cross-examination, Dandy agreed that he would sometimes perform "spot checks" on videos to observe staff, including the Appellant.

23. The next witness called by the Appellee was **Ms. Kasandra Phillips**. Upon being properly sworn, Phillips offered the following summarized testimony:

24. Phillips stated she was the "JSDS" in Hardin County and had been the Acting Superintendent at Lincoln Village Youth Development Center from August 2011 through May 2012. Phillips stated that Lincoln Village was "staff secured" and not "perimeter secured" (with a fence.) Phillips testified that the classification section in DJJ makes the decision on which youths go where, and if the youth is a high risk for going AWOL that the youth is put on AWOL watch. Phillips testified that doors are not locked at a Level 3 Facility such as Lincoln Village. This means that it is a "staff secured" facility, and there is no perimeter fence around Lincoln Village YDC.

25. Phillips stated she and Erik Dandy had interviewed Clemons and she had also reviewed the tape. Phillips testified that issues she saw on the tape were the Appellant not supervising the youth properly, not checking on him while he was in the shower room, nor keeping the shower room door in the line of sight. Phillips testified that the youth having been placed in an isolation cell alone should have alerted the Appellant to the fact that the youth was high risk either for some sort of assault or other volatile behavior, such that he had to be placed in a locked room.

26. Phillips stated that a white jumpsuit would equate to AWOL risk; that all colors the youths wore at Lincoln Village equated to what level of privileges those youths were allowed, and the staff should know those colors. Phillips testified she did not know of any situation where youth would come out of the isolation cell and the employee would not need to have a heightened sense of awareness. Phillips further testified that in reviewing the videotape, she was concerned about seeing Clemons not monitoring the youth the way he should, the fact that Clemons had stepped into other rooms off the day room, and that he often had his back to the area of the shower room door, making it harder for him to have intercepted the youth or monitored the youth.

27. Phillips testified she had reviewed the video before she talked to the Appellant after the incident had occurred, and there were some inaccuracies in what the Appellant reported to her. One was the Appellant failed to report to her his noncompliance with maintaining line of sight on the youth. Phillips stated the Appellant also failed to mention that the youth was in the shower for 22 minutes, that he was on the phone, watching TV in the day room, and spraying chemicals. Phillips also testified the Appellant stated he was in the proximity of the counselor's office, maintaining line of sight on the shower room, which Phillips did not believe was accurate.

28. Phillips testified that the youth was ultimately apprehended by the Kentucky State Police, executing a Commissioner's Warrant which had been issued. Phillips also testified that the first time the youth had gone AWOL the previous day he had been apprehended before a Commissioner's Warrant had been issued. Phillips testified that the Appellant, as a seasoned employee, knew the protocol. Phillips had written the protocol and distributed it to all staff, and she had never heard from the Appellant that he did not know what the protocols were.

29. Phillips testified that a white jumpsuit, while identifying an AWOL risk, was not limited to those youths in isolation, but one would see white jumpsuits all over the campus of Lincoln Village. Phillips also testified she had never worked in "residential" before she became Acting Superintendent, and she learned many of these policies, such as how long a youth would be allowed to shower, by "shadowing" youth workers in the cottages. Phillips testified it would not be appropriate to not have line-of-sight on a youth showering, even if that youth was in general population, for 22 minutes.

30. Phillips testified that the Appellant should have maintained direct line-of-sight on the isolated individual and she did not observe him doing so in the videotape.

31. On cross-examination, Phillips testified she did allow the Appellant to view the videotape sometime soon after March 20, 2012. She also stated she made no notes as to the interview she conducted with the Appellant.

32. Phillips stated that the requirement to do "15 minute checks" on the youths housed at Lincoln Village is an absolute policy requirement, but she is not familiar with the alleged requirement to check on a youth showering every 10 minutes.

33. On re-direct, Phillips stated that the Appellant should definitely have instructed the youth to not pick up the clothes which were outside the isolation cell to take into the shower. Phillips stated that regardless of the Appellant's perceived dishonesty in response to the questions during the interview she and Erik Dandy conducted, that Appellant would have been disciplined in any event.

34. Upon conclusion of Phillips' testimony, the Appellee called **Mary Caldwell** as its next witness. Caldwell was sworn in and offered the following summarized testimony:

35. Caldwell stated she is a Personnel Administrator for the Department of Juvenile Justice and has been so for approximately seven years. Caldwell testified she keeps a detailed summary of the approximately 130 disciplinary actions per year since she has been the Personnel Administrator for DJJ. Caldwell stated she reviews files to make disciplinary recommendations.

36. During the course of Caldwell's testimony, counsel for the Appellee introduced into the record Appellee's Exhibits 4 through 9, which are statutes, regulations, DJJ regulations and/or Lincoln Village policies. These are what Caldwell relied upon for authority to recommend discipline.

37. On cross-examination, Caldwell recounted to counsel for the Appellant what she had reviewed in the file when assessing a recommendation for discipline against the Appellant, and this included the memorandum prepared by Erik Dandy and also a letter prepared by the Appellant. Caldwell stated that she did not review the videotapes or the DVDs in question regarding the incident.

38. Caldwell gave a qualified agreement to counsel for the Appellant's question that if the report she relied upon primarily in making the recommendation for discipline in the Appellant's case was proven to have contained factual inaccuracies, specifically that Caleb Sanders, Appellant's supervisor, had not briefed the Appellant regarding the AWOL youth prior to Appellant going to Clay Cottage, would that change the decision or the recommendation. Caldwell agreed to a point, but noted that it would not entirely change the recommendation.

39. The Appellee concluded its case.

40. For Appellant's first witness, he called **Ms. LaShae Newby**. Upon being properly sworn, Newby offered the following summarized testimony:

41. On the night in question, February 19, 2012, Newby was assigned as the Youth Worker in Clay Cottage and had been so assigned by the Youth Worker III Supervisor that evening, Caleb Sanders.

42. Newby testified that prior to the beginning of the shift on February 19, 2012, there was a shift meeting and the employees knew about the AWOL, but there wasn't a lot of information given at that meeting. Newby did know that the youth in question was in Clay Cottage. She also knew that the youth in question was supposed to be kept in the isolation cell, and that the Appellant was at Clay Cottage that evening to shower the resident and then put him back in isolation.

43. Newby testified she was not aware of any time limit for the youths in the shower. Newby did state that all residents (youths) are to be checked every 15 minutes. Newby further testified that she recalled monitoring the AWOL youth while he was in the shower, as the Appellant helped her with other activities in Clay Cottage that evening. Newby stated no disciplinary or corrective action was taken against her regarding the incident in question.

44. Newby testified that the locks on the outside door of the cottage did not work that evening, and as a result after the youth had gone AWOL, the Appellant stayed in Clay Cottage with her that evening to make sure no other youths gone AWOL. Newby stated the doors weren't locking, the buzzer wasn't going off, nothing was working on the doors. She said she was unaware the doors were not working properly until after the AWOL. Newby stated she logged this information about the door in the log book.

45. On cross-examination, Newby stated she was informed in the staff meeting on February 19, 2012, that an AWOL had occurred. She was also aware that the AWOL youth was in isolation. Newby stated the fact that a youth would be in isolation would be enough to put a staff member on notice there should be heightened awareness, and in fact she agreed that was



why the Appellant had been sent to Clay Cottage to help monitor the youth in isolation. Newby testified as far as she knew the Appellant's duty in Clay Cottage on February 19, 2012, was to shower the AWOL youth in isolation.

46. Newby testified that Lincoln Village, at the time of the incident, was a Level Three facility, but stated that the doors to the cottage such as Clay Cottage would lock. She stated that when she had tried to open the door without using her key that the buzzer would go off and a lock would engage, but if you pushed on the door, then she believed after 20 or 30 seconds the door would open.

47. Newby testified that sometimes the 15 minute checks are hard to accomplish with the level of activity in a cottage, and that is one reason the mirrors are in the cottage which would allow a youth worker to see the residents or youths from the day room if the residents or youths are leaving the shower or bathroom coming back to the day room.

48. Newby testified on question from the Hearing Officer that the isolation doors do lock.

49. The next witness called was **Caleb Sanders**. Upon being properly sworn, Sanders offered the following summarized testimony:

50. Sanders was employed as a Youth Worker III on February 19, 2012, at the Lincoln Village YDC. Sanders was the Shift Supervisor on that day. Sanders testified he did not brief the Appellant as to the AWOL youth. Sanders testified the employees coming in on second shift would have been briefed by first shift as to any issues. Sanders testified that as the "float," Clemons knew to go to each cottage and find out what each cottage would need.

51. As to what a worker such as the Appellant would do when supervising an isolated youth in taking a shower, Sanders testified the youth worker would try to stay in close proximity to the hallway or the shower, or be able to look into the mirror, and after so long would go to check on the shower. Sanders testified he was not aware prior to the event which occurred that the locks on the outer door at Clay Cottage were not functioning properly. Sanders testified that after the incident he heard that staff either made comments or stated that the locks were not properly functioning on Clay Cottage for two weeks. However, Sanders stated he did not know this at the time of the incident.

52. On cross-examination, Sanders testified an isolation youth preparing to go to the shower room should not take anything other than what has been provided to him, which might include a hygiene box. He stated such an isolation youth could not take extra clothes to the shower room.

53. Sanders agreed with counsel for the Appellee that when showering an AWOL youth, the Youth Worker should not lose sight of the door for more than a few seconds to be safe.

54. Sanders testified he would have advised the Appellant to have taken the position being in the hallway or adjacent hallway to the shower room, but not being in the day room for an extended period of time while showering the AWOL youth. Sanders testified that when he is showering a youth in isolation, he would try to position himself in the adjacent hallway to the shower room door, and then only briefly, if he had to, go from that area while the youth was in the shower room.

55. The next witness called by the Appellant was the **Appellant, Boyd Clemons**. Upon being properly sworn, the Appellant offered the following summarized testimony:

56. The Appellant testified he did not know the youth could not take the clothes into the bathroom, or assumed he had permission to do so, as he did not believe this youth was supposed to be wearing this AWOL suit. The Appellant claimed during portions of the video he was within earshot, that he could hear if the bathroom or shower door opened. During his testimony, the Appellant reviewed the videotape of the incident in question, and made repeated references or claims that he could see the shower door from the mirror while he was in the day room of Clay Cottage.

57. The Appellant testified he didn't believe he was the only one at fault; that Ms. Newby also would bear some of the responsibility as it was "her cottage." However, the Appellant saved most of the blame for the doors not locking properly; that had they "caught" for even five seconds he would have been able to stop the youth from going AWOL. The Appellant testified that if he had known the doors were not working properly, he would have called the supervisor and, "both of us would have been watching this kid."

58. At the conclusion of the Appellant's testimony, the case was closed.

### **FINDINGS OF FACT**

1. During the relevant times, the Appellant was a classified employee with status.
2. The Hearing Officer finds the Appellant was assigned, as was testified to and is uncontroverted, as the "float" youth worker to the Clay Cottage at the Lincoln Village Youth Development Center on the evening in question, February 19, 2012.
3. The Hearing Officer finds the primary reason the Appellant was in Clay Cottage on February 19, 2012, was to supervise the showering of a resident youth who had been AWOL the previous evening.
4. The Hearing Officer finds Appellant was not given a shift briefing by his supervisor, Caleb Sanders, regarding the status of this youth. This too is uncontroverted.
5. The Hearing Officer finds the Appellant was, however, aware that the youth was in an isolation cell that evening. The Hearing Officer finds that youths in isolation under the care

of the Department of Juvenile Justice require heightened supervision, and that the youth workers, and the Appellant, are aware of this.

6. The Hearing Officer finds that it is uncontroverted that the Appellant allowed the youth to take extra clothes with him into the shower room. The Hearing Officer finds the youth was not authorized to take these clothes. The Hearing Officer finds this fact to be important, because a youth in isolation, whether wearing a white jumpsuit or not, would have no need for extra clothes to go into the shower room as the youth would be returning to the isolation cell upon completing the shower. The Hearing Officer finds that the youth was in the shower room for over 20 minutes on February 19, 2012, between approximately 18:11 p.m. and 18:32 p.m. The Hearing Officer finds that the Appellant spent very little time between 18:11 p.m. and 18:32 p.m. in close proximity to the shower room. The testimony of Erik Dandy and Kasandra Phillips, and largely that of Caleb Sanders, revealed that a Youth Worker should be in close proximity to the shower door, and not be out of the line of sight of it for more than a few seconds when a youth in isolation is showering. The Hearing Officer finds this testimony persuasive.

7. The Hearing Officer is aware of the Appellant's testimony, backed up to some degree by LeShae Newby and Caleb Sanders, that he was able to maintain line-of-sight observation on the shower room door by utilizing the mirrors in Clay Cottage, which give multi-directional views in the cottage. The Hearing Officer however, finds this is a poor substitute for being near the shower room door, or at least in the hallway directly adjacent to the shower room to provide that line-of-sight supervision.

8. The Hearing Officer finds that the Appellant was clearly relying on the outer doors of Clay Cottage to have a "locking mechanism" as described at the evidentiary hearing by the Appellant, LaShae Newby and Caleb Sanders, that when a person pushes on the door to go outside, if the key had not been turned, a buzzer would go off and the door would not open for anywhere between 10 to 30 seconds. The Hearing Officer finds it undisputed that this mechanism was not functioning properly on February 19, 2012.

9. The Hearing Officer is aware that the Appellee is sensitive to what terms are used to describe this locking mechanism as it may affect what level of facility Lincoln Village is, but nevertheless, the mechanism did not work on the evening of February 19, 2012.

10. The Hearing Officer did not find it unreasonable that the Appellant would have considered this outer door a sort of "back-up" in case a youth would try to go AWOL, but that does not excuse the almost entire lack of supervision of the youth.

11. The Hearing Officer is perplexed that Appellant, a Youth Worker with many years of experience, would allow a youth who was in isolation, and was even wearing the white "AWOL" jumpsuit, to remain in the shower unsupervised for over 20 minutes. This is troubling because the Appellant was assigned to Clay Cottage that evening as the "float" and his primary job duties were not to help LaShae Newby, but were to see this youth in isolation was showered and then returned to his cell for the evening. The Appellant failed his primary job function. The Hearing Officer finds the testimony of Caleb Sanders, Erik Dandy and the Appellant all persuasive in this regard, as all witnesses spent time reviewing the Appellant's actions on

videotape during the course of the evidentiary hearing, with both Erik Dandy and Caleb Sanders commenting that even though the Appellant possibly could have seen the shower door from the "day room" of the cottage via the mirror system, that such was not a substitute for maintaining direct line-of-sight on the shower door and being positioned properly in the hallway outside the shower room door. The Hearing Officer also finds troubling that the Appellant, during the course of his direct testimony, attempted to lay equal blame for the youth going AWOL at the feet of LaShae Newby, even though it was his function to ensure that the youth was showered that night as a part of his "float" duties.

12. The Hearing Officer does not find that the Appellant was intentionally untruthful to Erik Dandy and Kasandra Phillips when he was interviewed by them after this incident. That is, he may genuinely have not remembered and recalled exactly what it was he was doing.

### **CONCLUSION OF LAW**

The Hearing Officer concludes as a matter of law that the one day suspension levied on the Appellant for poor work performance and not properly supervising the isolation cell youth when he took his shower on the evening of February 19, 2012, was not excessive or erroneous. The Hearing Officer concludes that the poor work performance demonstrated by the Appellant's failure to properly supervise the youth being showered does constitute unsatisfactory performance of duties per 101 KAR 1:345 and that a one-day suspension was certainly not out of line.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **BOYD T. CLEMONS V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE, (APPEAL NO. 2012-113)** 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 Boyce A. Crocker** this 20<sup>th</sup> day of June, 2013.

**KENTUCKY PERSONNEL BOARD**

  
\_\_\_\_\_  
**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Adam Adkins  
Hon. Gary S. Logsdon