

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-103

ROBERT COATES

APPELLANT

VS. FINDINGS OF FACT, CONCLUSION OF LAW
AND RECOMMENDED ORDER

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

This matter came on for an evidentiary hearing on March 11, 2020, at 10:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Robert Coates, 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. Angela Cordery. Appearing as Agency representative was Warden Kevin Mazza of the Green River Correctional Complex.

This matter involves a 15-day suspension given to the Appellant by letter dated April 12, 2019. The burden of proof was placed upon the Appellee by a preponderance of the evidence to show that the disciplinary action was justified and was neither excessive nor erroneous.

Specifically, the suspension was given for poor work performance under 101 KAR 1:345, Section 1, for violation of various post orders and GRCC Policy No. IPP 10-01-01.

In summary, the allegations for poor work performance are that on February 13, 2019, the Appellant failed to restrain an inmate prior to removing him or entering in his cell.

BACKGROUND

1. The Appellee's first witness was **Tina Whitworth**. She has served as a Human Resources Administrator at Green River Correctional Complex (GRCC) approximately four years and has 22 years of service with the Agency. She introduced: (1) Appellee's Exhibit 3, dated February 22, 2019, (2) Appellee's Exhibit 4, dated October 1, 2018, and (3) Appellee's Exhibit 5, dated April 11, 2018. These represent previous disciplinary actions given to the Appellant, ranging from a written reprimand, a one-day suspension, and a three-day suspension.

2. The Appellee's next witness was **Damen Ellis**. He has been a Correctional Unit Administrator I for the previous five months at GRCC and served there previously as a Classification and Treatment Officer.

3. The witness testified that, on February 13, 2019, at approximately 12:25 p.m., he was working on A Lower Walk in the Restricted Housing Unit (RHU) speaking with an inmate. During his presence there, he noticed that the Appellant and two other Officers in Training were in front of Cell AL-09. As he was exiting the block, he noticed that the cell door of that unit was open and inmate Ellis was inside, unrestrained. He then reported this to his superiors.

4. On cross-examination, the witness was directed to Post Order #PO-30 (Joint Exhibit 1). Specifically, he was directed to Item 8, which states, in pertinent part:

Staff shall be responsible for strict security procedures in regards to staff, visitors, and inmate movement within the unit.

A. Unit Doors Operations.

1. The entry doors to SMHU shall be operated in a sallyport fashion, with only one door open at a time...
2. All walk doors shall be secured at all times.
 - a. Staff shall not be allowed on the walk if inmates are out on that walk unrestrained.

5. The witness explained that although he did not see the inmate out of the cell, the potential for violence was there because the door was unlocked and the inmate was not restrained. Rather, the inmate was standing at the back of the cell wall.

6. The witness then confirmed the inmate never left the cell while he was present.

7. The Appellee's next witness was **Tristan Noffsinger**. He has been a Correctional Officer (CO) at the facility for approximately one year, and was an Officer in Training on February 13, 2019. He explained that he accompanied the Appellant, along with Officer in Training Drea, on that day to the Lower Block. He testified that the Appellant opened the cell door to inmate Bell and told him to stand at the rear wall.

8. On cross-examination, the witness explained that he was not totally familiar with the proper procedures of entering a cell but, afterward, his supervisor, Lt. Young, counseled him on the proper procedures.

9. The Appellee's next witness was **Alex Drea**. He has also been a CO at GRCC for approximately one year and was an Officer in Training on February 13, 2019. He confirmed witness Noffsinger's testimony of the actions that day. He testified that the Appellant first told the inmate to stand on the back wall, wherein the Appellant opened the door, got a food tray, and then left.

Apparently, Appellant then returned to the cell a second time after learning that the inmate had lied to him about receiving a cell tray. Appellant again opened the door without restraining the inmate and told him to sit on the bed. The witness also confirmed that the inmate never attempted to leave the cell.

10. On cross-examination, although having confirmed the inmate never attempted to leave his cell during these incidents, the witness added that it was always a risk when the door was open and the inmate was unrestrained.

11. The Appellee's next witness was **Daniel McGuire**. He has been a Sergeant at GRCC for approximately five months and has served six years with the Agency. He began as a CO.

12. The witness testified that, on February 13, 2019, he also was on the RHU and explained that it was a unit where inmates were "more controlled," as they were the more troublesome inmates. The witness related that while previously serving as a CO, he had been told that the inmates are always to be restrained before opening their cell doors.

13. On cross-examination, the witness again confirmed that the inmate never attempted to come out of the cell.

14. The Appellee's next witness was **Sheila Chaney**. She has served as a Correctional Lieutenant for the past nine years and has 16 years with the Agency. She testified that she sometimes becomes involved in disciplinary actions involving her staff. She introduced Appellee's Exhibits 11 and 12. These are her Occurrence Reports of February 14, 2019, after having learned of the actions, or inactions, of the Appellant the previous day. In her report, she indicates that she requested an Occurrence Report to be filled out by the Appellant. This was apparently done, but the witness felt it was incomplete as it contained no full explanation of the incident the previous day.

15. The Appellee's next witness was **Donald Young**. He was a Lieutenant at the facility on February 13, 2019, and was in charge of the RHU. The witness indicated that, on February 13, he was advised the Appellant was on the floor with trainees Noffsinger and Drea and was at an open cell door of inmate Bell with the inmate unrestrained. As a result, he ordered the Appellant off the floor and advised the two other Officers in Training of the proper procedures, which were that restraints are required on the inmates at all times before staff open the door.

16. He also confirmed that the type of inmates placed in the RHU require more secure restrictions because of their temperaments.

17. On cross-examination, the witness confirmed that inmate Bell was not being escorted, which was in reference to another portion of the Post Order. However, the violation of Post Order #PO-30 occurred simply because the inmate's cell door was open and he was not restrained.

18. The Appellee's next witness was **Angela Hernandez**. She was serving as a Correctional Captain at GRCC in February 2019. She related that Lt. Young told her of the incident involving the Appellant with the inmate being unrestrained. She then oversaw an investigation into this matter and reported her findings to Correctional Major Robert Henning by a memo dated

February 18, 2019 (Appellant's Exhibit 14). In this memo, the witness listed five violations of policies and procedures that she felt the Appellant had committed. These are:

GRCC 10-01-01, Item B, Subsection 2.

An inmate released from his cell shall be placed in shackles, handcuffed behind the back, and placed under escort, unless otherwise directed by the unit supervisor.

Post Order #30 - RHU, Item 8.

Staff shall be responsible for strict security procedures in regards to staff, visitor, and inmate movement within the unit.

Post Order #30 - RHU, Item 8, Subsection A, Item 2(a).

Staff shall not be allowed on the walk if inmates are out on that walk unrestrained.

Post Order #30 - RHU, Item 8, Subsection D, Item 3.

No inmate shall be allowed out of cell without being fully restrained except for cell cleaning and showers.

Post Order #30 - RHU, Item 8, Subsection D, Item 3(c).

After the handcuffs have been placed on him, RHU Control opens the cell door.

19. The witness then explained that, for security purposes, it is important that an inmate be handcuffed before being removed from the cell. This also means that an inmate must be handcuffed before a cell door is opened, which apparently was not the case here. She stated that it is important that an inmate be restrained because once a cell door is opened, it gives access to the walk where other staff or inmates may be.

20. The Appellee's next witness was **Warden Kevin Mazza**. He has served as Warden at GRCC since July 2018. He has 15 years of service with the Agency.

21. He testified that he made the decision involving taking disciplinary action against the Appellant. He gave his reasons for the 15-day suspension after having taken into account the prior disciplinary history of the Appellant, along with the potential danger, which had been presented to himself and other staff by the Appellant having not followed Post Orders.

22. He again emphasized that an inmate's open cell door with no restraints on him is very risky, especially in the RHU.

23. The Appellee closed its case-in-chief.

24. The **Appellant, Robert Coates**, called himself as his one and only witness. He stated that he has served 12 years with the Department of Corrections as a Correctional Officer. Without naming specifics, the Appellant stated that he has seen other COs open doors and get lighter suspensions than he did. At one point, he also referenced that, in previous years, it had apparently had been all right to open a cell door after having directed an inmate to stand against a back wall.

25. The Appellant closed.

FINDINGS OF FACT

1. The Appellant, Robert Coates, was given a 15-day suspension, by letter dated April 12, 2019, for poor work performance, specifically, for violating various Post Orders and GRCC Policy No. IPP 10-01-01.

2. At the heart of the violations was the Appellant's failure to restrain an inmate on the RHU (a unit holding the most potentially troublesome prisoners) prior to entering his cell.

3. The Warden and other supervisory officers testified of the potential risks involved in opening an inmate's cell door without first restraining him with handcuffs, which certainly appears to be a logical, commonsense approach.

4. As an experienced Correctional Officer with 12 years of training, the Appellant was, or should have been, aware of those policies and Post Orders, most specifically Post Order #PO-30, SMHU, Item 8, Section D, Subsection 3(c), which states: "After the handcuffs have been placed on him, SMHU Control opens the cell door."

5. Although the Appellant argues the inmate never left the cell, nor was he being escorted anywhere, a potential risk occurred because the cell door was open and the cell contained an unrestrained inmate.

6. The Hearing Officer therefore finds the Appellee carried its burden of proof to show that the Appellant violated Post Order #PO-30, SMHU, Item 8, Section D, Subsection 3(c), stated above, and Post Order #PO-30, SMHU, Item 8, which states: "Staff shall be responsible for strict security procedures in regards to staff, visitor, and inmate movement within the unit."

7. The Warden's decision to impose a 15-day suspension was not excessive nor erroneous, taking into account the Appellant's previous disciplinary history and the potential risk herein.

CONCLUSION OF LAW

Based upon the foregoing Findings of Facts and the Appellant's previous disciplinary history, the Hearing Officer concludes as a matter of law that the Appellee proved its burden that the 15-day suspension of the Appellant was neither excessive nor erroneous, and was taken with just cause.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **ROBERT COATES V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2019-103)** 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 R. Hanson Williams** this 30th day of April, 2020.

KENTUCKY PERSONNEL BOARD



MARK A. SIPK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Angela Cordery
Mr. Robert Coates