

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-095

JOSEPH CONLEY

APPELLANT

v.

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

*** *** *** *** ***

The Board, at its regular December 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated November 7, 2024, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer 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 18th day of December, 2024.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Joseph Conley
Hon. Peter Dooley
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney Moore

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-095

JOSEPH CONLEY

APPELLANT

FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND RECOMMENDED ORDER

JUSTICE & PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

*** * * * *

This matter came on for evidentiary hearing on August 26, 2024, at 9:00 a.m. ET via Zoom video conferencing before Brenda D. Perry, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Joseph Conley was present at the evidentiary hearing via Zoom and was not represented by legal counsel. The Appellee, Justice & Public Safety Cabinet, Department of Corrections was present and was represented by the Hon. Peter Dooley. Also present was Warden Kevin Mazza, the agency representative.

The issues before the Hearing Officer were whether there was just cause for the dismissal of the Appellant and whether the penalty of dismissal was excessive or erroneous. The Appellee had the burden of proof, which was by a preponderance of the evidence. Prior to the hearing, the parties entered an Agreed Protective Order that records, photographs and videos concerning any inmates or Department of Corrections employees, as well as materials related to institutional security, shall remain confidential. To that end, the exhibits and video shall be subject to the protective order and the inmate at issue shall be referred to as "Inmate A."

BACKGROUND

1. The Appellant, Joseph Conley, filed his appeal with the Personnel Board on July 19, 2023. On the appeal form, he provided, "I was told I omitted information on a report on a cell entry. My dismissal states poor work performance."

2. On the day of the hearing, both parties waived making an opening statement. The Appellee called **Patrick Hawkins**, who served as the Correctional Unit Administrator of the Northpoint Training Center ("Northpoint"). After being sworn, the witness stated that he first began working for Northpoint in 2010 and was promoted to his current position in 2019. He

testified that he is tasked with supervising the daily activities of three shifts including the Special Management Unit, which houses the more aggressive inmates.

3. Mr. Hawkins testified that, on May 15, 2023, there was an incident involving the Appellant and Inmate A. The witness said that when incidents occur, a report is sent via email to various staff members. The witness stated that when he returned to the office on May 19, he reviewed the associated stationary camera footage and handheld camera footage, along with the reports completed by Sgt. Conley and Officer Ashely and realized the actions he observed on the videos were inconsistent with the reports completed by the two officers.

4. The witness testified that upon reviewing the video of the stationary camera mounted in the hall, he could see Officer Ashely prepare the tray slot in the inmate's cell door so that it could be opened without a key. Officer Ashely then positioned himself out of sight of the inmate and Sgt. Conley (who was holding the handheld camera recording the inmate) later nods his head for Officer Ashely to spray the inmate with Oleoresin Capsicum (OC) Spray. After the head nod, Officer Ashely quickly opens the tray slot and sprays the inmate with the OC.

5. The witness asserted that any time an inmate is in a cell by himself, but is being non-compliant, a planned use of force is considered. In such situations, medical staff are consulted to make sure the health of the inmate does not present a risk of harm from the use of OC or taser. He testified that staff of the institution try to gain compliance by using other staff interventions before force is considered. The witness identified **Appellee's Exhibit 1**, (Bates Stamped 92- 95) a May 19, 2023 Memorandum entitled Use of Force Review for the inmate at issue, and it was entered into the record without objection. The witness identified **Appellee's Exhibits 2 and 3**, the handheld and stationary videos of the incident that he had reviewed in conjunction with the reports of the officers, and they were entered into the record without objection. The witness identified **Appellee's Exhibit 4** (Bates Stamped 19 to 46), the Use of Force Extraordinary Occurrence Report (EOR), and it was entered into the record without objection. The witness testified regarding the exhibits. He stated that Sgt. Conley's portion of the EOR omitted that OC was deployed, and it also omitted the inmate's actions and activities when it was deployed.

6. The next witness to testify was **Warden Kevin Mazza**. After being sworn, he testified that he is the Warden of the Northpoint Training Center and oversees all operations, security, medical and recreational programs. He is responsible for all employee discipline. His approach in disciplinary actions is to meet with the employee to obtain their side of the story and he did so in this case. He testified that, after meeting with the Appellant, he didn't feel he had missed anything, and he based his decision to terminate the Appellant's

employment on what is best for the Northpoint Training Center and what is best for the Department of Corrections. He determined that, based upon the investigation, Sgt. Conley's actions warranted termination. The witness identified **Appellee's Exhibit 5** (Bates stamped 16-18), which is the letter of dismissal he issued after Sgt. Conley's pretermination hearing. He stated that the use of force was not justified, and that Sgt. Conley lied on his official documents, the inmate was not pulling off his colostomy bag, and that the deployment of the OC was omitted from the report.

7. **The Appellee rested.**

8. Upon being sworn, the Appellant, **Joseph Conley**, testified as the only witness on his own behalf. Mr. Conley testified that he had been employed with the Department of Corrections just short of five (5) years at the time of the incident and he had been employed at Northpoint prior to this in 2013 and 2014. After watching the video of the stationary camera during the proceedings, the witness first testified that he did not see his head nod, then later testified that his head nod depicted in the video was intended for an inmate in the cell next to the inmate at issue. He testified that this other inmate was attempting to speak with him (the Appellant) and the nod was for that inmate and it was not a cue for the other officer to deploy the OC. The Appellant testified that it was a miscommunication on the spraying of the inmate. The witness testified that it was appropriate to spray the inmate at that time because the inmate was messing with his colostomy bag, and the inmate had asked Mr. Conley, "Have you ever seen guts?" He testified that the inmate was getting ready to commit self-harm and he (Mr. Conley) was trying to de-escalate and monitor the situation. When asked by the Hearing Officer why he did not include the use of force in his report, the Appellant responded that he did not know.

9. Each party made a closing statement. The Hearing Officer considered the entire administrative record.

FINDINGS OF FACT

1. The Appellant, Joseph Conley, was employed as a Correctional Sergeant with the Justice and Public Safety Cabinet, Department of Corrections and was assigned to Northpoint Training Center. (Testimony of Warden Mazza and the Appellant)
2. Employees are required to learn and adhere to specific policies and rules regarding their conduct, including de-escalation techniques, the required steps before the use of force, and the reporting requirements. (Testimony of Warden Mazza and Patrick Hawkins)

3. On May 15, 2023, Sgt. Conley prepared a Use of Force Extra Ordinary Occurrence Report resulting from an incident with Inmate A. The report provided:

On the above date and approximate time, I, Correctional Sergeant Joseph Conley attempted to de-escalate [Inmate A] prior to cell entry. [Inmate A] was given multiple directives to come to the door and cuff up and refused. [Inmate A] stated "have you seen guts before?" He started pulling at his colostomy bag water to commit self-harm. While the cell entry formed up, I assisted cell entry team on the camera. No injuries.

See Appellee's Exhibit 4.

4. A review of the videos reveal that Sgt. Conley engaged in no de-escalation with the inmate at all. In fact, prior to the deployment of the OC, the Appellant made no statements to the inmate and gave him no directives. Additionally, while the inmate did ask Sgt. Conley, "Have you ever seen guts?" that question was posed several minutes earlier. The video reveals that Officer Ashley told Sgt. Conley, "He's wasting my f*cking time! "Let me have your can" and then removed Sgt. Conley's OC spray from his belt, went to the cell door, and began shaking the can, prepping it for deployment. Upon seeing this, the inmate covered the tray slot with his blanket. Officer Ashley then leaves the tray slot unlocked and moves out of sight of the inmate and positions himself along the wall next to Sgt. Conley, while Sgt. Conley continues to film the inmate in the cell. Once the inmate dropped the blanket and stepped away from the door, he told Sgt. Conley that, if they spray him, he will pull out his colostomy bag so the OC will get into his system. The video reveals the inmate wiping his nose and mouth with toilet paper, several feet away from the door, when Sgt. Conley nods his head and Officer Ashely immediately went back to the door and sprayed the inmate with OC through the unlocked tray slot. The inmate yells and asks why they sprayed him. (Appellee's Exhibits 2, 3, and 4.)

5. The EOC report completed by Sgt. Conley contained false information in that Sgt. Conley engaged in no de-scalation prior to the deployment of the OC and the inmate did not pull at his colostomy bag or engage in other attempts at self-harm. Finally, the report submitted by Sgt. Conley completely omits the fact that he permitted Officer Ashley to utilize his (Sgt. Conley's) OC to spray the inmate. Sgt. Conley also omitted from his report, the fact that he nodded to Officer Ashley to signal him to spray the inmate through the tray slot that Officer Ashley had left unlocked for quick opening. While Sgt. Conley claims that his head nod was intended for another inmate who was asking him questions at the time, the handheld video, which includes audio, contradicts Sgt. Conley's account. The Hearing Officer is persuaded that Sgt. Conley and Officer Ashley executed a pre-planned act to spray Inmate A with OC, as the evidence reveals Sgt. Conley never questioned Officer Ashley about why he had removed the OC from his (Sgt. Conley's) belt, or stopped him when Officer Ashley began shaking the can to prep it to deploy.

Moreover, upon deployment, Sgt. Conley never questioned, admonished or reported Officer Ashley's improper use of force. Instead, Officer Ashley deployed Sgt. Conley's OC spray, then each of them prepared reports omitting this crucial fact that violated Department of Corrections' policies. (Exhibits 2, 3, and 4)

6. CPP 9.1 contains the following provisions at issue:

II. POLICY and PROCEDURE

A. 4. Only the minimum amount of force necessary shall be used to accomplish the purpose for which the use of force was required.

...

G. Levels of Force. The degree of force applied in any given situation shall be in accordance with this policy and consistent with the degree of severity of the particular situation encountered.

3. Level Three Force- Planned use of Chemical Agents, Distraction Devices and PerpperBall Launchers.

a. These means shall be initiated only by one of the following: Warden, Deputy Warden, Duty Officer, Shift Supervisor in situations that necessitate immediate actions.

b. Chemical agents shall not be used on an individual inmate except to

(1) Prevent injury to himself or others;

(2) Prevent property damage

(3) Prevent loss of life; or

(4) When necessary for the purpose of enforcing the lawful rules of the institution.

...

d. Chemical agents shall be used when deemed appropriate as minimum force necessary to control disturbance.

(1) When chemical agents are used to quell a disturbance, they shall be dispensed only in amounts sufficient to achieve their intended purpose.

(Appellee's Exhibit 5)

7. NTC 9.10.01 contains the following provision at issue:

(3) The use of physical force shall be restricted to instances of justifiable self-defense, protection of others, protection of property, prevention of escapes, and to maintain or regain control and then only as a last resort and in accordance with appropriate statutory authority. A written report shall be prepared following all uses of force. The report shall be submitted to administrative staff for review. Personal abuse and corporal punishment of inmates shall be strictly prohibited. Physical force shall not be used as punishment or to harass.

(Appellee's Exhibit 5)

8. The Appellant violated the above provisions by failing to prepare an accurate report on the use of force and omitting his involvement in the use of force.

CONCLUSIONS OF LAW

1. The Appellant, Joseph Conley, engaged in misconduct in violation of the Department of Corrections Policies NTC 9.10.01 and CPP 9.1, which constitutes poor work performance in violation of 101 KAR 1:345, Section 1.

2. The Hearing Officer concludes that the Justice and Public Safety Cabinet, Department of Corrections has met its burden of proof that the termination of the Appellant, Joseph Conley, was for just cause and was neither excessive nor erroneous.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the case of **JOSEPH CONLEY VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2023-095) 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 exception that are filed by the other party within fifteen (15) 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 the 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.

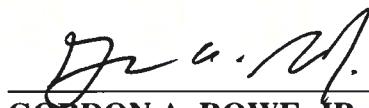
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365 Section 8(2).

The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov

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 Brenda D. Perry** 7th day of November, 2024.

KENTUCKY PERSONNEL BOARD


GORDON A. ROWE, JR.
EXECUTIVE DIRECTOR

A copy this day emailed and mailed to:

Hon. Peter Dooley
Joseph Conley
Hon. Rosemary Holbrook, Personnel Cabinet