

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-080**

RICKY W. COX

APPELLANT

**V. FINAL ORDER SUSTAINING
HEARING OFFICER'S FINDINGS OF FACT,
CONCLUSIONS OF LAW AND RECOMMENDED ORDER
AS ALTERED**

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

APPELLEE

**** ** ***

The Board at its regular February 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 7, 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 altered as follows:

A. **Delete** the Recommended Order and substitute the following:

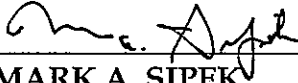
IT IS ORDERED that the Hearing Officer's Recommended Order be altered and that the appeal of **RICKY W. COX V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2013-080)** be **DISMISSED**.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as altered, be and they hereby are approved, adopted and incorporated herein by reference as a part of this Order and that the Appellant's appeal be **DISMISSED**.

The parties shall take notice that is Order may be appealed to the Franklin Circuit Court in accordance with KRS 13B.140 and KRS 18A.100.

SO ORDERED this 19th day of February, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
SECRETARY

A copy hereof this day mailed to:

Hon. Amber Arnett
Ricky Cox
Stephanie Appel

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-080**

RICKY W. COX

APPELLANT

**V. FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER**

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

APPELLEE

** ** *

This matter came on for an evidentiary hearing before the Kentucky Personnel Board on November 22, 2013, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Stephen McMurtry, Hearing Officer. Present were the Appellant, Ricky W. Cox, *pro se*, and the Appellee, Justice and Public Safety Cabinet, Department of Corrections, represented by the Hon. Amber Arnett. Both parties announced they were prepared to proceed with the hearing on the merits of the appeal.

BACKGROUND

1. On March 19, 2013, Clark Taylor, Warden of the Kentucky State Reformatory, advised Appellant, Ricky W. Cox, a Correctional Officer at the facility, that the Department of Corrections was suspending him for three working days, April 12, 13 and 14, 2013, for refusal to work mandatory overtime. Taylor asserted this constituted Poor Work Performance based on the authority of 101 KAR 1:345.

2. Cox filed an appeal of the suspension on April 8, 2013, alleging, "On March 12, 2013, Lt. Wall called me to work mandatory overtime which on March 11, 2013, I asked to be put on the list for Friday, March 15th to complete my mandatory draft. Lt. Wall called me Tuesday which I go to a school on campus that if I missed more than two days, I am automatically dropped from class. I brought in papers to show the Warden I was enrolled and in class during that time. I told him I had military when I notice my name on Monday, I was told that was too far to go out to. So Tuesday, I had to refused and I was off on Wednesday and Thursday, and I came in on Friday and worked a double prior to working that day my last refusal was March 21, 2012."

3. There is no dispute in the facts of this case as testified by Lieutenant Jeanette Sisco (Wall), the supervisor of Cox, and confirmed by Cox in his Statement of Appeal.

Lieutenant Sisco advised Cox he would have to work mandatory overtime on March 12, 2013, specifically the 3:30 p.m. to 11:30 p.m. security shift. Cox refused, giving as his excuse that he had to go to school that evening, and if he missed two classes within a 2-week period, he would be dropped from that course. Cox testified he had not missed any classes during that session and would not have been subject to dismissal for missing the March 12, 2013 class. Cox stated he was in the National Guard, and these classes were paid for by the Guard, although they were discretionary and not required as part of his training and duty.

4. Warden Clark J. Taylor explained the business necessity and regulatory justification for mandatory overtime. Taylor said the "general staff" had to be maintained at a level which guaranteed the safety of the public and prisoners at the reformatory. To promote this level of security and adhere to the policy and regulatory requirements, the reformatory, when short of guards, required the supervisor to ask for volunteers from the pool of guards working the preceeding shift and, if still short of guards, impose mandatory work requirements on guards in that shift. The supervisor maintained a revolving list of guards, and those whose names appeared at the top were required to work the next shift. A guard who volunteers has his name placed at the bottom of the rotating list, so that guards can somewhat control when they have mandatory overtime.

5. Warden Taylor introduced a copy of the regulatory basis for the mandatory overtime. 101 KAR 2:095, Section 2(3) reads:

An appointing authority may require an employee to work hours and days other than regular days and hours, including an overtime or inclement weather schedule if it is in the best interest of the agency.

Warden Taylor introduced a copy of the reformatory's Policy and Procedures pertaining to this Regulation, that is, Policy No. KSR 03-00-01, Subsections G, H and I, which read:

G. ...With the authorization of the appropriate Supervisor, employees may also be required to work overtime on a scheduled or unscheduled basis.

H. Any overtime shall be scheduled and approved by your immediate Supervisor. To meet the needs of the institution, or in the event of an emergency, overtime shall be mandatory.

I. Employees may be required to work hours and days other than regular scheduled days and hours, including an overtime or inclement weather schedule if it is in the best interest of the institution.

6. Warden Taylor also introduced two documents, one signed by Cox dated 8/16/2007, which attested to his knowledge of the mandatory overtime requirement, and a 4/22/2011 Memorandum issued to all security staff from Senior Captain Jay Whitfield, which related and reaffirmed the mandatory overtime work requirement. He also introduced a

3/21/2012 written reprimand to Cox for refusing to work mandatory overtime on 3/13/2012 and 3/16/2012.

7. Warden Taylor testified he followed a policy of progressive discipline in giving Cox a three-day suspension – first, a reprimand followed by a three-day suspension for the next violation. He testified Cox's performance was consistent with punishment given to Correctional Officers in similar circumstances.

FINDING OF FACT

Appellant, Ricky W. Cox, without justification, refused to work mandatory overtime on March 12, 2013, in violation of KSR Policy and Procedures 03-00-01, Sections G, H and I.

CONCLUSIONS OF LAW

1. Appellant, Ricky W. Cox's violation of the mandatory overtime provisions of the Kentucky State Reformatory constituted "Poor Work Performance." 101 KAR 1:345.

2. The imposition by the reformatory of a three-day suspension was neither excessive nor clearly erroneous in violation of KRS 18A.095(22)(c).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **RICKY W. COX V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 10-266)** 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 Stephen McMurtry** this 7th day of January, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Amber Arnett
Mr. Ricky W. Cox