

**CERTIFICATION OF PERSONNEL BOARD RECORDS**

I certify that attached hereto is a true and correct copy of the Findings of Fact, Conclusions of Law and Recommended Order and Final Order in the case of **LISA CRAIGMYLE VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2017-065)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 18<sup>th</sup> day of January, 2018.

  
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**MARK A. SIPEK, SECRETARY**  
**KENTUCKY PERSONNEL BOARD**

Copy to Secretary, Personnel Cabinet



**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2017-065**

**LISA CRAIGMYLE**

**APPELLANT**

**VS.**

**FINDINGS OF FACT, CONCLUSIONS OF LAW  
RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF CORRECTIONS**

**APPELLEE**

\* \* \* \* \*

This matter came on for an evidentiary hearing on October 27, 2017, at 9:30 a.m., at 28 Fountain Place, 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, Lisa Craigmyle, was present and was represented by the Hon. Thomas Schulz. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Alex Mattingly. Appearing as Agency representative was Warden Aaron Smith of the Kentucky State Reformatory (KSR).

The issue in this hearing was whether the Appellant's resignation was voluntary and whether she is entitled to any specific relief. The Appellant was assigned the burden of proof on all issues by a preponderance of the evidence.

**BACKGROUND**

1. The Appellant's first witness was **Kim Funaro**. She has been employed at KSR as an Accountant III since 2015. During her time there, the Appellant, an Accountant IV, was her supervisor.

2. She testified that on March 1, 2017, she arrived to begin her work schedule, which ran from 7:00 a.m. through 3:00 p.m. She testified that the Appellant had previously arrived and was working the front gate, checking IDs of employees arriving. The witness stated, at that time, the Appellant told her that her arm was hurting.

3. Sometime shortly thereafter, apparently when they both had arrived at their workstations, the Appellant again complained her arm was hurting and explained an incident earlier that morning where she thought an air conditioner, which had blown out of the window during an early morning storm, may have hit her, but she was not sure. This witness then

informed their supervisor, David Payton, of the Appellant's complaints. The witness testified that Payton then urged the Appellant to go to an Urgent Care Center to be seen and filled out some paperwork, which he gave the Appellant to sign and take with her.

4. The witness also stated that the Appellant had resisted going for medical treatment, saying that she did not feel she was injured that badly. However, she went to Baptistworx to be examined.

5. Thereafter, this witness brought the Appellant back to the facility at the Appellant's insistence. The witness stated that after a consultation with Supervisor Payton, the Appellant was sent home and asked to return the following day.

6. The Appellant, **Lisa Craigmyle**, called herself as her next witness. She testified that at the time of the accident on March 1, 2017, she had been employed for approximately five years at KSR as an Accountant IV. She worked in the Business Office, where she handled inmate accounts, the Canteen fund, and other monetary business.

7. She stated that on March 1, 2017, she came in early (at approximately 6:20 a.m.) to check on some equipment in the Tower Grill, which equipment was a part of her responsibility. She worked a 7:00 a.m. to 3:00 p.m. regular shift. The witness testified that there had been an early morning storm that day and as she entered the Tower Grill area, an air conditioning window unit behind her blew out and flew across the room.

8. She stated there were three inmates present at the time. She remembers being hit by something and then, almost instantaneously, the lights went out. She testified, at that point, she thought that either the air conditioning unit or a cord had hit her. She remembers one of the inmates at that time, Mike Stoots, telling her that he had pushed her out of the way of the air conditioning unit. She testified that in the midst of the storm, she had asked a colleague, Vickie Callahan, to have people get down for safety. She stated she then reported to the Front Gate to check IDs. At that time, she noticed her arm had begun to ache.

9. After beginning work in her office, she stated that she went to Supervisor Payton and told him of the incident. She stated that he noticed a knot had arisen on her elbow. Payton then began filling out some paperwork while she was in his office and had her sign it.

10. This paperwork was the Workers Compensation - First Report of Injury or Illness Form (Appellant's Exhibit 1). Appellant confirmed that she was then driven to the medical facility by Funaro, where she was examined by a physician who told her that she had suffered a contusion and inflammation of the right arm and shoulder. She was put on light duty and told to come back to the doctor's office within one week.

11. After returning to the facility, she told Supervisor Payton she had been placed on light duty, at which time he told her that Warden Smith would have to give permission for that

duty. When she later met with the Warden that day, she was informed he had not been told she was sent to the doctor, and her impression was that the Warden was somewhat upset by that.

12. The Appellant testified that she returned to work the following day, March 2, 2017. Upon returning, the Appellant testified that a coworker, Brenda Covington, told her that "we watched the video of the incident" yesterday and it does not look like the air conditioner hit you. Supervisor Payton then got a call to go to the Internal Affairs (IA) office for a meeting, after which he came back and told her "you did nothing wrong."

13 Shortly afterward, Captain Williams from IA took her to his office and questioned her. She stated that he insinuated that she was lying about the incident. At that point, she said that Captain Williams began to make an issue of her filing a Workers Compensation claim. She stated that she told him of the inmate pushing her out of the way of the air conditioning unit. At that point, Williams showed her the video. She stated that he either claimed or insinuated that she had committed Workers Compensation Insurance fraud, which could be a felony. The Appellant stated rhetorically, "Why would I make a false claim when I have my own health insurance."

14. Later that day, she went to Warden Smith's office where Captain Williams, the Warden, and Sergeant Ball were present. She stated that she entered thinking that everything would be alright, but instead she stated the Warden had called her a "liar."

15. She testified that during the meeting the Warden told her she could either resign or be terminated. She testified the Warden said that if he had to terminate her, he would charge her with a felony or Workers Compensation might themselves charge her.

16. The Appellant testified, at that point, she felt sufficient pressure to sign a voluntary resignation form, which was given to her. (Appellant's Exhibit 2.) The reason stated for her resignation was "misconduct" and the form was dated March 2, 2017.

17. The witness then introduced Appellant's Exhibit 3, a March 1, 2017 Radiology Report from Baptistworx Urgent Care. This was signed by Dr. Elliott and his diagnosis was deltoid and humerus contusion to the right upper arm. The history taken by the physician, as given by the Appellant, was that an air conditioning unit had hit her right arm.

18. On cross-examination, the Appellant testified that she was second in command of the Business Office after Supervisor Payton. She confirmed this was a position of trust. She also stated that she had experienced no mental health issues previously.

19. She was then asked about her viewing of the surveillance video, shown to her by Captain Williams. When asked why she had not reviewed this video before filling out a Workers Compensation claim to ascertain exactly what had happened, she stated that her computer system had crashed several days previously and she did not have access to the video that morning. She

stated she did not think this was a big deal, but did go to the doctor out of an abundance of caution.

20. The witness then identified Appellee's Exhibits 1, 2, and 3. Appellee's Exhibit 1 was a DVD disc containing action filmed by the surveillance video the morning of the incident. Appellee's Exhibits 2 and 3 are still shots of the moments when the incident occurred.

21. At this point, all parties, including the Hearing Officer, reviewed the surveillance video (Appellee's Exhibit 1). Following this review, the Appellant confirmed that Appellee's Exhibit 2 appeared to show no contact with her from the air conditioning unit. As to Appellee's Exhibit 3, the witness testified that the photo showed an inmate making contact with her on her left side. As noted previously, her complaints of injury were to her right upper arm and shoulder.

22. The Appellant was then directed to Appellee's Exhibit 4, a March 3, 2017 letter to Appellant from Warden Smith accepting her resignation. The Appellant adamantly denied ever receiving this letter.

23. On re-direct, the witness was again directed to Appellee's 2 and 3. These still shots show the inmate approaching and pushing the Appellant in the same instant. The Appellant was not able to say whether the contusion on her right elbow showed in the picture where she was wearing a blue shirt rolled up to her elbow.

24. The Appellant was then directed to the Baptistworx medical report from March 1, 2017. This shows her signing in at 9:25 a.m., approximately three hours after the incident occurred. She notes that although she may not have been able to identify a contusion on her elbow at the time of the incident shown in Appellee's Exhibit 3, these medical records show that the doctor found a contusion to her right arm.

25. Appellant stated she was charged with fraudulent insurance acts in the Oldham District Court, based on the Affidavit of Captain Mike Williams. The Appellant then addressed Appellee's Exhibit 5, the Oldham County District Court's resolution of her charges. This exhibit shows that the charges were dismissed following negotiations between the Appellant's counsel and persons at the facility. The Appellant verified her signature on the document stating that "Based on the information presented to the Court, there was probable cause for the summons to be issued in this case." However, the Appellant stated she signed this only on the advice of her attorney in order to have the case dismissed.

26. The Appellant announced closed-in-chief.

27. The Appellee's first witness was **Michael Williams**. He is a Captain in charge of the Internal Affairs (IA) Unit since November 2011. He was previously employed in the Jefferson County Sheriff's Office and has approximately 22 years in the law enforcement field.

28. The witness stated he conducted the investigation into this matter. He explained he was called to Warden Smith's office sometime in the late morning of March 1, 2017, and was questioned about the injury to the Appellant. Knowing nothing at that point, he then began an investigation that day. As a result of taking statements from several staff and reviewing the surveillance video of the incident in question, the witness formed a preliminary opinion the Appellant had falsified her story of how her injury had occurred earlier that morning. He so reported this judgment to the Warden.

29. The witness then related that a meeting was held on March 2, 2017, in the Warden's office where the Appellant, this witness and Sergeant Ball were present. He testified that the Warden told the Appellant he did not know if he could trust her any longer because of what he had seen on the video. He gave her an opportunity to resign. The witness testified that there was no mention by the Warden that any criminal charges would go away if she resigned, but instead related, "Some criminal charges may come up later."

30. The witness then introduced Appellee's Exhibit 6, his report of the investigation. It is noted that this investigation apparently continued beyond March 2, 2017, and was dated March 11, 2017.

31. The witness then noted his findings on page 11 of the report, which were, in pertinent part:

- (1) The Appellant knowingly submitted a False Workmans Compensation Claim Form to Supervisor David Payton;
- (2) Appellant knowingly provided false information to Baptist Health Occupational Medicine concerning the alleged injury of March 1, 2017; and
- (3) Appellant knowingly provided false information to Warden Aaron Smith on March 1, 2017, during a meeting in his office as to the cause of her injury. (sic)

32. The witness then introduced Appellee's Exhibit 7, the Kentucky Corrections Policies and Procedures (CPP) 3.1, CODE OF ETHICS. He felt that Section II(A)(2) and (5) had been violated.

33. These provisions are as follows:

**Section II. POLICIES and PROCEDURES**

**A. General Standards of Conduct**

...

2. Any effort to influence an employee to violate the standards of ethical conduct set forth in this policy or to engage in conduct which creates a justifiable impression in the public mind that this trust is being violated shall also be a violation of ethical standards. An employee shall not use his official position to secure privileges for himself or others. An employee shall comply with KRS 18A.14-0 concerning prohibited political activities.

...

5. Providing false information to anyone during the course of an investigation shall constitute a violation of the standards of ethical conduct.

34. The witness then confirmed that the meeting between the Appellant, the Warden and himself had taken place on the afternoon of March 2, 2017, at which time she was given the opportunity to resign. At that meeting, he stated that his investigation had consisted of work he had done on on March 1 and 2, 2017.

35. The witness also related that following his findings, he had originally gone to meet with the Commonwealth Attorney in Oldham County, Kentucky, but because of jurisdictional issues, was referred to the Oldham County Attorney. He also stated that charges were filed, but later dismissed based on a stipulation of probable cause by the Appellant. He stated he agreed to this resolution because of the County Attorney's recommendation.

36. On cross-examination, the witness confirmed that he had met with the Warden on March 2, 2017, after he had seen the video and met with the Appellant. He also confirmed his final report was concluded on March 11, 2017. He stated he had continued to investigate the matter after Appellant had resigned.

37. When asked whether he had reviewed any of Appellant's medical records before her resignation, the witness stated he did not recall and, it is noted, these are not contained in his investigative file.

38. The witness was then questioned as to his knowledge of Appellant's Exhibit 3, a still shot of the incident. The witness stated that he had not seen this before the Appellant's resignation, but, afterward, looked at pictures 2 and 3 and stated he saw no contusion in those pictures. He stated that, at some point, he reviewed the medical report, which reported a contusion to Appellant's right arm.

39. Williams was then questioned as to whether the Appellant's actions in filing the Workers Compensation claim could have been a "mistake," and he replied that she had informed



him she “did not really know what happened.” He also added that he saw the Appellant on March 2, 2017 (the day after the incident), where he saw no swelling on her arm.

40. The witness then identified Appellant’s Exhibit 4, his Affidavit submitted on or about April 13, 2017, in support of the criminal charges of FRAUDULENT INSURANCE ACTS, \$500 OR LESS issued against the Appellant. The witness then identified Appellant’s Exhibit 5, a copy of KRS 304.47-020, relating to fraudulent insurance acts. The witness answered that he had not reviewed the statutes prior to filing his affidavit and was not aware the statute required an intent to defraud or deceive.

41. The witness next attempted to clarify the timeline of events. He stated he had interviewed the Appellant on March 2, 2017, at approximately 12:23 p.m. He stated that, during this interview, she said she “was not struck by the air conditioner.” Thereafter, the witness then went to the Warden sometime that afternoon and related the conversation.

42. On re-direct, the witness stated that after his review and meetings with the Appellant on March 2, 2017, he had preliminarily determined a violation of CPP 3.1 had occurred. He stated he informed the Warden that, in his opinion, the Appellant “might face criminal charges later” after the investigation was complete.

43. The Appellee’s next witness was **Teresa Kidwell**. She has been the Human Resource Administrator with KSR for approximately three years and has 11 years’ employment with the Department of Corrections. She stated she is familiar with Workers Compensation procedures and handles those for the facility.

44. She testified that in the event of a potential Workers Compensation injury, an employee can deny medical treatment or refuse to sign the initial First Report of Injury form. She stated the Warden had never asked her to prepare an Intent to Dismiss letter concerning Appellant, and added that it is the Warden’s practice to sometimes allow employees to resign so as to enable them to better find another job.

45. The witness then identified Appellee’s Exhibit 4, a March 3, 2017 letter of resignation acknowledgment by Warden Smith. The witness testified this was sent to the Appellant by certified mail, but she had no proof in the hearing of any return.

46. The Appellee’s next witness was **David Payton**. He has been the Fiscal Manager at the facility for five years and was the Appellant’s direct supervisor. He stated that she worked under him for approximately four and one half years, and he had trained her on Workers Compensation procedures.

47. The witness related that the Appellant had received all “Outstanding” ratings on her evaluations and did her work very well. He then added that the position she held, involving handling of the money, was a position that required great trust.

48. The witness further stated that because of his training in the Workman's Compensation process, he routinely requires employees to fill out forms, including the First Report of Injury when there is a potential claim. He added that an employee can refuse medical treatment, but must sign the appropriate Workers Compensation form.

49. The witness related that, on March 1, 2017, the Appellant reported to him she had arrived at work early. She informed him an air conditioner unit had blown out of the window in the Tower Grill and hit her on the right arm. At that time, the witness stated she had told him, "Her arm was not bothering her." He then informed her that she needed to fill out certain Workers Compensation forms.

50. He stated that she initially went within the facility to have a routine urinalysis test done and, when she returned, an ice pack had been placed on her arm. The witness then suggested she go to Baptistworx for an examination. He stated she first resisted, but then went and came back to the facility early that afternoon. Apparently sometime later on the afternoon of March 1 or early on March 2, the witness had an opportunity to review the surveillance video of the incident. He testified that after reviewing these pictures, he thought the Appellant had lied to him about what had happened. He also said he did not examine her arm at any time. The witness also said that on the morning of March 1, 2017, the Appellant was wearing long sleeves. Shown the still pictures (Appellee's Exhibits 2 and 3), the witness confirmed they show otherwise. The witness concluded by stating that he knows the Appellant in her professional life as an accurate and precise person.

51. The Appellee's next witness was **Warden Aaron Smith**. He has been employed at KSR for approximately nine years, with the last three plus years as Warden. He confirmed he has final authority on disciplinary actions and also stated that the position held by the Appellant was one of trust.

52. The witness related that he first saw the Appellant on March 1, 2017, at approximately 7:45 a.m. This was after the supposed incident; she was working the front gate checking IDs where she admitted him. He stated she said nothing of the incident at that time.

53. The witness stated he later saw the Appellant and David Payton after her return from the doctor's visit. This occurred in his office and she appeared to be in pain. He testified the Appellant told him, "the air conditioner flew out of the window and smashed her in the shoulder." She further related to him that the doctor had told her "she had a significant injury and he could not tell the extent of it during her visit."

54. According to the witness, the Appellant further informed him the doctor had told her "if the inmate had not pushed me out of the way, I could have been killed." Hearing this, the Warden then reviewed the video and, after doing so, did not think the air conditioner had actually struck her.

55. He stated that he then called Captain Williams to investigate on the afternoon of March 1, 2017, and saw him the next day, along with the Appellant. He stated that prior to the March 2, 2017 meeting with the Appellant, Williams had informed him the Appellant's story had changed and she was now saying the air conditioner did not hit her.

56. The Warden was very certain after reviewing the surveillance video that the incident did not happen as she had first informed him. During the March 2, 2017 meeting, the Warden stated that he felt she had lied to him and changed her story. He confirmed he told her he planned to do an Intent to Dismiss and was going to the County Attorney to see if charges were appropriate. He then offered to let her resign. The witness denied he had told her the criminal charges would go away if she resigned.

57. On cross-examination, the witness stated that upon her return from the doctor on March 1, 2017, the Appellant had told him she had trauma to her right arm. He stated there was no evidence showing that the Appellant had not been injured at work that morning. However, his impression was that she was calculating in her answer.

58. The Appellant, Lisa Craigmyle, was then recalled for further questioning. She adamantly denied using the word "smashed" in describing her injury to the Warden. She stated that she had her medical records from Baptistworx with her in the meeting with the Warden. She added that the meeting lasted approximately two to three minutes. In answer to David Payton's assertion that she was wearing a long sleeve blouse, this witness stated that she was wearing such a blouse on March 2, 2017. She again insisted that she at all times felt some part of the air conditioning unit had hit her.

### FINDINGS OF FACT

1. In the early morning of March 1, 2017, a severe storm occurred on the grounds of KSR, causing one or more window air conditioning units to be dislodged and blown across an area of the Tower Grill in the facility.

2. The Appellant felt one of the units may have struck her right arm or shoulder area, but was not certain. She was told an inmate had pushed her out of the path of the AC unit. Shortly before 7:00 a.m., she informed coworker Kim Funaro that her arm was hurting, advising her of the earlier incident.

3. Supervisor David Payton was informed, filled out some Workers Compensation forms for the Appellant to sign, and insisted she go to Baptistworx to be examined.

4. Approximately three hours after the incident, the Appellant was examined and diagnosed with deltoid and humerus contusions to the upper arm. She returned to work afterward, but was told by Payton to go home.

5. Upon returning to work the following day (March 2), Captain Williams began questioning her about the incident. He informed her his review of a surveillance video did not appear to show her being struck by the AC unit. He left her with the belief he felt she had committed insurance fraud by falsely claiming a Workers Compensation injury.

6. A meeting occurred the afternoon of March 2, 2017, in the Warden's office, where Warden Smith told her he had reviewed the video of the incident and that he did not believe it happened as she had reported.

7. She was presented a voluntary resignation form to sign in lieu of termination proceedings being initiated. During this meeting, she was led to believe charges of insurance fraud might be pursued. She signed the resignation form.

8. Misdemeanor charges of fraud were later filed in Oldham County District Court, based on the Affidavit of Captain Williams. The charges were later dismissed.

9. Captain Williams conducted a preliminary investigation on March 1 and 2, 2017. It did not include a review of her medical records from her March 1 examination at the medical center. After the Appellant's resignation on March 2, Williams' investigation continued and was concluded on March 11, 2017.

10. Warden Smith's review of the incident appeared to consist of only a review of the surveillance video, with no consideration of the Appellant's medical records or her past work history.

11. The Hearing Officer finds the Appellant credible in her belief she was struck by the AC unit or an appendage of it. The Hearing Officer makes no finding as to the actual seriousness or appearance of the Appellant's injury.

12. There was no credible evidence to indicate the Appellant's injury occurred prior to March 1, 2017.

### CONCLUSIONS OF LAW

1. In deciding the issues herein (whether the Appellant's resignation was voluntary or made under duress), several factors must be considered.

2. The Appellant initially felt her injury was minor and went for medical consultation at the insistence of Supervisor Payton. She returned to the facility that same day, ready to resume work. She was sent home, but returned the following day prepared to work. There was no evidence to suggest the Appellant's injury was not work related. Also, the Appellant truly believed she had been struck by something.

3. The Appellant undoubtedly was shocked and surprised to learn the next day in the Warden's office that she was believed to have filed a fraudulent insurance claim. She was given the choice to resign or face termination. This position by Warden Smith was based primarily on his review of the surveillance video, the video being suggestive, but not conclusive, that the air conditioning unit did not strike the Appellant.

4. Under all the circumstances, it is puzzling why the Agency felt it needed to act so quickly, without a completed investigation or consideration of the employee's work record. It is also clear no considerations other than "resign or be terminated" were in play as a means of determining what actually happened.

5. Given all the circumstances, it can hardly be believed the Appellant's resignation was voluntary. Rather, it is clear the Appellant's resignation was submitted under duress.

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **LISA CRAIGMYLE V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2017-065)** be **SUSTAINED to the extent** that her resignation be rescinded. The Appellant shall be reinstated to her previous position as an Accountant IV with the Department of Corrections, awarded lost pay and benefits, and that she otherwise be made whole. [KRS 18A.105 and 200 KAR 12:030.]

### **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).

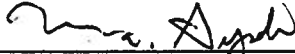
**Any document filed with the Personnel Board shall be served on the opposing party.**

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 5<sup>th</sup> day of December, 2017.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
**Executive Director**

A copy hereof this day mailed to:

Hon. Alex Mattingly  
Hon. Thomas Schulz