COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-072

STEVEN CRAWFORD **APPELLANT**

VS.

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

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

** ** ** ** **

The Board at its regular January 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated December 10, 2013, 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 14th day of January, 2014.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Stafford Easterling
Steven Crawford
Stephanie Appel

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-072

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This matter came on for evidentiary hearing on October 9, 2013, at 9:40 a.m. at 28 Fountain Place, Frankfort, Kentucky, before John C. Ryan, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by KRS Chapter 18A.

Appellant, Steven Crawford, was present and was not represented by legal counsel. The Agency, Justice and Public Safety Cabinet, Department of Corrections, was also present and represented by the Hon. Stafford Easterling.

This matter was the subject of a pre-hearing conference conducted on May 1, 2013, at which the relief sought was determined and the issues defined.

BACKGROUND

1. Appellant, Steven Crawford, is a Correctional Officer at the Luther Luckett Correctional Complex (LLCC) in LaGrange, Kentucky. By written notice on March 21, 2013 over the signature of Gregory S. Howard, Warden, he was assessed a five-day suspension from duty and pay following conduct of a disciplinary interview. A true copy of the suspension letter is attached hereto as "**Recommended Order Attachment A.**" By appeal on March 25, 2013 under the appropriate category of "Suspension," he took issue with this action without further comment therein.

2. Upon convening the evidentiary hearing, following brief opening statements, the Agency was assigned the burden of proof under standard policy and sought the sworn testimony of Appellant, **Steven Crawford**. He confirmed that he has served as a Correctional Officer at LLCC for approximately 4.3 years, primary duties consisting of security and monitoring and control of inmates. He acknowledged receipt of the letter of intent to suspend him and the letter imposing the suspension, thereupon made a part of the record. He pointed out one inaccuracy;

during the first alleged infraction he was assigned to Unit 7C, Control Room, rather than Unit 7B as recited in the letter. He confirmed that he directed the inmates to return to their cells within five seconds over the public address system for counting and recognizes now that this announced time allocation is not normal procedure nor appropriate. He agreed that in the minds of some inmates they might be "written-up" if they required longer than five seconds, although no write-ups were made. The inmates complied, but at least one of them cursed him, which he conceded demonstrated agitation. A lockdown was then implemented to discern the source of the vulgar comment and in due course Unit Administrator Snyder advised him that the five-second notice was unwise. Follow-up related to several inmates seeking to converse with a superior officer about the episode, and this deviation further generated one or another level of agitation and a possibility of further reaction and a dangerous situation. Appellant recognized the potential escalation aspect in his testimony.

3. Addressing the factual sequence, Appellant disputed certain aspects thereof and urged that his conversation with UA Snyder about one or another portion of the events should have been included in the summary. Nonetheless, he acknowledged, the overall series of events did occur basically as depicted.

4. Directed to discuss the second count pertaining to having strip-searched an inmate, Appellant professed lack of formal training in the conduct thereof and explained his own grounds for doing so. He agreed that in his four plus years at the facility he has conducted in excess of 100 searches and should be accordingly familiar therewith. He noted that he has reviewed or studied policy on the subject, asserting that he "trained himself." He acknowledged that policy dictates that prior approval from a superior is required, whereas in the instance cited he did not seek this approval nor was any management official present. He recalled being advised to conduct the "search" when an inmate was observed with a red flag-type item hanging out of a back pocket. Nothing was found in the search, but a red washcloth was later located in the inmate's cell. Appellant conceded that a strip search was never ordered nor would it have been appropriate, and therefore a violation of policy, and a mere pat down or frisk of the inmate would have been sufficient.

5. In response to questioning, Appellant urged that his challenge before the Personnel Board relates not to a serious dispute of most of the facts but the severity of the five-day suspension. He views that a counseling session would have been sufficient and that he has learned from his mistakes. The Agency produced, and Appellant ratified, a series of policies which rather expressly define the appropriate conditions for search of inmates and the documenting thereof, as well as provide certain guidelines for all correctional personnel. Appellant agreed that his handling of both the search and the requisite documentation variously violated the policies. He insisted, nonetheless, that the documentation aspects are violated by staff "everyday" at the institution. He reiterated that he now understands the requirements and a

counseling session and review of the policy would have sufficed. He noted that he was never before disciplined other than one written reprimand rising from an overtime matter.

6. The Agency pressed Appellant concerning his prior counseling. It reminded him that within a specified period of time a total of fifteen such sessions were conducted with him by management arising from various events. He professed no recollection of the sessions, suggesting that in each instance he learned from his mistakes and saw no reason to recall the specific meetings. He viewed that none of the errors giving rise to the sessions were again committed and that the same approach should have been applied to the events now under scrutiny. He agreed that adherence to policy is important, but the extent and nature of all policies cannot be committed to memory and time is limited to repeatedly review them.

7. At the conclusion of Appellant's sworn testimony, the Agency submitted that absence of dispute of material facts, other than as previously stated, dictates dismissal of the appeal. The Hearing Officer deferred ruling thereon, whereupon the Agency entered the testimony of **Bruce Snyder**, who is a Classification and Unit Administrator at LLCC. He has served the Agency for approximately thirteen years, with 3.5 years at LLCC. Recalling the events of December 27, 2012, he recited that a count of the inmates is conducted daily at 12 noon and at other times. They are returned to their cells to accomplish this, and he routinely departs his office to commence aiding in moving them along for that purpose. He then heard Appellant loudly announce over the public address system, "You got five seconds to get to your cells," or similar language, which he viewed as unnecessary. It predictably prompted an immediate response from various inmates, who commenced yelling back and uttering obscenities about the short time span. He intervened to calm them down, informing them to continue to their cells and advising that, following the count, he would talk with whoever was upset.

8. The witness continued that following the foregoing he directed Appellant to lockdown the Unit and to allow no inmate to leave until the count was cleared. He recalled that Appellant then announced again over the public address system, again somewhat loudly, that the wing or unit stood locked down. It was clear that unrest occurred due to the five-second announcement and not because of the lockdown, which was routine. He continued that the count was accomplished and the officers identified in the suspension letter then came to him to advise that some inmates were "worked up" and these officers were frankly concerned for their personal safety. He had surmised that there was a strong possibility of escalation when he heard the Appellant's initial announcement and this was borne out by the angry response. He confirmed that the summary set forth in the suspension letter accurately depicts the sequence.

9. Under cross-examination, the witness recalled that management never identified the specific inmates yelling obscenities. They did in fact return to their cells for the count in an orderly manner, grumbling all the while, and ultimately safety and order were secured. He confirmed that it was he who ordered the lockdown. He viewed that the conversation between

himself and Appellant, which Appellant insisted in his testimony should have been included, was implied in the suspension summary. He noted that the announcements by Appellant over the PA system gave the impression, at least to him, that he was speaking in a raised voice, which he observed to add to the agitation. He ratified that no violence or physical contact occurred. He pointed out that the overall policy at the institution is to "give respect to receive respect," and judging from the reaction by the inmates they felt disrespected by the manner in which they were ordered to perform a routine function.

10. At the conclusion of the testimony by this witness, the Agency moved for a directed verdict, i.e. order dismissing the appeal. Following discussion, the Hearing Officer made no ruling thereon, whereupon the Agency offered the testimony of **Gregory Howard**, Warden of LLCC. The Warden reported that he has been employed by the Agency since July 1, 1991 in a variety of capacities and assumed command of LLCC on June 1, 2012. As Warden, he is charged with the determination and ultimate assessment of discipline. He recited his knowledge of the asserted events and confirmed the subsequent review thereof with Appellant. He listed a variety of factors which he viewed must be considered in determining both the assessment and level of discipline, pointing out his distaste for having to deprive any member of staff of income through suspensions. He explained that the practice in the institution is to move away from the "guard" atmosphere to "Correctional Officer," thereby depicting an effort to attain more professionalism among staff. Applying this approach to Appellant's behavior, his actions fell short, and the two violations were deemed serious.

11. The Warden continued that the actions, which Appellant never disputed having occurred, were a notable departure from policy and generated what he saw as a ripple effect throughout the facility. He explained that the "five-second" announcement was seen by the inmates impacted thereby to be a lack of respect and resulted in a predictable reaction on their part. Thereupon, other staff and upper management were then required to suspend their normal duties to deal therewith. Experience dictates that the prison population does not react favorably to unusual demands, demeaning behavior, or selective treatment, and the population expects to adhere to strict and firm time schedules without being ordered to comply. He emphasized that mutual respect must be in place at all times and the inmates tend to hold staff accountable in exchange for their good behavior. He pointed out that the facility houses in excess of 1,100 incarcerated individuals and existing staff is rather thinly spread with a ratio of ten to twenty inmates per staff person. Accordingly, any aberration creates risk of injury to staff. He was particularly concerned that one or more staff reported that they were "scared" concerning the possible fallout from Appellant's action.

12. The Warden continued that when he met with Appellant prior to imposing discipline, his response appeared to be that his action(s) were "no big deal." This attitude caused him consternation in light of the philosophy and image which management has been cultivating. He expanded that Appellant readily admitted his behavior but has never acknowledged any

awareness of or concern for the potential overall disruption throughout the institution nor the risk of harm to one or more officers. He did not seem to grasp either the risk or the inconvenience, nor did he recognize that his method of communication, both as to what was said and how it was said could have resulted in serious ramifications.

13. Turning to the strip search aspect detailed in the suspension letter, the witness recalled that Appellant repeatedly asserted a "probable cause" basis for his handling thereof, which was viewed under policy as an incorrect application. Further, having allowed the inmate to return to his quarters before conducting the search could have allowed him to get rid of whatever contraband was suspected, a serious lapse. Further, commensurate with matters of dignity, policy, and, again, respect, strip searches are deemed a drastic measure and must be very carefully ordered, documented, and confirmed as absolutely necessary. Unnecessary or repeated searches of any individual without implementation of well established policy requirements can be seen as harassment and potentially actionable at several levels. He noted that Appellant did not appear to grasp the accountability of not only himself but facility management.

14. Turning to whether a conference with himself or senior staff, as urged by Appellant, should have been sufficient, he reiterated that Appellant has undergone "several" such conferences previously and, in his view, attained only limited, if any, results. He explained that Appellant continues to demonstrate difficulty understanding the need for appropriate communications with both staff and the inmate population. Events giving rise to the immediate penalization signal an on-going concern that he has not learned from his mistakes. The admittedly heavy penalization is an effort to persuade him to consider that he must change his approach to the requirements and duties of his position.

15. Under cross-examination, Appellant quizzed the witness concerning the timeframe in which the two met to discuss the events, posing whether, if the violations were as egregious as depicted, whether he should have been called in more quickly. The witness reacted that interviews and review are not rushed, observing that scheduling is dependent upon availability of himself and involved personnel.

16. Appellant discussed the matter of strip searches with the Warden at some length. The outcome thereof was that such searches should fit the occasion and need, ranging from individuals initially entering the facility to suspicion of contraband, the type of contraband, and certain routine searches of inmates involved with the canteen, laundry, and the various shops. Some are conducted daily and others are selective; the witness reiterated that the one under scrutiny conducted by Appellant was an aberration in routine and policy and, additionally, all searches must be carefully documented and logged in accordance with applicable policy. The Warden noted that these aspects were previously addressed in his conferences with Appellant, whereas Appellant disavowed sufficient training or knowledge as to the variations.

17. Appellant addressed his handling of the lockdown episode. He and the witness discussed the various types of lockdown within the facility and their impact, specifically as applicable to individual cells, a unit, or a wing. Pressed as to his view of what would be more provocative in the circumstances depicted, the witness reacted that under the facts before him as presented by those involved, Appellant created two occasions which could have upset the impacted population. Specifically, the five-second announcement would have started the grumbling and the handling of the lockdown preparatory to the count added to their irritation, necessitating the need for a supervisor to intervene to quell a potentially explosive situation.

18. There was thereupon concluded the sworn testimony and, following brief summary of the respective positions by the parties, the matter stood submitted for recommended order.

19. KRS 18A.095(1) requires that "A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause." Other provisions of the statute blueprint requirements of notice and the method for assessment of penalization. Appellant does not allege violation by the Agency of the notice provisions.

20. 101 KAR 1:345 is the regulation governing imposition of disciplinary actions. Section 1 thereof allows that "Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties." Duties, of necessity, include compliance with facility and Agency policies. Section 4 outlines the provision for imposition of a suspension and the requisite documentation thereof.

FINDINGS OF FACT

1. At all times germane to this proceeding Appellant, Steven Crawford, was a classified employee with status, holding the position of Correctional Officer at the Luther Luckett Correctional Complex (LLCC). On December 27, 2012, while on duty, he announced over the public address system in the unit under his supervision that all inmates were allotted five seconds to return to their cells. The inmates were well aware of the routine requirements and the timeframes. Consequently, some took offense at both this perceived "overkill" and the tone in which it was delivered. Reaction(s) from certain of them were instant, quickly resulting in the need for a supervisor to intervene and quell the displays of temper. Although no incident arising from the sequence occurred, management consensus was that the matter could have easily escalated into a dangerous event, and secondarily institution routine was disrupted in dealing with the episode.

2. Two days later, on December 29, 2012, Appellant admittedly conducted a strip search of an inmate without proper supervisory consent, and did not properly document either

the necessity or the event. Agency policy expressly outlines the procedure required to conduct what is depicted as a non-routine strip search and Appellant has conceded that policy was not followed. The failure to comply with this particular policy is considered by the Agency to be a serious transgression.

3. The posture of the Agency is that Appellant, as a four-year employee, was well aware of practice and policy requirements and should have recognized the potential ramifications of his actions. However, although admitting his errors, he does not grasp their overall impact upon the routine of the institution nor potential danger generated thereby. Appellant, for his part, views that a five-day suspension is unduly harsh, insisting that he has sufficiently learned from his mistakes to prevent them from again occurring.

4. The Hearing Officer finds the testimony of all witnesses to be credible.

CONCLUSIONS OF LAW

1. The express issue presented in this appeal is simple: Appellant does not view his mishandling of the two events complained of as sufficiently serious to merit five days loss of pay, while the Agency urges that he either misunderstands or ignores the potential volatility and overall effect arising from his behavior in the matters. The Warden, particularly, attributes his apparent dismissiveness of the matters to a need for better effort by this four-year employee to improve his communication skills. He and the Agency opine that instructional conferences, in which Appellant invests only (paid) time, have accomplished little and that time off without pay, within the statutory and regulatory framework, might cause him to reconsider his approach to his performance of duties, particularly communications.

2. Commensurate with the provisions of 101 KAR 1:345, together with Agency policies, the employer must be afforded reasonable discretion in the enforcement of its own rules to which the employee subscribed when signing on. The outcome is that the Agency's disposition should prevail in this instance and its treatment of Appellant's behavior was neither erroneous nor excessive in view of the overall circumstances.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **STEVEN CRAWFORD VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (Appeal No. 2013-072)** 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).

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 John C. Ryan** this 10th day of December, 2013.

KENTUCKY PERSONNEL BOARD

MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof mailed to:

Hon. Stafford Easterling
Steven Crawford

DEPARTMENT OF CORRECTIONS

LaDonna Thompson
Commissioner

Luther Luckett Correctional Complex
P.O. Box 6
LaGrange, Kentucky 40031
Telephone: (502) 222-0363
Fax: (502) 222-2043

Gregory Howard
Warden

March 21, 2013

Steven Crawford

Dear Officer Crawford

After careful consideration of the statements made on your behalf in the disciplinary interview held on March 13, 2013, I find no reason to alter my decision to suspend you from duty and pay.

Based on the authority 101 KAR 1:345, Section 1 and 4, and in accordance with KRS 18A.095, you are hereby notified that you are suspended from duty and pay for a period of five (5) working days beginning of business April 3, 2013 and continuing through close of business April 7, 2013. You may return for your next regular shift on April 10, 2013 following your regular off days.

Based on a review of your performance and based on the authority of 101 KAR 1:345, Section 1 and 4, there is reason to believe this suspension is justified based on the following specific reasons:

> **Misconduct , i.e.,** as reported by Unit Administrator Bruce Snyder, Lieutenant Larry Blankenship, Officer Michelle Perkins and Officer Betty Ramos, on December 27, 2012 at approximately 12:00 PM while assigned to unit 7B Control Room, you announced over the wing speakers that all inmates had five (5) seconds to return to their cells. UAII Bruce Snyder heard someone in the wing yell out "Fuck you mother fucker". For this reason, UA Snyder had the wing locked down to investigate who made the comment. After the wing was locked down, you yelled over the wing speakers "you are on lock down". As a result of your actions, several inmates in the wing were completely ignoring authority and yelling out "we want a Captain to come down here." This could have resulted in the officers that were conducting the count in that wing to have further problems, i.e.,

Recommended Order Attachment A

APPELLEE'S EXHIBIT #2

possible riot situation. Additionally, your actions placed both officers and inmates involved- in a potentially dangerous situation.

In a meeting you had with Senior Captain Whitfield, Lieutenant Forgy and Captain Crutcher on January 2, 2013, you stated your reason for the comment was "to give them a sense of urgency." Making the inmates think they need to rush back to their cells.

Your actions were in violation of LLCC 03-01-01 page 6 Section S (Employee Conduct) Item 1. An employee shall maintain a professional relationship with an inmate. Item 2. An employee shall greet or interact with an inmate in a professional manner.

Poor Work Performance, i.e., on December 29, 2012, at approximately 10:00 AM, you conducted a strip search of inmate Curry Mackenzie #193853 in the floor office of 7C. Consequently, you did not contact your shift supervisor to request permission to conduct the strip search. On January 2, 2012 you met with Senior Captain Whitfield, Lieutenant Forgy and Captain Crutcher about the incident. When asked why you did not call the Shift Supervisor to get permission to strip search the inmate, Your response was "I got caught up in the moment was not thinking at the time."

Your actions are in violation of IPP LLCC 09-18-01 page 6 Section E, Sub section 2. Which states if an employee shall request a non-routine strip search the Shift Supervisor or higher authority shall authorize the search. The Shift Supervisor shall maintain a "strip search" log. The Shift Supervisor shall document information for all non-routine strip searches in accordance with CPP 9.8 Search Plan.

A copy of this notice shall be provided to the Personnel Cabinet in accordance with Personnel rules. As provided by KRS 18A.095, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the date notification is received. An appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

Sincerely,

Gregory S. Howard, Warden

Attachment

cc: Tim Longmeyer, Secretary, Personnel Cabinet
LaDonna Thompson, Commissioner – Department of Corrections
Jim Erwin, Deputy Commissioner-Department of Corrections
Stephanie Appel, HR Director, Justice and Public Safety Cabinet
Mark Sipek, Executive Director-Personnel Board
Personnel File