

21. The Board finds that the sub-par performance as articulated in Recommended Order Attachment A, the disciplinary letter, even standing apart from the unsatisfactory performance of November 12, 2012, is more than enough to sustain the demotion of Appellant. The Board finds and agrees with the Appointing Authority that it simply cannot condone such continued poor performance from a supervisor.

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 June, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Angela Cordery
Laura Dennis
Stephanie Appel

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-018**

LAURA DENNIS

APPELLANT

VS.

**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 on November 12, 2013, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Laura Dennis, was present 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. Also present on behalf of the Department of Corrections was Warden Joseph Meko, the Appointing Authority.

BACKGROUND

1. The Appellant, Laura Dennis, filed her appeal with the Personnel Board on January 25, 2013. The Appellant filed an appeal from an action by the Department of Corrections demoting her from Correctional Sergeant to Correctional Officer. The Appellant alleged the proper disciplinary procedures were not followed. She also alleged that her demotion was based on retaliation for an Occurrence Report she had filed against two supervisors for sexual harassment and discrimination. She also pointed out on her Appeal Form that her evaluating supervisor was the husband of one of the supervisors she had filed a complaint against. She felt this was a conflict of interest. She stated she was punished in part for time and attendance and she felt there were supervisors who had worse time and attendance records.

2. A pre-hearing conference was held on February 27, 2013. At that time it was determined that the primary issue for hearing was the Appellant's appeal from her demotion. The burden of proof on this issue was assigned to the Appellee to establish that the demotion was taken for just cause and that the penalty was neither excessive nor erroneous. The Appellant also alleged that the demotion was taken in retaliation for her sexual harassment claim. The burden of proof on this issue was assigned to the Appellant and was to be by a preponderance of the evidence.

3. A second pre-hearing conference was held on August 29, 2013, to discuss discovery issues.

4. At the evidentiary hearing, counsel for the Appellee in her opening statement stated that the Appellee would prove just cause for the demotion of the Appellant from Sergeant to Correctional Officer. She stated that the evidence would show that the Appellant had issues with time and attendance, appeared late, lost her badge, and did not follow the uniform policy. She also referenced that on November 12, 2012, the proof would show that the Appellant left the perimeter unsecured and was involved with an accident at the front gate.

5. In the Appellant's opening statement, she stated that her performance improved following receipt of a Performance Improvement Plan (PIP) on May 12, 2012. She stated that Capt. Holly Goodpaster should never have been involved with the investigation due to the fact that she had been the subject of a complaint filed by the Appellant. Appellant also stated that the evidence would show that her time and attendance was similar to that of several other supervisors who were not demoted.

6. The Appellee called as its first witness, **Serena Waddell**. Ms. Waddell is the Human Resources Administrator Institutional for Little Sandy Correctional Complex (LSCC). She also serves as the custodian of personnel records.

7. Ms. Waddell stated that the Appellant was hired as a Correctional Officer at LSCC on April 1, 2005. The Appellant was promoted to Correctional Sergeant on October 1, 2009. The Appellant was demoted to officer from Sergeant effective January 16, 2013.

8. Introduced as Appellee's Exhibit 2 was a copy of the demotion letter dated January 2, 2013. This letter is attached hereto as **Recommended Order Attachment A**. Through Ms. Waddell's testimony the Appellee also placed into evidence Appellee's Exhibit 3, documentation concerning an October 29, 2012 supervisory conference for arriving late to an assigned post. Ms. Waddell also introduced Appellee's Exhibit 4 the Appellant's Annual Employee Performance Evaluation for 2012, which was issued January 17, 2013. Included was a PIP provided to the Appellant on May 12, 2012. Ms. Waddell introduced a copy of the progress record kept by Appellant's supervisors as Appellee's Exhibit 5. Ms. Waddell also pointed out that Ms. Dennis was previously known as Laura Mayse and many of her documents have this name.

9. Ms. Waddell introduced Appellee's Exhibit 6, an Occurrence Report that she prepared on August 19, 2013. Ms. Waddell explained that on or about May 12, 2012, she received an Occurrence Report written by the Appellant regarding a counseling session involving Lt. Paul Crouch and Capt. Holly Goodpaster which had taken place on May 11, 2012. The counseling session concerned the Appellant's uniform, taking responsibility for her own actions and being on time to work. In her Occurrence Report, the Appellant stated that she felt she was harassed by Lt. Crouch and Capt. Goodpaster. Ms. Waddell stated that within the next week the

Appellant visited her in her office, stated she had thought about this situation and realized that Lt. Crouch and Capt. Goodpaster were only doing their jobs and she wished to have the Occurrence Report shredded. Ms. Waddell stated that she shredded the report in the presence of the Appellant. As far as she could tell this was the only copy of the Occurrence Report at the facility. Appellee's Exhibit 6 was prepared by Ms. Waddell after the appeal was filed to document these events.

10. On cross-examination, the Appellant introduced Appellant's Exhibit 1, an open records request she had sent to Ms. Waddell requesting a copy of a number of documents including the investigation and Occurrence Report that the Appellant had filed on Capt. Goodpaster and Lt. Crouch. Ms. Waddell requested additional time and reported she was unable to locate any additional copies of the Occurrence Report. She checked with the Warden's office and other supervisors just in case a copy had been maintained somewhere else or if she had forwarded it to someone else.

11. Ms. Waddell stated she wished she had kept a copy of the report and had Ms. Dennis initial that she was withdrawing her complaint. Ms. Waddell stated that the Appellant did not come back to see her about this matter after withdrawing her complaint. She does not remember any phone calls from the Appellant. Produced as Appellant's Exhibit 2 was a Retention Schedule which appeared to say that such a report should be maintained for at least one year following the conclusion of the action.

12. Ms. Waddell testified that there were other supervisors who were required to provide documentation for use of any sick leave. The Appellant was not placed on this status during 2012 and was only placed on this status in 2013 following her demotion. Ms. Waddell acknowledged that the Appellant had not received a written reprimand or a suspension before her demotion.

13. Ms. Waddell did not remember exactly what complaints the Appellant had regarding Crouch and Goodpaster. She did recall that she has heard Goodpaster make a statement similar to, "A female has to work twice as hard as a man to be recognized in Corrections." Ms. Waddell was not aware that any investigation was done regarding the complaint because the Appellant withdrew it.

14. The Appellee called as its next witness, **Captain Holly Goodpaster**. Capt. Goodpaster is currently a shift supervisor; however, she was an Internal Affairs Investigator during the events which concern this appeal.

15. Capt. Goodpaster testified that she was asked to perform an investigation by the Warden regarding an incident where the Appellant had been assigned to work outside patrol or perimeter patrol (OSP II), and instead was at Post I, the entry post, where a gate was dropped on a vehicle trying to leave the institution.

16. A copy of Capt. Goodpaster's investigative report was introduced into evidence as Appellee's Exhibit 7.

17. In performing her investigation, Capt. Goodpaster reviewed the cameras at the institution. From reviewing these cameras, she determined that at 3:35 the Appellant arrived at Post I with Officer Fannin. She stated that the Appellant stood around at Post I while Officer Fannin and Officer Gilliam got ready for the hospital trip. Capt. Goodpaster stated that at 3:41, Sgt. Dennis watched while Officers Gilliam and Fannin got in the state car and Dennis opened the gate. At this time Capt. Goodpaster wrote that Officer Vanessa Fraley, who was assigned to Post I, notified the appropriate personnel of the departure. Capt. Goodpaster stated that the Appellant allowed the state vehicle to leave along with two other vehicles. The Appellant watched those cars pass, did not look back and put the gate down on a fourth vehicle at 3:41:40.

18. Capt. Goodpaster states that from her view of the camera recordings, Sgt. Dennis never assumed the duties of OSP II. She also stated that the Appellant did not put her weapon on and did not get in the vehicle. Capt. Goodpaster reported that the schedule calls for OSP I to be relieved fifteen minutes early at 3:45 to ensure there is always a vehicle on the perimeter. Capt. Goodpaster testified she was not sure when the shift exchange was made regarding the other patrol vehicle.

19. Capt. Goodpaster did not speak with Sgt. Dennis about this incident. She did attach Occurrence Reports to her report to the Warden. These include a report from Officer Vanessa Fraley, Lt. Finch and Sgt. Shawn Ramey. There is no report from Lt. Gillum or Sgt. Dickerson.

20. Capt. Goodpaster's report includes an extensive review of Sgt. Dennis' progress notes. These include one occurrence in March, two in September and five in October of not being on post on time. On October 29, 2012, Dennis was issued a verbal reprimand for failing to be on post on time.

21. Capt. Goodpaster also made reference to a counseling session on May 11, 2012, including Lt. Crouch, Sgt. Dennis and herself. On this occasion, Crouch and Goodpaster discussed the importance of having an employee ID and badge and taking responsibility for her own actions. It was documented that the Appellant had a habit of making excuses and not getting to work on time. A PIP was completed.

22. According to Capt. Goodpaster the Appellant also did not have a badge or ID on October 27, 2012. On November 14, 2012, the Appellant was counseled on proper security protocol and proper use of break times. On September 17 the Appellant came to work and her hair was not within proper guidelines.

23. Capt. Goodpaster included a discussion of the PIP in her report. She also included a discussion of the second interim review from Appellant's performance evaluation.

24. The conclusion of Capt. Goodpaster was that Sgt. Dennis had been counseled numerous times by supervisors, including her PIP and interim review. She was instructed that she needed to improve and she had failed to improve.

25. Capt. Goodpaster stated she had never heard that Lt. Gillum told the Appellant to "get the medical trip out first."

26. Capt. Goodpaster stated she was present on May 11, 2012, so that a female supervisor would be there. She did not recall any inappropriate statements during the counseling.

27. Capt. Goodpaster does not know if other employees had been disciplined following lowering a gate on a car. She testified there are other supervisors with time and attendance problems. Goodpaster stated that her report did not recommend any particular disciplinary action.

28. The next witness was **Captain Paul Crouch** who has served thirteen years with the Department of Corrections. He is currently a Shift Captain. At the time of the events of this case he was a Lieutenant who served as the Appellant's first-line supervisor for a period of time.

29. Lt. Crouch met with the Appellant and Capt. Goodpaster on May 11, 2012, to discuss the Appellant's time and attendance issues. She had called in several times. She also had been late to her post. She had problems doing her job and had to be told what to do rather than taking an initiative. In addition, she took Correctional Officers from posts in order to go to the parking lot and smoke with them. In general, Lt. Crouch felt that the Appellant needed to take responsibility for her own actions and stop making excuses. As a result of the meeting, they prepared a PIP which was issued to the Appellant the following day.

30. The witness also reviewed Appellee's Exhibit 5, the progress notes, including the incidents he was involved with the Appellant.

31. Lt. Crouch stated that the counseling session did not go too well. Afterward, the Appellant filed paperwork on him and Capt. Goodpaster alleging that they harassed her during the counseling session.

32. On cross-examination, Lt. Crouch stated that Capt. Goodpaster was not there just to have a female presence at the counseling session. He stated that he met with Capt. Goodpaster the day before and they discussed what they needed to go over with the Appellant. Lt. Crouch stated that he did not make any remark regarding Jennifer Dennis and the Appellant being "lesbians." Following the complaint, Lt. Crouch requested to be taken out of her line of supervision. Capt. Ison became the Appellant's supervisor. Lt. Crouch does not know if there was any follow-up on the PIP as he was out of the chain of command at that point.

33. Lt. Crouch denied that Capt. Goodpaster made a statement such as, "Women need to work twice as hard as a man" or concerning her mother's cancer.

34. Lt. Crouch stated that he heard about the Appellant's harassment complaint from Capt. Goodpaster. He called Serena Waddell to discuss it and that was the last he heard regarding the complaint.

35. The next witness was **Lieutenant Mike Finch**. Lt. Finch has been in Corrections for thirteen years and serves as the Operations Lieutenant. He viewed Appellee's Exhibit 4 which was the Appellant's 2012 employee evaluation. Lt. Finch prepared the second interim review on September 26, 2012. He stated that the Appellant needed to set an example as a Sergeant and she was not doing that. He stated she would be found off post not performing her daily duties and that she needed direction. He also stated that she had problems with time and attendance and punctuality. Lt. Finch also gave her a third interim review which stated that her performance had been consistent during the third period. The Appellant refused to sign. He gave the Appellant a "Needs Improvement" evaluation for the entire year. The Appellant initially refused to sign the final evaluation as well; however, she eventually signed the evaluation, disagreed and requested reconsideration.

36. In Lt. Finch's opinion, the evaluation was fair and correct. He stated that the Appellant had been told what was expected of her.

37. Lt. Finch testified regarding the events of November 12, 2012. His Occurrence Report was introduced as Appellee's Exhibit 8. There was an inmate that needed to be taken to the hospital. From Lt. Finch's position, he felt it took a long time to get the inmate to the hospital. He learned that the Appellant could not go on the trip because she did not have a babysitter. Lt. Finch advised Sgt. Dickerson to find someone else to go on the hospital trip. He heard that the Appellant was ordered by Lt. Gillum to go to outside patrol. From his review of this matter the Appellant turned down the trip to the hospital, did not report to outside patrol, and allowed the gate to crash on a vehicle. On cross-examination, Lt. Finch said he was aware that the Appellant said that no one asked her to go on the trip. He said, however, that the camera shows that she and the officer got the car ready for the trip. He was not aware that Lt. Gillum had asked her to find someone to go on the trip.

38. Lt. Finch stated after the accident with the gate and the vehicle, he asked the Appellant to prepare an Occurrence Report.

39. Lt. Finch stated that the Appellant did not follow an order to go to outside patrol.

40. Lt. Finch testified that he became the Appellant's first-line supervisor after the PIP. He was aware that there were other supervisors who are on sick leave abuse. He was not involved in the decision to give the Appellant a verbal reprimand or a demotion.

41. Lt. Finch was asked if there was a conflict of interest because of the Appellant's harassment complaint regarding Capt. Goodpaster (Lt. Finch's wife). Lt. Finch stated that he was not aware of the complaint and, therefore, there was no conflict of interest.

42. The Appellee's next witness was **Deputy Warden David Green**. He has been with the Department of Corrections for twenty-four years and currently serves as the Deputy Warden over both programs and security. He gave the Appellant her demotion letter, Appellee's Exhibit 2.

43. The Appellee introduced policies cited in the demotion letter through Deputy Warden Green, including Corrections Policy and Procedure 3.17, Uniformed Employee Dress Code, which was introduced as Appellee's Exhibit 9. This policy provides the female security staff must wear their hair so that it does not reach the eyebrows in the front and stays off the collar in the back. Deputy Warden Green introduced LSCC General Post Order as Appellee's Exhibit 10 which states that security staff shall be at their assigned post on time. Deputy Warden Green introduced LSCC Perimeter Patrol Post Order as Appellee's Exhibit 11. This policy states that at least one outside patrol officer shall be on the perimeter at all times in order to prevent escapes. Deputy Warden Green stated that the Appellant was assigned to outside patrol and did not go. Instead she went to Post 1. Introduced as Appellee's Exhibit 12 was LSCC Security Reception Post Order which states that all security staff shall have their ID and badge.

44. On cross-examination, Deputy Warden Green stated that he is aware that female staff have been counseled before regarding hair length. When asked if there was one outside patrol on duty in the incident on November 12, Deputy Warden Green stated he did not believe so. He believed the other officer was relieved fifteen minutes early. Deputy Warden Green was not aware that Lt. Finch had told the Appellant to do an Occurrence Report after the accident with the vehicle.

45. The last witness called by the Appellee was **Warden Joseph Meko**. Warden Meko has been a warden of the LSCC for six years following a twenty-eight year career with the Federal Bureau of Prisons. As Warden, he is responsible for disciplinary and corrective actions of employees. He made the decision to demote the Appellant. He stated that she is the third or fourth Sergeant he has demoted. The Warden stated that the Appellant had difficulty coming to work on time and was not serving as a role model for the officers she supervised. In making the decision to demote, he said he took into account everything he knew about the Appellant including her family situation. He had previously made a KEAP referral. He stated that the Appellant was someone who was not ready to assume supervisory responsibilities.

46. He stated he made the decision not to suspend because it would not have the desired corrective effect. He stated that the Appellant did not make a good supervisor.

47. Regarding the November 12, 2012 incident, the Warden stated that if there was any confusion about what the Appellant was supposed to do, she should have questioned Lt. Gillum who allegedly gave her the orders.

48. The Warden stated that the Appellant's performance as an officer still was not up to par following her demotion, however, he could not give any specifics. He was not aware of her time and attendance.

49. The Warden stated he did not have any conversation with the Appellant regarding this incident. He was not aware of her sexual harassment complaint. He was aware that some type of complaint against Goodpaster and Crouch had been retracted, but he was not aware that it was sexual harassment. His understanding was that the Appellant felt picked on by the two supervisors during her conference.

50. Following Warden Meko's testimony, the Appellee rested.

51. The Appellant called her father, **Ronnie Mayse**, as her first witness. Mayse is employed as a Recreation Supervisor at LSCC. He has worked at the facility since it opened in July 2005 and has a total of fifteen years with the Department of Corrections. Mayse recalled seeing his daughter, the Appellant, upset in May 2012. She stated that she had gotten "hammered" over her personal life and called a "lesbian." Appellant stated she was upset and was unable to give further details at that time.

52. A few days later, Mayse had a discussion with Capt. Goodpaster about what was wrong with his daughter. He said that Goodpaster said something about the Appellant's female friends at work. She also spoke about the Appellant's abusive husband and the fact that Appellant needed to get away from him. Mayse stated he agreed with that statement. Goodpaster said that the Appellant had filed sexual harassment charges on her. Goodpaster prepared a document about the discussion with Ronnie Mayse. The witness reviewed the document, although it was not placed into evidence.

53. On cross-examination, it was revealed that Mayse worked on the first shift from 8:00 a.m. to 4:00 p.m. The conversation with Goodpaster took place close to the Internal Affairs office while Mayse was going to the mailbox to get his mail.

54. The Appellant, **Laura Mayse Dennis**, testified. She stated that she has been employed at LSCC beginning in 2005 as a Correctional Officer. In 2009 she was promoted to Sergeant. She stated that on May 11, 2012, while they were giving her a PIP, she met with Lt. Crouch and Capt. Goodpaster. She stated that Lt. Crouch called her a "lesbian" and discussed her relationship with Jennifer Dennis. She testified that Capt. Goodpaster stated that as a female in Corrections, the Appellant had to work twice as hard as a man. She also stated that Goodpaster said that the Appellant wanted people to feel sorry for her because the Appellant had to deal with domestic violence at home. The Appellant claims that Goodpaster stated that if anyone should be felt sorry for that it was Goodpaster because her mother had cancer and was undergoing chemotherapy.

55. The Appellant introduced as Appellant's Exhibit 5 a document from Pathways showing that she had completed treatment requirements on September 25, 2012, as a result of domestic violence victimization. The Appellant stated she had received support from a number of individuals dealing with her personal issues including Warden Meko. The Appellant stated that her time and attendance was improving following her PIP and the completion of this Pathways program. She believed that the other areas of her performance had already gotten better.

56. With respect to the issues of November 12, 2012, the Appellant stated that on that date she was assigned to the yard. She was contacted by Sgt. Dickerson and told to go get the car and take it to the back of medical for a trip to go out. She stated that Correctional Officer Gilliam had the car keys and she helped him carry the equipment out to the car.

57. The Appellant stated that someone asked her if she was going on the trip, and she stated that no one asked her to. She stated that Lt. Finch asked, "You're not going?" She responded that she could not go because she could not get a babysitter that close to the end of the shift. She stated that Lt. Gillum stated, "You find someone to go on the medical trip and you can relieve them." The Appellant stated that she walked from the clerk's office to E Dorm in order to get someone. At that time she was radioed to go to OSP II by Lt. Gillum. She was also informed by Lt. Gillum that she needed to make sure she got the trip out (referring to the medical trip). She testified that after the car for the medical trip went out there were two more cars that were released. She did not see the fourth car and closed the gate on that car. She stated that Officer Vanessa Fraley was already at Post 1. While she was operating the gate, Officer Fraley had called the Captain's office to get permission to allow the trip to leave. After the trip went out, the Appellant stated that she was told that she had to complete an Occurrence Report regarding the accident. She did not complete this report until a few minutes before 4:00 p.m. At that time there was already someone from the new shift in OSP II. According to the Appellant, OSP I stayed on the perimeter the entire time.

58. With respect to her not taking control of OSP II, the Appellant stated no one ever asked her what happened, no one asked her to file a report. She stated that Capt. Goodpaster never talked to her about this issue.

59. With respect to the counseling session with Lt. Crouch and Capt. Goodpaster, the Appellant stated that she discussed this matter with Senior Captain Mark Stevens. She prepared an Occurrence Report and gave it to him. She stated that it was her understanding that he gave the report to Serena Waddell. The Appellant stated that she called Ms. Waddell about once a week for three or four weeks and was told the matter was still being investigated. She denied ever having a discussion with Ms. Waddell where she stated that Crouch and Goodpaster were "just doing their jobs." She believed that the investigation regarding the incident at Post 1 and perimeter patrol were the result of retaliation by Capt. Goodpaster for the Appellant's complaint of sexual harassment. She stated that Capt. Goodpaster's name was on everything.

60. Lastly, the Appellant argued that the Warden did not follow progressive discipline in deciding to demote her. She stated that she went straight from a verbal reprimand to a demotion.

61. On cross-examination, the Appellant stated that it was Capt. Goodpaster who brought up the Appellant's personal life during the meeting. Appellant also stated she was offended by Crouch's remark referring to her as a "lesbian."

62. The Appellant concluded by stating she felt she could be a very good supervisor.

FINDINGS OF FACT

1. The Appellant, Laura Dennis, was hired as a Correctional Officer at LSCC in 2005. In 2009 she was promoted to Correctional Sergeant. [Testimony of Serena Waddell and Appellee's Exhibit 1.]

2. Since being promoted to Sergeant, the Appellant's supervisors had concerns that she did not set a good example for the Correctional Officers she supervised. Special issues of concern included her time and attendance and punctuality, as well as her inability to take responsibility for her own actions. [Testimony of Capt. Goodpaster, Lt. Crouch, Warden Meko and Appellee's Exhibit 5.]

3. On May 11, 2012, the Appellant met with her immediate supervisor, Lt. Paul Crouch, and Capt. Holly Goodpaster. During this meeting, the Appellant was counseled by Lt. Crouch and Capt. Goodpaster regarding the importance of wearing her employee ID and badge, the Appellant had lost hers. They also discussed the importance of the Appellant taking responsibility for her own actions and not making excuses. She was also counseled regarding being to work on time and to limit call-ins. [Testimony of Lt. Crouch, Capt. Goodpaster, and Appellee's Exhibit 4.]

4. The Appellant states that in addition to counseling her regarding these performance issues, both Lt. Crouch and Capt. Goodpaster discussed the Appellant's personal life. The Appellant alleges that Lt. Crouch referenced rumors that the Appellant was a lesbian based on reports that she was spending time around Officer Jennifer Dennis. Lt. Crouch and Capt. Goodpaster deny that Crouch made this remark. The Appellant reported to her father, Ronnie Mayse, a Recreational Supervisor at LSCC, that she was "hammered" on her personal life and called a lesbian during her counseling session. Ms. Waddell did not recall that the Appellant complained of being called a lesbian, but did state that she felt there were concerns that the Appellant was spending time around female officers. One such concern involved an incident where the Appellant took other officers with her to the parking lot to smoke. [Testimony of Appellant, Lt. Crouch, Capt. Goodpaster, Ronnie Mayse and Serena Waddell.]

5. The Hearing Officer believes that Lt. Crouch did not call the Appellant a lesbian during the counseling session; however, he did caution her about the amount of time she was spending around certain female Correctional Officers. The Hearing Officer further finds that the Appellant interpreted these remarks as calling her a lesbian. She was clearly offended by these comments as evidenced by her report to her father shortly after these events and her subsequent complaint. [Testimony of Appellant.]

6. The Appellant alleges that Capt. Goodpaster stated that as a female in Corrections she would have to work twice as hard as a man. Capt. Goodpaster and Lt. Crouch deny that this statement was made. Serena Waddell stated that she has heard Capt. Goodpaster make a similar statement in the past. [Testimony of the Appellant, Capt. Goodpaster, Lt. Crouch and Serena Waddell.]

7. The Hearing Officer finds that it is more likely than not that Capt. Goodpaster made this statement during the counseling session. The Hearing Officer makes this finding based primarily on the testimony of Serena Waddell that she has heard Capt. Goodpaster make this statement before. The Hearing Officer further finds that Capt. Goodpaster did not intend this remark in any discriminatory way and it was her effort to try and encourage the Appellant to work harder under difficult circumstances.

8. Appellant also alleges that Capt. Goodpaster stated that the Appellant wanted everyone to feel sorry for her because of her situation at home dealing with domestic violence. Appellant further alleges that Capt. Goodpaster stated that if anyone should have a right to be felt sorry for; it was her, due to her mother's cancer and chemotherapy. Capt. Goodpaster and Lt. Crouch deny that this statement was made. [Testimony of the Appellant, Capt. Goodpaster and Lt. Crouch.]

9. The Hearing Officer finds it is more likely than not that Capt. Goodpaster discussed the Appellant's domestic violence, as well as Goodpaster's mother's cancer during the counseling session. The Hearing Officer further finds that Capt. Goodpaster did not intend to offend the Appellant, but was again trying to encourage the Appellant to improve her work performance despite her difficult personal situation.

10. Following the counseling session, the Appellant filed an Occurrence Report alleging sexual harassment and harassment by Lt. Crouch and Capt. Goodpaster. Appellant first discussed these matters with Senior Capt. Mark Stevens. The Occurrence Report was forwarded by Senior Capt. Stevens to Personnel Administrator Serena Waddell. [Testimony of the Appellant and Serena Waddell.]

11. After the complaint was received by Serena Waddell, the Appellant discussed this matter with Ms. Waddell. The Appellant made a statement along the lines that she understood that Lt. Crouch and Capt. Goodpaster were just doing their job and stated she wished to withdraw the complaint. Although the Appellant denies making this remark, the Hearing Officer finds Ms. Waddell's testimony credible that she interpreted the Appellant's remark as stating she

wished to withdraw her complaint against Crouch and Goodpaster. Ms. Waddell shredded the complaint. The Hearing Officer resolves this credibility dispute in favor of Ms. Waddell based on her overall candor during her testimony. Ms. Waddell volunteered that she had heard Capt. Goodpaster make a remark such as a female would have to work twice as hard as a male in Corrections. In addition, Ms. Waddell testified that she wished she had not shredded the complaint and that she had maintained some type of documentation regarding the Appellant's withdrawal of the complaint. The Hearing Officer perceives Ms. Waddell, based on her testimony, as an employee trying to do the best job that she could and one who learned from what she perceived as mistakes. The Hearing Officer has difficulty believing the Appellant's testimony that she did not make such a statement (withdrawing her complaint) only inquired a couple more times with Ms. Waddell, and then took no further action regarding her complaint until her January 17, 2013 open records request. The Hearing Officer believes that based on the Appellant's testimony, she would have taken steps and discussed this with another supervisor, her father, a friend or someone else during the months between May 2012 and January 2013, if she did not intend in some way to drop her complaint. [Testimony of Serena Waddell and Appellant.]

12. Lt. Crouch learned from Capt. Goodpaster that the complaint had been filed and he asked to be removed as Appellant's immediate supervisor. This was accomplished relatively quickly. Lt. Crouch issued the PIP to the Appellant on May 12, 2012. By May 24, 2012, he was no longer her immediate supervisor and Captain Ison prepared the Appellant's first interim review on May 24, 2012. [Testimony of Lt. Crouch and Appellee's Exhibit 4.]

13. On May 12, 2012, Lt. Crouch issued the Appellant a PIP. The Appellant was encouraged to improve her time and attendance, punctuality, initiative, conduct, dependability and responsibility. She was encouraged to come to work and be on time, show initiative by doing the job without being told, to not use other staff for personal gain when it will affect other staff and their post, and to take responsibility for her own action without using any excuses. A second conference was scheduled for June 12, 2012. The PIP was signed by the Appellant and Lt. Crouch on May 12, 2012, and was signed by Capt. Ison on May 17, 2012. No additional conferences were conducted as Crouch was no longer the Appellant's supervisor. [Testimony of the Appellant, Lt. Crouch and Appellee's Exhibit 4.]

14. Following the PIP, the Appellant continued to have problems with her work performance. On September 14, 2012, she was counseled on proper security protocol when entering the institution, as well as the proper use of break times. On September 17, 2012, Appellant's hair was below her collar. The Appellant continued to report to her assigned post late, even on occasions where she scanned in on time. The Appellant received a verbal reprimand for arriving late to her assigned post on October 29, 2012. [Testimony of Serena Waddell, Capt. Goodpaster, Lt. Finch and Appellee's Exhibit 3.]

15. The Appellant was issued her second interim review on September 28, 2012. She was informed that she needed to work well without supervision. She was told she needed to use less leave time and get to her post on time and use only allotted times for breaks. She was also told she needed to account for her own actions and correct on-going problems. [Testimony of Lt. Finch and Appellee's Exhibit 4.]

16. On November 12, 2012, an inmate needed to leave LSCC for a medical trip. The Appellant was asked by Sgt. Dickerson to get the car ready for the medical trip. The Appellant did not understand that she was being asked to go on the trip. At some point later, when she was asked by Lt. Finch she said she could not go on this trip as she could not get a babysitter that late. The Appellant was instructed by Lt. Gillum to find an officer who could go on the trip and to relieve that officer. While the Appellant was attempting to find such an officer, she was radioed by Lt. Gillum and instructed to go to Post 1 to relieve OSP II and to make sure the medical trip gets out. Appellant understood this order as to assist at Post 1 until the medical trip left the grounds of the institution and then assume the responsibilities of OSP II. [Testimony of the Appellant and Appellee's Exhibit 7.]

17. The Appellant and Officer Fannin arrived at Post 1 at 3:35. Officer Fannin had previously been on OSP II. Fannin left with Officer Gilliam for the hospital trip at 3:41. The Appellant opened the gate to allow them out while Officer Fraley, the officer assigned to Post 1, called the Captain's office for approval to allow the medical trip to leave the grounds of the institution. The Appellant allowed the state car to leave along with two others. She did not see a fourth car approaching and put the gate down on the fourth vehicle at 3:41:40. [Testimony of Appellant, Capt. Goodpaster and Appellee's Exhibit 7.]

18. Following the accident, the Appellant was instructed by Lt. Finch to prepare an Occurrence Report. She did not complete the Occurrence Report until a few minutes before 4:00 p.m. By the time she was finished with her Occurrence Report, the officer from the second shift had relieved her with respect to OSP II. The Appellant never got in the vehicle to assume perimeter patrol in OSP II. [Testimony of Appellant and Appellee's Exhibit 7.]

19. There are two outside patrol vehicles. One vehicle is to be on the perimeter at all times with an officer. The practice is that OSP I is scheduled to be relieved at 3:45 p.m. so that one vehicle is on the perimeter at all times and two outside vehicles are not relieved at the same time. No one could testify what time OSP I was relieved on November 12, 2012. The Appellant testified that OSP I was on the perimeter the entire time of these events. The Hearing Officer finds her testimony un-contradicted and finds that one vehicle was on the perimeter at all times. [Testimony of the Appellant, Deputy Warden Green and Appellee's Exhibit 11.]

20. The Hearing Officer further finds that the Appellant did not refuse to accept her post at OSP II. The Appellant interpreted the order she was given by Lt. Gillum to be that she should first make sure the medical trip left the grounds of the institution and then assume the responsibility for OSP II. As a result of the gate accident, the Appellant followed Lt. Finch's order to do an Occurrence Report and was not able to assume OSP II before the second shift officer had relieved her of this responsibility.

21. The Hearing Office finds that there is not just cause for the demotion of the Appellant. The Appellant has a poor record as a supervisor and these matters were being handled through a PIP, through her interim reviews and ultimately a verbal reprimand. These issues were viewed in a different light following the incident of November 12, 2012, when the Warden believed the Appellant had left the perimeter unpatrolled by not taking responsibility to assume the duties of OSP II. The hearing demonstrated in this case the incident was much more complicated than was reported to the Warden. This appears to be the result of an investigation that consisted of watching the incidents through the institution's video cameras and reading Occurrence Reports from some of the participants. It also appears that in order to determine exactly what happened in this incident, a complete statement should have been taken from the Appellant and Lt. Gillum, as well as other participants.

22. Clearly the Appellant's performance as a Correctional Sergeant has been sub-par; she has not improved despite repeated counseling by supervisors. The Hearing Officer also believes that the Appellant's performance on November 12, 2012, should have been better than it was, however, she did not commit the offenses outlined in Appellee's Exhibit 2, the demotion letter dated January 2, 2013.

23. The Hearing Officer finds that there is just cause for a ten-day suspension of the Appellant based on her sub-par performance following her PIP on May 12, 2012.

24. The Hearing Officer does not find any evidence that the demotion of the Appellant was motivated by retaliation for her having filed a complaint against Capt. Goodpaster and Lt. Crouch. By the actions and testimony, the Hearing Officer finds that Capt. Goodpaster, Lt. Crouch and Warden Meko were motivated by attempting to improve the Appellant's work performance.

25. The result in this case could have been much different had there been credible evidence refuting Lt. Gillum's order to the Appellant. The Hearing Officer would have had no problem upholding the demotion had the Appellee proved the incident occurred as was stated in Appellee's Exhibit 2.

CONCLUSIONS OF LAW

1. As was stated in the Findings of Fact, the Hearing Officer concludes that there was not just cause for the demotion of the Appellant from Correctional Sergeant to Correction Officer and this action was excessive and erroneous. KRS 18A.095(1) and (22)(b) and (c).

2. The Hearing Officer concludes that the Appellant's work performance as a Correctional Sergeant constituted unsatisfactory performance pursuant to 101 KAR 1:345, Section 1, and that a ten-day suspension is the appropriate penalization.

3. The Hearing Officer concludes that the Appellee was not motivated by retaliation in demoting the Appellant. Although the Appellant established that she filed a complaint and that she suffered an adverse employment action, she was unable to establish any causal connection between the two. In addition, the Appellee articulated legitimate non-retaliatory reasons for her disciplinary action. Those reasons consisted of the Appellant's repeated unsatisfactory performance as a Correctional Sergeant. *Kentucky Department of Corrections v. McCullough*, 123 S.W.3d 130 (Ky. 2003).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **LAURA DENNIS VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2013-018)** be **SUSTAINED to the extent** that the penalty be reduced to a ten (10) day suspension; that the Appellant be restored to her previous rank of Correctional Sergeant and she shall further be awarded back pay and benefits (except for her period of suspension). Further, the Appellee is ordered to reimburse Appellant for any leave time she used attending the hearing and any pre-hearing conferences at the Board and that she otherwise be made whole. [KRS 18A.105, KRS 18A.095(25), 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.

SO ORDERED at the direction of **Hearing Officer Mark A. Sipek** this 10th day of March, 2014.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Angela Cordery
Laura Dennis



Department of Corrections
LITTLE SANDY CORRECTIONAL COMPLEX
505 Prison Connector
Sandy Hook, Kentucky 41171
Phone: (606) 738-6133
Fax: (606) 738-6143

Issued.

1-3-13

2:22 p.m.

David. Gunn

Lane Dennis

January 2, 2013

Laura Dennis

Dear Ms. Dennis:

Pursuant to KRS 18A.095, you are advised that you will be demoted for cause from your position as Correctional Sergeant, Little Sandy Correctional Complex, Elliott County, to the position of Correctional Officer, Little Sandy Correctional Complex, Elliott County, effective beginning of business January 16, 2013. Your monthly salary will be reduced from \$2,476.64 to \$2,358.72

You are demoted for violation of 101 KAR 1:345, Section 1, Unsatisfactory Performance of Duties; Corrections Policy and Procedure (CPP) 3.17, Uniformed Employee Dress Code, Section (B), item (2), which states: "Female hair length, bulk or appearance of the hair shall not be excessive, ragged or unkempt. Hair in the front shall not touch the eyebrows. Hair on the back of the head shall not go beyond the bottom of the uniform collar"; LSCC Post Orders, #PO-01, General Post Orders, Section 4, which states: "Staff shall be available to work the assigned shift in proper uniform and shall be neatly groomed. The uniform shall be clean and pressed. Shoes shall be shined"; LSCC Post Orders PO-01, General Post Orders, Section 6, item 16, which states: "Staff shall report to their assigned post at the scheduled times and be prepared to assume the duties of that assigned post"; LSCC Post Orders # PO-03, Perimeter Patrol (OSP), Section 3, which states: "Staff assuming duty shall relieve staff on duty at the Entry Post. One patrol shall remain on patrol when the other patrol is being relieved"; LSCC Post Order # PO-03, Perimeter Patrol (OSP), Section 4, item (B) states: "Perimeter patrols (OSP's) shall be equipped with the following: .357 cal. Revolver and holster with six (6) rounds of .38 cal. ammunition in the cylinder, two (2) speed loaders with twelve (12) rounds for a total of eighteen (18) rounds and one (1) double speed loader case. The serial number of the weapons shall be checked to ensure you have the correct weapon. The weapon shall be worn while on duty at this post"; and LSCC Post Order # PO-06, Security Reception, Section 8, which states: "All staff and visitors entering and exiting Security Reception shall empty their pockets and place the contents along with any metal objects in one of the containers at Security Reception. Staff shall also place their institutional ID card in

AN EQUAL OPPORTUNITY EMPLOYER M/F/D

EXHIBIT

tabbies

2

Recommended Order Attachment A

the container." Unsatisfactory performance from a supervisor shall not be tolerated, specified as follows:

Unsatisfactory Performance, i.e., On November 12, 2012, at approximately 3:30 p.m., you were assigned to relieve the OSP II officer so that the officer could go on a hospital trip. According to video camera recording, at 3:35 p.m., instead of going to the OSP II vehicle, you went to Entry Post (not your assigned post) and opened the gate to allow the trip (state) vehicle to leave grounds when there was an officer already assigned to Entry Post. You continued to watch as a maroon car followed the state vehicle, but failed to notice that a white car was behind the maroon car. You then lowered the gate on the white car, resulting in damage to the vehicle. Also according to the video recording, at 3:41 p.m., you never did put on your weapon, which is a requirement of the OSP post, nor did you get into the OSP II vehicle to make rounds of the institution. Since this was fifteen (15) minutes prior to shift change, and the OSP I was being relieved at this time, this meant there were no vehicles on perimeter road making any rounds of the institution.


On May 12, 2012, you were issued a performance improvement plan, which specifically targeted taking responsibility for your own actions without making excuses, (since you had lost your badge and ID the day before), not pulling officers off post for personal reasons because it directly affects the post the officer is on, doing your job without being told what to do and coming to work and being on post on time. By September 28, 2012, when your second interim review was done, your performance had not improved, i.e., on September 14, 2012, you were counseled on proper security protocol when entering the institution as well as the proper use of break times, on September 17, 2012, you were not in proper uniform, as your hair was below your collar, and between May 1 and August 31, 2012, you had taken sixteen (16) sick days and were late scanning in to work six (6) times. Since your 2nd interim review, you have taken seven (7) sick days and scanned in late to work six (6) times. Also since your 2nd interim review, on September 21 and October 5, 2012, although you scanned in on time, you didn't arrive at your post until 8:07 a.m. and 8:03 a.m. respectively. On October 25, 2012, you did not scan in and you arrived at your assigned post after 8:00, causing the relieved supervisor to scan out at 8:10 a.m. and gain unnecessary overtime. On October 27, 2012, you came in five (5) minutes late to work without your badge, ID or chevrons. On October 29, 2012, you received a verbal reprimand for arriving late to your assigned post on October 15, 25 and 27, 2012, causing the supervisor from the previous shift to receive unapproved overtime.

As a supervisor within the Department of Corrections, you are expected to be a positive role model and set a good example for other staff. You are expected to be punctual, reliable and responsible. Your record of conduct has shown that you have not met these standards. Your conduct is unacceptable and continuation of this type of conduct will not be tolerated. Failure to improve your conduct may lead to further disciplinary action taken against you, up to and including dismissal.

For your information, the Kentucky Employee Assistance Program (KEAP) is a voluntary and confidential assessment and referral service for state employees. This service may help you with any personal problems that may be affecting your job performance. KEAP can be reached at (800) 445-5327 or (502) 564-5788.

In accordance with 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. Such appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

Sincerely,



Joseph P. Meko
Warden

Attachment : Appeal Form

Cc: Tim Longmeyer, Secretary - Personnel Cabinet
LaDonna Thompson, Commissioner - Department of Corrections
James Erwin, Deputy Commissioner, Office of Adult Institutions
Stephanie Appel, Director - Division of Personnel Services
Personnel File