

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-061**

**BRIAN EASTON**

**APPELLANT**

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

**VS.  
EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
THOMAS O. ZAWACKI, APPOINTING AUTHORITY**

**APPELLEE**

\*\* \*\* \*

The Board at its regular June 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated February 25, 2014, having considered Appellee's exceptions, Appellant's response, oral arguments of the parties, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A. **Delete** Findings of Fact numbers 1 and 2 and substitute the following:

1. Appellant, Brian Easton, has been charged with the lack of good behavior and unsatisfactory performance of duties in that he failed to properly supervise the activities at 601 East Main Street, Frankfort, Kentucky, by allowing contraband in the form of tobacco and a rolling machine; and in failing to ensure that certain pornographic materials were not allowed to remain at that facility.

2. Until April 1, 2012, the Appellant was the Branch Manager over two sections at that facility, one of which involved the GSP inmate program. As of April 1, 2012, the Appellant became the Assistant Director of the Division. In both positions, as the Branch Manager and as the Assistant Director, the Appellant had little or no direct

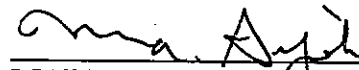
contact with the inmates at the facility. The Board finds that Appellant in both positions did perform work at the facility at 601 East Main Street.

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

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 18<sup>th</sup> day of June, 2014.

**KENTUCKY PERSONNEL BOARD**

  
\_\_\_\_\_  
**MARK A. SIPEK, SECRETARY**

A copy hereof this day mailed to:

Hon. Rosemary Holbrook  
Hon. Paul Fauri

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-061

BRIAN EASTON

APPELLANT

VS.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER

EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
THOMAS O. ZAWACKI, APPOINTING AUTHORITY

APPELLEE

\*\*    \*\*    \*\*    \*\*    \*\*

This matter came on for an evidentiary hearing on December 17 and December 19, 2013, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Brian Easton, was present at the hearing and was represented by the Hon. Paul F. Fauri. Appellee, Education and Workforce Development Cabinet, was present and was represented by the Hon. Rosemary Holbrook. Also present as Agency representative was Mark White.

The burden of proof was placed on the Appellee by a preponderance of the evidence to show that the suspension was appropriate under all the surrounding circumstances and neither excessive nor erroneous.

**BACKGROUND**

1. This matter involves a five-day suspension given to the Appellant by Amended Letter dated January 15, 2013. A copy of which is attached hereto as **Recommended Order Attachment A**. In summary, the Appellant was suspended for allegedly failing to carry out his supervisory duties in seeing that Cabinet policies relating to sexual harassment and the confiscation of contraband were followed.

2. The Appellee's first witness was **Desi Brooks**. He has been employed by the Department of Corrections for approximately seventeen years and serves as a Jail Consultant for the Division of Local Facilities within the Kentucky Department of Corrections.

3. The witness described a Governmental Services Program (hereinafter GSP) in which certain inmates are allowed to work in various Cabinet programs in order to assist the Cabinet. This program formerly involved inmates from the Frankfort Career Development

Center, but has since involved inmates who are held in the Franklin County Regional Jail (hereinafter FCRJ).

4. The witness explained that state employees who will be supervising these inmates in various cabinets must attend a training session stating their responsibilities and the expectations for supervising inmates. As a benefit to the Cabinet, the inmates work at a much reduced rate of pay.

5. The witness went on to state that prior to April 2012, tobacco was not considered contraband, but as of April 1, 2012, the jails were informed of a non-smoking policy and tobacco was thereafter considered contraband.

6. This witness then introduced Appellee's Exhibit 1, a Sign-In Sheet showing those in attendance at a training session given September 6, 2011. This shows that the Appellant attended that training session regarding the GSP supervisor training. The witness explained that the September 6, 2011 training covered the areas of pornography, prohibition on personal work for state employees, and the fact there was to be no telephone usage by the inmates. There apparently was no mention of tobacco as contraband at that meeting.

7. On cross-examination, the witness stated that a subsequent training was given May 7, 2012, at which time attendees were made aware of the change in tobacco as being contraband. The witness was not aware whether the Appellant attended that training. [**Hearing Officer Note:** A later exhibit, Appellant's Exhibit 1, is a Sign-In Sheet for that training and does not indicate the Appellant was present.]

8. The witness indicated that the May 7, 2012 training did emphasize the Cabinet's policy that there were to be no materials containing any sexual references in the workplace. The witness explained that in the case of rules violations, the state supervisors were to notify the jail, who in turn would notify the Department of Corrections. After this, there would be a decision made as to whether the inmates were to be removed from the individual program.

9. Under redirect, the witness explained that it was the jail's responsibility to get the state employee trainees to attend the training. The record shows that at the May 7, 2012 training, there were several individuals from Workforce attending, including Steve Lewis. This session involved training of tobacco as contraband. As stated before, the Appellant was apparently not present.

10. The witness then introduced Appellee's Exhibit 2, a Memorandum of Agreement (hereinafter MOA) between the FCRJ and the Department of Corrections and the Education and Workforce Development Cabinet, to be effective July 1, 2012, through June 30, 2013. The Appellant signed this document on behalf of the Education and Workforce Development Cabinet. The Cabinet's responsibilities under this MOA include the responsibility to: (1) immediately report all observed violations of policies and procedures to the appropriate staff at FCRJ followed by a written report; and (2) assuring that GSP supervisors comply with policies

and procedures concerning the GSP Work Supervisor Agreement and the GSP Detail Code of Conduct.

11. The witness concluded stating that when this training was first offered, it was not necessary for all supervisors to immediately attend, because in Frankfort there are usually two training sessions given yearly.

12. The witness speculated that the Appellant could have been informed by other Workforce employees who attended the May 7, 2012 training; however, he does not know whether this occurred.

13. Appellee's next witness was **Justin Muravchick**. He has been an employee of the Franklin County Sheriff's office, Security Detail, for the past one year. Prior to that, he was employed by the FCRJ as a Correctional Officer for two and a half years.

14. Part of his duties include doing inspections at inmate worksites. During these inspections, the witness would conduct approximately five to ten investigations weekly and was always checking for contraband. He added that tobacco and pornographic materials were considered contraband.

15. The witness testified that he conducted an investigation at the Cabinet inmate site at 601 East Main Street, Frankfort, Kentucky, on July 12, 2012. The suspension letter gives the date as July 20, 2012, and the witness' later report of the incident, Appellee's Exhibit 3, is simply dated July 2012.

16. Although there may appear to be some discrepancy in the dates, it is clear from the testimony and Appellant's Exhibit 3 that the same incident is the one being discussed.

17. The witness went on to state that during this July 2012 inspection, he went to an inmate work space in the basement of the site and saw inmate Langdon with a pile of tobacco in front of him, where he was using a rolling machine to roll cigarettes. When the witness asked who this was for, the inmate replied, "For the boss man." The witness believed the boss man in this instance to be supervisor Steve Lewis.

18. The witness went on to state that at the time of inspection no one was supervising Langdon and he saw no supervisors in the area. He also stated that this worksite had access both in and out to the rear which the inmates could use. The witness reported all this to Captain Richard LeMay, the GSP Program Director at the FCRJ.

19. The witness stated that he did not confiscate the tobacco as contraband during this July inspection.

20. Muravchick went on to state that the second inspection of 601 East Main Street was conducted on October 23 by himself and Sergeant Dhondt. In this incident, the officer saw an individual inmate smoking outside the building and decided to investigate. Upon entering the basement premises, they found tobacco products, a rolling machine, and pornographic materials, including adult magazines. [Appellee's Exhibit 3.]

21. During this investigation, the officer saw no state supervisors with the inmates. Muravchick and his partner reported their findings to Captain LeMay, but did not take the contraband, tobacco or magazines, as they thought it was supervisor Steve Lewis' job to remove these items.

22. On cross-examination, the witness reiterated that no supervisors, including Steve Lewis, were present at the July 12, 2012 inspection.

23. On redirect, the witness again confirmed that inmates can be removed from the worksites by the state supervisors for violations of work ethic or behavior by the inmates. He again stated that the inmates were supposed to be supervised at all times by a supervisor and that none were present at the July and October inspections.

24. Appellee's next witness was **Richard LeMay**. He is a Captain at the FCRJ and has been the Chief Deputy for approximately seven years. He has also been the GSP Program Director for the jail since April 2012. As such, he oversees the program for the jail wherein the inmates provide a labor force for state agencies. Generally these duties involve lifting and janitorial services.

25. This witness identified Appellee's Exhibit 6, which details the Supervision Requirements for State Inmates to be followed by the site supervisors. This document dated September 6, 2011, was signed on behalf of the Agency by the Appellant. This document first describes violations which will result in the inmate's removal from the worksite. In pertinent part, such violations include:

5. Possession of contraband including weapons, drugs, drug paraphernalia and intoxicants;
- ...
9. Using telephones outside the jail.

26. The document also describes guidelines which worksite supervisors must follow. The pertinent ones include:

2. No inmate will be allowed to do any personal work for the supervisor or any other private individual or enterprise;
- ...

6. The supervisor must supervise the inmates at all times;
7. The supervisor should not allow the inmates to use telephones for any reason. If contact is to be made with the facility, the supervisor can make the phone call.

27. Lastly, the document provides that the appropriate supervisor has read these guidelines and understands that any misconduct shall be reported to the jailer.

28. The witness also went on to introduce Appellee's Exhibits 4 and 5, consisting of pictures taken of the contraband, tobacco and pornographic magazines during the October 23, 2012 inspection. The witness explained he was informed that the magazines had been at the worksite for several years.

29. On October 29, the witness met with Steve Lewis and the Appellant and showed them the contraband seized from the inspection. He stated that the Appellant was concerned about the presence of the magazines. Approximately four days later, the witness related that the Appellant called and asked him if "rolling cigarettes" was wrong. The witness explained that it was.

30. LeMay then stated that on October 31, 2012, he received a letter from the Appellant. In this letter, the Appellant stated that he was aware of the previous incident in July involving the tobacco and rolling machine and further confirmed that he was aware that adult magazines had been found at the worksite during the October 2012 inspection. In that letter, the Appellant told LeMay that upon finding the presence of the magazines, he had asked that they be removed some three to four months prior. This timeframe would seem to make this request to have occurred shortly after the July inspection. Appellant also confirmed that he had failed to follow-up to make sure the magazine removal had taken place.

31. Apparently the witness asked the Appellant to submit additional information from himself and others detailing their knowledge of contraband and other inmate behavior. As a result, the witness received Appellee's Exhibit 7, an October 31, 2012 memo from Appellant stating that he was aware of inappropriate magazines located at 601 East Main Street. Thereafter, after reviewing this and other supervisor feedback detailing their knowledge of or lack of knowledge of contraband, this witness determined that inmates had been poorly supervised. As a result, the witness decided to suspend the program at 601 East Main Street. This decision was outlined in a memo from the witness to a Mr. Roberts, sometime after November 2, 2012. [Appellee's Exhibit 9.]

32. On cross-examination, the witness stated that prior to making this decision; he had interviewed inmates Hatton and Holloway, the Appellant and Steve Lewis. LeMay also testified that there should have been two trainings given in 2012 for supervisors regarding the inmate program. One would have occurred in July and another later in the year. He stated supervisors who should have attended these trainings were the Appellant, Steve Lewis, and Richard Lyons.

33. He added that he is aware that the Appellant had the September 2011 training, but does not know if tobacco as contraband was covered there.

34. Appellee's next witness was **Melinda Bourne**. She is currently employed with the Department of Medicaid Services in the Cabinet for Health and Family Services. She previously worked at 601 East Main for March 12, 2012, through April 13, 2013. She was not involved with the GSP.

35. She stated that sometime in July 2012 she was outside smoking and saw an officer come to the building to conduct an inspection. Supervisor Richard Lyons led the officer downstairs. She stated that she feels that the Appellant was made aware that contraband tobacco was found after this inspection. She stated that she knew of the ban on tobacco at that time and thought that most of her coworkers were aware of it.

36. Regarding the tobacco ban which went into effect April 1, 2012, she stated that she had seen inmates smoking after this ban was in place and thought that they got some tobacco from employees Steve Lewis and Patrick Gaines. She also added that the inmates appeared to have no restrictions on them at 601 East Main. She added they remained in the basement primarily and were not always supervised.

37. This witness stated that she very infrequently had occasion to visit the downstairs bathroom, but she apparently was aware of the pornographic magazines and stated that the inmates and state workers had access to those. She also claims that the Appellant was aware of these magazines.

38. The witness went on to explain that she had talked to the Appellant about the inmates use of phones and told him that one inmate had a cell phone. She does not feel the Appellant followed-up on this.

39. The witness testified that supervisor Steve Lewis brought tobacco in the facility and that once she and coworker Candi Rinehart went to the Appellant and complained about inmate Langdon smoking. However she claims nothing was done. This apparently occurred in July or August 2012.

40. The witness concluded by stating that she did not feel the Appellant had done anything about various inmate violations and again stated that the inmates often smoked in front of and with supervisor Steve Lewis.



41. On cross-examination, the witness stated that she felt Steve Lewis was the direct supervisor over the inmates. She thought the Appellant was his boss. She also explained that Patrick Gaines worked with Lewis.

42. This witness claimed that she and the Appellant had talked about the July incident involving contraband tobacco prior to his suspension. She also claims that from June 12 onward she and the Appellant talked about the things the inmates were doing.

43. This witness confirmed that the Appellant told her when she began employment, either in March or April 2012, that tobacco products were not approved. The witness went on to testify that she and Steve Lewis often smoked together outside with the inmates, and that she told Lewis, Gaines and the Appellant that the inmates were not supposed to be smoking.

44. The witness specifically stated that she informed the Appellant that inmate Langdon had his cell phone and she noted that he still possessed the phone afterward for several days. She also explained that she had never talked to Human Resource Director Mark White about either the July or October incidents.

45. The witness further testified that a new Branch Manager, Dana Abbott, came to work during the summer of 2012. The witness stated that she told her about the fact that the inmates were not to smoke.

46. The Appellee's next witness was **Mark White**. He has been the Human Resources Director for the Workforce Development Cabinet for approximately eight years and is the Appointing Authority. In addition he has many years of personnel experience with state government. He explained that he was the one who made the decision to give Appellant a five-day suspension. In part, he based his decision on the fact that the Appellant was the main supervisor over the 601 East Main Street office and was the ultimate supervisor over GSP. The witness explained that regarding the October 23, 2012 incident, that Director Tommy Goins and the Appellant came to him sometime in November to inform him of it. He is aware that the investigation regarding the October 2012 incident was conducted by Captain LeMay from the FCRJ. This witness received LeMay's investigative report and thereafter went to the jail to review the contraband which was seized.

47. White then talked to the Appellant and told him that he had become aware of the July incident. Thereafter, he received Appellee's Exhibits 7 and 8, statements from the Appellant regarding his knowledge of tobacco and a cigarette roller in July and of the magazines after the October 2012 incident. The witness felt that, with the knowledge of the tobacco and cigarette roller attributed to the Appellant, he took no steps to have those removed. He also acknowledged that the Appellant had made a request to have the magazines removed, but did not follow up with that request.

48. The witness then addressed the disciplinary action given to Richard Lyons, an Administrative Specialist III, who was given a three-day suspension over these same two incidents. In that case, Lyons admitted knowledge of both the smoking and the inappropriate magazines.

49. The witness then introduced Appellee's Exhibit 10, the Cabinet's policy on Discriminatory Harassment. White explained that Paragraph VI(A)(4) which states, "bringing or displaying a sexually suggestive object, book, magazine, photographs, cartoon, calendar or picture in the workplace" is an example of prohibited sexual harassment behavior. He added that the presence of the pornographic magazines violated this policy. He added that the Appellant had attended training on the sexual harassment policy on November 14, 2000 (Appellee's Exhibit 11).

50. The witness was then questioned as to how the Appellant's conduct violated 101 KAR 1:345, misconduct and lack of good behavior. The witness answered that the Appellant had not followed-up on having the magazines removed; that he was somewhat responsible for the suspension of the GSP, which resulted in some financial affects to the Cabinet because of the loss of the inmate labor; he had failed to see that the inmates were supervised; and that he was aware of the tobacco usage and phone usage by inmates. The witness ended by saying that he felt the Appellant was the one responsible for the overall operation of the 601 East Main Street office. White also added that supervisor Steve Lewis had been suspended five days for much the same reasoning. He did add that he had considered the Appellant's twenty-four years of employment as a factor in not levying a more severe discipline.

51. On cross-examination, the witness confirmed that he received no information concerning these incidents from Melinda Bourne. However, he reviewed the statements of Captain LeMay and talked with employees Lyon, Lewis and Patrick Gaines.

52. The witness was then shown Appellant's Exhibit 4, an organizational chart of the GSP. He confirmed that Administrative Specialist II, Steve Lewis, was in charge of the GSP. Prior to April 1, 2012, the Appellant was the Branch Manager over Section Supervisor Coleman and Steve Lewis. As of April 1, 2012, the Appellant became the Assistant Director of the Division. The witness then introduced Appellant's Exhibit 6, the five-day suspension letter given to Steve Lewis. In this letter, the witness confirmed that it states that Lewis is the primary supervisor for GSP. The witness noted that in his letter to Lewis, Lewis acknowledged the presence of the adult magazines, but denied knowledge of the cigarettes and rolling paper. The witness then noted that he later found this denial regarding tobacco to be false.

53. White then went on to explain that the Appellant told him he had found out about the July incident involving tobacco after the fact. The witness explained that he does not know whether the Appellant had an obligation at that point to inform the FCRJ of the July incident, since they already knew of the incident.

54. The witness then detailed the disciplinary actions given the various employees involved. He stated that Steve Lewis, as the primary supervisor, was given a five-day suspension. Richard Lyons was given a three-day suspension because he admitted bringing in the adult magazines. The Appellant was given a five-day suspension because in July 2012 he was the Branch Manager and, therefore, second-line supervisor. He did not become Assistant Director or third-line supervisor until October 2012. White feels that Appellant should be held to a higher standard because he held a higher supervisory position. He also indicated that he did not ask Steve Lewis whether he had taken the magazines out after being told to do so by the Appellant. This witness relied in great part on Captain LeMay's investigation.

55. On redirect, White testified that after supervisor Coleman's resignation, that for the period of July through November 2012, Lewis would report directly to the Appellant.

56. The Appellant also admitted to him that after he requested the magazines be removed, he had failed to follow up. The Agency then rested.

57. The Appellant's first witness was **Richard Lyons**. For several years he has worked at 601 East Main as a Maintenance Supervisor I for the Workforce Development Cabinet.

58. He stated in 1997 when he first became employed at the Cabinet, the Appellant was his Section Supervisor. He has previously worked with the inmates in the GSP. He acknowledged that he received a three-day suspension involving the same matters which are concerned with the Appellant's suspension. His suspension was upheld by the Personnel Board.

59. The witness explained that while involved with the GSP in February 2012, he oversaw Addeco workers instead of inmates. These Addeco workers are temporary contract workers employed by the state.

60. He also added that he and Steve Lewis had undergone training for the inmate program and both had some oversight responsibilities for inmates, although this was mostly handled by Lewis.

61. The witness went through the GSP training in 2000 and has had no training since. He explained that according to the Cabinet's sexual harassment policy, he knew the pornographic magazines were illegal.

62. He explained that in July 2012, when Officer Muravchick inspected the facility at 601 East Main, he saw inmate Langdon smoking and reported this to Steve Lewis.

63. On cross-examination, the witness stated that the Appellant is now his third-line supervisor. He stated that he knew the pornographic magazines had been in the building for years, and on cross-examination, he changed his testimony to state that he did not know they were illegal. He added that no one had ever told him to take them out of the building. He also

added that he knew that tobacco was contraband and that the inmates were not supervised at all times.

64. The witness was then directed to Appellee's Exhibit 13, his statement in response to the Appellant's attempt to gather information of his subordinate's knowledge of contraband. In this statement, given October 31, 2012, the witness denied knowing that any contraband, including tobacco products and magazines, were located at 601 East Main Street. This is in direct conflict with his testimony here.

65. Appellant's next witness was **J.T. Fightmaster**. He has been an Addeco employee since August 2012, and has consistently worked at the Cabinet office at 601 East Main Street. His primary duties are moving furniture and performing maintenance. He sometimes works with Richard Lyons.

66. He testified that when he began in 2012, the inmates were at the 601 East Main office. He now does some janitorial and furniture moving which the inmates used to do.

67. On cross-examination, the witness acknowledged that when he began in August 2012, he was aware that the inmates were not supposed to have tobacco products.

68. The Appellant's next witness was **Steve Lewis**. He is currently an Administrative Specialist III with the Cabinet. He has worked for the Cabinet since 1995 and has in excess of twenty-four years employment with the Commonwealth. He has worked with the inmate program for the past ten to twelve years. Prior to June 2011, when the FCRJ assumed ownership of the program, he stated that the inmates were able to travel to outlying areas in the state to perform their jobs. In June 2011, the inmate program came under the auspices of the FCRJ. Since that time the inmates have been used for janitorial and moving duties, but have not been allowed to travel outside Frankfort, thus necessitating the need for the Addeco employees.

69. The witness testified that he went to the inmate training program in September 2011. At that training there was no discussion of tobacco being contraband.

70. After the tobacco ban went into effect in April 2012, he went to further training in May 2012, where tobacco contraband was discussed.

71. The witness states that he was primarily responsible for the inmate program, along with some assistance from Brett Gardner, Patrick Gaines, Candi Rinehart, Daryl Sanderson, and Richard Lyons. Appellant's only involvement was infrequent transportation of the inmates.

72. The witness acknowledged that the Appellant had told him to get the pornographic magazines out of the office in either May or June 2012. He stated he got busy and forgot to remove those.

73. The witness explained that on Friday, July 27, 2012, he was not in the office, but was informed by text message that Officer Muravchick's inspection that day had uncovered tobacco products and a rolling machine being used by inmate Langdon. He added that on the following Monday, he went to the basement and removed all the contraband and threw it in a dumpster.

74. The witness acknowledged that he has received a five-day suspension stemming from the July 2012 inspection and an October 23, 2012 inspection, wherein contraband was discovered.

75. The witness contradicted the report written by Captain LeMay by saying that he told LeMay the magazines had been in the building for years, but not the cigarette rolling machine. Asked to discuss the loss of the inmate labor by the program being suspended, this witness added that after losing the inmate labor, the office now has two Addeco workers. He added that it is more advantage to the office to use the Addeco workers rather than inmates, because they are more flexible and able to travel to outlying areas to perform their duties.

76. On cross-examination, the witness explained that the Appellant is involved in his annual evaluations as his second-line supervisor. He added that new Branch Manager, Dana Abbott, did his year-end 2012 evaluation.

77. This witness denied ever smoking in the same area with the inmates and added that he never reported the inmates to the FCRJ for any violations of smoking prior to March 2013. He stated that although he was aware of the pornographic magazines on-site, no one has ever been disciplined over the magazines until this series of disciplinary actions. He acknowledged that although he signed an agreement to supervise the inmates, they were sometimes left unattended. He also added that he did not inform Captain LeMay that he had been told to remove the pornographic magazines by the Appellant.

78. The witness was then directed to Appellee's Exhibit 14, his October 31, 2012 response to a request for information from the Appellant. In this statement, the witness denied any knowledge of tobacco products having been on the premises. The witness also reported to Appointing Authority Mark White that he had no knowledge of any tobacco contraband at the facility [Appellee's Exhibit 15].

79. On redirect, the witness explained that the basement at 601 East Main had been designated as a "approved area" by previous jail employee Chris Blankenship, prior to the FCRJ taking over the program. He stated that at that time, the jail guards who visited the facility were not concerned if this witness was upstairs and the inmates were in the basement by themselves.

80. This witness said he had no understanding of why the FCRJ did not remove the contraband from the office in July 2012 after Muravchick's inspection. The witness concluded by saying that his year-end 2012 evaluation had been performed by Branch Manager Dana Abbott as first-line supervisor and signed off by the Appellant as second-line supervisor.

81. On cross-examination, the witness added that Captain LeMay from the FCRJ had never been to the 601 East Main office to perform an inspection.

82. Appellant, **Brian Easton**, called himself as a witness. He testified that he has been employed with the state in excess of twenty-three years. As of April 1, 2012, he was promoted to Assistant Director of the Administrative Services Division within the Workforce Development Cabinet. Prior to that date, he was a Branch Manager in the Facilities Management Branch. He also continued to perform his Branch Manager duties from April 2012 through August 1, 2012, when a new Branch Manager was named.

83. As Assistant Director, his duties are involved more directly in working with the Commissioner and the various Directors and on budget issues. During his tenure as Branch Manager, his branch was involved with GSP involving inmates. As Branch Manager, he supervised two Section Supervisors, one of whom, Steve Lewis, directly oversaw the inmate program.

84. The witness explained that he performed the first two interim evaluations in April and August 2012 for Steve Lewis. Mr. Lewis was the liaison with both the Frankfort Career Development Center (FCDC) when it was in charge of the inmate program, and later was liaison with the FCRJ when they took over the supervision of inmates.

85. He explained that Richard Lyons, who was under his supervision, sometimes worked with inmates, as did Patrick Gaines. He also explained that an Addeco employee named Jeremy Webb helped both Steve Lewis and Richard Lyons.

86. Appellant explained his prior disciplinary history by stating that he had no previous disciplinary actions prior to this suspension; had received two ACE Awards, and two Partnership of the Year awards from the Office of the Blind.

87. He also introduced Appellant's Exhibit 7(a)(b) & (c), a listing of his past ten years of annual evaluations. These show that the Appellant received seven "Outstanding" and three "Highly Effective" ratings during this time.

88. The Appellant's job duties were referenced in each of these evaluations, and in none of them was there any mention of duties involving the supervision of inmates. The witness explained that the inmate GSP began approximately nine to ten years ago. Initially, the witness went to training which was done by FCDC. He then attended another training in 2005, as FCDC and, later the FCRJ, insisted that any state employee who might potentially be involved with the inmates must attend training.

89. Appellant further explained that his duties in the initial seven to ten years of the program involved only limited transportation of inmates to and from the 601 East Main Street office. He then related that he had attended training on September 6, 2011, when the FCRJ was in charge of the program. At this training session, he insists no mention was made of tobacco as contraband. After this training he continued to serve as a backup person to transport inmates. However, he said that he never actually transported any.

90. The witness then stated that the section supervisors under him were assigned the duties of supervising inmates, and the primary person responsible was the supervisor, Steve Lewis. The Appellant then added that he did not attend the May 2012 training, as he had then become Assistant Director and had no contact with the inmates.

91. The witness then added that Captain LeMay from FCRJ had never visited Lewis prior to the October 2012 incident and that this witness had only met with Captain LeMay one time after the October 2012 incident.

92. Regarding the allegations in the suspension letter, the witness testified that during the July 23, 2012 incident when Officer Muravchick inspected the premises and found tobacco in a rolling machine, that the Appellant was on annual leave that afternoon. He stated that he first learned of the presence of tobacco in the office in late October or November 2012, after the October incident uncovering the presence of tobacco and pornographic magazines. He also added that he received no information from the FCRJ regarding the July 2012 inspection involving tobacco.

93. Appellant stated that he first saw the Muravchick report of the July 2012 incident only after receiving his suspension letter in January 2013. The witness stated that he was aware that pornographic materials were considered as contraband, but since he had not attended the May 2012 training, he was not aware that tobacco was considered contraband after the April 1, 2012 ban was initiated.

94. Appellant also explained that he only first learned the magazines were in the office when Bryan Coleman, a Section Supervisor, retired in July 2012. Upon learning of these, he insists that he saw supervisor Lewis and told him to have the magazines removed. He trusted Lewis to do so and failed to follow-up, only to learn later they had not been removed. He again insisted that no one had ever brought to his attention the July 2012 incident involving the uncovering of tobacco.

95. In a phone call with Captain LeMay in late October or early November 2012, the witness confirmed that he did ask LeMay, "Is there a problem with inmates rolling tobacco on their downtime?" LeMay responded, "Yes, there is to be no work performed for private individuals by the inmates."

96. At his October 29, 2012 meeting with LeMay, the witness was informed that his office needed more training. There was a training session being offered by the jail on December 12, 2012; however, no one from his office attended because there was an ongoing investigation being conducted by the Cabinet.

97. Appellant also added that he had previously been made aware that an inmate was using a phone in the basement at the 601 East Main location. He explained that he checked the phone records, confirmed that usage, and then had the phone removed from the office. The inmate later reimbursed the office for the phone calls.

98. The Appellant testified that the first time he actually saw the pornographic magazines was in the year 2012; however, he had heard about "inappropriate materials" being there. He also added that as Branch Manager, he was a second-line supervisor over Steve Lewis, and not his direct supervisor.

99. Asked to comment on claims by inmates that Steve Lewis went around the office throwing tobacco down whenever he was finished with it, the witness testified he had never heard of such a thing nor had anyone from the FCRJ ever reported this to him.

100. Referred to Appellee's Exhibit 2, the MOA between the FCRJ and the Workforce Development Cabinet for the period of July 1, 2012, through June 30, 2013, the witness admitted that he had signed this on behalf of the Cabinet. However, he explained that the document had been prepared by supervisor Bryan Coleman, the Cabinet legal staff and the FCRJ. He merely reviewed it and signed on behalf of the Cabinet. The Appellant then explained that he did not feel he was in violation of item #7 of the MOA. This item required immediate reporting of all observed violations of policies and procedures to staff at the FCRJ. The witness insisted that he had never observed tobacco or magazines so as to be responsible for reporting them.

101. The witness was then asked to comment on prior witness Melinda Bourne. He explained that she began work with the Cabinet on May 1, 2012, when he was Assistant Director. He was her supervisor for a period of approximately three to four months. She gave him administrative support.

102. The Appellant denied ever discussing a smoking ban with her or discussing his knowledge of rolling papers. This testimony directly contradicts that given by Bourne.

103. He also denied Bourne's testimony that she informed him of an inmate possessing a cell phone, but does confirm that she told him about inmate Langdon smoking in a truck outside the building. He added that he intended to inform Lewis about this and simply forgot to do so. He concluded by denying that he ever acknowledged to Bourne that he knew about the pornographic magazines.



104. On cross-examination, he again acknowledged that he was performing both the duties of Branch Manager and Assistant Director in July 2012. He acknowledged that between July 31 and November 1, 2012, there was a gap in a Section Supervisor position, as Bryan Coleman had retired.

105. The Appellant was then referred to the duties listed in his annual evaluations and acknowledged that they included supervising and coordinating the activities of the two sections below him. He then denied that Bourne had told him the following day about the inspection on July 23, 2012, that tobacco had been found on the premises.

106. Appellant was then directed to Appellee's Exhibit 7, his October 31, 2012 letter to Captain LeMay at the FCRJ in which he stated, "I know there was a previous incident that occurred several months ago involving a cigarette machine and the inmates." He does not recall what he told Appointing Authority Mark White about this incident.

107. Appellant then addressed Appellee's Exhibit 6, a list of supervision requirements for state inmates. He acknowledged that he signed this document on September 6, 2011. In summary, the document lists actions by inmates which are considered violations. These include possession of contraband and using telephones outside of the jail. The document also lists guidelines to which the supervisors must adhere. These include not allowing inmates to do personal work; supervising inmates at all times; not allowing inmates to use telephones and, finally, reporting any misconduct of inmates to the FCRJ.

108. Regarding the October 2012 inspection wherein contraband in the form of tobacco and magazines were found, the witness stated that he was Assistant Director at that time. He did not personally report this to the jail, since he felt the jail had prior knowledge based on the July 2012 incident.

109. The witness then opined regarding Steve Lewis that he had made some mistakes (failing to ensure removal of pornographic magazines), but that for the most part, this witness felt that Lewis did an adequate job as supervisor. The witness concluded by stating that he did not feel that he had failed in any regard by the magazines not being removed. He stated that he had ordered them removed and since Lewis failed to carry out this duty, he acknowledged the ultimate failure was his (Appellant's).

110. The witness again addressed Appellee's Exhibit 6, the duty to report misconduct and stated that regarding the July incident involving the discovery of tobacco, this discovery was not even reported to him by Muravchick. He added that he could, therefore, have no duty to report it if he did not know about it.

111. The witness also addressed Appellee's Exhibit 8, his statement furnished to the FCRJ concerning knowledge of contraband. The witness stated that he had no prior knowledge of the July tobacco and only learned about it from Captain LeMay on October 29, 2012. His answer on Appellee's Exhibit 8 was meant to address the issue of prior knowledge of tobacco, not what he learned in the October 29<sup>th</sup> conversation.

112. Appellant then called as a rebuttal witness, **Dana Abbott**. She acknowledged that she became the Facilities Branch Manager on August 1, 2012. There were two sections under her including Richard Lyons and Patrick Gaines.

113. In August 2012, she began supervising Melinda Bourne, who had no involvement with the inmate GSP. This witness denied that Bourne ever informed her that inmates were smoking or that she was uncomfortable being around inmates.

114. On cross-examination, the witness admitted that she had no interaction with Melinda Bourne between May 1 and August 1, 2012.

115. The Appellee then called as a rebuttal witness, **Captain Richard LeMay**. LeMay again confirmed that leaving inmates unsupervised was against the Department of Corrections rules. He stated that Steve Lewis had signed an agreement to fully supervise the inmates. The witness stated that he did not hear Lewis say that he threw out all the contraband found during the July inspection. This witness heard about the cigarette rolling machine in July, but did not see it. He first saw it in October. He acknowledged that Lewis had told him that the cigarette roller and magazines had been in the building for years.

116. He confirmed that the conversation occurred between himself and the Appellant during which Appellant asked if rolling cigarettes on downtime was improper. The witness testified that his answer to the Appellant was that it was not just personal work, but also involved contraband.

117. On cross-examination, the witness testified that Officer Muravchick had failed to confiscate the contraband following the July 2012 inspection. He further acknowledged that the inmates involved in that finding of tobacco were not removed from the program, as per the Department of Corrections requirements. He also confirmed that he had never informed the Appellant about the July contraband incident until their meeting on October 29, 2012.

### **FINDINGS OF FACT**

1. Appellant, Brian Easton, has been charged with unsatisfactory performance of duties in that he failed to properly supervise the activities at 601 East Main Street, Frankfort, Kentucky, by allowing contraband in the form of tobacco and a rolling machine; and in failing to ensure that certain pornographic materials were not allowed to remain at that facility.

2. Until April 1, 2012, the Appellant was the Branch Manager over two sections at that facility, one of which involved the GSP inmate program. As of April 1, 2012, the Appellant became the Assistant Director of the Division. In both positions, as the Branch Manager and as the Assistant Director, the Appellant had little or no direct contact with the inmates at the facility. Likewise, both as Branch Manager and as the Assistant Director, the Appellant had no regular daily contact with the activities at 601 East Main Street.

3. By all accounts, Steve Lewis was the primary supervisor of the inmate program for at least ten years. Up until the time the Appellant became the Assistant Director, Lewis was the subordinate to the Appellant.

4. Sometime in July 2012, Justin Muravchick of the Franklin County Sheriff's office, Security Detail, conducted an inspection at 601 East Main Street, at which time he discovered the presence of tobacco and a cigarette rolling machine. He did not remove this contraband and did not inform the Appellant of his findings, although he apparently made his findings known to Steve Lewis and Captain Richard LeMay.

5. The Appellant denies he was made aware of this finding of contraband by anyone immediately subsequent to the July inspection, although Melinda Bourne claims to have advised the Appellant of same the following day.

6. On or about October 23, 2012, Muravchick and Sergeant Dhondt conducted a second inspection at 601 East Main Street, at which time they discovered tobacco products and pornographic materials, including adult magazines. Again, Muravchick and his partner reported their findings to Captain Richard LeMay, but did not remove the contraband or magazines.

7. On October 29, 2012, Captain LeMay met with Steve Lewis and the Appellant and showed them the contraband observed at the inspection. In an October 31, 2012 letter from the Appellant to Captain LeMay, Appellant advised that he had asked that the adult magazines be removed some three to four months prior, presumably sometime after the July 2012 finding of same. Appellant also failed to follow-up with Steve Lewis to make sure the removal had occurred.

8. In this October 31, 2012 letter from the Appellant, the Hearing Officer interprets Appellant's statements that he was aware of the previous incident in July involving tobacco to mean that the Appellant had become aware since that time of the tobacco, but was not aware of it prior to July.

9. Tobacco was not identified as prohibited contraband prior to April 1, 2012. The Appellant's last formal training on the GSP inmate program was in September 2011.

10. The testimony of Melinda Bourne is somewhat troubling to the Hearing Officer. She testified that immediately after the July discovery of tobacco contraband, she informed the Appellant of same and also informed him the inmates were smoking. She also supposedly told him that she felt uncomfortable being around inmates. However, Dana Abbott, who became Branch Manager on August 1, 2012, stated that at no time did Bourne ever inform her inmates were smoking or that she was uncomfortable being around them. The Hearing Officer understands that Abbott had no interaction with Bourne between May 1 and August 1, 2012; however, in light of the apparent candor of the Appellant's denial that Bourne informed him of these things, the Hearing Officer finds the Appellant to be more credible in his denial of the contraband tobacco.

11. Appellant is an employee within excess of twenty-three years of service with the Commonwealth. His past ten yearly annual evaluations show that he has received seven "outstanding" and three "highly effective" ratings during this time. He has no prior disciplinary actions.

Appellant's evaluations make no mention of his having job duties involving the supervision of inmates. However, the job duties state that he was responsible for supervising and coordinating the activities of the two sections, one of which involved the inmate program.

12. For purposes of the MOA between the Cabinet and the FCRJ and the detail of responsibilities involving inmate supervisors, the Hearing Officer finds that Steve Lewis was the appropriate supervisor for purposes of the supervision and reporting requirements.

13. There is no credible evidence that the Appellant was notified by anyone, including Steve Lewis or an official from the FCRJ, of the presence of tobacco contraband discovered during the July 2012 inspection, until he was informed in October 2012. The evidence does support that the Appellant first definitely learned of the adult magazines in July 2012 when Section Supervisor Bryan Coleman retired. The evidence also shows that after learning of this, the Appellant instructed Steve Lewis to have the magazines removed.

14. Following Captain LeMay's decision to remove the Cabinet from the inmate program, it was possible for the Cabinet to have been reinstated with the program by undergoing additional training. However, the Cabinet chose not to do this while the investigation into the findings of the July and October 2012 inspections was ongoing.

15. The Hearing Officer finds that the Appellant was not in violation of the "reporting" requirements of the MOA, in that he never observed any violations of policies or procedures. In addition, the FCRJ, through its own July and October inspections, was aware of any violations involving contraband and pornographic materials.

16. The Hearing Officer finds that Appellant did not adequately supervise those under him (including Steve Lewis and others) and that such constituted unsatisfactory performance of duties.

17. 101 KAR 1:345, Sections 1 and 4 states:

Section 1. General Provision. Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.

...

Section 4. Suspension.

- (1) A suspension shall not exceed thirty (30) working days.
- (2) An employee without status may also be suspended for a period not to exceed thirty (30) days and shall be entitled to the same provisions of notice contained in KRS 18A.095(8) with the exception of the right of appeal.
- (3) When the employee is notified, copies of the notice of suspension shall be forwarded to the Commissioner of Personnel on the same date notice is delivered to the employee.

### **CONCLUSIONS OF LAW**

1. The Hearing Officer concludes as a matter of law, the Cabinet failed to carry its burden of proof to show the Appellant exhibited lack of good behavior under 101 KAR 1:345.
2. The Hearing Officer concludes as a matter of law, the Cabinet carried its burden of proof to show the Appellant demonstrated unsatisfactory performance of duties under 101 KAR 1:345. Although the evidence shows the Appellant was ultimately responsible organizationally for the inmate program, the actual responsibility for overseeing the program resided in Steve Lewis and others.
3. The Hearing Officer concludes that the unsatisfactory performance of duties requires only corrective action, and not penalization.
4. The Hearing Officer concludes that Appellant relied on Steve Lewis and Richard Lyons' many years of experience with the inmate program. The Hearing Officer further observes that if employees are to be held strictly accountable on the basis of organizational charts, then it follows the Division Director and perhaps his supervisors may bear some responsibility.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **BRIAN EASTON VS. EDUCATION AND WORKFORCE DEVELOPMENT CABINET (APPEAL NO. 2013-061)** be **SUSTAINED** to the extent that the Appellant's five-day suspension without pay be vacated and a written reprimand be issued instead; that Appellant be awarded five days back pay, to reimburse Appellant for any leave time he used attending the hearing and any pre-hearing conferences at the Board, and to otherwise make Appellant whole. KRS 18A.105, 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).

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).

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

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 25<sup>th</sup> day of February, 2014.

**KENTUCKY PERSONNEL BOARD**

  
\_\_\_\_\_  
**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof mailed this date to:

Hon. Rosemary Holbrook  
Hon. Paul F. Fauri



EDUCATION AND WORKFORCE DEVELOPMENT CABINET  
OFFICE OF THE SECRETARY

Steven L. Beshear  
Governor

Capital Plaza Tower, 3<sup>rd</sup> Floor  
500 Mero Street  
Frankfort, Kentucky 40601  
Phone (502) 564-0372  
Fax (502) 564-5959

Joseph U. Meyer  
Secretary

**AMENDED LETTER**

January 15, 2013

Brian Easton

PERN

Dear Mr. Easton:

Based on the authority of KRS 18A.095 (8) and 101 KAR 1:345 (1)(4), you are officially notified that you will be suspended from duty and pay for a period of five (5) working days. This suspension is effective during your scheduled work time from Wednesday, January 16, 2013, through Friday, January 18, 2013 and Tuesday, January 22, 2013 through Wednesday, January 23, 2013.

In accordance with 101 KAR 1:345 (1)(4), you are being suspended from your position of Assistant Division Director, position number 31007214, in the Division of Administrative Services, for the following reasons:

**Lack of good behavior and unsatisfactory performance of duties:** You were the Administrative Branch Manager of the Facilities Management Branch until you were promoted to the Assistant Director of Administrative Services. In both positions, you have been responsible for overseeing the activities of the Facilities Management Branch. This responsibility includes overall supervision of inmates assigned to your Branch through the Governmental Services Program (GSP). On July 20, 2012, during a routine inspection of the 601 East Main Street office, Sergeant Muravchick of the Frankfort Regional Jail observed Inmate Robin Wayne Langdon in the basement sitting at a desk with loose tobacco in a pile and empty cigarettes. He asked the inmate what he was doing with the contraband and

*Kentucky*

Inmate Langdon stated, "I am rolling cigarettes for the boss man. You can go upstairs and ask him." It was later determined the boss man the inmate was referring to was Steve Lewis, an employee you supervise. The jail removed Inmate Langdon from this work detail because tobacco related products are considered contraband. You indicated in an October 31, 2012 letter to Captain Richard LeMay, Director of Custody and Program Operations, Franklin County Regional Jail that you did not know if the cigarette wrapping machine was removed at that time (July 20, 2012) or if it was left onsite.

According to Captain LeMay, you attended the Department of Corrections Governmental Service Program Inmate Work Supervisory training on ~~\*September 6, 2011~~ **May 27, 2012**. You were made aware of what items are considered contraband, and therefore, prohibited from the work site. As the manager, given the potential violation of the Supervision Requirements for State Inmates, you should have known that tobacco related products are contraband and should have ensured the removal of all contraband from the premises.

On October 23, 2012, the Frankfort County Regional Jail conducted another routine inspection of the premises at 601 East Main Street. They recovered a large amount of contraband, including the following:

- 1 – Cigarette rolling device
- 1 – Used can of Skoal Long Cut Mint
- 1 – Wave Cigarette Box containing 10 filters cut from cigarettes
- 1 – Empty Marlboro Special Blend Box
- 1 – Box of Wave Full Flavor Cigarettes – 14 Cigarettes in the pack
- Rock Star Magazine: Issue Date: 08/2007
- Cheri Magazine: Issue Date: 07/1993
- Swank Magazine: Issue Date: 09/1993
- Penthouse Magazine: Issue Date: 04/2008
- Genesis Magazine: Issue Date: Holiday, 1994
- High Society Magazine: Issue Date: 07/1993
- Coming Attractions Magazine: Issue Date: 10/2009

\* After speaking to Captain LeMay on January 15, 2013, it was confirmed that you attended the Governmental Service Program Inmate Work Supervisory training on September 6, 2011 not May 27, 2012. With this in mind, the incorrect date above, in bold and struck through, has been deleted.



- Club Confidential Magazines: Issue Dates: 04/1993; 07/1993; 06/2009.
- Hustler Magazines: Issue Dates: 01/2004; 12/2008; 04/2009; 07/2009; 08/2009; 10/2009; 12/2009
- Playboy Magazines: Issue Dates: 03/2009; 04/2009; 05/2009; 06/2009; 08/2009; 09/2009; 10/2009; 05/2011
- Barely Legal Magazines: Issue Date: 03/2009; 04/2009; 05/2009; 06/2009; 09/2009; 10/2009; 11/2009; 12/2009.

As a manager, you knew or should have known that these items were inappropriate for the workplace. Having these items on premises violated the Education and Workforce Development Cabinet's policy on Discriminatory Harassment, section five (5) which states, The Education and Workforce Development Cabinet employees "shall be advised to avoid offensive or inappropriate conduct or sexually harassing behavior at work." Section VI (A) (4) identifies prohibited behavior, including "bringing or displaying a sexually suggestive object, book, magazine, photograph, cartoon, calendar or picture in the workplace." You received a copy of this policy when you attended Sexual Harassment Prevention training on December 9, 2004. And as a manager, this is basic information you should know. An employee under your second line of supervision brought these items to the workplace and, through a statement from you dated October 31, 2012, you admitted you were aware of the contraband. It was your responsibility to ensure an appropriate work environment for both employees and inmates.

On October 29, 2012, Captain LeMay met with you and Steve Lewis about the violations. He showed you photographs and an inventory list of what had been recovered and you were "very concerned" about contraband magazines being at this location. As part of the investigation, you were asked to provide a statement regarding any information pertaining to this investigation. In your statement, dated October 31, 2012, you stated that you knew the magazines were there and that when you found out about them, you asked that they be removed. You further stated that you made this request 3-4 months ago, thought they had been removed, but failed to follow up to see if they had been removed. As a supervisor, this failure to supervise is unacceptable. As a result of your consistent failure to supervise, the Cabinet has been suspended as a jobsite in the Government Services Program.

You also violated the conditions of the GSP and violated work site supervisor responsibilities, (2) *No inmate will be allowed to do personal work for a supervisor or any other private individual or enterprise; and (6) The supervisor must supervise the inmates at all times.*" During his investigation on October 29, 2012, Captain LeMay also spoke to the Inmates Michael Hatton and Jerome Holloway, who were assigned to our agency at the time of the second contraband incident on October 23, 2012. Inmate Hatton stated that an employee named Rick (later determined to be Richard Lyons) was the owner of the magazines. He also went on to say that the dip and cigarettes belonged to Mr. Lewis. Inmate Hatton said that when Mr. Lewis finishes a pack or a can of dip he just throws it down wherever he is. Inmate Holloway stated in his interview that the magazines had been there for a while. He also reported that Mr. Lewis brought in the cigarette roller and loose tobacco and he would have the inmates roll cigarettes for a friend of his. Captain LeMay asked if anyone could corroborate his story and he (Holloway) said Inmate Langdon rolled cigarettes for Mr. Lewis also. Inmate Langdon verified the information provided by Inmate Holloway. Inmate Holloway also indicated that they were left alone frequently and that allowed inmates to use the phone, which is another violation of the Supervision Requirements for State Inmates.


When Captain LeMay called you (after an earlier meeting) on October 29, 2012 to inform you of the new information received, he says you asked if having the inmates roll cigarettes for an employee was wrong. You were well aware of this violation because you received training in May 27, 2012, and had a previous similar incident involving Inmate Langdon in July 20, 2012. The training material from the May training workbook verifies that you were made aware of this information. Such dereliction of your supervisory responsibilities is not only poor work performance, but your actions put the Cabinet at risk of losing inmate labor support. Your inattentiveness to staff job performance jeopardizes the effectiveness of the branch, the accuracy of performance evaluations and our positive working relationships with the Finance and Administration Cabinet, Franklin County Regional Jail and the Department of Corrections.

Further incidents of unsatisfactory performance of your duties may result in further disciplinary action, up to and including dismissal from your position.

For your information, the KY Employee Assistance Program (KEAP) is an assessment and referral service for state employees. They can help you with any personal problems that may be affecting your job performance. Participation in KEAP is voluntary and confidential. KEAP can be reached at 1-800-445-5327 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,



Mark A. White, Director  
Division of Human Resources  
Appointing Authority

CC: Tim Longmeyer, Secretary  
Personnel Cabinet

Randy Justice, Executive Director  
Office of Legal and Legislative Services

Tommy Goins, Director  
Division of Fiscal Services

Personnel File

Attachments: Personnel Board Appeal Form