

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-113

LISA GIBBS

APPELLANT

VS.

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

*** **

The Board, at its regular June 2018 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 17, 2018, (Appellant's Exceptions – returned as untimely), and being duly advised,

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

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

SO ORDERED this 13th day of June, 2018.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Amy Barker
Ms. Lisa Gibbs
Mr. Rodney E. Moore

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-113**

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

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

APPELLEE

**** ** * ** * ** * ** * ** * ** * ** * ** ***

This matter came on for evidentiary hearing on January 30, 2018, at 9:30 a.m. at 1025 Capital Center Drive, Suite 105, Frankfort Kentucky before Brenda D. Allen, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Lisa Gibbs, was present at the evidentiary hearing and was not represented by legal counsel. With her was her husband, John Gibbs, whom Ms. Gibbs stated was present to assist her in the event of an anxiety attack. The Appellee, Justice and Public Safety Cabinet, Department of Corrections was present and was represented by the Honorable T. Alex Mattingly. Also present was Agency Representative, Warden Randy White and Paralegal Deanna Smith.

The issue before the Hearing Officer was whether or not there was just cause for the Appellee's decision to place the Appellant on directed sick leave and whether that action was excessive or erroneous. The Appellee had the burden of proof as to that issue. An additional issue is whether the Appellant was subjected to disability discrimination. The Appellant had the burden of proof by a preponderance of evidence as to that issue.

BACKGROUND

1. Lisa Gibbs filed her appeal on June 1, 2017, appealing the Appellee's May 24, 2017 decision to place on her directed sick leave. She also alleged that she was the subject of disability discrimination. She filed a motion for discovery and the records requested were provided by the Appellee.
2. On the day of the hearing, both the Appellee and the Appellant made opening statements.

3. The first witness to testify on behalf of the Appellee was **Amy Ford**, who serves as an Accountant III with the Kentucky State Penitentiary (KSP). After being sworn, Ms. Ford testified that she has been employed with KSP for approximately one and a half years, but had been employed with Corrections for nearly 20 years, always in an office setting. She testified that she and Ms. Gibbs worked in the Business Office which is part of the museum, a free standing house a few minute walk from the prison itself, but still on the penitentiary grounds. She testified as to the set-up of the office and explained that Ms. Gibbs has her own office and that Ms. Ford and Shannon Mincey, another coworker, share an office across the hall from Ms. Gibbs' office. During her testimony, Ms. Ford drew out a partial floor plan of the interior of the Business office, which was entered into the record without objection as Appellee's Exhibit 1.

4. Ms. Ford testified that she and Ms. Gibbs had developed a friendship when Ms. Ford began working at KSP. Ms. Ford testified that she had shared with Ms. Gibbs that her daughter, Emma had passed away of cancer at 4 years of age, approximately 5 years ago. She testified that Ms. Gibbs had shared with her that Ms. Gibbs had Obsessive Compulsive Disorder ("OCD"). Ms. Ford testified that upon her hiring, she decorated her office with a framed photograph of her deceased daughter utilizing the existing nail holes that were present. However, Ms. Gibbs, presumably because of her OCD, was bothered by the placement of the photograph and discussed several times with Ms. Ford and their coworker Shannon Mincey, her desire to re-hang the photo. Each time Ms. Gibbs brought up the issue, Ms. Ford advised her that she did not want the photograph moved, as she had placed it exactly where she wanted it in her own office.

5. Ms. Ford testified that Ms. Gibbs had been on medical leave for several months just after Ms. Ford began working there and that Ms. Gibbs had returned to work in late April or early May of 2017. Shortly after Ms. Gibbs' return, their coworker Ms. Mincey was in a car accident and was off work for an extended period of time. Ms. Ford testified that she was assigned to complete Ms. Mincey's work and that she would switch between her desk and Ms. Mincey's desk several times per day performing each of their duties. Ms. Ford testified that her work hours were 7:00 a.m. to 3:00 p.m. and Ms. Gibbs was the only staff person in the Business Office with an earlier shift, 6:30 to 2:30.

6. Ms. Ford began to testify as to occurrences she experienced with Ms. Gibbs shortly after her return to work from medical leave. On May 11, 2017, while working in support of employee appreciation day, serving pizza to the staff, Ms. Gibbs disappeared from the prison canteen and did not perform any of her assigned work. Ms. Gibbs husband, John Gibbs, who also works as a Captain at the prison was present at that time, was asked by Ms. Ford where Ms. Gibbs was. She testified that Mr. Gibbs stated that his wife left and pointed to another coworker, Mitzi Lisanby, as the reason for her departure. Ms. Ford testified that she asked Ms. Lisanby if something had happened between them and Ms. Lisanby was unaware of any issue with Ms. Gibbs. Ms. Ford's

husband, Deputy Warden Steven Ford, who was also present, asked Ms. Ford to complete an Occurrence Report regarding Ms. Gibbs disappearance. She did so.

7. Ms. Ford testified that starting on May 17, 2017, she began to notice that when she came to work each day, the items on Ms. Mincey's desk had been moved from where she had left them the evening prior and, on one occasion, sticky notes with important information had been thrown away. Ms. Ford testified that because she was the last to leave each evening, and Ms. Gibbs was the only employee to arrive before her each morning, she believed Ms. Gibbs to be responsible.

8. On many occasions, Ms. Ford stated she would arrive to find that all of the items on Ms. Mincey's desk had been placed into the shape of a square. Ms. Ford testified that she discussed this with Ms. Gibbs several times, asking her not to bother the items on Ms. Mincey's desk as she was using them on a daily basis to perform Ms. Mincey's work. Ms. Ford testified that each time she would bring the issue up to Ms. Gibbs, Ms. Gibbs would say, "I'm sorry, I can't help it. I have a condition." Ms. Ford testified that she began reporting the issue to her supervisor, Anita Coggins, and to Ms. Gibbs' supervisor, Vanda Adamson. Ultimately, the issue reached the Warden who set up a meeting with Ms. Ford and two mental health professionals at the prison who advised Ms. Ford on how to interact with Ms. Gibbs in light of her stated mental health conditions. Ms. Ford testified that she was advised not to ask, but to be firm and direct in telling Ms. Gibbs not to bother the items in her work space.

9. Ms. Ford testified that on May 23, 2017, the antics with items on Ms. Mincey's desk had moved to her own desk, as well. Ms. Ford testified that her desk phone rang and she immediately noticed that someone had changed the ringtone. She testified that in the ten (10) months that she has worked there, she had never changed the ringtone nor did she on this occasion. Ms. Ford testified that she believes Ms. Gibbs was responsible for this as well. She filed an Occurrence Report regarding this.

10. Ms. Ford testified that on May 24, 2017, she came in to work to find that the foldable legs of her keyboard had been folded down and an air freshener on her desk had been moved. She testified that she called out in a loud firm voice to Ms. Gibbs, who was in her own office at the time, "Lisa, do not ever come back to my office again and touch anything!" Ms. Ford testified that Ms. Gibbs opened her door and said, "Excuse me?" Ms. Ford testified that she repeated herself two more times in a firm voice, at which time Ms. Gibbs began yelling, "I can't help it, I have a condition!" Ms. Ford testified that she then said, "If you do it again, I am going to write another incident report." She stated that she continued to hear Ms. Gibbs sobbing loudly and talking, she presumed to herself, since the light on her phone did not indicate that she was on her office phone line.

11. Ms. Ford testified that her supervisor Anita Coggins then got to work and went into Ms. Gibb's office and she could hear Ms. Gibbs crying loudly saying, "She yelled at me, she yelled at me!" Ms. Ford testified that Ms. Coggins then came to her own office and she relayed to Ms. Coggins what had happened between them. Ms. Ford stated that Ms. Gibbs then came out of her office into Ms. Ford's office once again and said, "How dare you! We are burying a 3 year old today!" Ms. Ford testified that she then stood up and said, "Don't speak to me about burying a 3 year old! Get out of my office!" Ms. Ford testified that she believed Ms. Gibbs made the remark about burying a child intentionally to hurt her because of the loss of her own 4 year old child.

12. Ms. Ford then testified that she called her husband, Deputy Warden Ford, and told him she could not take it anymore and explained the latest occurrences. Shortly thereafter, Deputy Warden Ford, Sgt. James Beavers and Sergeant Crick came to Ms. Gibbs' office, directed her repeatedly to "Get out of the floor, put your shoes on and come with us." Ms. Ford stated that Ms. Gibbs continued to sob and say, "She yelled at me, she yelled at me!" She testified that, ultimately, Ms. Gibbs complied and they left. Incident reports of May 11, May 23, and May 24 were identified and entered into the record, collectively as Appellee's Exhibit 2, without objection.

13. On cross-examination, Ms. Ford testified that she was certain Ms. Gibbs had done this because she was the only person who had messed with items on her desk, and it only happened during the three weeks since Ms. Gibbs returned to the office from medical leave. She also reiterated that she had asked Ms. Gibbs not to do this several times during the three weeks since Ms. Gibbs had returned.

14. The next witness to testify was **Anita Coggins** called by the Appellee by phone. Ms. Gibbs had no objection to a telephonic testimony. After being sworn, Ms. Coggins testified on direct and cross-examination that she is an Accountant IV at the KSP. She testified that she has worked there for seven and a half years and has worked with Ms. Gibbs during that entire time. She testified that she had been Ms. Gibbs' supervisor for approximately one year, but that Ms. Vanda Adamson was now Ms. Gibbs supervisor. She testified that Ms. Gibbs had never previously disclosed any mental health issues or hot buttons that might set her off.

15. Ms. Coggins relayed that after Ms. Gibbs came back from sick leave, in late April, Ms. Ford and Ms. Mincey both had problems with their things being moved in their office. She testified that Ms. Ford had brought it to her attention several times, but had mostly reported it to Vanda Adamson, Ms. Gibbs' supervisor. She was aware that the Penitentiary administration had set-up a meeting with Ms. Ford and mental health professionals to provide her skills to deal with an individual under these circumstances. She testified that she had discussed this situation with Ms. Gibbs on more than one occasion, asking her not to bother the items on anyone's desk.

16. The witness testified that on May 24, 2017, she got to work at approximately 7:05 a.m. and went to Ms. Gibbs' office to give her some picture frames. She stated that when she went in, Ms. Gibbs was sobbing loudly, her shoulders were shaking, and she stated said that Ms. Ford had yelled at her for moving the items on her desk and stated that she was going to write a report. Ms. Coggins testified that Ms. Gibbs then stated, "I can't help it, I have OCD." Ms. Coggins testified that she advised Ms. Gibbs not to look at Ms. Ford's or Ms. Mincey's desks when she went through their office, but to focus her gaze ahead.

17. As it pertains to Ms. Gibbs' state of mind during the incident, Ms. Coggins testified that she had seen Ms. Gibbs upset in the past, but never like this. She testified that she then went into Ms. Ford's office to speak with her about the situation and find out what had happened. Then, Ms. Gibbs came into Ms. Ford's office and said, "How dare you! We are burying a three year old today!" Ms. Coggins stated that Ms. Ford stood up, pointed to the door, and told Ms. Gibbs to leave her office. She had to repeat herself, at which time Ms. Gibbs left the office, continuing to cry.

18. Ms. Coggins stated that shortly thereafter, Deputy Warden Ford, Sgt. Crick and Sgt. Beavers arrived and went into Ms. Gibbs' office. She stated she overheard Deputy Warden Ford repeatedly tell her to get out of the floor, put her shoes on, and come with him and, ultimately, she complied. Ms. Coggins testified that she had never heard Ms. Ford complain about another employee and she had never heard Ms. Gibbs accused of bullying or pulling pranks. However, she testified that both she and Ms. Gibbs' supervisor, Vanda Adamson, each had told Ms. Gibbs not to bother the items on her coworkers' desks.

19. The next witness to testify was **Deputy Warden Steve Ford**. Deputy Warden Ford was called telephonically and Ms. Gibbs had no objection. After being sworn, Deputy Warden Ford testified that he is Deputy Warden of KSP and has worked for twenty-one (21) years as a Correctional Officer, Administrator, and Deputy Warden at Green River. He testified that he is the husband of Amy Ford, who works with Ms. Gibbs in the Business Office. He testified that his wife had discussed with him Ms. Gibbs' constant movement of items on Ms. Mincey's and Ms. Ford's desks. He indicated that Ms. Ford had reported the matter a number of times to her superiors and it ultimately made it to the Warden's desk, who set up a session with mental health staff. He testified that it was his understanding that Ms. Ford was told to confront Ms. Gibbs regarding her actions.

20. Deputy Warden Ford testified that on May 24th at about 7:30 a.m., his wife called him to indicate that the items on her workstation were moved again and that Ms. Gibbs had come back in to the office crying, screaming, pointing her finger, and talked about burying a three (3) year old. He stated that he advised the Warden of what was happening and the Warden instructed him to go get Ms. Gibbs and bring her to his office. He stated that solicited the help of two other employees and went to Ms. Gibbs' office and found Ms. Gibbs loudly crying in the corner, on the floor, knees drawn to her chest, in a fetal position. He testified that he told her multiple times to get off the floor, get her shoes on, and come with him. He stated that she kept crying and talking about having to bury a three year old. He testified that she ultimately complied. The witness identified Appellee's Exhibit 3, his report of the incident, and it was entered into the record without objection.

21. The next witness to testify on behalf of the Appellee was **Sgt. James Beavers** who testified in person. After being sworn, Sgt. Beavers stated that he works as an Internal Affairs Supervisor at KSP and has been there for eighteen (18) years. He stated that he is familiar with Lisa Gibbs and has had to interact with her previously in his role. He stated that every morning at 7:15 a.m. he provides an intelligence briefing to the Warden. While he was in the process of providing the briefing on May 24, 2017, Deputy Warden Ford came in and indicated there was a problem with Ms. Gibbs moving items in others' offices. The Warden told him to bring Ms. Ford to him and the witness indicated that he offered his assistance. He stated that Sgt. Crick also accompanied them.

22. Sgt. Beavers testified that he took a small digital audio recorder with him to record the interaction. He testified that once they got to the Business Office, he turned on the recorder and placed it in his pocket. He said when he entered Ms. Gibbs' office, after Deputy Warden Ford did, he did not see Ms. Gibbs at her desk. Instead, she was on the floor beside her desk with her feet on the floor, knees to her chest, rocking back and forth, loudly sobbing, and saying she was sorry.

23. The witness testified that Deputy Warden Ford instructed her to get up, get her shoes on and come with him. He stated she was sobbing and recalled her saying, "All I do is work and clean." She asked Deputy Warden Ford if she was getting fired, he said that "wasn't his decision to make." At that point, she still had not complied and Sgt. Beavers testified that he intervened and told her to comply with the Deputy Warden's orders. Sgt. Beavers testified that he would characterize her behavior as strange and bizarre.

24. He testified that they walked the 100-150 yards to the Warden's office and she continued to say, "All I do is work and clean." At the prison, Deputy Warden Ford and Sgt. Beavers entered the Warden's reception area and the Deputy Warden Ford instructed Ms. Gibbs to sit and wait in the reception area. He stated that the three men entered the Warden's office and he turned off the recorder, then Deputy Warden Ford outlined what had occurred. Deputy Warden Ford was excused by the Warden and Sgt. Beavers stated that he turned the recorder back on, placed it on the desk, and asked Ms. Gibbs to come in. He testified that when she came in, the Warden told Ms. Gibbs not to talk, but to listen to him. He told her that her behavior was inappropriate and that he was putting her on leave and she was to see a psychiatrist before she was going to be allowed to return.

25. Sgt. Beavers testified that Ms. Gibbs did not comply with the Warden's orders to be quiet and she continued to try to plead her case and talk over him. He testified that the Warden instructed Ms. Gibbs to hand over her identification and to leave the institution. Sgt. Beavers testified that the Warden did not use any derogatory language with Ms. Gibbs during this time. He testified that the Warden was acting in a businesslike manner, but he was not happy with Ms. Gibbs trying to talk over him nor was he happy that she was not following his orders, but he remained professional.

26. Sgt. Beavers testified that when he finished, he escorted Ms. Gibbs to her car and that upon entering her vehicle, Ms. Gibbs turned her vehicle on, cranked her radio as loud as it could go, began screaming and shaking her head side to side and gripping the steering wheel and that she then pulled off. Sgt. Beavers testified that Ms. Gibbs' behavior was extremely unusual. A Compact Disc with the audio recording made by Sgt. Beavers was entered into the record without objection as Appellee's Exhibit 4. Sgt. Beavers indicated that he submitted an Occurrence Report regarding this situation. He identified it as Appellee's Exhibit 5, and it was entered without objection. After cross examination, the witness was excused.

27. The next witness to testify was **Warden Randy White**. After being sworn, the Warden testified that he has been the Warden at KSP for nearly six years, but he has been with the Department of Corrections for twenty-two (22) years. He testified that Ms. Gibbs was an Accountant III at KSP. He identified the Job Classification for Ms. Gibbs' position which was marked as Appellee's Exhibit 6 and was entered without objection.

28. Warden White testified that Ms. Gibbs had previously disclosed to him that she had Bipolar Disorder, Post Traumatic Stress Disorder (PTSD), Obsessive Compulsive Disorder (OCD) and that she had engaged in prior acts of self-mutilation. He stated that Ms. Gibbs had not supplemented that with any medical records regarding her diagnosis and that when she submitted her most recent fitness for duty documentation, it did not specify any mental conditions.

29. Warden White stated that he placed Ms. Gibbs on Directed Sick on July 12, 2016, and she returned to work April 20, 2017. He stated that the reason for putting her on Directed Sick leave in July 2016 was that she had stated that, "She was a ticking time bomb" and he felt that strongly suggested that she could be a danger to self or others. He testified that his goal was to have her see a provider to determine if she could perform her assigned work. He testified that, eventually, she provided documentation on April 20, 2017.

30. The Warden testified that during Ms. Gibbs' 2016 directed sick leave, he initially wanted documentation from a mental health provider, but that Ms. Gibbs was having difficulty obtaining that, so there was a request to consider fit-for-duty statements from a medical doctor combined with a licensed clinical social worker. He testified that he agreed to this and Ms. Gibbs supplied the paperwork and returned to work. Warden White testified, that upon her return, he began to hear complaints regarding Ms. Gibbs. He stated that it was about 1 to 2 weeks after she had returned. He outlined that on May 11, 2017, Ms. Gibbs was missing in action during employee appreciation week. He explained that in a maximum security prison, if you are not where you are supposed to be, that is cause for alarm. He stated that she had agreed to come in during the night shift but left when she appeared to have a problem with Mitzi Lisanby, who was present when Ms. Gibbs was placed on her 2016 Directed Sick Leave.

31. The Warden then outlined the events of May 24, 2017, and stated that he was having his normal intelligence briefing when Deputy Warden Ford knocked on the door, advised him that there was an incident in the Business Office, and that Ms. Ford had asked someone to come down and intervene. He testified that he asked Deputy Warden Ford and Sgt. Beavers to bring Ms. Gibbs to his office. He indicated that it is quite common for relatives to work at the prison together, and that both Ms. Gibbs' and Ms. Ford's spouses work in the prison.

32. Warden White testified that when they brought Ms. Gibbs back to his office, she waited in the reception area while he was briefed that Ms. Gibbs was found on the floor in a fetal position, crying in a state of emotional distress, was not in control, and perhaps volatile. He stated that he excused Deputy Warden Ford and Ms. Gibbs was instructed to come into the office and sit in a chair and not to speak. He advised her that he was placing her on Directed Sick Leave and that her behavior was unacceptable. He stated that she attempted to talk over him a couple of times and that he did raise his voice. He stated that he did not want to engage in conversation with Ms. Gibbs because, as the Appointing Authority, he had to keep control of the meeting and did not wish to get into an argument or a debate. He testified that he had referenced Ms. Gibbs' transgressions going into someone's office space, and messing with their things. He stated he also referenced her statement about burying a three (3) year old and said that was very inappropriate since the Fords had lost a child. He testified that he regretted telling Ms. Gibbs that he did not care, but denied making any derogatory statements to her.

33. Warden White stated that due to the prior directed sick leave after Ms. Gibbs' "ticking time bomb" comment, he felt that it would be a liability to allow her to continue to work there without a fitness for duty assessment. He testified that Ms. Gibbs had indicated difficulty with finding a provider to give her clearance and he had relented, allowing a licensed clinician and a physician. He stated that, upon her return, they were closely monitoring the situation, then the issues with her and her coworkers' belongings arose and she had consistently stated to them, that she had a mental condition and could not help herself. He testified that to assist all involved he even set up time for Ms. Ford, Vanda Adamson, and himself to visit with the mental health professionals to find appropriate ways to interact with Ms. Gibbs.

34. Warden White testified that on May 24, 2017, he decided to place her on directed sick leave because she was in an emotional state, lying on the floor, crying. He testified that, earlier, she had indicated that she was unable to control her behavior and, at this point, he could not predict her behavior. He testified that Ms. Gibbs was a former Correctional Officer, so was trained with weapons and possibly defensive tactics. The Warden identified Appellee's Exhibit 7, the May 24, 2017 letter he utilized to put Ms. Gibbs on directed sick leave. He testified that after being made aware of the events of May 24, 2017, he consulted with Human Resources and the letter was prepared and mailed to Ms. Gibbs after she left his office. Appellee's Exhibit 7 was entered into the record without objection.

35. Warden White testified that when Ms. Gibbs returned in April, he had afforded her the reasonable accommodation of her own private office space, in an effort to give Ms. Gibbs some privacy and some boundaries from other staff. He testified that the directed sick leave was not a disciplinary matter, it is a directed sick leave and he equates it to someone with any other type of injury or illness. He stated that if Ms. Gibbs provides adequate clearance from a mental health professional, she can return.

36. On cross-examination, Warden White testified that he did not ask Ms. Gibbs her side of the story, but indicated that he was sensitive to her situation and wanted to assist her in reaching 20 years and retirement.

37. On redirect, Warden White outlined the basis for his decision for directed sick leave: 1) Ms. Gibbs had recently returned from directed sick leave; 2) Ms. Gibbs had made statements to Ms. Ford that she could not or would not stop her problematic behavior; 3) Ms. Gibbs' mental state on May 24, 2017, lying on the floor, in a fetal position, and crying, indicated an inability to work. He testified that he decided to apply the Administrative Regulations and place Ms. Gibbs on sick leave. The Appellee rested.

38. Ms. Gibbs attempted to call witnesses by phone to testify as to her character and that she would not rearrange the items on anyone's desk. The Hearing Officer inquired as to the testimony to be elicited and advised that whether or not Ms. Gibbs was capable of the actions accused was not relevant and reminded Ms. Gibbs of the issue before her. Ms. Gibbs took the stand. She testified upon questioning by the Hearing Officer and in the narrative that she has worked as an Accountant since 2007 and was previously a Correctional Officer for just over three (3) years. Ms. Gibbs testified that she had been under tremendous stress since July 2016, then began to "show cracks" in her mental illness. She testified that she has been diagnosed as Bipolar, had/suffering from severe depression, and chronic PTSD. Ms. Gibbs then looked at notes on her phone regarding other diagnoses and testified that she also has panic and anxiety attacks, OCD, claustrophobia, major depressive disorder, and personality disassociation disorder. She testified that a medical doctor, psychologist or psychiatrist has had made all of her diagnoses. She also testified that she engages in self-mutilation and raised her arm to show prior scars of cuts she had made to herself.

39. Ms. Gibbs testified that in May 2016 she was under a great deal of stress in handling employee appreciation week and that on June 1, she put herself on medical leave to "get her head screwed back on straight." She indicated that she was taking phone calls from a gentleman she had met and that she was ultimately called into Internal Affairs, Sgt. Beavers, regarding her calls, which had been recorded. She indicates, at that time, that she did make a statement about being a "ticking time bomb," but testified that she was just referring to being under pressure.

40. As it pertains to the allegations that she was moving items on the desks of others, Ms. Gibbs testified that she moved some personal items that were on Ms. Mincey's desk to a drawer on one occasion, and that she had only picked up a paperclip and put it in Ms. Mincey's paper clip holder, and returned the stapler to her desk on one occasion. She stated that the sticky notes on Ms. Mincey's desk, she had put inside the desk. She denied rearranging items in the shape of square, denied moving Ms. Ford's air freshener, denied changing Ms. Ford's ringtone or keyboard height, and denied that Ms. Ford, Vanda Adamson, or Anita Coggins had ever discussed this issue with her at any time. Upon questioning from the Hearing Officer, Ms. Gibbs likewise denied ever telling anyone, "I can't help it, I have a condition."

41. Ms. Gibbs testified that on May 24, she was in her office and heard Ms. Ford scream and say horrible things, and that she heard something crash. When asked by the Hearing Officer, what horrible things were said by Ms. Ford, Ms. Gibbs was unable to provide an answer. She testified that one of her triggers for PTSD is yelling, screaming, and raised voices, which cause panic and anxiety. She stated that she did go into Ms. Ford's office and say she had a funeral to go to for a 3 year old and that Ms. Ford told her to get out of her office, so she went to the bathroom and went outside to get back to her office without going through Ms. Ford's office. She indicated

that, having walked through wet grass, her shoes were wet so she took them off to dry by the heater, and was sitting on the floor in case she passed out when Deputy Warden Ford, Sgt. Beavers, and Sgt. Crick arrived. She denies being in the fetal position or sitting with her knees pulled to her chest and indicated that she was unable to sit in this position due to her size.

42. Ms. Gibbs testified that by the time Deputy Warden Ford and the other two men arrived, what was going “through my head was crazy, sick and twisted.” During her testimony, Ms. Gibbs stated that she had previously accused the Warden of calling her “sick, crazy and twisted” during their May 24, 2017 meeting. However, during her testimony, Ms. Gibbs admitted that her prior statements were not true and she apologized to the Warden, stating “It was all in my head” and that the Warden was firm with her, but not disrespectful.

43. Ms. Gibbs identified Appellant’s Exhibit 1, a printout of her computer activity on May 24, 2017. She indicates that she obtained this document from the Cabinet during discovery and testified that it showed she was at her desk, working the entire morning of May 24th and that she did not have time to go to Ms. Ford’s desk and change her keyboard placement or remove her air freshener. The document was entered into the record without objection as Appellant’s Exhibit 1. Ms. Gibbs’ also entered into the record her own drawing of the layout of the Business Office, which was entered into the record as Appellant’s Exhibit 2, without objection. The Appellant rested. Each party made a closing statement. The Hearing Office reviewed the entire administrative record.

FINDINGS OF FACT

1. The Appellant, Lisa Gibbs was employed in the classified position of Accountant III with the Justice and Public Safety Cabinet, Department of Corrections, and was assigned to Kentucky State Penitentiary, a position she had held for more than seven (7) years. Prior to that, Ms. Gibbs had worked as a Correctional Officer for more than three years. In this capacity, she was trained in weapons use. (Testimony of Appellant, Warden Randy White)

2. Ms. Gibbs had voluntarily shared with the Warden that she suffers from Post Traumatic Stress Disorder, Obsessive Compulsive Disorder, Bipolar Disorder, and had engaged in acts of self-mutilation. However, Warden White had never received any documentation from a medical professional outlining those diagnoses. (Testimony of White.)

3. In July 2016, the Warden put Ms. Gibbs on Directed Sick Leave after she made a comment that she was a “ticking time bomb.”

4. Warden White initially required Ms. Gibbs to have documentation from a mental health provider before being able to return to work. However, after several months, Ms. Gibbs expressed having difficulty obtaining the required documentation, so Warden White relaxed the requirement and allowed Ms. Gibbs to provide fitness for duty paperwork from a physician and a licensed clinician. In April 2017, Ms. Gibbs provided the required fit for duty paperwork and came back to work on or about April 21, 2017. (Warden White, Appellant)

5. Upon her return, the Warden provided a reasonable accommodation to Ms. Gibbs, allowing her to have a private office to promote acceptable interactions with her coworkers. Warden White closely monitored the situation in light of Ms. Gibbs' diagnoses, return to work, and prior statements. (Warden White.)

6. Ms. Amy Ford and Shannon Mincey, Ms. Gibbs' coworkers, shared an office across the hall from Ms. Gibbs. (Testimony of Appellant, Ford).

7. On May 11, 2017, Ms. Gibbs disappeared and did not perform her assigned duties for an employee appreciation event due to a problem with a coworker who had been involved in her 2016 directed sick leave. The coworker was unaware of any problem with Ms. Gibbs. Being missing in a maximum security prison is an issue of great significance, and this was ultimately reported to the Warden. (Testimony of Ms. Ford, Warden White)

8. Shortly after Ms. Gibbs' return in April 2017, Ms. Ford began to perform the duties of Ms. Mincey, who was on sick leave. Ms. Ford would move between both desks several times per day to perform the work of both positions. (Testimony of Ford.)

9. From May 17 to May 23, 2017, Ms. Ford discovered items on Ms. Mincey's desk were rearranged into a square and notes were placed in the trash. On Ms. Ford's desk, the ringtone on her phone was changed. (Testimony of Ford).

10. Ms. Ford reported this to her supervisor, Anita Coggins, and to Ms. Gibbs' supervisor, Vanda Adamson, and all three had conversations with Ms. Gibbs about this on multiple occasions, with Ms. Gibbs responding, "I'm sorry, I can't help it, I have a condition." (Testimony of Coggins, Ford, Warden White).

11. Ms. Gibbs denies that anyone ever discussed this issue with her and denies that she ever apologized or stated that she could not help herself. (Testimony of Gibbs) The Hearing Officer finds Ms. Gibbs lacks credibility on this issue.

12. In an effort to assist in interacting with Ms. Gibbs, and after several reports that she was meddling with other peoples' office space, Warden White set up a session with two mental health professionals employed by KSP. It was his hope to provide Ms. Ford, Vanda Adamson, and himself insight in to how to interact with Ms. Gibbs in light of the diagnoses she had shared with him. They were advised to be firm in giving directives to Ms. Gibbs. (Testimony of White, Ford, Coggins.)

13. On May 24, 2017, Ms. Ford arrived at work and found that an air freshener on her desk had been moved and the legs on her keyboard had been flipped down. Ms. Ford called out to Ms. Gibbs, who was in her own office, in a loud, firm voice and told Ms. Gibbs not to come back into her office to change anything. The situation escalated with Ms. Gibbs re-entering Ms. Ford's office, asserting that Ms. Ford was out of line, and remarking about burying a 3 year old that day. Ms. Ford then ordered Ms. Gibbs from her office. (Testimony of Amy Ford)

14. Ms. Gibbs then went into her office and was discovered moments later by prison administration on the floor sobbing, in a fetal position with no shoes on. (Testimony of Gibbs, Steve Ford, Sgt. Beavers)

15. Ms. Gibbs testified that she was only on the floor because she wanted to prevent injury to herself in case she passed out due to her anxiety, denies being in the fetal position, and also indicates that she was without shoes because she was drying them after they had gotten wet when she went outside to return to her office, after being ordered to leave Ms. Ford's office. (Testimony of Gibbs.) However, the Hearing Officer finds that Ms. Gibbs is not credible on these issues and that Ms. Gibbs was on the floor, with no shoes, in a fetal position because she was in an extreme emotional state, unable to control her emotions or conform her behavior to acceptable business standards.

16. Ms. Gibbs also contends that the printout of computer activity for May 24, 2017, shows that there is no time when she was away from her computer that would have afforded her time to move the items on Ms. Ford's desk as accused. The Hearing Officer, upon reviewing the document, finds that this is not the case and that several gaps of 3 to 4 minutes provide sufficient time for Ms. Gibbs to have engaged in the activity of which she was accused. This further damages Ms. Gibbs' credibility.

17. 101 KAR 2:102, Section 2(2)(a)(4) provides:

An appointing authority shall grant or may require the use of sick leave with or without pay if an employee would jeopardize the health of the employee or others at the employee's work station because of a contagious disease or demonstration of behavior that might endanger the employee or others,

18. The Hearing Officer finds that Warden White, in his decision to place Ms. Gibbs on directed sick leave, relied upon 1) Ms. Gibbs' prior statement about being a ticking time bomb, 2) her current statements to others that she was unable to stop her inappropriate behavior of moving the items on her coworkers' desks, and 3) the fact that she was in her office in an emotional state, on the floor, in the fetal position, without shoes. (Testimony White).

19. The Hearing Officer finds that, at the time she was placed on directed sick leave, Ms. Gibbs had demonstrated behavior that might endanger herself or others.

CONCLUSIONS OF LAW

1. The Appellee has met its burden to show that there was just cause for the Appellee's decision to place the Appellant on directed sick leave and that the action was neither excessive nor erroneous.

2. The Appellant has failed to put forth any evidence of disability discrimination.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the case of **LISA GIBBS V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2017-113)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen 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 exception 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 the judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W. 3d 560 (Ky. 2004).

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

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365 Section 8(2).

Each party has thirty (30) days after the date the Personnel Board issues a Final Order in which to appeal to the Franklin Circuit Court pursuant to KRS 13B.140 and KRS 18A.100

ISSUED at the direction of **Hearing Officer Brenda D. Allen** this 4th day of May, 2018.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy this day mailed to:

Hon. Amy Barker
Lisa Gibbs