

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-312**

CHRISTOPHER GORE

APPELLANT

**VS. FINAL ORDER ALTERING THE 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 November 2017 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated September 18, 2017, Appellee's Exceptions, Appellant's Reply (Request for Oral Argument untimely filed), 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 paragraphs 11 and 12 and substitute the following:

11. The Board finds that the Appellant was demoted five pay grades from his position as a Maintenance Branch Manager (Grade 15) to Maintenance Mechanical and Operations Technician III (Grade 10). These positions were identified in the record through testimony and through Appellee's Exhibit 8, the demotion letter. The Appellant's salary was reduced five percent per grade. The Appellee accomplished the 25 percent decrease in Appellant's pay by using the method approved by the Personnel Cabinet, that is, a calculation of his previous

salary of \$4,334.14 per month divided by 1.25 which equals \$3,467.31 cents, his new pay. This method, in addition to being approved by the Personnel Cabinet, is more favorable to the Appellant than a straight reduction of 25 percent from Appellant's previous salary.

12. The Board disagrees with the Hearing Officer's finding regarding the severity of the penalty and finds the Appellant's misconduct does support a five-grade demotion, with a \$866.82 reduction in monthly salary. In so finding, the Board agrees with Warden Jordan, that as a Department head, it was appropriate to hold the Appellant to a higher standard and to expect him to adhere to and enforce the policies and regulations involved in this appeal. Appellant was put in charge of the care and oversight of the institution's fleet of state vehicles. As testified to by Warden Jordan, the Appellant's position of Maintenance Branch Manager carried with it responsibility over the budget for the Maintenance Department. The Appellant's failure to report damage to his state vehicle showed that he could not be trusted with that responsibility and that demotion to a lesser position was warranted. Because the Appellant failed to take responsibility and report the damage to his vehicle, the Board finds a five-grade demotion was neither excessive nor erroneous under the circumstances of this case. No evidence was introduced in the record regarding intermediate levels of demotion.

B. **Delete** Conclusions of Law paragraphs 1, 2, 3 and 4, and substitute the following:

1. The Board concludes that the Appellee met its burden of proof to show that the Appellant should be demoted from a Maintenance Branch Manager position to the position of Maintenance Mechanical and Operations Technician III.

2. The Board concludes that the five-grade demotion of the Appellant was neither excessive nor erroneous, and was taken with just cause. KRS 18A.095.

3. The Board concludes the Appellee was not excessive nor erroneous in its decision to direct the Appellant to vacate his state housing within sixty (60) days or to turn in his state vehicle.

C. Delete the Recommended Order and substitute the following:

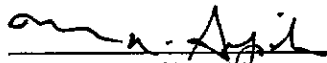
IT IS HEREBY ORDERED that the appeal of **CHRISTOPHER GORE**
V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF
CORRECTIONS, (APPEAL NO. 2016-312) is **DISMISSED**.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer, as Altered, are approved, adopted and incorporated herein by reference as a part of this Order, and Appellant's appeal is **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 8th day of November, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
SECRETARY

A copy hereof this day mailed to:
Hon. Alex Mattingly
Hon. Jessica Durden
Mr. Rodney E. Moore

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2016-312**

CHRISTOPHER GORE

APPELLANT

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

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

APPELLEE

** ** ** ** **

This matter came on for an evidentiary hearing on June 14, 2017, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Colleen Beach, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Christopher Gore, was present at the evidentiary hearing and was represented by the Hon. Jessica C. Durden. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Catherine M. Stevens. The Agency representative was Warden Scott Jordan.

This matter involves the demotion of the Appellant from Maintenance Branch Manager, Luther Luckett Correctional Complex, to the position of Mechanical Maintenance and Operations Technician III, Kentucky State Reformatory. Appellant was also directed, under separate notice, to turn in his state equipment, including his state vehicle, and to vacate his state house.

The burden of proof in this matter was placed on Appellee to demonstrate that the penalty taken against Appellant was neither excessive nor erroneous.

BACKGROUND

1. The Appellee called its first witness. **Captain Tim Forgy** is an Internal Affairs supervisor at Luther Luckett Correctional Complex (LLCC). His primary job task is to conduct investigations into allegations of improper behavior on the part of LLCC inmates and staff.

2. On October 19, 2017, Forgy received information that Appellant's state vehicle had sustained damage to the side of the truck bed and that Appellant had directed an inmate to repair it.

3. After hearing this allegation, Forgy called Appellant on the telephone and the two convened in the area where Appellant had parked the vehicle. Forgy inspected the truck. He observed the damage to the side panel and also noticed that there was a dent in the vehicle's front bumper. Forgy took photographs of the damaged areas. He also photographed a sign displayed inside the vehicle which reads:

Break down or Accident
7 AM to 4:30 PM EST
Call 800-928-4649
After 4:30
Call 502-564-2080 (Sic)

4. The photographs were introduced into the record as Appellee's Exhibit 3.

5. Forgy recorded the conversation he had with Appellant as he was inspecting the truck. This recording was introduced into the record as Appellee's Exhibit 2. Track 1 of the recording can be summarized as follows:

Forgy: What happened?

Appellant: I don't know. I noticed it today, that there was a dent. So I asked Russell to knock the dent out...Somebody did a scrape on it. I don't know when. I never go to the passenger side. Only place I been is the parking lot, and normally I back in....I don't know, somebody dented it in. It was dented in a lot worse, but we were able to push it out.

Forgy: Before we popped it out, it should have been reported. I needed to take pictures. The problem is it was not reported and it was popped out by another inmate. Let's take a look at it.

What happened to that bumper? See how it's dented in?

Appellant: I don't know...about a week or two weeks ago, we were working the water lines, I might have, I know I did, I bottomed out.

Forgy: Did you report?

Appellant: I didn't know it was that bad, didn't know it was dented in like that.

Forgy: When did this happen?

Appellant: This happened three or four weeks ago.

6. Forgy noted that in order for Appellant to enlist the aid of an inmate, he had to drive the truck to an area behind the maintenance shop. Forgy stated that this is against policy,

which states that vehicles in need of repair are to be taken to a local garage and are not to be worked on at the institution.

7. Forgy instructed Appellant to complete two separate incident reports; one to address the damage to the front bumper, the other to address the damage to the side panel. Appellant completed both reports that same day, October, 19, 2017.

8. The first Occurrence Report states: "On 10/19/16 around 9 am I Chris Gore LLCC Maintenance Branch Manager noticed a dent in the passenger rear quarter panel on state truck KB3421. I have don't know how or really when it happen other than I don't remember seeing it there on 10/17/2016." [Sic] (Appellee's Exhibit 5)

9. The second Occurrence Report states: "On 09/07/16 around 11 am I Chris Gore LLCC Maintenance Branch Manager was driving state truck KB3421 and was pulling onto the drive way and bottom out the front end and bent and scraped the bumper. I was working on a water line in the middle of a field delivering parts." [Sic] (Appellee's Exhibit 4)

10. Forgy called Appellant back into his office on October 20, 2016, to discuss a discrepancy between his statement regarding how the front bumper got damaged and that of Deputy Warden Webb Strang. Forgy recorded the conversation, which was introduced into the record as Track 2 of Appellee's Exhibit 2. At this meeting, Appellant denied that he had told Strang he hit a tree stump. Appellant stated that he was driving in a field, and the damage to the bumper occurred when he drove off the grass and onto the driveway of a vacant lot.

11. The Hearing Officer notes that in one of the photographs Captain Forgy took (Appellee's Exhibit 3), the side dent damage is quite visible. The picture of the vehicle was taken after the inmate had attempted to repair it.

12. At Warden Jordan's request, Captain Forgy prepared an investigative memorandum regarding Appellant's conduct. In the memo, Forgy concluded:

[Appellant] failed to report damages to his assigned state vehicle on two separate occasions. This is a violation of the Guide for Drivers of the Commonwealth's vehicles, Page 8, Vehicle Accident; LLCC IPP 03-01-01, Part 1, Section P, State Property tools; LLCC IPP 03-01-01 Part 1, Section Q, Travel Reimbursements, and CPP 3.1, Code of Ethics, Part II.

[Appellant] attempted to repair the damage to the vehicle by having inmates assigned to his department fix the dent by hammering it out.

During his interview with Captain Forgy, [Appellant] stated that he had bottomed out while pulling into the driveway. In a separate conversation with Deputy Warden Webb Strang [Appellant] stated he had struck a tree stump in yard of a state house. In a follow up interview [Appellant] denied making the statement to Deputy Warden Strang.

13. Forgy's memorandum included two written estimates for repairing all damages to the truck. One was for a total cost of \$2,260.00 and the second was for \$1,981.44.

14. On cross-examination, Forgy agreed that in the event a state vehicle had sustained very minor damage, such as a scratch, he did not see a reason to report that.

15. **Warden Scott Jordan** has been the Warden at LLCC for the past thirteen months. He has been employed by the Department of Corrections for eighteen years and has worked at six different institutions.

16. Jordan was asked to explain how state vehicles are managed. He answered that all state vehicles are managed by Fleet Management. "We do not own these vehicles. They are leased to the Department of Correction through Fleet. Each institution has an allotment of vehicles. The institution assigns vehicles to individual staff members. Many institutions assign state vehicles to the Maintenance Branch Manager because they may be called to respond to maintenance issues twenty-four hours a day, seven days a week."

17. Jordan stated that Fleet Management decides "which vehicles go where, and when vehicles should be retired." He added that when a state vehicle is damaged, policy requires the damaged vehicle to be taken to a reputable garage or collision center for the purpose of obtaining estimates for the vehicle's repair. The estimates are then forwarded to Fleet Management, who determines the next course of action. Jordan noted: "No repairs can be done by the institution's Maintenance Department, and certainly not by an inmate."

18. In Jordan's opinion, the estimated monetary damage to the truck—approximately \$2,000—was "not relevant." The deciding factor in his decision to demote Appellant was the fact that the damage went unreported. Jordan also considered Appellant's attempt to conceal the damage by enlisting an inmate to attempt to repair it. Jordan stated: "Look at the job title—Maintenance Branch Manager. A Maintenance Branch Manager is in charge of the entire fleet of state vehicles. He knows we are not allowed to attempt to repair these vehicles.

[Appellant] went around the side of the institution into a secured perimeter and instructed an inmate to fix the damage in an effort to not have to report it.

Jordan added that to get into a secured perimeter, which is not a place a state vehicle routinely goes, Appellant had to go through a security checkpoint and have his vehicle searched.

19. Jordan further stated that the annual budget of the Maintenance Department is in excess of \$300,000. Appellant, as Branch Manager, was in charge of that budget. Appellant's job duties also included dealing with contractors hired to work at the institution. "I cannot have a person in that position that does not have the integrity to report damage to his state vehicle in charge of that fiscal responsibility. The Department of Corrections does not generate revenue. Everything that happens at Luther Luckett is funded with taxpayer money. We have a duty to treat that responsibility with respect. We must be diligent," Jordan stated.

20. Jordan considered termination, but decided to demote Appellant instead, based on his years of service.

21. Jordan was asked to explain DOC policy regarding institutional staff housing. He stated that housing is sometimes provided for staff members who are required to respond quickly to situations that may arise at the institution. The usual order of preference for housing is as follows: Warden, Deputy Warden, Security Chief, Maintenance Supervisor, and then CERT Commander. Jordan noted, "If a person above you in the priority list wants the staff housing you're living in, you will be given sixty days to vacate." Jordan stated that the Maintenance Branch Manager who replaced Appellant does not currently live in the house Appellant had occupied. It was given to the current Deputy Warden after Appellant was demoted and transferred.

22. Through Jordan's testimony, the following policies were introduced into the record: Kentucky Corrections Policies and Procedures 3.12 ("Institutional Staff Housing"); Kentucky Corrections Policies and Procedures 3.1 ("Code of Ethics"); Luther Lockett Correctional Complex Policies and Procedures 03-01-01 ("General Guidelines and Information for LLCC Employees"); and a Guide for Drivers of the Commonwealth's Vehicles.

23. At the end of Warden Jordan's testimony, the Cabinet rested its case.

24. **Appellant, Christopher Gore**, testified on his own behalf. Appellant testified that he was employed as a Maintenance Branch Manager, Grade 15, at LLCC, where he had worked for 18 years. On November 15, 2016, he was demoted to Maintenance Mechanical and Operations Technician III, Grade 10, and transferred to Kentucky State Reformatory. His salary was reduced from \$4334.14 monthly to \$3467.32 monthly.

25. Appellant stated that he "does not want to go back to Luther Lockett." When asked what relief he is seeking, he responded: "I want my money back."

26. Appellant was promoted to the Maintenance Branch Manager position in 2013. He stated that his demotion has negatively impacted his career: "I have no chance of getting promoted in the future," he stated.

27. Appellant testified that he had been disciplined early in his career, but had no prior actions since 2005 or 2006. Prior to his demotion, his performance evaluations had always been "Good."

28. Appellant was asked to address the damage to his state vehicle. He testified that he discovered the dent in the truck's side the morning of October 19, 2016, the same day he asked an inmate to help "bump out the dent."

29. Appellant stated that he often parks close to the dumpster at LLCC. He opined that it was possible a garbage truck may have damaged the vehicle when the dumpster backed out.

30. Appellant noted that because of the way he typically parks at both LLCC and at home, he usually does not walk by the damaged side of the vehicle.

31. Appellant addressed how damage to state vehicles are usually handled: "The Maintenance Department tries to mitigate the damage—if it is a scrape, we'll try to buff it out. If we couldn't fix it, we would report it and get estimates to have it fixed."

32. Appellant was asked if he had ever been investigated by LLCC Internal Affairs (IA). He responded in the affirmative. The first time was in 2016, when he was questioned if he was taking "kickbacks from contractors." He was also questioned about money spent at state-owned houses. Appellant stated that he felt the administration was "gunning" for him. Prior to 2016, he had never been investigated by IA.

33. Appellant was asked to explain the damage to the front of the vehicle. He stated, "I know I had done some damage when I bottomed out one day." He stated that after the incident, he did not stop to inspect his vehicle.

34. On cross-examination, Appellant affirmed that sometime on the morning of October 19, 2016, he discovered the damage to the side of his state truck. He then drove the vehicle to the institution's Maintenance Shop and directed an inmate to "bang out the dent." Sometime after that, Lt. Forgy contacted him. Appellant did not file a report any time between the time he discovered the damage and when he enlisted the inmate to repair it.

35. Appellant affirmed that he had made conflicting statements regarding when the damage to the front bumper occurred. In one conversation with Lt. Forgy, Appellant first said it had happened "one to two weeks" prior; later he corrected his statement to "three or four weeks" prior. When Appellant filed the Occurrence Report at Forgy's direction on October 19, 2016, Appellant wrote that it happened on a date certain—"September 7, 2016." Appellant explained that he "talked to some guys in maintenance to try to figure it out. I wasn't really sure, but it was definitely a few weeks before."

36. Appellant was asked if he tried to conceal the damage to the side of the vehicle. He responded, "It was part of the norm that we tried to fix what we could."

37. Appellant affirmed that it was institutional "protocol" to perform a drug and alcohol test on an employee after they reported damage to their state vehicle.

38. At the end of his testimony, Appellant rested his case.

39. Appellee recalled **Warden Scott Jordan** on rebuttal.

40. Jordan was asked if he had ever disciplined an employee for having the misfortune of damaging a state vehicle. He responded, "No, absolutely not. The issue here is the failure to report and concealing the damage." Jordan denied that it was an accepted practice

to repair state vehicles at the institution: "It is against policy to work on vehicles at all. They are not authorized to do that. It is not our vehicle."

41. Jordan was asked to address Appellant's testimony that he had been investigated previously by Internal Affairs. Jordan stated that he was not Warden during that timeframe and knew nothing about prior investigations.

42. KRS 18A.095(1) states: "A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause."

43. Kentucky Corrections Policies and Procedures 3.12 governs the Agency's use of state housing. Section I (A) states, in relevant part: "Corrections may offer institutional housing to any staff position that is critical to the function and operation of the institution." Section I (C) states:

The following staff positions, listed in rank order of priority, shall be eligible for institutional housing. If any housing remains available after these priority assignments, each house shall be filled as recommended by the Warden and approved by the Deputy Commissioner of Adult Institutions.

1. Warden
2. Deputy Wardens
3. Chief Engineer or Maintenance Superintendent, Security Supervisor, or Duty Officer
4. Farm Manager
5. Other staff as approved

44. Kentucky Corrections Policies and Procedures 3.12, Section II (C)(2 and 3) states:

C. Entry and Exit Procedures

...

2. Any employee who resides in institutional housing who is required to leave because of priority schedule shall be granted sixty (60) days to vacate the premises.
3. Present housing occupants not in conformance with policy shall be required to leave within sixty (60) days from receiving written request to vacate.

45. The Guide for Drivers of Commonwealth's Vehicles states, in relevant part:

Driving a Commonwealth-owned vehicle is a privilege and not a right. The Commonwealth may disqualify or qualify individuals to drive these vehicles based on driving record, the severity of offenses or accidents or a combination of these factors.

...

All agency staff that drive, ride in, oversee, approve, or support Fleet-owned vehicles must adhere to and enforce the provisions contained in both Guides as well as other pertinent documents.

...

In case of accident or damage to a state vehicle, the driver shall:

1. Dial 9-1-1
2. In case of injury to the driver, passenger(s) or third party seek emergency assistance immediately
3. Notify the Division of Fleet Management at (502) 564-2260 of any accident or injury sustained no later than the next business day.
4. Notify the agency contact and employee's supervisor
5. If an employee is injured, follow the employee's agency process for reporting a work-related injury.
6. Within 24 hours complete and submit a Commonwealth of Kentucky Civilian Traffic Collision Report or obtain a copy of an official accident report and provide a copy to the Division of Fleet Management.

45. Luther Luckett Correctional Complex Policy 03-01-01 P(1) and Q(1) state:

P. State and Property Tools

1. An employee shall use care and caution handling a tool or state property. Luther Luckett Correctional Complex shall not tolerate reckless or negligence in regards to state property.

Q. Travel Reimbursements

1. An employee shall use a state vehicle for travel on state business, if one is available. An employee shall follow the state speed limit and traffic law while driving a state vehicle and shall immediately be reported to the warden, a citation or violation and shall be the responsibility of the employee. It may be a serious violation of trust and dependability and may result in disciplinary action being taken.

46. KRS 18A.005(24) defines "penalization" as follows:

'Penalization' means demotion, dismissal, suspension, fines, and other disciplinary actions; involuntary transfers; salary adjustments; any action that increases or diminishes the level, rank, discretion, or responsibility of an employee without proper cause or authority, including a reclassification or reallocation to a lower grade or rate of pay; and the abridgment or denial of other rights granted to state employees;

47. 101 KAR 2:034, Section 3(2)(a), Demotion, reads:

(a) If an employee is demoted, the appointing authority shall determine the salary in one (1) of the following ways:

1. The employee's salary shall be reduced by five (5) percent for each grade the employee is reduced; or
2. The employee shall retain the salary received prior to demotion. If an employee's salary is not reduced upon demotion, the appointing authority shall explain the reason in writing and place the explanation in the employee's personnel files.

FINDINGS OF FACT

1. Appellant, Christopher Gore, is a classified employee with status who was employed as a Maintenance Branch Manager at the Luther Lockett Correctional Complex.

2. On November 15, 2016, Appellant was informed, by letter under the signature of Warden Scott Jordan, that he was being transferred and demoted to Maintenance Mechanical and Operations Technician III at Kentucky State Reformatory. His monthly salary was reduced from \$4334.14 to \$3467.32.

3. Appellant was informed that, under a separate letter also under the signature of Warden Jordan, he had sixty calendar days to vacate the state house he was currently living in and was directed to turn in his state vehicle immediately. (Appellee's Exhibit 9.)

4. As grounds for the demotion, Warden Jordan cited the following in the demotion letter:

To demonstrate a complete and total lack of integrity by failing to report two accidents to your state issued vehicle and to hinder an investigation by discrepancies in your statements, shows that you are not suited to be a supervisor, even less so the head of a department.

The actions you have demonstrated are completely unacceptable as a Department Head. The level of public trust instilled in you as the Branch Manager of the Maintenance Department should not be taken lightly. The Maintenance Department at Luther Luckett averages over \$300,000 in annually budgeted funds. You are expected to both monitor those funds, and ensure that any and all expenditures are in accordance with needs, and are fiscally and ethically responsible. Adherence to ethical standards and departmental policy are extremely important, especially when you are charged with approving large expenditures, maintaining custody of a state issued vehicle, and overseeing the work and conduct of eight skilled workers. To demonstrate a complete and total lack of integrity by failing to report two accidents to your state issued vehicle and to hinder an investigation by discrepancies in your statements, shows that you are not suited to be a supervisor, even less so the head of a department. It would be irresponsible of this administration and a violation of public trust to allow your oversight of the critical maintenance function to continue.
(Appellee's Exhibit 8).

5. The Hearing Officer finds that the plain language of Kentucky Corrections Policies and Procedures 3.12 makes clear that institutional housing is a privilege granted to certain staff members under particular circumstances. No right had been conferred to Appellant in regard to his state housing and directing him to vacate the property was not a "penalization" under KRS Chapter 18A.

6. The Hearing Officer finds that the plain language of the Guide for Drivers of the Commonwealth's Vehicles makes clear that driving a vehicle provided by the state is a privilege, and directing him to turn it in was not a "penalization" under KRS Chapter 18A.

7. The Hearing Officer finds that directing Appellant to vacate his state house and turn in his state vehicle was not a "penalization" within the meaning of KRS 18A.005(24), as these directives are not a demotion, dismissal, suspension, fine or other type of discipline. Nor did these directives diminish his level, rank, discretion or responsibility without proper cause or authority.

8. The Hearing Officer finds that the Agency did prove by a preponderance of the evidence certain allegations contained in the dismissal letter, specifically that Appellant failed to report the damage to his state vehicle and that he directed an inmate to repair the damage to it. These actions were in violation of the Guide for Drivers of Commonwealth Vehicles and Luther

Luckett Correctional Complex Policies and Procedures 03-01-01, General Guidelines and Information for Luther Luckett Correctional Complex Employees.

9. The Hearing Officer finds this misconduct supports a demotion from the position of Branch Manager. Branch Managers, described by Warden Jordan as "Department Heads," are held to a higher standard, and are expected to adhere to and enforce the very policies and regulations which it was shown Appellant had violated. This is especially true in light of Warden Jordan's testimony that Appellant, in the position of Maintenance Branch Manager, was in charge of the institution's fleet of state vehicles. He was tasked with their care and oversight. Appellant's contention that he had no idea how or when the obvious damage to the side panel occurred strains credibility. The damage to the vehicle is clearly visible in the photograph Forgy took (Appellee's Exhibit 3) and that photograph was taken after the inmate had attempted to repair it. By Appellant's own estimation, the damage had actually been "a lot worse." And while Appellant stated he was not aware of the damage to the bumper—even though he apparently knew exactly how it happened—his failure to check the condition of his vehicle after "bottoming out" reflects a negligent disregard for his state property in violation of Luther Luckett Correctional Complex Policies and Procedures 03-01-01 (P)(1).

10. The Hearing Officer finds that the Agency did not prove by a preponderance of the evidence the allegation contained in the dismissal letter that Appellant made a conflicting statement to Deputy Warden Webb Strang concerning how the damage to the truck's front bumper occurred. Strang was not called as a witness at the evidentiary hearing nor was the allegation addressed through the testimony of Captain Forgy or Warden Jordan. Furthermore, the Hearing Officer finds Appellant's denial of the statement allegedly made to Strang (memorialized in the recorded interview with Captain Forgy, Appellee's Exhibit 2, Track 2) to be persuasive.

11. The Hearing Officer notes that Appellee provided no evidence regarding how many pay grades Appellant was demoted. Appellant's assertion at the evidentiary hearing that he was demoted five pay grades, from a Grade 15 to a Grade 10, was unrebutted by Appellee. However, in its dismissal letter to Appellant, Appellee references 101 KAR 2:034, which mandates a 5% reduction in pay for every pay grade of demotion. A 20 percent reduction of \$4,334.14 is \$3,467.31, which would indicate that Appellant had been demoted four grades. There was no other explanation in the record how the monthly salary of \$3,467.32 was determined.

12. In summation, the Hearing Officer finds Appellant's misconduct does not support a four or five grade demotion and an \$866.82 reduction in monthly salary. The Hearing Officer notes that in Appellant's eighteen years of service, the one suspension he received occurred approximately ten years ago, and Appellant's otherwise acceptable job performance was undisputed by Appellee. The Hearing Officer finds that the evidence submitted by Appellee in support of the allegations contained in the letter of demotion fell short of meeting the burden of proof to sustain such a harsh discipline.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes that Appellee met its burden of proof to show that Appellant should be demoted from a Branch Manager position.
2. The Hearing Officer concludes that the Appellee was excessive and erroneous in its decision to demote Appellant from Maintenance Branch Manager with a monthly salary of \$4334.14 to Maintenance Mechanical and Operations Technician III, with a monthly salary of \$3467.32.
3. The Hearing Officer concludes that the appropriate disciplinary action in light of all the surrounding circumstances of this appeal is a two grade demotion, with the concomitant 10% reduction in pay, in accordance with 101 KAR 2:034.
4. The Hearing Officer concludes that the Appellee was not excessive or erroneous in its decision to direct Appellant to vacate his state housing within 60 days, or to turn in his state vehicle.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **CHRISTOPHER GORE V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2015-266)** be **SUSTAINED TO THE EXTENT** as follows:

1. **The Appellant's demotion from Maintenance Branch Manager with a monthly salary of \$4,334.14 to Mechanical Maintenance and Operations Technician III with a monthly salary of \$3,467.32 shall be VOIDED.**
2. **The Appellant shall be demoted two pay grades with a concomitant 10 percent reduction in pay, including back pay and benefits, and otherwise be made whole.**
3. **Appellant's transfer to the Kentucky State Reformatory shall remain in effect.**

FURTHER, the Appellee is ordered to reimburse Appellant for any leave time he used attending the hearing and any pre-hearing conferences at the Board and that he otherwise be made whole. [KRS 18A.105, KRS 18A.095(25), and 200 KAR 12:030.]

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on

which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

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

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

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

ISSUED at the direction of **Hearing Officer Colleen Beach** this 18th day of September, 2017.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Amy Barker
Hon. Jessica Durden