

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-086

SEAN GREEN

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 February 2018 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated January 18, 2018, 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 15th day of February, 2018.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Alex Mattingly
Mr. Sean Green
Mr. Rodney E. Moore

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2017-086

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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 an evidentiary hearing on November 15, 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, Sean Green, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. T. Alex Mattingly. Also present as Agency representative was Joseph Meko, former Warden of the Little Sandy Correctional Complex.

BACKGROUND

1. Appellant, Sean Green, was a classified employee with status who was employed as a Correctional Officer at the Little Sandy Correctional Complex (LSCC). On April 17, 2017, he filed a timely appeal with the Personnel Board of his dismissal (Appeal No. 2017-086). Appellant provided the following statement of facts relating to his appeal:

In training they taught us to tell the truth, that everyone makes mistakes working in corrections so that's what I done causing the Commissioner and Warden Meko to dismiss me not even giving me a chance to resign banning me from all corrections in the state!

Accidentally caused one inmate to beat another one up!

For all the things other staff has done and still working at Little Sandy it is unjustified. I'm dismissed and banned from corrections because of this. (sic)

2. By letter dated February 27, 2017, (under the signature of Warden Joseph Meko), the Appellant was informed of his dismissal for misconduct. A copy of that letter is attached hereto and incorporated by reference as **Recommended Order Attachment A**.

3. As Appellee bears the burden of proof, the Agency proceeded first in the presentation of evidence.

4. Appellee called **Sergeant Rebecca Lewis** as its first witness. Lewis has been employed at LSCC since 2005. From May 2016 until Appellant's dismissal in February 2017, Lewis, then a Lieutenant, occasionally acted as Appellant's supervisor, depending on her shift assignment.

5. Through her testimony, Appellant's "Progress Record" was introduced into the record as Appellee's Exhibit 1. Lewis described the document as "a way to keep track of an employee's job performance." According to the record, Appellant was counseled on June 4, 2016, on how to correctly check out equipment. On October 18, 2016, it was noted that he failed to properly secure loading dock doors, which resulted in an emergency inmate count. On November 9, 2016, Appellant received a verbal reprimand for failing to call in his absence from work according to protocol.

6. On January 21, 2017, Lewis, as acting supervisor of third shift, received a document called a "Staff Conflict Report" from an inmate, Derick Flatt. In the report, Flatt alleged that Appellant had "told another inmate (Charles Young) that he (Flatt) had ratted on him." The consequence of Appellant sharing that information was that Young, angered by the account, entered Flatt's cell and assaulted him.

7. After receiving the "Staff Conflict Report," Lewis interviewed Flatt and Appellant. She then directed Appellant to write two Occurrence Reports, which were introduced into the record as Appellee's Exhibit 2.

8. In the reports, Appellant stated that while he was working in F-Dorm (on January 10, 2017), Flatt was able to look at a bed roster in order to identify the name of an inmate in a particular cell. Appellant later told the inmate in question, Charles Young, that "if he had anything he wasn't supposed to that he had better get rid of it" because Flatt was "trying to get out of trouble," and had requested his name. (Appellee's Exhibit 2).

9. Appellant was placed in "Central Control" on February 6, 2017, pending an investigation. Lewis stated that Appellant was placed there to keep him apart from the inmates for his personal safety.

10. Aaron Holbrook is currently a Training Coordinator I at Eastern Region Training Center, Department of Corrections, a position he has held since July 1, 2017. Prior to assuming that position, Holbrook was employed as a Lieutenant in Internal Affairs at the Little Sandy Correctional Complex, where he had been employed since February 1, 2001.

11. Holbrook's job in Internal Affairs included conducting investigations into alleged misconduct of facility staff and inmates. He estimated that he investigated twenty-five to thirty cases per year.

12. Holbrook began his investigation into the charges against Appellant on January 22, 2017, after inmate Flatt filed a "Staff Conflict Report." Holbrook had been informed by Lt. Rebecca Lewis that Appellant told an inmate, Charles Young, to dispose of contraband because another inmate, Derick Flatt, had reported that Young had tobacco in his possession. Later that day, Young entered Flatt's cell and attacked him.

13. Holbrook interviewed Appellant on January 22, 2017. Appellant related to Holbrook that Flatt had entered the Captain's office and asked who occupied cell GB-F 110. Appellant answered that he wasn't sure. Flatt asked for the bed roster, which Appellant gave him. Appellant also admitted that he then went to cell F-110 and told the two men in the cell to get rid of any contraband because Flatt "had told on them to get out of a write-up."

14. Holbrook asked Appellant to explain his actions. Appellant answered that "he didn't want to see the inmates get in trouble because Flatt was telling lies on them."

15. On January 22, 2017, Holbrook interviewed Flatt. Flatt informed Holbrook that he had been written-up for having razor blades in his cell, because the blades might cause an officer to get cut in a cell search. Flatt then asked Captain Gillum if he could receive "help" with the write-up in exchange for information regarding other inmates who kept tobacco in their cells. Gillum told Flatt to get the names of the inmates, which Flatt was able to procure from the bed roster, which Appellant handed him. Later that day, at approximately 9:30 p.m., Young entered Flatt's cell and assaulted him.

16. After concluding his investigation, Holbrook found the allegations against Appellant substantiated. Holbrook's report, entered into the record as Appellee's Exhibit 3, was forwarded to Warden Meko on February 9, 2017.

17. Holbrook stated that Appellant's actions violated the following policies:

- CPP 3.1 Code of Ethics, II. B(3)(b), which forbids "providing a gift or favor to an offender, family of an offender, or agent except as authorized in the official performance of duties." (Appellee's Exhibit 4).
- CPP 3.1 Code of Ethics, II C(2), which forbids the release of confidential information without prior consent of appropriate authority within the Department of Corrections. (Appellee's Exhibit 4)
- LSCC Policies and Procedures, 03-01-01, K(11), which prohibits: "Engaging in any other activity which shall be deemed detrimental to the proper performance of ...duties as an employee of the Department of Corrections and LSCC or which comes into conflict with the attainment of goals and the mission of the Department and LSCC." (Appellee's Exhibit 6).

18. Through Holbrook's testimony, the LSCC "Conditions of Employment," signed by Appellant, was introduced into the record as Appellee's Exhibit 5. In this document Appellant acknowledged that he had read the document and agreed to abide by its terms. Part 2(c) of the document states that the employee has a duty to ensure that he "will not intentionally or negligently place any inmate in a position where his life or safety is jeopardized by fire, unsafe, unsanitary or dangerous working or living conditions."

19. Attached to the "Conditions of Employment" was a signed addendum entitled "Employee Confidentiality and Security Agreement." Appellant acknowledged in this document that accessing or releasing confidential information or records of the Department of Corrections could result in disciplinary action. (Appellee's Exhibit 5).

20. **Joseph Meko** is the former warden of LSCC. Prior to his retirement on August 1, 2017, Meko had been employed at LSCC for ten years. As Warden, Meko was responsible for all staff discipline.

21. Meko stated that he was familiar with Appellant through an Internal Affairs briefing he received from Lt. Holbrook on February 9, 2017, which found that Appellant had violated DOC policies and procedures.

22. Meko was asked to explain why Appellant's actions merited dismissal. He responded that "overfamiliarity with inmates is not good. Inmates are not friends. This is a serious security issue. In this case, an inmate got hurt, but he could have been killed. A prison is very different from other working environments. It is common for inmates to manipulate staff. That is why we cannot bestow favors on them."

23. Through Meko's testimony, the Intent to Dismiss letter, dated February 15, 2017, was introduced into the record as Appellee's Exhibit 7.

24. Appellant requested a pre-termination hearing, which was held on February 21, 2017. Present at the meeting was Warden Meko, the Appellant, and Serena Waddell, Human Resource Administrator. Meko stated that Appellant "admitted wrongdoing and was very remorseful. He said he needed the job and the insurance. But the charges against him were very serious and the decision was made to terminate." Meko added: "Maintaining a position of trust in a correctional environment is very important. The warning of a search cannot be tolerated."

25. Through Meko's testimony, the dismissal letter, dated February 27, 2017, was introduced into the record as Appellee's Exhibit 8.

26. At the end of Meko's testimony, Appellee rested its case.

27. Appellant, **Sean Green**, testified on his own behalf. Appellant was hired as a Correctional Officer at LSCC on April 4, 2016. He was dismissed February 28, 2017.

28. Appellant stated that some time before the January 10, 2017 incident, a razor blade had been found in Flatt's cell. Rather than sending him to segregation for the infraction, the attending officer, Captain Gillum, sent him back to his cell. According to Appellant, Flatt had negotiated a deal with Gillum wherein he would provide information regarding another inmate in exchange for not being placed in segregation.

29. Appellant first stated that he could not remember if he had allowed Flatt to look at the bed roster. Later in his testimony, Flatt noted that "[T]hey taught us at the Academy to tell the truth." He then clarified that "I agree that I did those things but lesson learned. I know now if that happens again to go to 'IA.' I didn't mean to cause a fight. It's common sense, but I wasn't meaning to harm staff or anyone...I just thought [Flatt] made stuff up to stay out of trouble."

30. On cross-examination, Appellant testified that he did not dispute that he allowed Flatt to look at the roster, or that he warned inmate Young of an impending cell search.

31. Appellant recalled **Joseph Meko**. Meko was asked why he did not let Appellant resign. Meko answered: "You could have resigned at any time."

32. KRS 18A.095(1) states:

A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.

33. 101 KAR 1:345, Section 1, states:

Section 1. General Provision.

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

FINDINGS OF FACT

1. Appellant Sean Green was a classified employee with status, employed by the Justice and Public Safety Cabinet, Department of Corrections, as a Correctional Officer at Little Sandy Correctional Complex.

2. On January 10, 2017, Appellant was assigned to work third shift in the Captain's office. Inmate Derick Flatt approached Appellant during the shift and asked if he could see the bed roster. By Appellant's own admission, both in an interview with Lt. Holbrook and at the evidentiary hearing, Appellant allowed Flatt to see the roster in order to identify which inmates occupied cell F-110.

3. Later that afternoon, Appellant went to cell F-110 and told the two inmates housed there to get rid of any contraband. According to his statement in the interview with Holbrook, Appellant admitted that he warned the inmates that Flatt "had told on them to get out of a write-up." When asked by Holbrook to explain his actions, Appellant answered that he "didn't want to see inmates get in trouble because Flatt was telling on them."

4. Later that evening, one of the inmates in cell F-110, Charles Young, entered Flatt's cell and assaulted him.

5. Derick Flatt filed a "Staff Conflict Report" against Appellant after the assault, which prompted an investigation into the incident by Internal Affairs, conducted by Lt. Holbrook. Holbrook's investigative report was completed on February 9, 2017, and forwarded to Warden Meko. According to his report, the charges against Appellant were substantiated.

6. Prior to January, 2017, Appellant had been counseled several times for poor work performance and received a verbal reprimand for failing to call in his absence from work according to protocol.

7. Appellant acknowledged on April 4, 2016, the conditions of his employment included the responsibility to ensure that inmates are not placed in a position where their life or safety is jeopardized. Appellant also acknowledged his understanding that releasing confidential Department of Corrections' information or records was a violation of the LSCC Employee Confidentiality and Security Agreement. (Appellee's Exhibit 5).

8. The Hearing Officer finds that Appellant's actions on January 10, 2017, specifically, his allowing Flatt to read the bed roster, warning inmates of an impending cell search, and telling those inmates that Flatt had acted as an informant against them, to be a violation of CPP 3.1 Code of Ethics, II, B(3)(b) and C(2), LSCC Policies and Procedures, 03-01-01, K(11), and the LSCC Employee Confidentiality and Security Agreement.

9. The Hearing Officer finds that while Appellant took responsibility for his conduct and was remorseful for his actions, his behavior demonstrated a woefully egregious lapse in judgment. His conduct was so far outside the realm of appropriate behavior for a Correctional Officer that dismissal was the appropriate disciplinary action.

10. The Hearing Officer finds that under all the surrounding circumstances of the case, the action of Appellee in terminating Appellant was neither excessive nor erroneous.

CONCLUSIONS OF LAW

1. Appellant's misconduct satisfied the elements of poor work performance and misconduct, pursuant to 101 KAR 1:345.
2. Appellant's misconduct meets the just cause requirement of KRS 18A.095(1).
3. The Cabinet was not arbitrary or excessive in its decision to terminate Appellant.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **SEAN GREEN V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2017-086)** be **DISMISSED**.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

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
January, 2018.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Alex Mattingly
Mr. Sean Green



Justice and Public Safety Cabinet
LITTLE SANDY CORRECTIONAL COMPLEX
505 Prison Connector
Sandy Hook, KY 41171
(606) 738-6133

Rodney Ballard
COMMISSIONER

Joseph Meke
WARDEN

February 27, 2017

Sean Green

Reference: Personnel Number

Dear Mr. Green:

On February 15, 2017, you received a letter from me notifying you of my intent to dismiss you from the position of Correctional Officer with the Department of Corrections, Little Sandy Correctional Complex. You were given five (5) working days from the date of receipt to request a Pre-Termination Hearing with me. On February 20, 2017, I received your request for a pre-termination hearing, which was scheduled for and took place in my office at 1:00 p.m. on February 21, 2017. Having considered your statements made during the pre-termination hearing and information I have gathered, I have determined that the clear weight of the evidence establishes that you committed the charges as outlined in my letter to you dated February 15, 2017.

Therefore, based on the authority of KRS 18A.095, you are hereby notified that you are officially dismissed from duty and pay effective the beginning of business Tuesday, February 28, 2017.

You are being dismissed from your position of Correctional Officer for violation of 101 KAR 1:345, Section 1 (unsatisfactory performance) for the specific reasons outlined in my letter to you dated February 15, 2017, and these reasons are again indicated as follows:

Misconduct, i.e., on January 21, 2017, it was discovered through a disciplinary report investigation on inmate Derick Flatt, #254483, conducted by Sergeant Bradley Prewitt, Segregation Unit Supervisor, then reported to Operations Lieutenant Rebecca Lewis and later to Internal Affairs Lieutenant Aaron Holbrook, that you provided information to Inmate Flatt and to another inmate, Charles Young, #214562, which caused Inmate Young to attack Inmate Flatt in his cell on January 10, 2017. Specifically, on the morning of January 10, 2017, you were the officer in F-Dorm when Inmate Flatt approached you as he came from the Captain's Office and he asked you who lived in cell F-110 and asked to see the bed roster. You gave him the bed roster which allowed Inmate Flatt to see who lived in that particular cell and figure out the name of who he was looking for in order to disclose information about that inmate and prevent him from getting a write-up. The inmate in question was Charles Young. You then proceeded go to Inmate Young's cell and tell him that if he had anything he wasn't supposed to have in his cell, that he better get rid of it because Inmate Flatt was going to tell on him to try to get out of trouble. Later that day, Inmate Young entered Inmate Flatt's cell and attacked him.

Recommended Order
Attachment A

APPELLEE'S
EXHIBIT

5

On January 22, 2017, you were directed to write occurrence reports about what took place between you and Inmate Flatt and you and Inmate Young. On that same date, Lieutenant Aaron Holbrook interviewed you about the incident. You stated that inmate Flatt did ask who lived in cell F-110 and then he asked to look at the dorm bed roster after coming from the Captain's Office and you gave the roster to him. You stated that Inmate Flatt said "Inmate Young and Inmate Cook live in the cell", and when you told him one guy worked in Prison Industries (PI), Inmate Flatt told you it was the guy that doesn't work in PI that he was looking for. You also stated that Inmate Flatt said "I didn't use to be like this before prison but I need to get out of some trouble." You informed Lieutenant Holbrook that once Inmate Flatt went back to his cell, you went to cell F-110 and told Inmate Young and Inmate Cook to get rid of anything they had because Inmate Flatt had told on them to get out of a write-up. When Lieutenant Holbrook asked you why you did that, you stated that you didn't want to see the inmates get in trouble because Inmate Flatt was telling lies on them to get out of trouble. Lieutenant Holbrook informed you that you caused Inmate Flatt to get beat up by Inmate Young and that it could have possibly been worse if Inmate Young had a weapon. You stated that you had good intentions, but you didn't think before acting.

You admitted in your occurrence reports and in your interview with Lieutenant Holbrook to giving an inmate access to the bed roster. The inmate should not have had access to the roster, as it had confidential information on it. Also, you admitted to tipping off another inmate to dispose of any contraband.

Your actions are in direct violation of:

- **Corrections Policy and Procedure 3.1, Code of Ethics, Section II, B, 3, b**, which states:
 3. *The following activities relate specifically to relationships with an offender and shall be prohibited:*
 - b. *Providing a gift or favor to an offender, family of an offender, or agent except as authorized in the official performance of duties.*
- **Corrections Policy and Procedure 3.1, Code of Ethics, Section II, C, 1, 2, and 3**, which states:
 - C. **Confidential Information**
 1. *See KRS 11A.040(1). An employee shall sign the Employee Confidentiality and Security Agreement prior to beginning his employment or prior to accessing any confidential information. The original shall be kept in the employee's personnel file.*
 2. *Any release of confidential information shall require the prior consent of the appropriate authority within Corrections. Failure to obtain prior approval may be grounds for disciplinary or other appropriate action.*
 3. *If it is determined that an employee released confidential information to anyone not authorized to receive the information, he may be prosecuted in accordance with Corrections policy, state or federal law, including KRS 11A.990.*

- **Little Sandy Correctional Complex Policy and Procedure 03-01-01, Item K, 11, which states:**
K. Prohibited Activities and Conduct (See CPP 3.1)

The following activities and conduct shall be prohibited at LSCC:

11. Engaging in any other activity which shall be deemed detrimental to the proper performance of your duties as an employee of the Department of Corrections and LSCC, or which comes into conflict with attainment of goals and the mission of the Department and LSCC.

You stated in your pre-termination hearing with me that you realize you did wrong, but you live and learn, and you should be given a second chance. You stated that you thought the inmate was making stuff up so he can get out of trouble, and you should have told Internal Affairs. You even stated that after the incident, Sergeant Bradley Prewitt asked you what if that guy made a shank, and you told him you didn't think of it that way. You said you didn't think the bed roster had confidential information on it because the inmate ID's have the same information on them, but that is not true. The rosters do have some confidential information on them, such as the programs the inmates are in. You stated you didn't remember if you handed the roster to the inmate, but in the investigation it was determined that you did. You also stated you didn't remember telling [Lieutenant] Holbrook that you were trying to get "them" [the inmates] out of trouble, yet the investigation showed that you tipped off inmates to get rid of anything they had because another inmate told on them to get out of a write up. You made a grave error in judgment as it caused an inmate to be physically assaulted by another and it allowed advanced warning to inmates of a cell search by other staff. It also posed a threat to the safety and security of the institution, staff and inmates. Your actions were unacceptable and cannot be tolerated. This indicates that you cannot hold or maintain a position of trust in a correctional environment.

Pursuant to KRS 18A.032, you will not be certified on future registers for employment within the Department of Corrections unless the Department of Corrections so requests.

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

Sincerely,


Joseph P. Meko
Warden

Attachments: Appeal Form

cc: Thomas B. Stephens, Secretary- Personnel Cabinet
Rodney Ballard, Commissioner - Department of Corrections
James Erwin, Deputy Commissioner, Office of Adult Institutions
Rodney Moore, Director - Division of Personnel Services
Personnel File