

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NOS. 2019-068 and 2020-014**

JAY HAWKINS

APPELLANT

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

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

APPELLEE

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The Board, at its regular July 2024 meeting, having considered the record, including the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order dated May 10, 2024, Appellant's Exceptions and Request for Oral Argument, Appellee's Response to Exceptions, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be approved with the following alteration:

A. **Delete** paragraph 8 in the Background section on page 6 and substitute the following:

6. On February 7, 2024, Hearing Officer Stafford Easterling conducted a Post Hearing Conference, with counsel for both parties appearing by telephone. After a discussion of the issues and motions, the parties agreed there was no need for additional testimony, and that they would submit documents and arguments by March 8, 2024. Counsel for the Appellee did not submit anything further and this matter was submitted to the Hearing Officer for a decision. However, on March 8, 2024, counsel for the Appellant emailed Appellant's Exceptions with attachments to Hearing Officer Stafford Easterling's email address. Mr. Easterling resigned February 9, 2024, and Board staff were unaware of the emailed exceptions until counsel for the Appellant questioned Board staff, by email, about the Exceptions not having been filed after he had received a copy of the Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order. Thereafter, the Appellee filed its Response to Exceptions.

IT IS FURTHER ORDERED that the Appellant's Request for Oral Argument is **DENIED**, and the Recommended Order of the Hearing Officer, as Altered, be approved, adopted and incorporated herein by reference as a part of this Order, and the Appellant's appeals are 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 18th day of July, 2024.

KENTUCKY PERSONNEL BOARD



**GORDON A. ROWE, JR.
SECRETARY**

A copy hereof this day emailed and mailed to:

Hon. Ben Wyman
Hon. Edward Baylous
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney Moore

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PERSONNEL BOARD
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VS.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
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**JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS**

APPELLEE

** ** * * * ** **

This matter came on for an evidentiary hearing on March 23 and 24, 2022, May 6, 2022 and June 29, 2022, at 9:30 a.m., each day at 1025 Capital Center Drive, Suite #105, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Jay Hawkins, was present and was represented by the Hon. Ben Wyman. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Edward Baylous. Also present for the Appellee was Warden Anna Valentine and Paralegal Deanna Smith.

BACKGROUND

1. The Hearing Officer notes Appeal No. 2019-068 was filed with the Personnel Board on March 29, 2019. On the Appeal Form, the Appellant, a classified employee with status, indicated he was appealing a ten (10)-day suspension. The Appellant further explained his claims in an attachment to the narrative portion of the Appeal Form wherein he states, in pertinent part:

My suspension letter lists several reasons how my action placed the inmate and the institution in potential harm. I see no actions taken that considering the personal issues involved, the hesitation to report could not be explained. My complaint was serious and as

such, could not be undo once reported. Facts had to show there was probable cause and not just another rumor. This was an inappropriate conduct complaint not a PREA. I was also talking about someone who I had a relationship with for three years and did not want one incident to ruin their career or to be the subject of rumors. The fact that there was no actions taken against the female staff member nor was she ever separated from the inmate, in accordance with PREA regulations, shows there was no threat to security, staff or the institution. [sic]

I am asking that the charges be dismissed and no action taken. There are multiple parts of the charges against me that are either in error or not based on facts. Since the minute I reported the incident I have felt like the full attention was on the witness and not the person accused of the inappropriate action. I also received a verbal warning and Written counseling for the same issue just days prior. How can I get all three on the same issue. [sic]

2. On January 13, 2020, the Appellant filed Appeal No. 2020-014. He was appealing his dismissal. The Appellant attached the following statement to his Appeal Form:

I ended a personal relationship with Melissa Hall, a Unit Administrator at Kentucky State Reformatory, in December of 2018.

On March 6, 2019, Melissa Hall entered the facility after hours, took an inmate into her office and remained there for over an hour. On its face, this behavior is improper, and I knew it to be against policy and best practices. I observed Ms. Hall's rendezvous with the inmate via security cameras. On March 7, 2019 I reported the incident with Ms. Hall and the inmate to an employee who I trusted and asked them to file an anonymous complaint on my behalf. Two hours later, I was summoned to a meeting with Internal Affairs Lt. Grooms and PREA Compliance Manager Daniel King, where I was asked if I was the anonymous person who filed the report. I plainly stated that I did not go to management directly with my concern about Ms. Hall

because I did not trust management to be impartial, based partly upon the fact that Ms. Hall and Warden Anna Valentine are close friends.

The very next day, March 8, 2019, Deputy Warden Jesse Stacks, in response to my assertion that I didn't trust certain administrators, ordered me to put *in writing* the supervisors I did not trust and why I did not trust them.

On March 12, 2019, I discovered that an Extraordinary Occurrence Report was created with my personal statement against Melissa Hall, that it had been made accessible to all employees and had indeed been viewed by other staff; all of this was improper. I immediately brought this to the attention of Deputy Warden Jesse Stacks and PREA Compliance Manager Daniel King. Two days later, on March 14, 2019, I filed an EEOC complaint. Ten days later I received a 10-day suspension (which has been previously appealed separately from this appeal).

On April 11, 2019, I filed a second EEOC complaint and a formal grievance.

In November of 2019, in collaboration with KSR Management, Melissa Hall filed an emergency protective order. The petition was denied.

Later in November I received notice of intention to terminate me on the grounds that I failed to provide notice in my hiring process of the reasons I left my corrections position in Maryland. In a December 4, 2019, hearing with Warden Valentine, I told her I explicitly described, *in writing on my application for employment*, the grounds upon which I left my Maryland corrections position, and also explicitly described that in my team interview I was never directly or impliedly asked about my previous employment (but rather only presented with a variety of work-related scenarios and asked how I would respond). My performance in that meeting was such that the members of the leadership team interviewing me each wanted me for their respective units.

Not once during my years of service to KSR was my previous employment or my credibility ever an issue until the events of 2019. In light

of those events briefly described above, the reaching back to my hiring process to now create new grounds to fire me appears on its face pretextual.

Despite clearly and directly answering Warden Valentine's challenges to my credibility and integrity, I was terminated effective December 6, 2019. I am appealing Valentine's dismissal decision.

3. Issue for the evidentiary hearing: Whether there was just cause for the suspension and dismissal of the Appellant and whether those penalties were excessive and erroneous. The burden of proof was on the Appellee and was by a preponderance of the evidence.

4. **Witnesses:**

a. For the Appellee:

- 1) Jay Hawkins, Appellant
- 2) Warden Anna Valentine, KSR (Warden Valentine)

b. For the Appellant:

- 1) Gena Milchick, Former Classification and Treatment Officer, KSR (Gena Milchick)
- 2) Deputy Warden Jesse Stack, KSR
- 3) John Milchick, Lieutenant, RCC
- 4) Cody St. Clair, Internal Affairs Captain, RCC
- 5) Travis St. Clair, Major, KSR
- 6) John Grooms, Internal Affairs Lt., KSR (Grooms)
- 7) Daniel King, PREA Compliance Manager, KSR (King)
- 8) Jeff Eiser, Criminal Justice Consultant (Eiser)
- 9) Melissa Hall, Unit Administrator, KSR (Hall)
- 10) Jay Hawkins, Appellant

c. Appellee Rebuttal:

- 1) Tammy Lou Wright, HR, EEO
- 2) Captain Tim Forgy, LLCC (Forgy)
- 3) Deputy Warden Arnold Chism, RCC (Chism)

5. Exhibits:

a. Appellee's Exhibits:

- 1) Complaint, Franklin Circuit 20-CI-00234 (with attachments)
- 2) Memorandum, July 19, 2011, Statement of Charges – Dismissal
- 3) Memorandum, August 26, 2011 – Notice of Disciplinary Action – Dismissal
- 4) Arbitration, Case 8:12-cv-00623
- 5) Application
- 6) Interview Questions – Correctional Officer
- 7) Appeal Form, 2019-068
- 8) Suspension Letter, March 27, 2019
- 9) Dismissal Letter, December 5, 2019
- 10) Email chain, Randy White, Rodney Moore, CC Jesse Stack
- 11) Email chain, Tammy Lou Wright, Anna Valentine, CC Heather Churchman, Jesse Stack

b. Appellant's Exhibits:

- 1) PREA – National PREA Resource – February 6, 2020
- 2) Federal Register
- 3) Supervisor's Handbook – Kentucky State Reformatory
- 4) Annual Employee Performance Evaluation 2016
- 5) Annual Employee Performance Evaluation 2017
- 6) Annual Employee Performance Evaluation 2018
- 7) Annual Employee Performance Evaluation 2018 Updated scores, not crossed out
- 8) Jeff Eiser Resume
- 9) List of Cases – Jeff Eiser Testified Regarding
- 10) Petition/Motion for Order of Protection
- 11) Report 3/8/2019 – to DW Jesse Stack
- 12) 6/16/15 – Personnel Action Request (PAR)
- 13) PAR 6/16/15 – more redactions
- 14) PAR 6/30/15
- 15) PAR 6/30/15 – Howard signature
- 16) PAR 6/30/15 – Howard and Underwood signatures

- 17) PAR 11/15/16 – Smith signature
- 18) PAR 11/15/16 – all signatures
- 19) Memo, 3/14/19 to Sherry Mtez
- 20) EEOC Complaint, 4/11/19
- 21) Access List

6. After the conclusion of the Evidentiary Hearing, counsel for the Appellant filed a written Closing Argument and Proposed Findings of Fact, Conclusions of Law and Order. Counsel for the Appellee filed a Closing Brief.

7. On September 13, 2023, counsel for the Appellant filed a document titled “Appellant’s CR 61.02 Motion to Re-Open Proof, Motion to Strike the Testimony of Anna Valentine, Motion for Sanctions for Failure to Disclose Exculpatory Evidence.” On November 14, 2023, counsel for the Appellee filed a “Response to 61.02 Motions.” On November 27, 2023, counsel for the Appellant filed a Reply and a Surreply (which appear to be the same).

8. On February 7, 2024, Hearing Officer Stafford Easterling conducted a Post Hearing Conference, with counsel for both parties appearing by telephone. After a discussion of the issues and motions, the parties agreed there was no need for additional testimony, and that they would submit documents and arguments by March 8, 2024. Neither counsel submitted anything further and this matter was submitted to the Hearing Officer for a decision.

9. This matter has been assigned to Hearing Officer Mark A. Sipek for entry of Findings of Fact, Conclusions of Law and Recommended Order.

FINDINGS OF FACT

1. The Appellee terminated the Appellant from his employment as a Correctional Lieutenant at the Kentucky State Reformatory (KSR) because he failed to disclose on his application and during his interview that he had been terminated for misconduct by the Montgomery County (Maryland) Department of Corrections and Rehabilitation. The evidence established there was just cause for the Appellant’s dismissal, which was neither excessive nor erroneous.

- a. The Appellant was terminated for substantial policy violations, including lying during an investigation and establishing an inappropriate relationship with an inmate by the Montgomery County (Maryland) Department of Corrections and Rehabilitation on September 9, 2011. The Appellant challenged this decision, however, it was upheld by an arbitrator. (Testimony of the Appellant, Warden Valentine, and Appellee's Exhibits 2, 3, and 4).
- b. The Appellant failed to disclose his reason for leaving his job with the Montgomery County Department of Corrections and Rehabilitation when he submitted his official online application for employment as a Correctional Officer at the Kentucky State Reformatory in February 2015. (Testimony of the Appellant, Warden Valentine, and Appellee's Exhibit 5).
- c. The Appellant was interviewed by a four (4) member interview team in 2015 and was asked, "Have you ever been dismissed or asked to resign from any job?" The Appellant answered, "No" despite the fact he had been dismissed by the Montgomery County Department of Corrections and Rehabilitation in 2011. (Testimony of Warden Valentine, Forgy, and Chism, and Appellee's Exhibit 6).
- d. The Appellant was hired at the Kentucky State Reformatory in 2015 and was subsequently promoted to Correctional Lieutenant. He would not have been hired in 2015 if he had disclosed his 2011 termination from Montgomery County Department of Corrections and Rehabilitation. (Testimony of Appellant, Warden Valentine, Forgy, Chism, and Appellee's Exhibit 9)
- e. The Appellant alleged he submitted a handwritten application to a Lieutenant at the Luther Lockett Correctional Complex in which he disclosed his earlier termination from employment. The handwritten application was not introduced into evidence and the Lieutenant was not called as a witness. More importantly, in 2015, when the Appellant was hired by the Appellee, only applications

submitted online were utilized in the hiring process. The alleged handwritten application was not a part of the Appellant's official personnel record and was not viewed by members of the interview panel. (Testimony of the Appellant, Warden Valentine, Forgy, and Tammy Lou Wright).

- f. The Appellant also alleged that, during the interview, he misunderstood the question about being fired from a previous job or the members of the interview panel misunderstood his answer. The Hearing Officer does not find the Appellant's explanation credible. Forgy and Chism testified forcefully and credibly that each question was asked carefully and separately. This testimony was also supported by contemporaneous documentation through their interview sheets. (Testimony of Appellant, Forgy, Chism, and Appellee's Exhibit 6).

- g. Finally, the Hearing Officer finds Warden Anna Valentine's (Warden Valentine's) testimony credible that the Appellant was dismissed because he failed to disclose his previous dismissal from a corrections job and that he would not have been hired in the first place if he had. The Appellant's theory is that Warden Valentine was motivated by her friendship for Melissa Hall. He alleged that he was fired because the Warden did not like the way he treated Hall. The Hearing Officer does not find this testimony presented by the Appellant and his witness credible.

2. The Appellee suspended the Appellant for ten (10) days from his position as a Correctional Lieutenant for misconduct and violation of Corrections Policies and Procedures.

The Appellant was suspended because:

- 1. He failed to promptly report activity he found suspicious between a staff member and an inmate;

- 2. He made the report to an inappropriate person when he finally did report it;

3. He accessed the institutional camera system to conduct his own investigation without authority; and
4. He accessed the Appellee's computer system, Kentucky Offender Management System (KOMS), to access and copy a confidential Prison Rape Elimination Act (PREA) report.

3. The Appellee proved these allegations, establishing just cause for the Appellant's ten (10) -day suspension and that the penalty was neither excessive nor erroneous.

- a. The Appellant admitted he performed all the actions outlined in the suspension letter. He argued he was justified in his actions and that his actions were authorized by policy. (Testimony of the Appellant, Warden Valentine, Chism, Gena Milchick, and Appellee's Exhibit 1, 7, and 8).
- b. The Appellant was involved in a personal relationship with Unit Administrator, Melissa Hall. During their relationship and after their breakup, he suspected Hall of having an inappropriate relationship with an inmate. The Appellant witnessed incidents he believed were suspicious in December 2018, on February 13, 2019, and March 6, 2019. He did not report his suspicions to anyone on these dates. (Testimony of Appellant, and Appellee's Exhibits 1 and 8).
- c. Instead, the Appellant reported his suspicions to Classification and Treatment Officer Gena Milchick on March 7, 2019. Milchick was not a supervisor, did not work in Internal Affairs, and was not the PREA Compliance Manager. As a Lieutenant, and a PREA Investigator himself, the Appellant should have known how to report his suspicions whether he thought he was reporting a potential PREA violation or inappropriate conduct. The Appellant's fear that his report would be discounted because of his prior relationship with Hall did not give him license to violate

policy. (Testimony of Appellant, Warden Valentine, Gena Milchick, Grooms, King, and Appellee's Exhibits 1 and 8).

- d. The Appellant also violated policy when he accessed the institutional camera system, thereby conducting his own investigation of Hall, his former girlfriend. (Testimony of Appellant, Warden Valentine, and Appellee's Exhibits 1 and 8).
- e. Finally, the Appellant violated policy when he accessed the PREA report on KOMS when he had no authority to access it. (Testimony of the Appellant, Warden Valentine, Grooms, King, and Appellee's Exhibits 1 and 8).
- f. The Appellant's actions violated Corrections Policy and Procedure, CPP 3.23 and CPP 14.7
- g. The Appellant's critique of the Appellee's PREA investigation does not mitigate his admitted misconduct and is not relevant.
- h. The Hearing Officer finds the testimony of Grooms, King, and Hall credible. The Hearing Officer finds Warden Valentine's testimony credible that she suspended the Appellant because of his failure to follow policy and not because of her alleged friendship with Hall. (Testimony of the Appellant, Warden Valentine, Grooms, King, and Hall).

4. The Appellant was not targeted by the Appellee and was appropriately suspended and dismissed because of his actions and inactions.

5. The Hearing Officer finds that the credibility of Warden Valentine is not damaged in any way by the "Appellant's CR 61.02 Motion to Re-Open Proof, Motion to Strike the Testimony of Anna Valentine and Motion for Sanctions for Failure to Disclose Exculpatory Evidence." Warden Valentine was testifying about employment applications when she stated that the Appellee did not accept written applications around the time the Appellant was hired. The fact that Warden Valentine had a handwritten application from the Appellant for VA

Educational Benefits does not in any way impeach her testimony. Further, the Appellant has waived any claim to re-open proof and there is no basis for sanctions against the Appellee.

CONCLUSIONS OF LAW

1. The Appellee carried its burden of proof that there was just cause for the suspension and dismissal of the Appellant. KRS 18A.095(1) and KRS 13B.090(7)

2. The Appellee carried its burden of proof that the ten (10) -day suspension and dismissal of the Appellant were neither excessive or erroneous. KRS 18A.095(22) and KRS 13B.090(7).

3. The Appellant's dismissal was also supported by KRS 18A.032(1)(c) and KRS 18A.145.

4. The Appellant's actions and inactions constituted a Lack of Good Behavior and justified the disciplinary actions. 101 KAR 1:345.

5. The Appellant's actions violated Corrections Policy and Procedure, CPP 3.23 and CPP 14.7 (codified in 501 KAR 6:020).

6. Because all the events underlying this Appeal occurred before the effective date of Senate Bill 153, all references to KRS Chapter 18A are to the sections in effect at the time of the events associated with this Appeal.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **JAY HAWKINS VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NOS. 2019-068 AND 2020-014)** 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 fifteen (15) 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).

[Hearing Officer Note: Any document filed with the Personnel Board shall also be served on the opposing party.]

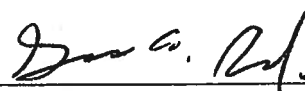
The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov

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** Mark A. Sipek this 10th day of May, 2024.

KENTUCKY PERSONNEL BOARD



**GORDON A. ROWE, JR.
EXECUTIVE DIRECTOR**

A copy hereof this day emailed and mailed to:
Hon. Edward Baylous
Hon. Ben Wyman
Hon Rosemary Holbrook (Personnel Cabinet)