

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-254

CHARLES LEWIS

APPELLANT

VS.

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF JUVENILE JUSTICE

APPELLEE

*** **

The Board, at its regular January 2021 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated November 17, 2020, 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 January, 2021.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Jamhal Woolridge
Hon. Peter Whaley
Ms. Cynthia Watson

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
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APPELLEE

* * * * *

This matter came on for an evidentiary hearing on August 11, 2020, at 9:30 a.m., EST, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were conducted by video teleconference using Amazon Chime. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Charles Lewis, was present, and was represented by the Hon. Peter Whaley. The Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and represented by the Hon. Jamhal Woolridge. Also present for the Appellee was Agency representative, Larry Milburn.

The parties were informed that the permanent recording of the proceedings would be an audio recording. The video recording would be of the Personnel Board's hearing room and would not show what the participants were seeing on their screen at the time of the hearing.

BACKGROUND

1. The Appellant, Charles Lewis, filed his appeal with the Personnel Board on November 18, 2019, from his dismissal by the Justice and Public Safety Cabinet, Department of Juvenile Justice (DJJ).

2. Following a pre-hearing conference and a period of discovery, this matter was scheduled for an evidentiary hearing. The burden of proof was assigned to the Appellee to establish just cause for the dismissal of the Appellant and to prove that the dismissal action was neither excessive nor erroneous. The parties agreed to conduct the evidentiary hearing by video teleconference.

3. At the beginning of the evidentiary hearing, the parties waived opening statements and proceeded directly to presenting testimony.

4. The Appellee DJJ called **Larry Milburn** as its first witness. Milburn is the Assistant Superintendent at the Northern Kentucky Youth Development Center. Milburn has a number of years' experience with DJJ, and has served as a Youth Worker and a supervisor before promoting to Assistant Superintendent. In his current role, he provides overall supervision to the Youth Worker staff at the facility. The main objective of the Northern Kentucky Youth Development Center (NKYDC) is to provide treatment, education, and other services to adjudicated youth.

5. Milburn testified that Charles Lewis was employed as a Youth Worker III at NKYDC. Lewis' duties include participating "in juveniles individual treatment plan development" and ensuring "security room checks are performed during shifts." Lewis was also responsible for maintaining "shift logs regarding juveniles' behaviors and events." (Appellee's Exhibit 9, Position Description for Charles Lewis, Task #2 and Task #3.)

6. DJJ facilities are run pursuant to a number of policies. Employees are asked to sign Annual Policy Acknowledgement forms to memorialize an employee's understanding of those policies. DJJ introduced a number of these forms into evidence, including the form Charles Lewis signed for 2019. (Appellee's Exhibit 8.) This form includes the following statement, "I have reviewed the following policies, agreements and/or handbooks and shall be responsible for its contents and any updates that may occur. Updates may be found and accessed online on the document center (Personnel items/personnel actions/forms)."

7. Milburn prepared a Request for Disciplinary Action regarding Charles Lewis dated July 24, 2019. (Appellee's Exhibit 10.) The Request for Disciplinary Action focuses on Lewis' involvement with a youth placed in isolation. Lewis was the supervisor on duty for a shift at NKYDC beginning April 9, 2019, at 11:30 p.m. and continuing until April 10, 2019, at 6:45 a.m. These events were previously investigated by the Internal Investigations Branch of the Justice and Public Safety Cabinet, which resulted in a substantiated finding that "staff does not provide appropriate supervision." Lewis completed documentation that claimed he performed 46 direct visual observations of the youth in isolation. A review of the camera footage shows that Lewis went to the isolation room door to conduct a direct visual observation of the youth only 36 times. On 10 other occasions, Lewis failed to provide direct visual observation of the youth, yet he had documented he had conducted the required visual observation on the observation log. Milburn also reported that, as the supervisor on duty, Lewis also failed to open the door to the youth's room to provide a wellness check. The youth in question was not only in an isolation cell, but was also in mechanical restraints during the entire shift. In the request for discipline, Milburn also points out that Lewis is a ten-year employee of DJJ and has only had one supervisory conference, which was during his first few months of employment.

8. Milburn sent the Request for Disciplinary Action to his Facilities Regional Administrator, the Division Director, the Deputy Commissioner, and the Commissioner. Milburn's report included a statement from Lewis giving his version of events. Lewis stated that the second shift supervisor, Mr. Saylor, told him that the youth was to remain in mechanical restraints until morning wakeup due to safety and security. Lewis admitted that it is documented that he did not do nine physical checks on the youth while in isolation. Lewis stated that during

these nine checks he had “visual” of the youth through live camera feed of the isolation room. He stated he was unable to do the physical checks due to mandated paperwork and checks on other youth sent to intensive supervision rooms. Lewis stated that, on some occasions, another staff member was in the room with the youth. He also stated that Saylor told them not to enter the room for safety and security reasons. Lewis stated that, during the night, the youth pulled the mattress over the top of himself. Though they did not enter the room, they were able to see the youth moving under the mattress. Lewis ended his statement by saying, “Upon reviewing policy, I better understand the importance of physical checks on the youth.”

9. Attached to Milburn’s report was DJJ Policy 324 regarding restraints. This policy reads, in part, as follows:

IV. PROCEDURES

C. Three (3) types of restraints approved by the department shall be:

...

2. Mechanical Restraint

...

g. Staff shall check youth every fifteen (15) minutes during the mechanical restraint episode to ensure the youth is not in physical distress.

i. Documentation shall be made on the youth observation log.

10. Milburn also attached DJJ Policy 323, Isolation, to his report. This policy states, in part, as follows:

IV. ...

I. ...

9. Staff shall monitor the youth in intervals, not to exceed fifteen (15) minutes, for the youth’s compliance with the plan for release criteria. These checks shall involve **direct visual contact** with the youth and the time between checks shall be random. (Emphasis added.)

11. Milburn attached DJJ Policy 110, General Security Guidelines in Facilities and Programs. This policy calls for bed checks of youth while they are sleeping or while in isolation every fifteen (15) minutes. This policy reads, in part, as follows:

IV. ...

A. ...

6. ...

a. Staff shall observe residents and conduct bed checks at random, staggered intervals not to exceed fifteen (15) minutes during sleep hours and any time a youth is secured in a cell/room for any reason, including but not limited to, intake, isolation, time-out, room restriction, sick call, bed rest, or known AWOL risk. Precise 15 minute checks are not acceptable, since such checks allow youth to predict and monitor the movements of staff.

...

e. All documentation regarding youth observations, bed checks, shall accurately reflect the monitoring of the staff who conducted the check. Staff shall not document a bed check on behalf of another staff.

12. This same policy also requires that observation include that the resident's head is uncovered and that the resident is in no apparent distress.

13. Also included with the request were the supervisory conference of the Appellant from 2009, a commendation from 2017, and Northern Kentucky Youth Development Center Policy and Procedure No. 915.

14. Milburn testified that Lewis admitted he documented checks for other coworkers. Milburn testified that there is no procedure that allows a staff member to conduct a bed check using a live camera feed. Milburn testified that it is important that staff directly observe residents. If there is a need for more staff, the shift supervisor is responsible for calling in more staff. Milburn pointed out that video does not provide sound, and it is against policy to rely on video for bed checks. He stated that other staff members such as, Gideon, who is a teacher, and Nurse Pence are not responsible for bed checks.

15. Milburn introduced Appellee's Exhibit 2-C, which was a video of the youth in isolation. This video showed that he was covered by a mattress. Milburn testified that it is necessary to open the door if the youth does not respond. He stated that it is necessary to make sure that the youth is not suicidal or in any other distress.

16. On cross-examination, Milburn testified he was aware that, at the time of his report, the youth had assaulted staff the night before. Milburn acknowledged that DJJ Policy 324 regarding restraints was effective April 5, 2019, and this incident occurred on April 9, 2019. He also acknowledged that Lewis signed a policy acknowledgement on March 5, 2019, before this policy was changed.

17. On redirect, the Appellee introduced Appellee's Exhibit 12, which is 28 CFR, Section 1-15-3-13. This is a federal regulation, which calls for minimum staffing ratios of one staff for every eight (8) residents during waking hours and one staff for every sixteen (16) residents' during sleeping hours.

18. The Appellee called **Miranda Rogers Gray**. She is a Special Investigative Agent III with the Internal Investigations Branch within the Justice and Public Safety Cabinet. Her job duties include conducting investigations and writing reports.

19. Gray was involved in an investigation at the NKYDC after she received a hotline telephone call. The investigation involved the restraint of a youth who was kept in handcuffs.

20. Gray went to the facility as a part of her investigation. She learned that the youth was kept in full mechanical restraints overnight. The youth was kept in isolation for 43 hours.

21. Gray completed her investigation report, which was admitted into evidence as Appellee's Exhibit 1. This exhibit consisted of 183 pages. She stated that she investigated a number of issues, one of which applied to Charles Lewis. This allegation was that "During the course of the investigation, staff documented direct observations noted on Isolation Observation Log were compared to video footage and revealed discrepancies. Therefore, the entire Isolation Observation Log was compared to the video footage (internal isolation room and external hallway footage) provided by Northern Kentucky YDC." Her conclusion was that the allegation was substantiated.

22. Gray stated that Lewis was the shift leader, a Youth Worker III, with 10 years' experience. Gray interviewed Lewis on May 2, 2019. Her summary of this interview is contained at pages 44-45 of this investigation (Appellee's Exhibit 1).

23. Lewis told her he arrived at the facility on April 9, 2019, around 11:15 p.m. He was briefed by second shift supervisor Saylor regarding the youth and the fact that he was in isolation and in mechanical restraints. Saylor recommended that Lewis leave the mechanical restraints on the youth, due to the fact that the youth had assaulted two staff members on two separate occasions. Lewis reported the youth appeared to be asleep on his mat in mechanical restraints at the start of third shift.

24. Gray's summary of the interview includes the following:

Lewis stated, "I left him in the (mechanical restraints) on third due to him being a security risk with us. Whereas we only run with

three staff, two males and one female. And he had already assaulted two male staff previously in the day. We weren't going to take a chance of having him in the middle of the night deciding he was going to assault two of us and have 18 other kids with one female trying to watch them and possibly starting a riot." When asked if he should have attempted to see if youth wanted the restraints removed during the night, Lewis stated, "Yes. We probably should have at least attempted to open the door. My biggest fear was that it was a safety and security thing." Lewis reported he had no conversations through the night with Hoehn or Saylor regarding the continued use of mechanical restraints on _____. Lewis reported he took the mechanical restraints off the youth the following morning around 7 a.m.

25. Gray's report included the fact that Lewis stated he was not aware of the time restrictions for the use of mechanical restraints. He also was not aware of the fact that the youth being in mechanical restraints had to be documented on the log. Jones, another third shift employee, brought this to his attention and Lewis directed Jones to go back and add "with handcuffs" to the log.

26. Gray questioned Lewis regarding an entry on page three of the Isolation Observation Log, at 6:12 a.m. The log reads: "_____ offered a shower and refused due to not responding. Laying on the bunk, covered up with mattress." Lewis told Gray he knocked on the window several times asking if the youth wanted a shower and the youth did not respond. He thought the youth was ignoring him. Lewis stated the youth was laying on the concrete portion of the bunk with the mattress pulled over him. Lewis stated he could not see any part of the youth, only the outline of his body under the mattress. Although he received no response, Lewis did not go into the isolation room to check on the unresponsive youth.

27. Gray identified pages 135 – 142 of her report as the Isolation Observation Log.

28. Gray completed a bed check spreadsheet, which was included in her report, beginning at page 171. This spreadsheet showed that, according to the log, Charles Lewis conducted bed checks at 12:36 a.m. and 12:50 a.m. on April 10, 2019. The video showed that these checks were performed by Youth Worker Young. On the Lewis spreadsheet, Gray found numerous occasions where, according to the video, Lewis completed a bed check, however, the log indicated that another staff member completed the check. There were also at least three occasions where Lewis logged that he did the bed check when another employee completed the bed check.

29. Gray conducted a second interview with Lewis on June 13, 2019. A summary of this interview is contained at page 58 of her investigation. Gray summarized this interview as follows:

Lewis explained that bed checks are conducted to make sure the youth is still breathing, safe, and secure. While conducting bed checks, Lewis is looking for signs of life like movement and breathing. Lewis also wants to confirm that the youth is not attempting to hurt themselves as well. Lewis reports that if he did not witness signs of life, he would open the door to see what was going on with the youth.

Lewis confirmed that Saylor recommended that the youth stay in isolation all night due to assaulting staff. Lewis could not recall if Saylor instructed him against opening the isolation door or whether he mentioned anything about removing the handcuffs and leg shackles.

In hindsight, Lewis explained that he should have opened the isolation door when _____ was handcuffed and shackled, wrapped in a mattress pad, and not visible. Lewis also added that if the youth continued to wrap himself in the mattress pad, that he should have come up with an alternative plan to allow the youth to sleep safely. Lewis acknowledged that, without a visual on the youth, he could not know what was going on under the mattress. If the youth has his head and legs tucked into a shirt, Lewis would open the isolation door to check on the youth if he had not seen any movement from the youth.

Lewis added that there would be no reason for a bed check to be documented and not actually conducted. If he had missed a bed check, the reason should be documented on the log. Lewis explained that he would write down bed checks for other staff once they are conducted and vice versa. Lewis was aware documenting work for other staff or allowing staff to document his work on the log was not appropriate.

30. Gray testified it is against DJJ policy to document bed checks on behalf of other staff or have other staff document on behalf of an employee. She stated that, according to policy, if there is a lack of a response from a youth, staff should go in and check on the youth. She stated that video monitoring of a youth is not acceptable and bed checks must be done by direct observation. She specifically mentioned that at 6:12 a.m. when the youth was offered a shower and did not respond, Lewis should have gone in and checked on the youth. She stated it was also wrong to add information after the fact, such as "in handcuffs."

31. On cross-examination, Gray stated she was aware of the events leading up to the restraint. She stated that the youth was told to go to timeout and refused. She stated that he was restrained by two employees and he resisted the restraint.

32. Gray testified her investigation showed that Saylor told third shift staff, "Don't go in there."

33. After reviewing the policies, including Appellee's Exhibit 10, DJJ Policy 3.23, Gray testified that direct visual contact includes looking through the window in the door. She stated it does not include looking at a video. She stated that the videos she reviewed were overhead in the youth's isolation cell and the second video was in the hallway.

34. Gray testified that if any bed checks are missed, that information should be documented, including the reason the bed check was missed.

35. After a break, Gray was recalled to the stand and introduced Appellee's Exhibit 2-C, a video looking into the youth's cell. This video shows that, at 6:11 a.m., the window was opened and the youth was covered. Gray also testified that, at 5:12 a.m., the video showed that another staff completed a bed check and Lewis signed the log.

36. The Appellee called **George Scott**, the Deputy Commissioner, as a witness. He has served in that position for approximately one year. At the time of this incident, he was the Facility Regional Administrator for the Western Region. He has a total of 21 years' experience with DJJ. As a Facility Regional Administrator, he was in charge of seven facilities, including NKYDC. He was aware of the allegations from April 2019.

37. Scott testified that DJJ takes the bed checks seriously. He discussed an incident that occurred in January 2016 at the Lincoln Village YDC, where a youth died. He stated that, since that time, there has been a great push to make sure that staff conduct and accurately document bed checks.

38. Scott reviewed the investigation report, which showed that, out of 46 bed checks that were documented, Lewis did 36.

39. Scott agreed that dismissal was the appropriate penalty for this misconduct. He testified that falsifying the documentation was worse than missing the check. He stated that the DJJ standard was well known.

40. During his testimony, Scott introduced Appellee's Exhibit 13, which was the Intent to Dismiss, and Appellee's Exhibit 14, which was the dismissal letter. Lewis was charged with failure to conduct four bed checks, which he documented that he did. It was also stated that, during this time, Lewis was aware that a mattress covered the youth and the youth was not visible. He was charged with failure to provide appropriate supervision of a youth. It was also stated that, as a supervisor, he had a heightened responsibility to know, understand, and follow policy. Appellee's Exhibit 14 is attached hereto and incorporated herein as **Recommended Order Attachment 1**.

41. Scott also introduced Appellee's Exhibit 15, which was DJJ Policy 104, Employee Code of Conduct. Section IV(I) of this policy reads, as follows:

All employees of DJJ shall be truthful when questioned by a supervisor, an investigator, or when completing paperwork.

42. DJJ recalled **Larry Milburn**. He testified that Academy training for all staff includes information on how to conduct bed checks. They are not instructed to use video. DJJ rested its case. The Hearing Officer asked for the Appellee to introduce the earlier version of DJJ Policy 3.24.

43. The Appellant, **Charles Lewis**, testified on his own behalf. He started with DJJ in 2009. In his ten years with DJJ, he only had one write-up prior to this incident.

44. Lewis testified that he was scheduled to start work at 11:30 p.m. on April 9, 2019, and arrived about five minutes early. Saylor, the supervisor from second shift, informed him about the youth in isolation. They were both aware that there were only three staff on third shift. Lewis stated that Saylor told him, "Do not remove the cuffs or shackles from the resident." Lewis stated they had 19 residents and two units. He stated that, with an assaultive youth like this, they would not go in the isolation room unless there were two of them. That would leave only one other staff member to watch all the rest of the youth. He did not think it would be safe under these circumstances to enter the isolation room. They did not receive any help until 6 a.m.

45. In addition to running the facility with only three staff, two units, and a youth in isolation, Lewis testified that they were responsible for conducting bed checks, doing laundry, seeing that staff received breaks, and checking the grounds. As the supervisor, he did most of the bed checks. He stated that they are required to have sight and sound observation. He believed that the live camera counted as sight, and he was close enough to hear anything from where he was located. He stated he was approximately 25 feet from the isolation room and could hear anything that was going on. "We're short-staffed until morning." Lewis testified he was responsible for removing the restraints from the youth.

46. When asked about the procedure for maintaining the log, Lewis stated that someone was required to check on the youth. They would finish their tasks, including laundry or whatever they were required to do. They would relay the information to the person who was supposed to keep the log. Lewis claimed it had never been brought to his attention during his previous ten years that there was anything wrong with this procedure. He did not believe there were any entries that were false. For any entry showing a bed check, the youth was observed by one of the three staff members.

47. As far as looking into the isolation room, Lewis stated he was looking for a part of the body. There were times when he could not see the youth's body, however, he could see movement or sign of life when the youth was stirring. He repeated he had been told not to enter the room.

48. Lewis reviewed DJJ Policy 3.23. He believed that direct visual contact included reviewing a live video feed. He was never instructed on the meaning of this policy.

49. The Appellant testified he was placed on administrative leave in June 2019. He stated that the Facility Administrator told him this would be cleared up in a couple of weeks.

50. The Appellant introduced into evidence a one-page memo from Facility Director Straus dated June 18, 2019. Straus stated that they learned from the Justice and Public Safety Cabinet Secretary that there were policy violations based on the restraint in isolation in April. Straus stated in the memo, "Where we know we made mistakes was watching camera at times we should have been making face-to-face checks. Therefore, any time we have someone in isolation, we have to look into the window, have direct visual, and be able to know that the resident is alive." Lewis testified that he thought he was facing a possible suspension over this incident.

51. On cross-examination, Lewis testified that he expected to be disciplined. He told the investigator that he should have opened the door. He acknowledged that the mattress was covering the youth a great portion of the night and that he was in cuffs the entire time. He also acknowledged that the youth's face was not visible at times.

52. At the conclusion of Appellant Lewis's testimony, the parties presented closing arguments. Counsel for the Appellant argued that the Appellant had a ten-year, almost spotless record. He tried to follow the training and policy he had received. He was not aware that what he had been doing for years was incorrect. They believed that dismissal was too harsh of a penalty under the circumstances. The Appellee argued that it had proven its case. The Appellant expected discipline, therefore, he admitted he was guilty of misconduct. The Appellee argued that fear should not have kept him from doing his job.

FINDINGS OF FACT

1. The Appellee proved that the Appellant, Charles Lewis, documented bed checks on April 10, 2019, that he did not conduct. Bed checks require direct visual contact. This does not include watching a video feed of a resident or receiving a verbal report from another employee that they have conducted the bed check.

2. The Appellee proved that the Appellant failed to provide appropriate supervision when he observed that the youth was covered by a mattress and not responding for 20 seconds to verbal requests at 6:11 a.m. DJJ policy required, and the Appellant admitted, that he should have entered the isolation room to check on the resident's wellbeing. If he did not have enough staff to safely enter the cell, he should have contacted a higher authority.

3. Under all the surrounding circumstances, the penalty of dismissal was neither excessive nor erroneous. DJJ has a right to expect its employees to follow its policies, especially regarding the safety and security of its facility and residents.

4. Although the DJJ policy was recently changed before this incident, the provisions relating to Lewis's misconduct were not changed. As a ten-year employee he should have been well aware that direct visual contact did not involve looking at video.

CONCLUSIONS OF LAW

1. The Appellee established that the Appellant's actions constituted misconduct pursuant to 101 KAR 1:345.

2. Based on the Findings of Fact, the Appellee has proven by a preponderance of the evidence that there was just cause for the dismissal of the Appellant. KRS 18A.095(1).

3. Based on the Findings of Fact, the Appellee has proven that the penalty of dismissal was neither excessive nor erroneous. KRS 18A.095(22)(c).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **CHARLES LEWIS V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2019-254)** 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 the Hearing Officer this 17th day of November, 2020.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Jamhal Woolridge
Hon. Peter Whaley

54-523 - 31017200
Lewis, Charles

NOV 20 2019

9-24-19



JUSTICE AND PUBLIC SAFETY CABINET

Matthew G. Bevin
Governor

Department of Juvenile Justice
1025 Capital Center Drive, 3rd Floor
Frankfort, Kentucky 40601-8205
Phone (502) 573-2738
Fax (502) 573-4308
www.kentucky.gov

John C. Tilley
Secretary
Denver E. Butler
Commissioner

September 19, 2019

Charles Lewis

Via Certified & Regular Mail

PERNR:

Dear Mr. Lewis:

After considering the comments made at your pre-termination hearing held on September 17, 2019 it has been determined that there is no sufficient reason to alter the notice of intent to dismiss, dated August 26, 2019.

Therefore, based on the authority of KRS 18A.095 (7), and 101 KAR 1:345, Section 2, you are hereby notified that you are officially dismissed from your position of Youth Worker III, with the Department of Juvenile Justice, at Northern Kentucky Youth Development Center, effective close of business on Monday, September 23, 2019.

In accordance with 101 KAR 1:345, Section 1, you are being dismissed from your position for the following specific reasons:

Misconduct and Poor Work Performance i.e., as reported by Northern Kentucky Youth Development Center, Juvenile Facility Superintendent I, (JFS I) Larry Milburn, you demonstrated misconduct and poor work performance by not providing appropriate supervision of Youth*. The Justice and Public Safety Cabinet, Internal Investigations Branch (IIB) conducted an investigation into the allegation of inappropriate supervision, in which the allegation was substantiated. The findings are contained in the investigative report, IIB #2797-19.

On April 9, 2019, you were the supervisor on duty from 11:30 P.M. until April 10, 2019, at 6:45 A.M. During that time you wrote down that you completed forty (40) observations on Youth's* Isolation Observation Log while Youth* was in the isolation cell. However, review of video footage provided by the facility, shows you were present at the isolation door only thirty-six (36) times. During this time, you were aware that a mattress covered the youth and there was no visibility of youth. Therefore, you failed to provide appropriate supervision of youth. As a supervisor, you have a heightened responsibility to know, understand, and follow policy.




Charles Lewis
Dismissal
September 19, 2019
Page 2

Your misconduct and poor work performance demonstrated by inappropriate supervision, poor judgement and lack of youth's medical welfare constitutes violations of Department of Juvenile Justice Policy #104, "Code of Conduct", I, IV. (B., L., U.); Department of Juvenile Justice Policy # 110, "General Security Guidelines in Facilities and Programs", IV, (A.)(6.)(a., b., d., e., and f.); Department of Juvenile Justice Policy #323, "Isolation", IV, (K.)(8.); Department of Juvenile Justice Policy #324, "Restraints", IV. (C.)(2.)(g.)(i.).

A copy of this notice is being furnished to the Personnel Cabinet in accordance with personnel rules. As an employee with status, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the day of receipt. Appeals must be made by completing the attached form and directing it to the address indicated on the form. (See KRS 18A.095 and 101 KAR 1:265, Appeal and Hearing Procedures).

Sincerely,



Denver E. Butler
Commissioner

DEB/lmc

Attachments: Personnel Board Appeal Form

C: Hon. Mark A. Sipek, Executive Director, Personnel Board
Ed Jewell
Scott Whitaker
Steve Potts
Tim Corder
Hillary Truesdell
Martin Strouse
Cynthia Watson
DJJ Legal
DJJ Personnel
Personnel File