



**COMMONWEALTH OF KENTUCKY  
KENTUCKY PERSONNEL BOARD  
APPEAL NO. 2020-081 and 2020-082**

**NICOLE LOWRY-HALL**

**APPELLANT**

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

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

**APPELLEE**

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This matter came on for evidentiary hearing on August 30 and 31, 2021 and October 5, 6, and 7, 2021, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, with the parties and Hearing Officer Brenda D. Allen all appearing remotely via Amazon Chime video teleconferencing. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Nicole Lowry-Hall was present and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Jesse Robbins. Also present was Agency representative, Maryann Strickland. During the first day of the hearing, the Hon. Peter Klear and Deanna Smith were both additionally present on behalf of the Appellee.

The Appellant, Nicole Lowry-Hall, filed an initial appeal (Appeal 2020-081) on March 9, 2020, appealing her demotion from the position of Program Administrator of the Substance Abuse Program (SAP) at the Roederer Correctional Complex (RCC), based upon her receipt of an "Unacceptable" score on her 2019 Annual Employee Performance Evaluation. Then, on March 10, 2020, she filed a second appeal (Appeal 2020-082) appealing the 2019 evaluation itself. These appeals were consolidated. Thus, the issues before the Hearing Officer for the consolidated appeals were the scoring of the Appellant's 2019 Annual Employee Performance Evaluation and the Appellee's subsequent demotion of the Appellant as a result of the score of the evaluation. The Appellee had the burden of proof upon all issues, by a preponderance of the evidence, to demonstrate the actions they took were neither excessive nor erroneous and were taken with just cause. Prior to the evidentiary hearing, the parties entered into certain stipulations with regard to

the authentication of their exhibits.<sup>1</sup> There were no prehearing motions, and both parties made an opening statement.

### BACKGROUND

1. The first witness to be called was **Jeanne Waldridge**, who now serves as the Assistant Director of Roederer Correctional Complex. She initially began employment with the Department of Corrections (DOC) in 2004, became a Program Administrator of jail treatment programs in 2008, became the supervising Social Service Clinician in 2015, and then, in 2018, was promoted to Branch Manager. She testified that, with her promotion, she still has the same supervisory role with the additional title in 2019. She testified that she is married to Branch Manager Maryann Strickland, and, because of that relationship, the witness does not supervise her wife; instead, Director Sara Johnson does. The witness testified that she became acquainted with the Appellant in 2010 when the Appellant became her tenant in a house the witness owned. She testified that the Appellant no longer rents from her; she became the Appellant's second-line supervisor in 2015, then her acting first-line supervisor in 2016, and there were no issues that occurred from their landlord/tenant relationship.

2. The witness identified and discussed: 1) the Appellant's 2016 Annual Employee Performance Evaluation (**Appellee's Exhibit 1**) where she scored a 422 - Highly Effective, 2) the Appellant's 2017 Annual Employee Performance Evaluation (**Appellee's Exhibit 2**) where she scored a 478 - Outstanding, and 3) the Appellant's 2018 Annual Employee Performance Evaluation (**Appellee's Exhibit 5**) where she scored a 352 - Highly Effective. In 2019, however, the witness testified that the Appellant's performance declined from the prior year. The witness testified that there were issues with both a DOC Division Audit and an OIG audit of the Substance Abuse Program the Appellant administered. She then discussed particular statements within the 2019 Annual Employee Performance Evaluation that detailed the areas within which the Appellant struggled. The witness then identified **Appellee's Exhibit 3**, the DOC Division Audit that was discussed in the 2018 Interim Evaluation and discussed two areas that were deemed unsatisfactory. She then identified **Appellee's Exhibit 3a**, which is the OIG Audit referenced in the 2018 Interim Evaluation. As set out by the audits, the witness noted that treatment plans were not completed within the proper timeframe and also noted the corrective action and the Appellant's response documented on the form.

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<sup>1</sup> The Hearing Officer was not provided a copy of any exhibits prior to the hearing. The exhibits of both parties were provided during the first day of the Hearing via Dropbox, with counsel for the Appellee agreeing to provide the Appellant's exhibits at the Appellant's request. By pleading submitted by the Appellee on September 2, 2021, the Appellee corrected the numbering/identification of certain of the Appellant's Exhibits, which were intended for her own use, but which were apparently mislabeled. The documents referred to as Appellant's Exhibits 3, 4, 5, 6, and 7 are actually Appellant's 4, 5, 6, 7, and 3, respectively. For purposes of this document, the Hearing Officer is using the corrected numbering and identification of Appellant's exhibits.

3. Assistant Director Waldridge testified that the deficiencies in both the DOC and the OIG audits were concerning to her as a supervisor because of the possibility of the program losing its license. She testified that she worked with the Appellant to prepare a comprehensive Corrective Action Plan that not only addressed the program deficiencies identified by the audits, but that would also address issues with staff that had led to staff turmoil, dissatisfaction, and requests from staff to leave the Roederer Substance Abuse Program (“SAP”) program that the Appellant administered. The witness identified **Appellee’s Exhibit 4** as the supervision plan that she first discussed with the Appellant, then sent to the Appellant’s incoming supervisor and the witness’s spouse, Mary Ann Strickland. She also identified and testified regarding **Appellee’s Exhibits 3b, 3c, and Exhibit 7**.

4. In summary, the witness testified on direct and cross-examination that while the Appellant did demonstrate clinical competency and leadership, and had trained new hires, but, overall, her ability to manage the program, manage the staff, and communicate the important things that needed to be communicated, were lacking. She testified that the Appellant simply could not manage her staff, which led to a very toxic environment.

5. The next witness to testify was **Erin Kron-Chia**, who was the Administrative Branch Manager for the Division of Addiction Services. She testified that she had worked for fifteen (15) years with the Substance Abuse Program (SAP) and was a Certified Drug and Alcohol Counselor. She testified that she performed the DOC internal audit of the program and identified deficiencies with the program, including: (1) notes not being timely, and (2) that the inmates appeared unkept and not dressed properly on the day of her visit. She also testified that she conducted a survey, and one inmate found the “Town Halls” (administrator-sanctioned events where the inmates develop and perform something that may be deemed creative) generally not to be therapeutic, but rather a means of forcing the inmates to entertain the staff. Some inmates had no interest in singing and dancing.

6. The next witness to testify was **Durrell St. Clair** of DOC Internal Affairs. He stated that his role is to investigate staff and inmates for EEO or sexual harassment complaints. He stated that he was tasked with investigating a 2019 incident occurring at a certain Town Hall in the program administered by the Appellant. He identified and testified with regard to **Appellee’s Exhibit 23**, his Internal Affairs report on the Town Hall incident, which was entered into the record. He stated that there was no finding of misconduct against the Appellant, because she was not present at the Town Hall on the day at issue. However, he did find that, on May 1, 2019, there was sexual harassment/abuse arising from a Town Hall skit when several counselors permitted a skit wherein inmates, wearing wigs and pretending to be women, simulated a striptease, removing their outer shirts, dancing and thrusting their pelvises at other inmates who were seated while a sexually suggestive song was playing, all while the SAP counselors present clapped and cheered. Following the witness’ investigation and findings, all counselors present during that Town Hall

received a substantiated finding of failure to report and a failure to protect under the Prison Rape Elimination Act (PREA) and DOC regulations. Only the Appellant and the Roederer SAP program's administrative secretary did not have substantiated findings lodged against them as they were not present during the Town Hall.

7. The witness also testified to a second Internal Affairs investigation he conducted. He identified **Appellee's Exhibit 48 and Appellant's Exhibit 12**, as relating to his investigation and the exhibits were entered into the record. He stated that, on February 14, 2020, he received a complaint from the Appellant that Ms. Strickland, her supervisor, was treating her with disdain and creating a hostile work environment. She also alleged that Ms. Strickland had a bias against the Appellant because the Appellant was a "northerner," and she contended this resulted in a score of 148 on her most recent Annual Employee Performance Evaluation. He testified that, after investigating the claim, he determined it was unfounded.

8. The next witness to testify was **Tiffany Davis**, who testified regarding her time working in the program under the Appellant as a Social Service Clinician (SSC). She testified that she worked with the Appellant prior to the Appellant's promotion. They were in equal positions, and then Appellant was promoted and became the witness's supervisor. She testified that it was a great program when the Appellant took it over, but it declined. **April Geisler** then testified regarding her time working as a secretary for the Appellant. Each witness indicated that the Appellant had difficulty managing the staff, and that the animosity and comments made between certain members of the staff made for a toxic environment. Each of the two witnesses testified that they asked to quit working for the Appellant, finding that she was not a good supervisor, and the program struggled under her authority.

9. **LaTawnya Gray** was the next witness who testified that she also worked for the Appellant and that the program was good for about a year. Then, according to the witness, Ms. Taylor came on board and there was an immediate problem with her and Ms. Merkle being unable to get along; the Appellant never addressed it, so the behaviors never changed. She testified that, after Ms. Taylor left, there was different chaos, and that, once she realized she (Gray) had taken an entire bottle of ibuprofen in thirty (30) days, the witness decided that she needed to quit working for the Appellant for her own health. She testified that, as her supervisor, the Appellant never gave the witness constructive feedback, and the witness experienced no growth during the time she worked for the Appellant in the program. She testified that the program suffered under Ms. Lowry-Hall's leadership, and she resigned.

10. The next several witnesses, **Misty Hair-Wilson, Robin Parks, Jennifer Merkle, and Tiffani Sparks**, all testified that the Appellant was their first-line supervisor. They generally testified to a lack of decision making, a failure to address conflict between two (2) members of the staff, and a failure to address the bad behavior of members of the staff. There was testimony that

the treatment plans to be reviewed by Appellant lingered on the Appellant's desk for five (5) to six (6) weeks before the Appellant reviewed them. **Brittany Puckett** and **Lindsay Bostock** testified regarding their professional interactions with the Appellant. **Appellant's Exhibit B, and Appellee's Exhibits 4 and 7** were entered into the record.

11. **Matt Manley** also testified. He testified that he serves as the Branch Manager of Addiction Services and was a Program Administrator whose role is to oversee and serve as a support assistant for the addiction program. He testified that Director Johnson and Program Manager Strickland asked him to come and assist the Appellant. He stated that he was made aware of issues with the Town Hall the month before and the ongoing issues with which the Appellant had struggled, including the issues with staff. He testified that he visited the Roederer SAP program on four (4) occasions in July and August 2019. He identified and testified with regard to **Appellee's Exhibit 29 and Appellee's Exhibit 30**, and they were entered into the record. He testified that, during the first two visits, the Appellant was out of the office; Ms. Gray and Ms. Merkle were there, and he met with them. He testified that, for the remaining two (2) days of his visit, the Appellant was back in the office, and he met with her with the goal of working on her weekly program notes. He testified that, while some employees thought things were going well, others expressed frustration and anger with regard to the Town Hall incident. He testified that his objective with visiting Ms. Lowry-Hall's program was to bring stability and ideas because there were two (2) people who worked for the Appellant who were actively trying to leave the program at that time.

12. The next witness to testify was **Jay Volkert**, who testified that his role was to audit substance abuse programs. He stated he was part of the 2019 Office of the Inspector General ("OIG") audit, which included four members on the team. He testified that, as a part of the audit, they reviewed document files, conducted interviews and, at the end of the two days, met with staff and gave an overview of the findings of the audit. He identified and testified with regard to **Appellee's Exhibits 35, 36, 37, and 38**, and they were entered into the record. During his testimony, he discussed that there had been a Corrective Action Plan entered for the Substance Abuse Program as a whole for its performance during the 2018 year, but the areas highlighted by the 2018 Plan had improved. The OIG audit for the 2019 year then required a Corrective Action Plan focusing on other areas of concern. He testified regarding the various categories of the 2019 Audit and noted the deficiencies they found, which included problems with program notes, missing signatures, the lack of start and end dates on treatment plans, outdated progress notes, clients filling in the top parts of their own staff clinical notes, and other areas. He testified that, ultimately, the program was found to be in "partial compliance," so a Corrective Action Plan was required to be developed and submitted within fourteen (14) days. He testified that all responsibility for the audit lies with the Program Administrator, the Appellant, Ms. Lowry-Hall.

13. The next witness to testify was **Sarah Johnson**, who stated that she is the Director of Addiction Services and the Appellant's second-line supervisor. She testified that she was the

person who performed the reconsideration of the Appellant's 2019 Annual Employee Performance Evaluation. Ms. Johnson testified that, throughout the year, she kept up to date with the program and did not find anything in the evaluation to be inaccurate. She testified that, with regard to the Town Hall incident, she made the decision to suspend the Appellant because of her failure to communicate this incident to her superiors when she learned of it, and her failure to train her staff on the sexually related issues prevalent during the Town Hall incident. She provided the Appellant with a Notice of Intent to suspend for three (3) days and, after reviewing Ms. Lowry-Hall's response, the witness reduced it to a one (1) – day suspension. She testified that there were problems in 2018 with the audit and staff morale and they continued into 2019. She testified that, while the Appellant was on a corrective plan, she failed to perform the time-sensitive duties required and instead spent her time performing tasks, such as assisting with urine screens, which prevented her from updating the program files as required in order for her to leave them in good order while she was temporarily assigned elsewhere for training under her Corrective Action Plan. For that, the Appellant was issued a written reprimand, **Appellee's Exhibit 12**, which was entered into the record.

14. She testified that, taking into consideration all that had transpired during the year, including the two instances of Ms. Lowry-Hall's discipline, she found the score of the Annual Employee Performance Evaluation to be warranted. She stated they had the option to demote or to terminate, and they opted to demote the Appellant rather than to terminate her. They met with the Appellant to discuss her demotion and provided her with the Notice of Intent to Demote, and then, after the meeting, the Appellant requested a voluntary demotion. Ms. Johnson testified that she (Johnson) agreed to a voluntary demotion rather than to demote her for cause to allow the Appellant to go to another department and assist in her career.<sup>2</sup> She testified that they even had some email communication with the Appellant to share open positions with her and asked that Human Resources advise the Appellant of vacancies of suitable positions. Ultimately, the Appellant got a position in re-entry. The witness identified and testified with regard to **Appellee's Exhibits 9, 16, 25, 42, 44, 47, 50, 51, 52, 54, 56, and 57**. She testified that the Appellant had previously demonstrated that she was capable of performing the lower-level position, so she felt a demotion back to that level was appropriate.

15. The next witness to testify was **Maryann Strickland**, the DOC Branch Manager in charge of addiction services. She testified regarding her thirty-four (34) – year career in

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<sup>2</sup> While there is testimony and two Appellee's Exhibits, 51 and 52, indicating that Ms. Lowry Hall requested and was granted a voluntary demotion, neither party placed a signed voluntary demotion form into the record. In accordance with 101 KAR 335, Section 2, a completed voluntary demotion form would have included a waiver of the Appellant's right to appeal, which would have resulted in the Hearing Officer issuing a recommendation for a dismissal of the resulting appeal (2020-081) outright for a lack of jurisdiction. The Appellant's appeal form and attachment detail a demotion based upon the evaluation and an appeal based upon that action and makes no mention of her request for a voluntary demotion, which did occur. Without knowing whether the Appellant waived her right to appeal her own request for a voluntary demotion in writing, the Hearing Officer will entertain the issue of a demotion resulting from the lowest rating possible on the yearly evaluation.

addiction services with the last twenty-two (22) years in supervision in the state of Kentucky. She gave an overview of the SAP Program and the evaluation tool. She discussed the Interim Reviews and Corrective Action Plan. She then testified that, on her first day of hire as a Branch Manager, March 1, 2019, she had a meeting with Director Sara Johnson and the Director told the witness to focus on Roederer.

16. She testified they discussed that there were issues in the program, the environment was deteriorating, and those issues were negatively impacting the program as a whole. She testified that she was told the Appellant was on a work plan at that time and she needed to work through it. She stated that staff conflicts and communications with each other were not good, and it was impacting the clients. She testified with regard to **Appellee's Exhibits 4 and 42** already in the record and discussed her approach to evaluating and scoring the Appellant. She testified that the program was in crisis, it was dysfunctional, many of the staff were in tears, some with whom the witness had worked in the past and who she believed had shown themselves not to be "faint hearted," yet in working for Ms. Lowry-Hall, these women were in tears on multiple days. So, the witness decided they needed a crisis plan that included the Appellant being temporarily assigned to another building to go through computer training as well as a period of shadowing another Program Administrator.

17. Branch Manager Strickland testified that the state of the program files for the Roederer SAP program were unacceptable, and she had directed the Appellant to get them in order prior to her leaving for the temporary training assignment. She also specifically instructed that the Appellant to not perform any drug screening tasks. She testified that the Appellant did perform drug screening tasks contrary to the directive and failed to get the files in order, resulting in a written reprimand being issued to the Appellant. She indicated if OIG had come in unannounced and reviewed the Roederer SAP program files, with the program already being under a Corrective Action Plan, they could have lost their license.

18. The witness identified and testified regarding **Appellee's Exhibits 6, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, 29(a) and (b), 31, 33, 34, 39, 41, 42, 43, 45, 46, and 55 and Appellant's Exhibits A, C, D, E, F, and G**, and they were entered into the record. The witness testified that a lack of trust, the lack of a healthy work environment, and the lack of growth and professional development was present at the Roederer SAP program, and she tried to fix the program for all of them, including Ms. Lowry-Hall. She testified that she had temporarily assigned April Geisler, an administrative specialist, to assist the Appellant, and that Geisler did not last long working for Ms. Lowry-Hall. She stated that this latest staff departure gave her insight into the environment in the Appellant's program.

19. The witness discussed the 2019 Town Hall incident and discussed that, in the 2018 Audit, there was a discussion of the impact of Town Halls on the clients, including the sentiment that certain inmates were humiliated by the Town Halls and by being made to dance and sing for



the pleasure of the staff. She stated that the impact of Town Halls should have been revisited, and that this was an opportunity missed. She discussed all measures made to support the Appellant, including bringing in Matt Manley to observe, assess, and collect information and data. She indicated that she offered the team mediation to work on the issues between them, but there needed to be some preliminary steps first; however, the team was in such disarray, the timing did not lend itself to mediation.

20. Branch Manager Strickland testified that, at the end of 2019, the program was worse than it was in March 2019 when she was hired and was told to make the program a priority. She testified that, at year's end, the program was in shambles, the health of the program was not good, and efforts to support, coach, and assist the Appellant were not successful. Accordingly, the score of "Unacceptable" that she gave the Appellant on her evaluation was accurate.

21. The witness testified that after she finalized the 2019 evaluation, the Appellant filed a formal complaint alleging a hostile work environment – that the witness was engaging in bias against her because she was "northerner." The witness denied that she was biased against the Appellant for any reason and indicated that when the Appellant first came to Kentucky, she and her wife, Assistant Director Waldridge, rented a home to her, the Appellant came to events at their home, she even went to the Appellant's wedding, and the witness spent Father's Day with the Appellant so that she would not be alone. She stated that she considered them friends and denied any northern bias or any conspiracy with her wife to unfairly score Ms. Lowry-Hall's 2019 Annual Employee Performance Evaluation.

22. Branch Manager Strickland then discussed the efforts to assist the Appellant in finding a suitable position after her demotion. She also discussed that, when she was asked by the Appellant's new supervisor for information regarding Ms. Lowry-Hall's past performance, she declined to provide any information in order to provide the Appellant with a fresh start in a new department.

23. **The Appellee rested.**

24. The Appellant called witnesses, **Andrew Story, Julie Barnes, Deleana Weathers, Marsha Turner, and Marty Johnson**, who all testified briefly regarding their work with the Appellant, and their testimonies were taken into consideration by the Hearing Officer. **Appellant's Exhibit 19** was entered into the record.

25. **The Appellant elected not to testify and rested.**

26. The parties made their closing statements in writing. The Hearing Officer considered the entire record and all testimony.

**FINDINGS OF FACT**

1. The Appellant, Nicole Lowry-Hall, was employed as a Program Administrator in the Roederer Correctional Complex, Substance Abuse Program, having formerly served in the position of Social Service Clinician (SSC), prior to her promotion to the position of Program Administrator. (Testimony of Tiffany Davis, Maryann Strickland.)

2. In 2018, an internal DOC audit was conducted of the Roederer SAP administered by Ms. Lowry-Hall, and deficiencies were noted. The Appellant was required to work with her administration to develop a Corrective Action Plan for the SAP and submit it to the auditors. (Testimony of Maryann Strickland, Jeanne Waldrige, Appellee's Exhibits 3, 3a, and 4.)

3. By late 2018, staff turmoil in the Roederer SAP, coupled with Ms. Lowry Hall's failure to adequately address the conflict and chaos, led to SSCs actively trying to leave the program. (Testimony of Tiffany Davis, Jeanne Waldrige, Appellee's Exhibits 3b and 3c.)

4. By March 2019, problems in the Roederer SAP Program, including internal staff turmoil and conflict, were so prevalent and they were of such import to the administration that, on her first day of hire, the new Branch Manager, Maryann Strickland, was directed by Director Sara Johnson to "focus on Roederer," citing issues in the program, its deterioration, the 2018 Audit failure, communication problems, and internal staff turmoil, all of which were affecting the clients. Director Johnson advised the new Branch Manager that the Appellant was on a work plan. (Testimony of Maryann Strickland, Sara Johnson, Jeanne Waldrige.)

5. Branch Manager Strickland had known the Appellant previously, as the Appellant was once Strickland's tenant several years prior and they had developed a friendship, with Strickland even attending Ms. Lowry-Hall's wedding. (Testimony of Maryann Strickland.)

6. Branch Manager Strickland reviewed the 2018 DOC Division Audit, the 2019 OIG audit, met with staff, and also met with the Appellant to discuss the program and its problems. (Testimony of Maryann Strickland, Appellee's Exhibit 6.)

7. When Branch Manager Strickland asked the Appellant how she felt she was performing as a supervisor, the Appellant cried and stated that she was a "complete failure." (Testimony of Maryann Strickland, Appellee's Exhibit 8.)

8. Based upon her own observations and the Appellant's self-assessment of her performance as a supervisor, Branch Manager Strickland developed a crisis plan to address the

issues with the Roederer SAP program and obtained approval from Director Johnson to implement it. The plan included a series of online trainings for the Appellant to review and then to provide specific feedback on the courses. It also included; 1) the Appellant spending a week in another correctional facility's SAP shadowing that SAP's Program Administrator who could model alternative leadership and team building strategies with the staff, 2) online training for the staff with resulting assignments related to the material, and 3) evaluation to determine if mediation was necessary prior to allowing the Appellant to return to work. In April 2019, the plan was implemented. (Appellee's Exhibits 8 and 9, Testimony of Maryann Strickland.)

9. During the same month the crisis plan was implemented, the Appellant was issued a written reprimand for her failure to abide by the directives of her superiors to complete certain time sensitive tasks related to getting the Roederer SAP program files in order so that she could go to the training required in her plan. Instead of getting the files in order, the Appellant spent her time assisting with urine tests, which could have been performed by others. (Appellee's Exhibits 11 and 12, Testimony of MaryAnn Strickland.)

10. On May 1, 2019, a Town Hall at the SAP program took place while the Appellant was out of the office. During this Town Hall, several inmates performed a simulated striptease in front of other inmates while dancing to a sexually suggestive song to the cheers and clapping of SSCs present. (Testimony of Durrell St. Clair, Appellee's Exhibit 23.)

11. The Appellant was advised of the incident on her return to work on May 6, 2019, and did not inquire for more details or report the incident to her superiors. (Appellee's Exhibits 11 and 12, Testimony of Maryann Strickland.)

12. On May 10, 2019, Internal Affairs received a complaint regarding the incident and began an investigation of the incident in the Appellant's program. (Appellee's Exhibit 23.)

13. The investigation substantiated violations of the Prison Rape Elimination Act (PREA) and DOC policies against the counselors who were present for the May 10, 2019 Town Hall for their failure to protect the inmates in addition to a subsequent failure to report the May 10, 2019 incident to their supervisors. (Testimony of Durrell St. Clair, Appellee's Exhibit 23.)

14. In July 2019, the Appellant was issued a one (1) -day suspension for her failure to advise her superiors of the Town Hall incident when she learned of it in early May. The July 2019 discipline was also issued for failing to adequately train her staff on sexual harassment issues. (Appellee's Exhibit 27, Testimony of Maryann Strickland.)

15. In July 2019, the Appellant was provided her Interim Evaluation covering the period of January 1 through June 30, 2019. The Interim Evaluation showed performance planning

of “Job Duties” and “Expectations” had occurred at the beginning of the calendar year and the Appellant and her then-supervisor, Jeanne Waldrige, signed the document on January 29, 2019.

16. The July 2019 Interim Evaluation provided the following:

**JOB TASKS:**

...Nicole is to provide training to her staff and ensure appropriate recruitment and retention. Nicole has struggled with her duties as Program Administrator and was issued a written reprimand this year to address concerns with meeting mandates and continued decline in staff morale. She was provided with a supervisory development plan which included a variety of training opportunities which she completed as well as an opportunity to shadow other Program Administrators which she has not yet able to complete...

**COMMUNICATION/TEAMWORK:**

Normally Nicole communicates effectively with staff, her supervisor, and her team to ensure information is delivered in a timely manner and keeps supervisor apprised of progress or of any problems. Unfortunately, an incident occurred ths (sic) period that compromised the integrity of the program and put clients and staff at risk. Nicole did not actively communicate with her staff to fully understand the nature of the incident. Further, the incident was not conveyed to institution staff or to her supervisor(s) in a timely manner...

**SELF MANAGEMENT:**

Dependability and responsibility:

Nicole generally completes her work within the expected time frames. (sic) She finds it challenging at times to accept responsibility for her own actions or to see the impact that her leadership style has on her staff and peers. These are areas where she has agreed to accept training and guidance this year.

The July 2019 Interim Evaluation was signed by the Appellant and her supervisor on July 22, 2019. (Appellee’s Exhibit 42.)

17. In July and August 2019, the administration brought in a successful Program Administrator to assist and assess the Roederer SAP. (Testimony of Maryann Strickland, Testimony of Matt Manley, Appellee's Exhibit 30.)

18. In August 2019, SSC Davis and SSC Gray resigned, with each concluding that the Roederer SAP suffered under the Appellant's leadership, and they found the environment unacceptable. (Testimony of LaTawnya Gray and Tiffany Davis.)

19. That same month, April Geisler, who worked with the Appellant as administrative support, took a lateral transfer out of the program, deciding that she too no longer wanted to work under the Appellant. (Testimony of April Geisler.)

20. In October 2019, the Roederer SAP program failed an audit for the second year in a row under the Appellant's leadership, this time failing the audit performed by the Office of the Inspector General.

21. By December 2019, despite all of the intervention and support, the Roederer SAP under the Appellant's direction was in worse condition than it had been in March 2019, when Maryann Strickland was told to make Roederer a priority. (Testimony of Maryann Strickland, Appellee's Exhibit 42.)

22. The deficiencies from the period of July 1, 2019 to December 31, 2019, were documented in the 2019 Annual Employee Performance Evaluation meeting, including that the Appellant required additional training on sexual harassment/PREA resulting from the 2019 Town Hall incident once she was made aware of it. This was the fourth training on PREA that the Appellant was required to attend in two (2) years with no improvement in her understanding of the parameters of what behaviors violated the law. On January 27, 2020, the Appellant received an Annual Employee Performance Evaluation yearly evaluation score of 148, "Unacceptable," which is the lowest possible rating. (Appellee's Exhibit 42, Testimony of Maryann Strickland.)

23. The Appellant requested reconsideration of her evaluation within the appropriate timeframes and DOC performed the reconsideration and upheld the determination that the Appellant's job performance during the 2019 calendar year was "Unacceptable." (Appellee's Exhibits 44, 45, 46, 47, and 50, Testimony of Sara Johnson).

24. The Appellant then filed a complaint against her superiors claiming that her poor score resulted from bias and isolated incidents, and that they created a hostile work environment. Upon investigation, the Appellant's allegations were deemed unfounded. (Appellee's Exhibit 48.)

25. Based upon her score of 148, which falls within the category of “Unacceptable,” the Appellee then provided the Appellant with a Notice of Intent to Demote in accordance with 101 KAR 2:180, Section 8(1) and (2). (Appeal form 2020-081 and attachment.)

26. Branch Manager Strickland opted to demote the Appellant instead of terminating her because she felt that the Appellant had previously demonstrated competency in the lower-level position of an SSC and felt she could succeed again in this role. (Testimony of Maryann Strickland.)

27. The Appellant then requested a voluntary demotion, the form for which would ordinarily include a waiver of the right of appeal. (Testimony of Maryann Strickland, Appellee’s Exhibits 51, 52, and 54.)

28. Since a voluntary demotion form and waiver is absent from the record, and the issue of the propriety of the evaluation and resulting demotion must be decided on the merits, the Hearing Officer finds that the Appellant’s 2019 Annual Employee Performance Evaluation was accurate and her performance in the role of Program Administrator was “Unacceptable.”

29. The Hearing Officer is persuaded that the provisions of the 2019 Annual Employee Performance Evaluation that indicate that the Appellant had difficulty accepting responsibility for her actions is indeed accurate, and there is ample evidence in the record that Assistant Director Waldridge, Branch Manager Strickland, and Director Johnson provided a plethora of support, attention, retraining, modeling, opportunity, and time (an entire year) for the Appellant to succeed, none of which was met with the same degree of work, prioritization, diligence, or urgency on the Appellant’s part.

30. The Hearing Officer finds that the demotion of the Appellant from the position of Program Administrator in accordance with the regulation was likewise taken with just cause and was neither excessive nor erroneous

31. The Hearing Officer is not persuaded that there was any bias or improper treatment of the Appellant in the evaluation or demotion process. To the contrary, the evidence of record demonstrates that the Appellee showed a great deal of compassion and generosity in permitting the Appellant to voluntarily demote and working with her to find a suitable position consistent with her skill set.

### CONCLUSIONS OF LAW

1. The Appellant, Nicole Lowry-Hall, performed her job duties as a Program Administrator at the Roederer Substance Abuse Program at an unacceptable level during the 2019 evaluation year, which was accurately reflected in her 2019 Annual Employee Performance Evaluation, which was properly scored at 148 and properly conducted in accordance with the applicable relevant administrative regulations. 101 KAR 2:180.

2. The Appellant's "Unacceptable" score of 148 mandated either the Appellant's demotion or dismissal. Here, the Appellee chose the lesser of the two (2) disciplinary actions available to it and chose to merely demote the Appellant instead of terminating her. KRS 18A.110(7)(j)(6) and 101 KAR 2:180, Section 8.

3. The Hearing Officer concludes that the Cabinet has met its burden of proof that the evaluation was accurate and the decision to demote was taken with just cause and was neither excessive nor erroneous. KRS 18A.095(1) and (22).

### RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the case of **NICOLE LOWRY-HALL V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NOS. 2020-081 AND 2020-082)** 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 exception 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 the judicial review of those issues not specifically excepted to. On appeal, a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W. 3d 560 (Ky. 2004).

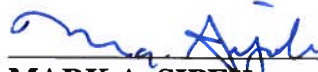
Any document filed with the Personnel Board shall be served on the opposing party.

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

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

**ISSUED** at the direction of **Hearing Officer Brenda D. Allen** this 27 day of February, 2023.

**KENTUCKY PERSONNEL BOARD**



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**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy this day emailed and mailed to:

Nicole Lowry-Hall  
Hon. Jesse Robbins  
Hon. Rosemary Holbrook (Personnel Cabinet)