

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-329

JEREMY K. LUCAS

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET  
DEPARTMENT OF CORRECTIONS  
J. MICHAEL BROWN, APPOINTING AUTHORITY

APPELLEE

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The Board at its regular June 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 19, 2015, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be, and they hereby 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 24<sup>th</sup> day of June, 2015.

KENTUCKY PERSONNEL BOARD

  
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MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Edward Baylous  
Jeremy K. Lucas  
Bobbie Underwood

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-329**

**JEREMY K. LUCAS**

**APPELLANT**

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

**JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF CORRECTIONS,  
J. MICHAEL BROWN, APPOINTING AUTHORITY**

**APPELLEE**

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This matter previously came on for a pre-hearing conference on February 16, 2015, at 11:30 a.m., ET, at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Boyce A. Crocker, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Jeremy K. Lucas, was present by telephone and was not represented by legal counsel. The Appellee, Department of Corrections, was present and represented by the Hon. Edward Baylous, appearing by telephone.

The purposes of the pre-hearing conference were to determine the specific penalization(s) alleged by Appellant, to determine the specific section of KRS 18A which authorizes this appeal, to determine the relief sought by Appellant, to define the issues, to address any other matters relating to the appeal, and to discuss the option of mediation.

The Hearing Officer noted this appeal was filed with the Personnel Board on December 22, 2014. The Appellant indicated Other Penalization, specifically "Being given the Fire and Safety Position and then being pulled from that position and not being placed back into my original position."

At the pre-hearing conference, Appellant further explained that when he was pulled from the Fire and Safety Position, he was not returned to his original position as Operations Lieutenant with Sundays and Mondays as days off, but rather was returned as a Relief Lieutenant with Mondays and Tuesdays as days off.

Counsel for the Appellee noted he had filed a Motion to Dismiss prior to the pre-hearing conference. This was discussed, and Appellant was given time to file a response to the motion to dismiss.

Appellant timely filed a response to the Appellee's Motion to Dismiss. The matter is ready for a ruling.

### **BACKGROUND**

1. During the relevant times, the Appellant, Jeremy K. Lucas, was a classified employee with status.

2. In its Motion to Dismiss, Counsel for the Appellee stated the Personnel Board does not have jurisdiction over the claims raised because Appellant has no right, under Kentucky law and regulation, to any particular post, assignment, shift or day off, and none of the acts complained of by the Appellant constitute a penalization within the meaning of KRS Chapter 18A, and thus, the appeal must be dismissed.

3. As noted, Appellant filed a timely response. In his response, Appellant contends he was involuntarily transferred from the Fire and Safety position. Appellant contends another Correctional Lieutenant was essentially promised the position, and that is why he was moved from the Fire and Safety position. Appellant contends that it is "common knowledge" that if the Warden of the correctional facility likes a person, they receive the position. Appellant gave examples of that.

4. Appellant also attached Correctional Policy and Procedure (CPP) 3.7, "Shift, Post and Days Off Assignment." Appellant contends the policy states that a Captain assigns days off and shift assignments, not the Warden. Appellant also claims he has not lied about anything in his grievance, and believes a polygraph might be in order to prove such.

5. Finally, Appellant stated he is more qualified in Fire and Safety than the current occupant, and believes he was poorly treated by the Warden and Deputy Wardens, "...concerning decisions on how to move staff in accordance to policy."

6. The Appellee filed a reply to the Appellant, that communicates that the Appellant understood when he was hired he might be required to work any post or shift with days off to meet the needs of the institution and executed a document showing this understanding which Appellee made an exhibit to its reply to the Appellant's response.

7. CPP 3.7, Section II(G)(1, 2) states:

The Shift Supervisor shall be responsible for assigning:

1. Each post and rotating all assignments on the shift; and
2. Days off.

8. 101 KAR 2:095, Section 2(4), states:

Attendance, Hours of Work.

(4) An employee who works for an agency that requires more than one (1) shift or seven (7) days a week operation may be reassigned from one shift to another or from one post to another or alternate days off by the agency to meet staffing requirements or to maintain security or provide essential services of the agency.

### **FINDINGS OF FACT**

1. During the relevant times, the Appellant, Jeremy K. Lucas, was a classified employee with status.

2. The Hearing Officer finds that Appellant has appealed the Warden's response to a grievance Appellant had filed upon being given the Fire and Safety post at the Roederer Correctional Complex, and then involuntarily being moved from that post to another Correctional Lieutenant post.

3. The Hearing Officer finds that such actions as described in Finding of Fact No. 2, above do not constitute a penalization as defined at KRS 18A.005, specifically due to 101 KAR 2:095, Section 2(4), which addresses such actions taken in a 24/7 facility that requires shift work by employees.

4. The Hearing Officer finds that this move of the Appellant from the Fire and Safety post to another Correctional Lieutenant post within RCC does not constitute an involuntary transfer, was not a penalization and complied with 101 KAR 2:095, Section 2(4), and is not inconsistent with the requirements stated at CPP 3.7.

5. The Hearing Officer further finds that Appellant was fully aware when he began employment with the Department of Corrections that he could be required to work any schedule, shift, post or days off in accordance with departmental need.

### **CONCLUSION OF LAW**

The Hearing Officer concludes as a matter of law that the Appellant was not penalized, and in fact, the movement of Appellant from the Fire and Safety post to another Correctional Lieutenant post (all within RCC) is in accordance with regulation at 101 KAR 2:095, Section 2(4), and thus the Personnel Board lacks jurisdiction to further consider this appeal pursuant to KRS 18A.095(18)(a).

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **JEREMY K. LUCAS V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2014-329)** be **DISMISSED**.

**NOTICE OF EXCEPTION AND APPEAL RIGHTS**

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

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

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

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

**ISSUED** at the direction of **Hearing Officer Boyce A. Crocker** this 19<sup>th</sup> day of March, 2015.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPER**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Edward Baylous  
Mr. Jeremy K. Lucas