

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-012**

MARCUS MOZEE

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 February 2025 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated December 5, 2024, Appellant's Exceptions and Request for Oral Argument, Order Granting Extension of Time to File Response to Exceptions, and Appellee's Response to Exceptions and Request for Oral Argument, and being duly advised,

IT IS HEREBY ORDERED that the Appellant's Request for Oral Argument is **DENIED**, and 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 24th day of February, 2025.

KENTUCKY PERSONNEL BOARD

Gordon A. Rowe, Jr.

Copies hereof this day emailed and mailed to:
Hon. Garry Adams
Hon. Edward Baylous
Hon. Rosemary Holbrook (Personnel Cabinet)
Melanie Jenkins

COMMONWEALTH OF KENTUCKY
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**FINDINGS OF FACT, CONCLUSIONS OF LAW,
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**JUSTICE & PUBLIC SAFETY CABINET,
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This matter came on for evidentiary hearing on September 16, 2024, at 9:30 a.m. ET, at 1025 Capital Center Drive Suite 105, Frankfort Kentucky before the Hon. Brenda D. Perry, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Marcus Mozee, was present at the evidentiary hearing and was represented by the Hon. Garry Adams. The Appellee, Justice & Public Safety Cabinet, Department of Corrections, was present and was represented by the Hon. Edward Baylous.

The issues before the Hearing Officer were whether there was just cause for the twenty (20) -day suspension without pay of the Appellant and whether that penalty of suspension was excessive or erroneous. The Appellee had the burden of proof, which was by a preponderance of the evidence. Prior to the hearing, the parties agreed that the juveniles at issue in this case shall be referred to by initials, however for purposes of this Recommended Order, the Hearing Officer is utilizing Youth 1 and Youth 2.

BACKGROUND

1. The Appellant, Marcus Mozee, timely filed his appeal with the Personnel Board on January 20, 2023. On the appeal form, he provided, "I am appealing being responsible for supervising the youth that were on Unit 500 and the events that happened on August 27th, 2022."

2. On the day of the hearing, both parties waived opening statements. The parties agreed to allow witnesses to be taken out of order to accommodate the schedule of one of the witnesses. As such, the Appellant called his first witness, **Stanley Edward Cooper**. After being sworn, the witness stated that he began his professional career in corrections and as a police officer, then as an economist in Liberia before coming to the United States. Once in the United States, he was hired by the Department of Juvenile Justice in February 2005 as a Youth Worker. After that, he had positions as a Social Service Worker, then a Social Service Clinician, before being promoted to Superintendent I at Westport Group Home. He stated that, in 2020 or 2021, he was

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detailed to Jefferson Regional Juvenile Detention Center (hereinafter referred to as Jefferson Regional).

3. Mr. Cooper testified that there were a number of problems at Jefferson Regional including the lack of secure doors, inadequate staffing, and overcrowding of juveniles. He testified that he was the third superintendent assigned to the facility in a year and a half and that those before him had failed. He indicated that those problems led to mentally exhausted staff working long hours. Mr. Cooper acknowledged that there were times he had to call the St. Matthews Police to assist with the residents breaking down doors and being violent with staff and, on two or three occasions, juveniles took over the facility.

4. The witness affirmed that staff were not trained. He confirmed that staff were supposed to go to an academy to be trained on how to handle juveniles, how to handle incident reporting and de-escalation training, and to learn policies and procedures. He testified that, to the best of his knowledge, Mr. Mozee had not been to this training program, but instead had on-the-job training. He stated that he was responsible for recommending Mr. Mozee to become a supervisor, and Mr. Mozee was subsequently promoted.

5. Mr. Cooper testified that, on August 27, 2022, he was off of work. He received a call that there was a fire at the facility and came in to work. He detailed that it was chaotic, and the fire department was there. He stated that Youth 1 (female) brought a lighter into the facility a few days earlier and, on August 27th, she started a fire in her room. He testified that Mr. Mozee was alerted to the fire, extinguished it, but failed to search for the lighter. Mr. Mozee then left Youth 1 unsupervised in the Dayroom, where she started a second fire. When Mr. Mozee came back to extinguish the second fire, he was unable to do so and the fire department was called to respond. Mr. Cooper asserted that, while the fire department was on site, Mr. Mozee left a second juvenile, Youth 2 (male) unsupervised in the hall and Youth 2 escaped the facility.

6. Mr. Cooper said that he decided not to discipline anyone on staff for the events of that date, finding that none of the staff did anything wrong. Mr. Cooper was provided **Appellant's Exhibit 1**, which is the letter of suspension issued to the Appellant, Marcus Mozee, by Commissioner Vicki R. Reed. He was unable to identify it as a document he had received in the course of his employment, but the parties stipulated to its authenticity. Mr. Cooper testified regarding the facts outlined in the letter and the letter was entered into the record without objection. The witness identified **Appellant's Exhibit 2** as the Incident Report Form signed by Ms. Beasley and Mr. Mozee. Mr. Cooper identified his signature as the immediate supervisor. On the Incident Report, Mr. Cooper wrote below his signature, "Staff followed protocol during the incident and no issue of concern noted."

7. On cross-examination, the witness testified that he was terminated for a number of reasons arising from the incidents involving Youths 1 and 2. The reasons for his termination included a failure to provide adequate supervision, failing to ensure that incident reports were timely completed and submitted, and for failing to direct a supervisor to search Youth 1 for contraband when she arrived on August 19, 2022. The witness testified that there were three (3) fires at the facility that arose from the lighter brought in by Youth 1 on August 19, 2022. First, there was fire on August 23rd set by Youth 2, after Youth 1 passed him the lighter. Four (4) days

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later, after Youth 1 got the lighter back from Youth 2, she set two (2) fires. Youth 1 set one (1) fire in her room and a second fire was set when the Appellant left her unsupervised in the Dayroom. The witness testified that while Mr. Mozee did complete one incident report relating to the second fire on August 27th and the escape, he did not complete an Incident Report for the fire set by Youth 1 in her room, even though he was the one who extinguished it.

8. During the hearing, Mr. Cooper reviewed portions of the videos of the two fires set on August 27th by Youth 1 and the responses of his former staff. The video showed that staff failed to search for the lighter after the first fire in Youth 1's room. After watching the video, the witness maintained that his staff did nothing wrong and blamed his former employer for inadequate staffing and training.

9. The Appellee called its first witness, the Appellant, **Marcus Mozee**. After being sworn, Mr. Mozee was questioned on cross-examination and on direct, and reviewed several minutes of the videos of August 27, 2022, to refresh his memory.

10. Mr. Mozee testified that, prior to coming to work for the Department of Juvenile Justice, he had a great deal of experience working with youth at The Brook, and then as a coach in the Jefferson County Public Schools, where he also worked with high school students with emotional behavioral disorders. He stated that he began working for the Department of Juvenile Justice in 2019. He testified that he should have gone to a training academy in support of his role once hired, but that did not occur. He said that the appointing authority initially intended to terminate him for his handling of the August 27, 2022 incidents involving Youth 1 and Youth 2, but the appointing authority changed that to a twenty (20) -day suspension without pay. He testified that he was sent to the training academy in January 2023, five (5) months after these incidents and it was a "game changer."

11. The witness testified that during the period of time leading up to the August 27, 2022 fires and escape, staff were overworked, understaffed, and scared of the youths housed at the facility. He stated that, on August 27, 2022, he called Ms. Beasley in to assist him, as staffing was inadequate. He said that after Youth 1 started the first fire in her room on that day and he extinguished it, he asked her for the lighter, but she refused. He stated that he was unable to search her, since males were not permitted to search females and, even though he had called in Ms. Beasley to assist him that day, he did not alert Ms. Beasley or ask her to search Youth 1 for the lighter.

12. Mr. Mozee stated that after he extinguished the fire in Youth 1's room, he decided to leave her in the Dayroom while he went to the gym to supervise other youth. While there, Ms. Neumann, a staff member in the Control Room monitoring the facility by video, alerted him by radio that Youth 1 was starting another fire in the Dayroom. Several minutes later, with no action by Mr. Mozee, Ms. Neumann radioed again, alerting the Appellant that the fire was getting bigger.

13. During his testimony, the Appellant watched several minutes of the video of Youth 1 starting the fire in the Dayroom and adding flammable objects to feed the flames. He admitted that it only takes one (1) minute to walk from the gym where he claimed to be to the Dayroom where the fire was burning, but he was unable to explain why he waited ten (10) minutes to appear

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with a fire extinguisher. The Appellant testified that after several unsuccessful attempts to extinguish the fire, the unit was evacuated and the fire department was called. The Appellant identified the videos of the incident which, together with the investigative report relative to the incidents, were marked collectively as **Appellee's Exhibit 1** and they were entered into the record without objection.

14. The Appellant then testified about his role in the escape of Youth 2, which also formed the basis for the Appellant's suspension. Mr. Mozee testified that Youth 2 escaped when the Appellant left Youth 2 unsupervised in the hall. He stated that other residents were threatening Youth 2, so he decided that leaving Youth 2 in the hall would be safer for the youth. Once the fire department arrived and Youth 2 was in the hall without staff supervision, he walked down the hall, broke the glass out of a door, and escaped the facility.

15. Mr. Mozee testified that one (1) of the charges in support of his suspension was that he failed to complete an incident report regarding the first fire set by Youth 1. The witness only completed one (1) incident report for the second fire and the escape of Youth 2. He admitted that he failed to prepare an incident report with regard to the first fire set by Youth 1 and testified that he was not trained on how to complete incident reports.

16. Mr. Mozee identified **Appellee's Exhibit 2**, the Intent to Dismiss Letter, and **Appellee's Exhibit 3**, a supplemental letter outlining specific days for which he would serve the twenty (20) day suspension without pay.

17. Mr. Mozee identified **Appellee's Exhibits 4, 5, and 6**, as the DJJ policies he was charged with violating. Mr. Mozee testified that he was not trained on the policies prior to going through the Academy training several months later but admitted that he had access to all of the policies before August 2022. **Appellee's Exhibits 2, 3, 4, 5, and 6** were entered into the record without objection.

18. The next witness to testify on behalf of the Appellee was **Rodney Moore**. After being sworn, Mr. Moore testified that he is the Human Resource Director for the Justice and Public Safety Cabinet, and he is responsible for the administration of discipline for Jefferson Regional. He stated that as a result of the incidents at the facility involving Youth 1 and Youth 2, there were a couple of terminations, some suspensions, and a demotion. He acknowledged that he reviews all disciplinary matters, and he made the initial recommendation to the appointing authority to terminate the Appellant based upon the goal of consistency in discipline throughout the Cabinet. He stated that Vickie Reed, the appointing authority, ultimately made the decision to reduce the termination to a twenty (20) -day suspension without pay, and he carried out that discipline.

19. Each party made a closing statement. The Hearing Officer considered the entire administrative record.

FINDINGS OF FACT

1. The Appellant, Marcus Mozee was employed as a Youth Worker Supervisor with the Justice and Public Safety Cabinet, Department of Juvenile Justice, and was assigned to Jefferson Regional Juvenile Detention Center. (**Testimony of the Appellant, Appellee's Exhibit 2.**)

2. Prior to coming to the Cabinet, the Appellant had a great deal of experience working with youth at The Brook, as a coach, and by working for the Jefferson County Public Schools, including working with students with emotional behavioral disorders. (**Testimony of the Appellant.**)

3. Upon his hiring in 2019, the Appellant received on-the-job training, which included access to policies of the organization. (**Testimony of the Appellant, Testimony of Stanley Edward Cooper.**)

4. On August 27, 2022, the Appellant was alerted to a fire in the room of Youth 1 and went to the youth's room to extinguish it. The Appellant then allowed Youth 1 to retrieve an object from her room. He then closed the door to her room and left Youth 1 unsupervised in the Dayroom, where she passed objects to and from other residents under their doors. (**Appellee's Exhibit 1, page 13, Appellee's Exhibit 1 Video JK Fire Incident.**)

5. After the Appellant extinguished the fire, Ms. Neumann, an employee who was working in the Control Room asked Mr. Mozee (via radio), "Did you get the lighter from Youth 1?" The Appellant responded (via radio), "She gave it to Youth 2." (**Appellee's Exhibit 1 Investigative Report, page 13, Appellee's Exhibit 1 video JK Fire Incident at 9:59.**)

6. With the understanding that the lighter Youth 1 used to start a fire was now in the hands of Youth 2, the Appellant took no action to search for or obtain the lighter from Youth 2. (**Id.**)

7. After the Appellant left Youth 1 unsupervised in the Dayroom, she set a fire to the contents of a trashcan and spent several minutes feeding the fire with combustible material. (**Appellee's Exhibit 1, Page 13, line 3, and video JK fire incident.**)

8. Even though the gym where the Appellant claimed to have been was less than a one (1) -minute walk from the Dayroom, the Appellant waited ten (10) minutes to enter the Dayroom to attempt to extinguish the fire.

9. The Appellant was unable to explain to investigators or the Hearing Officer what he was doing for the ten (10) minutes after he was alerted of the Dayroom fire.

10. The fire and resulting smoke were so significant that staff and youth had to be evacuated from the Unit and the St. Matthews Fire Department ultimately extinguished the fire. (**Testimony of the Appellant, Appellee's Exhibit 1.**)

11. While the firefighters were entering the facility, elsewhere in the facility Youth 2, who the Appellant had left unsupervised and allowed to roam freely in the hall, walked several feet ahead of the Appellant to the exit and escaped .

12. The Appellant completed an Incident Report regarding the escape of Youth 2, but failed to prepare an Incident Report for the fire he extinguished in Youth 1's room. (**Testimony of the Appellant.**)

13. During the course of the hearing, the Appellant contended that he was not responsible for the events of August 22, 2022, because DJJ failed to properly train him. However, this position is contrary to the Appellant's own words during his investigative interview. The Investigative Report provides that the Appellant acknowledged and took responsibility for his conduct. The report provides the following from his October 10, 2022 Interview with Investigators:

When asked what they could have done differently between the two fires set by Youth 1, Mozee stated, "we should have got that lighter" and further added that the lighter should never have been brought in the facility. (**Appellee's Exhibit 1, Page 28, Paragraph 6.**)

Mozee explained that there are a lot of things he would do differently, especially if they had enough staff; they would have been able to get the lighter and this would not have happened. (**Id., Paragraph 8.**)

Mozee explained he should have mentioned the first fire Youth 1 set on his Incident Report, but he did not. Mozee explained he was responsible for the shift on 8/27/2022 and in addition, responsible for Unit 500. (**Id., Paragraph 9.**)

When asked what was so important for him to leave Youth 1 alone in the Dayroom with a lighter, Mozee stated he did not know. Mozee added he thought Beasley needed him in the gym and assumed he left to help Beasley because of staff-to-resident ratio. Mozee stated after thinking about it, he should have never left and that there was nothing more important than getting that lighter. (**Id., paragraph 11.**)

Mozee admitted he was "totally wrong" from leaving Youth 1 alone in the Dayroom without securing the lighter. Mozee added he could have requested Beasley take her residents back to Unit 700 and come help him search for the lighter. (**Appellee's Exhibit 1, Page 29, paragraph 2.**)

Mozee stated it was a "brain fart" when he allowed Youth 2 to stay in the hallway as he went into Unit 500 and accepts full responsibility. Mozee believed an Incident Report was completed for Youth 2 kicking through the glass of the exterior door. (**Id., Paragraph 5.**)

Mozee stated if he could do anything different, it would be “everything” and is thankful nobody got hurt. Mozee mentioned communication is a big issue and needs to be improved. Mozee stated staff had to know a lighter was present if fires are being set. Mozee stated there is a policy for doing contraband checks of resident rooms at least 2 – 3 days per week, especially if a new resident comes into the facility. (***Id., Paragrpah 6.***)

See Appellee's Exhibit 1, Investigative Report, pages 28 and 29.

14. During his interview, the Appellant admitted that he did not complete the incident report for the fire in Youth 1's room, and that he did not search for the lighter after he extinguished the fire. He also admitted that he should not have left Youth 1 unsupervised in the Dayroom or Youth 2 in the hall. For each incident that ultimately led to his suspension without pay, he not only acknowledged what he did wrong, but detailed the appropriate way he could have handled them. Thus, the Appellant lacks credibility for his contention that he required additional training to handle these incidents appropriately.

15. The Appellant's letter of suspension includes, among others, Violations of DJJ Policy 110, “General Security Guidelines in Facilities and Programs” Section I; DJJ Policy 714 “Searches” Section I; and DJJ Policy 715 Incident Reports, Section IV A and IV D (1 and 2).

16. DJJ Policy Number 110 Section I provides:

Staff supervision and security measures shall be provided to ensure a secure and safe environment.

17. DJJ Policy Number 714 Section I provides:

The Department shall ensure the safety of the juvenile and the environment within a program by utilizing searches of juveniles and the facility. Whenever there is reason to believe that the surety of the facility may be endangered or that contraband may be present in or introduced into the facility, a search of a juvenile and their possessions shall occur.

18. DJJ Policy Section 715 Section IV provides:

IV. Procedures

A. *Any staff witnesses witnessing or discovering an incident shall immediately intervene to prevent further escalation of possible or lessen potential severity.*

D. *An incident report shall be written to or provided details specific information regarding:*

1. *The violation or behavior*
2. *Events leading up to the incident;*
3. *The manner in which the incident was dealt with and any consequences issued as a result;*
4. *Staff witnesses;*
5. *Physical evidence;*
6. *Use of force;*
7. *The full names of the juvenile;*
8. *Date, time, and place; and*
9. *The report staff's name, signature and current position.*

(Emphasis Added, Appellee's Exhibits 4,5 and 6.)

19. The Appellant violated DJJ Policy 714 when he failed to initiate a search for the lighter after Youth 1 started a fire in her room. (**Appellant's Exhibit 1.**)

20. The Appellant violated DJJ Policy 110 when he left Youth 1 unsupervised, allowing her to start a fire of such magnitude that staff and residents needed to evacuate and it had to be extinguished by the St. Matthews Fire Department. He also violated this policy by leaving Youth 2 unsupervised, allowing his escape from the facility. (**Appellant's Exhibit 1, Appellee's Exhibit 1 Video JK Fire Incident.**)

21. The Appellant violated Policy 715 when he failed to complete an Incident Report for the first fire started by Youth 1. (**Appellant's Exhibit 1.**)

22. In his interview, the Appellant acknowledged that his decisions and conduct on August 22, 2022, were inappropriate and could have had deadly consequences. Despite this, during the hearing and while under oath, the Appellant denied responsibility for the multitude of bad decisions he made that day and instead attempted to lay blame on his employer.

23. The evidence of the Appellant's acceptance of responsibility, followed by an absolute denial of responsibility while testifying under oath at the hearing, damages the Appellant's credibility.

CONCLUSIONS OF LAW

1. The Appellant, Marcus Mozee, engaged in misconduct in violation of the Department of Juvenile Justice Policies 715, 714, and 110. His violation of policy constitutes poor work performance in violation of 101 KAR 1:345 Section 1.

2. The Hearing Officer concludes that the Justice and Public Safety Cabinet, Department of Juvenile Justice, met its burden of proof that the twenty (20) day suspension of the Appellant, Marcus Mozee, was for just cause and was neither excessive nor erroneous.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the case of **MARCUS MOZEE V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2023-012) 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).

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 Brenda D. Perry 5th day of December, 2024.

KENTUCKY PERSONNEL BOARD


GORDON A. ROWE, JR.
EXECUTIVE DIRECTOR

A copy this day emailed and mailed to:

Hon. Garry Adams
Hon. Edward Baylous
Hon. Rosemary Holbrook (Personnel Cabinet)