

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2022-057**

STEPHEN MULLINS

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

APPELLEE

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The Board, at its regular February 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated January 18, 2024, 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 14 day of February, 2024.

KENTUCKY PERSONNEL BOARD

M. A. Sipek
MARK A. SIPEK, SECRETARY

Copies hereof this day emailed and mailed to:

Stephen Mullins
Hon. Kristin Wehking
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney Moore

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FINDINGS OF FACT, CONCLUSION OF LAW
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This matter came on for an evidentiary hearing on September 19, 2023, at 9:30 a.m. EDT, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Stafford Easterling, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Stephen Mullins, was present in person and was not represented by legal counsel. The Agency/Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Kristen Wehking. Also present as Agency representative was former Roederer Correctional Complex Warden, Jessie Ferguson.

At issue during the evidentiary hearing was the Agency's dismissal of the Appellant and whether such dismissal was taken with just cause and was either excessive or erroneous. The burden of proof was with the Agency and was by a preponderance of the evidence.

BACKGROUND AND FINDINGS OF FACT

1. Following a discussion of the burden of proof and the admission of certain documents the Appellant intended to rely upon, the parties waived opening statements and the Agency called the Appellant, **Stephen Mullins**, as its first witness. Mullins began by stating that he was previously employed as a Chaplain at the Roederer Correctional Complex (RCC) with the Justice and Public Safety Cabinet, Department of Corrections, following several years serving as a Stores Operations Supervisor at the Kentucky Correctional Institution for Women (KCIW). He was then directed to written statements he provided during the investigation of the underlying events, admitted writing the statements, and admitted their accuracy. The Appellant's February 22, 2022 admission reads, in pertinent part:

[KCIW] I/M Brown worked for me while I was the Laundry Officer at KCIW. I/M Brown worked from late 2020 to early 2021. During

the period of time that I/M Brown worked for me there were occasions that she made comments that were inappropriate. I/M Brown interpreted my choice not to discipline her as a license to continue. I let my guard down and around Christmas of 2020, she increased her effort to pursue me. I allowed I/M Brown to first touch my hand, kiss my hand which increased her perceived license. During times of consoling I/M Brown I did hug her which increased her license. On one of the occasions that I hugged her, she leaned in to kiss me. The kissing occurred three to four times.

Prior to kissing incident she had smacked my crotch with the back of her hand and held it there for a brief moment. I scolded I/M Brown but did not follow-up with any disciplinary action. The initial kissing incident occurred on Christmas Day 2020 and occurred three to four times prior to her being taken to SAP in February of 2021.

* * * *

The events associated with I/M Brown were the result of me overlooking minor infractions. In not addressing small issues I exercised poor judgment. The result was that she perceived that she was free to kiss me on three or four occasions and even grabbed my belt. The touching of my crotch occurred two or three times outside of the pants.

2. The Appellant acknowledged that he submitted an additional written statement on February 23, 2022, which reads, in pertinent part:

[] I/M Brown pursued inappropriate activity. She used her elbows to push my hands down to touch her buttocks. She did this once to get my hands on the outside of her pants and then, on another occasion, pushed my hands down on the inside of her pants to touch her buttocks. On one or two occasions she pushed my hand down the front of her pants. Once I realized what she was attempting I stopped. On those occasions she also unzipped my pants to access my penis. When I realized what she was doing I stopped her and before she could get through my underwear. This occurred once or twice.

3. The Appellant acknowledged that he permitted physical contact by I/M Brown and acknowledged that he kissed her but insisted that the inmate initiated those multiple contacts. The Appellant also acknowledged that he received training on the Prison Rape Elimination Act (PREA). The Appellant then highlighted the narrative statement he made on his Appeal Form, which reads in full:

The events which led to and caused my dismissal could have been prevented. When I crossed over from programs (Warehouse Supervisor) to security in 2020, I was not prepared for the rigors of a Corrections Officer's job. I was placed in a permanent post while I was still naïve to the manipulative tactics of the inmate population. Furthermore, I should have been assessed for psychological fitness for duty.

4. The Agency then called **Warden Jessie Ferguson** as its next witness. Ferguson served as Warden of the Roederer Correctional Complex (RCC) for approximately four (4) years prior to her August 2023 retirement. Ferguson made the decision to dismiss the Appellant and was the Appointing Authority who issued the letter imposing the dismissal. After detailing her work history with the Department of Corrections and her general knowledge of the Appellant, Ferguson was directed to the March 9, 2022 dismissal letter. Ferguson testified that she terminated the Appellant for violating DOC policies through inappropriate sexual behavior with an inmate at KCIW that occurred prior to his promotion to Chaplain at RCC. Ferguson discussed the DOC's zero tolerance policy on the sexual abuse, assault, or harassment of inmates and noted that inmates are legally unable to consent to sexual contact with DOC employees while in the custody of the DOC. Ferguson acknowledged a high staff turnover rate and that inmates are often manipulative. Ferguson then addressed the Appellant's February 22 and 23, 2022 written statements set out at length above and detailed what the Appellant's response should have been to each of the inmate's inappropriate statements and incidents of physical contact. She also set out the level of discipline she would have imposed for each of the Appellant's repeated failures to report or take action against the inmate for her inappropriate behavior. Ferguson then testified about the various types of training DOC employees receive on interacting with inmates, including annual training, written policies, and specialized annual PREA training. Cards detailing DOC employees' PREA obligations are included on every employee's identification badge, in addition to each employee receiving significant on the job training responding to real-time situations occurring within the correctional facilities.

5. The Agency next called **Jose Rodriguez** as its last witness. Rodriguez serves as Correctional Captain and Internal Affairs supervisor at RCC and formerly had served as the Training Coordinator at KCIW when the Appellant worked at that facility. Rodriguez investigated the allegations laid out against the Appellant in the March 9, 2022 dismissal letter and testified credibly and in detail about the steps of his investigation that confirmed the allegations against the Appellant. Rodriguez then testified about the Appellant's training record and discussed the number of courses where the Appellant received PREA training.

6. The **Appellant, Stephen Mullins**, then retook the stand as the only witness in his case-in-chief. The Appellant testified consistently with the events described above, including largely admitting the accuracy of the allegations contained in the March 9, 2022 dismissal letter. The Appellant testified that he sought medical treatment following his dismissal and received treatment for severe depression and anxiety in addition to further assessment for other significant medical conditions. The Appellant noted his previous clear disciplinary record while serving as KCIW's Stores Operations Supervisor and argued that serving as a Correctional Officer placed

him under an additional level of stress for which he was not prepared. He noted that stressors can lead to latent mental health issues materializing and said that was the situation here. The Appellant argues that the Department of Corrections should have required him to provide both physical and psychological fitness for duty forms prior to transferring to a Correctional Officer role. He asserts that, had he been required to pass a psychological fitness for duty test for Correctional Officer, he would have failed such a test and would have been required to remain as a Stores Operations Supervisor, a position that involved less inmate interaction and in which he had a prior clear disciplinary record and above average annual evaluations.

7. After review of the evidence of record, including the testimony of the Appellant, and all exhibits entered into the record, including the Appellant's written admissions, the Hearing Officer deems the contents of the Agency's March 9, 2022 dismissal letter proven by a preponderance of the evidence. The Hearing Officer finds that the Appellant's actions constituted misconduct pursuant to 101 KAR 1:345 and that the Agency established just cause to impose disciplinary action against the Appellant. Given the details and nature of the Appellant's misconduct, the Appellee further established that the Appellant's dismissal was neither excessive nor erroneous.

CONCLUSIONS OF LAW

1. KRS 18A.095(1) provides that "a classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause."

2. As demonstrated in the Background and Findings of Fact, the Agency carried its burden of proof to establish just cause for the dismissal of the Appellant. Further, the evidence of record established that this penalty was neither excessive nor erroneous. KRS 13B.090(7), KRS 18A.095(1) and (22), and 101 KAR 1:345.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **STEPHEN MULLINS V. JUSTICE AND PUBLIC CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2022-057)** be DISMISSED.

NOTICE OF EXCEPTION AND APPEAL RIGHTS

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

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 Mark A. Sipek** this 18th day of January, 2024.

KENTUCKY PERSONNEL BOARD



**MARK A. SIPEK,
EXECUTIVE DIRECTOR**

A copy hereof this day emailed and mailed to:

Stephen Mullins
Hon. Kristen Wehking
Hon. Rosemary Holbrook (Personnel Cabinet)