

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-114**

**DOUGLAS NEAL**

**APPELLANT**

**FINAL ORDER  
ALTERING HEARING OFFICER'S  
VS. 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 January 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated November 13, 2014, having noted Appellee's exceptions, oral arguments and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer be altered as follows:

A.    **Delete** Findings of Fact numbers 3 and 4 and substitute the following:

3.    The Appellant acknowledged that carrying a firearm was an essential function of his position as a Correctional Officer. The Appellant clearly understood that once a Domestic Violence Order of Protection is entered against you, you are prohibited from using or possessing firearms. Having had an amended Domestic Violence Order entered against him in the Jefferson Family Court on January 18, 2008, it is clear the Appellant understood that there was an exemption available under the Brady Act which would have allowed him to continue to carry a firearm for employment purposes only. [See Appellee's Exhibit 4.]

4. A Domestic Violence Order of Protection was again entered against the Appellant in the Jefferson Family Court on December 11, 2012. During this particular incident, the Appellant represented himself and did not have the help of an attorney. According to the Appellant, he held a conversation with the Prosecutor and the Judge regarding the exemption available under the Brady Act which would have allowed for his continued use of firearms for employment purposes only. However, the 2012 Order of Protection did not include this exemption under the Brady Act.

B. Delete Finding of Fact number 6 and substitute the following:

6. The Board finds the Appellant did not provide the Appellee with a copy of his 2012 Order of Protection. The Board finds had it not been for the subject background check performed in February or March of 2014, Appellant would never have informed the Appellee that the 2012 Order of Protection had been entered against him.

C. Insert a new Finding of Fact number 8 as follows:

8. The Board finds Appellant was in the best position to know the effect of the domestic violence order of protection entered in 2012 on his ability to carry a firearm. The Board finds Appellant knew or should have known, or made inquiry, as to whether he actually had an exemption on this domestic violence order to allow him to carry a firearm for performance of work duties. The Board finds the fault in not ensuring that the firearm exemption for work purposes not being added to the domestic violence order of protection rests solely with the Appellant.

D. Renumber Findings of Fact 8 and 9 to numbers 9 and 10.

E. **Delete** Conclusions of Law numbers 3, 4, 5, and 6 and substitute the following:

3. The Board rejects any conclusion or suggestion that it was the responsibility of Appellant's supervisors within the Department of Corrections to follow-up with Appellant after he reported arrest in December 2012 to determine if in fact Appellant was still qualified to perform the functions of Correctional Officer. Appellant had previous experience in obtaining a firearms exemption to a domestic violence order and was doubtless aware such an exemption was necessary in order for him to fulfill the functions of Correctional Officer.

4. The Board concludes the Appellant's failure to ensure that he did in fact have the firearms exemption for work purposes language added to the Domestic Violence Order was his responsibility alone.

5. The Board concludes that the Department of Corrections acted reasonably upon discovering that Appellant for over a year had been performing the functions of a Correctional Officer which require the lawful ability to carry a firearm without actually having the legal authority to carry that firearm. The Board concludes that the Appellee had just cause to take action against Appellant and that the penalty of dismissal was neither excessive nor erroneous, but was in fact a sound management decision.

F. **Renumber** Conclusion of Law 7 to number 6.

G. **Delete** the Recommended Order, and substitute the following:

**IT IS HEREBY ORDERED** that the appeal of **DOUGLAS NEAL VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2014-114)** be **DISMISSED**.

**IT IS FURTHER ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer as Altered be, and they hereby are, approved, adopted and incorporated herein by reference as a part of this Order and the Appellant's appeal is **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 13<sup>th</sup> day of January, 2015.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK, SECRETARY**

A copy hereof this day mailed to:

Hon. Stafford Easterling  
Douglas Neal  
Bobbie Underwood

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-114**

**DOUGLAS NEAL**

**APPELLANT**

**VS.**

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

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

**APPELLEE**

\*\* \*\* \*

This matter came on for evidentiary hearing on August 12, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Geoffrey B. Greenawalt, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Douglas Neal, 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. Stafford Easterling.

**BACKGROUND**

1. The Appellant, Douglas Neal, was terminated from his position of Correctional Officer with the Department of Corrections, Roederer Correctional Complex (RCC), effective close of business March 25, 2014.

2. The issue at the evidentiary hearing was the dismissal of the Appellant. The burden of proof was upon the Appellee to demonstrate by a preponderance of the evidence that the disciplinary action taken against the Appellant was neither excessive nor erroneous and was taken with just cause.

3. The Appellant timely filed his appeal with the Personnel Board on May 25, 2014, appealing from his dismissal from his position as Correctional Officer with the Department of Corrections, Roederer Correctional Complex (RCC), effective close of business March 25, 2014.

4. The first to testify was the Appellant, **Douglas Neal**. Mr. Neal testified that he had been employed as a Correctional Officer at RCC from March 1, 2002 until the close of business on March 25, 2014. Appellee's Exhibit 1, was introduced through the witness and is a copy of the job specifications for a Correctional Officer.

5. Appellee's Exhibits 2 and 3 were introduced into the record. Similar to the intent to dismiss letter, Appellee's Exhibit 3 is a copy of the actual dismissal letter dated March 24, 2014. In essence, the Appellant was dismissed from his position as a Correctional Officer because his job required that he be able to carry a firearm. However, in 2012, an Order of Protection was entered against the Appellant in a domestic violence case. Unlike a previous Order of Protection entered against the Appellant in 2007/2008, the 2012 order did not exempt him from the Brady Act. Thus, he was precluded from carrying or possessing a firearm.

6. Appellee's Exhibit 4 was introduced into the record and is an Order of Protection entered against the Appellant on January 18, 2008. It should be noted that said order contained the requisite language which allowed the Appellant to continue to use a firearm while at work only.

7. Appellee's Exhibit 5 was introduced to the record and is a copy of the Order of Protection entered against the Appellant on December 11, 2012. It should be noted that unlike the 2007/2008 order, this order did not contain the requisite language which allowed the Appellant to continue to use a firearm while at work only.

8. The Appellant testified that given his experience in 2007/2008, he was aware in 2012 that he needed an exemption under the Brady Act in order to be able to carry a firearm while at work. He stated that in 2007 he was represented by an attorney who made it a point to have the exemption language contained in the Order. However, in 2012, the Appellant represented himself and did not have legal counsel to guide him through the process and insure that the Order of Protection contained the requisite firearm exemption language. He did however state that he while he was before the Judge, the exemption was discussed openly. According to the Appellant, he informed the Judge that he was aware that he was not to possess any guns for personal use and that he could only carry one at work which had to be turned in at the end of each day. According to the Appellant, as a result of his conversation with the judge, after he walked out of the courtroom, he never gave it another thought and simply continued to work as he had before back in 2008.

9. Appellee's Exhibit 6 was introduced into the record and is a copy of the amended 2012 Order allowing the Appellant to carry a gun for purposes of employment with the Kentucky Corrections department only. This Order was entered May 13, 2014 and was obtained by the Appellant, with the assistance of legal counsel, after he had been notified that he would be losing his job due to his inability to carry a gun while at work.

10. According to the Appellant, when he first went before the Judge on the domestic violence issue in 2012, the Judge was made aware that he needed an exemption in the Order of Protection so that he could continue with his employment. The Appellant was under the impression that since the Judge was aware he needed the exemption that there was nothing further to worry about. The Appellant acknowledged that being able to carry a firearm during his employment was an essential aspect of his job. However, when he walked out of the courtroom in 2012, he was under the impression that the exemption was in place.

11. According to the Appellant, he reported his arrest on December 3, 2012, to his first-line supervisor, Lt. Regina Couch. In fact, he called Lt. Couch during his arrest at which time he asked her to arrange for the following day off through his shift Captain, Capt. Scott Stewart. According to the Appellant, he actually ended up speaking with Capt. Stewart and asked him directly if he could have the day after his arrest off. During this conversation, Capt. Stewart asked the Appellant to keep him abreast of his situation.

12. On cross-examination, the Appellant acknowledged that simply reporting his arrest to his supervisor did not relieve him from the dictates of the original Order of Protection which prohibited him from carrying or possessing firearms. However, he explained that had it not been for his dismissal, he never would have known the 2012 Order of Protection did not contain the requisite language exempting him from the Brady Act.

13. According to the Appellant, after being placed on administrative leave in March 2014, he got in touch with the lawyer who helped him with his 2007 Order of Protection. His lawyer then went about getting before the Jefferson Family Court in order to obtain the necessary exemption to the original 2012 Order of Protection. The Appellant testified that during his pre-termination hearing, he informed Warden Sims that he had obtained a lawyer and was trying to get things cleared up. However, due to the tremendous backlog in the Jefferson Family Court, it took a while to obtain the necessary order. According to the Appellant, the only reason the exemption language was not included in the 2012 order was because of a simple misunderstanding or failure of communication between him and the Judge and that had he known back then what needed to be done it would have been done. He reiterated that in 2007 he obtained the exemption because he had the help of a lawyer while in 2012, he represented himself and simply failed to make sure he got the exemption.

14. The next to testify at the hearing was **Ravonne Sims**, the Warden at the RCC. Warden Sims reviewed Appellee's Exhibits 2 and 3 and testified she both approved and signed off on each of them.

15. Appellee's Exhibits 7, 8 and 9 were introduced into the record through the witness. Warden Sims testified that under the Prison Rape Elimination Act (PREA) a background check on all Correctional employees had to be performed each five years. She chose to conduct all of the background checks at one time. These were all completed on March 21, 2014. Seven employees came up flagged, including the Appellant. Warden Sims asked the Deputy Warden for Security, Vanessa Kennedy, if there was anything that allowed the Appellant to carry a gun. At that time, she was shown the 2007/2008 Protection Order that included the necessary exemption language allowing the Appellant to carry a firearm. A call was then made to the Jefferson Family Court and the 2012 Protection Order was faxed over to them. They noticed that there was no firearm exemption language contained in this Order. Since it is an essential job duty for Correctional Officers to carry a firearm, the intent to dismiss letter was then generated.

16. During the pre-termination hearing, Warden Sims admitted that the Appellant told her he was in the process of getting an amended Order and was always under the impression that the exemption had applied to him. According to Warden Sims, the amended Order, marked as Appellee's Exhibit 6, has no impact on her decision to terminate the Appellant because at the end of the day, the Appellant failed to report the entry of the Protection Order as required. According to Warden Sims, no other issues influenced her decision to terminate the Appellant and that the same was based strictly upon the facts.

17. On cross-examination, Warden Sims testified that both Capt. Stewart and Lt. Couch acknowledged that the Appellant told them about his arrest. However, he never reported his actual conviction to them. According to Warden Sims, the Appellant's failure to report his conviction was grounds enough to terminate the Appellant.

18. This matter is governed by KRS 18A.095(1) which states:

A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.

19. The Hearing Officer has considered the entire administrative record, including the testimony and statements therein.



**FINDINGS OF FACT**

1. The Appellant, Douglas Neal, was terminated from his position as a Correctional Officer with the Department of Corrections, Roederer Correctional Complex (RCC), effective close of business March 25, 2014. According to the termination letter dated March 24, 2014, and marked as Appellee's Exhibit 3, the Appellant was dismissed due to misconduct. In essence, the Appellant failed to officially report to the Appellee that a Domestic Violence Order of Protection had been entered against him on December 11, 2012, in the Jefferson Family Court, in direct violation of CPP 3.1 and IPP 03-01-01.

2. The Appellant, a classified employee with status, timely filed his appeal with the Personnel Board on May 27, 2014, appealing from his termination as a Correctional Officer. Prior to his termination as a Correctional Officer, the Appellant had worked as such at RCC since March 1, 2002.

3. The Appellant acknowledged that carrying a firearm was an essential function of his position as a Correctional Officer. The Appellant clearly understood that once a Domestic Violence Order of Protection is entered against you, you are prohibited from using or possessing firearms. Having had an amended Domestic Violence Order entered against him in the Jefferson Family Court on January 18, 2008, it is clear the Appellant understood that there was an exemption under the Brady Act which allowed him to continue to carry a firearm for employment purposes only. [See Appellee's Exhibit 4.]

4. A Domestic Violence Order of Protection was again entered against the Appellant in the Jefferson Family Court on December 11, 2012. During this particular incident, the Appellant represented himself and did not have the help of an attorney. According to the Appellant, he held a conversation with the Prosecutor and the Judge regarding the exemption contained in the Brady Act which allowed for his continued use of firearms for employment purposes only. However, the 2012 Order of Protection did not include this exemption under the Brady Act.

5. During the course of his arrest, the Appellant contacted his immediate supervisor, Lt. Couch, and informed her of the same. It is also clear that Capt. Stewart was made aware of the Appellant's arrest by the Appellant himself.

6. There is no evidence of record that the Appellant provided the Appellee with a copy of his 2012 Order of Protection. According to the Appellant, had it not been for the subject background check performed in February or March of 2014, he would never have realized he had failed to officially inform the Appellee that the 2012 Order of Protection had been entered against him. According to the Appellant, based upon his conversation with the Prosecutor and the Judge during the December 2012 domestic violence matter, he was under the impression that the Brady exemption applied to him. Further, having spoken directly to Lt. Couch and Capt. Stewart regarding his arrest, he was under the impression that the incident had been properly reported.

7. According to Warden Sims, although the Appellant was able to procure an amendment to the Domestic Violence Order of Protection entered in 2012 which would allow him to possess a firearm for purposes of state employment [see Appellee's Exhibit 6], his failure to report his conviction was a sufficient basis for his termination. According to the dismissal letter, marked as Appellee's Exhibit 3, the Appellant was expected to be a role model for the inmates and that his behavior demonstrated a clear disregard for the laws and violated the trust the Appellee placed in him by employing him as a Correctional Officer.

8. A review of the Appellant's personnel file revealed that he had five previous disciplinary actions taken against him between April 30, 2012, and June 5, 2012. [See Appellee's Exhibits 2 and 3.]

9. Prior to his termination on March 25, 2014, the Appellant had been placed on administrative leave effective March 3, 2014, and remained so until his termination from employment.

### **CONCLUSIONS OF LAW**

1. The Appellant timely filed his appeal with the Personnel Board on May 27, 2014, appealing from his termination from his position as a Correctional Officer with the Department of Corrections, Roederer Correctional Complex, effective March 25, 2014.

2. The Appellant was terminated for his misconduct. Specifically, he was alleged to have violated CPP 3.1, II. and IPP 03-01-01, which are general ethics policies. The termination letter, marked as Appellee's Exhibit 3, further stated that as a Department of Corrections employee the Appellant was expected to be a role model for the inmates and was to display behavior acceptable to the public and within the laws of the Commonwealth of Kentucky. According to Warden Sims, the Appellant's behavior demonstrated a clear disregard for the laws, and, violated the trust the Department of Corrections placed in him by employing him as a

Correctional Officer. In addition, and much more importantly, the Appellant was terminated because he was disqualified from performing an essential function of his position as a Correctional Officer by not being able to carry a firearm.

3. The Appellant promptly reported his arrest to his immediate and second line supervisors. The subsequent entry of an Order of Protection against him nine days later appears to have gone unreported, at least in any formal manner. However, having willingly and timely reported his arrest, it is understandable that the Appellant was under the impression he was not required to do anything further. In addition, although they were clearly aware of what was going on, there is nothing in the record to suggest the Appellant's supervisors made any effort to follow up or ascertain the outcome of the Appellant's legal troubles.

4. The overriding impression herein is the Appellant timely disclosed his arrest to his immediate supervisors, there were no material omissions regarding his misconduct, and he never provided materially false information to the Appellee when his conviction came to light. There is no indication the Appellant ever attempted to hide the fact this domestic relations violation occurred. The evidence only suggests the Appellant misunderstood the scope of the 2012 Order of Protection and that the same was rectified in fairly short order with the procurement of the amended Order, marked as Appellee's Exhibit 6.

5. The record does not reflect the Appellant demonstrated a clear disregard for the laws of the Commonwealth or violated the trust placed in him by the Appellee as determined by Warden Sims. The Appellant was a long-term employee of the Department of Corrections as a Correctional Officer with a relatively minor disciplinary background. In fact, the Appellant's disciplinary background was not even mentioned in his termination letter or at hearing. In addition, the Appellant was not terminated from employment on the basis of the Order of Protection entered against him in 2007, and the fact another Order of Protection was entered against him in 2012 was not mentioned as the basis of his termination.

6. The Appellee clearly could not allow the Appellant to remain employed as a Corrections Officer while the restriction against possessing a firearm remained in effect. However, given his length of service, his relatively minor disciplinary history, and the lack of evidence to suggest the Appellant intentionally kept his criminal background from the Appellee in order to keep his job, the best course of action would have been to place the Appellant on unpaid administrative leave from March 3, 2014, until such time as prohibition against carrying firearms was lifted.

7. The Appellee has failed to demonstrate by a preponderance of the evidence that the disciplinary action taken against the Appellant, the same being his termination from his position as a Correctional Officer with the Roederer Correctional Complex, effective close of business on March 25, 2015, was neither excessive nor erroneous, and was appropriate under the circumstances.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **DOUGLAS NEAL VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORECTIONS (APPEAL NO. 2014-114)** be **SUSTAINED to the extent** that the Appellant be reinstated to his former position effective March 25, 2014, and further awarded lost pay and benefits and otherwise be made whole. Between March 26, 2014 and May 13, 2014, the Appellant is to be considered to have been on unpaid leave pending his procurement of the exemption to the Brady Act which allowed him to possess firearms issued by and for the use in the course of state employment. **[KRS 18A.105 and 200 KAR 12:030.]**

**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 Geoffrey B. Greenawalt** this 13<sup>th</sup> day of November, 2014.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day mailed to:

Hon. Stafford Easterling  
Douglas Neal