

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2016-113

ANGELA MORRELL-ONEAL

APPELLANT

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

**JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF CORRECTIONS**

APPELLEE

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The Board, at its regular June 2017 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 5, 2017, 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** Conclusions of Law paragraph 2, and substitute the following:

2.     The Appellee has demonstrated by a preponderance of the evidence that the Appellant was officially resigned from her position as a Correctional Officer at KCIW in accordance with 101 KAR 2:020.

**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 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 15<sup>th</sup> day of June, 2017.

KENTUCKY PERSONNEL BOARD

  
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MARK A. SIPEK  
SECRETARY

A copy hereof this day mailed to:

Hon. Scotty McFarlan  
Ms. Angela Morrell-Oneal  
Mr. Rodney E. Moore

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2016-113**

**ANGELA MORRELL-ONEAL**

**APPELLANT**

**VS.**

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

**JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF CORRECTIONS**

**APPELLEE**

\*\* \*\* \*

This matter came on for an evidentiary hearing on December 1, 2016, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Geoffrey B. Greenawalt, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Angela Morrell-Oneal, was present and was not represented by legal counsel. Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Scotty McFarlan.

By pre-hearing order dated August 29, 2016, the issue at the evidentiary hearing was whether or not the Appellant was penalized without just cause when she was resigned from her position as a Correctional Officer after being on sick leave without pay for one year. The burden of proof was upon the Appellee, which was to be by a preponderance of the evidence.

**BACKGROUND**

1. The Appellant, Angela Morrell-Oneal, a classified employee, timely filed her appeal with the Personnel Board on June 16, 2016, appealing from her dismissal as a Correctional Officer at the Kentucky Correctional Institution for Women (KCIW).

2. The first to testify was **Mr. Stephen Lyons**, who has been with the Kentucky Correctional Institution for Women for approximately seven years as a Human Resource Administrator. His duties include overseeing the Personnel Department at KCIW and all duties

related thereto, including hiring, payroll, and disciplinary actions. He also serves as the Americans with Disabilities Act (ADA) and Equal Employment Opportunity (EEO) Coordinator at KCIW. As the ADA Coordinator, any questions regarding the availability or suitability of reasonable job accommodations would first come to him.

3. According to Mr. Lyons, on December 20, 2014, a prisoner was extracted from her cell at KCIW which required deployment of OC pepper spray. The Appellant was subsequently ordered to mop and clean said cell. According to Mr. Lyons, the Appellant finished her shift that evening and worked the majority of her next day shift before leaving early complaining of breathing difficulties. That was the last time the Appellant worked at KCIW. Appellee's Exhibit 1 was entered into the record and summarizes the events surrounding the aforementioned cell extraction, which occurred on December 20, 2014. Appellee's Exhibit 2 was introduced into the record and is an Occurrence Report summarizing the Appellant's last day working at KCIW. Appellee's Exhibit 3 was introduced into the record and is a copy of the Appellant's Fitness for Duty Assessment dated January 8, 2015. It appears from this form that, after being assessed by Darlene Cardwell, ARN, the Appellant was unable to return to work. It is noted thereon that the Appellant's work restrictions were not considered permanent at this time.

4. Mr. Lyons stated the Appellant was allowed to exhaust her sick leave and her FMLA unpaid leave, at which time, per regulations, the Appellant was placed on sick leave without pay, commonly referred to as medical P-1 status. This occurred on May 30, 2015, after which, per regulation, the Appellant had one year in which to return to work.

5. Appellee's Exhibit 4 was introduced into the record and is a copy of e-mail communication between Mr. Lyons and Bobbie Underwood outlining the Appellant's employment status as of February 4, 2016. Appellee's Exhibit 5 was introduced into the record and is the Appellant's updated Fitness for Duty Assessment form dated March 18, 2016, which indicates the Appellant was permanently restricted from working overtime and being exposed to any further OC pepper spray.

6. Mr. Lyons opined that based upon these permanent restrictions, Appellant could not perform the essential duties of a Correctional Officer, which included working mandatory overtime and the ability to deploy OC pepper spray at any time or place.

7. Mr. Lyons testified the only available position at KCIW, while the Appellant was on unpaid sick leave, was an Administrative Secretary position. However, the workstation was located in the Administration building on the KCIW campus where OC pepper spray could be deployed at any time due to the on-going presence of inmates. As such, there were no available accommodations to offer the Appellant within KCIW. According to Mr. Lyons, Ms. Benson, an Administrative Specialist II at the Personnel Office at KCIW, instructed the Appellant to go on

the Career Opportunity System (COS) website and to look for available positions. Appellee's Exhibit 6 was introduced into the record and is a copy of e-mail communication wherein the Appellant was informed that KCIW could offer no accommodations and provided the Appellant with information to assist in her on-going job search. Mr. Lyons testified, as far as he was aware of, no one had an obligation to interview the Appellant as a result of her being placed on unpaid sick leave status. The Warden at KCIW cannot force another agency to hire or interview her. As far as he knew, no other agency reached out regarding the Appellant's employment status. Finally, in Mr. Lyon's opinion, the Appellee handled the Appellant's resignation appropriately.

8. The next to testify was **Warden Janet Conover**. Ms. Conover is the Warden at KCIW and has been for the last six plus years. She is also the Appointing Authority at KCIW.

9. Ms. Conover testified that she is aware of the Appellant's situation as it relates to her exposure to OC pepper spray in December 2014. As far as she knows, the Appellant was placed on P-1 sick leave status per the regulations and was subsequently resigned from her position as Correctional Officer. Appellee's Exhibit 7 was introduced into the record and is a copy of the letter which placed the Appellant on sick leave as of May 30, 2015. Appellee's Exhibit 8 was introduced into the record and is a letter dated May 4, 2016, wherein Appellant was formally requested to return work and resume her duties by the beginning of business on May 30, 2016. The letter requires the Appellant to provide a medical statement certifying she is able to perform the essential functions of her position with or without reasonable accommodations. It also informs Appellant that if she is unable to return to her former position, and no reasonable alternative is available, she would be deemed resigned from her employment pursuant to 101 KAR 2:102(2).

10. According to Warden Conover, in light of the Appellant's permanent restrictions, the Appellant was unable to perform the essential duties of a Correctional Officer, as a Correctional Officer may be required to use pepper spray at any time. She also stated that KCIW could not accommodate the Appellant's permanent restrictions, because OC pepper spray can be used at any time in any place within the institution. Appellee's Exhibit 9 was introduced into the record. According to Warden Conover, OC pepper spray had been used 33 times in 2016 and 49 times in 2015.

11. Appellee's Exhibit 10 was introduced into the record and is a letter to the Appellant dated May 30, 2016, informing her that effective the beginning of business May 30, 2016, she was officially deemed to have resigned from her position. Appellee's Exhibit 11 was introduced into the record and is a copy of 101 KAR 2:102.

12. The next to testify was the Appellant, **Angela Morrell-Oneal**. According to the Appellant she started work as a Correctional Officer on November 17, 2013. On December 20, 2014, there was a cell extraction involving the use of pepper spray. The Appellant was ordered

to get a mop and clean up the cell. At that time, she started choking and could not finish the job. Although she was hacking and coughing after cleaning up, she was able to finish her shift. While at home, she continued to cough and had difficulty sleeping. When she went back to work the next day, she could not handle her continued coughing and went straight to the emergency room. She was later referred to a pulmonary doctor by the name of Lloyd.

13. The Appellant acknowledged she had exhausted her paid sick leave and was not able to work during her FMLA leave time. She also acknowledged receiving all required notices and agreed she could no longer perform the essential functions of a Correctional Officer. According to the Appellant, she filled out tons of job applications. She is aware of one administrative job within KCIW, but never heard back from Mr. Lyons regarding her qualifications to perform this position. Ms. Morrell-Oneal stated this position was an Administrative Specialist II whose workstation was located on the KCIW campus in the Administration building. As she was not familiar with the Administration building, she did not know if the employees working within carried OC pepper spray or whether the use of pepper spray was a possibility therein.

14. Appellant's Exhibit 1 was introduced into the record and is a copy of an e-mail from the Appellant to Kathryn Benson indicating she had applied for a job at KCIW. According to the Appellant, she never heard back from anybody at KCIW regarding this job.

15. On cross-examination, the Appellant again agreed that, given her permanent work restrictions, she could not act as a Correctional Officer if OC pepper spray is present. She also knew, as a Correctional Officer, that OC pepper spray could be used at any time, in any place, at KCIW.

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

### **FINDINGS OF FACT**

The Hearing Officer makes the following findings by preponderance of the evidence:

1. The Appellant, Angela Morrell-Oneal, a classified employee, filed her appeal with the Personnel Board on June 16, 2016, appealing from her dismissal as a Correctional Officer at the Kentucky Correctional Institution for Women (KCIW) on or about May 30, 2016.

2. Pursuant to the Interim Order dated August 29, 2016 and entered herein, the issue before the Personnel Board was whether or not the Appellant was penalized without just cause

when she was resigned from her position as a Correctional Officer with KCIW after being on sick leave without pay for one year.

3. On December 20, 2014, there was a cell extraction at KCIW involving the use of OC pepper spray. Following the same, the Appellant was ordered to clean up the cell. Soon after the Appellant began mopping the cell, she began hacking and coughing. She was able to clean herself up and finish her shift, but she unable to complete the assignment of mopping out the cell. The Appellant was able to return to work the next day but left before the end of her shift, complaining of trouble breathing and indicating she was going to the emergency room. That was the last time the Appellant came to work at KCIW.

4. After exhausting her sick leave and FMLA leave time, the Appellant was placed on Medical Sick Leave by Personnel Action on May 30, 2015. (See Appellee's Exhibit 7.)

5. As a result of the Appellant's medical condition, her doctor, John A. Lloyd, on March 18, 2016, indicated the Appellant was permanently restricted from working overtime and being exposed in any way to pepper spray. (See Appellee's Exhibit 5.)

6. Being able to work overtime and being able to carry and discharge OC pepper spray are essential duties of a Correctional Officer at KCIW. In addition, the discharge and use of OC pepper spray could take place at virtually any time and any place within the KCIW campus, including the Administration building.

7. The Appellee was unable to accommodate the Appellant's permanent medical restrictions.

8. The Appellant was unable to return to her former position as a Correctional Officer and resume her previous duties as such by the beginning of business May 30, 2016. As a result of exhausting her one calendar year of unpaid sick leave by Personnel Action, the Appellant was resigned from her position as Correctional Officer at KCIW effective at the beginning of business May 30, 2016. (See Appellee's Exhibits 7 and 10.)

### **CONCLUSIONS OF LAW**

1. The Appellant, Angela Morrell-Oneal, timely filed her appeal with the Personnel Board on June 16, 2016, appealing from her dismissal as a Correctional Officer at the Kentucky Correctional Institution for Women on May 30, 2016.

2. The Appellant has demonstrated by a preponderance of the evidence that the

Appellant was officially resigned from her position as a Correctional Officer at KCIW in accordance with 101 KAR 2.020.

3. The Appellee has shown by a preponderance of the evidence that the Appellant was not penalized without just cause when she was resigned from her position as a Correctional Officer at KCIW.

**RECOMMENDED ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeal of **ANGELA MORRELL-ONEAL VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2016-113)** 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 Geoffrey B. Greenawalt this 5<sup>th</sup> day of May, 2017.



**KENTUCKY PERSONNEL BOARD**

A handwritten signature in black ink, appearing to read 'Mark A. Sipek' followed by a large, stylized 'MAS'.

**MARK A. SIPEK  
EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. Scotty McFarlan  
Angela Morrell-Oneal