

CERTIFICATION OF PERSONNEL BOARD RECORDS

I certify that attached hereto is a true and correct copy of the Findings of Fact, Conclusions of Law, and Recommended Order and Final Order in the case of **CATHERINE PARTLOW VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2012-166)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 14th day of May, 2013.



MARK A. SIPEK SECRETARY
KENTUCKY PERSONNEL BOARD

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-166

CATHERINE PARTLOW

APPELLANT

VS. FINAL ORDER ALTERING 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

** ** ** ** **

The Board, at its regular May 2013 meeting, having considered the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer, dated March 7, 2013; 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. **Add** Findings of Fact number 14 as follows:

14. However, the Board Finds that Appellant took absolutely no ownership of the situation, instead leaving it to her supervisor to ensure that previously pre-approved voting leave was in fact taken off the timesheet and other leave substituted therefore. It was not unreasonable to expect Appellant, to check for herself whether or not the voting leave had been taken off and other leave substituted.

B. **Delete** Conclusions of Law number 1 and substitute the following:

1. Even though Appellant attempted to correct the situation, she did not follow through to ensure that she was not properly awarded voting leave, and the Board finds that her failure to do so was worthy of corrective action. The Appellee was excessive and erroneous in its decision to suspend Appellant for ten days. The record did not show by a preponderance of the evidence that Appellant "falsified" documentation for personal gain (Suspension letter, Appellee's Exhibit 4). What was established at the evidentiary hearing was that Appellant requested voting leave in advance with the

intention of taking it. When she failed to vote, she attempted to correct the situation with her supervisor.

C. **Delete** the Recommended Order.

IT IS HEREBY ORDERED that the appeal of **CATHERINE PARTLOW VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (Appeal No. 2012-166)** be **SUSTAINED to the extent** that the Appellant's ten-day suspension be set aside and that she be awarded back pay and benefits lost as a result of the suspension; that Appellant be reimbursed for any leave time she used attending the hearing and any pre-hearing conferences at the Board; and that she otherwise be made whole.

IT IS FURTHER ORDERED, if not previously done, that four hours of voting leave improperly assigned to Appellant be removed and that Appellant's time off spent for claimed voting leave that was not used either be deducted from compensatory or annual leave. **IT IS ALSO ORDERED** that the Appointing Authority take corrective action in the form of a written reprimand regarding Appellant's failure to have fully ensured that the voting leave she was not entitled to was not reflected on her timesheet. **KRS 18A.105, KRS 18A.095(25) and 200 KAR 12:030.**

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 therefore **SUSTAINED to the extent** stated above.

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 14th day of May, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day mailed to:

Hon. Wesley Duke
Catherine Partlow
Stephanie Appel

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2012-166**

CATHERINE PARTLOW

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 an evidentiary hearing on January 2, 2013, at 10:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Colleen Beach, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Catherine Partlow, was present and was not represented by counsel. Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and was represented by the Hon. Wesley Duke. Also appearing as Agency representative was Warden Don Bottom.

BACKGROUND

1. Appellant, Catherine Partlow, is a classified employee with status who is employed as a Classification and Treatment Officer I with the Department of Corrections, Blackburn Correctional Complex (BCC). She filed a timely appeal with the Personnel Board on July 25, 2012. Appellant provided the following statement of facts relating to her appeal.

I feel the committee was unfair and too harsh to have given 10 days w/o pay for the mistake of not reporting my 4 hours of voting time correctly. I was accused of lying when in fact I told my supervisor that Wednesday morning that I did not vote due to my physical therapy appointment. My supervisor knew of this days before, in which he states he did not know why I came in late. My supervisor states he knew Tuesday that I did not vote – but in fact he approved my voting on Wednesday. I did not lie about it – but take responsibility for not checking. (sic)

2. Appellant was notified of her suspension by means of a letter dated June 28, 2012, from Don Bottom, Warden. A copy of that letter is attached hereto and incorporated herein as **Recommended Order Attachment A**.

3. As Appellee has the burden of proof, it went first in the presentation of evidence. Appellee called **Tiffany Taylor** as its first witness. Taylor is the Human Resource Administrator for BCC, a position she has held for the past two years.

4. Taylor testified she first learned of the discrepancy in Appellant's claim of voting leave when she received an "Occurrence Report" from Unit Administrator Ray Sandy on May 29, 2012. The report stated that at approximately 11:30 on May 22, 2012, Appellant had informed Sandy (her first-line supervisor) that she "did not vote and had no intention to." Sandy also stated that she "started to laugh and told me that she never votes and she has always gotten her four hours of leave." Her four hours of voting leave had been pre-approved, and appeared on her timecard for May 22, 2012, which was introduced as Appellee's Exhibit 3.

5. Taylor discussed the allegations in the Occurrence Report (attached as **Recommended Order Attachment B**) with then-Warden Don Bottom, who advised Taylor to call the Anderson County Clerk to see if, in fact, Appellant had voted. The clerk – whose name Taylor could not recall – advised Taylor that Appellant had not voted in the primary election on May 22, 2012.

6. Taylor informed Warden Bottom what the Anderson County Clerk had told her. She also confirmed with Roger Kilgore, a Human Resource Specialist II in her office who handles payroll matters, that Appellant had been pre-approved for four hours of voting leave on May 22, 2012. She also pulled Appellant's time card from May 16, 2012 to May 22, 2012, which confirmed that Appellant had taken voting leave on May 22, 2012.

7. **Warden Don Bottom** is currently the Warden of Northpoint Training Center. In May 2012 he was employed as the Warden of BCC. He has been with the Department of Corrections for the past twenty years.

8. Warden Bottom received a copy of Ray Sandy's Occurrence Report the end of May 2012. After he read the allegations against Appellant, he asked Tiffany Taylor to contact the Anderson County Clerk's office to confirm if Appellant had voted. When he learned that Appellant had not voted, he contacted central office for advice on the appropriate discipline for an employee's misuse of voting leave. Warden Bottom stated this kind of incident was a case of first impression for him. He was advised by the Department of Corrections' Human Resource office that a ten-day suspension was appropriate.

9. Appellant was informed of her ten-day suspension on June 28, 2012, by letter under the signature of the Warden for misconduct, specifically, for "falsifying documentation for personal gain."

10. Through the testimony of Warden Bottom, the following were introduced: KRS 118.035 regarding "Conduct of Elections;" 101 KAR 2:102, Section 7, regarding "Voting and Election Leave;" for employees in the classified service; and BCC Policy No. 03-02-01 regarding "General Guidelines for BCC employees."

11. Warden Bottom stated that he felt the ten-day suspension was appropriate because Appellant “fraudulently used leave time for personal gain.” Usually, falsification of records results in termination, but, Bottom testified: “This time we chose a ten-day suspension.”

12. On cross-examination, Bottom stated that Appellant had informed him at the pre-suspension hearing that she “had physical therapy on May 22, 2012, and couldn’t vote.”

13. **Stephanie Appel** is the Director of Personnel for the Justice and Public Safety Cabinet, Department of Corrections, a position she has held since May 2005. Appel stated that she was contacted by Warden Bottom for advice on “how to handle the falsification of time and attendance records.” While she has dealt with falsification of attendance records generally, she had never dealt specifically with a violation of voting leave. She looked at other disciplinary actions regarding time and attendance falsification taken in the past and concluded that precedents had been set for dismissal. However, she consulted with the Commissioner and Deputy Commissioner, and they concluded that a ten-day suspension was the appropriate action. Appel could not “recall the specifics” of why they decided to be more lenient toward the Appellant.

14. On cross-examination, Appel was asked if she looked into the circumstances regarding Appellant’s not voting. Appel replied she only reviewed “the facts the Warden gave us – he serves as Appointing Authority.”

15. Appel was asked what procedure should be followed if an employee – who had been pre-approved for voting leave – had something come up and did not vote. Appel responded that the employee should “put down the appropriate leave on her time card.” When queried how time cards were processed at BCC, Appel responded that she did not know – “It varies by institution and by type of position.”

16. At the end of Appel’s testimony, the Cabinet rested its case.

17. Appellant called her first witness. **Chad Hockensmith** is a Corrections Unit Administrator II, and is Appellant’s second-line supervisor. Hockensmith testified that he learned Appellant did not vote sometime the week following the election. Hockensmith was in his office speaking to Ray Sandy, Appellant’s first-line supervisor, when Deputy Warden Brandy Harm called. Harm informed Hockensmith that Appellant had advised her she has a physical therapy appointment every Tuesday. Hockensmith hung-up with Harm and told Sandy about Appellant’s regular appointment. Sandy said: “She is going to be off this Tuesday,” and Hockensmith corrected him: “No, she is going to be off every Tuesday.” Hockensmith testified that Sandy “seemed displeased that he had been bypassed in the chain of command” regarding Appellant’s taking of leave.

18. Hockensmith was asked if he was aware of any problems between Appellant and Sandy. Hockensmith replied that "there were a number of communication problems." An e-mail Appellant sent Hockensmith on May 25, 2012, was introduced as Appellant's Exhibit 2. The e-mail states that Appellant is "at the end of her rope" with how Sandy supervises her. Hockensmith decided to have a meeting with Appellant and Sandy "to clear the air." The meeting was held sometime thereafter, although Hockensmith could not recall the exact date. On May 29, 2012, Sandy wrote the Occurrence Report regarding Appellant's alleged fraudulent claim of voting leave.

19. The Appellant, **Catherine Partlow**, testified on her own behalf. She is a Classification and Treatment Officer at BCC, a position she has held for a little over a year. She has been with the Department of Corrections for six years.

20. Appellant admitted that she had not voted, but testified that this was due to her physical therapy appointment. Appellant explained that she had back surgery a year ago, and has had persistent pain since then. She told her first-line supervisor, Ray Sandy, that she had a physical therapy appointment on Tuesday, May 22, 2012, the day of the primary election. Sandy responded that she had to work 12 to 4 and that she was "not allowed" to work a full eight hours. She asked him if she could work 11:30 to 3, to accommodate her appointment. He said she would have to get that approved by Deputy Warden Harm, which she did.

21. Appellant stated that the day of the election, she meant to vote after her physical therapy appointment, but she did not feel well, and ended up not going to the polls. The following day, May 23, 2012, she informed Ray Sandy that she had been unable to vote. She explained to him that after her physical therapy she did not feel up to it. She asked him what she should do. Sandy responded, "Don't worry about it. I'll take care of it."

22. On cross-examination, Appellant was asked if she ever tried to correct her claim of voting leave. She answered: "That is why I reported it to my supervisor."

23. Appellant stated that she has no timesheet, per se, to sign off on. She clocks in and out of the prison through KRONOS. If she wants to request time off, she asks her supervisor, "either by e-mail or by filling out a slip of paper for [her] supervisor's approval."

24. Appellant was queried why she did not inform Roger Kilgore in Personnel that she had failed to vote. She had e-mailed him earlier on May 22, 2012, to tell him her hours. The e-mail, introduced as Appellant's Exhibit 1, states: "Hey Roger, I worked 11:30 to 3:00 off other time for voting (sic)." Appellant replied: "I didn't contact Kilgore because I was concerned about the situation and wanted to let my supervisor know."

25. Appellant testified that although Ray Sandy stated in his Occurrence Report that he had an extended conversation with Appellant the day of the election (May 22, 2012), she actually did not speak to him at all that day. He clocked out at 11:23, the same time she clocked in. A computer generated record of the time Appellant and Sandy clocked in was introduced into the record as Appellant's Exhibit 4.

26. Appellant stated she told the Warden what had happened at her pre-suspension hearing.

27. KRS 18A.095(1) reads:

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

28. 101 KAR 1:345, Sections 1 and 4(1) read:

Section 1. General Provision.

Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties.

...

Section 4. Suspension.

(1) A suspension shall not exceed thirty (30) working days.

...

FINDINGS OF FACT

1. Appellant, Catherine Partlow, is a classified employee with status, employed as a Classification and Treatment Officer I, with the Department of Corrections, Blackburn Correctional Complex (BCC).

2. On June 28, 2012, she was suspended for ten days for misconduct; specifically for "falsifying documentation for personal gain." (Suspension letter, Appellee's Exhibit 4.)

3. Appellant had a physical therapy appointment at 4:00 p.m. on May 22, 2012, the day of the primary election. She was informed by her first-line supervisor that she had to work 12:00 to 4:00. She reminded him of her appointment and asked if she could work 11:30 to 3:00 instead. He agreed to this if she got approval from Deputy Warden Harm, which Appellant did.

4. On May 22, 2012, Appellant e-mailed Roger Kilgore in Personnel, informing him: "Hey Roger, I worked 11:30 to 3:00 off other time for voting (sic)." Kilgore replied: "This was pre-approved!" (Appellant's Exhibit 1.)

5. Appellant testified that she had intended to vote after her physical therapy appointment, but did not feel well afterward and never made it to the polls.

6. The next day, May 23, 2012, Appellant informed her supervisor, Ray Sandy, that she did not vote after all, and asked him how to proceed. According to Appellant's testimony, he answered: "Don't worry about it. I'll take care of it."

7. On May 29, 2012, Sandy wrote an "Occurrence Report" that he forwarded to Warden Don Bottom and Tiffany Taylor, Human Resource Administrator. The report recounted a conversation Sandy allegedly had with Appellant during which Appellant told him she did not vote, had no intention of voting, that "she never votes and she has always gotten her four hours of leave."

8. Warden Bottom testified that he had never encountered the situation of an employee fraudulently claiming voting leave. He sought direction from Stephanie Appel, Director of Personnel, on how to handle this incident of misconduct. Appel testified that this was a matter of first impression for her as well; she in turn consulted with both the Commissioner and Deputy Commissioner. While falsification of time and attendance records normally resulted in an employee's termination, the decision was made to suspend Appellant for ten days instead. Appel could not recall the reason for this leniency.

9. Appellant testified that she never spoke to Sandy the day of the primary election, May 22, 2012, and that the conversation he described in his Occurrence Report did not, in fact, ever occur.

10. What was developed at the evidentiary hearing was that Appellant and her first-line supervisor, Ray Sandy, had a challenging relationship. This was corroborated by Charles Hockensmith (Appellant's second-line supervisor) who testified that the two had a "number of communication problems." Hockensmith also stated that Sandy was displeased that Appellant had gone to Deputy Warden Harm regarding her standing physical therapy appointments.

11. The e-mail Appellant sent to Hockensmith on May 25, 2012 (four days before the Occurrence Report was written) also supports Appellant's assertion that her relationship with Sandy was contentious. In the e-mail to Hockensmith, Appellant complains of Sandy's attitude toward "the guys in her dorm," her difficulties communicating with Sandy, and her dissatisfaction with his supervisory performance (Appellant's Exhibit 2).

12. The disciplinary action against Appellant was precipitated solely by the Occurrence Report written by Ray Sandy on May 29, 2012. The veracity of this report and Sandy's motivation for writing it was called into question by Appellant. Appellee presented no evidence corroborating the truth of Sandy's report, and Sandy himself was not called as a witness at the evidentiary hearing. The Hearing Officer finds the Appellant to be a credible witness, and consequently accepts her testimony as true. Therefore, the Hearing Officer finds that Appellant did not converse with Sandy on May 22, 2012, and that the statement Sandy wrote in the Occurrence Report regarding his alleged conversation with Appellant is false.

13. Appellant testified that she told Sandy on May 23, 2012, that she did not vote and asked him how to proceed in correcting her prior request for voting leave. According to the Appellant, certain leave requests for staff at BCC (such as for voting and for physical therapy) are pre-approved. As far as recording daily work hours, Appellant did not have a timesheet to fill out or sign. Instead she clocked in and out through KRONOS. Appellee offered no evidence regarding this system of time and attendance to the contrary.¹ Therefore, the Hearing Officer finds that Appellant attempted to remedy the leave she was pre-approved for but did not take. She informed her first-line supervisor, Ray Sandy, of the error and he assured her he would handle it for her. It was not unreasonable for Appellant to assume that this was an acceptable resolution to the problem.

CONCLUSIONS OF LAW

1. The Cabinet was excessive and erroneous in its decision to suspend Appellant for ten days. The record did not show by a preponderance of the evidence that Appellant "falsified" documentation for personal gain (Suspension letter, Appellee's Exhibit 4). What was established at the evidentiary hearing was that Appellant requested voting leave in advance with the intention of taking it. When she failed to vote, she attempted to correct the situation with her supervisor.

2. Based on the above, and considering that Appellant had no history of prior disciplinary actions, the Hearing Officer concludes that the ten-day suspension was not taken for just cause pursuant to KRS 18A.095(1).

¹ When the Hearing Officer sought clarification from Stephanie Appel regarding how Appellant's hours were documented, Appel stated that she "did not know."

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **CATHERINE PARTLOW VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2012-166)** be **SUSTAINED**. The Hearing Officer further recommends that the Appellant's ten-day suspension be set aside; that she be awarded back pay and benefits lost as a result of the suspension; that four hours of voting leave be deducted (if not already done); to reimburse Appellant for any leave time she used attending the hearing and any pre-hearing conferences at the Board; and that she otherwise be made whole. **KRS 18A.105, KRS 18A.095(25) 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 Colleen Beach** this 7th day of March, 2013.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof mailed this date to:

Hon. Wesley Duke
Catherine Partlow



LaDonna Thompson
Commissioner

COMMONWEALTH OF KENTUCKY
DEPARTMENT OF CORRECTIONS
BLACKBURN CORRECTIONAL COMPLEX
3111 Spurr Road
Lexington, KY 40511
Telephone (859) 246-2366

Don Bottom
Warden

June 28, 2012

Catherine Partlow

Dear Ms. Partlow:

After careful consideration of the statements that you made on your behalf during the pre-suspension hearing, I find no reason to modify my decision to suspend you for ten (10) days.

Based on the authority of KRS 18A.095 (2) and (9), and 101 KAR 1:345, Sections 1 and 4, you are hereby notified that you are officially suspended from duty and pay for a period of ten (10) working days. Actual dates of suspension are July 10, July 11, July 12, July 13, July 16, July 17, July 18, July 19, July 20 and July 23. You are to return to your regular work schedule on July 24, 2012.

You are suspended from your position as Classification and Treatment Officer I with the Department of Corrections, Blackburn Correctional Complex, for the following reasons:

Misconduct, etc., you falsified documentation for personal gain. Specifically, on May 22, 2012 you sent an email to Payroll Officer Roger Kilgore and requested four (4) hours of voting leave. On this same day, Unit Administrator Ray Sandy asked you if, "the voting lines were long when you voted". You replied, "I have no idea because I didn't vote." UA Sandy then asked you, "Why did you come in late if you had no intension of voting?" You replied, "I never vote but have always gotten the four (4) hours of voting leave." On May 31, 2012, at approximately 2:45pm, HR Administrator Tiffany Taylor called the Anderson County Court house and verified that you in fact did not vote on Election Day, May 22, 2012.

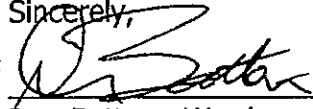
Your actions are in direct violation of KRS 118.035 which states that, "Any qualified voter who exercises their right to voting leave but fails to vote under circumstances that did not prevent them from voting may be subject to disciplinary action." Your actions constitute lack of good behavior in accordance with 101 KAR 1:345 and are in violation

Recommended Order Attachment A

of 101 KAR 2:095, Section 2 and 101 KAR 2:102. Furthermore, your actions are in direct violation of BCC 03-02-01, General Guidelines for BCC Employees, Section C(5), which prohibits employees from "making a false report or altering an official document for personal gain." Your behavior does not meet the ethical standards established by the Kentucky Department of Corrections and cannot be tolerated.

A copy of this notice is being furnished to the Department of Personnel in accordance with personnel rules. As provided by KRS 18A.095, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the date notification is received. An appeal must be in writing using the attached form and in the manner prescribed on the form.

Sincerely,



Don Bottom, Warden

Attachment (Appeal Form)

CC: Tim Lonymeyer, Secretary-Personnel Cabinet
LaDonna Thompson, Commissioner-Department of Corrections
Stephanie Appel, Director-Division of Personnel
Employee Personnel File