

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-284**

HASSAN REZAEI

APPELLANT

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

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

APPELLEE

** ** ** ** **

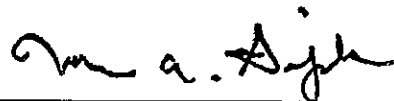
The Board at its regular January 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated December 9, 2014, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer 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 **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 13th day of January, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William Codell
Hassan Rezaei
Joslyn Olinger Glover

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-284**

HASSAN REZAEI

APPELLANT

VS.

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

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

APPELLEE

This matter came on for an evidentiary hearing on October 30, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Hassan Rezaei, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and represented by the Hon. William F. Codell. Appearing as agency representative was Chris Gillum.

This matter involves the 10-day suspension given the Appellant by letter dated October 31, 2013 (a copy attached as **Recommended Order Attachment A**). In summary, the Appellant was suspended for poor work performance and misconduct by excessive use of force with a resident, failure to document physical contact with a resident, and failure to report the incident to supervisor.

The burden of proof was placed upon the Appellee by a preponderance of the evidence to show that the suspension was neither excessive nor erroneous and was appropriate under all surrounding circumstances.

BACKGROUND

1. The Appellee's first witness was **Chris Gillum**. He has been employed by the agency as the Facilities Regional Administrator over the Fayette Regional Juvenile Detention Center in Lexington, Kentucky since January 14, 2014. In 2013, he was performing as the Fayette Regional Juvenile Detention Center Facility Superintendent (for the previous six years.) He testified the Appellant was a Youth Worker II at the facility, whose duties included direct

supervision of juveniles. This facility houses youths while they are going through various court proceedings.

2. Gillum introduced Appellee's Exhibit 2, a receipt to the Appellant whereby he acknowledged having received various policies of the agency, some of which are in issue in this hearing. These include the DJJ Policy Manual and the Employee Handbook.

3. Gillum introduced Appellee's Exhibit 3, DJJ Policy 104 CODE OF CONDUCT. He cited the pertinent parts therein as (4)(p) which states:

The employee shall interact with the youth on a consistent basis to address individual youth needs and prevent conflicts from becoming unmanageable. Employees shall protect the individual safety of youth and themselves through the use of approved controlling techniques utilizing no more than the absolute amount of force necessary to diffuse a confrontational situation. (emphasis added.)

4. Gillum also cited, as a pertinent part of this policy, IV(r), which states:

Abuse and other mistreatment of youth in the care or custody of the Department shall not be tolerated...persons abusing youth shall be subject to disciplinary action up to and including dismissal under 101 KAR 1:345...

5. Gillum then introduced Appellee's Exhibit 4, DJJ Policy 713, dealing with "Restraints." He cited, as the pertinent part of this document, I. POLICY:

DJJ-staff shall be permitted to use approved methods of defense-oriented physical and mechanical restraints on youth that become aggressive towards self, staff or peers...

6. He added that all youth workers, including the Appellant received training on the use of force, which is commonly known as AKIDO Training.

7. Gillum then testified that he had become aware on June 6, 2013, as reported to him through the Charge Nurse, of an incident on June 5, 2013, involving the Appellant and a youth. After investigating, the witness testified he had found no record of the incident being reported by the Appellant.

8. Gillum then introduced Appellee's Exhibit 5, a videotape of the incident of June 5, 2013, beginning at approximately 2:37 p.m. This video was then reviewed by the Hearing Officer and all parties. (This exhibit was received and placed UNDER SEAL.)

9. This video shows the youth standing in the doorway of his room and also reveals that Youth Worker Bowman was not in the room, and Janitor Colman had his back turned and did not observe the incident.

10. The Hearing Officer notes that the video contained no audio, and after some conversation between the Appellant and the youth, the Appellant rose from his chair and approached the youth and gave him a very firm push into his room, wherein the Appellant then shut the door on the youth.

11. There appeared to be no confrontational activity by the youth towards the Appellant, and no apparent act of defiance. The Hearing Officer would best describe the Appellant's actions as being somewhere between a very firm push, but something short of violent.

12. Gillum then opined that the Appellant's actions had violated DJJ Policy, in that he had violated the techniques which are to be followed by Youth Workers. This includes first attempting a verbal redirect towards the youth, and then moving other youth away from the situation before taking any other action. He also added that the push by the Appellant was not an approved AKIDO technique.

13. Gillum then introduced Appellee's Exhibit 6, DJJ Policy 715, dealing with "Incident Reports." He cited the pertinent parts of this policy as being III. DEFINITION "CRITICAL INCIDENT" means :

A. Resident behaviors which compromise the health, safety, or security of youth, staff or the program, including...

10. Use of Physical or Mechanical Restraint.

14. The witness also cited (in DJJ Policy 715) IV. PROCEDURES:

E. The primary staff who is directly involved during or at an incident shall write the Incident Report...

15. Gillum then noted that the Appellant had filed no Incident Report regarding this matter. He continued by stating that the agency's Internal Investigation Unit had investigated this incident after the youth made a complaint to them concerning his treatment. The investigation was deemed substantiated, and Gillum thereafter made a request for disciplinary action through the chain of command. (Appellee's Exhibit 7 admitted UNDER SEAL.)

16. Gillum referred to page 4 of Exhibit 7, containing DJJ Policy 705.2, Section 4(a)(1) which states: "The purpose of Progress Notes is to provide a running record of significant events during the youth's placement in secure detention or alternative programs." He added that the Youth Workers all know they are to write Incident Reports, which are the equivalent of Progress Notes, so as to fulfill the purpose of this section. The witness noted that these notes and reports are important in the event that the agency or the youth end up going through court proceedings.

17. Gillum added that the Appellant was given a chance to respond to the Request for Disciplinary Action, but chose not to.

18. Gillum concluded by stating that the possible problems which could be caused by putting one's hands on a youth are: (1) possible injuries, and (2) charges of abuse.

19. On cross examination, Gillum admitted he did not personally witness the event live, but apparently the Charge Nurse did. He also does not remember if he reviewed the videotape with the Appellant, but is confident that his assistant did review this tape with the Appellant.

20. When asked why there was an approximate one-month delay in contacting the Appellant after the June 5, 2013 incident (normal procedure is within 24 hours), Gillum stated that after his shift on June 5, 2013, the Appellant went on a lengthy vacation. He also added that because the matter had become an open investigation being handled by the Investigative Unit, the facility staff had to stay out of the matter.

21. On further cross-examination, the witness admitted the Appellant had been on an authorized vacation for the lengthy amount of time which he took.

22. The next witness called by Appellee was **Ed Jewell**. He has been an Investigator with the agency since 2005. His prior background includes having received a Bachelor's in Criminal Justice and employment with the Fayette County Police. He deals with investigations involving abuse and hotline complaints from youths.

23. Jewell testified that the youth herein had called the hotline and reported the Appellant had shoved him. As a result, this witness talked with the youth and other possible witnesses, and reviewed the pertinent videotape.

24. Jewell introduced Appellee's Exhibit 9, his investigative report dated August 1, 2013. He stated that the findings of the report substantiated the claim of abuse reported by the youth. (Exhibit admitted UNDER SEAL.)

25. Jewell continued to state that he saw no aggressive action by the youth. He also explained that when he interviewed the Appellant on or about July 17, 2013, the Appellant informed him he had "gently touched him" to get him to go into the room. The Appellant also explained to this witness that he had filed no incident report, as he did not consider the action to be an incident. Jewell concluded by opining that, in his view, the Appellant used excessive force.

26. On cross-examination, Jewell was asked to define "excessive use of force." Jewell replied that it depended upon the context of the action taken. Although the Appellant attempted to get this witness to confine the definition to a "struggle," the witness replied that the shoving in this instance was excessive. (Emphasis added.)

27. On re-direct, the witness again opined that he did not think the action taken by the Appellant was a "soft touch."

28. The Appellee's next witness was **Kimberly Whitley**. She has been employed with the agency as a Human Resource Branch Manager for in excess of one year. She has ten years' experience in Human Resources, and holds a Master's Degree in that subject. Part of her duties include overseeing the payroll, benefits, and handling disciplinary actions.

29. Whitley testified that the request for disciplinary action against the Appellant came up through the chain of command, and was ultimately approved by the Commissioner's Office. She also added that the Appellant had a prior one-day suspension for poor work performance.

30. Whitley stated she was the one who recommended the ten-day suspension to the Commissioner. She stated the factors involved in her recommendation were:

- (1) prior misconduct
- (2) seriousness of this conduct (the level of misconduct)
- (3) cooperation with the investigation.

She cited the fact that the Appellant provided no statement of his side of the incident.

31. Whitley added that she received with the packet requesting disciplinary action, the investigative report, which she read. The Appellee closed.

32. The Appellant called as his first witness **Ronnie Bowman**. He has been employed with the agency in excess of one year as a Trainer. He was a Youth Worker Supervisor at the time of the incident.

33. Bowman stated on June 5, 2013, he was the Shift Supervisor, but had no knowledge of the incident. No one talked with him that day, nor did the youth contact him on June 5, 2013.

34. The witness did confirm that the incident occurred close to the end of the shift for the Appellant on June 5, 2013. Bowman added that he did review the video at some subsequent point, but did not himself fill out an incident report. He added that his observation from the video was that the youth was not confrontational nor threatening anyone.

35. On cross-examination, the witness testified that a Youth Worker should not shove a youth if they were not being aggressive. He also added that if a worker ever touched a youth, that worker should write an incident report.

36. **Appellant** then called himself as a witness. He testified he is a native of Iran. He previously worked for the Department of Corrections in Florida for 24 years, filling several positions. He stated he came to Kentucky in 2000, and has been employed for the past 10 years at the Fayette County Juvenile Detention Center as a Youth Worker II.

37. Appellant testified that on June 5, 2013, he was assigned to Unit 200. At or about 2:38 p.m., he was ready to end his shift. However, before leaving, he needed to secure all cells, meaning youths were confined, so as to hand off his wards to the on-coming shift.

38. Regarding the incident herein, the Appellant testified he first told the youth to get into his cell; however, the youth barely moved, so the Appellant told him again. After he continued to stand in the doorway, Appellant stated he went to the youth and put his hand on top of his shoulder, pushing him in and shutting the door. He added that, on that date, the youth had just returned from Court, and was upset because he had been sentenced there.

39. The Appellant stated he could have put the youth into his cell by force, if necessary. If he had done so, he claimed he would have called for backup to help him.

40. The Appellant admitted he did not write an incident report, because he did not think it was a critical incident. He added that no shift supervisor ever met with him after the incident, but rather Investigator Ed Jewell was the only person to ever discuss the incident with him. (**Hearing Officer note:** As previous testimony indicates, once an investigation began, no staff were allowed to be a part of it.)

41. The Appellant then submitted Appellant's Exhibit 2, a collection of previous yearly evaluations. In the 2006 evaluation, the Appellant was rated Highly Effective; the 2009 evaluation was rated Highly Effective; the 2010 evaluation was rated Good; the 2011 evaluation was rated Good; and the 2012 evaluation was rated Good.

42. The Appellant also submitted his Appellant's Exhibit 1, a July 12, 2000 letter of recommendation from Chris Gillum, recognizing him for his punctuality and attendance, as well as acknowledging he is capable of performing his current job duties in an efficient manner.

43. The Appellant stated he felt in light of his background, the 10-day suspension was excessive.

44. On cross-examination, the Appellant confirmed he had completed the academy training regarding contact with youth and that he had trained in the AKIDO technique.

45. Appellant contended he had pushed the youth into the cell for his own safety, so that the door would not hit him.

46. The Appellant stated the youth had to have heard him say "Get in your cell." He stated the youth was not a threat to himself or others, and no threat to damage property or to go AWOL.

47. The Appellant insisted he had no bad intentions regarding his actions and it is apparent he has a difference of opinion from management's interpretation of policy as to what constitutes unnecessary force.

FINDINGS OF FACT

1. On June 5, 2013, at the Fayette Regional Juvenile Detention Center at approximately 2:37 p.m., the Appellant very forcibly confined a youth by pushing him into his room and shutting the door on the youth. This constituted using more than the absolute amount of force necessary.

2. The video footage of the incident showed no apparent act of defiance or confrontational activity on the part of the youth.

3. The Appellant's own witness, Ronnie Bowman, testified that policy dictated if a worker ever touched a youth, the worker should write an incident report. The Appellant admittedly failed to file such a report, and therefore, failed to report the incident to a supervisor.

4. The Appellant's actions herein in using more than the absolute amount of force necessary and in failing to file an incident report were violations of DJJ Policy 104(4)(p) and DJJ Policy 715, and constituted poor work performance and misconduct under 101 KAR 1:345.

5. The Appellant's work history includes a previous one-day suspension for poor work performance.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes as a matter of law that Appellee carried its burden of proof by a preponderance of the evidence to establish the charges against the Appellant were proven.

2. In light of the fact that the youth population at the Appellant's work facility is often times fragile by virtue of previous life experiences and in need of understanding and consideration by their youth workers, the Hearing Officer concludes the 10-day suspension imposed is neither excessive nor erroneous under all surrounding circumstances.

RECOMMENDED ORDER

Therefore, the Hearing Officer recommends to the Personnel Board that the appeal of **HASSAN REZAEI V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE, (APPEAL NO. 2013-284)** 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 R. Hanson Williams** this 9th day of December, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. William F. Codell
Mr. Hassan Rezaei



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JUSTICE AND PUBLIC SAFETY CABINET

Personnel Board

Steven L. Beshear
Governor

Department of Juvenile Justice

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Phone (502) 573-2738
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J. Michael Brown
Secretary

A. Hasan Davis
Commissioner

October 31, 2013

Mr. Hassan Rezaei

VIA HAND-DELIVERY

Dear Mr. Rezaei:

Based on the authority of KRS 18A.095 (1) and (8) and 101 KAR 1:345, Section 4, you are hereby notified that you are officially suspended from duty and pay for a period of ten (10) working days, effective beginning December 8, 2013, continuing on December 9, December 10, December 11, and December 12, again on December 15, and continuing on December 16, December 17, December 18, and continuing on December 19, 2013.

In accordance with 101 KAR 1:345, Section 1, you are being suspended from your position as Youth Worker II, at Fayette Regional Juvenile Detention Center, for the following reasons:

Poor Work Performance and Misconduct, i.e., as reported by Fayette Regional Juvenile Detention Center Juvenile Facility Superintendent Chris Gillum, you demonstrated poor work performance and misconduct by excessive use of force with a resident, failure to document physical contact with a resident, failure to report the incident to a supervisor and failure to follow a supervisory directive in providing a written statement. An investigation was conducted by the Justice and Public Safety Cabinet, Internal Investigations Branch (IIB), and your use of excessive force with the resident was substantiated. The findings are contained in the investigative report IIB #2470-13, dated August 1, 2013.

For the investigation, IIB Investigator Ed Jewell reviewed the June 5, 2013, facility surveillance videotape, Youth*'s Daily Progress Notes and Youth*'s Post Restraint/Injury Body Checklist. Interviews were conducted with Youth*, four (4) resident witnesses and you. From the investigation, it was determined that on June 5, 2013, at approximately 2:38 p.m. in the Unit 200 dayroom, you pushed Youth* into his cell and slammed the door. Immediately prior, Youth* had asked you several times if he could speak to a supervisor, and you directed Youth*, who was seated in the doorway to his cell, to go inside his cell. When youth did not go into his cell, several resident witnesses observed you walking in

Youth*'s direction, whereupon you shoved Youth* into his cell and slammed the door closed. You failed to complete an Incident Report, stating to Investigator Jewell that you did not consider the event to be an incident. Youth* reported that when you pushed him into his cell, he nearly hit his head on the wall. You admitted to Investigator Jewell that you could have avoided physical contact with Youth* had you approached him and repeated your instruction for Youth* to enter his cell. The facility surveillance videotape, witness statements and Youth*'s statement confirm that you pushed Youth* into his room and then slammed the door. According to the Daily Progress Notes prepared by you regarding Youth* on June 5, 2013, your only comments were "Youth went to court and is on orientation status". You failed to notify your supervisor of the incident or to complete an Incident Report noting your physical contact with Youth*. When Youth Services Program Supervisor Jonathan Smith and Youth Worker Supervisor Ronnie Bowman met with you to discuss the request for major corrective action resulting from the incident, you were requested but declined to provide a written statement responsive to your supervisors' request.

Your poor work performance and misconduct, demonstrated by excessive use of force with a resident, failure to document physical contact with a resident, failure to report the incident to a supervisor and failure to follow a supervisory directive in providing a written statement, constitute violation of 505 KAR 1:140; Department of Juvenile Justice Policy #104, "Employee Code of Conduct", I., IV.(B., C., F., I., P., R. and S.), IV.(W.)(1.); Department of Juvenile Justice Policy #705.2, "Progress Notes", I., IV.(A.)(1. and 2.); Department of Juvenile Justice Policy #713 "Restraints", I., IV.(A.)(1.); Department of Juvenile Justice Policy #715, "Critical Incident Reports", I., IV.(D., E. and F.); Fayette Regional Juvenile Detention Center Standard Operating Procedure #JD 15.4, "Permanent Logs", I., III.(A.)(1.); Fayette Regional Juvenile Detention Center Standard Operating Procedure #JD 15.12, "Use of Force", I., III.(D.)(1.); and Fayette Regional Juvenile Detention Center Standard Operating Procedure #JD 17.4, "Disciplinary/Incident Report", I., III.(A.).

Furthermore, you received a one (1) day suspension by letter dated November 5, 2007, and pursuant to Personnel Board Appeal No. 2007-376, final Order issued September 24, 2008, for misconduct (failure to adequately manage a situation with a youth and/or request assistance from your supervisor, resulting in escalation of youth's behavior and making an offensive racial remark to youth).

Hassan Rezaei
10-Day Suspension
Page 3
October 31, 2013

For your information, the Kentucky Employee Assistance Program (KEAP) is a voluntary and confidential assessment and referral service for state employees. This service may help you with any personal problems that may be affecting your job performance. KEAP can be reached at (800) 445-5327 or (502) 564-5788

A copy of this notice is being furnished to the Personnel Cabinet in accordance with personnel rules. As an employee with status, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the day of receipt. Appeals must be made by completing the attached form and directing it to the address indicated on the form. (See KRS 18A.095 and 101 KAR 1:365, Appeal and Hearing Procedures).

*To keep confidential the identity of the youth as required by law, the name of the youth referred to is transmitted by the attached list marked "CONFIDENTIAL", which is not to be disclosed without proper authorization.

Sincerely,



Hasan Davis
Commissioner

HD/msc

Attachments: Acknowledgement Form
Personnel Board Appeal Form

C: Hon. Timothy Longmeyer, Secretary, Personnel Cabinet
Hon. Mark A. Sipek, Executive Director, Personnel Board
Barney Kinman, Internal Investigations Branch
Diana McGuire
Sherre Smith-Jones
Joslyn Olinger Glover
Kris Mann
Chris Gillum
Kimberly Whitley
DJJ Legal
DJJ Payroll
Personnel File