

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-059

JOANN SEARCY

APPELLANT

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

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

APPELLEE

** ** *

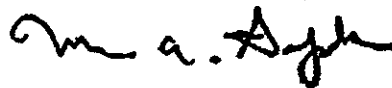
The Board at its regular June 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated April 23, 2014, having considered Appellant's exceptions, Appellee's response, and being duly advised,

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 18th day of June, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Michael Boylan
Hon. Amber Arnett
Stephanie Appel

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This matter came on for evidentiary hearing on December 10, 2013, 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, JoAnn Searcy, was present and was represented by the Hon. Michael Boylan. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Amber Arnett.

The issue at the evidentiary hearing was the Appellant's three-day suspension without pay. 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.

BACKGROUND

1. The Appellant, JoAnn Searcy, timely filed her appeal with the Personnel Board on March 13, 2013, appealing from her three-day suspension from duty and pay from her position as an Administrative Specialist II at the Kentucky Correctional Institution for Women (KCIW).

2. The first to testify was **Jenny Noe**. At the time of the subject incident, October 9, 2012, Ms. Noe was a Correctional Unit Administrator I at KCIW. She has since been promoted to a Correctional Unit Administrator II.

3. Appellee's Exhibit 1 was introduced through the witness and is Ms. Noe's written account of the incident which took place between herself and the Appellant on October 9, 2012. This was prepared at the insistence of Deputy Warden Paige McGuire. Ms. Noe testified the contents of Appellee's Exhibit 1 are accurate. She stated that around 3:00 p.m. on October 9, 2012, the Appellant showed up at her office, looked around (seemingly) to be sure they were alone, then angrily stated she had problems with two things Ms. Noe had said. Apparently Ms. Searcy was offended when Ms. Noe told her she had "done her good deed for the day" after the Appellant admitted she allowed some elderly inmates to utilize a ramp inside the main building at KCIW to make it easier on them even though the general prison population was not supposed to use the same. Ms. Noe supposed the Appellant thought she was trying to be clever.

4. According to Ms. Noe, the Appellant kept leaning over the front of her desk while she spoke. This caused Ms. Noe to back away from her desk. Also, anytime Ms. Noe attempted to interject, the Appellant would hit her hands on the desk and demand that she be allowed to finish speaking. According to Ms. Noe, throughout the incident, the Appellant's body language was aggressive and her tone of voice very loud. Ms. Noe described the conversation as a "rant" because she essentially had no input and little opportunity to speak. According to Ms. Noe, the Appellant eventually calmed down after another caseworker came into the office area.

5. After the Appellant left her office, Ms. Noe had to take a second to compose herself because no one had ever spoken to her in that manner. She then went to Deputy Warden Paige McGuire and told her about the incident. A couple of days later, Ms. Noe, the Appellant, Randy Hargis and Deputy Warden McGuire met to discuss the incident. During this meeting, the Appellant acted as if nothing had happened. According to Ms. Noe, the Appellant never really acknowledged any wrong doing which caused her to think her apology was half-hearted.

6. On cross-examination, Appellant's Exhibit 1 was introduced through the witness and is a sketch of Ms. Noe's office depicting the layout of her furniture. Ms. Noe reiterated that she was caught off-guard by Ms. Searcy's rant. She stated that there were no threatening words and no cussing, per se. However, the Appellant's demeanor was both threatening and aggressive and her voice was loud. The Appellant also declined Ms. Noe's invitation to sit down to discuss the matter calmly.

7. The next to testify was **Mr. Randy Hargis**, who is the Deputy Warden of Security at KCIW. At the time of the incident, October 2012, Mr. Hargis was a Unit Administrator II over the main building. He noted he and the Appellant shared office space and that he had to walk through the Appellant's office to get to his. He was also the Appellant's immediate supervisor.

8. Appellee's Exhibit 2 was introduced through the witness and is a copy of a memorandum prepared by Mr. Hargis. This memorandum was prepared for the benefit of Janet Conover, the Warden of KCIW, after he had reviewed the Appellant's personnel file and met with both Ms. Noe and Ms. Searcy concerning the subject incident.

9. On October 10, 2012, Ms. Noe asked Mr. Hargis to come into her office, at which time she told him about her confrontation with the Appellant. Following his discussion with Ms. Noe, Mr. Hargis then spoke to the Appellant. Upon broaching the subject, the Appellant became upset and stated that she “would take it all the way to the top” because she had been in trouble for this type of stuff in the past. Mr. Hargis then asked the Appellant to prepare her written statement, which is attached to Appellee’s Exhibit 2. Mr. Hargis noted that Ms. Searcy’s recollection of events did not match that of Ms. Noe’s.

10. Mr. Hargis then took Ms. Noe’s and Ms. Searcy’s statements to Paige McGuire and they scheduled a meeting for the next day. At said meeting, Ms. Noe and Ms. Searcy told conflicting stories.

11. Mr. Hargis stated that he believed Ms. Noe’s version of the events because he had seen the Appellant over the years and had seen that part of her personality come out. He stated that the Appellant gets angry once in awhile and goes off. He made note of the Appellant’s history of inappropriate behavior on page two of his memorandum, marked as Appellee’s Exhibit 2.

12. Appellee’s Exhibit 3 was introduced through the witness and is a copy of KCIW Policy and Procedure No. KCIW 03-02-01, General Guidelines for Staff. Mr. Hargis pointed to KCIW 03-02-01 C. (2)(d) as the specific policy Ms. Searcy violated as a result of her confrontation with Ms. Noe.

13. On cross-examination, Mr. Hargis stated he had been the Appellant’s supervisor for the previous year and a half and never had to discipline her during that time. He also never knew her to be untruthful. He also stated that Ms. Searcy’s violation of policy KCIW 03-02-01 was not the only basis for his recommendation that major disciplinary action be taken against her. According to him, her past history of unprofessional behavior also played a part in his recommendation. Mr. Hargis also admitted that there had been no other staff or an inmate present when the subject confrontation occurred.

14. The next to testify was **Janet Conover**, the Warden of KCIW. Appellee’s Exhibit 4 was introduced through the witness and is a copy of the intent to suspend letter dated January 9, 2013, and the suspension letter dated January 15, 2013. Each document speaks for itself. Ms. Conover stated that these letters were actually drafted by Deputy Warden Dawson, but she reviewed, approved and processed the same. While reviewing the same, Ms. Conover considered the witness statements and the summary of events prepared by Mr. Hargis and Deputy Warden McGuire.

15. Appellee's Exhibit 5 was introduced into the record and is a copy Deputy Warden McGuire's written summary of events. Warden Conover stated she did not agree with Ms. McGuire's recommendation mainly because the Appellant had already received two written reprimands for very similar behavior.

16. Appellee's Exhibit 6 and 7 were introduced into the record and are copies of the two previous written reprimands referenced in the intent to suspend and the suspension letters marked collectively as Appellee's Exhibit 4.

17. Appellee's Exhibit 8 was introduced into the record and was referenced in Randy Hargis' memorandum marked as Appellee's Exhibit 2.

18. After her review, Ms. Conover determined that the Appellant was a good worker, but that she had issues with the way she spoke with fellow staff members. She felt that progressive disciplinary action should be taken and that given her two previous written reprimands, a three-day suspension would serve that purpose. Appellee's Exhibit 9 was introduced into the record and is a copy of the Appellant's written summary of events.

19. The testimony of Warden Conover marked the end of Appellee's case in chief.

20. The next to testify was the Appellant, **JoAnn Searcy**, who has been employed by the Department of Corrections since June 1995. She stated that Randy Hargis was her immediate supervisor and that Jenny Noe was not in her chain of command. However, she and Ms. Noe did interact during the course of business which has continued since the subject incident, although in a less than a hands-on manner.

21. When asked to explain what happened on October 12, 2012, Ms. Searcy stated she had issues with inmates coming in the wrong doors. She had just spoken to Ms. Noe about these issues then admitted she had recently looked the other way when a couple of older female inmates utilized a prohibited ramp. Ms. Noe responded by stating "well you did your good deed for the day" and kind of snickered. Ms. Searcy told Ms. Noe that she did not like to have her kindness questioned and Ms. Noe started laughing.

22. When describing her confrontation with Ms. Noe, Ms. Searcy explained that she used the same tone of voice she was using at the hearing. She denied ever being loud or having screamed. However, she did admit that her voice is naturally loud. She also stated she was never physical and never got in Ms. Noe's space and though she might have been standing up against Ms. Noe's desk, she never stood over it.

23. The morning after the incident, Mr. Hargis met with the Appellant. According to Ms. Searcy, before she could even get her coat off, Mr. Hargis asked her, "Okay JoAnn what did you do to Jenny?" She told him her side of the story and denied ever having done anything to Ms. Noe. Mr. Hargis asked her to prepare an incident report which she did. Ms. Searcy admitted that her recollection of the events did not match Ms. Noe's at all.

24. Ms. Searcy believed her meeting with Deputy Warden McGuire, Mr. Hargis and Jenny Noe, had not been called to get things corrected. Instead, she felt like everyone was against her and that she had already been "tried, convicted and done with." Ms. Searcy simply continued to deny any wrongdoing. Ms. Searcy also noted that Ms. McGuire transferred out of KCIW the following day or so and so this meeting was her last involvement with the incident.

25. On cross-examination, Ms. Searcy admitted to the incidents noted in Appellee's Exhibits 6, 7, and 8. She also stated her past reprimands had taken her by surprise, but she accepted them because she knew they were not appealable.

26. 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.

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

FINDINGS OF FACT

1. The Appellant, JoAnn Searcy, was suspended from duty and pay for a period of three working days from her position as an Administrative Specialist II at the Kentucky Correctional Institution for Women for lack of good behavior. [See Appellee's Exhibit 4.]

2. The Appellant, a classified employee with status, timely filed her appeal with the Personnel Board on March 13, 2013, appealing from her three-day suspension from duty and pay.

3. On October 9, 2012, Appellant took it upon herself to visit the office of coworker, Jenny Noe. The purpose of this visit was to air-out a grievance Ms. Searcy had with a comment Ms. Noe had made earlier in the day. Prior to speaking to Ms. Noe, Ms. Searcy first looked around to be certain no one else was present. Once satisfied they were alone, Ms. Searcy began to air her grievance with Ms. Noe. While doing so, Ms. Searcy utilized a loud voice and was visibly agitated. She also leaned over Ms. Noe's desk while speaking to her and continued to rap her hands on Ms. Noe's desk while stating, "Let me finish," whenever Ms. Noe attempted to

speak. The Appellant's tone of voice and threatening demeanor upset Ms. Noe because it was the first time anyone had spoken to her in that manner.

4. There were no inmates or other staff members present or within hearing range when the subject conversation between the Appellant and Ms. Noe took place.

5. The Appellant received two written reprimands regarding her manner of speaking to fellow staff members in the past. [See Appellee's Exhibits 6, 7, and 8.]

6. Having reviewed the incident reports and memorandums prepared by Jenny Noe, JoAnn Searcy, Randy Hargis and Paige McGuire, Warden Janet Conover determined that a three-day suspension from duty and pay was an appropriate disciplinary action to be taken against the Appellant which was in-line with the Department of Correction's progressive disciplinary policy.

7. The Appellant was also suspended for allegedly violating policy KCIW 03-02-01, C.(2)(d) which read as follows:

An employee shall not:

...

Engage in a loud discussion or argument with another staff member in the presence of other staff or an inmate. The matter shall be dealt with privately and in a professional manner.

8. The Appellant engaged in a loud discussion with another staff member outside the presence of other staff or an inmate and dealt with the matter between herself and Ms. Noe privately. However, while engaging in the loud discussion, the Appellant was visibly agitated and continually leaned over Ms. Noe's desk in a threatening manner. She also did not allow Ms. Noe to interject in the conversation. Ms. Searcy's behavior is found to be unprofessional.

CONCLUSIONS OF LAW

1. Clearly, engaging in a loud discussion or argument with another staff member, so long as it is held outside the presence of other staff or inmates and is done so privately and in a professional manner, is not prohibited. However, it is concluded the Appellant's manner of speaking to Ms. Noe on October 9, 2012, went well beyond what should be considered as professional and was done in violation of policy KCIW 03-02-01, C.(2)(d). Based upon her two previous written reprimands, the evidence also demonstrates the Appellant had similar issues in the past and that a three day suspension was not excessive.

2 The Appellee has demonstrated by a preponderance of the evidence that the disciplinary action taken against the Appellant, the same being a three-day suspension from duty and pay, was neither excessive nor erroneous and was done for cause.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **JOANN SEARCY VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORECTIONS (APPEAL NO. 2013-059)** 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 23rd day of April, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Amber Arnett
Hon. Michael Boylan