

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-249**

**RONYELD SHIRLEY**

**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 July 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated May 19, 2014, having noted Appellant's exceptions, Appellant's additional 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 paragraphs 4, 5 and 6 and substitute the following:

4. The Board finds the e-mail sent to Appellant by her Supervisor, Amy Robey, did not constitute a direct order to come into work Sunday, but truly was a request.

5. The Board finds that while the Appellant should have communicated in some way with Robey to express her desire to be off that Sunday, the Board finds that the Appellee did not take into account Appellant's long, excellent work history in deciding to discipline her when a lesser corrective action would have sufficed for the perceived poor work performance.

B. **Delete** the Conclusion of Law and substitute the following:

The Board rejects the Hearing Officer's conclusion that the Appellee proved its case justifying the disciplinary action taken and instead concludes that the action taken was excessive and not taken with just cause. The Board concludes that a written reprimand as corrective action to be more in-line with the actual conduct of Appellant. The Board notes this is the action anticipated by Appellant's supervisor.

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

**IT IS HEREBY ORDERED** that the appeal of **RONYELD SHIRLEY VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2013-249)** be **SUSTAINED to the extent** that the suspension of Appellant be rescinded, and that a written reprimand be substituted. The Board further orders that the three-day suspension be expunged from Appellant's record, that she be awarded three days' back pay, and to otherwise make Appellant whole. **FURTHER**, the Appellee is to reimburse Appellant for any leave time she used attending the hearing and any pre-hearing conferences at the Board. KRS 18A.105, 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 **SUSTAINED to the extent** herein.

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 16<sup>th</sup> day of July, 2014.

KENTUCKY PERSONNEL BOARD

  
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MARK A. SIPEK SECRETARY

A copy hereof this day mailed to:

Hon. Stafford Easterling  
Ronyeld Shirley  
Stephanie Appel

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2013-249**

**RONYELD S. SHIRLEY**

**APPELLANT**

**V. 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 April 22, 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, Ronyeld S. Shirley, was present at the evidentiary hearing 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. Also appearing as agency representative was Warden Clark Taylor of the Kentucky State Reformatory (KSR).

This matter involves a three-day suspension given to the Appellant by letter dated October 17, 2013, for failure to comply with a directive to plan on working for four or five hours on Sunday, September 22, 2013. A copy of the letter is attached as **Recommended Order Attachment A**.

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

**BACKGROUND**

1. The Appellee called the Appellant, **Ronyeld S. Shirley**, as its first witness. She testified she previously worked for four years with the Administrative Office of the Courts before beginning her career with Corrections. She has been employed by the Justice and Public Safety Cabinet for the past eight years. She identified her position as a Correction Unit Administrator I (CUA), which she described as being part of the front-line staff. Her duties

include supervising Case Workers and Unit staff. She does evaluations on approximately three people and can supervise up to 10 to 12 employees.

2. The Appellant was questioned about the audit preparation, which was the subject of the work being done, which resulted in Appellant's suspension. She described this inspection of their facility as a "big deal," since it affects the facility's accreditation. She testified that this program security review audit occurs once per year. Part of her duties to prepare for an audit include making sure the files are correct, that her unit is clean and that nothing has gone wrong since the last work day.

3. Appellant confirmed that she has gone through these yearly reviews for approximately six years, both as a Correctional Officer and as a CUA. She also confirmed that most management employees work extra time immediately prior and leading up to the audit review.

4. Appellant expanded on these preparations by stating they sometimes involved painting and cleaning of the units, often done by inmates on the weekends, where they are supervised by the Correctional Officers. She added that in the case of her unit, all of the preparation had been done on Friday, September 20, 2013, in anticipation of the Sunday, September 22, 2013 work day.

5. Appellant continued by explaining that since her unit was clean on Friday, she felt no need to come in and work on Sunday, adding that the unit usually ran fine without her being there on the weekends. She also stated that during this time her father was hospitalized, and she was spending much time with him.

6. The Appellant then introduced Appellee's Exhibit 1, a September 17, 2013 e-mail from Amy Robey to the Appellant. This e-mail read as follows:

Please plan to work on Sunday for at least 4 to 5 hours.

You are approved to work Saturday also, if needed.

7. The Appellant admitted she did not report for work on that Sunday. Instead, she did not interpret the e-mail to mean it was mandatory to work, for it used the word "plan." The witness did not appear for work on that Sunday, September 22, 2013, nor did she communicate with Robey or anyone else that day that she would not be present. In addition, the Appellant did not communicate with Robey after receiving the e-mail. However, the Appellant stated that in 2011 she voluntarily came in to prepare for an upcoming audit.

8. The Appellee's next witness was **Amy Robey**. Robey has been a CUA II at KSR for approximately seven years. She has 11 years employment with the Department of Corrections.

9. Robey is in charge of the management of the unit holding approximately 500 inmates. She also supervises seven program staff and three shifts of security. She identified the chain of command as CUA Is reporting to her, and she reports to Deputy Warden James Coyne.

10. Robey also identified the program security review (One Year Audit) as being a "big deal." This is the matter which is the subject of this suspension.

11. Robey stated that immediately prior to these audits, management always comes in the day prior to the audit to ensure that the units are ready. She testified that things can happen and can change very quickly in a prison facility overnight. She added that on weekends the security staff is present in the units, but their main job is to provide security and not to ensure the cleanliness of the unit's appearance.

12. Robey authored Appellee's Exhibit 1 and disagrees with the Appellant that it was an optional request. She added that use of the word "please" is just being courteous. She also added that the Appellant has never told her that she thought it was optional.

13. Robey stated that the other CUA I, Dotson, came into work on both Saturday, September 21, 2013, and Sunday, September 22, 2013. She opined that Appellant's unit, because of its nature, was much more likely to become dirty than was Dotson's.

14. She also confirmed she met with the Appellant and Deputy Warden Coyne in his office on September 27, 2013, regarding the upcoming disciplinary action.

15. On cross-examination, Robey testified that her e-mail to the Appellant was meant to ensure some flexibility in the hours worked. Robey added she never verbally told the Appellant she had to be there, but relied on the e-mail. She added she was somewhat surprised when, following the meeting on September 27, 2013, the Appellant was advised she would be suspended. Robey stated she was probably expecting a written reprimand to be issued.

16. The Appellee's next witness was **Deputy Warden James Coyne**. He has been the Deputy Warden for programs at KSR for the past two and a half years, and has 15 years' service with the Department of Corrections.

17. His job involves overseeing all the living units, which includes the CUAs. He is the second-line supervisor for the Appellant, and the first-line supervisor of Robey.

18. The witness identified Appellee's Exhibit 2, the October 7, 2013 Intent to Suspend letter issued to Appellant. He corroborated Robey's testimony regarding the importance of being at the institution the day before the audit, and again reiterated that many things can happen quickly in the institution. He stated that Robey told him the Appellant did not show for work on Sunday, and that all other management staff did report.

19. This was following Deputy Warden Coyne's own memo sent earlier to Robey, directing her to instruct all CUAs to come in on Sunday to prepare. Deputy Warden Coyne

expressed great frustration that the Appellant did not at least contact Robey that she was not going to come in on Sunday.

20. Deputy Warden Coyne related that in a subsequent meeting between he and the Appellant, she told him "She had a second job on Sunday and couldn't afford to lose the money." He also confirmed that the Appellant has received a previous written reprimand.

21. Deputy Warden Coyne explained he had previously worked with the Appellant at Roederer Correctional Institute. He described their relationship at Roederer as good, but stated that after they both came to KSR she became unhappy. He added she sometimes came to him for career advice, and he had finally told her that she had a "bad attitude." He again described part of Appellant's conduct as most egregious as being the fact that she "blew off" the directive to work, and disrespected Robey by not informing her.

22. The Appellee's next witness was **Warden Clark Taylor**. He has been the Warden at KSR for the past two years, and has 26 years of service with the Cabinet. He is the Appointing Authority for KSR.

23. Warden Taylor described KSR as a facility with a large budget, with approximately 600 staff and 2,000 inmates.

24. The witness advised he was told by Deputy Warden Coyne that the Appellant was a no-show on Sunday, September 22, 2013. He described the upcoming audit as a program security review, which he stated was almost like an American Correctional Accreditation (ACA) audit, plus it sometimes focused more on security issues. He again confirmed earlier testimony that all the other CUAs reported for duty on that Sunday. He felt the Appellant violated KRS Policy and Procedure 03-00-14, in pertinent part II, "Prohibited Activities and Conduct" and N, "Failure to Obey a Properly Given Order by His Superior."

25. Warden Taylor examined Robey's e-mail to the Appellant (Appellee's Exhibit 4) and opined he thought the language was mandatory as to working. He testified that he directed the three-day suspension letter to be issued, after considering the Appellant's statement and the discussion with others.

26. Warden Taylor admitted that in his discussion with the Appellant, she informed him of her father's health issue and her opinion that the e-mail was not mandatory.

27. The Warden admitted he was aware that the Appellant had made some EEO allegations against Deputy Warden Coyne, and introduced Appellee's Exhibit 6, a finding by Human Resources Personnel Director Stephanie Appel that, after an investigation by her, she determined there were no valid EEO allegations.

28. The Appellee closed its case.

29. The Appellant began her case by calling **John Evans**. Evans has been a Correctional Officer at KSR for approximately the past 10 years. He testified he works at Gate 1

and the Control Center. While working at the Control Center, he has known Amy Robey to call the Appellant at home outside work hours. He does not know the purpose of these calls, but stated it occurred once during the Appellant's vacation.

30. The Appellant's next witness was **Travis St. Clair**. He has been employed at KSR since 2007, and has functioned as CUA II since 2009. He has been the Appellant's supervisor for more than one year. He confirmed he has never had to counsel her for refusing a direct order. He also adds that she is a good employee, with solid time and attendance.

31. The witness identified Appellant's Exhibit 1, a 2009 evaluation rating the Appellant as "Outstanding" with a score of 450.

32. St. Clair testified that he came in to work on the Sunday before the audit in question.

33. The Appellant's next witness was **Tiffany Ratliff**. She has been the Deputy Warden for Programs at Luther Luckett Correctional Complex for the past two and a half years. Prior to that time, she was the Appellant's supervisor at the Roederer Correctional Complex for approximately one and a half years. She described the Appellant's performance at Roederer as good while functioning as a Correctional Treatment Officer (CTO). She stated Appellant's time and attendance was good there, and she was never counseled for violating a supervisor's orders.

34. On cross-examination, Ratliff admitted that a good employee in the past can thereafter make mistakes. She added that while at Luckett, in preparation for interviews, the CUAs came in to prepare immediately before the audit. However, they were not acting under a directive to do so.

35. The Appellant then recalled **Deputy Warden James Coyne**. He stated that while at KSR, he was Appellant's direct-line supervisor. He admitted he had never given her counseling for disobeying a direct order as a CTO.

36. Deputy Warden Coyne admitted that at the September 27, 2013 meeting between himself and Robey, that he advised the Appellant that her attitude needed to change in order to help her career. He also admitted he knew that she was looking for a job outside the facility.

37. The Appellant then recalled **Amy Robey**. The witness stated she had never counseled the Appellant on failure to perform any duties in the past. She confirmed that the Appellant had good work performance, outside of the issue referenced here. Robey admitted she has had the Control Center call the Appellant at home outside of work, but thinks it was only one time.

38. Robey identified Appellant's Exhibit 2, a November 8, 2013 e-mail from her to others, including the Appellant. The e-mail stated "Everyone needs to be here at 7:30 a.m."



39. When asked to compare this wording with that of Appellee's Exhibit 1, the Appellant argued both e-mails were mandatory directives, but the phrasing in Appellant's Exhibit 2 was more direct and less courteous.

40. The Appellant then called herself as her final witness. She testified she has been employed by the state in excess of 11 years. She has been with the Corrections Cabinet for four years and has functioned as a supervisor (CUA I). She testified she has apologized to Robey since the incident, and added she has never been counseled or reprimanded by Robey.

41. Appellant emphasized that her father's health at the time of this incident was more important than the job, and was her focus. She also added she is looking for a job outside KSR and this suspension, if allowed to stand, would greatly affect her ability to get another job. She added that her work record, as a whole, should warrant less than a three-day suspension.

### **FINDINGS OF FACT**

1. The Appellant received an e-mail from Supervisor Amy Robey dated September 17, 2013, advising "Please plan to work on Sunday for at least four to five hours."

2. Sunday, September 22, 2013, was the day before an important program security review was to begin at KSR.

3. The Appellant did not report for work, nor did she inform Robey that she was not coming in to work.

4. Based on her previous years of experience with the Department of Corrections, the Appellant was, or should have been, aware of the importance of this review.

5. The Hearing Officer finds without merit the Appellant's claim that she thought the e-mail from Robey was merely voluntary. Her failure to report and to notify Robey constitutes Unsatisfactory Performance of Duties and Lack of Good Behavior under 101 KAR 1:345.

6. Under all the surrounding circumstances, the Hearing Officer finds the 3-day suspension of Appellant neither excessive nor erroneous.

### **CONCLUSION OF LAW**

The Hearing Officer concludes as a matter of Law that the Appellee has proved its case by a preponderance of the evidence.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **RONYELD S. SHIRLEY V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2013-249)** 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 19<sup>th</sup> day of May, 2014.

**KENTUCKY PERSONNEL BOARD**



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

A copy hereof this day mailed to:

Hon. Stafford Easterling  
Ms. Ronyeld S. Shirley



## DEPARTMENT OF CORRECTIONS

**LaDonna H. Thompson**  
Commissioner

**Kentucky State Reformatory**  
3001 W. Hwy 146  
LaGrange, Kentucky 40032  
Telephone: 502/222-9441  
[www.kentucky.gov](http://www.kentucky.gov)

**Clark Taylor**  
Warden

October 17, 2013

Ronyeld Shirley

Dear Ms. Shirley,

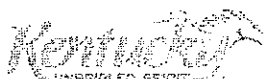
You were issued Intent to Suspend letter on October 7, 2013. You chose to make a written response within two (2) working days from the receipt of the letter and have an interview. On October 8, 2013, I met with you in regards to your suspension, you also provided me with your written response. After careful consideration of the statements made on your behalf in the disciplinary meeting held on October 8, 2013 and your written response, I find no reason to alter my decision to suspend you from duty and pay.

Based on the authority 101 KAR 1:345, and in accordance with KRS 18A.095 you are hereby notified that you are suspended from duty and pay for a period of three (3) working days beginning October 21, 2013 and continuing through October 23, 2013. You may return for your next regular shift on October 24, 2013

**Poor Work Performance, i.e.,** as reported by James Coyne, Deputy Warden/Programs, on Tuesday, September 17, 2013, Correctional Unit Administrator II (CUA II) Amy Robey sent you an email telling you to plan on working for four (4) or five (5) hours on Sunday, September 22, 2013 to prepare your unit for the Institution's Program and Security Review, that was to begin the following day. You did not report to work, at any time on September 22, 2013.

On Friday, September 27, 2013, Deputy Warden Coyne asked you why you did not inform Ms. Robey that you were not going to report to work on September 22, 2013. You stated you just did not tell her. Mr. Coyne asked you why you did not report to work and you stated that you could not afford to lose money, by missing work at your second job.

On Tuesday, October 8, 2013 I met with you and asked you to explain why you did not report to work on Sunday, September 22, 2013 as instructed by your supervisor, Amy Robey. You stated that the email sent to you by Ms. Robey did not have times



Recommended Order Attachment A

listed for you to report to work on September 22 so you felt that working on September 22 was optional. When I asked you if you asked for clarification or if you informed Ms. Robey that you were not going to work, you stated you did not. You also informed me that you did not work a second job on September 22, 2013.

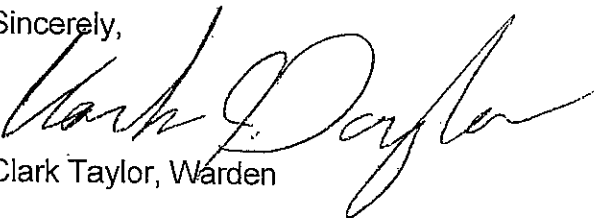
Your actions are a direct violation of the Kentucky State Reformatory's Institutional Policy and Procedures 03-00-14 Prohibited Employee Conduct, Disciplinary Actions, and Appeal Process, Policy and Procedure, II. Prohibited Activities and Conduct, N. Failure to obey a properly given order by his supervisor.

You have previously received a Written Reprimand on February 25, 2013 for misconduct.

As a Correctional Unit Administrator I and a Department of Corrections employee, it is incumbent upon you to follow and adhere to all policies and procedures of the Department of Corrections. Failure to improve in your performance may lead to further disciplinary action taken against you, up to and including dismissal.

A copy of this notice shall be provided to the Personnel Cabinet 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 filed in writing using the attached appeal form and in the manner prescribed on the form.

Sincerely,



Clark Taylor, Warden

Attachment

Cc: LaDonna Thompson, Commissioner, Department of Corrections  
Tim Longmeyer, Secretary, Personnel Cabinet  
Jim Erwin, Deputy Commissioner, Adult Institutions  
Stephanie Appel, Director, Division of Personnel Services  
Regional Personnel File  
Evaluation File

Received by & Date: Refused to Sign James Cape 10-17-13  
Witnessed by & Date: James Cape 10-17-13  
Witnessed by & Date: Jimmy Robey 10-17-13