

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-082

SWARNLATA SINHA

APPELLANT

V.

FINAL ORDER DISMISSING APPEAL

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

*** *** *** *** ***

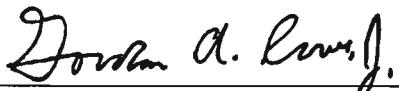
The Board, at its regular May 2024 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated March 26, 2024, and being duly advised,

IT IS HEREBY ORDERED that the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer 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 17th day of May, 2024.

KENTUCKY PERSONNEL BOARD



GORDON A. ROWE, JR., SECRETARY

Copies hereof this day emailed and mailed to:

Swarnlata Sinha
Hon. Jonathan Gifford
Hon. Rosemary Holbrook (Personnel Cabinet)
Rodney Moore

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2023-082

SWARNLATA SINHA

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

** ** ** ** ** **

This matter came on for an evidentiary hearing on , February 5, 2024, at 9:30 a.m., ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Swarnlata Sinha, was present and was not represented by legal counsel. She was accompanied by her husband, Pankaj Sinha. The Appellee was present and represented by the Honorable Jonathan Gifford. Also present for the Appellee was Agency representative, Warden James Green.

BACKGROUND AND FINDINGS OF FACT

1. The Appellant filed her appeal with the Personnel Board on June 16, 2023, from her dismissal while serving her initial probationary period as a Correctional Officer at the Eastern Kentucky Correctional Complex (EKCC). She described herself as Asian or Indian and alleged race discrimination. The Appellant stated that she was harassed on a daily basis by her Supervisor, Lieutenant Spears, who would ask her, "Why are you here?" She stated there was a particular day when she took some medicine, closed her eyes, and was accused of sleeping at work. She stated she talked to the Captain on that date and was told she would be ok. Two (2) weeks later she was told she was fired over the same incident.

2. After an initial pre-hearing conference and a period of discovery, an evidentiary hearing was conducted.

3. The issue for the evidentiary hearing was whether the Appellant was dismissed from her position as a Correctional Officer while serving her initial probationary period as a result of race discrimination. The burden of proof was on the Appellant who proceeded first in the presentation of proof.

4. The following witnesses testified at the hearing:

- a. The Appellant, Swarnlata Sinha, former Correctional Officer at EKCC.
- b. Captain Abraham Felton, EKCC.
- c. Captain Thomas Wyatt, EKCC.
- d. Warden James Green, EKCC.

5. Appellee's Exhibits:

- 1) The Appellant's answers to Doc's Interrogatories, Request for Production of Documents and Request for Admissions.
- 2) The Appellant's Progress Record with entries by her supervisors.
- 3) Video recording showing the Appellant sleeping on post at EKCC on June 9, 2023.
- 4) The Appellant's Appeal Form.
- 5) Disciplinary letters of various EKCC Correctional Officers for sleeping on duty.

6. **The Appellant, Swarnlata Sinha** was employed as a Correctional Officer with the Department of Corrections at the EKCC from March 3, 2023, through June 27, 2023. She was serving her initial probationary period throughout her employment.

7. The Appellant stated that she believed she was doing a good job as a Correctional Officer and pointed out that she was never late to work.

8. The Appellant stated she was given a hard time by Lieutenant Spears who asked her, "Why do you work here because you drive a Mercedes?" The Appellant also reported to Lieutenant Spears when male Correctional Officers asked her on several occasions whether she had a boyfriend. The Appellant stated that Lieutenant Spears responded that they are just children and did nothing about it.

9. On June 9, 2023, the Appellant was found sleeping while on duty in the control cab of a dormitory. The Appellant stated she was having bad menstrual cramps and took a Tylenol, closed her eyes, and told her fellow officer to radio her if she was needed. The Appellant stated she went to the Captain's office and was told she would be OK.

10. While in the Captain's office, the Appellant, who identified herself as Asian and Indian, witnessed a white male employee in uniform who was sleeping.

11. On or about June 27, 2023, the Appellant was informed she was dismissed from her position as a Correctional Officer. She believed her dismissal was the result of race discrimination.

12. **Captain Abraham Felton** testified the Appellant worked primarily on the night shift from 6:00 p.m. to 6:00 a.m. He reviewed her progress record, noting that she had to be instructed twice about performing proper walkthroughs. This included making sure that inmates are present, alive, and well.

13. **Captain Thomas Wyatt** testified that he witnessed the Appellant sleeping on post on several occasions. He would often call a Lieutenant or Sergeant to wake her up. He testified they were relatively lenient with this issue because they were short staffed. On the June 9, 2023, incident, Captain Wyatt found that the Appellant was present with her eyes closed in the control cab for an extended period of time. The **Appellee's Exhibit 3**, a videotape of this incident, was introduced during Captain Wyatt's testimony.

14. **Warden James Green** testified that he dismissed the Appellant based on the reports he received regarding her performance. He had multiple reports of her sleeping on a security post, having difficulty with performing proper counts, and having to be instructed on how to conduct a walkthrough. Because she was on her initial probation, the Appellant was dismissed without cause.

15. The Appellant's race had nothing to do with Warden Green's decision to dismiss the Appellant. The Appellee introduced **Appellee's Exhibit 5**, which was a series of disciplinary actions taken against other Correctional Officers at EKCC. Four (4) of the officers were suspended for thirty (30) days and one (1) officer was dismissed. All of these officers were white and were classified employees with status. Warden Green testified that the employees who received a suspension were given another chance because it was the first incident where they were sleeping on the job. In the Appellant's case, she was caught sleeping multiple occasions during her probation period. Thus she was dismissed.

16. Based on the testimony of Captain Wyatt and Appellee's Exhibit 3, the Hearing Officer finds the Appellant slept on the job multiple times while working a security post.

17. The Hearing Officer finds the testimony of Warden Green credible that the Appellant was dismissed for reasons other than her race.

CONCLUSIONS OF LAW

1. As an employee serving her initial probationary period pursuant to KRS 18A.111, the Appellant could be dismissed without cause. The Appellant could only file an appeal based on a claim of illegal discrimination. KRS 18A.095(12) and (14)(a).

2. By filing her appeal and alleging race discrimination, the Appellant properly invoked the jurisdiction of the Personnel Board. KRS 18A.095(12) and (14)(a).

3. After a review of all the evidence, the Hearing Officer determines the Appellant failed to present a *prima facie* case of race discrimination. She introduced evidence that as an Asian-Indian, she was a member of a protected class. She also presented evidence that she suffered an adverse employment action when she was terminated. She failed to prove she was meeting the legitimate expectations of her employer when she slept multiple times while on the job. *McDonnell Douglas Corporation v. Green*, 411 U.S. 792 (May 14, 1973).

4. Even though the Appellant failed to present a *prima facie* case of discrimination, the Appellee articulated legitimate nondiscriminatory reasons for the Appellant's dismissal. Sleeping at a security post on multiple occasions constitutes a legitimate reason for dismissal from employment.

5. The Appellant failed to introduce any evidence that the Appellee's stated reason for her dismissal was merely pretext and that the real reason was race discrimination.

6. The Appellant failed to carry her burden of proof that she was dismissed from her probationary position as a Correctional Officer as a result of race discrimination. KRS 13B.090(7).

7. Because all the events underlying this Appeal occurred before the effective date of Senate Bill 153, all references to KRS Chapter 18A are to the sections in effect at the time of the events associated with this Appeal.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **SWARNLATA SINHA VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2023-082)** 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 fifteen (15) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1).

Swarnlata Sinha
Findings of Fact, Conclusions of Law,
and Recommended Order
Page 5

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)

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).

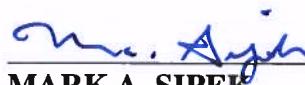
The parties are strongly encouraged to send any exceptions and/or requests for oral argument by email to: PersonnelBoard@ky.gov

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.

Any document filed with the Personnel Board shall be served on the opposing party.

SO ORDERED at the direction of **Hearing Officer Mark A. Sipek** on the 26 day of March, 2024.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day emailed and mailed to:

Swarnlata Sinha
Hon. Jonathan Gifford
Hon. Rosemary Holbrook (Personnel Cabinet)