

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-205**

BRADY SMITH

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 evidentiary hearing on February 26, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Stephen T. McMurtry, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Brady Smith, was present and was not represented by legal counsel. The Appellee, Department of Corrections, was also present and represented by the Hon. Amber Arnett.

BACKGROUND

1. On June 26, 2013, Corrections Commissioner, LaDonna Thompson, placed Brady Smith on a three-day suspension without pay from July 8 through July 10, 2013, for poor work performance in violation of 101 KAR 1:345. The specific reasons for the suspension were:

As reported by Corrections Program Administrator Michael Lynn, on March 29, 2013, you were assigned to approve approximately 20 offenders to be released on April 1, 2013. On April 2, 2013, Michael Lynn discovered you had not approved the offenders for the available beds. When Commissioner LaDonna Thompson questioned you about why you ignored the assignment, you stated that you did "other job duties" instead. You stated that you understood ahead of time that disciplinary action would take place if this assignment was not performed by the deadline and you also stated that you understood the importance of entering approval for inmate placement.

Your job expectations clearly require you to enter placement approval as beds become available. Your failure to perform your basic job duties caused undue delays in inmate placement and constitutes unsatisfactory performance of duties for which you may be disciplined according to 101 KAR 1:345. Your actions also violate Corrections Policy and Procedure 28-03-01(II)(A) and 28-03-02(II)(A)(3).

2. Smith filed a timely appeal with the Kentucky Personnel Board on August 20, 2013, alleging:

The following information is for events which occurred during 3/29/13 through 4/2/13. Approximately 20 offenders were not released on 4/1/13. That day the Dept. of Corrections released record numbers of offenders, and my department received no additional help during this time. My direct supervisor spoke with me concerning the situation and then I was seen by Commissioner Thompson, who after speaking with me later suspended me without pay for three days for this action. I don't feel the proper progression of disciplinary acts were followed regarding this incident. Since then additional staff have been added and new tools have been created to fulfill my job duties.

3. **LaDonna Thompson** testified that early in 2013 the Department recognized a crisis in its ability to efficiently and quickly place paroled inmates in private residences and half-way houses as required by law. The crisis was exacerbated by prison over-population and the Legislature's passage of laws to relieve that problem. The Community Placement Office within the Department of Corrections had functioned so ineptly that delays in parolee placement had cost the Commonwealth \$677,382.76 from April 4, 2012, to April 4, 2013. In short, paroled prisoners scheduled for release to the community were kept unnecessarily in prison requiring the Commonwealth to provide for their human needs.

4. Thompson began a series of meetings with the employees who administered community placement, including Mike Lynn, Brady Smith's direct supervisor; Johnathan Hall, Administrative Coordinator; the Deputy Commissioner, Kim Blair; and others, to design a system in Thompson's words to effectuate "an exodus (of parolees) very, very quickly." As an upshot of that meeting, Thompson directed "Mike Lynn to immediately obtain approved plans for all [parolees] on . . . the waiting list" by March 7, 2013, and warned that disciplinary consequences would result if the backlog of parolee placement was not erased by April 1, 2013.

5. Thompson testified that on April 2, 2013, Mike Lynn discovered that "approximately" twenty parolees scheduled for placement and release on April 1, 2013, to half-way houses had not been approved by Brady Smith. Thompson summoned Smith to explain the failure. Thompson said Smith told her that he "did other job duties" even though he "understood ahead of time that disciplinary action would take place if the assignment was not performed by the deadline" and he "understood the importance of entering approval for inmate placement."

6. Thompson suspended Smith for three days and Mike Lynn for five days for this particular failure. Fifteen others were disciplined for otherwise contributing to the failure to meet deadlines to reform the parolee placement system.

7. **Mike Lynn**, Brady Smith's supervisor and Manager of the Community Placement Office, testified that he oversees the release of paroled inmates into private homes or to half-way houses if homes are not available. He said Smith's duties are essentially to release parolees to half-way houses. This entails assuring that the prisoner has met the conditions imposed by the Kentucky State Parole Board, checking for detainers and outstanding arrest warrants, checking to assure that a parolee will not be housed with another parolee with whom he/she has had serious conflict in prison, and assuring that sex offenders or child abusers are not placed in legally prohibited neighborhoods or in close proximity to children. According to Lynn, all of these checks are done on a computer program called Kentucky Offender Manager System (KOMS) and takes approximately eight to ten minutes to complete each placement, as most of the work had been done by the field workers.

8. Lynn described the meetings he and others had with Commissioner Thompson and knew that reform of the placement system would have to be achieved by April 1 or disciplinary measures would be imposed. Lynn said he assumed the discipline to be imposed would be a written reprimand not a suspension. He testified that he gave Smith a list of about twenty parolees who were to be placed in twenty available half-way houses and expected Smith to have the placements completed by the next day. If Smith could not get the work done within normal hours he knew to seek help from him and others. He testified that Smith did not ask for help and, if he had known Smith would not be able to get the work done, he would have provided help. The next day Lynn learned that Smith had not placed the parolees in half-way houses. Smith told Lynn that he had more important job duties placing "in-box" parolees referred directly by investigative officers. Lynn said that these cases were neither more nor less important than half-way house placements, but he expected both types of placements to be completed that day. Lynn said he had to answer for Smith's failure for he also was suspended.

9. **Johnathan Hall**, Administrative Coordinator working in the Community Placement Office, corroborated much of Lynn's testimony. He thought Smith could have completed each placement within five to ten minutes, but he acknowledged some requests for release and placement from field investigators often involved considerable extra work. He did not know if any of Smith's work on April 1, 2013, involved extra work.

10. **Brady Smith** testified that he knew the procedures of the Community Placement Office were in the process of change, but he denied knowing that if deadlines were not met he would be disciplined. He said, had he known, he would have worked through the night of April 1 and come in early to complete the half-way house placements. He denied telling Commissioner Thompson that he knew ahead of time that disciplinary action would be taken. He said, when he talked to Commissioner Thompson, he was nervous and he remembered her telling him, "You know there will be disciplinary action."

11. Smith objected to the three-day suspension or any suspension and thought that a written reprimand was the proper punishment. Smith offered no testimony that his work in approving the "in-box" or immediate release parolees took extra time or that he, in fact, came in early the next day to complete the assignment of the half-way house placements.

FINDINGS OF FACT

1. The only significant factual conflict is whether, as testified by Thompson, Smith knew when he was given the twenty parole placements he would be disciplined if he failed to complete them that day or, as testified by Smith, he did not expect disciplinary action until mid-way through his conversation with Thompson following his failure to place the twenty parolees.

2. The Hearing Officer finds by a preponderance of the evidence that Smith's recall of the conversation is more likely than Commissioner Thompson's, but, this finding does not necessarily excuse Smith from disciplinary action. Smith knew the procedures for parole placement were creating an enormous backlog and were being radically changed and reformed by the Commissioner. He knew that by not finishing his assignment the release of the inmates would be delayed, costing the Commonwealth money. Smith reverted to the old way of doing placements – putting them off at least until the next day to complete or, as Commissioner Thompson testified in rebuttal, putting them off for weeks or even months.

CONCLUSIONS OF LAW

1. Brady Smith's failure to perform his assignment to place the twenty parolees in half-way houses on April 1, 2013, constituted poor work performance in violation of 101 KAR 1:345.

2. The imposition of a three-day suspension was not excessive or erroneous in violation of KRS 18A.095(22)(c). There was no proof of unequal punishment by the Cabinet for similar actions.

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **BRADY SMITH VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2013-205)** 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).

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).

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

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 Stephen T. McMurtry** this 1st day of April, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Amber Arnett
Mr. Brady Smith