

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2013-114

JEFFREY STREEVAL

APPELLANT

VS. FINAL ORDER
SUSTAINING HEARING OFFICER'S
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 May 2014 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated April 11, 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 14th day of May, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. William F. Codell
Jeffrey Streeval
Joslyn Olinger-Glover

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
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This matter came on for an evidentiary hearing on February 11, 2014, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before Colleen Beach, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Jeffrey Streeval, was present and was not represented legal counsel. Appellee, Justice and Public Safety Cabinet, Department of Juvenile Justice, was present and was represented by the Hon. William Codell. Also appearing as Agency representative was Ron Long, Facility Superintendent.

The appeal was previously the subject of a pre-hearing conference conducted on June 26, 2013, convened to ascertain what Appellant, who is a classified employee reverted prior to the conclusion of his promotional probation, was alleging in his appeal. The Appellant indicated he was claiming that he was reverted from promotional probation in retaliation for having reported and investigated alleged wrong-doing on the part of one of his supervisors.

Appellee filed a motion to dismiss on July 10, 2013, arguing that discrimination was the only grounds to challenge a reversion from promotional probation. By Interim Order dated August 28, 2013, the Hearing Officer overruled the motion finding that a claim of retaliation is within the jurisdiction of the Personnel Board pursuant to KRS 18A.095 (14)(a), and that such statutory reference would include discrimination against individuals who engage in protected activity.

By Interim Order dated July 2, 2013, it was established that at issue at the evidentiary hearing was whether or not Appellant was reverted from promotional probation in retaliation for having reported and investigated alleged wrong-doing on the part of one of his supervisors, and that the Appellant bore the burden of proof on this issue.

BACKGROUND

1. By letter dated March 13, 2013, under the signature of Hasan Davis, Commissioner, Department of Juvenile Justice, Appellant was informed that he had failed to satisfactorily complete his promotional probationary period, and was being reverted, effective April 1, 2012, from a Youth Worker Supervisor (Grade 11), to a Youth Worker II (Grade 10).

2. By appeal filed May 9, 2013, under the category of “demotion” and “reallocation,” Appellant alleged:

Administration refused my probation status on 3/11/13 wanting me to continue my duties until 4/1/13 when my probation time was up on 4/16/13. However, I helped Mrs. Hines and Mr. Thompson run shift two days after the date of 4/1/13. However, I had no issues until I watched footage of a YSPS walk into a resident, blatantly disrespectful with other staff in hallway. When investigated these staff were not talked to about the issue and the video footage that Administration archived for investigation was different from the angle I watched in supervisor’s office. This is retaliation because they asked why I watched footage on a supervisor of mine instead of asking about an abuse allegation a resident made to me.

3. Appellant called his first witness. **Mark Thompson** is a Youth Worker II at Adair Youth Development Center (AYDC), in Columbia, Kentucky. He described his job duties as supervising residents and helping them in their treatment process. He denied that he observed an incident with a resident on East 300 Hall on February 16, 2013.

4. **Adrian Hughes** is a Youth Worker Supervisor at AYDC. He was asked to recall the events of February, 2013 involving a youth residing at the facility identified as “AA.” Hughes stated that Appellant had told him that youth AA had reported to him that he had been “abused” by Youth Service Program Supervisor, Chris Gadberry. He and Appellant discussed the allegation with the resident, then retrieved the video footage of the alleged incident and watched it in the Supervisors’ Office.

5. The next day, Hughes and Appellant were called into a meeting with Dwayne Mills, Superintendent; James Roberts, Appellant’s direct supervisor; Ron Long, Assistant Superintendent; and Chris Gadberry. Hughes testified that he could not recall verbatim what was said at the meeting, but recalled some mention that the video footage should not have been watched.

6. On February 20, 2013, a supervisors’ meeting was held. Hughes recalled that Mr. Mills had complained of staff “blackballing” Chris Gadberry. He also recalled Mills stating that “if any of us felt we couldn’t do what we are supposed to, to stop by his office, and if we can’t do what we are asked, then we can step down to Youth Worker.”

7. Hughes stated that beginning April 1, 2013, he was moved from a first and second shift rotation to third shift, which he did for six months.

8. On cross-examination, Hughes was asked if, after viewing the video, he believed Gadberry had “abused” Resident AA. Hughes responded: “I don’t think it was intentional.”

9. **James Roberts** is a Youth Service Program Supervisor (YSPS) at AYDC, and was Appellant’s first-line supervisor. His job duties include the supervision of the Youth Supervisors on his shift.

10. Roberts testified that he first learned of Resident AA’s abuse allegation when he arrived at work on February 17, 2013, and walked in on Appellant watching the video footage. Appellant told him that AA was upset because Gadberry had “bumped” and “shoved” him. Roberts then watched the video with Appellant. Roberts stated that when Superintendent Mills asked him later what he had seen in the video, Roberts replied: “Not much.” Roberts added that while he couldn’t understand why AA “was so upset,” he did direct the Appellant to inform Gadberry what AA was alleging.

11. Roberts was asked to describe what he saw on the video. He responded that “as AA is going to the front of the line, Gadberry is walking in the opposite direction. There appears to be a “brush” between Gadberry’s arm and AA’s arm.”

12. On February 20, 2013, a Supervisors’ meeting was held. Roberts testified that he did not recall exactly what was said at the meeting, but did remember Mills telling the Youth Supervisors that “if you can’t do what is expected of you, you can step down to Youth Worker.”

13. In March, 2013, Roberts and Gadberry met with the Appellant to inform him that he was not meeting the expectations of a supervisor and that he was not going to make promotional probation. Roberts testified that the reason for this decision was Appellant’s refusal to follow Gadberry’s directive regarding Youth Workers sitting with residents in the dining room.

14. As for Appellant’s 2012 evaluation, which Roberts completed, Appellant had scored 335 points, which is considered “Good.”

15. Roberts was asked if Appellant had good communication skills. Roberts replied: “Yes, but maybe not all the time. And keep in mind that I am over the ‘detention’ side of the facility, so I can’t speak to the ‘residential’ side.” Roberts explained that he is the YSPS over “Detention” (West Hall, where youth who are still in the court system reside), and Chris Gadberry is the YSPS over “Residential” (East Hall, where youth who are committed to the state reside).

16. On cross-examination, Roberts was asked how Appellant had described the incident recorded on the video. Roberts stated that the Appellant had "claimed it was abuse in his eyes. He said that Gadberry had lowered his shoulders."

17. **Greg Burchett** is a Youth Supervisor at AYDC, and was Appellant's co-worker. Burchett stated he was aware of the abuse allegation made by AA against Chris Gadberry.

18. Burchett was asked to explain how evaluations are done at the facility. Burchett responded that he writes them for his assigned staff members, and then Burchett's supervisor reviews them. He stated that he had never had a supervisor make changes on any of the evaluations he had completed.

19. On cross-examination, Burchett was asked if he had seen the video in question. Burchett stated that he had reviewed it, and in his opinion, the video showed that "Gadberry had made contact with AA's elbow, but not intentionally." Burchett added: "The youth could have done a better job of getting out of Gadberry's way."

20. **Chris Gadberry** is a Youth Service Program Supervisor. He has been employed by DJJ for the past 16 years, and has been at AYDC since September, 2012. He was one of Appellant's first-line supervisors, although James Roberts was his direct supervisor.

21. Gadberry testified that AYDC was attempting to "change the facility's culture," from an adult incarceration model to more of a treatment model. Gadberry was attempting to teach the staff how to transition to that model. He explained that AYDC has two programs: "Detention" which houses youths involved in the court system, and "Residential" which houses youth committed to the state. The facility's goal is to rehabilitate the youths in the Residential program.

22. Gadberry was asked if Appellant had ever acted with insubordination. Gadberry replied that he had asked the youth supervisors to direct the youth workers to sit at the dining tables with the youth. This tactic was part of the new treatment program. Appellant told Gadberry that he was not going to do that because the female youth workers did not feel comfortable sitting with "sex offenders."

23. Gadberry first became aware of the allegation made against him by AA when he came in to work on February 17, 2013, and Appellant informed him of it.

24. On cross-examination, videos of the incident that occurred on Feb 16, 2013, were introduced into the record under seal and played at the evidentiary hearing.

25. The first video was identified as recording "Hallway East (looking West)" at AYDC. Gadberry narrated that the video displays a line of residents walking down the hall. A second group of youths walk into the hallway. Gadberry walks into the hallway. AA moves from the back of the line to the front. Gadberry and AA walk by each other. A second video was shown and identified as "East Hall Double Doors." It showed the same occurrence, but from another angle.

26. Gadberry was asked if he touched AA as he walked past him. Gadberry stated that he did not recall. "I had to see the video to know what the allegation was about," he stated.

27. Gadberry was asked if Appellant had committed any other acts of insubordination in addition to his refusal to have Youth Workers sit with the youth at meals. He answered that Appellant had also acted inappropriately when he went directly to Superintendent Mills to discuss his dissatisfaction with Gadberry's directive.

28. Through Gadberry's testimony, DJJ Policy and Procedure 104, Employee Code of Conduct was introduced. Section IV (c) reads as follows:

Employees are required to obey the lawful order or directive of a supervisor. If the order or directive conflicts with an order or directive previously issued by another supervisor, the employee shall make the supervisor aware of the conflict. If the supervisor does not alter the order or directive, the most recent order shall stand and the responsibility shall be assigned to the supervisor issuing the most recent order.

29. Gadberry stated that by not following his directive, Appellant violated this policy.

30. Gadberry testified that the decision to revert Appellant back to a Youth Worker II position was made by himself, James Roberts, Ron Long, and Michael Mangum. The main reason for the reversion was his acts of insubordination.

31. As for Appellant's behavior regarding the allegation AA made, Gadberry stated that Appellant had not followed protocol. The normal procedure, when a resident makes an abuse allegation, is for the staff member to notify the supervisory staff and to have the resident contact the abuse hotline. It was improper for Appellant to have "shared" the information regarding the allegations with staff who was not involved, specifically, Jeremy Burton, a Youth Worker. Gadberry added that Appellant "had seen the video and knew the allegation was unfounded, but he continued to assert that an assault had occurred."

32. Appellant, **Jeffrey Streeval**, testified on his own behalf. Streeval is currently a Youth Worker II at AYDC, where he has been employed since 2006. He was reverted from his position as Youth Supervisor on April 1, 2013, for failure to successfully complete promotional probation.

33. On February 17, 2013, an abuse allegation made by Resident AA was reported to him by Youth Worker Jeremy Burton. Appellant went to AA to discuss what had happened. AA stated that the day before, February 16, 2013, Youth Service Program Supervisor Chris Gadberry "had walked through him without acknowledging him or apologizing." AA further stated that he felt that Gadberry "was pushing his buttons."

34. After speaking to AA, Appellant went back to the Supervisors office and retrieved the video footage for the time AA said the incident had occurred. After watching the video, Appellant contacted his own supervisor, James Roberts, at home. Roberts directed Appellant to discuss the matter with Gadberry. Appellant asked Roberts if they should contact Superintendent Mills, but Roberts advised him to wait until Monday. Appellant attempted to call Gadberry on his cell phone, but Gadberry did not answer. Appellant spoke to Gadberry the next day, at the facility.

35. Appellant testified that after Superintendent Mills and Assistant Superintendent Long became aware of the allegation, "they had some trouble with the server for the video, but eventually it got fixed." Appellant stated that after Mills, Long, and Mangum watched the video, he and Hughes and Roberts were brought into a meeting and asked what their take on the incident was. Appellant testified that Long told them they should not have watched the video footage of a supervisor unless directed to do so by "someone higher up." Appellant stated he responded: "I wasn't watching a video of my supervisor, I was watching a video of an abuse allegation." When asked what he had seen that in the video that concerned him, Appellant replied that he saw "contact" between Gadberry and AA, and that it looked like Gadberry had intentionally stiffened his arm.

36. Appellant stated that his refusal to follow Gadberry's directive to have female officers sit with the youth at meal times was also brought up at this meeting.

37. On February 20, 2013, a Supervisors meeting was held. Among the staff present were the Appellant, Mangum, Roberts, Gadberry, Long, Burchett, and Hughes. At the meeting, the events of the past few days were discussed. Appellant stated that Mills "was pissed off," and told staff that "if they couldn't do what they were asked, his door was open and they could go in and tell him."

38. Appellant filed a grievance with the Commissioner on March 20, 2013, because he felt he had been retaliated against for watching the video.

39. On cross-examination, Appellant admitted that he filed the grievance after he was informed on March 13, 2013, that he was being reverted to Youth Worker II.

40. Appellant stated that he decided to not follow Gadberry's directive regarding the Youth Workers sitting with the residents. Appellant discussed the matter with Gadberry and "it got heated—both sides had attitude, but I decided I would not make the females sit with sex offenders."

41. Appellant admitted that while he was watching the video footage for the second or third time, Youth Worker Jeremy Burton walked into the office and was informed of the situation.

42. Appellant was asked why he called the Investigative Branch. He responded that he wanted to make sure the situation was checked out. He estimated that he did this sometime in February, 2013, but could not recall the specific date.

43. At the end of his testimony, the Appellant rested his case.

44. Appellant, Department of Juvenile Justice, called its first witness. Mr. **Ron Long** is the current Interim Superintendent of AYDC. He authenticated a third video of the incident in question, which was admitted into the record under seal and watched by the Hearing Officer and the parties. The video was identified as "East Hall 007" on February 13, 2013, at 11:55 a.m.

45. **Gary Sewell** is the Division Director, Southeast Region, for DJJ. His division includes AYDC.

46. Sewell explained that AYDC is an 80-bed secure facility. AYDC handles "the most serious kids—those who are at risk for escape or have been convicted of murder."

47. Sewell stated that the role of the Youth Worker is to maintain constant supervision of the youth on a daily basis. The Youth Supervisors, in turn, act as the first-line supervisors of the Youth Workers. The Youth Supervisor's promotional probationary period is one year.

48. On March 4, 2013, Sewell received a memorandum from Dwayne Mills, Juvenile Superintendent III at AYDC, requesting that Appellant be reverted from his current position as Youth Supervisor, Grade 11, to Youth Worker II, Grade 10. The reason stated in the memo was that Appellant "was unable to meet some of the necessary supervisory expectations either from an agency standpoint or a facility one."

49. On March 13, 2013, Appellant was informed of his reversion to Youth Worker II by letter under the signature of Hasan Davis, Commissioner. The reversion, with the corresponding reduction in salary from \$2,354.04 per month to \$2,166.38 per month, was to be effective April 1, 2013.

50. Sewell testified that prior to receiving the memo from Dwayne Mills, he had a few conversations with AYDC staff regarding the Appellant, and his conclusion was: "If things aren't going good in probation, chances are, other issues will come up after." Specifically, Sewell recalled that Appellant had refused to direct his Youth Workers to sit with the youth in the dining room. Sewell added that Appellant's follow-up of the abuse allegation against Gadberry "did not play into the decision to revert him."

51. **Ed Jewell** is a Special Investigator for the Justice and Public Safety Cabinet, where he has been employed since 2005. Jewell investigated the assault allegation by AA against Chris Gadberry. Jewell stated that on February 19, 2013, an anonymous caller had called the abuse hot line and complained of “aggressive actions toward AA on the part of Chris Gadberry.” The action was alleged to have happened three days earlier. The anonymous caller stated that “supervisors had looked at the video of the action and it looked excessive.” The caller added that “the facility was attempting to cover up the action by deleting the video footage.”

52. The case was assigned to Jewell, and he called the facility and asked that the video be archived. He next watched the video himself and noted that he was not sure if there had actually been contact between Gadberry and AA. Jewell testified that he watched the footage no less than 25 times. He next conducted a telephone interview with AA to make sure he had watched the correct video. AA recounted that he had been “pushed and shoved” by Gadberry. Jewell concluded that was not an accurate account of the incident, and found the allegation to be “unfounded.” In his opinion, based on his analysis of the event as depicted on the video, it would be “reckless” to say that Gadberry had assaulted AA.

53. Jewell described what he saw on the video: AA steps toward Gadberry, and if they do actually make contact, Gadberry doesn’t change course. Then AA bumps into another staff member. “It looked playful,” Jewell concluded.

54. **Michael Mangum** is Assistant Superintendent of AYDC. He has worked for DJJ for the past 16 years. Mangum first met Appellant in July, 2011, when Appellant first began working at AYDC. Mangum was aware that Appellant had been promoted to Youth Supervisor, and began his promotional probation in April, 2012.

55. Mangum recalled the new policy requiring Youth Workers to sit with the youth in the dining hall. Mangum testified that Appellant’s reaction to that policy was that “he was not going to do it.”

56. Mangum added that there had been another incident involving Appellant while he was on promotional probation. Nick Curry, a Youth Worker, had taken a youth out of class. Mangum passed by and asked Curry to terminate the conversation so the youth could get back to class. Later, Appellant brought Curry to Mangum to ask him why he had terminated their conversation. Curry was apparently unhappy about the incident. Mangum viewed this as insubordination on Appellant’s part because Mangum felt Appellant had “confronted him in his actions.”

57. Appellee recalled **Ron Long**. Long began his employment with DJJ in 1999, as a Youth Worker. He was promoted up the ranks to Assistant Superintendent. Currently he is acting as the Interim Superintendent since Dwayne Mills’ departure.

58. Long was asked to recall the events of February, 2013, regarding the abuse allegation made by AA against Chris Gadberry. Long stated he had come in to work on Monday, February 17, 2013, and Appellant had informed him that AA had told him that Gadberry had “shouldered” AA and “walked right through him,” and that Appellant had watched video footage of the incident.

59. At that point in the workday, Long did not have the video footage available to him. He instructed the maintenance workers not to re-set the server because “we couldn’t lose that video.”

60. When the video was retrieved for Long, he and Superintendent Mills watched it together. They then met with Appellant, Adrian Hughes and James Roberts. Long noted that Hughes and Roberts were “noncommittal” regarding the video, but Appellant was quite adamant that Gadberry had “knocked into AA on purpose.” In Long’s opinion, Appellant was not being honest about the incident as seen on the video.

61. Long was asked if he had problems with Appellant’s job performance during promotional probation. He answered that he had noted certain acts of insubordination on Appellant’s part. First, Appellant had refused to follow Gadberry’s directive to have Youth Workers sit with the youth at meals. Second, he acted inappropriately by taking Youth Worker Bruce Curry to confront Michael Mangum when Curry felt slighted by Mangum’s directive. Finally, Long stated, there had been another incident involving Appellant’s supervision of Curry. Curry had posted some inappropriate pictures on Facebook, and Appellant had “balked” when instructed to ask Curry to take them down.

62. Long was asked why the decision was made to revert Appellant back to a Youth Worker II. Long responded that he met with Roberts, Mangum, and Gadberry. “We went around the room,” he stated, “and I asked each of them how they felt. They each supported the reversion. We felt it would be better for the facility.” Long testified that Appellant’s pursuit of the abuse allegation made by AA “was not a big consideration” in the decision to revert him. Long added: “The youth housed at AYDC can be very disruptive and manipulative.”

63. On cross-examination, Long was asked why it had been wrong for Appellant to retrieve the video footage. Long stated that there was a DJJ procedure in place when such allegations are made. The youth should be instructed to call the abuse hotline, or to file a written grievance. Watching the video is the investigator’s job.

64. Long agreed that Appellant had come to him prior to the allegation incident and asked him how he could improve his job performance as a Youth Supervisor. Long testified that he told Appellant: “You need to learn to make a separation from the youth workers because, as a supervisor, you have a different level of responsibility.” At the end of Long’s testimony, the Appellee rested its case.

65. The Appellant, **Jeffrey Streeval**, testified on rebuttal.

66. Appellant stated that Bruce Curry is James Roberts' nephew. Curry had felt disrespected by Mangum, but Roberts did not want to get involved. He told Appellant to take Curry to Mangum to discuss the issue.

67. On cross-examination, Appellant was asked why he didn't just instruct AA to call the hotline when AA made the abuse allegation against Gadberry. Appellant responded that AA was "leaving to go to court for final sentencing. I just wanted to make sure the issue got checked out before he left. I felt morally that it needed to be known."

68. KRS 18A.005(35) reads:

'Reversion' means either the returning of a status employee to his or her last position held in the classified service, if vacant, or the returning of a status employee to a vacant position in the same or similar job classification as his or her last position held in the classified service. Reversion occurs after a career employee is terminated other than for cause from the unclassified service or after a status employee fails to successfully complete promotional probation. Reversion after unsuccessful completion of promotional probation, or in the case of a career employee after termination from the unclassified service, may only be appealed to the Personnel Board under KRS 18A.095(12).

FINDINGS OF FACT

1. Appellant is a classified employee with status who was promoted to the position of Youth Worker Supervisor (Grade 11) at Adair Youth Detention Center, on April 16, 2012.

2. On March 13, 2013, Appellant was informed by letter under the signature of Hasan Davis, Commissioner, Department of Juvenile Justice, that he had failed to satisfactorily complete his promotional probationary period. Effective April 1, 2013, Appellant was reverted to Youth Worker II (Grade 10).

3. On February 17, 2013, a youth worker, Jeremy Burton, informed Appellant that a youth, AA, had reported to Burton that Youth Service Program Supervisor, Chris Gadberry, "had walked through him without acknowledging him or apologizing."

4. Appellant went to speak to AA and then retrieved the video footage of the incident. After watching it, Appellant informed his supervisor, James Roberts, and Deputy Superintendent, Ron Long, of the incident.

5. Long attempted to secure the video footage, but there was a temporary technical difficulty at the facility that postponed Long's retrieval of the footage. Long instructed the maintenance workers not to "re-set the server." Later that same day, February 17, 2013, he and Superintendent Mills were able to watch it.

6. Long and Mills met with Appellant, Adrian Hughes, and James Roberts, all of whom had seen the video. Long asked each man what their take was on the video. According to Long, Roberts and Hughes were "noncommittal," but Appellant was adamant that Gadberry had "knocked into AA on purpose."

7. On March 4, 2013, Superintendent Mills sent a memorandum to Gary Sewell, DJJ Division Director, Southeast Region, requesting that Appellant be reverted to a Youth Worker II. The reason stated for the request was that Appellant had been "unable to meet some of the necessary supervisory expectations either from an agency standpoint or a facility one."

8. On March 13, 2013, Appellant received the letter informing him of the facility's decision to revert him, effective April 1, 2013.

9. On March 20, 2013, Appellant filed a grievance with the Commissioner stating that he felt he had been retaliated against for watching the video of the February 16, 2013 incident between Gadberry and AA.

10. Ed Jewell, Special Investigator for the Justice and Public Safety Cabinet, investigated a complaint made by an anonymous caller on February 18, 2013, on the abuse hotline that complained of "aggressive actions toward AA by Chris Gadberry." Jewell interviewed AA telephonically, and watched the video footage "no less than 25 times." His conclusion was that the allegation against Gadberry was "unfounded."

11. With the exception of the Appellant's testimony, all the witnesses at the evidentiary hearing agreed that the video did not show intentional contact with AA on Gadberry's part. While Appellant asserted that Gadberry had "stiffened" his arm, Appellant's supervisor, James Roberts, described the contact as a "brush." Greg Burchett, Youth Worker Supervisor, added that "the youth could have done a better job of getting out of Gadberry's way."

12. The Hearing Officer accepts the finding of Ed Jewell, Special Investigator, that the allegation against Gadberry by AA was "unfounded."

13. Numerous witnesses testified that Appellant had acted with insubordination by refusing to follow the direct order of his superior, Chris Gadberry, to have Youth Workers sit with youth at meal times, and by Appellant's own admission, he had an "attitude" with Gadberry regarding the matter. While Appellant may have disagreed with the order, it was his responsibility as a Youth Worker Supervisor to follow this directive. What was developed at the evidentiary hearing was that Appellant had a difficult time making the separation from his old job, and the allegiance of his old co-workers, to the new level of responsibility and discretion

required of a supervisor. As Long noted, youth at AYDC can be “disruptive and manipulative.” AYDC houses “the most serious kids,” including those at flight risk or who have been convicted of murder. Youth Supervisors need to act with the highest level of professionalism to ensure the safety of both the youth and the staff.

14. Appellant asserts that the decision to revert him was based on his reporting and his investigation of an abuse allegation made by youth AA against YSPS Chris Gadberry. Both Gary Sewell, Division Director, and Ron Long, Assistant Superintendent (now Interim Superintendent), testified that Appellant’s behavior regarding the allegation did not play a role in the decision to revert him. The Hearing Officer accepts the testimony of Ron Long that the decision to revert Appellant was based on unsatisfactory job performance.

15. It must be noted, however, that Appellant’s actions regarding the incident further bolster the finding that Appellant had not acted in accordance with the discretion and professionalism required of a supervisor. Both Long and Gadberry testified that the proper protocol to follow when an abuse allegation is made by a resident youth is to direct the youth to call the abuse hotline or file a written grievance. Instead, Appellant took it upon himself to act as the de facto investigator, retrieving video footage and watching it with other staff members, including a Youth Worker. As Long noted, youth at AYDC can be “disruptive and manipulative,” and AYDC houses “the most serious kids,” including those at flight risk or who have been convicted of murder. Youth Supervisors need to act with the highest level of professionalism to ensure the safety of both the youth and the staff.

CONCLUSIONS OF LAW

1. The Appellant, Jeffrey Streeval, failed to satisfy his burden of proof to show that he was reverted from promotional probation in retaliation for having reported and investigated alleged wrong-doing on the part of one of his supervisors.

2. The actions of the Agency were neither excessive nor erroneous in the exercise of its right under KRS 18A. 005(35).

RECOMMENDED ORDER

The Hearing Officer recommends to the Personnel Board that the appeal of **JEFFREY STREEVAL VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE, (APPEAL NO. 2013-114)** 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 Colleen Beach** this 11th day of April, 2014.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof mailed this date to:

Hon. William Codell
Jeffrey Streeval