

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2020-137

TABATHA VANDERPOOL

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF CORRECTIONS

APPELLEE

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The Board, at its regular September 2021 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated July 6, 2021, Appellee's Exceptions and Request for Oral Argument, 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** the Findings of Fact and substitute the following:

1.     The Appellant, Tabatha Vanderpool, was employed as a Correctional Officer at the Eastern Kentucky Correctional Complex (EKCC). She was dismissed for misconduct pursuant to 101 KAR 2:095, 101 KAR 2:102, CPP 3.1, CPP 3.22, and General Post Order 8.

2.     Specifically, the Appellant was accused of developing a relationship with inmate Roy Vanburen. The allegation of a relationship was based in large part on video evidence captured by EKCC surveillance cameras showing the Appellant allowing inmate Vanburen to touch her on the

buttocks on two separate occasions on March 24, 2020. The evidentiary record also clearly established that the Appellant failed to report these incidents of inappropriate touching to her supervisor or issue the inmate a disciplinary report. In addition, the Appellant was accused of dropping a piece of paper on the floor on March 28, 2020, at 12:51 a.m., and kicking it under inmate Vanburen's cell door.

3. The Board finds that the Appellant allowed inmate Vanburen to touch her on the buttocks twice on March 24, 2020. The Board makes this finding based on the clear preponderance of the evidence in the record. This evidence includes the videotape of the incident that was admitted into evidence as Appellee's Exhibit 6. The Board specifically finds that: 1) the video shows it is more likely than not that inmate Vanburen touched the Appellant on the buttocks on two occasions on March 24, 2020, 2) the Appellant allowed him to touch her inappropriately, and 3) the Appellant did not report him for that inappropriate touching. This finding is also supported by the testimony of Lieutenant Elam and his Investigative Report, which was entered into the record as Appellee's Exhibit 4.

4. The Appellant was interviewed by Lieutenant Elam as a part of his investigation. The Board specifically finds that the Appellant's interview statement is full of inconsistencies. For instance, the Appellant initially denied knowing inmate Vanburen at all. She later admitted that they worked together in medical. Similarly, she initially denied that inmate Vanburen touched her in any way; however, she later admitted that he touched her, just not inappropriately, she claimed. However, the Appellant also admitted to elbowing inmate Vanburen to keep him away from her. When asked why she did not report Vanburen's actions, she stated that she

had filed a previous report regarding inmate conduct and no action was taken. The Appellant eventually admitted she should have reported this incident. The Board finds that the Appellant was not truthful during her interview with Lieutenant Elam. More importantly, the Board finds that the Appellant's testimony at the evidentiary hearing lacks credibility.

5. The surveillance video entered into the record shows the Appellant kicking a piece of paper into Vanburen's cell on March 28, 2020 at 12:51 a.m. The Appellant admitted that she kicked the paper into Vanburen's cell and that this was a violation of policy (specifically, General Post Order 8, which was introduced into the record as Appellee's Exhibit 7). Yet, the Appellant was not clear as to whether or not she had actually read the paper she kicked into Vanburen's cell to confirm the contents of the document. Accordingly, the Board does not find credible the Appellant's speculation that this paper may have contained information regarding an upcoming medical appointment. Nonetheless, all parties agreed that, regardless of the contents of this paper, it was a violation of policy for the Appellant to kick the paper in Vanburen's cell at the time that she did. As a result, the Board finds that the Appellant violated DOC policy by kicking a piece of paper into Vanburen's cell.

6. There is no dispute that the Appellant violated General Post Order 8. As to the contested charges, the Board finds that the Appellant's conduct on March 24, 2020, and March 28, 2020, violates CPP 3.1. Both of these incidents show that the Appellant had developed a relationship with inmate Vanburen that was not necessary in the performance of her work duties. The Board also finds that the Appellant's conduct in allowing inmate Vanburen to touch her buttocks on March 24, 2020, constitutes sexual

contact that is unrelated to her official duties as a Correctional Officer and is a clear violation of CPP 3.22.

7. The Board finds that the Appellant's actions in violating CPP 3.1, CPP 3.22, and General Post Order 8 constitute misconduct and subject her to disciplinary action.

8. The Board finds that the penalty of dismissal was appropriate for the Appellant's misconduct and that this penalty was neither excessive nor erroneous under all the surrounding circumstances.

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

1. As stated in the Findings of Fact, Appellant's actions on March 24, 2020, and on March 28, 2020, violated CPP 3.1, CPP 3.22, and General Post Order 8, and constitute misconduct pursuant to 101 KAR 1:345. As a result, there was just cause for disciplinary action against the Appellant. KRS 18A.095(1).

2. As stated in the Findings of Fact, the Board finds the penalty of dismissal was appropriate and was neither excessive nor erroneous under all the surrounding circumstances. KRS 18A.095(1) and (22)(c).

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

**IT IS HEREBY ORDERED** that the appeal of **TABATHA VANDERPOOL V. JUSTICE AND PUBLIC SAFETY CABINET,**

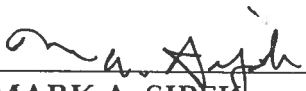
DEPARTMENT OF CORRECTIONS (APPEAL NO. 2020-137) is  
DISMISSED.

IT IS FURTHER ORDERED that the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer, as altered, are approved, adopted and incorporated herein by reference as a part of this Order and that the Appellant's appeal is 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 13<sup>th</sup> day of September, 2021.

KENTUCKY PERSONNEL BOARD

  
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MARK A. SIPER  
SECRETARY

A copy hereof this day mailed to:

Hon. Jesse Robbins  
Tabatha Vanderpool  
Rodney Moore  
Hon. Rosemary Holbrook

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2020-137

TABATHA VANDERPOOL

APPELLANT

VS.

FINDINGS OF FACT, CONCLUSION OF LAW  
AND RECOMMENDED ORDER

JUSTICE AND PUBLIC SAFETY CABINET  
DEPARTMENT OF CORRECTIONS

APPELLEE

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This matter came on for evidentiary hearing on April 1, 2021, at 1025 Capital Center Drive, Suite 105, 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. By prior agreement of the parties, the proceedings were conducted via Amazon Chime video conferencing in accordance with COVID-19 guidelines.

The Appellant, Tabatha Vanderpool, was present and appeared *pro se*. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Erik Carlsen-Landy. Appearing as Agency representative was Warden James Green of the Eastern Kentucky Correctional Complex (EKCC).

This matter involves the dismissal of the Appellant from her position as Correctional Officer at EKCC by letter dated April 30, 2020. The burden of proof was assigned to the Appellee by preponderance of the evidence to show that the dismissal was neither excessive nor erroneous and was justified under all surrounding circumstances.

APPLICABLE STATUTES AND REGULATIONS

The basis of the dismissal was cited as "misconduct" pursuant to 101 KAR 2:095 and 101 KAR 2:102. Specifically, the Appellant was alleged to have violated CPP 3.1, CPP 3.22, and General Post Order No. 8.

The violations of the above cited policies and Post Order are alleged to have occurred due to the Appellant having formed a type of relationship with an inmate, Roy Vanburen, by allowing him to touch her buttocks on two separate occasions. This is cited as violating the Sexual Offense Policy, CPP 3.22.

Also, a basis for the Appellant's dismissal was the fact that she was seen dropping a white piece of paper on the floor and kicking it under inmate Vanburen's cell door, supposedly in violation of General Post Order No. 8.

**POLICY AND PROCEDURE AND POST ORDER CITED**

**1. CPP 3.1 Code of Ethics/Social Media Use**

**II. POLICY and PROCEDURES**

**B. Conflicts of Interest**

3. The following activities relate specifically to relationships with an offender and shall be prohibited:

(D) Developing a relationship between staff and an offender other than that necessary for the normal conduct of business. An employee shall not become romantically involved with an offender, engage in sexual relations with an offender, or develop sexual relations with a member of the offender's immediate family.

**2. CPP 3.22 Staff Sexual Offense**

**1. DEFINITIONS**

“Sexual Contact” means any touching or physical contact of the sexual or other intimate parts of a person, including but not limited to the genitalia, anus, groin, breasts, inner thighs, or buttocks, either directly or through clothing, that is unrelated to official duties, or done for the purpose of arousing, humiliating, harassing, degrading, or gratifying the sexual desire of any person.

**3. General Post Orders**

**PURPOSE**

8. The officer will not accept gifts from the inmate or carry a message into or out of the institution on behalf of an inmate.

**BACKGROUND**

1. The Appellee's first witness was **Keith Elam**. He is a Correctional Lieutenant and is the supervisor of the Internal Affairs Office at EKCC. He conducted the investigation into this matter involving the Appellant, pursuant to orders from Warden Green.

2. The witness stated that he began the investigation after receiving a letter from another inmate alleging that inmate Roy Vanburen had touched the buttocks of the Appellant. He then interviewed inmate Vanburen (Appellee's Exhibit 15) and stated that the inmate admitted to touching the Appellant "a couple of times."

3. Lt. Elam then interviewed the Appellant concerning this matter. He reported that she had first said the touching never happened, then later said that one touching may have occurred. She admitted she did not inform a supervisor of Vanburen's touching, nor did she write the inmate up for this contact. All these activities occurred in Dorm 8 at the facility. Regarding the second incident of supposedly kicking a letter for the inmate under his cell door, which occurred on March 28, 2020, the witness stated this occurred at approximately 1:00 a.m. in the morning, and there should have been no mail to be delivered on the weekend.

4. The witness then compiled and submitted an Investigative Report, dated April 22, 2020, to Warden James Green. In this report, the witness detailed his findings after having reviewed some relevant video footage of the interactions between the Appellant and inmate Vanburen. The interactions he reviewed all occurred on March 24, 2020. In the findings of his report, Lt. Elam indicated that he felt the Appellant's actions violated CPPs 3.1 and 3.22 as well as EKCC Post Order 8.

5. On cross-examination, the witness was asked about the disparity in length of the interviews between herself and the inmate. The witness replied that he felt the inmate was more forthcoming in his interview than the Appellant.

6. The Appellee's next witness was **Warden James Green** of the EKCC. His duties involve managing the daily operations of the prison, carrying out policies and procedures, and being responsible for disciplinary actions.

7. The witness testified that he had reviewed and agreed with Lt. Elam's report. He felt that it was concerning that these actions happened between the inmate and Appellant, that she filed no report with a supervisor, and that she had not written-up the inmate. His concerns regarding these failures involving not having a report on hand, which could be addressed. Also, the Warden expressed that such unreported actions would give the inmate leverage over a staff member.

8. Following the issuance of an Intent to Dismiss letter (Appellee's Exhibit 2), the witness stated that the Appellant met with him and denied having any sort of inappropriate relationship with this inmate. He again confirmed his belief that the interactions between the



Appellant and the inmate had violated CPP Policy 3.1 involving developing relationships and CPP 3.22 involving sexual contact, because he felt she had allowed her buttocks to be touched and had not reported it.

9. The witness then addressed the passing of the message/letter into the inmate's door and felt that this violated EKCC Post Order 8.

10. On cross-examination, the witness admitted that, during the pre-termination hearing, the Appellant told him that she was gay and was married to a woman and, therefore, did not need to develop any kind of relationship with a man. The Warden felt these actions still constituted a policy violation.

11. Appellee's next witness was **Rodney Moore**. He is the Director of Employee Management at the Justice and Safety Cabinet and is familiar with the disciplinary process involved here. He testified that it is the standard disciplinary action for officers to be dismissed for developing inappropriate relationships with inmates. In support, this witness introduced Appellee's Exhibits 13 and 14. Appellee's Exhibit 13 is an August 13, 2018 Intent to Dismiss letter to Mary N. Blair for having an inappropriate relationship with an inmate. Appellee's Exhibit 14 was a January 17, 2020 document supporting the dismissal of Staci Crowder Holt for having an improper relationship with an inmate.

12. The Appellee announced closed.

13. The Appellant, **Tabatha Vanderpool**, called herself as her only witness. She testified that she had been a Correctional Officer at EKCC for approximately 11 months at the time of termination. She first denied the inmate touching her and pointed out that her uniform is very baggy and if the touching occurred, she did not feel it. She also flatly denied telling Lt. Elam that the inmate had touched her at all. She admitted that, after viewing the video footage of the March 24, 2020 interactions, at one point, she elbowed the inmate in the chest and told him to back off because he was in such close proximity to her.

14. The Appellant admitted she was aware of her responsibility to report the actions of the inmate but stated that she did not file a report on him because she had earlier filed reports on another incident, and nothing had been done about it. In fact, she claims her reports were deleted.

15. Regarding her interview with Lt. Elam (Appellee's Exhibit 16), she stated that she had told him that the inmate "knocked" into her, and she nudged him away. She added that she tried to treat the inmates with respect instead of as "white trash." She also added that she had some association with inmate Vanburen in the Medical Unit previously and there was some sense of comfortability between the two of them.

16. Regarding pushing the letter under the inmate's cell, the witness stated that she had come on shift at midnight and noticed that there was mail that had not been delivered. She cited earlier instances of the nurses becoming angry when inmates did not receive a doctor's note

informing them of a missed appointment, and she felt this might be one of those times. Therefore, she wanted to make sure he received any mail that might be important to him.

17. The Appellant was not clear as to whether she had actually read the letter to confirm its contents.

18. The Appellant closed.

### **FINDINGS OF FACT**

1. Following an Intent to Dismiss letter and a pre-termination hearing between the Appellant and Warden James Green, the Appellant was dismissed by letter dated April 30, 2020.

2. The basis of the dismissal was misconduct (under 101 KAR 2:095) claiming the Appellant had violated Corrections Policies and Procedures (CPP) 3.1, 3.22, and EKCC General Post Order 8.

3. The Hearing Officer has reviewed the relevant camera footage involving the Appellant's March 24, 2020 interactions with inmate Vanburen - both at the hearing and again prior to writing this Order. Neither review is convincing that the inmate's physical actions and Appellant's response were as described in Lt. Elam's report to the Warden. At times, the footage of March 24, 2020, clearly shows the two in close proximity, but the Hearing Officer would specifically note there is never any clear picture establishing that the inmate grabbed or pinched the Appellant at any point during the recording. Importantly and unfortunately, some views were obstructed by poles; other views were shown from angles that made it impossible decipher anything with certainty.

4. Nonetheless, camera footage does clearly show the Appellant sliding a piece of paper under the inmate's door on March 28, 2020, and the Appellant admitted same. Her explanation as to why (because of past occurrences) is not relevant as she was aware of General Post Order 8 prohibiting such an action. It was her duty to abide by this, and the Hearing Officer finds her actions violated General Post Order 8.

5. The Appellant's failure to "write-up" or otherwise report the inmate for invading her space was referenced in the disciplinary letter and the Warden's testimony. The Appellant's failure to report the inmate's conduct constitutes misconduct pursuant to correctional policy. Again, the Appellant's reasons for not having done so do not mitigate her failure to do so.

6. Ultimately, however, given the lack of convincing evidence in the record, the Hearing Officer specifically finds there was no clear violation of CPP 3.1(3)(D), nor of CPP 3.22.

7. The Hearing Officer also takes into account the Appellant's testimony that, as a gay female married to a female, she would have little interest in developing any sort of relationship with a male inmate other than necessary for the normal course of business.

8. There was no introduction of any previous disciplinary actions against the Appellant and, therefore, the Hearing Officer finds the violations found as proven, cited above, are first-time offenses.

9. The Hearing Officer finds the penalty of dismissal was excessive given all the surrounding circumstances. The Appellee proved misconduct by the Appellant, which the Hearing Officer finds established just cause for a three (3) - day suspension.

### **CONCLUSIONS OF LAW**

1. The Hearing Officer concludes as a matter of law that the Appellee failed to carry its burden of proof by a preponderance of the evidence as to the violations of CPP 3.13(D) or CPP 3.22. cited in the Appellant's letter of termination.

2. The Hearing Officer concludes as a matter of law that the Appellee carried its burden of proof to show violations of General Post Order 8 in passing a message to an inmate and in failure to report the inappropriate actions of an inmate.

3. Based on the Findings of Fact, the penalty of dismissal was excessive under all the surrounding circumstances. KRS 18A.095(22). The appropriate penalty is a three (3) - day suspension. KRS 18A.095(1).

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **TABATHA VANDERPOOL V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2020-137)** be **SUSTAINED to the extent** that the dismissal of the Appellant be rescinded, and that Appellant be issued a three-day suspension, and that the Appellant be reinstated to her former position or a position of like pay and status with full backpay, except for the three-day suspension, and that she otherwise be made whole. KRS.18A.105 and 200 KAR 12:030.

### **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 6 day of July, 2021.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day mailed to:

Hon. Amy Barker  
Tabatha Vanderpool  
Hon. Rosemary Holbrook (Personnel Cabinet)