

Administrator II, then demoted to the position of Classification and Treatment Officer I with the Roederer Correctional Complex, effective the beginning of business August 14, 2019. The Appellant testified that he did not believe he did anything wrong, and he should not have been demoted.

B. Delete the Findings of Fact paragraphs 4 and 5 and substitute the following:

4. Kentucky Corrections Policies and Procedures No. 3.5, Sexual Harassment and Anti-Harassment, was entered into the record and marked as Appellee's Exhibit 2. According to such policy, harassment means continuous verbal or nonverbal conduct of one (1) or more employees that directly results in the inability of another employee to perform his job duties or otherwise adversely affects another employee's employment opportunities. This policy also includes the following:

Corrections shall prohibit offensive or inappropriate conduct at work before the conduct rises to the level set by 29 C.F.R. § 1604.11. Corrections' employees shall avoid offensive or inappropriate conduct or sexually harassing behavior at work...Appropriate action shall be taken to ensure that any harassment does not recur.

5. The Appellant's demotion letter - dated August 13, 2019, and marked as Appellee's Exhibit 3 - indicated that the Appellant was demoted for lack of good behavior or the unsatisfactory performance of his duties. KAR 101 1:345, Section 1.

C. **Delete** Findings of Fact paragraphs 8, 9, 10, 11, and 12, and substitute the following:

8. On July 30, 2019, while in the kitchenette area, the Appellant approached Ashley Madras and engaged in a conversation about Ms. Madras stepping down from the interview panel for training coordinator. The Appellant stated to her “your little ass would fit in this trash can.”

9. On July 31, 2019, Ashley Madras was in the business office. The Appellant stopped in the office and started giving her a hard way to go about coming off the interview panel. Ms. Madras told the Appellant that she came off the panel because she had to deal with payroll. The Appellant started rolling up his pants legs and told her that he was rolling them up for all the “shit” she was talking. Later, Ms. Madras was helping Aubrey Fountain with her health insurance enrollment when the Appellant came into Ms. Fountain's office and asked Ms. Madras if timesheets were due. Ms. Madras stated that yes, they were due the next day. The Appellant then went around the desk, leaned into Ms. Madras, started rubbing her back, and stated, “we all know payroll is not due today.”

10. On Friday, August 2, 2019, the Appellant went into Deputy Warden Steve Lyons’ office around lunchtime where a group of employees and Ms. Madras were eating. The Appellant again talked about Ms. Madras not sitting on the interview panel.

11. The Board finds Ms. Madras’ testimony about the Appellant’s actions overwhelmingly credible and, therefore, resolves all factual disputes

between her reporting and the Appellant's testimony in Ms. Madras' favor. As a result, the Board finds that the Appellant's conduct violated Corrections Policy and Procedure 3.5 and constituted a "Lack of Good Behavior" as alleged in the demotion letter marked as Appellee's Exhibit 3. The Appellant's actions herein were unprofessional, imprudent, and have no place in any workplace environment.

12. The Board finds that the Appellee has demonstrated just cause for the demotion of the Appellant to the rank of Classification and Treatment Officer I. The Board finds compelling that the Appellant's actions demonstrate that he should not be placed in a position with supervisory authority over other employees. The Board further finds that the demotion of the Appellant to Classification and Treatment Officer I is not excessive or erroneous under all of the surrounding circumstances. The Board makes this finding while noting the Appellant's lack of disciplinary history, his previous performance evaluations, and the fact that he had never previously been accused of sexual harassment.

D. **Delete** Conclusions of Law paragraphs 1 and 2 and substitute the following:

1. The Appellee has demonstrated by a preponderance of the evidence that there was just cause to demote the Appellant from his position as a Correctional Unit Administrator II to the position of a Classification and Treatment Officer I. The Board rejects the Hearing Officer's Finding and Conclusion that the Appellee failed to prove the back rubbing allegation by a preponderance of the evidence. The Board further rejects any requirement

that corroborating evidence was necessary to support this Finding given Ms. Madras' credible testimony.

2. The Appellee has demonstrated that the decision to demote the Appellant from Corrections Unit Administrator II to Classification and Treatment Officer I was neither excessive nor erroneous based on all the surrounding circumstances. The Board concludes that the Appellant's actions violated 101 KAR 1:345 and Corrections Policy and Procedure 3.5. The Appellant's behavior in this instance should not be tolerated and constitutes just cause for the disciplinary action taken against him.

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

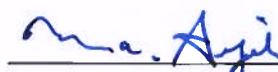
Based on the foregoing Findings of Fact and Conclusions of Law, the Personnel Board **DISMISSES** the appeal of **BRIAN WARD V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2019-194)**.

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 16th day of March, 2022.

KENTUCKY PERSONNEL BOARD



**MARK A. SIPEK
SECRETARY**

A copy hereof this day mailed to:

Hon. Thomas Schulz
Hon. Edward Baylous
Rodney Moore
Hon. Rosemary Holbrook (Personnel Cabinet)

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2019-194

BRIAN WARD

APPELLANT

VS.

FINDINGS OF FACT, CONCLUSIONS OF LAW
AND RECOMMENDED ORDER

JUSTICE AND PUBLIC SAFETY CABINET,
DEPARTMENT OF CORRECTIONS

APPELLEE

This matter came on for evidentiary hearing on July 27, 2021, 9:30 a.m. ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Geoffrey B. Greenawalt, 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 teleconferencing in accordance with COVID-19 guidelines.

The Appellant, Brian Ward, was present and represented by the Hon. Thomas J. Schulz. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Edward A. Baylous.

By Interim Order dated April 20, 2021, the issue at the evidentiary hearing was the demotion of the Appellant in addition to the Appellant's claim of discrimination. The Appellee was assigned the burden of proof on the demotion claim, which was to be by a preponderance of the evidence. The Appellant was assigned burden of proof on his claim of discrimination, which was also to be by a preponderance of the evidence.

BACKGROUND

1. The Appellant, Brian Ward, filed his appeal with the Personnel Board on September 10, 2019, appealing his demotion from his position as a Corrections Unit Administrator II to the position of Classification and Treatment Officer I at the Roederer Correctional Complex. At the time of his demotion, the Appellant's position was that of a probationary Deputy Warden for Programs at the Kentucky Correctional Institute for Women (KCIW), and he simultaneously reverted to his prior position of Corrections Unit Administrator II, then demoted to the position of Classification and Treatment Officer I.

2. The first witness called by the Appellee was the **Appellant, Brian Ward**. The Appellant testified that, on June 1, 2019, he was promoted to Deputy Warden of Programs at KCIW. His duties included oversight of the Programs Department, the Chaplains, and the kitchen. He was not responsible for oversight of Human Resources. On August 13, 2019, well within his

six (6) – month probationary period as a Deputy Warden, the Appellant was reverted to his previous position as Corrections Unit Administrator II, then demoted to the position of Classification and Treatment Officer I with the Roederer Correctional Complex, effective the beginning of business August 14, 2019.

3. The Appellant stated a complaint was made against him by Ashley Madras, who works in the Human Resources Department at KCIW. The Appellant also stated there was no reason for him to have any contact with Ms. Madras other than through the normal course of business. He described his relationship with Ms. Madras as mainly speaking to her in passing.

4. The allegations mentioned in his demotion letter, dated August 13, 2019, occurred after the Appellant was told that upon her request Ms. Madras had been removed from a July 2019 interview panel (hereinafter, the "Interview Panel") that she and the Appellant were scheduled to participate on. The reason Ms. Madras gave the Appellant for coming off the Interview Panel was that she had to work on the upcoming payroll. The Appellant did not think that was reason enough to come off the panel.

5. The next witness to testify was Ashley Madras, who is currently a Human Resource Specialist II at KCIW in the Personnel Department. According to Ms. Madras, in July 2019, she was asked by Deputy Warden Stephen Lyons to be on an Interview Panel. When she found out the Appellant was on the panel, she asked Deputy Warden Lyons to remove her because she was uncomfortable being around the Appellant and because it was payroll processing time. Ms. Madras stated there was a lot going on.

6. When asked why she felt uncomfortable around the Appellant, Ms. Madras could not point to any specific incident. However, she testified that the Appellant has an aggressive personality and when she sat on a previous interview panel with him, he spent a lot of time discussing his younger girlfriend, which gave her a bad vibe. Ms. Madras stated Deputy Warden Lyons removed her from the Interview Panel.

7. It was shortly after she had been removed from the Interview Panel that Ms. Madras experienced her first uncomfortable encounter with the Appellant. It occurred on July 20, 2019, while she was having lunch. Ms. Madras figured that, by that time, the Appellant had been informed she was off the Interview Panel, because he stopped outside the door where she was lunching, shook his head, and stated, "Your little ass will fit in this trash can." This made Ms. Madras extremely uncomfortable since she did not perceive the comment as being a joke, however, she just let it go.

8. Her next uncomfortable encounter with the Appellant occurred the following morning on the day the Interview Panel was to take place. She ran into the Appellant coming out of an office, at which time the Appellant bent down and rolled up his pant legs. When she asked him why he did that, the Appellant said, "I'm rolling up my pants for all the shit you're talking."

9. Ms. Madras' next uncomfortable encounter with the Appellant came on the day of the Interview Panel as well. Ms. Madras ran into the Appellant while he was walking an

interviewee down the hallway. While passing each other, the Appellant looked her up and down with an "Ah-ha" look on his face and whispered, "traitor" to her under his breath.

10. Her next uncomfortable encounter with the Appellant came the day after the Interview Panel while she was in the Appellant's secretary's office (Aubria Fountain) helping with her insurance enrollment. They were at Ms. Fountain's desk, and Ms. Madras was sitting behind Ms. Fountain when the Appellant walked into the office. The Appellant asked her when timesheets were due, and she told him they were due the next day. The Appellant then walked around the desk, pulled Ms. Madras in around him, and started rubbing her back. The Appellant then said, "We all know payroll is not due today." According to Ms. Madras, the Appellant was being extremely flirtatious. She had never asked the Appellant to touch her or made it appear as though she wanted him to touch her.

11. A day or two later, while eating lunch with several other employees, the Appellant walked in and started giving Ms. Madras grief for not being on the Interview Panel. According to Ms. Madras, Deputy Warden Lyons and Jessica Wallace were also present. It was at this point that Ms. Madras had had enough of the Appellant's grief.

12. Ms. Madras admitted reporting another unrelated harassment incident involving a different employee who was making comments about her body. She told this employee to stop, and he did not. Ms. Madras was not sure what discipline resulted from her complaint, but she knew that the employee no longer worked at KCIW. This occurred before February 2019.

13. On cross examination, regarding the "back rubbing" incident, Ms. Madras admitted she did not tell the Appellant to stop because she did not want to cause a scene with his new secretary. Ms. Madras also stated that Melanie Drago witnessed her first uncomfortable encounter with the Appellant but told her she did not hear the Appellant's comments. Therefore, she did not mention Ms. Drago as a potential witness.

14. Ms. Madras testified that she met with KCIW Warden Vanessa Kennedy regarding her complaint against the Appellant on August 5, 2019, at which time she was told to fill out an Occurrence Report. The Warden had just returned from vacation, which caused a delay in following up with Ms. Madras' complaint. Ms. Madras had stated in her complaint that there were no other encounters involving the Appellant during the subject three (3) to four (4) day period, mainly because she did her best to avoid him. Ms. Madras assumed that the first incident, involving the trash can comment, was the Appellant giving her grief for coming off the Interview Panel. However, she admitted she never told the Appellant that she did not take the trash can comment as being a joke.

15. The next witness to testify was **Stephen Lyons**, Deputy Warden of Programs at KCIW. Deputy Warden Lyons recalled that Ashley Madras approached him and asked to be taken off the Interview Panel. Deputy Warden Lyons stated that Ms. Madras wanted off the panel because she did not want to be in a room with the Appellant for a whole day. She further stated that, because the Appellant acted weird and creepy, she did not like to be around him. Deputy Warden Lyons then asked her for specifics, and she stated that, on a previous occasion, the Appellant talked about liking and dating younger women, which she found off-putting. That was reason enough for Deputy Warden Lyons to remove Ms. Madras from the Interview Panel and that

was also the end of his involvement with this incident until he was asked to fill out an Occurrence Report.

16. Deputy Warden Lyons recalled having lunch in his office with Ms. Madras and others when the Appellant popped in and asked Ms. Madras if she was done with payroll. The Appellant was clearly being snarky. According to Deputy Warden Lyons, it was an odd encounter and Ms. Madras appeared to take it weird. The Appellant tried to get Deputy Warden Lyons to joke around with him about it as well, but he backed off and told the Appellant he was on his own with that. Following the incident, the whole mood shifted, and Ms. Madras almost looked visibly sick. He could tell the encounter made Ms. Madras extremely uncomfortable.

17. The Appellee's next witness was **Vanessa Kennedy**, who is the Warden at KCIW. According to Warden Kennedy, Aubria Fountain, the Appellant's former secretary, is currently on active military leave. In addition, Jessica Wallace, who was present along with Deputy Warden Lyons when the Appellant gave Ms. Madras grief at lunch, continues to be employed at KCIW but is currently on Family and Medical Leave Act (FMLA) status.

18. Warden Kennedy stated she was involved in the decision to promote the Appellant to Deputy Warden since she was on the interview panel that selected him for the role. She also stated that she is the Appointing Authority at KCIW. When asked if she was satisfied with the Appellant's performance as Deputy Warden, she stated that she knew the Appellant was regarded as having an aggressive behavior and she had already talked to him about being in better control of his behavior during June of 2019. Specifically, the Appellant became aggressive with the Fiscal Director and cut her off during a conversation causing Warden Kennedy to instruct the Appellant not to talk to women as aggressively. She also asked the Appellant to get out and get to know his people, which he never really did. In addition, the Appellant messed up on a prisoner transfer. Warden Kennedy had instructed the Appellant to terminate a staff member while she was on vacation. However, instead of doing it himself, he passed it off to somebody else. When she came back from vacation, Warden Kennedy was presented with the subject issue involving the Appellant and Ms. Madras. Warden Kennedy stated she was already looking at reverting the Appellant back to his position as Corrections Unit Administrator II prior to learning about Ms. Madras's claim.

19. Deputy Warden Lyons informed Warden Kennedy about the Ms. Madras's situation on Monday following her return from vacation. Warden Kennedy passed the information on to Rodney Moore, Human Resources Director with the Justice and Public Safety Cabinet. He instructed her to investigate Ms. Madras's allegations and to handle the investigation with her staff instead of Justice Cabinet investigators. The Appellant was also placed on administrative leave.

20. Warden Kennedy immediately interviewed Ashley Madras, Deputy Warden Lyons, Jessica Wallace, and the Appellant. She also obtained written Occurrence Reports from Jessica Wallace, Deputy Warden Lyons, Ashley Madras, and the Appellant along with her interviews. Lastly, Warden Kennedy briefly interviewed Melanie Dragoo, but since she had not heard any of the Appellant's alleged comments, Ms. Dragoo was not asked to prepare an Occurrence Report.

21. Warden Kennedy stated that, according to Jessica Wallace, she and Ms. Madras were in the kitchenette when the Appellant became aggressive with Ms. Madras and told her that he would put her little ass in the trash can. Ms. Wallace also told Warden Kennedy about an

incident where she was eating lunch with Ms. Madras, Ms. Drago, and others in Deputy Warden Lyons' office and the Appellant came in and started giving Ms. Madras a hard way to go about payroll not being completed.

22. After completing her investigation, Warden Kennedy concluded that the Appellant was being flirtatious with Ashely Madras in the hallways by looking her up and down and making her feel uncomfortable. The rolling up his pants and the trash can incidents, taken together with the unwanted physical touching, which she felt was important, was the basis to demote the Appellant. Warden Kennedy had already contemplated reverting the Appellant before the Madras incidents occurred. However, given the way the Appellant mishandled his supervisory duties as Deputy Warden, rather than reverting the Appellant to his previous position, which also entailed supervisory duties, Warden Kennedy decided that demoting the Appellant to a position with no supervisory authority over anyone was the best course of action. Therefore, she decided to demote the Appellant to the position of Classification and Treatment Officer I, which does not have any supervisory authority.

23. After making her decision, Warden Kennedy discussed it with Rodney Moore and Randy White, the Deputy Commissioner of Adult Institutions for the Department of Corrections. Neither one had any objections to her decision.

24. On cross-examination, Warden Kennedy admitted she had not looked to previous disciplinary actions taken against other employees for similar misdeeds to ensure uniformity of penalization when she determined the level of discipline to be applied to the Appellant. Rather, she based her decision on her own experience with these types of incidents. In short, the Appellant was reverted to a Corrections Unit Administrator II, based on performance, and demoted to Classification and Treatment Officer I, based on his harassment of Ms. Madras.

25. At this time, Appellee's Exhibit 1, the Appellant's Personnel Board Appeal Form; the Appellee's Exhibit 2, Kentucky Corrections Policies and Procedures No. 3.5; and the Appellee's Exhibit 3, which is a copy of the August 13, 2019 demotion letter, was entered into the record and the Appellee rested its case.

26. Next to testify was **the Appellant, Brian Ward**, concerning his allegation of discrimination and his response to the Appellant's allegations. The Appellant's Exhibit 1, the Occurrence Report of Jessica Wallace; the Appellant's Exhibit 2, the Occurrence Report of Ashley Madras; the Appellant's Exhibit 3, being the Occurrence Report of Deputy Warden Lyons; the Appellant's Exhibit 4, the Occurrence Report of the Appellant, Brian Ward; and the Appellant's Exhibit 5, which is the Employee Progress Report prepared by Warden Kennedy, was entered into the record during Mr. Ward's testimony.

27. The Appellant stated he was currently working at the Roederer Correctional Complex as a Classification and Treatment Officer I, pay grade 12. According to the Appellant, he had been employed by the Appellee for over seventeen (17) years. The Appellant stated that he had received sexual harassment training from the Appellee every year. He also stated that he was engaged to a considerably younger woman and would have only mentioned it to anyone if he had been asked.

28. The Appellant stated he started work at KCIW as a Deputy Warden on June 1, 2019 and was responsible for supervising between twelve (12) and thirteen (13) people. During his career with the Appellee, he began supervising employees in 2006 and, until the Madras complaints, he had never been accused of sexual harassment. All his employee performance evaluations were in the top two (2) categories until 2019, when he received his mid-term employee performance evaluation grade, after he had been reverted and demoted. Regarding the subject incidents, the Appellant stated that, once he found out Ms. Madras was coming off the Interview Panel, he tried to joke with her about it. On July 30, 2019, regarding the kitchenette incident, the Appellant recalled stopping outside the door and saying something about the Interview Panel to Ms. Madras, but could not remember saying anything about putting her ass in a trash can. The Appellant admitted that he rolled up his pant legs on July 31, 2019, and again stated he was just being playful and joking around about the veracity of the excuse Ms. Madras gave for coming off the Interview Panel.

29. The Appellant further noted that Ms. Madras never told him to stay away from her or informed him that he was being creepy. He also did not remember calling her a traitor but admitted he might have done so in a joking manner. Regarding the incident involving Aubria Fountain, the Appellant stated that Ms. Madras and Ms. Fountain were behind Ms. Fountain's desk working on an insurance matter when he asked Ms. Madras if payroll was running that day. She told him no, it would be the next day. The Appellant stated he never touched her or put his hands on her back. In fact, he stated that, due to his many years in the military, he was aware of being careful and, had he moved around behind her, he would have put his hands up while doing so to insure there was no improper touching.

30. According to the Appellant, when he was reverted from Deputy Warden back to his previous position as a Corrections Unit Administrator II, he went from a pay grade 18 to a pay grade 15. When he was demoted from Corrections Unit Administrator II to his current position as a Classification and Treatment Officer I, he went from a pay grade 15 to a pay grade 12. The Appellant stated the last time he was a grade 12 was ten (10) years ago.

31. The basis of his discrimination allegation was that the only thing the Appellant could think of was that, because he previously worked at the Kentucky State Reformatory where sexual harassment incidents had occurred, Warden Kennedy believed Ashley Madras instead of him. The Appellant had no factual basis to support his allegation of discrimination, but still believed and felt it actually occurred.

31. The Hearing Officer has considered the entire administrative record, including the testimony and the Exhibits therein.

32. This matter is governed by KRS 18A.095(1), which states that a classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause.

FINDINGS OF FACT

The Hearing officer makes the following Findings by a preponderance of the evidence:

1. The Appellant, Brian Ward, a classified employee with status, timely filed his appeal with the Personnel Board on September 10, 2019, appealing his demotion from Corrections Unit Administrator II to the position of Classification and Treatment Officer I with the Roederer Correctional Complex.

2. Pursuant to the Interim Order dated April 20, 2021, the issue before the Personnel Board was the Agency's demotion of the Appellant and whether that penalty was excessive or erroneous under the circumstances. The Appellee had the burden of proof on this issue, which was to be by a preponderance of the evidence. The other issue before the Personnel Board was the Appellant's claim of discrimination. The Appellant had the burden of proof on this issue, which was to be by a preponderance of the evidence.

3. Until the present claims were made, the Appellant had been employed by the Appellee in a supervisory capacity since 2006 without incident, accusation, or disciplinary action.

4. Kentucky Corrections Policies and Procedures No. 3.5, Sexual Harassment and Anti-Harassment, was entered into the record and marked as Appellee's Exhibit 2. According to such policy, harassment means continuous verbal or nonverbal conduct of one (1) or more employees that directly results in the inability of another employee to perform his job duties or otherwise adversely affects another employee's employment opportunities.

5. The Appellant's demotion letter dated August 13, 2019, and marked as Appellee's Exhibit 3, indicated that the Appellant was reverted and demoted for lack of good behavior or the unsatisfactory performance of his duties. KAR 101 1:345, Section 1.

6. The Hearing Officer finds that the Appellant's reversion from Deputy Warden of Programs at KCIW to Corrections Unit Administrator II was supported by the testimony of Warden Vanessa Kennedy and was properly administered.

7. The totality of the evidence, including the testimony of Ashley Madras, Deputy Warden Lyons, and the Appellant demonstrated that Ms. Madras was not comfortable being in the presence of the Appellant and, as such, did not want to participate on the subject Interview Panel with the Appellant. This, coupled with her impending payroll duties, was reason enough for Deputy Warden Lyons to remove Ms. Madras from the subject Interview Panel. The Appellant did not like her reasons for being removed from the Interview Panel and he made a point to be sure Ms. Madras was aware of the same.

8. With the glaring exception of the "rubbing the back" incident, the Appellant admitted to the bulk of the allegations contained in Appellee's Exhibit 3 but stated his actions were only meant as a joke. Had his actions stopped with the "her little ass would fit in the trash can" incident, it is likely this matter would not now be before the Personnel Board. However, the Appellant continued to press the issue with Ms. Madras and, with each additional incident, he made her more and more uncomfortable.

9. Warden Kennedy testified that the "rubbing the back" incident was an important factor in determining the Appellant's level of discipline. However, given that Aubria Fountain, who was present at the time of the incident, was unable to produce a supporting Occurrence Report,

it is found that such allegation was not proven by a preponderance of the evidence.

10. The preponderance of the evidence does not support a finding that the Appellant's actions herein directly resulted in the inability of Ms. Madras to perform her job duties or otherwise adversely affected her employment opportunities.

11. The preponderance of the evidence herein supports a finding that the Appellant's actions and comments meant for Ms. Madras constitute a lack of good behavior as alleged in the demotion letter marked as Appellee's Exhibit 3. The Appellant's actions herein were unprofessional, sophomoric, imprudent, and have no place in any workplace environment.

12. The record indicates that Warden Kennedy considered the Occurrence Reports entered into the record as Appellant's Exhibit 1, 2, 3, and 4, as well as her face-to-face interviews with Jessica Wallace, Deputy Warden Lyons, Ashley Madras, and the Appellant. She relied solely on her own experience dealing with these types of disciplinary actions when deciding to demote the Appellant. However, there is no evidence that Warden Kennedy considered the Appellant's lack of disciplinary history, his previous performance evaluations, or that he had never previously been accused of sexual harassment during his tenure with the Appellee.

13. The preponderance of the evidence does not support a finding that the Appellant was the victim of discrimination.

CONCLUSIONS OF LAW

1. The Appellee has failed to demonstrate by a preponderance of evidence that there was just cause to demote the Appellant from his position as Corrections Unit Administrator II to the position of Classification and Treatment Officer I. In addition to failing to prove the "the rubbing the back" allegation by a preponderance of the evidence, the undersigned considers the Appellant's unblemished and undisciplined history with the Appellee to be a major mitigating factor and concluded that his demotion was erroneous and excessive.

2. The Appellee has demonstrated by a preponderance of the evidence that the Appellant's actions and comments meant for Ms. Madras constitute a lack of good behavior as alleged in the demotion letter marked as Appellee's Exhibit 3. The Appellant's behavior in this instance should not be tolerated and constitutes just cause for disciplinary action.

3. The Appellee has failed to demonstrate his claim of discrimination by a preponderance of the evidence.

RECOMMENDED ORDER

Based on the foregoing Findings of Facts and Conclusion of Law, the Hearing Officer recommends to the Personnel Board that the appeal of **BRIAN WARD V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL 2019-194)** be **SUSTAINED to the extent** that his demotion from Corrections Unit Administrator II to Classification and Treatment Officer I be **RESCINDED**, that he be placed back in his former position as Corrections Unit Administrator II, and that he shall be suspended from duty and pay

for thirty (30) days. Furthermore, the Hearing Officer recommends the Appellant be reimbursed for the difference in his salary from a Corrections Unit Administrator II to Classification and Treatment Officer I, beginning August 13, 2019, along with any other related benefits, and that he 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).

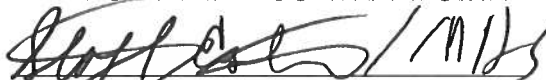
Any document filed with the Personnel Board shall be served on the opposing party.

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 Geoffrey Greenawalt** this 5th day of January 2022.

KENTUCKY PERSONNEL BOARD



**MARK A. SIPEK
EXECUTIVE DIRECTOR**

A copy hereof this day emailed and mailed to:

Hon. Thomas J. Schulz
Hon. Edward A. Baylous
Hon. Rosemary Holbrook (Personnel Cabinet)