

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-076

JAMIE WARD

APPELLANT

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

JUSTICE AND PUBLIC SAFETY CABINET
DEPARTMENT OF CORRECTIONS
J. MICHAEL BROWN, APPOINTING AUTHORITY

APPELLEE

** **

The Board at its regular May 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated April 15, 2015, 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 20th day of May, 2015.

KENTUCKY PERSONNEL BOARD


MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Stafford Easterling
Jamie Ward
Bobbie Underwood

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NO. 2014-076**

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VS.

**FINDINGS OF FACT, CONCLUSIONS OF LAW
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This matter came on for an evidentiary hearing on March 11, 2015, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Roland P. Merkel, Hearing Officer. The proceedings were recorded by audio/video equipment and authorized by virtue of KRS Chapter 18A.

Appellant, Jamie C. Ward, was present and not represented by legal counsel. Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Stafford Easterling. Accompanying Mr. Easterling was Ms. Ann Smith, Paralegal, and Warden Alan Brown, the Agency representative.

The issue concerns the three-day suspension of Appellant from duty and pay, effective beginning of business March 20, 2014, through close of business March 22, 2014, based on allegations of poor work performance. The burden was on the Appellee to prove by a preponderance of the evidence that the disciplinary action was taken with just cause and was neither excessive nor erroneous.

Presentation of opening statements was waived by both parties. The rule separating witnesses was invoked and employed throughout the course of the proceeding.

BACKGROUND

1. The first witness for the Appellee was the Appellant, **Jamie C. Ward**. Ms. Ward is employed by the Department of Corrections as a Correctional Sergeant at the Green River Correctional Complex (GRCC). She has been employed with the Department for six years. As a Correctional Sergeant she supervises officers and inmates. At the time of the alleged incident, she had been assigned to the midnight to 8:00 a.m. shift in the Special Management Unit (SMU). The SMU houses troubled inmates and there are special rules that apply to handling SMU inmates.

2. She identified Appellee's Exhibit 1 as Green River Correctional Complex Policies and Procedures, GRCC 10-01-01. This policy applies to the SMU. SMU inmates are more dangerous than inmates in the general population. She read section B.2. into evidence. An SMU inmate is not allowed to come out of his cell without first being placed in handcuffs and shackles. This helps ensure the safety of the facility. Her responsibilities involved compliance with this policy.

3. She identified Appellee's Exhibit 2 as Green River Correctional Complex, Post Order #PO-31 which applies to SMU supervisors. Appellant read into evidence paragraph 5. As a supervisor, Appellant was responsible to ensure this policy was followed.

4. She identified Appellee's Exhibit 3 as Green River Correctional Complex Policies and Procedures, GRCC 03-01-01, General Guidelines for GRCC Employees.

5. On February 3, 2014, Correctional Officer Ware came down to the SMU. Appellant and others on the midnight to 8:00 a.m. shift were in the midst of picking up breakfast trays. Appellant gave Ware her keys. Ware took full restraints up to the cell where a certain inmate Jennings was housed. Appellant assumed Officer Ware would place the inmate in shackles and handcuffs. She continued performance of her own duties.

6. When Ware and the inmate came downstairs, Appellant noticed the inmate was not in restraints. Ware and the inmate walked through the dayroom towards the laundry room. The inmate had been walking behind Officer Ware. Appellant testified they had been taught from "day one" at supervisors' in-service training and at basic academy, never to correct an officer in front of an inmate. She, therefore, did not correct Officer Ware in front of inmate Jennings.

7. She observed Ware and the inmate enter the laundry room. She then instructed Officer Adam Loney, who was equipped with pepper spray, to enter the laundry room and assist Officer Ware.

8. Sergeant Ward subsequently entered the laundry room because the inmate had requested a white t-shirt to wear during the transport. He was getting stripped out at the time. She noticed the restraints, metal handcuffs, shackles and a belly chain were undone and lying on a table within arms' reach of the inmate. Appellant took the restraints off the table. She then spoke to the inmate and calmed him down. The inmate was then placed in full restraints and escorted out.

9. Appellant then spoke to Officer Ware off to the side and told him he had not followed proper procedure. The inmate was required to have been in restraints. Officer Ware responded that was the way they did it on the dayshift.

10. She identified Appellee's Exhibit 4 as the February 27, 2014 letter issued to her by Alan D. Brown, Warden, notifying her of an intent of the Appointing Authority to suspend her from duty and pay for a period of three days. She identified Appellee's Exhibit 5 as the March 14, 2014 letter issued to her by Warden Alan Brown, notifying her that she had been suspended for three days from duty and pay.

11. This is Appellant's first disciplinary action involving a suspension. She had received written reprimands for poor work performance, in 2010 and again in 2012.

12. The next witness was **Irvin Ware**. For the past eleven years Mr. Ware has been employed as a Correctional Officer at the GRCC. On February 3, 2014, he had been the Transportation Officer assigned to transport inmate Jennings to Jefferson County for a court appearance. It was his responsibility to secure the inmate, "strip him out," put him in restraints, and take him for transport. Officer Ware acknowledged the SMU houses inmates who are highly dangerous and are "max custody."

13. Officer Ware admitted he had let the inmate out of his cell without shackles or restraints, testifying "I messed up." It was approximately 5:30 a.m. that day when he obtained a set of keys from Sergeant Ward. He went to the inmate's cell, let him out of the cell and took him to the laundry room. As they walked toward the laundry room, the inmate was walking behind Officer Ware. Sergeant Ward observed them as they walked past.

14. Once they got into the laundry room the inmate became irate and complained he was supposed to wear a separate set of clothes for this trip. Sergeant Ward came into the laundry room and straightened out the situation. Ware placed the inmate in shackles and took him on the transport.

15. Officer Ware identified Appellee's Exhibit 6 as the Occurrence Information Report he had completed on February 3, 2014. He read his statement into evidence:

On 2-3-14 (sic) at approximately 5:35 a.m. I, Ofc Ware was escorting Inmate Jennies Dawan (sic) #256994 from SMU for a court trip. I, Ofc Ware forgot to handcuff Inmate Jennings Dawan #256994.

16. **Robert Henning** was the next witness. Mr. Henning is employed by the Department of Corrections as a Captain at the GRCC. At the time of the incident he was a Lieutenant at the facility. He supervised all Sergeants including the Appellant.

17. He reviewed the situation and recommended disciplinary action. He had received various reports and prepared his own report to the Deputy Warden. He identified Appellee's Exhibit 7 as the Occurrence Information Report submitted on February 3, 2014, by Officer Adam Loney. Henning had entered his own supervisor's comments and signed the report. Henning also reviewed the Occurrence Information Report supplied by Officer Ware.

18. The subject inmate was in the SMU, the maximum custody unit. SMU inmates are not to be taken outside their cell without wearing restraints. Upon observation of the inmate out of restraints, Sgt. Ward should have immediately corrected the behavior to have the inmate placed in restraints while being moved through the unit.

19. He identified Appellee's Exhibit 8 as the February 6, 2014 request for disciplinary action report he had written and submitted to Deputy Warden Ron Beck. Captain Henning had recommended imposition of a five-day suspension for both Sgt. Ward and Officer Ware. He believed that any supervisor is responsible for the safety and security of all staff and inmates. Anything that places staff in harm's way should be subject to discipline. This particular incident placed staff in harm's way. Sgt. Ward's reason for not correcting an officer in front of the inmate was not appropriate. She was required to immediately correct the dangerous behavior she observed. One can always talk to an officer about the matter later. The unrestrained inmate had been walking behind the officer, which also presented an extremely dangerous situation. The institution has strip cages where inmates are to be stripped down. This procedure is not to be carried out in the laundry room.

20. He identified Appellant's Exhibit 1 as the Occurrence Information Report dated February 3, 2014, submitted by the Appellant. He had also reviewed this document, as well as having placed his supervisor's comments and signature thereon.

21. The next witness was **Alan Brown**. Mr. Brown has been employed by the Department of Corrections for twenty-seven years and has served the past three years as Warden of GRCC.

22. Warden Brown had received and reviewed the recommendation report for suspension (Appellee's Exhibit 8). He surmised Sgt. Ward had violated policy and that she should have immediately stopped the inmate and Officer Ware, had the inmate placed in restraints, and instructed the officer to conduct the strip-down in the proper area and not in the laundry room.

23. The SMU is a high security area. The inmate was being transported to court. Officer Ware allowed the inmate to come out of his cell unrestrained and walk behind him. The safety of staff was put at risk. As a supervisor, Sgt. Ward failed to take appropriate action.

24. Upon consideration of this matter, and in view of Appellant having had no prior suspensions, Warden Brown reduced the recommendation of the suspension from five days to three days.

25. Appellee rested its case. Appellant called no witnesses. Appellee presented a closing argument. Appellant waived presentation of a closing argument.

FINDINGS OF FACTS

1. At the time of issuance of the disciplinary action, Jamie C. Ward, Appellant, was a classified employee with status. She is employed as a Correctional Sergeant by the Department of Corrections and had been assigned to the Special Management Unit (SMU) at the Green River Correctional Complex (GRCC).

2. The SMU houses inmates who are highly dangerous and considered "max custody." On February 3, 2014, Appellant worked the midnight to 8:00 a.m. shift. Correctional Officer Irvin Ware came to the SMU to take one of the SMU inmates, Dewaun Jennings to Jefferson County. Appellant gave Ware her keys. Ware carried a set of full restraints up to Jennings' cell.

3. Ware brought Jennings back downstairs and walked through the dayroom toward the laundry room, in full view of the Appellant. Jennings was walking behind Ware and was not wearing any restraints (shackles or handcuffs). Appellant took no corrective action at that time.

4. Once Ware and Jennings entered the laundry room, Sgt. Ward instructed Correctional Officer Adam Loney to assist Ware in the laundry room. When Jennings became agitated about the clothing he was to wear to court, Ward subsequently entered the laundry room. She observed Jennings was not in any restraints; the restraints were lying on a table within arms' reach of the inmate. She took the restraints off the table and calmed the inmate by speaking to him. Jennings was placed in full restraints and escorted out of the laundry room.

5. Appellant then took Correctional Officer Ware aside to correct him for not having placed the inmate in full restraints.

6. As a result of this incident, Occurrence Incident Reports were required from, and submitted by, Correctional Officer Ware (Appellee's Exhibit 6), Correctional Officer Loney (Appellee's Exhibit 7), and Sgt. Ward (Appellant's Exhibit 1).

7. At the time of the incident, the following were in full force and effect:

- Green River Correctional Complex Policies and Procedures, GRCC 10-01-01, specifically:

B. Unit Security

...

2. An inmate released from his cell shall be placed in shackles, handcuffed behind the back, and placed under escort, unless otherwise directed by the Unit Supervisor.

(Appellee's Exhibit 1);

- Green River Correctional Complex, GRCC Policy & Procedure References, Post Order #PO-31, Specifically:

Purpose:

...

5. The supervisor shall ensure that inmate movement is controlled to the highest degree of security and the safety of staff and inmates is always a top priority.

A. Except for recreation, cleaning, and showers, SMU inmates shall be in full restraints (handcuffed behind the back and leg restraints) when out of their cells.

(Appellee's Exhibit 2)

8. At the time of the incident, inmate Jennings was not involved in recreation, cleaning, or taking a shower. Sgt. Ward did not "otherwise direct" that the inmate not be placed in shackles.

9. Captain Robert Henning (who was a Lieutenant at the time of this incident) reviewed the three Occurrence Incident Reports, as well as various policies, determined certain policies had been violated, and sent his own written report to Deputy Warden Ron Beck (Appellee's Exhibit 8). He recommended a five-day suspension be issued to Sgt. Ware.¹

10. Warden Alan Brown reviewed Henning's report. He agreed Appellant had violated certain policies and should be disciplined. Although Appellant had received written reprimands for poor work performance in 2010 and 2012, this was the first request for her suspension.

11. He concluded Appellant had violated GRCC 10-01-01, Special Management Unit, B.2 and Post Order #PO-31, SMU Supervisor, 5., and issued his February 27, 2014 intent to suspend letter advising Appellant of a potential three-day suspension (Appellee's Exhibit 4).

12. Appellant met with the Warden on March 3, 2014, to discuss the matter. On March 14, 2014, Warden Brown issued a letter suspending Appellant from duty and pay for three days (Appellee's Exhibit 5).

13. Appellant timely filed her appeal of this disciplinary action with the Kentucky Personnel Board.

CONCLUSIONS OF LAW

1. A classified employee with status shall not be suspended, except for cause. KRS 18A.095(1). Appointing authorities may discipline employees for lack of good behavior for the unsatisfactory performance of duties. 101 KAR 1:345, Section 1. A suspension shall not exceed thirty days. 101 KAR 1:345, Section 4(1).

2. Appellee issued Sgt. Ward a three-day suspension by letter of March 14, 2014 (Appellee's Exhibit 5). That suspension was based on an allegation of poor work performance and violations of Policy GRCC 10-01-01, Special Management Unit, B.2., and Post Order #PO-31, SMU Supervisor, 5., citing 101 KAR 1:345, Section 1.

3. At the time of the incident Appellant worked the midnight to 8:00 a.m. shift in the Special Management Unit (SMU). The SMU had special rules pertaining to the inmates housed there. Such inmates, prior to being taken out of their cells, were to be placed in shackles, handcuffed behind the back, and placed under escort.

¹ Captain Henning testified he had also recommended a five-day suspension for Correctional Officer Ware.

4. On February 3, 2014, Correctional Officer Irvin Ware came to the SMU to take inmate Dewaun Jennings via transport to Jefferson County. He retrieved a set of keys from Sgt. Ward and went up to Jennings' cell. When Sgt. Ward next saw Ware he was escorting Jennings through the dayroom toward the laundry room. The inmate walked behind Officer Ware and did not wear any restraints. Sgt. Ward failed to take immediate corrective action to place the inmate in restraints and have Officer Ware walk behind the inmate during the escort.

5. Appellant had previously been issued written reprimands for poor work performance in 2010 and 2012.

6. Appellee has shown by a preponderance of the evidence that there was just cause for disciplinary action against the Appellant, based on the incident of February 3, 2014. Appellee employs progressive discipline, and, therefore, it has shown by a preponderance of the evidence that the disciplinary action taken in the nature of a three-day suspension was neither excessive nor erroneous.

RECOMMENDED ORDER

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Personnel Board that the appeal of **JAMIE C. WARD VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2014-076)** be **DISMISSED**

NOTICE OF EXCEPTION AND APPEAL RIGHTS

Pursuant to KRS 13.B.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).

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 Roland Merkel** this 15th day of April, 2015.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Stafford Easterling
Jamie C. Ward