

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2012-160**

**PAUL WEEKS  
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**

**APPELEE**

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The Board at its regular January 2013 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated December 11, 2012, 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 \_\_\_\_\_ day of January, 2013.

**KENTUCKY PERSONNEL BOARD**

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**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. Amber Arnett  
Paul Weeks  
Stephanie Appel

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2012-160**

**PAUL WEEKS**

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**VS.**

**FINDINGS OF FACT, CONCLUSION OF LAW  
AND RECOMMENDED ORDER**

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

**APPELLEE**

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This matter came on for an evidentiary hearing on November 26, 2012, at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

Appellant, Paul Weeks, was present at the hearing, and not represented by legal counsel. Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and was represented by the Hon. Amber Arnett. Appearing as Agency representative was Warden Clark Taylor of the Kentucky State Reformatory.

The issues for the hearing involved the appeal of Appellant's three-day suspension and a one-day leave without pay. At the beginning of the hearing, the Appellee announced that the one-day leave without pay had been retracted and the Appellant had been compensated. The burden of proof as to the suspension was placed upon the Appellee by a preponderance of the evidence to show that the disciplinary action was neither excessive nor erroneous.

In summary, the Appellant was suspended for failing to work required mandatory overtime on July 4, 2012.

**BACKGROUND**

1. The Appellee's first witness was **Arnold Chisholm**. He has been a Captain for approximately one year at the Kentucky State Reformatory (hereinafter "KSR"), and has been employed with the Commonwealth for approximately nine years. His duties include running his shift, doing necessary paperwork, dealing with emergencies and ensuring that full staffing is available for his shift.

2. This witness is the Appellant's supervisor on the third shift, which operates from 11:30 p.m. through 7:30 a.m.

3. The witness stated that the Appellant was assigned to Dorm 6. He went on to explain that if there are not enough staff on a particular shift, he first asked for volunteers to cover, and if there are not enough volunteers, then a draft is performed to secure the necessary staffing for mandatory overtime. The witness then introduced Appellee's Exhibit 2, a July 29, 2012 draft list for the 12:00 – 8:00 shift, on which the Appellant worked. The witness explained that this list shows that the Appellant was at the top of the list, having last worked mandatory overtime on April 21, 2012. The list of names below Appellant's shows the most recent dates in which other individuals had worked mandatory overtime. It is the policy of Captain Chisholm that when one is drafted to work a mandatory overtime shift then following that shift he goes to the bottom of the list.

4. The witness then identified Appellee's Exhibit 3, the July 10, 2012 intent to suspend letter. The witness confirmed that he reported the Appellant's refusal to work mandatory overtime on July 4, 2012, and confirmed the Appellant gave as a reason "he had to watch his son." He further added that the Appellant made no mention of being sick that day.

5. The witness also added that the Appellant did call in sick for July 5, which covered the shift of 11:30 p.m., July 4, through 7:30 a.m. July 5.

6. Appellee's second witness was **Scott Jordan**. He has been a Senior Captain at KSR since July 1, 2012, and during his ten years of employment with the state has performed as an Officer, Sergeant, Lieutenant, and Captain. Part of his duties includes overseeing all three Captains who serve at his direction.

7. He stated that Captain Chisholm was under his command and forwarded the notice to him of the Appellant's refusal to work overtime.

8. This witness then introduced Appellee's Exhibit 5, the KSR policy 03-00-01, which covers "Employee Leave Regulations." The pertinent parts of this policy are I. (G)(H) and (I).

I.(G) provides: ". . .With the authorization of the appropriate Supervisor, Employees may also be required to work overtime on a scheduled or unscheduled basis."

I.(H) provides: ". . . To meet the needs of the institution, or in the event of an emergency, overtime shall be mandatory.

I.(I) provides: "Employees may be required to work hours and days other than regular scheduled days and hours, including an overtime or inclement weather schedule if it is in the best interest of the institution."

9. The witness also added that this policy is covered during the pre-hire interviews and in regular training. He added that during the interview of the Appellant for employment, he was made aware of this notice of mandatory overtime and agreed to perform same.

10. Jordan further explained that the policy on mandatory overtime is important, because there has to be a minimum number of staff needed to ensure the security of KSR, which contains 2,000 inmates. The witness also introduced Appellee's Exhibit 9, a May 23, 2012 written reprimand given to the Appellant for refusal to work mandatory overtime.

11. On cross-examination, the witness was asked to explain the approval process as it relates to mandatory overtime and an employee having a doctor's appointment. He answered that a supervisor will take into account on the day of the mandatory overtime, whether the employee knew ahead that he had a doctor's appointment. If so, the employee could be expected to have worked overtime previously so as to accumulate the time which would allow his name to then go to the bottom of the list. The witness explained that in working overtime an employee must work a minimum of four hours in order to accumulate sufficient time in order to allow his name to drop to the bottom of the draft list.

12. Appellee's next witness was **Clark Taylor**. He has been the Warden at KSR since June 1, 2012, and has worked for the Commonwealth for approximately twenty-four years. He has held previous positions with the Department of Corrections and is considered the appointing authority at KSR.

13. He confirmed the previous witness' testimony that staff can volunteer to work overtime, but occasionally mandatory overtime is needed. He also confirmed that staff are encouraged to control their own overtime by volunteering so as not to be subject to mandatory overtime.

14. The witness then introduced Appellee's Exhibit 10, a copy of 101 KAR 2:095. The pertinent section of this regulation is Section 2(3) which provides, "An appointing authority may require an employee to work hours and days other than regular days and hours, including an overtime or inclement weather schedule if it is in the best interest of the agency." As Appointing Authority, Taylor issued the intent to suspend letter and follows progressive discipline, noting a previous written reprimand. He stated that he met with the Appellant prior to issuing the July 11, 2012 suspension letter. He does not recall the Appellant mentioning to him that "he had to watch his son on July 4."

15. On cross-examination, the witness stated that a July 4, 2012 doctor's statement was tendered to him by the Appellant after the fact.

16. The Appellee then rested its case.

17. The Appellant, **Paul Weeks**, called himself as his only witness. He has been a Correctional Officer at KSR for the past five years. He testified that on July 4, 2012, after finishing his previous shift at 7:30 a.m., he went to a doctor in Shelbyville at approximately noon. As a result, he received a doctor's statement excusing him from work for the rest of the day on July 4 through July 9, 2012.

18. As a result of this apparent illness and the doctor's note, Appellant had his mother call in to KSR on the night of July 4 to tell Captain Chisholm that he would not be reporting for his shift at 11:30 p.m. that night.

19. The Appellant claims that he was suffering from severe bleeding during the afternoon and night of July 4, none of which is explained in the doctor's note.

20. The Appellant then rested.

### **FINDINGS OF FACT**

1. The Appellant refused to work mandatory overtime on July 4, 2012, telling his superiors he had to watch his son.

2. The Appellant's name was at the top of the "draft" list to work mandatory overtime.

3. The Appellant was well aware from the beginning of his employment that he was subject to working mandatory overtime.

4. The Appellant submitted a doctor's statement after the fact excusing him from work from July 4 – July 9, 2012. No details were given and the doctor's statement was in contradiction with the Appellant's excuse that he had to watch his son.

5. The Appellant's refusal to work mandatory overtime was in violation of KSR Policy 03-00-01, I.(G)(H) and (I) and constituted lack of good behavior under 101 KAR 1:345.

6. The three-day suspension given to Appellant was neither excessive nor erroneous under all surrounding circumstances considering a previous written reprimand for the same offense.

### **CONCLUSION OF LAW**

The Appellee carried its burden of proof by a preponderance of the evidence in justifying the three-day suspension.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **PAUL WEEKS VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2012-160)** be **DISMISSED**.

**NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4), each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file exceptions to the Recommended Order with the Personnel Board. In addition, the Kentucky Personnel Board allows each party to file a response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted to. On appeal a circuit court will consider only the issues a party raised in written exceptions. See *Rapier v. Philpot*, 130 S.W.3d 560 (Ky. 2004).

The Personnel Board also provides that each party shall have fifteen (15) days from the date this Recommended Order is mailed within which to file a Request for Oral Argument with the Personnel Board. 101 KAR 1:365, Section 8(2).

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 \_\_\_\_\_ day of December, 2012.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof mailed this date to:

Hon. Amber Arnett  
Paul Weeks