

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2020-197

DAVID WILKERSON

APPELLANT

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

**JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF JUVENILE JUSTICE**

**APPELLEE**

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The Board, at its regular September 2021 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 5, 2021, 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 Finding of Fact paragraph 7 and substitute the following:

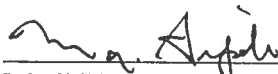
7.     The knife was described to have a 4 to 5-inch blade that required a push button mechanism to close the blade from its open position.

**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 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 13<sup>th</sup> day of September, 2021.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK**  
**SECRETARY**

A copy hereof this day mailed to:

Hon. William Codell  
David Wilkerson  
Cynthia Watson  
Hon. Rosemary Holbrook (Personnel Cabinet)

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
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**VS. FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER**

**JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF JUVENILE JUSTICE**

**APPELLEE**

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This matter came on for an evidentiary hearing on May 27, 2021, before Hearing Officer, E. Patrick Moores, at the offices of the Kentucky Personnel Board, Frankfort, Kentucky. Due to the directives of the Kentucky Supreme Court arising out of the concerns pertaining to the health risks relating to the national COVID-19 virus pandemic, the hearing proceedings were conducted by Amazon Chime video teleconference and recorded on audio-video equipment pursuant to the authority found at KRS Chapter 18A.

The Appellant, David Wilkerson, was present and was unrepresented by legal counsel. The Appellee, the Kentucky Justice and Public Safety Cabinet, Department of Juvenile Justice (hereinafter designated as "DJJ"), was represented by the Honorable William Codell.

**I. STATEMENT OF THE CASE**

1. The Appellant, David Wilkerson, filed an appeal on September 16, 2020, of the Cabinet's decision to terminate his services as a Youth Worker II from DJJ's Green River Youth Development Center (hereinafter "Green River YDC") in Butler County, Kentucky, under the authority of KRS 18A.095(2) and (3) and 101 KAR 1:345, Section 2, for assaulting and injuring a coworker with a weapon in violation of DJJ Policy 102, Code of Ethics, I, IV (C and N), and DJJ Policy #104, Code of Conduct, IV (M and S). The disciplinary action against the Appellant resulted from an incident on May 13, 2020, when a coworker, Jesse Wood, entered a staff break room. Witnesses stated that the Appellant and Wood started jabbering with each other in an apparent non-hostile manner when they suddenly started grappling with each other and Wood drew back with a cut on his arm that was bleeding. Medical assistance was provided Wood, who was

eventually transported to the Greenview Hospital Emergency Room in Bowling Green, Kentucky, to treat the injury. Juvenile Facility Superintendent II (JFSII) Gregory Lundy was contacted by his supervisor to go to the breakroom to investigate what happened. Subsequently, the matter was referred to the Justice Cabinet's Internal Investigation Branch, and the findings were reported on August 4, 2020. The matter was turned over to the Kentucky State Police and, on August 5, 2020, Lundy submitted a written request for Major Corrective Action against the Appellant to the DJJ Commissioner.

2. Based on the DJJ investigation, the Commissioner, LaShana Harris, determined that there was sufficient evidence to warrant the termination of the Appellant's employment with DJJ and, on August 25, 2020, she sent him a written notice of the Appellee's intention to dismiss him. The written notice set forth the finding of his violations of policy in assaulting a coworker with a weapon, warranting said disciplinary action, and informing him of his right to request a pre-termination hearing. The Appellant was subsequently terminated and filed an appeal with the Kentucky Personnel Board on September 16, 2020, in which he stated that he "did not intentionally grab a knife and assault Mr. Wood," as he thought he was grabbing his keys but mistakenly grabbed his knife, injuring Wood, alleging that the "unfortunate accident" was not done intentionally and was without malice.

3. A telephonic pre-hearing conference was conducted on February 4, 2021; the Appellant was present and unrepresented by legal counsel, and Mr. Codell appeared on behalf of the Cabinet. The matter was assigned for a video conference evidentiary hearing on March 31, 2021, and the parties were given until March 17, 2021, to submit their respective list of witnesses and exhibits they intended to use during the evidentiary hearing. On March 31, 2021, the Hearing Officer called the evidentiary hearing to order, however, the Appellant failed to appear and also failed to contact the Board concerning his inability to appear. Without objection, a show cause order was issued to the Appellant, who eventually contacted the Board that he had technical difficulty accessing the hearing.

4. The Board rescheduled the evidentiary hearing to take place for May 27, 2021, by video conference. Pursuant to the April 22, 2021 Interim Order issued by the Board, the hearing proceeded by video conferencing, with the burden of proof placed on the Appellee to prove by a preponderance of the evidence that DJJ had just cause to terminate the Appellant, and that the disciplinary action was neither excessive nor erroneous. At the conclusion of the hearing, the parties were offered the opportunity to submit written memoranda of law in support of their respective cases, which they mutually declined, submitting the matter on the record for the following findings of fact, conclusions of law, and recommended order.

## II. STATEMENT OF THE EVIDENTIARY TESTIMONY

1. The first witness called by the Appellee was **James Saulsberry**, a Youth Worker I at the Green River YDC. He described his duties as assuring the youth were in a safe environment and directing their progress to return to society. He testified that he was in the facility break room with the Appellant, Wood, and another youth worker, Curtis Kessinger, conducting a briefing on some DJJ rules, when Wood and the Appellant started “joking” with each other. He said that the joking became serious, and he overheard the Appellant tell Wood, “It will not be that easy,” following which he observed Wood approach the Appellant; he then heard a clicking sound, and the two began scuffling with each other. The next thing he knew, Wood pulled back and his arm was bleeding; the Appellant placed his hand on Wood’s arm and tried to apply pressure to stop the bleeding.

2. Saulsberry stated that he and Kessinger were talking to each other at the time of the incident, and that he was not paying attention to what was transpiring between the Appellant and Wood. He described the Appellant as a very serious person who does not joke around. He said that, following the incident, Stephen Clark, a Youth Services Program Supervisor (YSPS) called 9-1-1, and then Lundy entered the room asking each of them write out a statement of what happened. Saulsberry said he commented that “things just happened.”

3. **Kathryn Reed**, a Special Investigation Agent with the Justice Cabinet’s Internal Investigations Branch (IIB), testified that she was assigned to investigate the incident between the Appellant and Wood at the Green River YDC. She stated that her job duties involve investigating EEO complaints and special incidents for DJJ and the Department of Corrections. She said she asked Lundy if there were any videos of the incident and she learned that there were none. She began conducting interviews on May 14 and 15, 2020, and took statements from Saulsberry, Kessinger, the Appellant, and Wood, and other staff subsequently involved as witnesses to the incident. She then submitted a report of her findings on August 4, 2020. She testified the Appellant reported to her that Wood was joking with the Appellant about his (Wood’s) physical abilities and that the Appellant replied to Wood, “It will not be that easy.” The Appellant said that when Wood came at him, the Appellant thought he grabbed his keys from his pocket and did not realize he had cut Wood. She said the Appellant said that, later that evening when he was home and changing clothes, he found his knife in his pants pocket, and he called the facility and reported it to Green River YDC YSPS Steven Clark. She said the Appellant told her that Clark told him to bring the knife to the YDC, and that he admitted to Clark that he possibly had the knife with him during the scuffle with Wood, but that he thought he was just grabbing his keys to poke Wood to “get a rise out of him.”

4. **Cynthia Watson** has been the Human Resources Manager of the Personnel Branch at DJJ since 2015. She testified that, following her receipt of the request for Major Disciplinary

Action against the Appellant, she began to collect the documentation compiled during the investigation and reviewed the findings for appropriate disciplinary action in accordance with DJJ's policies. She said she looked at the severity of the situation and how any disciplinary action should be applied under the Department's progressive disciplinary policy to correct the conduct. In her review, she learned that the Appellant had been suspended for five (5) - days during the previous year (2019) for using excessive force in restraining a youth inmate. She further reviewed other previous DJJ disciplinary actions to ensure that consistency would be applied to the determination to discipline the Appellant. As a result, she recommended that the Appellant be dismissed and prepared the letter of intent for the Commissioner. She concluded that the Appellant's dismissal was consistent with DJJ policy and prior disciplinary actions.

5. **George Scott** is a Deputy Commissioner with DJJ, having worked for the Department for over twenty-one (21) years, including having served as a superintendent at several facilities. His job duties include overseeing residential programs in DJJ's youth homes statewide. He testified that the youths admitted to Green River YDC are admitted through the courts. He said he became aware of the investigation into the stabbing incident involving the Appellant by the Internal Investigation Branch. He testified that he is involved in internal disciplinary actions and that he prepared the memo recommending that the Appellant be dismissed. His decision was based on the severity of the assault and that it involved a weapon prohibited by state law and DJJ policy, combined with the fact that the Appellant had been suspended just the previous year for use of excessive force. The Appellee's decision to dismiss the Appellant was consistent with DJJ policy and previous disciplinary actions.

6. **Greg Lundy** has been employed with DJJ for nearly twenty (20) years, during which he has served as a Superintendent at numerous facilities, including the Green River YDC. At the date of the evidentiary hearing, he was serving as a Regional Administrator for the Department. He described the Green River YDC facility as housing adjudicated youth offenders, who were admitted so they could be provided disciplinary direction, supervision, and other needs for redirecting them productively back into the community.

7. Lundy was serving as Juvenile Facility Superintendent II at Green River YDC when the incident involving the Appellant and Wood occurred. He testified that he was in his office when he learned of the stabbing incident from Edin Smajlagic, the Juvenile Facility Superintendent, and that, when he arrived at the scene, he observed blood on the floor, Wood sitting in a chair, and Wood's arm was bleeding. After Wood was taken to the hospital, he brought the Appellant to his office asked him what happened. He said the Appellant told him that he and Wood were joking around and horseplaying; Wood approached the Appellant, grabbed him by the arm and, the next thing he knew, Wood's arm was bleeding. Lundy said the Appellant denied he had anything sharp in his possession that would cut Wood.

8. Lundy testified that he talked to the Appellant a second time. During the second conversation, the Appellant told Lundy that Wood approached him saying he (Wood) would sodomize the Appellant on the table there in the break room, and that the Appellant replied, "it would not be easy." Lundy said the Appellant again stated that he did not think he had anything sharp in his hand, but that he must have used his keys. Lundy authenticated a signed statement he gave to the investigator, that the Appellant had reported Wood told him, "I will f-ck you in your -ss over this table," and the Appellant again said that he reached in his pocket and "pulled out my keys, put them by his nuts, and said, 'It won't be easy.'" The Appellant reported that he "went under his arms and when I came down, I must have cut him with the keys."

9. Lundy testified, as authenticated in the statement, that, in the early evening at home, the Appellant called YSPS Clark and reported that, when he was changing clothes, he "found a knife in his pocket with blood on it." Lundy instructed Clark to tell the Appellant to bring the knife to the YDC facility. When the Appellant brought it to the facility and gave it to Lundy, he stated that, when Wood grabbed him, he must have grabbed the knife and cut him.

10. Lundy testified to the policies that the Appellant's conduct violated, including DJJ Policy No. 102: Code of Ethics, Section IV(N), prohibiting "workplace violence," and Policy No.104: Code of Conduct, Section IV(M) and (N), prohibiting contraband and weapons on the facility. Lundy testified that the Appellant violated the policy by bringing the knife, which he described as a "fairly nice size . . . 4 to 5 inches long," onto the facility.

11. The Appellant, **David Wilkerson**, testified very briefly, only stating in his direct testimony that he did not intentionally stab Wood. He responded to the allegation that Wood had threatened to sodomize him by acknowledging that he told Wood, "it won't be easy," and that was when Wood was cut. He described the knife as a "lock-back knife," with a push button mechanism that prevented it from being closed when it is open. The Appellant reiterated that he did not recall what transpired regarding his use of the knife, and claimed that he had reached into his pocket during their scuffle to grab his keys, with the intent to poke Wood with his keys to get him to stop his aggression.

### **III. FINDINGS OF FACT**

1. The Appellant and Jesse Wood were both Youth Workers employed as classified employees at the Green River Youth Development Center (Green River YDC).

2. The Green River YDC is a secure facility located in Butler County, Kentucky, that houses youth inmates who are sent to the facility by the state court system for a number of reasons, including awaiting trial or sentencing, or serving a sentence after being convicted of a crime.

3. On the afternoon of May 13, 2020, as the Appellant and Wood were in the breakroom of the facility, they began to joke with each other, which devolved into a vulgar and inappropriate exchange of words between them. The conflict then further turned into a brief physical scuffle during which Wood was cut on the arm by a knife possessed by the Appellant.

4. Following the physical confrontation between the Appellant and Wood, which was witnessed by others in the area, Wood was bleeding to the extent that he had to be taken to a hospital emergency room for treatment. An investigation then immediately ensued, and the matter was subsequently reported to DJJ Commissioner Harris.

5. The Appellant initially said that, when Wood confronted and grabbed his arms, he reached into his pocket to get his keys to poke Wood in the groin area, to get a rise out of him, and to get Wood away from him. He initially denied that he used any weapon that caused Wood to be cut.

6. The Appellant subsequently went home and stated that, as he was changing clothes, he discovered a knife in his pants pocket, which had blood on the blade, and he called the facility and reported his discovery of the knife.

7. The knife was described to have a 4 to 5-inch blade that required a push button mechanism to be closed the blade from its open position.

8. Following review of the witness interviews and personal conversations with the Appellant - in which he acknowledged that he was aware of the Appellee's Code of Conduct policy against workplace violence and its prohibition of weapons on the premises, the Human Resources Manager, Cynthia Watson, recommended to the Commissioner that the Appellant be dismissed from his employment with the DJJ regarding his violation of DJJ policies.

9. Commissioner Harris reviewed the investigation and the recommendations of DJJ's Human Resources Manager, and determined that the Appellant's conduct, combined with his prior behavior, which had required his suspension less than a year earlier, were in violation of state laws, regulations, and DJJ policies and procedure, justifying his termination of employment. The Appellant was notified in writing of DJJ's determination to dismiss him.

10. The Appellant timely filed an appeal, bringing this matter for review before the Kentucky Personnel Board and, despite being provided the opportunity to present any proof at the evidentiary hearing justifying his appeal, he presented virtually no direct evidence nor did he seek exculpatory evidence in his defense from cross-examination of witnesses.



11. The only testimony the Appellant presented at the hearing was his statement that the stabbing of Wood was not intentional, as the incident started as horseplay, along with a description of the knife and elaboration on the size of the blade. The Appellant repeated his statements that he could not recall what transpired regarding his use of the knife, but acknowledged saying to Wood, "That won't be easy." At the conclusion of his testimony and again in his closing argument to conclude the hearing, the Appellant reiterated he thought he was grabbing his keys in order to "poke" Wood in the groin area.

12. The Appellant was offered the opportunity to present a written memorandum on the facts presented and the law that would present any argument in favor of his appeal, which he declined.

#### IV. CONCLUSIONS OF LAW

1. Pursuant to KRS 18A.095(1), a classified employee with status shall not be dismissed, demoted, suspended or otherwise penalized except for just cause. In this state, a civil service or similar job status is regarded as a vested right or, at least, is given the same protection as if it were. Hopwood v. City of Paducah, 424 S.W.2d 134 (Ky. 1968). In meeting this burden the employer has to also protect an employer's concerns about employee safety, discipline, and harmony among the workforce in addition to the responsibilities of the duties being performed. The Kentucky Administrative Regulations provide that disciplinary actions may be imposed on a state worker for "lack of good behavior" at 101 KAR 1:345, which states: "Appointing authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties."

2. 101 KAR 1:345, Section 2 provides that an employee may be dismissed from employment provided all the statutory requirements for the disciplinary action are satisfied.

3. Additionally, 101 KAR 2:095, Section 9 outlines the guidelines concerning Workplace Violence:

- (1) Workplace violence shall be prohibited and shall include:
  - (a) The attempted, threatened, or actual conduct of a person who endangers or is likely to endanger the health and safety of state employees or the general public; or
  - (b) A threatening statement, harassment, or behavior that gives a state employee or member of the general public reasonable cause to believe that his or her health or safety is at risk.
- (2) Examples of prohibited workplace violence shall include:

- (c) Intimidating, threatening, or directing abusive language toward another person, either verbally, in writing or by gesture; . . .
  - (e) Striking, slapping, or otherwise physically attacking another person;
- (3) Violation of this section shall constitute grounds for disciplinary action and referral for criminal prosecution.

4. Department of Juvenile Justice Policy and Procedures Policy Number DJJ 102, "Code of Ethics" sets out what is expected from its staff and provides in paragraph IV(N) that "Workplace violence shall be prohibited and constitute grounds for disciplinary action and referral for criminal prosecution."

5. Department of Juvenile Justice Policy and Procedures Policy Number DJJ 104, "Code of Conduct" sets out what is expected from its staff and provides at paragraph IV(S) that, in accordance with statutory provisions concerning firearm and other weapons, staff are prohibited from possession of a deadly weapon at any facility/program that houses delinquent youth.

6. Concerning the appropriateness of the influence of the Appellant's prior recent suspension for use of excessive force in the determination to dismiss him from employment, the same Code of Conduct Policy, DJJ 104, provides at paragraph IV(U) that all staff shall protect the individual safety of the youth "utilizing no more than the absolute amount of force necessary" utilizing the "controlling techniques" in which they have been certified by the Division of Professional Development.

7. The Justice and Public Safety Cabinet and its Department of Juvenile Justice has a legitimate interest in regulating the conduct of its staff to ensure the integrity of the classified service they provide in performing a vital service for the security of the people of the Commonwealth of Kentucky and the youth appointed by the courts to their care. The Appellant, David Wilkerson, is a classified employee with status. KRS 18A.095(2) states that "a classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause." The question in this case is whether the Appellee provided sufficient evidence to show cause for the Appellant's termination. Our Supreme Court has held that all of Kentucky's "adjudications, whether judicial or administrative," are protected by due process guarantees "whereby Kentucky citizens may be assured of fundamentally fair and unbiased procedures." Commonwealth Natural Resources and Environmental Protection Cabinet v. Kentec Coal Co., Inc., 177 S.W.3d 718, 724 (Ky. 2005). If the state agency's decision is unsupported by substantial evidence or law, then it is clearly erroneous or arbitrary. See Kentucky Bd. of Nursing v. Ward, 890 S.W.2d 641, 643 (Ky. App. 1994). If the findings of fact are supported by substantial evidence of probative value, then they must be accepted as binding, and it must then be determined whether or not the administrative agency has applied the correct rule of law and penalty to the facts so found. See Southern Bell Telephone and Telegraph Co. v. Kentucky Unemployment Ins. Comm'n., 437 S.W.2d 775, 778 (Ky. 1969).

8. Appellant Wilkerson's sole defense was that he did not intend to stab Wood during their physical confrontation. The function of this hearing was to determine the facts and whether the Appellee's termination of the Appellant's employment was supported by the preponderance of the evidence, which, taken alone or in light of all the evidence, it has sufficient probative evidence to induce conviction in the minds of reasonable men. Commonwealth of Ky. v. Bridewell, 62 S.W.3d 370 (Ky. 2001).

9. The focus of the evidence presented was on whether the Appellant's conduct violated the DJJ policies and procedures, and that he was performing his job duties inappropriately as to justify his dismissal. The Kentucky Supreme Court addressed the issue of required staff conduct in the corrections environment, stating in pertinent part:

In all societies, there is a line, or a "seam," between appropriate conduct and inappropriate conduct. Sometimes it is a broad line, sometimes thin. This line, or "seam," is defined or established by law. And by our interpretive rulings, this court can more clearly define, or inadvertently obscure, or even move the line, or "seam," characterizing conduct in our society. Thus, we should always realize that every ruling we make, or "seam" we define, obscure, or adjust, has a composite effect, however large or small, on the "efficiency" of the society we live in. In this sense, it is important to note that society has looked (and is looking) for alternative programs in the corrections area with consistent objectives of punishment and rehabilitation in order to lower our incarceration rate . . . Having a great stake in the fortunes of tomorrow, we should not be inclined to fashion rules that unduly hinder, or impede, an honest search for solutions, absent the command of law.

Rowan County v. Sloas, 201 S.W.3d 469, 479 - 480 (Ky. 2006).

10. Under the authority of 101 KAR 1:345, Section 1, the supervisors in charge of DJJ and the Green River YDC must be allowed to exercise some discretion in taking appropriate disciplinary action of staff that violate their policies and procedures, particularly where workplace violence with the use of prohibited weapons is involved. The Justice and Public Safety Cabinet and its staff within the Department of Juvenile Justice are under an obligation to the people of the Commonwealth of Kentucky and are charged with the supervision not only of the center's inmate residents, but also the staff performing those responsibilities.

11. A secure confinement facility is a unique place fraught with serious security dangers. See Bell v. Wolfish, 441 U.S. 520, 559 (1979). The staff of such facility are responsible for the care, custody, and control of individuals who have been sentenced by the courts to serve time in the facility. State v. Shepherd, 577 S.E.2d 341, 344 (N.C. App. 2003). The duty of safety not only extends to the facility and staff, and the youth inmates, but also to the citizens of the Commonwealth of Kentucky who might be exposed to such risks.

12. In an environment such as the Green River YDC, with employees and inmates relying on the rules for their own security, it is very important that the staff follows the facility's policies and procedures. The function of the services provided at this corrections facility is very

serious to the people of the Commonwealth of Kentucky, who entrusted the youth inmates to the staff of the facility to provide for the safety and welfare of the youth, the staff members themselves, and to the people of the Commonwealth, for which the taxpayers of the Commonwealth provide their pay for its implementation. The duties and responsibilities given to the staff are reasonable and clearly documented by the legislature in the statutes and regulations, and by the Cabinet and its departments in their institutional policies. The Appellant was obligated to the people of the Commonwealth of Kentucky to perform his essential job functions, in his capacity as a Youth Worker, throughout the Green River complex.

13. Furthermore, the employees are trained and frequently reminded of these rules, which are not to be ignored. James Saulsberry testified that, immediately prior to the scuffle between the Appellant and Wood, he was talking with them both in the breakroom concerning facility rules. The Appellant admitted he was aware of the policies and procedures, which he had violated. Furthermore, it cannot be ignored that, less than a year prior to this offense, he had been suspended for use of excessive force.

14. In this matter, the conclusion should be clear. The Appellant's entire defense was built entirely on allegations that he did not intentionally stab Wood. However, by his own admission, he confirmed that he intended to poke [stab] Wood in the groin, by using his keys, "to get a rise out of him." He was overheard by witnesses to say, in response to a vulgar comment from Wood, "that won't be easy." The Appellant's statement shows an intent to cause some sort of harm to Wood, regardless of whether he actually believed he was grabbing his keys instead of his knife. He clearly intended to cause Wood some harm. Taking into consideration that the Appellant was aware that 1) he had the knife in his possession, 2) he had to depress a button on the knife to close it from the open position, 3) he immediately secured the closed knife back on his person out of sight from observation, and 4) the denial that he had a sharp weapon on him that could have cut Wood, the Hearing Officer concludes that it exceeds all sense of credibility and believability of his alleged defense to the basis of his termination.

15. In his position of utmost security and responsibility assigned to him by the Commonwealth and DJJ, the Appellant failed to abide with the job responsibilities and policies while doing his appointed duty, by having a weapon in his possession while on the premises to begin with. Merely bringing such a weapon into Green River YDC was inappropriate of a staff member in such a secured facility, unprofessional for a trained employee in his position, and, by itself, warranted severe disciplinary action up to and including termination of employment.

16. The testimony from the witnesses all pointed to the fact that the Appellant and Wood engaged each other in a vulgar and offensive manner, which almost immediately escalated into a physical confrontation, that, in itself, violated the facility's policy. The DJJ Commissioner reviewed the incident reported by the witnesses, the Appellant, and Wood's supervisors, along with additional information that was provided by the interviews and the Appellant's employment record. The Commissioner further considered the fact that the Appellant admitted knowingly violating the policy, together with the fact he could not provide an adequate explanation as to the reason he had a knife on his possession, which he initially denied, or why he even intended to poke Wood in the groin area with his keys. The Commissioner justifiably considered this to be a serious

infraction of DJJ and state policy, that was dangerous and involved seriously unprofessional behavior in an unacceptable manner, that merited termination.

17. The testimony presented gave a clear indication of violation of DJJ policy and procedures, particularly as it involved workplace violence. The incident and the Appellant's admissions shows that appropriate consideration was given by Commissioner Harris to all the circumstances, and that the evidence of the seriousness of the incident justified the disciplinary action against the Appellant.

18. This Hearing Officer concludes, under the authority of 101 KAR 1:345, Section 1, *supra*, that the Commissioner of DJJ must be allowed to exercise some discretion in taking appropriate disciplinary action of staff found knowingly violating clearly stated policy and failing to perform their duty, particularly when it pertains to the interaction between employees resulting in workplace violence, and the discipline to be administered on a consistent basis for serious violations of the policy.

19. This Hearing Officer notes that the Appellant, as an employee of DJJ, was placed in a position of trust to which he was appointed, that conferred upon him certain responsibilities, which cannot be trifled with. The function of the services provided at this facility is very serious, not only to the inmates of the facility, but to the staff that oversees their security, and also to the people of the Commonwealth who provide for the position and pay for its implementation.

20. This Hearing Officer, having weighed all the evidence and considered the credibility of the witnesses, believes that the conduct of the Appellant in suddenly stabbing a coworker - causing an injury that required treatment at a hospital while falsely alleging he did not have anything sharp and despite having used a knife he possessed that required him to push a button to close the open knife blade before he could secure it out of sight back on his person - justifies the determination that his termination of employment was proper and not excessive. The evidence establishes that appropriate consideration was given by Commissioner Harris to all the circumstances, including the Appellant's recent prior disciplinary suspension for use of excessive force on a youth inmate, and that the seriousness of the incident with Wood justified the termination of the Appellant. The Appellant's own conduct has brought about this result. Under the circumstances, there was sufficient evidence to support the decision of DJJ to terminate the Appellant, and the determination should be upheld.

#### V. RECOMMENDED ORDER

Having considered and weighed all the evidence and the laws of the Commonwealth of Kentucky, including the appropriate statutes, regulations, and institutional policies, and based upon a preponderance of the evidence set forth in the foregoing findings of fact and conclusions of law, the Hearing Officer recommends to the Personnel Board that the appeal of **DAVID WILKERSON V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF JUVENILE JUSTICE (APPEAL NO. 2020-197)** 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, E. Patrick Moores**, this 5<sup>th</sup> day of August, 2021.

**KENTUCKY PERSONNEL BOARD**

  
\_\_\_\_\_  
**MARK A. SIPEK**  
**EXECUTIVE DIRECTOR**

A copy hereof this day mailed to:

Hon. William Codell  
David Wilkerson  
Rosemary Holbrook (Personnel Cabinet)