

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2016-081**

**DONALD S. WILLIAMS**

**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**

**APPELLEE**

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The Board, at its regular November 2016 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated August 30, 2016, Appellant's Exceptions and Request for Oral Argument 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 22<sup>nd</sup> day of November, 2016.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK, SECRETARY**

A copy hereof this day sent to:

Hon. Catherine Stevens  
Mr. Donald S. Williams  
Mr. Rodney E. Moore

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This matter came on for an evidentiary hearing before the Hon. Stephen McMurtry, Hearing Officer, at the Kentucky Personnel Board on July 28, 2016, at 9:30 a.m., on the appeal of Donald S. Williams from the decision of the Justice and Public Safety Cabinet, *ex rel.*, Little Sandy Correctional Complex, to terminate his employment as a Correctional Lieutenant. The proceedings were recorded by audio/video equipment and were authorized by KRS Chapter 18A.

Present were the Appellant, Donald S. Williams, appearing *pro se*, and the Cabinet, represented by the Hon. Catherine Stevens.

**BACKGROUND**

1. On February 11, 2016, Joseph P. Meko, Warden of the Little Sandy Correctional Complex (LSCC), notified Appellant Williams that he was being discharged from his employment for violation of Corrections Policy and Procedures 3.1, Code of Ethics, Section II, items A, 2 and 5, and Little Sandy Correctional Complex Policy and Procedure 03-01-01, General Guidelines for LSCC Employees, item K, 11. In short, Warden Meko alleged Williams had altered a medical release and submitted it to LSCC to permit him to return to work without restrictions. This action, as alleged by Warden Meko, constituted "Any effort to influence an employee to violate the standards of ethical conduct set forth in this policy or ...conduct which creates a justifiable impression in the public mind that this trust is being violated....", this action also constituted the provision of "false information to anyone during the course of an investigation," and activity which is "detrimental to the proper performance of (Williams') duty as an employee of the Department of Corrections and LSCC or which comes into conflict with attainment of goals and the mission of the Department and LSCC."

2. The February 11, 2016 dismissal letter included a summary of the actions Williams was alleged to have committed.

**Poor Work Performance**, i.e., providing altered documentation to personnel, as reported by Brandi Vogel, HR Specialist II and verified by Internal Affairs Lieutenant Aaron Holbrook. Specifically, on November 23, 2015, after being off work for 3 consecutive days (November 20, 21 and 22, 2015) due to sickness, you submitted a doctor's excuse to the Payroll Office at the Little Sandy Correctional Complex. Ms. Vogel examined your doctor's excuse to see if it had a release to full duty. It was clear that the excuse was computer generated, but someone had handwritten the following sentence on the document: "Return work with no restrictions." Ms. Vogel contacted Nurse Practitioner Angela Nelson's office at the King's Daughters-Sandy Hook Family Care Center (in Sandy Hook, Kentucky) to verify the statement. She spoke to Benita Akers, Patient Office Coordinator, at the family care center, who verified that you visited the office on November 20, 2015, the date of the excuse, and she stated she was the one who provided you with the computer generated excuse, but she did not handwrite a statement on the document. Ms. Vogel then faxed the statement to the family care center for further examination of the document by their staff. Ms. Akers returned the document by fax with a notation she made on the cover sheet that no one working at the family care center had written that statement on the doctor's excuse.

3. Williams disagreed with the dismissal and filed an appeal to the Kentucky Personnel Board on April 8, 2016, alleging:

I was fired for missing work even though I had a doctors statement excusing me. I have not been treated fairly since I was reinstated to the position of Lieutenant. Meko was extremely upset that I won my hearing and he has tried to fire me since I came back. My written reprimand and verbal reprimand were both for not producing a doctors statement on my return to work neither were for poor work performance. I did not forge any statements from a doctor. (sic)

4. **Brandi Vogel**, Human Resources Specialist II at LSCC, testified that Donald Williams had missed three consecutive days of work. She introduced the November 2015 record of Williams' time and attendance, which documented that he had missed three consecutive days for illness. She said Kentucky Corrections Policies and Procedures 3.14, a restatement of 101 KAR 2:102, Section 2, required employees who are absent from work for three consecutive days for illness to submit a "Fitness for Duty" medical release on a form obtained from the Human

Resources Department. If there are no restrictions, a “medical note” signed by a doctor or nurse practitioner is acceptable.

5. Vogel said that Donald Williams, on November 20, 2015, submitted a “medical note” signed by Angela Nelson, APRN, that said, in typewritten form, “Donald Williams was seen in my clinic on 11/20/2015. He may return to work on Monday, 11/23/15.” In addition to the typewritten information, the medical note had, in handwritten form, “\*Return with no restrictions.” Vogel said she often reviewed medical notes from that clinic, King’s Daughters Medical Center, and typically they did not contain handwritten material. That difference caused her to suspect the “medical note” had been altered without authorization.

6. She called the clinic and spoke to Benita Akers who told her Williams had been seen at the clinic, but she stressed clinic personnel “do not write on medical statements.” Vogel faxed Akers a copy of Williams’ “medical note” and she, in turn, faxed it back with the handwritten statement “11/23/15 no one at this clinic wrote in – Return with no Restrictions – Thanks, Benita, KDML Sandy Hook.”

7. **Aaron Holbrook**, a Correctional Lieutenant and supervisor of Internal Affairs at LSCC, testified that Warden Joseph P. Meko assigned to him the responsibility of investigating the actions of Donald Williams. Holbrook asked Williams about the note from King’s Daughters Medical Center. Williams explained that he initially received the “medical note” that said nothing about returning to work without restrictions. He took the note back to the receptionist working the front desk, who had blonde hair and was possibly named Amanda. He said the receptionist hand-printed “\*Return with no restrictions” on the “medical note.” Williams denied altering the “medical note.”

8. Holbrook telephoned Benita Akers, Patient Office Coordinator at King’s Daughters Medical Center, who said she was the only person at the clinic who met Williams’ description of a blonde lady working the front desk. Akers said no one at the clinic wrote on Williams’ “medical note” and she “knew for a fact that she did not write on it.”

9. Holbrook then compared a sample of Williams’ handwriting from a November 2011 Occurrence Report and Benita Akers’ handwriting on the fax sent to Brandi Vogel on November 23, 2015, with the handwriting on the “medical note” and concluded that Williams’ handwriting matched and Akers’ did not.

10. **LSCC Warden Joseph P. Meko** testified he had been the Warden at the complex since 2007, and had previously served 28 years in the federal prison system. He explained his rationale for terminating Williams’ employment was based on the “especially important need for trust in a Correctional Lieutenant.” Williams, he said, had broken that trust by altering the medical note and then lying about it. He explained at length how important trust in a

Correctional Lieutenant is at any prison facility. He explained that for the safety of prisoners and the public, Correctional Lieutenants had to follow the demands of their job when escorting inmates, making bed checks, never falling asleep on the job, never overcharging on Fleet credit cards, and always performing lockdown in the yard. Meko said he was aware of a similar incident at the complex in which the Warden dismissed a Correctional Lieutenant for a similar breach of trust.

11. **Donald Williams** testified that Benita Akers had given him the “medical note” signed by Angela Nelson, that did not contain the statement that he could return to work without restrictions. When he realized the medical note was deficient, he took it back to the clinic. A woman at the reception desk, possibly named Amanda, took the note and wrote on it “Return with no restrictions.” Williams denied that he wrote those words on the medical note.

12. Williams testified that Warden Meko, in dismissing him, was, in fact, retaliating against him for winning a 2014 appeal he filed to the Kentucky Personnel Board involving his demotion from a Correctional Lieutenant to a Correctional Officer (see Appeal No. 2014-199). Williams related that after winning the appeal, Warden Meko consistently assigned him duties below his rank. Meko denied that the adverse 2014 decision in any way influenced his decision to discharge Williams.

### **FINDINGS OF FACT**

1. Donald Williams, on November 23, 2015, altered a “medical note” by writing on the note “\*Return with no restrictions.” Kentucky Corrections Policies and Procedures 3.14 required a mere “medical note” signed by a doctor or a nurse practitioner that related the employee could return to work without restrictions. Williams could have obtained a proper “medical note,” as he was, in fact, able to return to work without restrictions. Instead, he chose the quick and easy road to return to work. At that juncture, Williams’ malfeasance might have been overlooked. He actually was cleared to go back to work without restrictions. But it was the cover-up, the tangled web of deceit he wove, when he continued to insist someone, a woman possibly named Amanda, wrote on the medical note “\*Return with no restrictions.”

2. The evidence supporting these findings of fact must comply with the requirements of KRS 13B.090. Hearsay, of which much of this testimony consists, “[m]ay be admissible, if it is the type of evidence that a reasonable and prudent person would rely on in their daily affairs, but it shall not be sufficient to support...findings of fact...unless admissible over objections in civil actions.” The hearsay statements of Benita Akers to Brandi Vogel and Aaron Holbrook are those upon which a reasonable person would rely, but KRS 13B.090 does not allow such hearsay to alone support an agency’s findings of fact. There must be, and there is in this case, other non-hearsay evidence or admissible hearsay in civil actions to support the hearsay statements of Benita Akers. Brandi Vogel knew from her work experience and observations that “medical

notes" from the King's Daughters Medical Center did not have handwritten information on them. They were computer-generated medical notes. Aaron Holbrook gave his admissible lay opinion that Williams' hand printing from a 2011 Occurrence Report matched the hand printing "\*\*Return with no restrictions" on the "medical note" here in question signed by Angela Nelson. Benita Akers' hand printing does not. Actually there is a remarkable similarity between Williams' hand printing from his Occurrence Report and the hand printing on the "medical note."

3. The hearsay of Benita Akers is of the quality on which a reasonable person would rely, and is supported by Vogel's familiarity with King's Daughters' "medical notes" and Holbrook's lay opinion of the similarity of the hand printing on Williams' Occurrence Report with the hand printing on the "medical note."

### **CONCLUSION OF LAW**

The actions of the Appellant, Donald S. Williams, constitute poor work performance in violation of Corrections Policy and Procedures 3.1, Code of Ethics, Section II, items A, 2 and 5, and Little Sandy Correctional Complex Policy and Procedure 03-01-01, General Guidelines for LSCC Employees, item K, 11. The decision of the Cabinet to punish Williams by dismissal is not erroneous or excessive in view of all surrounding circumstances, particularly the need for a high degree of trust in Correctional Lieutenants. Williams breached this trust by altering a "medical note" and by providing false information during the course of the investigation by claiming he did not alter the "medical note."

### **RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **DONALD S. WILLIAMS V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2016-081)** 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 Stephen McMurtry** this 30<sup>th</sup>  
day of August, 2016.

**KENTUCKY PERSONNEL BOARD**

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

A copy hereof this day sent to:

Hon. Catherine Stevens  
Mr. Donald S. Williams