

## **CERTIFICATION OF PERSONNEL BOARD RECORDS**

I certify that the attached is a true and correct copy of the Findings of Fact, Conclusions of Law, Recommended Order and Final Order in the case of **DONALD S. WILLIAMS VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2014-199)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 21<sup>st</sup> day of April, 2015.

  
\_\_\_\_\_  
**MARK A. SIPEK, SECRETARY**  
**KENTUCKY PERSONNEL BOARD**

Copy to Secretary, Personnel Cabinet

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-199**

**DONALD S. WILLIAMS**

**APPELLANT**

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

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

**APPELLEE**

\*\* \*\* \*\* \*\* \*\*

The Board at its regular April 2015 meeting having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 19, 2015, Appellee's exceptions, oral arguments 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** Background paragraph 9 and substitute the following:


9. **Serena Waddell** is a Human Resource Administrator at Little Sandy Correctional Complex. She works with Warden Meko on personnel issues, including the preparation of letters of disciplinary actions, which she forwards to the Department of Corrections, Human Resource division for their approval.

**IT IS FURTHER ORDERED** that the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer As Altered, 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 **SUSTAINED**.

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 21<sup>st</sup> day of April, 2015.

KENTUCKY PERSONNEL BOARD

  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Stafford Easterling  
Donald S. Williams  
Bobbie Underwood

**COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2014-199**

**DONALD S. WILLIAMS**

**APPELLANT**

**V. FINDINGS OF FACT, CONCLUSIONS  
OF LAW AND RECOMMENDED ORDER**

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

**APPELLEE**

\*\*\*\*\*

This matter came on for an evidentiary hearing on January 20, 2014 at 9:30 AM, at the offices of the Personnel Board, 28 Fountain Place, Frankfort, Kentucky before the Hon. Colleen Beach, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Donald Williams, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Stafford Easterling. The Agency representative was Warden Joseph Meko.

This matter involves the demotion of the Appellant from Correctional Lieutenant to Corrections Officer for misconduct. The burden of proof was placed upon the Appellee to demonstrate that the disciplinary action taken against the Appellant was neither excessive nor erroneous.

**BACKGROUND**

1. Appellee called Appellant as its first witness. **Donald Williams** is currently employed as a Correctional Officer at Little Sandy Correctional Complex. Through Appellant's testimony, the February 28, 2012 letter informing Appellant of his three-day suspension was introduced into the record as Appellee's Exhibit 1. According to the letter, Appellant was suspended for three days for "inappropriate internet usage," specifically, for shopping on the website e-bay.com.

2. Appellant was asked to describe the events that occurred on June 8, 2014, that led to the demotion that is the subject matter of this appeal. Appellant stated that he had been injured a few years ago, in 2011, during an altercation between an inmate and another officer. His back had been hurting him since then. On June 8, 2014, he was standing by the time clock, waiting his turn to clock out. He felt a sharp pain in his lower back, in the area that had been previously injured. Appellant described the feeling: "It felt like a taser. It almost brought me to

my knees.” Appellant stated that he thought it may have been an inmate that had hit him, so he “turned to swing.” Halfway through this movement he saw that it was Correctional Officer Laura Dennis. He attempted to lower his arm, but it was too late to abort the action altogether. “I ended up hitting her arm,” Appellant stated. “I hit her pretty hard. I said to her: ‘Why did you do that?’ She said that if I hadn’t lost so much weight, it wouldn’t have hurt so bad.”

3. Appellant was asked why he thought it had could have been an inmate that struck him from behind. He responded that inmates regularly come into that part of the facility (the front of the institution by the main entrance door) to clean.

4. Appellant testified that he has worked with CO Dennis for the past eight years. He admitted that he had “nudged” her in greeting by touching her elbow one or two times but nothing more. He also denied that her punching him in the back was “horseplay”: “To me, horseplay is friendly. I didn’t know she was there. It wasn’t a friendly punch. When I swung back, I thought it was an inmate.”

5. Appellant testified that after Dennis hit him in the back, his back began to hurt. He filled out an Occurrence Report regarding the situation because he had to seek medical attention. His physician prescribed him Hydrocodone, which he had to take for three weeks.

6. **Captain Paul Crouch** is an Internal Affairs Captain at Little Sandy. He was assigned by Warden Meko to investigate the incident that occurred between Appellant and CO Laura Dennis on June 8, 2014. His investigation consisted of speaking to Appellant, Officer Laura Dennis, and a witness to the incident, Officer Butch Adkins. Based on these interviews, Crouch prepared a “Report of Investigation.” introduced as Appellee’s Exhibit 4.

7. Crouch interviewed Officer Dennis on August 7, 2014. In the interview, Dennis admitted that she had hit Appellant in the back, but said that she “didn’t mean anything by it.” She also stated that she and Appellant “always play around and hit one another.” (Appellee’s Ex. 4.)

8. Crouch interviewed Appellant on August 1, 2014. Appellant told him that he felt like he had been “tasered” in the back, and then he turned around to see Officer Dennis standing there. Appellant told Crouch that he and Dennis “got along really well and he felt she was horse playing.” (Appellee’s Ex. 4.)

9. **Serena Waddell** is a Human Resource Administrator at Luther Luckett. She works with Warden Meko on personnel issues, including the preparation of letters of disciplinary actions, which she forwards to the Department of Corrections, Human Resource division for their approval.

10. Waddell became involved with the demotion of Appellant after the investigation report, prepared by Captain Crouch, was submitted to the Warden on August 8, 2014.

11. Waddell was asked if she felt the two grade demotion was the proper disciplinary action. She replied: “I do what Warden Meko tells me to do. I agree that we are taking someone from a supervisory position. He should have thought before he took action.”

12. **Warden Joseph Meko** has been warden of Little Sandy Correctional Complex since 2007. He first became aware of the incident involving Appellant and Officer Dennis when the situation was brought to his attention by an Occurrence Report. (He could not recall who had written the report).

13. Meko was asked: "Why is hitting staff a bad thing?" He replied: "It doesn't bring order to the institution. It sends a bad sign of disrespect among the ranks. Staff fighting with one another is a bad thing, especially supervisors beating up the lower ranks. Supervisors should be role models."

14. Meko testified that he chose to discipline Appellant with a two grade demotion because Appellant "needs to learn from his mistakes. The purpose of discipline is to have the desired corrective effect." Meko added that even if Appellant's "punch" had been unintentional, and more in the realm of horseplay, he would have imposed the same disciplinary action because horseplay is "equally disruptive."

15. At the end of Warden Meko's testimony, Appellee rested its case.

16. The Appellant, **Donald Williams**, testified on his own behalf. Appellant stated that he had been employed by the Department of Corrections for almost 15 years, and had had only one other disciplinary action, a three-day suspension for internet usage of *ebay.com*.

17. Appellant began his career with DOC in 2000 as a Correctional Officer at Eastern Kentucky Correctional Complex, and was promoted to Sergeant in 2005, when he was transferred to Little Sandy Correctional Complex. In 2008, he was promoted to Correctional Lieutenant.

18. Appellant stated that he is asking to be re-instated to his position of Correctional Lieutenant, and added: "I don't feel I deserve this."

19. Appellant addressed his statement to Captain Crouch that his punching Officer Dennis "was more like horseplay." Appellant explained: "He asked me if the action was done in anger or retaliation. What I meant was that it was more like horseplay than me trying to hurt her intentionally."

20. Appellant re-called **Warden Meko**. Meko was asked if he had informed Appellant that he was allowed to respond to the Letter of Intent when it was delivered to him. Meko answered: "We give officers the opportunity to respond to such actions. [Appellant] declined the opportunity."

21. At the end of Warden Meko's testimony, Appellant rested his case.

22. The Appellee recalled **Serena Waddell**. She was asked if an employee is allowed the opportunity to respond when discipline is imposed. She answered: "Oh, yes, it says so in the demotion letter."

23. On cross-examination, Waddell was asked if Appellant's opportunity to respond was actually verbalized to him by Warden Meko. She testified: "No, it was not actually said."

24. The Appellee recalled **Captain Crouch**. Through his testimony, a copy of the Investigative Report was introduced into the record as Appellee's Exhibit 4. Crouch stated that when the case was assigned to him, he received four Occurrence Reports. He spoke to each of the witnesses, and submitted his final report to Warden Meko on August 21, 2014.

25. KRS 18A.095(1) states: "A classified employee with status shall not be dismissed, demoted, suspended, or otherwise penalized except for cause."

26. Little Sandy Correctional Complex Policies and Procedures 03-01-01, Item K (4) reads:

The following activities and conduct shall be prohibited at LSCC:

...

4. Horseplay

### **FINDINGS OF FACT**

1. Appellant, Donald Williams, is a classified employee with status who was employed as a Correctional Lieutenant at Little Sandy Correctional Complex.

2. On August 26, 2014, Appellant was informed, by letter under the signature of Warden Joseph Meko, that he was being demoted two grades, that is, from a Correctional Lieutenant to a Correctional Officer. His monthly salary was reduced from \$2,877.92 to \$2,616.30.

3. As grounds for the demotion, Warden Meko cited Appellant's striking Correctional Officer Laura Dennis in the arm after she had struck his back. According to the demotion letter, this action was found to constitute behavior that was considered "horseplay", in violation of LSCC Policies and Procedures, Item K (4).

4. Appellant testified that on June 8, 2014, he was standing by the facility's time clock, when someone unexpectedly hit him in the back, exacerbating an old injury. Appellant described the sensation to his back as feeling as if he had been "tasered" and stated that the pain "almost brought me to my knees." Thinking he may have been assaulted by an inmate, Appellant turned, fist up, ready to strike back. Appellant testified: "I just swung in case an inmate was there, trying to get my keys." Halfway through this movement, Appellant realized it was Officer Laura Dennis who had punched him. Appellant then lowered his arm, but still made contact with Dennis, "hitting her pretty hard," in Appellant's estimation.

5. The pain in Appellant's back, due to Dennis' punch, worsened after he clocked out. The next day he sought the attention of a physician who prescribed hydrocodone to lessen the pain. Appellant submitted an occurrence report regarding the incident because he had to take three weeks off work to recuperate from the injury.

6. After Warden Meko was made aware of Appellant's Occurrence Report, he assigned Captain Paul Crouch to investigate the incident between Appellant and Laura Dennis. Crouch's investigation consisted of interviewing Appellant, Dennis, and a witness to the incident,

Officer Butch Adkins. In his report, Crouch concluded that Appellant was “involved in horseplay while at the workplace.” He based this conclusion on “both parties admitting to being involved in horseplay and admitting to having a playful relationship while at the workplace.”

7. Reviewing Crouch’s Investigative Report, Crouch’s finding of horseplay between Appellant and Dennis is based in large part on his interview with Dennis who allegedly told him that she and Appellant “always play around and hit one another.” However, Laura Dennis did not appear at the evidentiary hearing, and her hearsay statement is given little weight.

8. While the Cabinet contends that Appellant and Officer Dennis had a “history of horseplay,” this assertion was not proven at the evidentiary hearing. Appellant admitted that he and Dennis had “nudged” each other in greeting by touching elbows one or two times, but denied that they had engaged in any other kind of fraternization. Appellant also denied that the incident on June 8, 2014, was “horseplay,” and he was consistent in his description of the event as feeling as if he had been “tasered.” His having to seek medical attention and taking time off from work to recuperate from the injury, bolsters that assertion. Appellant was also consistent in his testimony that he “threw the punch” anticipating that it was an inmate that had hit him. Accordingly, the Hearing Officer accepts the testimony of Appellant that his hitting Officer Dennis in the arm was a knee-jerk reaction to being hit—painfully and unexpectedly—in the back by Dennis. No other eye witness to the incident testified at the hearing, and the Hearing Officer, finding Appellant to be a credible witness, accepts his testimony as a truthful rendition of the incident.

9. It is also significant to the Hearing Officer that Appellant was never disciplined at any time for his alleged “horseplay” with Dennis. His only prior discipline was a three-day suspension for inappropriate access of the website ebay.com.

10. The Hearing Officer rejects Warden Meko’s characterization of the event as a “supervisor beating up the lower ranks.”

11. The Hearing officer finds that the decision to demote Appellant two grades was erroneous under the circumstances, and does not believe the evidence establishes that the two-grade demotion was taken for just cause.

### **CONCLUSIONS OF LAW**

1. The Cabinet was excessive and erroneous in its decision to demote Appellant by two grades, from Correctional Lieutenant to Correctional Officer. The record did not show by a preponderance of the evidence that Appellant engaged in inappropriate “horseplay” with Correctional Officer Laura Dennis on June 8, 2014. What was established at the evidentiary hearing is that Appellant’s striking Dennis in the arm was an automatic reaction to being hit by surprise in the back, and fearing that it had been an inmate that had struck him.

2. Based on the above, and considering that Appellant had no prior history of disciplinary action for engaging in horseplay or similar behavior, the Hearing Officer concludes that the two-grade demotion was not taken for just cause pursuant to KRS 18A.095(1).



**RECOMMENDED ORDER**

Having considered and weighed all the evidence and the laws of the Commonwealth of Kentucky, and based upon the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board, based on the foregoing Findings of Fact and Conclusions of Law, that the appeal of **DONALD S. WILLIAMS V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2014-199) BE SUSTAINED.** Appellant shall be reinstated to the position of Correctional Lieutenant, or a position of like pay and status, with back pay, and that he otherwise be made whole. The Appellee is **ORDERED** to reimburse the Appellant for any leave time he used attending the evidentiary hearing and any pre-hearing conferences at the Personnel Board. (KRS 18A.105, KRS 18A.095(25) and 200 KAR 12.030.)

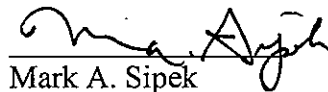
**NOTICE OF EXCEPTION AND APPEAL RIGHTS**

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 the Hearing Officer Colleen Beach, this 19<sup>th</sup> day of March, 2015.

**KENTUCKY PERSONNEL BOARD**

Mark A. Sipek  
Executive Director

A copy hereof this day mailed to:

Mr. Donald S. Williams  
Hon. Stafford Easterling