

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2022-147

NADINE WYATT

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 August 2023 meeting, having considered the record, including the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer dated June 9, 2023, and being duly advised,

**IT IS HEREBY ORDERED** that the Findings of Fact, Conclusions of Law, and Recommended Order of the Hearing Officer 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 17<sup>th</sup> day of August, 2023.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPEK, SECRETARY**

Copies hereof this day sent to:

Nadine Wyatt  
Hon. Edward Baylous  
Hon. Rosemary Holbrook (Personnel Cabinet)  
Rodney Moore

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**APPELLEE**

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This matter came on for an in-person evidentiary hearing on July 12, 2023, at 9:30 a.m. ET, at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. Mark A. Sipek, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Nadine Wyatt, was present and was not represented by legal counsel. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and was represented by the Hon. Ed Baylous. Also present for the Appellee was the Appointing Authority, Kentucky State Penitentiary Warden Scott Jordan.

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**BACKGROUND AND FINDINGS OF FACT**

1. The Hearing Officer notes this appeal was filed with the Personnel Board on October 17, 2022. On the Appeal Form and during the pre-hearing conference, the Appellant, a classified employee without status, indicated she was appealing her probationary dismissal in addition to advancing claims of sex discrimination, harassment, slander, and defamation. The Appellant further explained her claims in an attachment to the narrative portion of the Appeal Form wherein she states, in pertinent part:

I came to work every day, I was not late to work only day that looked like I was because I had forgot to punch in and did so after the meeting 10 mins, I treated staff and inmates fairly, and kind I would not treat inmates poorly or call them names as some.

2. At the start of the evidentiary hearing, the Hearing Officer stated that the issue was whether or not the Appellant's probationary dismissal was the result of sex discrimination or sexual harassment. The burden of proof was by a preponderance of the evidence and the Appellant was assigned to the burden of proof on all issues.

3. The Appellant called **Brett Oliver** as her first witness. Oliver is an acquaintance of the Appellant and is related to current staff members at the Kentucky State Penitentiary (“KSP”) where the Appellant was employed. Oliver last worked for the Department of Corrections (DOC) in 1995.

4. Oliver testified that the Appellant told him she was fired from her job at KSP because she wrote a letter to an inmate.

5. The Appellant called **Christopher Wyatt**, her ex-husband, as her next witness. Witness Wyatt testified that he had a daughter with another DOC employee, Lieutenant Tammy Bauer. Witness Wyatt stated he thought there would be trouble with the Appellant and Bauer working at the same facility. He stated that the Appellant and Bauer accused each other of sleeping with inmates. The witness had no knowledge of why the Appellant was dismissed from her position.

6. The **Appellant** testified that she was hired as a Correctional Officer at KSP on June 11, 2022. She was assigned to the first shift. She worked until her dismissal on September 20, 2022.

7. The Appellant testified that she was the only Correctional Officer (CO) assigned to work in the kitchen on August 22, 2022, when an inmate grabbed her. She stated she reported this to her supervisors and they were slow in reacting. She stated that this inmate was placed in Restricted Housing. She stated any administrative charges against the inmate were dropped when she was fired on September 20, 2022. The inmate was also returned to general population.

8. The Appellant testified that, following the kitchen incident, she was treated unfairly.

- a) The Appellant was assigned to wall stands, which she found boring.
- b) The Appellant was assigned to Cell House 3, which was the Restrictive Housing Unit. She did not like working in this Unit.
- c) The Appellant was told she should not sweep the floor in Cell House 3, although a male officer had been allowed to sweep the floor three (3) - days in a row.
- d) The Appellant was asked to walk from a wall stand across the Yard without a radio, pepper spray, or handcuffs.

- e) The Appellant was asked to monitor as many as five (5) inmates on Constant Watch. She stated that, per policy, Officers should have no more than two (2) inmates on Constant Watch.
- f) The Appellant reported an inmate approached her about bringing suboxone into the prison, however, no action was taken against the inmate and the report disappeared.

9. The Appellant grew frustrated and met with Deputy Warden Garyth Thompson and Anna Meier in September 2022. She complained about the adverse treatment to which she was subjected. She told Thompson that she was thinking about quitting. Thompson told her he would look into her situation and report back to her in a few days.

10. The Appellant testified that she was asked by Captain Denny where she would like to work. She said she was sick of working Wall Stands, and she would go anywhere but Cell House 3. The next day, the Appellant was assigned to work in Cell House 3.

11. Before the Appellant heard back from Deputy Warden Thompson, she was interviewed by Internal Affairs regarding allegations that Correctional Officer Fox was developing a relationship with an inmate. The Appellant stated that she had no information about CO Fox and the inmate.

12. Correctional Officers Fox and Morton delivered letters to the Appellant from an inmate. The Appellant knew this was against policy but did not report either the officers or the inmate. She said two (2) of the letters she received were from the same inmate. These letters were introduced into evidence as **Appellant's Exhibit 1**. In the letters, the inmate told the Appellant he loved her and was looking forward to a life with her outside of prison. He also mentioned asking her to bring drugs into the prison. The Appellant wrote a series of responses to the inmate stating she was not interested in a romantic relationship, and she would not bring drugs in the prison for him or anyone else. Nonetheless, her responses were very personal in nature and contained three (3) entries, all of which indicated she would "finish later" or "write later." The Appellant gave this letter to Fox to give to the inmate. This letter was found when Fox was searched regarding allegations against her. **Importantly, the Appellant admitted she wrote the letters, and that they were intended for the inmate.**

13. The Appellant also admitted delivering a message from another inmate to Fox.

14. The Appellant testified that there were rumors from various staff members at KSP that she was fired for having sex with an inmate and bringing drugs to inmates.

15. At the close of the Appellant's case-in-chief, counsel for the Appellee made a Motion for a Directed Verdict arguing that the Appellant failed to establish a *prima facie* case as to any of her allegations and, as a result, that the Appellant's appeal must be dismissed. After hearing arguments from both parties, the Hearing Officer **GRANTED** the Appellee's Motion for Directed Verdict.

16. After review of all evidence introduced during the Appellant's case-in-chief, the Hearing Officer finds that the Appellant did not produce any evidence that her dismissal was the result of sex discrimination or sexual harassment. In her own testimony and exhibits, she admitted that she corresponded with an inmate and delivered a message to an inmate, which are violations of Department of Corrections Policies and Procedures.

### CONCLUSIONS OF LAW

1. As an employee serving her initial probationary period, pursuant to KRS 18A.111, the Appellant could be dismissed without cause. The Appellant could only file an appeal based on a claim of illegal discrimination. KRS 18A.095(12) and (14)(a).

2. By filing her appeal and alleging sex discrimination and sexual harassment, the Appellant properly invoked the jurisdiction of the Personnel Board. KRS 18A.095(12) and (14)(a).

3. After review of all evidence introduced during the Appellant's case-in-chief, the Hearing Officer finds that the Appellant failed to present a *prima facie* case of sex discrimination. She introduced evidence that, as a female, she was a member of a protected class. She also presented evidence that she suffered an adverse employment action when she was terminated. The Appellant, however, failed to introduce evidence that she was meeting the legitimate expectations of her employer as a Correctional Officer. The Appellant admitted to serious violations of Department of Corrections Policies and Procedures when she failed to report Officers relaying messages from inmates, failed to report inmates sending messages to Officers, relayed a message from an inmate to another Officer, and, most importantly, wrote a personal letter to an inmate. *McDonnell Douglas Corporation v. Green*, 411 US 792 (May 14, 1973).

4. Because the Appellant failed to present a *prima facie* case, she failed to carry her burden of proof. "Failure to meet the burden of proof is grounds for a Recommended Order from the Hearing Officer." KRS 13B.090(7).

5. The Appellee's Motion for a Directed Verdict is **GRANTED**. *Koo v. Comm. Of KY, Dept. for Adult and Technical Education*, 919 S.W.2d 531 (Ky.App.1995).

6. Because all the events underlying this Appeal occurred before the effective date of Senate Bill 153, all references to KRS Chapter 18A are to the sections in effect at the time of the events associated with this Appeal.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **NADINE WYATT V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NO. 2022-147)** 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 fifteen (15) 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.

**SO ORDERED** at the direction of the Hearing Officer this 19 day of July, 2023.

**KENTUCKY PERSONNEL BOARD**

  
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**MARK A. SIPER**  
**EXECUTIVE DIRECTOR**

A copy hereof this day emailed and mailed to:

Nadine Wyatt  
Hon. Ed Baylous  
Hon. Rosemary Holbrook (Personnel Cabinet)