

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2016-247

JUSTIN CRAIGMYLE

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 April 2017 meeting, having considered the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated March 6, 2017, 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 19<sup>th</sup> day of April, 2017.

KENTUCKY PERSONNEL BOARD

  
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MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Oran S. McFarlan  
Mr. Justin Craigmyle  
Mr. Rodney E. Moore

**COMMONWEALTH OF KENTUCKY  
KENTUCKY PERSONNEL BOARD  
APPEAL NO. 2016-247**

**JUSTIN CRAIGMYLE**

**APPELLANT**

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

**JUSTICE & PUBLIC SAFETY CABINET  
DEPARTMENT OF CORRECTIONS**

**APPELLEE**

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This matter came on for evidentiary hearing on February 16, 2017 at 9:30 a.m. at 28 Fountain Place, Frankfort Kentucky before Brenda D. Allen, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Justin Craigmyle, was present at the evidentiary hearing and was not represented by legal counsel. The Appellee, Justice & Public Safety Cabinet, Department of Corrections, was present and was represented by the Honorable Oran S. McFarlan, III. Also present was Warden Tiffany Ratliff and Elisha Mahoney, paralegal.

The issues before the Hearing Officer were whether or not there was just cause for the three-day suspension of the Appellant and whether that penalty was excessive or erroneous. Included in this issue will be Appellant's claims that changing his post and days off was too harsh of a penalty. The Appellee had the burden of proof by a preponderance of evidence.

**BACKGROUND**

1. Justin Craigmyle filed his appeal with the Personnel Board on September 6, 2016. On the Appeal Form, he advised that he was appealing a written reprimand, loss of weekend days off, loss of an assigned outside detail (beautification) and a three-day suspension without pay. The Appellant admitted to making an "ill-advised comment to an inmate," but contends that the inmate added lies to his story, and that there had "been no other allegations of 'physically abusing or directing abusive, vulgar, or profane language toward an inmate'" and thus the discipline was "a bit too harsh."

2. A pre-hearing conference was held on January 3, 2017 to establish the issues before the Hearing Officer, the date of the hearing and the date for the submission and exchange of witness and exhibit lists. The Appellee was at that time ordered to notify the Personnel Board if, in fact, a written reprimand was issued by the Appellee along with the three-day suspension as alleged by the Appellant. On January 9, 2017, the Appellee provided notice that there was no written reprimand issued as a result of the Appellant's comment.

3. On the day of the hearing, the Appellee made an opening statement followed by the Appellant. **Sergeant Marika Burns** was the first witness to testify on behalf of the Appellee. She stated that she is assigned to Internal Affairs in the Department of Corrections and her role is to investigate rule violations alleged to be committed by staff, inmates or contractors. She stated that she receives her assignments from the Warden. She stated that in July 2016, the Warden assigned her to investigate an occurrence involving the Appellant, Justin Craigmyle, and his comments to an inmate who was on suicide watch. Sgt. Burns testified that the allegation involved Officer Craigmyle telling the inmate that he should have gone through with his attempted suicide. Sgt. Burns outlined that in conducting her investigation, she interviewed Correctional Officer Joseph Burkhardt, who overheard the remark, and she also interviewed the Appellant. **Appellee's Exhibit 1**, the Occurrence Report completed by the complainant, Officer Burkhardt, was entered into the record without objection. Sgt. Burns testified that upon interviewing the Appellant, he admitted to making the statement. **Appellee's Exhibit 2**, a compact disc containing an audio recording of the Appellant's interview, was entered into the record without objection. Sgt. Burns detailed that upon completing her report, she provided it to Deputy Warden Alicia Boyd who was the Acting Warden on that day.

4. The next witness to testify was **Alicia Boyd**. She testified that she serves as the Deputy Warden of Security and has served for nineteen years in the Department of Corrections. She testified that her responsibilities include the supervision of eighty-one (81) staff members to ensure there is support for the facility twenty-four hours per day. She testified that upon receipt of the Occurrence Report from Sgt. Burns, she reviewed the report and determined that, given the nature of the offense committed, disciplinary action was warranted. She elaborated that a medical doctor had determined that the inmate was in distress such that a suicide watch was necessary, and that for the Appellant to make a statement encouraging that individual to commit suicide was a serious matter. She stated that she reviewed the Appellant's personnel file and found several other instances of discipline and recommended a three-day suspension without pay. She further advised that the Appellant was removed from his assigned outside detail, but that the reassignment was not a disciplinary measure. She advised that the basis for the reassignment was that if the Appellant could make such a statement to an inmate in the presence of another officer, it would be problematic to leave him on the outside detail where he was alone with inmates without the presence of other officers. She testified that there was no additional compensation that was provided with the outside detail, and that at some point the Appellant could reapply for that assignment as the details are assigned in twelve-month rotations.

5. The final witness to testify on behalf of the Appellee was **Tiffany Ratliff**. She stated that she serves as the Warden of Blackburn Correctional Complex and has been in Corrections for sixteen years, serving as the Warden since July 2016. She advised that she assigned Sgt. Burns to investigate the allegations against Officer Craigmyle and ultimately determined that a three-day suspension without pay was appropriate given the nature of the offense and his prior disciplinary matters. She identified **Appellee's Exhibit 3**, a Notice of Intent to discipline Officer Craigmyle. She advised that this document outlined some of the Appellant's prior disciplinary action and provided Officer Craigmyle an opportunity to present a written statement to her or to meet with her prior to her imposition of the proposed three-day suspension. She testified that he

did not avail himself of either option, so she issued the letter of suspension which she identified as **Appellee's Exhibit 4**. Warden Ratliff identified **Appellee's Exhibit 5** as the Blackburn Correctional Complex Policies and testified as to which specific provision the Appellant violated. Appellee's Exhibits 3, 4 and 5 were entered into the record without objection.

6. The Appellee rested.

7. For his case in chief, the Appellant, **Justin Craigmyle**, was sworn and testified on his own behalf. Upon testifying in the narrative and being questioned by the Hearing Officer, the Appellant admitted to making the comment, but stated he believed the discipline imposed was too harsh, namely because by being removed from the outside detail, his days off were changed from Saturday and Sunday to Thursday and Friday which prohibited him from taking his children to church. He stated that he did not recall the basis for all of the disciplinary actions listed in Appellee's Exhibit 4. Upon cross-examination by the Appellee, the Appellant was asked to identify the disciplinary letters previously issued to him during his employment collectively marked as **Appellee's Exhibit 6**. The Appellant identified the documents. Upon Appellee's motion to enter the documents into the record, the Appellant objected, stating that the allegations in the October 9, 2007 reprimand were false. Appellant's objection was **OVERRULED**, and Appellee's Exhibit 6 was entered into the record. The Appellant rested.

8. Each party made a closing statement. The Hearing Officer considered the entire administrative record.

### **FINDINGS OF FACT**

1. The Appellant, Justin Craigmyle, was employed as a Correctional Officer with the Justice and Public Safety Cabinet, Department of Corrections, and was assigned to the Blackburn Correctional Complex. (Testimony of Ratliff)

2. Employees at Blackburn are required to adhere to specific policies and rules regarding their conduct, including their interaction with inmates.

3. On July 16, 2016, Officer Craigmyle had a conversation with an inmate whom the medical director had placed on suicide watch and stated something to the effect of, "Sucks you didn't go through with it." When the inmate responded with "Is that so?" the Appellant asked, "Do you want me to find you some rope?" (Appellee's Exhibit 1)

4. The conversation was overhead and reported by another Correctional Officer. During the course of the investigation, the Appellant admitted to making the statement. (Testimony of Burns, Craigmyle)

5. Blackburn Policy IPP 03-02-01, General Guidelines for BCC Employees Section D (4) prohibits employees from "physically abusing, or directing abusive, vulgar, or profane language toward an inmate." (Appellee's Exhibit 4, 5)

6. The Hearing Officer is greatly bothered by the Appellant's behavior with a suicidal inmate and finds the Appellant's conduct to be an egregious act of misconduct.

7. After reviewing the investigative findings, Warden Tiffany Ratliff also reviewed the Appellant's prior disciplinary record, which included:

- a. A May 23, 2016 written reprimand for Misconduct;
- b. An April 1, 2014 three-day suspension for Misconduct;
- c. A May 22, 2013 written reprimand for Poor Work Performance;
- d. A February 27, 2013 written reprimand for Misconduct;
- e. An April 11, 2011 written reprimand for Poor Time and Attendance;
- f. A March 24, 2011 written reprimand for misconduct;
- g. A September 20, 2010 written reprimand for Poor Time and Attendance; and
- h. An October 9, 2007 written reprimand for Misconduct.<sup>1</sup>

(Appellee's Exhibit 4, 6, Testimony of Craigmyle and Ratliff.)

8. The Warden imposed a three-day suspension without pay. The Hearing Officer finds that as an added measure of safety (and not discipline) the Appellee removed the Appellant from an existing detail on the Blackburn Complex grounds that previously provided the Appellant unsupervised access to inmates. (Testimony of Bloyd, Appellee's Exhibit 4).

### CONCLUSIONS OF LAW

1. The Appellant, Justin Craigmyle, engaged in misconduct in violation of Blackburn's General Guidelines for BCC Employees Section D (4) when he encouraged an inmate on suicide watch to commit suicide and offered to provide him a rope.

2. The evidence of record reveals that the Appellant had previously been issued seven (7) written reprimands and one (1) three-day suspension for prior acts of misconduct.

3. The Hearing Officer concludes that the Cabinet has met its burden of proof that the three-day suspension imposed upon Appellant was for just cause and was neither excessive nor erroneous.

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<sup>1</sup> This written reprimand was not listed in the section outlining prior discipline in the August 12, 2016 Suspension Letter issued to Appellant, but a copy of the reprimand was included in Appellee's Exhibit 6, the collective exhibit of all disciplinary letters issued to Appellant.

**RECOMMENDED ORDER**

The Hearing Officer recommends to the Personnel Board that the appeal of **JUSTIN CRAIGMYLE VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NO. 2016-247) BE DISMISSED.**

**NOTICE OF EXCEPTION AND APPEAL RIGHTS**

Pursuant to KRS 13B.110(4), each party shall have fifteen 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 exception 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 the 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).

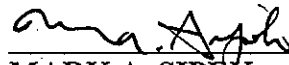
**Any document filed with the Personnel Board shall be served on the opposing party.**

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 Brenda D. Allen** this 6<sup>th</sup> day of March, 2017.

**KENTUCKY PERSONNEL BOARD**



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

A copy this day mailed to:

Hon. Oran S. McFarlan, III  
Justin Craigmyle