

COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NOS. 2014-216 AND 2015-100

BILLY FERGUSON

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

*** **

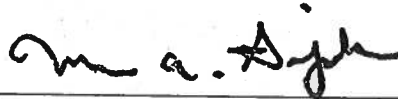
The Board, at its regular December 2018 meeting, having considered the record, including the Findings of Fact, Conclusions of Law and Recommended Order of the Hearing Officer dated October 30, 2018, and being duly advised,

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 appeals are 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 21st day of December, 2018.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Angela Cordery
Hon. Ned Pillersdorf
Mr. Rodney E. Moore

**COMMONWEALTH OF KENTUCKY
PERSONNEL BOARD
APPEAL NOS. 2014-216 and 2015-100**

BILLY FERGUSON

APPELLANT

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

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

APPELLEE

** ** *

This matter came on for an evidentiary hearing on October 5, 2018, at 9:30 a.m., at 1025 Capital Center Drive, Suite 105, Frankfort, Kentucky, before the Hon. R. Hanson Williams, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Billy Ferguson, was present and was represented by the Hon. Ned Pillersdorf. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Angela Cordery. Appearing as Agency representatives were Gary Beckstrom and Keith Helton.

This matter primarily involves the dismissal of the Appellant. The burden of proof was placed upon the Appellee by a preponderance of the evidence to show the dismissal of the Appellant was taken for just cause and was neither excessive nor erroneous. An additional issue is the Appellant's claim that he has been discriminated against by having the Health Insurance Portability and Accountability Act (HIPAA) violated. The burden of proof on this issue was placed upon the Appellant by a preponderance of the evidence.

The Appellant was dismissed from his position as a Correctional Officer with the Agency at the Eastern Kentucky Correctional Complex (EKCC) for poor work performance by letter dated March 27, 2015. A copy of this letter is attached hereto and incorporated herein as **Recommended Order Attachment A**.

The essence of the charges are that on March 10, 2015, the Appellant erroneously placed a restrained inmate in the same cell as an unrestrained inmate, resulting in an assault on the restrained inmate. The Appellant is further charged with failure to call out on his radio that a fight was in progress in Dorm 5, which would have necessitated immediate backup from other officers. Lastly, the Appellant was charged with losing possession of his hobble key (which fit restraints), in violation of Agency policy.

BACKGROUND

1. The Appellee's first witness was **Scarlett Wells**. She began employment with the facility as a Correctional Officer in March 2012 and has served as a Correctional Sergeant since October 2014. Since May 2016, she has been promoted to Lieutenant. Her duties include maintaining control of the yard and the Central Control booth, as well as supervising the Sergeants.

2. She testified that on March 10, 2015, she was acting as a Sergeant when this incident occurred. She was the supervisor of the Segregation Unit (Dorm 5), which held 128 inmates. This unit is designated for prisoners with certain disciplinary problems. EKCC is not a maximum security prison, but has maximum custody inmates, who can be assigned to the Segregation Unit.

3. She stated that the building in which Dorm 5 is located has four (4) wings, with each having upper and lower levels with a front or back. On the day in question, the back half of Dorm 5 was being used to allow for showering by the inmates. These inmates came from the B-lower and B-upper levels, as well as the C-lower and C-upper levels. Each wing had two (2) showers and, by using the showers on both levels, four (4) showers were available for use by 16 inmates.

4. The incident herein involved the use of the two showers on the B-lower wing. The witness testified that there is normally one (1) Correctional Officer in the Control Cab, which is located above the wings and from which the Officer can visually see what is occurring below.

5. On March 10, 2015, the Appellant was escorting inmates to their showers and back to their cells. The normal procedure was to use wrist restraints and leg restraints after removing an inmate from his cell to go to the shower. Upon returning inmates from the showers to their cells, once the inmate was inside the cell, these restraints were then removed.

6. On March 10, 2015, the Appellant escorted inmate Thacker back to his cell. Thacker was normally housed in Dorm 5 B-lower 3; however, upon being returned to the wing, he told the Appellant that his cell was in B-lower 14, and was placed there by the Appellant. After placing him in the cell, the Appellant removed his leg and wrist restraints. Approximately 15 minutes later, the Appellant then escorted inmate Eakins, who was actually housed in Dorm 5 B-lower 14, back to his assigned cell, removed his leg restraints, and placed him in the cell then occupied by inmate Thacker. As a result, Thacker, who was unrestrained, assaulted inmate Eakins, who was still wearing wrist restraints.

7. Wells testified that Correctional Officer Lovely, who was stationed in the Control Cab, saw what was occurring and came down to bring this incident to her attention. Lovely and this witness then went to the wing to investigate.

8. After this incident was cleared, the witness then filed an Occurrence Report on the day in question at 6:07 p.m. (Appellee's Exhibit 3). This report documented the incident as related above and further supplemented the fact that the witness had viewed the video cameras, which detailed the times that the various movements took place. This report also documented that the Appellant had dropped his hobble key, which had to be retrieved by Officer Purvis and returned to him.

9. The witness then filed a subsequent Occurrence Report at 6:10 p.m. that same day, reporting on their check of Cell 14, which did not disclose anything unusual to them. She stated that the mattress was covered with a sheet and the blanket was hanging over the bed.

10. A third Occurrence Report was filed by this witness at 8:40 p.m. that day, indicating that five (5) other officers on the Dorm 5 wing stated they did not hear the Appellant call out a fight on the Dorm 5 radio channel. (Appellee's Exhibit 5).

11. The following day, March 11, 2015, a meeting was held in Deputy Warden Helton's office, in which all officers on the Unit, including the Appellant, were present. When questioned separately, each answered they did not hear the Appellant call out a fight. The only exception was Officer Purvis, who stated, "Yes, I believe I heard CO Ferguson radio something."

12. At this point in the proceedings, the Appellee played a video recording of the actions on the day in question. This video shows that the Appellant accompanied inmate Eakins to the shower. Then, at 5:51 p.m., the Appellant placed inmate Thacker in Eakins' cell, Cell 14. At 6:02 p.m., the Appellant puts Eakins in the shower, and at approximately 6:04 p.m., returns Eakins from the shower. The Appellant looked into Cell 14 and then proceeded to place Eakins into the cell, which Thacker was already occupying.

13. At 6:07 p.m., Officer Purvis is shown returning a restraint key to the Appellant. The actual assault within Cell 14 was not shown on the video, but there is no doubt that same occurred.

14. On cross-examination, the witness was asked if she was aware that the Appellant had been charged with a crime on that same day, March 10, 2015, to which she replied that she was unaware.

15. The Appellee's second witness was **Andrew Arnett**. He has been a Correctional Officer at EKCC for approximately four (4) years. On the day in question, he switched with Officer Lovely and was working the Control Cab position in Dorm 5. He stated that, during the shower time, the Appellant called for the door to Cell 14 to be opened. This witness observed that he saw the Appellant accompanying inmate Eakins and, for some reason, Eakins seemed upset. He testified that he saw Eakins walk into his cell still in the wrist restraints and, this witness wondered to himself, "What is going on?"

16. He then explained that he heard no radio talk on the part of the Appellant during this incident. The witness then examined Appellee's Exhibit 7, a series of still photos taken from the outside and the inside looking into Cell 14, taken after the incident. The witness testified that there was no place to hide, implying that the Appellant should have seen inmate Thacker when he looked into the cell before placing inmate Eakins in there with Thacker.

17. The Appellee's next witness was **James Back**. He was a Captain at EKCC on the day in question. He stated that he remembers the incident with the Appellant because he collected the various Extraordinary Occurrence Reports (EORs) and forwarded them to the Deputy Warden for his perusal. (Appellee's Exhibit 8).

18. This witness does not remember personally making any kind of recommendation for discipline as to the Appellant. Back then introduced Appellee's Exhibit 9, his summarization of a meeting held on March 11, 2015, in Deputy Warden Helton's office. In this meeting were Sergeant Wells and this witness, together with Officers Ferguson, Purvis, Grigsby, Arnett, Lovely, and Terrill.

19. This summarization essentially included Deputy Warden Helton questioning the Appellant as to how he could put two (2) inmates into the same cell within a 13 or 14 minute span and not realize what he was doing. Helton also asked the Appellant why it took him one hour and 50 minutes to tell Sergeant Wells about the altercation in the cell.

20. On cross-examination, Beck reiterated that he had nothing to do with any charges brought by the authorities in Morgan County on March 10, 2015.

21. The Appellee's fourth witness was **Keith Helton**. He was the Deputy Warden at EKCC at the time of this incident. He has held various supervisory positions within the Agency and is currently the Warden of the Little Sandy Correctional Complex.

22. He testified as to the interview with the Appellant, which was summarized in Appellee's Exhibit 9. The witness explained that, upon questioning the Appellant, he was basically aloof and gave one or two-word answers. The witness went on to explain that EKCC had experienced prior problems with the Appellant. He explained that Sergeant Wells was on scene at the incident and, in answer to the Appellant's protestations that he did not have supervision, this witness stated that the Appellant could have asked Sergeant Wells if he had a question.

23. Helton explained that after the investigation was forwarded to Warden Beckstrom for final action, he made no recommendation as to the discipline to be imposed. The witness then introduced Appellee's Exhibit 10, the termination letter of March 27, 2015. This letter cites several violations previously listed, which are alleged to have occurred as a result of the Appellant's actions or inactions.

24. Appellee's Exhibit 11 is EKCC Post Order #1. This is a general order and its stated purpose is: "Certain basic responsibilities are required of Correctional Officers which insure the security of the institution in a general way. The General Post Orders outlined below expand on specific Post Orders for assigned posts and are intended to insure officer awareness that institutional security remains their primary responsibility." Page 3, No. 15 reads, as follows: "All officers shall be watchful of the following: (F) Remain awake on duty. Sleeping on duty is cause for disciplinary action that may include dismissal. Inattentive to duty is prohibited."

25. Page 5, No. 27 reads, as follows: "All staff employed by EKCC shall be responsible for reporting in writing to their supervisor any violation of institutional policy or any incident affected by or governed by a Kentucky Revised Statute (KRS). All reports must be accurate and completed in a timely manner."

26. The witness then introduced Appellee's Exhibit 12, EKCC Policy No. 09-12-01, Key Control. Section B, Item 8 states: "A staff member shall keep a key inside his pocket or secured to a belt." The witness explained that the purpose of this is to insure that inmate movements are secured and this can apply to keys relating to doors or restraints. The witness cited the incident of where the Appellant's key was picked up between Cells 14 and 15 and returned to him by Officer Purvis.

27. The witness next introduced Appellee's Exhibit 13, the EKCC policy covering Conditions of Employment. This policy states at Item 2, Section C, "...Therefore, you have a duty to do the following: (c) Ensure that you will not intentionally or negligently place any inmate in a position where his life or safety is jeopardized by fire or unsafe, unsanitary, or dangerous working or living conditions."

28. The witness stated, in support of the alleged violation, that as a result of the Appellant's actions in placing inmate Thacker into a cell with inmate Eakins where Eakins was still partially restrained and suffered an assault, the Appellant's actions had placed Eakins in a dangerous living condition.

29. The witness went on to detail that, at 8:15 a.m. the following day, March 11, 2015, he forwarded the results of his reports to the Warden. He was instructed to talk with Internal Affairs and to interview inmate Thacker. Sometime later that day, Warden Beckstrom told him to start the investigation and, also that day, the Kentucky State Police came in to investigate the incident that had occurred. This witness insisted he had no part in pressing the criminal charges filed against the Appellant.

30. The witness next introduced Appellee's Exhibit 14, his March 14, 2015 memorandum to Warden Gary Beckstrom. This was a summary of the incident and identified five (5) issues which should be addressed. Those are:

1. Why inmate Thacker was placed into B Lower Wing Cell #14 when he was housed in B Lower Wing Cell #03.

2. How Officer Ferguson could look into inside B Lower Wing Cell #14 after he placed inmate Thacker inside at least four different times and not see anyone inside the cell.
3. Why a fight was not called out over the institutional radio.
4. Why it took the Appellant one hour and fifty minutes to advise supervisor Wells that inmate Eakins had been assaulted.
5. That the Appellant failed to maintain control of the hobble restraint key.

31. On cross-examination, the witness was questioned as to Post Order #12, Section 15(a). Although this was not introduced, the reference was to the duties of the Control Cab officer and his responsibilities in opening a cell door only after identifying an inmate. The Appellant argued that the Control Cab officer should not have opened the door to allow Thacker to be initially placed into Cell 14, even though the Appellant had identified who the prisoner was.

32. The witness was then directed to Appellee's Exhibit 18, a March 14, 2015 Memorandum to Deputy Commissioner Jim Erwin from Warden Beckstrom. In this chronology of events, it is noted that an attachment compiled by Captain James Back notes that at 6:04 p.m. "Officer Ferguson advised the Control Officer to open the cell door and called out the altercation via radio." Obviously, this statement is in conflict with the earlier statements given by individual officers in Deputy Warden Helton's office.

33. The Appellee closed its case-in-chief.

34. The Appellant, **Billy Ferguson**, called himself as his first and only witness. Until the time of his termination, the Appellant had been employed with the Agency for approximately four (4) years. He was terminated on March 10, 2015. Since that time, he has been currently employed at a barrel stave company for approximately two years.

35. The Appellant admitted that he had placed Thacker in Cell #14 only after Thacker had told him that was where he resided. He also admitted that he later placed inmate Eakins in the same cell after returning him from the showers. He stated that he looked into Cell #14 before placing Eakins there, but did not see anyone. He does not contest that inmate Thacker was already in the cell.

36. The Appellant testified that when he realized Thacker was already in the cell, he began to pull inmate Eakins out of the cell by his wrist restraints. He also stated that after he realized Thacker had begun to assault Eakins, he got on his radio and called, "Fight. Fight in Dorm 5." He explained that the other officers then showed up very shortly.

37. Regarding the allegation of a HIPAA violation as to his medical records, the Appellant testified that some 12 to 14 months prior to the incident in question, Deputy Warden Helton had called him to the office, where the Appellant watched him read through his medical records. He indicated this occurred in the Human Resources office.

38. Regarding the charge of dropping his restraint key, the Appellant explained that he was nervous during the incident and he was able to have it brought back to him only a few minutes later.

39. On cross-examination, the witness answered that he had been initially employed in 2010 at EKCC. Thereafter, he underwent eight (8) weeks' training at the Correctional Academy. He then explained that he had never before been posted to the Segregation Unit prior to March 10, 2015.

40. The Appellant testified that when bringing inmate Eakins back from the shower, that he had looked into the cell once and, seeing nothing and apparently not realizing he had already placed inmate Thacker in Cell #14, proceeded to place Eakins in the same cell. Almost immediately, he stated that he saw Thacker hitting Eakins. He stated that, at that point, his observation was that any anger Eakins had was not directed at him, but instead toward inmate Thacker.

41. Regarding any radio transmission, the witness insisted that he had activated his radio and, once or twice, had called "Pop lower door 14," followed by "Fight on Dorm 5."

42. The Appellant went on to explain that, at the time of the incident, he was the only officer on the Wing and, when confronted by supervisor Wells, he told her "He put Thacker in the wrong cell" and they got into a fight.

43. The witness then affirmed a portion of the Disciplinary Report Form which he had compiled later in the day on March 10, 2015. Appellee's Exhibit 8, Page 4, entitled, "Kentucky Department of Corrections, Disciplinary Report Form, Part 1 – Write-Up and Investigation" related the Appellant's narrative involving the incident that day.

44. In his narrative, the Appellant writes "On 3/10/2015 at approximately 5:51 p.m. I C/O Billy Ferguson was on duty in dorm 5. While escorting Inmate Tyler Thacker #252644 from the shower in wing B lower inmate Thacker stated to me that he lived in cell B Lower 14. I later discovered that inmate Thacker actually lives in cell B Lower 3. I put Inmate Thacker in cell B Lower 14 and continued with my showers. At approximately 6:04:57 I took Inmate Jimmy Eakins #143998 from the shower to cell B Lower 14, I looked into the cell, had the control officer open the cell door and then began to take off his leg restraints. I then shut the cell door and when I began to open the tray slot to remove his hand cuffs I saw inmate Tyler Thacker hitting inmate Jimmy Eakins at this time I radioed for the cab officer to open the cell B lower 14, called a fight out and took out my pepper spray. When Inmate Thacker saw me remove my OC spray he stopped fighting Eakins, stepped back and said "I'm done. Don't spray me." At

approximately 6:05:31 I pulled inmate Eakins from cell B lower 14 and shut the cell door so Inmate Thacker was contained.”

45. The Appellant announced closed.

46. In rebuttal, the Appellee recalled **Keith Helton**. The witness was aware of the grievance filed herein by the Appellant regarding a HIPAA violation. He denies that he ever went through the Appellant’s medical records. Instead, he stated that, at some time in the past, he had been called to the HR office and found the Appellant had been there after having taken a urine test. He indicated that matter involved the Appellant showing him a prescription sheet, which was intended to allow him to return to work; however, Helton stated that the start date on that sheet was not prior to the drug test and he could not allow him to return to work that day.

FINDINGS OF FACT

1. On March 10, 2015, the Appellant was working as a Correctional Officer (CO), assigned to the Segregation Unit (Dorm 5) at the EKCC facility.

2. While escorting inmates to and from their showers, he erroneously placed inmate Thacker in B-lower cell 14 and removed his wrist and leg restraints. Thacker was normally housed in B-lower cell 3. Shortly thereafter, the Appellant escorted inmate Eakins to B-lower cell 14 and removed his leg restraints, after which almost immediately inmate Thacker began assaulting the partially-restrained Eakins.

3. Prior to placing Eakins in B-lower cell 14, the Appellant looked into the cell and, either not seeing Thacker or forgetting he had placed Thacker into cell 14 just a few minutes earlier, placed Eakins in the cell with Thacker.

4. Still photographs (Appellee’s Exhibit 7) taken of B-lower cell 14, showing interior and exterior shots, establish that there was no likely spot where Thacker could have hidden from the Appellant’s view.

5. There is no doubt the Appellant lost possession of his hobble (restraint) key during the incident, for it had to be returned to him by Officer Purvis.

6. It is clear that Sergeant Wells was notified of the incident shortly after it occurred; however, this was from Correctional Officer Lovely, who was in the Control Cab above. There was no testimony regarding the supposed 1 hour, 50-minute delay in the Appellant reporting the assault to Sergeant Wells. Regardless, Wells was almost immediately aware of the incident.

7. Regarding the Appellant’s failure to use his radio to notify others of the incident, in a March 11, 2015 meeting in Deputy Warden Helton’s office, five (5) Officers stated they did

not hear the Appellant call out "a fight" on his radio. Correctional Officer Purvis said he thought he heard something.

8. However, the March 14, 2015 Memorandum from Warden Beckstrom to Deputy Commissioner Jim Erwin quotes Captain Back as noting, "the Appellant called out the altercation via radio."

9. The Hearing Officer finds no credible or relevant HIPAA violations of the Appellant's medical records by Deputy Warden Helton.

10. The Appellant was given written reprimands on February 7, 2012 and September 30, 2014. He was given a 3-day suspension on March 17, 2015, for poor work performance unrelated to the incident herein.

CONCLUSIONS OF LAW

1. The Hearing Officer concludes as a matter of law the Appellee failed to prove by a preponderance of the evidence that the Appellant failed to notify other officers by radio of a fight in Dorm 5 on March 10, 2015.

2. The Hearing Officer concludes as a matter of law that the Appellant lost possession of his hobble restraint key during the incident on March 10, 2015, which is a violation of EKCC Policy 09-12-01, Section B(8).

3. The Hearing Officer concludes as a matter of law the Appellee proved by a preponderance of the evidence the Appellant violated Post Order #1, General Post Order, Page 3, No.15, by being "Inattentive to Duty."

4. Because of the conflicting nature of the proof regarding the Appellant's failure to call out a fight on his radio, the Hearing Officer concludes as a matter of law the Appellee failed to carry its burden of proof on this issue.

5. The Hearing Officer concludes as a matter of law the Appellee carried its burden of proof that the Appellant violated EKCC Conditions of Employment, Section 2, Items C and D, by negligently placing inmate Eakins into a cell already occupied by inmate Thacker, whereupon Eakins was assaulted.

6. The violations of the provisions cited above constitute poor work performance under 101 KAR 1:345.

RECOMMENDED ORDER

Taking into account the seriousness of the Appellant's action herein which caused an inmate to be assaulted and his prior work history, the Hearing Officer recommends to the Personnel Board that the appeals of **BILLY FERGUSON V. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS, (APPEAL NOS. 2014-216 and 2015-100)** 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 R. Hanson Williams** this 30th day of October, 2018.

KENTUCKY PERSONNEL BOARD



MARK A. SIPEK
EXECUTIVE DIRECTOR

A copy hereof this day mailed to:

Hon. Angela Cordery
Hon. Ned Pillersdorf



DEPARTMENT OF CORRECTIONS

Eastern Kentucky Correctional Complex
200 Road to Justice
West Liberty Kentucky 41472
(606) 743-2800

LaDonna Thompson
COMMISSIONER

Gary Beckstrom
WARDEN

March 27, 2015

Billy F. Ferguson

Dear Mr. Ferguson:

On March 19, 2015, you were issued a letter of intent to dismiss you from employment. This letter further advised you of your right to request a pre-termination hearing within five (5) working days after you received the notice of intent to dismiss (excluding the day you received notification) and a Pre-Termination Hearing Form was attached. As five working days have lapsed and you have not submitted the Pre-Termination Hearing Form, I have deemed that you have waived your right to a pre-termination hearing. After careful consideration of the facts, I have determined that the clear weight of the evidence establishes that you committed the charges as outlined in my letter to you dated March 19, 2015. Therefore, based on the authority of KRS 18A.095, you are hereby notified that you are officially dismissed from duty and pay effective March 28, 2015. You are being dismissed from your position of Correctional Officer with the Department of Corrections, Eastern Kentucky Correctional Complex for Poor Work Performance, in accordance with 101 KAR 1:345, for the specific reasons outlined in my letter to you dated March 19, 2015, and these reasons are again indicated as follows:

Pursuant to 101 KAR 1:345, and based upon your continued poor work performance which resulted in a restrained inmate being assaulted, I find probable cause to believe that your dismissal is justified based on the following reasons:

Poor Work Performance, since receiving a Written Reprimand dated February 07, 2012 for Policy Violation, a Written Reprimand dated September 30, 2014 for Poor Work Performance and a three (3) day suspension dated March 13, 2015 for Poor Work Performance you have continued to exhibit poor work performance, i.e, specifically, as reported in an Extraordinary Occurrence Report (EOR) compiled by the 4-12 shift Captain James Back on March 10, 2015 you were assigned to the special management unit (SEG), Dorm 5 Patrol and was escorting inmates to their showers and back to their cells when at approximately 5:51pm you escorted inmate Tyler Thacker (#252644 – Housed in Dorm 5 B-Lower 3) back to his cell. Reportedly, Inmate Thacker told you he lived in B-Lower 14 and you secured him in the B-Lower 14 cell,

removed his restraints and continued conducting showers. At approximately 6:04pm on this same date you escorted inmate Jimmy Eakins (#143998 – Housed in Dorm 5 B-Lower 14) back to his assigned cell, removed his leg restraints, placed him in his cell and secured the door. Inmate Eakins was then assaulted by Inmate Thacker. On March 10, 2015 you prepared an Occurrence Report which verifies this information by your own admittance. Captain Back's report further states at approximately 6:08pm Officer Purvis retrieved a hobbble key from the floor of B-Lower wing that you had dropped during this incident and that he returned the key to you.

On March 11, 2015, at approximately 4:20pm Sergeant Scarlett Wells and Captain James Back were present when Deputy Warden Helton conducted an interview with the following staff yourself (Correctional Officer Billy Ferguson), Correctional Officer Gregory Purvis, Correctional Officer Jody Grigsby, Correctional Officer Andrew Arnett, Correctional Officer Justin Lovely, Correctional Officer Daniel Terrill and Correctional Sergeant Scarlett Wells to ascertain if you had called a fight out over the radio on the date that the restrained Inmate Jimmy Eakins was assaulted in his cell. Each of the Officers interviewed were asked if they heard you (Officer Ferguson) call out a fight on the Dorm 5 channel while you were showering B-Lower wing and each one of them stated that they did not hear you call out a fight, with the exception of one Officer (Purvis) who stated that he believed he heard Officer Ferguson radio something. These Officers were excused from the interview and Deputy Warden Helton interviewed you in regards to the assault of Inmate Eakins and when he asked you "How could you place two Inmates in the same cell?" you responded by stating you did not know how it happened and that you messed up. You then asked Deputy Warden Helton why you were put in Dorm 5 anyway and Mr. Helton responded by telling you that you were placed in Dorm 5 for constant supervision due to you having problems in the previous post that you worked. Deputy Warden Helton asked you why you looked in the cell 4 times before you opened the cell door (after initially stating that you did not know why) you then stated you must have been looking for socks. Deputy Warden Helton asked you if it would surprise you if Inmate Thacker said he was forced to do what he done and that you told him if he didn't do it you would hobble him and beat him to death. The interview report states that you responded that it would surprise you if an Inmate said that because you had not done anything to piss him off. Deputy Warden Helton then asked you why you opened the door and grabbed the Inmates cuffs to get him out of the cell, and then let go of the hand cuffs and let the Inmate stand in harm's way and then moved him and shut the door. Your reported response was that you did not know why you did that, that you guessed you were nervous and did not know what to do. When Deputy Warden Helton asked you why it took you 1 hour and 50 minutes to tell Sergeant Scarlett Wells that there was an altercation in the cell you responded that you did not know. Deputy Warden Helton then asked if you had anything else and you responded that you did not have supervision.

Your actions are in violation of Post Order # 1, General Post Orders, Page 3, Number 15, Item F which states in part "...Inattentive to duty is prohibited." Your actions are in violation of Post Order # 1, General Post Orders, Page 5, Number 27 which states "All staff employed by E.K.C.C. shall be responsible for reporting in writing to their supervisor any violation of

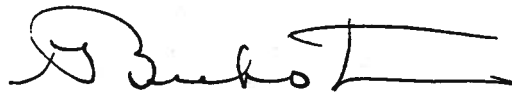
institutional policy or an incident affected by or governed by a Kentucky Revised Statute (KRS). All Reports must be accurate and completed in a timely manner." Your actions are in violation of EKCC Policy 09-12-01, Section B, Item 8 which states "A staff member shall keep a key inside his pocket or secured to a belt." Your actions are in violation of Eastern Kentucky Correctional Complex, Conditions of Employment, Section 1, Item (c) and Item (d). Item (c) states "Ensure that you will not intentionally or negligently place any inmate in a position where his life or safety is jeopardized by fire or unsafe, unsanitary, or dangerous working or living conditions." Item (d) states "Ensure that you will not intentionally or negligently allow an inmate to occupy positions of power or control over other inmates."

Your blatant failure to perform your job duties jeopardized the safety of an inmate who was under your direct care and supervision and who had no means of defending himself. Your continued poor work performance cannot be tolerated as it is in direct opposition to the responsibilities you are charged with upholding which is to protect the citizens of the Commonwealth and to provide a safe, secure and humane environment for staff and offenders. As a Department of Corrections employee with four plus years of service as a Correctional Officer and since receiving annual Common Core/Officer In-Service training, you knew or should have known your responsibility to abide by the established guidelines.

Pursuant to KRS 18A.032, you will not be certified on future registers for employment within Department of Corrections unless Department of Corrections so requests.

In accordance with KRS 18A.095, you may appeal this action to the Personnel Board within sixty (60) days after receipt of this notice, excluding the date notification is received. Such Appeal must be filed in writing using the attached appeal form and in the manner prescribed on the form.

Sincerely,



Gary Beckstrom, Warden

Attachments: Appeal Form

CC: Tim Longmeyer, Secretary – Personnel Cabinet
LaDonna Thompson, Commissioner – Department of Corrections
Mark Sipek, Executive Director – Personnel Board
Bobbie Underwood – Division of Personnel Services
Personnel File