

**CERTIFICATION OF PERSONNEL BOARD RECORDS**

I certify that attached hereto is a true and correct copy of the Final Order Sustaining Hearing Officer's Findings of Fact, Conclusions of Law and Recommended Order and Final Order in the case of **EMANUEL HOLBROOK VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS (APPEAL NOS. 2016-044 and 2016-045)** as the same appears of record in the office of the Kentucky Personnel Board.

Witness my hand this 19<sup>th</sup> day of April, 2017.

  
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**MARK A. SIPER, SECRETARY**  
**KENTUCKY PERSONNEL BOARD**

Copy to Secretary, Personnel Cabinet

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NOS. 2016-044 and 2016-045

EMANUEL HOLBROOK

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 February 20, 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 No. 2016-045 is therefore **DISMISSED**, and Appeal No. 2016-044 is therefore **SUSTAINED to the extent** therein.

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

  
MARK A. SIPEK, SECRETARY

A copy hereof this day sent to:

Hon. Angela Cordery  
Hon. Paul Fauri  
Mr. Rodney E. Moore

COMMONWEALTH OF KENTUCKY  
PERSONNEL BOARD  
APPEAL NO. 2016-044 and 2016-045

EMANUEL HOLBROOK

APPELLANT

VS.

FINDINGS OF FACT, CONCLUSIONS OF LAW  
AND RECOMMENDED ORDER

JUSTICE AND PUBLIC SAFETY CABINET,  
DEPARTMENT OF CORRECTIONS

APPELLEE

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This matter came on for an evidentiary hearing on July 12, and September 29, 2016 at 9:30 a.m., at 28 Fountain Place, Frankfort, Kentucky, before the Hon. Roland P. Merkel, Hearing Officer. The proceedings were recorded by audio/video equipment and were authorized by virtue of KRS Chapter 18A.

The Appellant, Emanuel Holbrook, was present and represented by the Hon. Paul Fauri. The Appellee, Justice and Public Safety Cabinet, Department of Corrections, was present and represented by the Hon. Angela Cordery. Also present as Agency representative was Warden Kathy Litteral.

The first issue pertains to the appeal of the suspension of Appellant from duty and pay for a period of three (3) days, beginning of business January 10, 2016, through close of business January 12, 2016, from his position as a Correctional Officer with the Department of Corrections, Eastern Kentucky Correctional Complex. The burden of proof was on Appellee to show, by a preponderance of the evidence, that such disciplinary action was taken with just cause and was neither excessive nor erroneous. The second issue is Appellant's contention that a Written Reprimand issued to him on June 8, 2015 was, in fact, a disciplinary action due to the inclusion of a citation to 101 KAR 1:345. The burden of proof was on the Appellant to show, by a preponderance of the evidence, that the Written Reprimand issued June 8, 2015, was a disciplinary action and a penalization.

In the event Appellant meets his burden of proof on the issue of the Written Reprimand, then there is a burden of proof on the Appellee to show, by a preponderance of the evidence, that the issuance of the June 8, 2015 Written Reprimand was done with just cause, was neither excessive nor erroneous, and was issued in compliance with KRS 18A.095.

The rule separating witnesses was invoked and employed throughout the course of the proceeding. Appellant moved that a certain portion of the January 6, 2016 suspension letter

making certain allegations against the Appellant, be stricken for lack of specificity. Mr. Fauri cited the following subject clause:

Furthermore, after a further review of your scans, it was revealed that you have had multiple scans (in and out) at the three different Kronos scanners located inside the institution (Basement Control, Central Control, and Main Hallway). The Kronos scanners at Central Control and Main Hallway are not the closest ones to your assigned workstation (Housing Unit #2).

After hearing the arguments of counsel, the Hearing Officer reserved a ruling on the motion. The parties then presented their respective opening statements. Appellant began with the presentation of evidence.

### **BACKGROUND**

1. The first witness for the Appellant was the Appellant, **Emanuel Holbrook**. For the past ten years and, since January 1998, Mr. Holbrook has been employed as a Lieutenant at the Eastern Kentucky Correctional Complex (EKCC). He received his first disciplinary suspension in January 2016. Previously, he had received two Written Reprimands; one in June 2014 and one in June 2015. He filed a written response to the 2014 Written Reprimand.

2. He identified Appellant's Exhibit 1 as the June 8, 2015 Written Reprimand he received for poor work performance. This Written Reprimand, citing incidents of May 5, 2015, and June 3, 2015, is referenced in the suspension letter.

3. On May 5, 2015, Unit Administrator I Jessie Ferguson told Appellant that an inmate was to be moved into Dorm 9. Lt. Holbrook was the supervisor of Dorm 9 and had knowledge that the inmate had come off suicide watch in protective custody. They were placing the inmate between two of the worst disciplinary segregation inmates (who would talk the transferred inmate into hurting himself.) That inmate had a history of hurting himself and being placed on suicide watches.

4. Appellant asked Ferguson why the inmate would be placed into that particular cell when there were three other wings available in Dorm 9. The other wings were "a lot calmer ...(and those inmates) basically laid, slept" most of the time. Ferguson said the Warden wanted him moved. Appellant responded that is fine, but why on that walk? Again Ferguson responded the Warden wanted him moved. Appellant responded, "We'll have to find out why." He told her this inmate would not do well in that wing.

5. Ferguson left to start Protective Custody (PC) Classification hearings. Lt. Holbrook stood in the corridor during those hearings. The base of a telephone was located in the

office with Ferguson. Appellant had possession of the handset. When the phone rang, Holbrook answered and the party asked for Jessie Ferguson. Appellant walked into the office, handed Ferguson the phone, turned around and left.

6. At 2:00 p.m. that same day, UA II Keith Williams and UA I Ferguson met with Appellant in his office. Ferguson stated she was going to counsel Appellant on being more respectful and considerate to his supervisors. Appellant asked how it was that he was not professional. She stated he had disrespected her. At that point, Appellant tried to engage Williams in a conversation.

7. During counseling, Lt. Holbrook expressed his concern about the subject inmate who was to be transferred. He stated he had always been professional and Williams knew from him everything that occurred at the facility. He had treated Ferguson no different from the day she first arrived at the facility. However, from the time she wrote him up in 2014, he was just going to be professional with her and not engage her in any other conversation. There was no discussion about the telephone incident. Williams and Ferguson left the room and Appellant thought the matter had ended.

8. The subject inmate was moved to the vacant cell between the two troublesome inmates. About 3:00 p.m., Psychologist Lowe approached Appellant, asked where the inmate was and how he was doing. Holbrook advised her. She immediately got on the telephone and called Warden Beckstrom. The Warden gave approval to move the inmates. The two inmates housed on either side of the subject inmate were switched out to another wing, and other inmates were placed in those adjoining cells.

9. He identified Appellant's Exhibit 2 as his Annual Employee Performance Evaluation for the period of January 1 through December 31, 2015. Page four shows that the 1st Interim Review for the period of January 1 to April 30, 2015, had been conducted by UA Williams on May 28, 2015. Under the heading "Communication/Teamwork" read the following: "Lieutenant Holbrook was counseled in regards to improving his communications skills with his Supervisors in a professional manner." Mr. Holbrook had accepted the 1st Interim Review at that time.

10. On June 3, 2015, Appellant was in the Dorm 9 floor office. UA Ferguson entered the office and wanted to discuss the equipment located there. Holbrook got up, unlocked and opened two lockers, and together they inventoried the equipment and materials. The institution was getting ready for an American Correctional Association audit.

11. They talked about TAC spray and went through the entire inventory and logbook. Ferguson continued to look at the log as Holbrook went back to his desk and sat down. The inventory had been completed. Ferguson was standing at the side of the desk with the logbook. Everything got quiet and there was nothing else to look at.

12. The inmate food carts arrived and Holbrook stated, "The food carts are here." He got up, proceeded to go out of the office to check the carts for the different meals while Aramark was still on the premises. It was his responsibility to check that the meals were proper, there was an appropriate count, and to measure a tray for proper temperature.

13. Once he took possession of a food tray, he heard Ferguson hollering, "Lt. Holbrook, I wasn't done. Lt. Holbrook, I wasn't done." He responded, "Well, I was just getting the food tray." He walked back to the office with the food tray. Ferguson then said she wanted the chemicals checked once per month and Holbrook responded affirmatively. The chemicals are checked daily by the officers. Caseworker Amber Spencer, Caseworker Harry Barker, and Correctional Officer Jason Chambers had also been present in the office during this time.

14. At no time was Holbrook asked to write an Occurrence Report about either the May or June matters.

15. On June 9, 2015, Deputy Warden Helton stopped Appellant at the Control Center and told him he was personally going to move Holbrook to another post. The following day in Dorm 9, Captain James Witt called Appellant. Appellant was told he was being moved to Housing Unit 2 and would be on all three shifts, one each week.

16. Carla Sparks became Appellant's supervisor and evaluator on June 11, 2015.

17. Appellant telephoned officials in Frankfort and told them he wanted to appeal the June 8, 2015 Written Reprimand. He was told there was nothing he could do about it, even though he felt the Written Reprimand was "bogus" and that he was being harassed by UA Ferguson and Deputy Warden Helton. He did not prepare or file a written response to this Written Reprimand.

18. He also spoke with Betty Lindon of the Personnel Department at EKCC. He asked if there was any deadline for filing an appeal or a written response. She told him he could give a written response at any time.

19. During the entirety of his employment, Appellant had worked four to five months on two separate occasions with Ms. Ferguson. When they first met, in addition to their professional relationship, they would regularly talk and laugh. One day in 2013, he told Ferguson that he had been at "minimum" for three and a half years and was ready to go. He had asked his superiors to find another Lieutenant. She then wrote him up and sent up three "bogus Occurrence Reports."

20. Holbrook spoke to Deputy Warden Helton and Deputy Warden Holloway about the matter. They told him they would move him because of these Occurrence Reports, but that they would do nothing to Ferguson as the Occurrence Reports were bogus. Holbrook agreed that would be fine. He told them he only had two years to go and requested he not have to work with

Ferguson again. Once he was moved, there were no incidents at all until Ferguson wrote him up again in 2014 and 2015. Those were the first times Ferguson had interaction with Lt. Holbrook outside the presence of UA Williams.

21. He testified the temperature of a food tray is always checked at the office desk. It is part of his daily duties. The food cannot sit out or it gets cold. Once it arrives, everything needs to be checked so the food can go out to the inmates.

22. During the counseling meeting, Appellant had never been given any directive or orders. It was just a discussion. He had asked how he was not professional in his duties, and never got an answer.

23. The next witness was **Jason Chambers**. For more than ten years Mr. Chambers has been employed at EKCC as a Correctional Officer. He has worked with the Appellant. He is currently assigned to several posts throughout the facility. He last worked with the Appellant in June 2015 in Dorm 9.

24. On June 3, 2015, UA Ferguson came into the office and the chemical inventory sheets were reviewed. Chambers had been sitting in the office while this occurred, waiting for the food carts to arrive. Inventory is done on a daily basis and recorded in the logbook.

25. At that time, Holbrook sat behind the desk and Ferguson stood at the corner of the desk. The food carts arrived. They were still talking and then it got quiet. Holbrook stood up and stepped out of the office.

26. Ferguson looked up and said, "Lt. Holbrook, I wasn't done talking." Chambers told her, "I think he went to get a food tray." Chambers left the office and started his duties with the food trays. He saw Holbrook bring a food tray back to the office to check its temperature.

27. Lt. Holbrook subsequently asked Chambers to submit a written report. UA Ferguson did not ask Chambers to submit a report. He identified Appellant's Exhibit 4 as the Occurrence Report he submitted based on his observations of the June 3, 2015 incident. He gave it to Lt. Holbrook. In the report, Chambers observed that when he told Ferguson that Holbrook had gone to get a food tray and would be right back, Ferguson responded, "Oh, the food carts are here?" In Chambers' opinion, Lt. Holbrook did not show any disrespect to Ferguson at that time.

28. Appellant rested his case on the issue pertaining to the Written Reprimand.

29. The first witness for the Appellee was **Betty Lindon**. Since 2010, Ms. Lindon has been employed at EKCC as the Human Resource Administrator Institutional. She described her duties, which included reviewing drafts of written reprimands.

30. She reviewed the Written Reprimand (Appellant's Exhibit 1) as well as supporting documentation and Occurrence Reports (OR) to make sure the dates corresponded and the information was correct. Normally, allegations of policy violations are already cited in such a letter when it comes to her. She checks to make sure the correct policies are cited. In this Written Reprimand, the policies included: Post Order # 01 (Appellee's Exhibit 1), specifically Page 5, Item 26:

“Employees shall maintain a courteous manner and professional decorum while communicating with Supervisory staff or fellow staff members.”

Policy Number EKCC 03-01-01, General Guidelines for Staff (Appellee's Exhibit 2), specifically Page 3, A. General Work Rules, (27): “A staff member shall follow chain of command” and (28): “A staff member shall follow any lawful order issued by a Supervisor.”

31. Appellant had submitted a written response to a 2014 Written Reprimand, which had been placed in the personnel file. He did not file a response to the 2015 Written Reprimand.

32. On June 9, 2015, Deputy Warden Helton came to Lindon's office and placed a miniature taperecorder on her desk. He told her Lt. Holbrook was coming to see her about a written reprimand. When Helton placed the recorder on her desk, it was already on. When Holbrook came into the office, the entirety of that discussion was recorded. At no time had Holbrook been told the conversation would be or was being recorded. At the conclusion of the conversation, Lindon returned the recorder to Helton without turning it off.<sup>1</sup>

33. Appellant told Lindon he felt he had been subject to a form of harassment by his supervisor. When asked if it involved sexual harassment, he responded, “Not really.” He did not provide any specifics. Lindon told him she needed specifics so it could be addressed. Lt. Holbrook stated he would submit a report in a few days. She asked him if he would have a problem continuing to work with his supervisor. He responded no, it was not going to be a problem. He then left the office.

34. Lindon felt uncomfortable about the allegations, so she passed that information on to Warden Litteral. Appellant was moved to another post so he would not be working under that supervisor. He never submitted a report. (At this point, Appellee's counsel tendered Appellee's Exhibit 3, a CD recording of the June 9, 2015 conversation.)

35. With reference to the written reprimand, it was Ferguson who asked Lindon for a template or an example of such a document. Lindon sent one to her. Ferguson drafted a Written Reprimand and Lindon reviewed it. She also had previously noticed Appellee's Exhibit cited a

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<sup>1</sup> No evidence was presented to show the purpose of recording this particular conversation.



Kentucky Administrative Regulation. At that time she looked up the KAR, and as it made reference to written reprimands, she did not change it.

36. She identified Appellee's Exhibit 4 as 101 KAR 1:345. Disciplinary actions. She identified Appellee's Exhibit 5 as 101 KAR 1:335. Employee actions.

37. A written reprimand is a corrective action that aims to prevent having to issue disciplinary action. Both written reprimands issued to Appellant had been corrective actions. One may also be counseled on a matter. If counseling does not work, the individual may still be issued a written reprimand for the same matter. The incident may constitute a ground for a written reprimand.

38. Lindon testified the facts seemed to indicate Appellant did not listen to Ferguson when he walked out of the office. They were not communicating. "He just kind of left her hanging" with the inventory. Lindon had not seen CO Chambers' Occurrence Report until "after the fact."

39. She believed Holbrook violated the chain of command when he kept asking Ferguson why the subject inmate was to be moved. This was a problem, as he had questioned his supervisor. Ms. Lindon had no idea what Lt. Holbrook's duties were.

40. She believed Holbrook had been disrespectful while checking the food tray, by not telling Ferguson he was going to do so. He just walked off and left her and did not respond to her calling out to him. She did not know why Holbrook got up to leave the inventory. This was disrespectful and a failure to follow orders.

41. In writing the Written Reprimand, UA Ferguson had secured Occurrence Reports from all witnesses present with the exception of CO Chambers. She believed she first saw Chambers' Occurrence Report about June 9, 2015.

42. The next witness was **Jessie Ferguson**, aka Sarah Jessie Ferguson. Since 2010, Ms. Ferguson has been employed at EKCC as a Unit Administrator I. In 2015, her duties included supervision of the Segregation Unit, including Segregation 9, where Lt. Holbrook was assigned. During that time, she worked directly with the Appellant on a daily basis.

43. On May 5, 2015, the Warden advised Ferguson to move an inmate to Dormatory 9. She told this to Lt. Holbrook. Holbrook asked her why. She told him she didn't know, the Warden just told her to move the inmate. Holbrook again asked why and she repeated her response. Holbrook mumbled something and said, "you need to find out" and left the room.

44. Shortly after that incident, Ferguson began Protective Custody hearings. She and the caseworker met with individual inmates in a separate room. During the hearing, Lt. Holbrook opened the door, laid a telephone down on the desk, and walked out of the room.

without saying anything. The hearing continued. Ferguson then glanced at the phone and noticed it was on. She said "Hello," and found out that someone from the Medical Department was on the line and had previously asked for her.

45. This constituted a lack of communication by Lt. Holbrook. All he had to say was "Ms. Ferguson, it's for you." "He refused to speak with me." She feels that since she started in the Segregation Unit in January, Holbrook, in general, avoided her and avoided communicating with her. She felt that was his goal.

46. Later that same day, she and UA Williams met with Appellant to discuss and counsel him on the matter. He was encouraged to communicate. Holbrook stated, "I'm not going to be your friend." Ferguson responded, "I don't want you to be a friend. All I want is for you to communicate with me." She wanted him to tell her what goes on. All parties then believed that as they had thoroughly discussed the matter with Appellant, the issue was concluded.

47. Prior to receiving ACA accreditation, the institution conducts inspections. Ferguson had received a report that the caustic toxic inventory was not correct. On June 3, 2015, she spoke with the Appellant. She got a folder out of the cabinet in the office and they talked about it. She then laid the folder on the desk.

48. Holbrook sat behind the desk as Ferguson went over the document with him. In the middle of her conversation, Holbrook got up abruptly, didn't say anything, and walked out of the room. Ferguson followed him out, stating, "Mr. Holbrook, Mr. Holbrook." Holbrook told her the food carts arrived and he had to check them. Ferguson responded she was not finished; they still had to go over the logs and get it done.

49. Holbrook came back into the office and started checking the temperature of the food. Ferguson started to go over the logbook again, and Holbrook just continued to check the food, not paying attention to what she said about correcting the log.

50. When the food arrives, the cart is plugged in to keep the food warm. They could have waited until they got done with the log, or Holbrook could have asked to give him a few minutes to check the food. He failed to communicate. When Appellant left the room, and as Ferguson began to follow out the door, CO Chambers said, "Oh, he's just checking the food carts."

51. Ferguson felt it was necessary to put all the events (May 5, 2015, and June 3, 2015) in the Written Reprimand, as it showed a pattern of behavior. She obtained a Written Reprimand template from Ms. Lindon, typed it up, and sent it to her. Lindon proofread it and helped her, as Ferguson had never drafted a Written Reprimand before. With Lindon's help,

Ferguson decided which policies had been violated. The document was meant to be a Written Reprimand and not a disciplinary action.

52. She identified Appellee's Exhibit 6 as the Occurrence Report she had written pertaining to the inventory incident. She was not sure whether she had asked CO Chambers to write a report. She recalled she and Appellant did talk about the TAC spray. She did not recall there being a lull in the conversation. Holbrook did not tell her he was going to get the food tray until after she had called out to him. When they both came back into the room, they reviewed some additional documents while Holbrook appeared to ignore her. She closed the book, put it back into the cabinet and locked the cabinet. The events that occurred after they returned to the room from the food carts took about two minutes.

53. She identified Appellee's Exhibit 7 as the Occurrence Report (OR) she wrote after she delivered the Written Reprimand to the Appellant. She wanted to record Appellant's behavior during her delivery and explanation of the Written Reprimand. Appellant threatened to sue her for harassment. He raised his voice a couple of times, laughed at one point, and was not receptive to anything she said. UA II Keith Williams was also present on that occasion.

54. When asked whether Holbrook told her his concerns about moving the subject inmate, she testified, "He could have. I don't remember." She acknowledged Appellant's responsibilities included knowing about and caring for the inmates. When asked whether she remembered Appellant telling her that the inmate should not be placed between two certain other inmates, she testified, "I don't remember that. He could have said that." She stated he has a right to express his concerns, it's just the way he did it.

55. When asked if Appellant's concerns were pretty important, she testified, "No. What's important is his rudeness to me, because it was inappropriate in a professional setting." "I'm fine with his concerns." "My concern is the way that he treats me." "I'm not disputing that he said that or did not say that." She reiterated she had told Holbrook the Warden instructed the inmate be moved, so the inmate was to be moved. "I was concerned about his behavior towards me during that incident."

56. During the counseling session that followed, Ferguson told Appellant he had just laid the phone on the table and it had an open mike. He responded, "Okay" throughout the counseling. UA Williams ended the counseling by saying, "So we're okay from here and we'll communicate better?"

57. With reference to the inventory incident, Ferguson had instructed Barker and Spencer to submit an OR. She could not remember if she requested Chambers to do likewise.

58. She looked at the ORs from Barker and Spencer before she wrote up the Written Reprimand. She wrote the Written Reprimand from her own experience. "In the big picture, this

all happened to me. You know, it's about me. About my experience with Mr. Holbrook. As his supervisor, he refused to communicate with me.”

59. The next witness was **Derwin Keith Williams**. For the past three and one-half years, Mr. Williams has been employed at EKCC as a Unit Administrator II. His duties include supervision of Dormitories 5 and 9, which generally house Protective Custody inmates. He was Ms. Ferguson's supervisor in 2015.

60. On May 5, 2015, UA Ferguson spoke to Williams about an incident. She had been conducting PC hearings. Lt. Holbrook entered the room, placed the telephone on the desk, said nothing and left. A minute later, Ferguson noted someone was on the telephone. She believed it would have been more appropriate for Lt. Holbrook to notify her of a waiting telephone call.

61. That same day, Williams accompanied Ferguson to counsel Lt. Holbrook. During the counseling, Holbrook became agitated, and then began to talk to Williams. Williams told him he would listen to Holbrook's concerns once Ferguson got done explaining her expectations. The counseling did not include a discussion of the matter of the movement of the subject inmate. Williams has never had any problems communicating with Lt. Holbrook.

62. Holbrook explained his belief that he was being harassed. Williams then testified he thought there was a discussion about the subject inmate's movement during the counseling session.

63. He identified Appellee's Exhibit 8 as the Occurrence Report he wrote following issuance of the June 9, 2015 Written Reprimand. Appellant was upset and aggravated, and made a statement about obtaining an attorney and suing.

64. When he reviewed Ferguson's draft of the Written Reprimand, Williams saw the policies she alleged had been violated. He informed her she needed to get written reports from the CTOs who witnessed the incident or who were in the room at the time. She did not have the reports at that time.

65. He performed Appellant's first interim evaluation for 2015. Williams, as Appellant's supervisor, never had any problems with Holbrook.

66. At the beginning of the second day of hearing, the Hearing Officer stated he had re-examined Appellant's Motion to Strike a specific clause in the January 6, 2016 suspension letter, due to lack of specificity. After careful consideration, the motion was **OVERRULED**.

67. The next witness was **Eric Barker**. Since August 2015, Mr. Barker has been employed as a Unit Administrator I by the Department of Corrections at EKCC. The previous three years he had been employed as a Caseworker/Classification and Treatment Officer (CTO),

which position he held at the time of the subject incidents. At that time, he had been assigned to the Segregation Unit with an office in Dorm 5. He performed rounds in both Dorm 5 and Dorm 9. Appellant was the Lieutenant of that Unit.

68. He identified Appellee's Exhibit 9 as an Occurrence Report he was asked to write by UA II Williams regarding a May 5, 2015 incident. At that time, they had been told by Warden Beckstrom to move an inmate. Barker witnessed Lt. Holbrook asking UA Ferguson why the inmate was to be moved. Ferguson said the Warden wanted him moved. Holbrook asked the same question a couple of times. The inmate was moved. CTO Barker confirmed that in his Occurrence Report he had written Appellant's statement, "We'll need to find out."

69. He also had been asked to write an Occurrence Report about a June 3, 2015 incident he had witnessed. UA Ferguson had been looking at an inventory log and discussing it with the Appellant. Appellant left the room. Ferguson asked Holbrook where he was going. He responded he was going to get the food trays. As part of Lt. Holbrook's duties, he is required to check food temperature. He brought a tray back to the Dorm 9 floor office.

70. Later that day, CTO Barker and UA Ferguson conducted protective custody hearings. Lt. Holbrook walked into the hearing room with telephone in hand and laid it on the desk, directly in front of Ferguson. Appellant said nothing and left the room. When Ferguson realized someone was on the phone, she asked out loud after the hearing why someone did not tell her there was a phone call for her. It took Ferguson about 30 seconds to realize that someone was on the telephone.

71. Appellee declared it had no additional witnesses to call on the issue of the written reprimand. Appellee continued examination of witnesses with reference to the three-day suspension.

72. For the past four years, **Keith Helton** has been employed by the Department of Corrections as Deputy Warden at EKCC. Part of his duties include issuance of directives. He issued one such directive pertaining to the use of the KRONOS system. Employees were directed to scan in and out on the KRONOS clock that was closest to their assigned post. There are three KRONOS scan clocks in the institution at different locations.

73. He identified Appellee's Exhibit 11 as the December 3, 2014 Memorandum he had issued. He read the contents into evidence. Post Orders require Shift One employees to be at their posts by 8:00 a.m. The basement scan clock is the one closest for line staff to report to their workstations. Clocking in closest to their workstation also frees up other clocks for the 300 people who check in. All those employees come in and out through the main door and through a single metal detector. Employees do not have a choice and must follow this directive.

74. There is a seven minute leeway to clock in at the beginning of the shift and at the end of the shift. If one clocks in eight minutes late or eight minutes early, they are assessed comp time. Employees must start work at 8:00 a.m. An employee, therefore, has seven minutes to clock in and get to their post on time. An employee can clock in up to seven minutes late without being docked for pay. However, you are still considered late to work.

75. The Memorandum, once approved by the Warden, became part of the policies. "It is a memo directing" but is not in the policies and procedures.

76. At that time, Appellant had been assigned to Dorm 9 and the basement scanner was the one closest to his workstation.

77. Lt. Holbrook experienced a problem with one of the scanners. A test was run and it was found the scanners were "goofed up." The scanners had transposed the location recordings. Clocking in at Central Control recorded "basement" and vice versa.

78. During the period of the incident cited in the suspension letter, the Captain had examined video, and saw Lt. Holbrook had indeed clocked in at the proper place. The Captain called the Deputy Warden, and advised accordingly. The Deputy Warden told the Captain to call IT to fix the problem. No one was penalized because of the "goof up." The matter was corrected before the beginning of the next shift.

79. If a policy has been violated once, this is normally handled by the shift supervisor. If the same policy is violated two or more times, the supervisor will usually request disciplinary action, and the Deputy Warden requires documentation from that person to support the request.

80. Deputy Warden Helton examined supporting documentation provided to him regarding Appellant's December 2, 2015 incident. He sent the documentation to the Warden with his recommendation that disciplinary action be taken. The Warden reviews such a recommendation and says either "Yay" or "Nay" on the matter. The Deputy Warden only recommends further disciplinary action, but not the type or length of action. Before he recommended discipline, someone below the Deputy Warden would have looked at the videos to confirm the violation.

81. A letter of Intent to Suspend the Appellant was issued. It gave the employee a chance to respond in writing, speak with the Warden or do both.

82. Prior to Helton having become Deputy Warden, a problem existed when all employees scanned in at the front of the institution. When the KRONOS system was first installed, the clocks were placed at the three locations to alleviate a backup of employees. Helton's predecessor had issued a memorandum directing employees to scan in at the clock nearest their workstation.

83. Helton issued his memorandum because the institution had been experiencing employees being relieved late from their shift and, therefore, getting comp time. His memorandum reinforced the requirement where to scan in and out. Deputy Warden Helton testified his memo is an "institutional memo," but does not revise any policies or procedures.

84. When asked whether the memorandum was an "order," Helton said it was a "directive." When asked the difference, he stated an order requires one to perform, while a directive, if there is a problem, allows the employee to advise and explain the problem. A directive is "not a cut and dried thing." It provides leeway if there are problems beyond one's control. If there was a good reason, there may be an exception to the directive. If one does not perform as directed, there needs to be a good reason for same.

85. Deputy Warden Helton then testified that his memorandum is an order, but is not "cut and dry." One must have a valid reason if they do not follow the memo.

86. For the past five years, **James Witt** has been employed by the Department of Corrections as a Correctional Captain I at EKCC. He supervises 121 employees on the day shift. Part of his duties include evaluation of employee performances and the recording of progress notes throughout the year. He kept such progress notes on the Appellant pertaining to his failure to clock in and out at the clock station nearest his workstation. Captain Witt counseled the Appellant on more than one occasion.

87. He identified Appellee's Exhibit 12 as a Progress Record he kept on the Appellant from 12/10/14 through 12/2/15 (progress notes entered prior to 12/10/14 were done so by Captain Witt's predecessor). Captain Witt counseled Appellant on the use of the clock nearest his workstation on 12/10/14, 1/7/15, 6/14/15 and 12/2/15. Appellant usually responded that he had to get his keys and equipment near Central Control, and should be clocking in and out at that location. During each counseling, Captain Witt told Appellant to make sure from that point forward he clocked in at the proper location in the Basement.

88. On one occasion, the Captain, after noticing Appellant was not on post, pulled some of the timeclock records. He spoke with Deputy Warden Helton to inquire about the next step in the process. It was determined progressive discipline should be followed and a suspension was discussed.

89. He identified Appellee's Exhibit 13 as a diagram/picture of EKCC, showing where the timeclocks are located (pink labels). Timeclocks are located at the main hallway, outside Central Control and downstairs in the basement. The basement timeclock is closest to Appellant's workstation at Dorm 9.

90. Captain Witt was advised Holbrook would be issued an Intent to Suspend letter. He was directed to draft the Intent letter, which he identified as Appellee's Exhibit 14. He

determined which policy had been violated: EKCC 03-01-01 (General Guidelines For Staff), page 3, no. 28, which states, "A staff member shall follow any lawful order issued by a Supervisor." He testified that when Appellant had been counseled about clocking in and out of the correct location, Holbrook "continually disobeyed that order." After drafting part of the Intent to Suspend letter, he had no further involvement in the matter other than delivering the final intent letter to the Appellant.

91. Records are kept from the KRONOS scanners showing the dates, times and location of an employee clocking in and out. One may also view video recordings of those locations. He identified Appellee's Exhibit 15 as one such KRONOS scan report, this one for the Appellant. Pages 1 through 12 show specific dates and time. Pages 12 and beyond show audits of where each scan was made and on what date.

92. The suspension letter cited Appellant for committing a policy violation on December 2, 2015, and also referenced the dates he had been counseled.

93. Reviewing Appellee's Exhibit 15, Captain Witt testified that prior to writing the Intent letter, he had examined this document. The record for December 10, 2014, shows Appellant clocked in at 8:00 a.m. at the main hall (page 12); on January 7, 2015, Appellant clocked in at 8:04 a.m. at Central Control (page 13); out at 12:38 p.m. at the main hall (back in at 1:02 p.m. at main hall); and out at 4:01 p.m. at Central Control. The Memorandum policy applies only to an employee clocking in at the beginning of the shift and out at the end of his shift. It does not apply to break periods.

94. Continuing his examination of Appellee's Exhibit 15, Witt testified that for June 14, 2014, it shows Appellant clocked in at 7:55 a.m. at Central Control (page 20); and on December 2, 2014, had clocked in at 7:53 a.m. at Central Control and clocked out at 3:59 p.m. at main hallway (page 27).

95. On the morning of March 11, 2014, Deputy Warden Helton told the witness that Lt. Holbrook had clocked in at Central Control. Witt asked Holbrook about it. Holbrook responded he had clocked in at the basement. He also stated that when he was at Central Control, the officer on duty there told him he forgot to clock in, and asked Appellant if he could slide his ID to him to clock him in. Holbrook did scan the officer's ID at Central Control, gave the ID back to the officer, then proceeded downstairs and scanned in his own ID card at the basement before reporting to his post.

96. Captain Witt checked the records pertaining to the officer's scan and determined the record showed such scan had been made at the Basement and not at Central Control. He surmised the system had reversed recording locations. As a problem had been discovered, Appellant was not penalized. Captain Witt had examined the video to confirm what the



Appellant had told him. There was a problem with the scanner that morning. He advised Deputy Warden Helton. Captain Witt acknowledged the scanners do malfunction at times.

97. After he had conducted his first counseling with the Appellant, he determined no discipline was required. The second incident occurred less than a month later. Again, he did not see a need for discipline. The third incident occurred about half a year later, and since there was a break in time where Appellant showed improved behavior, Captain Witt again determined no discipline was necessary. When the fourth incident occurred almost six months later, the Deputy Warden asked him if he had counseled Appellant. The Captain was asked to look back at all previous incidents to see if anything should be done. The impetus for discipline came from Deputy Warden Helton.

98. The next witness was **Betty Lindon**. Since 2010, Ms. Lindon has been employed at EKCC as Human Resource Administrator Institutional. She reviewed the disciplinary letter issued to Appellant to make sure it was supported by proper documentation, and that the policies cited were the most recent versions.

99. The Intent to Suspend letter (Appellee's Exhibit 14) had been delivered to Appellant with a copy kept in Ms. Lindon's office. The last page shows the Appellant chose to make a written response to the intent letter and engage in an interview with the Warden.

100. She identified Appellee's Exhibit 16 as the January 3, 2016 written response submitted by Appellant. This was placed in his personnel file.

101. Subsequent to Appellant's meeting with Warden Litteral, Ms. Lindon followed up with the Warden. Warden Litteral advised a three-day suspension would be issued. Ms. Lindon prepared the suspension letter for the Warden (Appellee's Exhibit 17). The letter was delivered and read to the Appellant on January 6, 2016.

102. The next witness was **Kathy Litteral**, who for the past year and a half has been employed by the Department of Corrections as Warden of EKCC. Her duties include employee discipline, and she is the ultimate decision-maker. A supervisor can alert her to a problem and provide her with documentation for review. There are other times when she has directed a supervisor to look into a problematic issue.

103. Lt. Holbrook had previously been issued a written reprimand for a problem he had with a supervisor. The supervisor had been talking to him when he left the room.

104. Regarding the KRONOS matters, Warden Litteral was made aware of same during the Fall or Winter of 2015. She received information about the problem with Appellant's scans from Deputy Warden Helton, in that, after having been repeatedly told to clock in at the basement, he failed to do so. She asked Deputy Warden Helton to look into the matter and report back.

105. In considering discipline for the Appellant, Warden Litteral observed he had a written reprimand and had been counseled approximately five times for this issue; that he had several opportunities to correct his behavior, but it had happened again in December. She reviewed the progress notes, as well as Appellant's personnel file. Thereafter, she issued the Intent to Suspend letter (Appellee's Exhibit 14).

106. She identified Appellee's Exhibit 16 as the written response submitted by the Appellant. She and the Appellant met, as Lt. Holbrook had requested. At the meeting he gave reasons why it was not appropriate for him to clock in at the basement. After the meeting, and giving further consideration to the matter, Warden Litteral issued the January 6, 2016 suspension letter (Appellee's Exhibit 17).

107. A three-day suspension was part of progressive discipline. Appellant had received two prior written reprimands, and had been counseled, so the next step, even had Appellant had a single written reprimand, would have been a three-day suspension. He had been given ample opportunity through several counselings to correct his behavior. At no time did he deny scanning in areas other than the basement. The suspension letter cited that Appellant violated policy by not following the memorandum issued by Deputy Warden Helton.

108. Appellee rested its case. Appellant presented a Motion for Directed Verdict on the suspension issue. Appellee responded to the motion. After consideration of the arguments of counsel, the motion was **DENIED**.

109. Appellant began his case with the presentation of the testimony of **William Douglas Manning**. For the past 17 years, Manning has been employed by the Department of Corrections at EKCC as a Correctional Officer. His current workstation is the Sally Port of the institution (he marked "SP" to denote Sally Port on Appellee's Exhibit 13). Officer Manning clocks in at the basement clock. He has clocked in at both the basement clock and Central Control. He acknowledged his employer wanted him to use the clock in the basement. However, sometimes when he comes in at Central, there is a line of employees waiting to pick up equipment and keys. If it is close to 8:00 a.m., then under such circumstances he scans in at Central Control. No one has directly told him not to use that location.

110. **Daniel Wright**, who, since October 2015, has been employed at EKCC as a Correctional Officer, was the next witness. For the past year and a half, he has been assigned to outside landscaping at the minimum security building. He scans in and out at the minimum security building.

111. Previously, he had been assigned to Dorm 9 during 2013 to 2014. After that, he worked a period of time for Transportation. With a workstation at Dorm 9, he always clocked in at the basement location.

112. He was aware of a problem Lt. Holbrook had scanning into the institution on December 16, 2014. Wright and Officer Chambers worked with Appellant in Dorm 9. They always scanned in at the basement and walked to the unit together. It was alleged Holbrook had clocked in that day at Central Control. At Holbrook's request, Wright composed an Occurrence Report stating he had seen Holbrook clock in at the basement between 7:53 a.m. and 7:56 a.m. This was the only Occurrence Report he had ever written concerning a problem clocking in.

113. The next witness was **Jason Chambers**, who has been employed at EKCC as a Correctional Officer for the past 10 years. He had previously been assigned a workstation at Dorm 4. He "heard" employees are supposed to scan in at the clock closest to their workstation. For him, that would be the basement location. He has, at times, scanned in at Central Control, where he picks up pepper spray and on occasions when he is running late.

114. On December 16, 2014, he was asked by Lt. Holbrook to write an Occurrence Report of a matter he had observed earlier that day. Chambers was assigned to Dorm 9 at the time. He, Officer Wright and Lt. Holbrook all clocked in at the basement location and walked to Dorm 9 together. Later, Lt. Holbrook had been notified that he had clocked in upstairs. Holbrook asked Chambers to write an Occurrence Report of what he saw. He identified Appellant's Exhibit 7 as that report, which he had given to the Lieutenant.

115. The next witness was the **Appellant, Emanuel Holbrook**. Holbrook has, for the past 11 years, been employed as a Lieutenant at EKCC. He is currently assigned to the minimum security building, where he oversees a prisoner paint detail. There is a scanner located at the minimum security building. Captain Witt directed Holbrook that he would be on this special detail, and Deputy Warden Helton instructed Holbrook come to the basement to get his name checked off before he goes on detail. He is required to clock in and out at the basement location.

116. On December 16, 2014, Holbrook reported to work, clocked in and spoke with Officers Chambers and Wright. They then walked to Dorm 9 together. About noon that day, Lt. Havens called Appellant from the Captain's office. Havens said she just got a call from Deputy Warden Helton to advise that Appellant had clocked in at Central Control at the beginning of the day. Holbrook told her he had not done that. Havens said she was looking at the scan as they spoke, and it showed clearly "Control Center." Appellant replied he had two officers standing there with him when he scanned in at the basement; they were sitting there and Havens could talk to them. Lt. Havens did not speak with those officers, but hung up the phone. This was the first time Appellant became aware there might be a problem with the clocks.

117. There were prior times when Appellant had no witnesses present and was told he had clocked in at Central Control, which he denied at the time. After such denials, he never heard anything about it again. Another time prior, he was asked if he clocked in at Central

Control, and he admitted he had. When asked why, he said because he was going to be late to post.

118. On March 11, 2015, Captain Witt called Appellant and advised Deputy Warden Helton had looked at scans and determined Appellant clocked in at Central Control that day. Appellant denied having done so. Captain Witt said that he was looking directly at the KRONOS sheet. Again Appellant said no, and that he could prove it.

119. Appellant then left Dorm 9 and went to the Captain's office to talk with Captain Witt. He told him about the other officer who had already been on post, when, as Appellant walked by that post, was asked to scan the officer in. Holbrook took the officer's ID through a tray slot, swiped the card at the Central Control timeclock, and gave the ID back to the officer through the slot. At that point he noticed Warden Beckstrom entering through Gate 3. Holbrook returned to the basement and clocked in at the basement clock. He thereafter reported to his post.

120. Captain Witt called the other officer and verified Appellant's explanation. The Captain pulled up his own personal scans on his computer, and stated it showed that the Captain had clocked in at Central Control. Captain Witt stated he has never clocked in at that location. Witt called Deputy Warden Helton to explain the information he had. That was the end of that matter.

121. The Hearing Officer examined Appellee's Exhibit 15, which applied solely to records of Lt. Holbrook. He asked Appellant to examine same. The Hearing Officer noted that page 12 shows Appellant, for that one week period, had clocked in at the basement on six occasions. Appellant disputed whether that was correct. The Hearing Officer then noted that on page 13, for the period of December 14, 2014, through January 12, 2015, it showed Appellant had clocked in the basement on two occasions. Appellant testified he knew that was wrong, because he was making sure during that time to use the basement timeclock, even on breaks. The Hearing Officer noted that on page 14, for the period of January 13, 2015, through February 4, 2015, it showed Appellant had used the basement location once. Appellant testified the system is not right. The Hearing Officer directed that a brief recess be taken, during which time he requested Appellant examine the audit and be prepared to give an explanation of what appears on that report.

122. When the hearing reconvened, the Hearing Officer stated he had examined Appellee's Exhibit 15, and found the total number of times the record shows Appellant to have clocked in at the basement was 152; that, divided by two (clock in and clock out), accounts for approximately 76 work days during the period of December 1, 2014, through December 10, 2015. Appellant testified that the one time he knows he "hit" Central Control was June 14, 2015. "I'm not a defiant employee." He denied he only used the basement clock 152 times during that

time period, and questioned the accuracy of the record. He stated the record did not accurately reflect his behavior during that time.

123. A discussion was held with the parties as how to proceed further, in view of this exhibit. The parties agreed a third day of hearing was required. The second day of hearing was then ended. Subsequently, the Hearing Officer issued an Interim Order, dated September 30, 2016.

124. At the start of the third day of the evidentiary hearing, Appellant renewed his Motion for Directed Verdict. After hearing arguments of counsel for the parties, the Hearing Officer **OVERRULED** the motion.

125. The parties had agreed that Appellee may present two witnesses out of turn to offer testimony with reference to the KRONOS system and Appellee's Exhibit 15.

126. The first witness out of turn for the Appellee was **Jeremy Shuck**. Since September 2005, Mr. Shuck has been employed by the Kentucky Department of Corrections, in the Information Technology Branch at Frankfort, Kentucky. His duties include acting as liaison between the Department of Corrections and the Commonwealth Office of Technology (COT). He supports the daily activities of the Department, including special projects. He also has responsibilities pertaining to KRONOS in the nature of supporting the server and its applications.

127. KRONOS is a time clock system which started at a single institution in LaGrange in 2006 to 2007. The employees use their identification badge to scan at a clock, to clock in and out. The system was eventually installed department-wide, including in the prisons. Each "time clock" has its own IP address, which is configured in the server. An individual employee is set up with a unique account in KRONOS. When that employee scans at any timeclock anywhere in the system, the server will record the identity of that employee, the time of scan and the location. Eastern Kentucky Correctional Complex has four timeclocks which have been named for their locations: Minimum Security, Central, Main and Basement.

128. In order for the location name to change between two clocks, something on the clock itself must have occurred. The IP addresses would have had to have been exchanged. The server only looks at the IP addresses. One can only set up the location of that clock on the server and not on the timeclock. A single server is located in Frankfort. An update on the server or a firmware update on a timeclock could possibly change something.

129. Mr. Shuck was not familiar with any reports of location misidentification by a timeclock. When a timeclock goes offline, even for up to two weeks, the clock will still perform the scan function and store that information. Once the clock comes back online, all that stored information is sent from the timeclock to the server.

130. Renaming a location from "Central" to "Basement" can be done on the server in Frankfort. He has had no experience, to his memory, that the server ever misread or misinterpreted a timeclock location. However, resets and major upgrades could result in changes. In December 2015, there was a "fresh start" where everything was moved to a new server.

131. The next witness was **Amye Havens**. For the past six years, Ms. Havens has been employed by the Department of Corrections as a Human Resource Specialist II at EKCC. She is the Institution's payroll officer and reconciles staff timekeeping. She utilizes the KRONOS system on a daily basis. Employees at the facility work eight hours per day. She reconciles each employee's time record.

132. If scan records show "timecard editor" followed by her name, Ms. Havens would have gone into the records manually to make a change.

133. In March 2015, Captain James Witt notified her that there appeared to be an issue where two timeclocks switched location recordings. The basement clock showed "Central" and vice versa. She contacted the Payroll Department at Central Office to so advise. They forwarded the information to COT. Then it was passed on to the EKCC IT employee and the issue was thereafter resolved and the problem fixed. She does not know how long the problem existed at the time she was notified. She believes the problem may have started sometime in July 2014.

134. She had been requested by her supervisor, Betty Lindon, to produce a printout of the KRONOS clock scans performed by Appellant for a one year period. Appellee's Exhibit 15 is the document she generated. Pages 1 through 12 show the scans that occurred, and this is what she sees when she logs into KRONOS on her computer. It shows the time of scans in and out, and whether she had to enter leave time used. From and after page 12 shows additional information that is available in that system. It can be called-up on command. This section shows the time of scans, locations, and whether a timecard editor manually entered the type of leave time. The line that denotes "super user" followed by an ID, specifically identifies an employee. In this case, the employee identified is the Appellant.

135. She reviews an employee's duty roster to compare it with the scans in order to confirm proper credit of time and nature of time or leave has been assigned to the employee. She does this for each employee for every pay period. The "cumulative" column shows the sum of all hours for which Appellant was paid during the time period of this audit. In this case, Appellant had been paid for 2,243.5 hours. She acknowledged that if a normal work hour day is eight hours, Appellant was paid for about 281 work days.

136. After March 2015, she received no further complaints about problems pertaining to recording of timeclock scan locations. She also was not aware if there were any timeclock

problems in December 2015. After the "location" problem was fixed in March 2015, the remainder of locations recorded in the audit from and after that time were, in her belief, true and accurate.

137. Appellee called no further witnesses. Appellant's counsel resumed the examination of **Mr. Holbrook**. Mr. Holbrook, upon examination of Appellee's Exhibit 12, recalled events pertaining to December 10, 2014. He had just returned from the Minimum Security building and had "hit" the timeclock at Central. Deputy Warden Helton saw him and told him he was supposed to hit the clock in the basement.

138. He has no recollection of the events pertaining to January 7, 2015. With reference to the incident of June 14, 2015, Appellant recalls that at that time Maintenance employees and Caseworkers entering the building came in to get their keys and all clocked in at Central. He had recently been switched to Housing Unit II on June 11, 2015. He picked up his keys at Central and, therefore, clocked in there because that is where he had clocked in from June 11 through June 14. The only employees not clocking in at that location were officers who went downstairs and did not have to pick up any equipment. This is what he had related to Deputy Warden Helton. He admitted he had hit the Central time clock and had given his reason why.

139. In mid-July 2015, Captain Witt advised Appellant he would be assigned to the lobby and gate on Wednesdays at the beginning and end of shift. On those days, Appellant was allowed to clock in at Central because it was near his morning post at Gate 3. He would watch third shift officers leave from inside the institution. This occurred between 8:00 a.m. to 8:20 a.m. Thereafter, he reported to his post at the Dormatory.

140. About 3:20 p.m. on Wednesdays, he reported to his post in the main lobby. He supervised the 4:00 p.m. to 12:00 a.m. shift entering the building. He was allowed to clock out at "Main," as this was the clock closest to his lobby post.

141. During this time, he worked Sundays 10:00 a.m. to 6:00 p.m.; Mondays, Tuesdays and Wednesdays 8:00 a.m. to 4:00 p.m.; and Thursdays 6:00 a.m. to 2:00 p.m. Thursday was his early morning when he came in at 6:00 a.m. The third shift was working at that time. When one is a Housing Unit Supervisor such as the Appellant, they are required to visit all three shifts during the week. That is also the reason why Appellant stayed over on Sundays to be with the 4:00 p.m. to 12:00 a.m. shift. Unit Administrator Carla Sparks and Appellant agreed to that schedule. Appellant was on that schedule from 2014 until January 2016 when he returned to an 8:00 a.m. to 4:00 p.m. schedule.

142. On the days he reported at 6:00 a.m., he would enter the main lobby. As no one was present, he had to get employees' attention at Central. They came down to the main hallway to check him in. They would then walk together down the hallway to Central and then at the Gate 1 area, Appellant would go downstairs to the basement where he clocked in.

143. Appellee's Exhibit 15, page 27 shows that Appellant scanned in on December 2, 2015, at "Central" and out at "Main." He admits he did so, as this was his Wednesday routine. However, other days show the same pattern other than Wednesday. He could not explain why the record showed this. He testified that parts of that record show him clocking out at the end of shift at Central, which made no sense as it would have required him going back into the interior of the prison to clock out.

144. He identified Appellant's Exhibit 8 as a July 1, 2016 commendation for unused sick leave he received from Warden Kathy Litteral. He had not used any sick leave for the preceding six month period. Lt. Holbrook has accumulated a great deal of unused sick time over 18 years.

145. Currently, as Appellant is detailed to Minimum Security, Captain Witt has required that he clock in at the basement. After clocking in, Appellant leaves the institution and goes to the Minimum Security building on the hill. Wherever he ends up his day's assignment is where he is able to clock out. If it ends at Minimum, that is where he clocks out. If Captain Witt calls him to supervise the lobby, he clocks out at Main.

146. Having reviewed Appellee's Exhibit 15, and with the exception of his single admission of using the wrong clock, he disagrees with all other indications of his using an improper location.

147. Appellant rested. The Hearing Officer recalled **Warden Kathy Litteral**.

148. At the time Warden Litteral issued the suspension letter (Appellee's Exhibit 17), she had not seen, nor had she reviewed, the KRONOS audit represented by Appellee's Exhibit 15. She had only cited dates that appeared in the Progress Notes she had reviewed.

149. Supervisors keep Progress Notes on their employees in order to note good work performance as well as performance problems. Performance Notes are also used as a coaching tool to assist employees.

150. **Captain James Witt** was recalled to the stand by the Appellee. Captain Witt acknowledged that Appellee's Exhibit 12 represents certain Progress Notes he had entered on Lt. Holbrook, beginning December 10, 2014.

151. On December 12, 2015, Appellant had been assigned to Dorms 3 and 4. The timeclock closest to that post was basement control. When Appellant had been assigned to the gate or lobby, then he was allowed to use the timeclocks closest to those posts. When he wrote up the December 12, 2014 Progress Note, his intent was to have Appellant clock in and out at the location closest to his workstation. He had no problem with Appellant clocking out at the clock closest to the lobby when he was assigned that post. It was probable that situation existed at least one day each week for Appellant.



152. Captain Witt testified that every time he counseled Appellant on this issue, particularly on December 2, 2015, he documented it in the Progress Note.

153. No further witnesses were called by either party, and a briefing schedule was set by separate Interim Order.

### **FINDINGS OF FACT**

1. Emanuel Holbrook, the Appellant, has, for the past 10 years, been employed as a Lieutenant at the Eastern Kentucky Correctional Complex (EKCC). He is a classified employee with status.

2. On May 5, 2015, Unit Administrator I Jessie Ferguson had been directed by the Warden to move an inmate to Dormatory 9. The inmate came off suicide watch and protective custody, and had a history of hurting himself.

3. When Ferguson communicated the fact of the move to Holbrook, Holbrook asked, "Why?" Ferguson responded she did not know; just that the Warden wanted him moved. Holbrook again asked, "Why?" and Ferguson repeated her response. Before leaving the room, Holbrook either said, "We..." or "You..." "need to find out." Although Holbrook had concerns about how this inmate would fare being housed between "two of the worst segregation disciplinary inmates in the facility," it is unclear whether he clearly and fully communicated the nature of his concern to Ferguson.

4. About 3:00 p.m. that day, Psychologist Lowe asked Appellant about the status of the subject inmate. When Appellant told her and expressed his concerns, Lowe immediately contacted Warden Beckstrom. The Warden approved relocation of the inmates. The two inmates on either side of the subject inmate were moved to another wing. Two other inmates were moved to the cells adjoining the subject inmate.

5. The same day as the inmate move, Ferguson conducted Protective Custody hearings. The telephone in Holbrook's possession rang, and the caller asked for Ferguson. He entered the Protective Custody hearing room, laid the telephone on the desk in front of Ferguson, and left. Several minutes later, Ferguson noticed the telephone was on. She picked it up and discovered someone from the Medical Department had been holding for her.

6. Later that day, Ferguson and UA Williams met with and counseled Holbrook about his lack of communication. Holbrook was encouraged to communicate more with superiors, particularly with Ferguson. The testimony of both Holbrook and Ferguson showed all parties believed this issue was concluded when the counseling meeting ended.

7. In mid-2015, EKCC expected an accreditation audit from an organization known as the ACA. Ferguson had been advised the caustic toxic inventory was not correct, and on June 3, 2015, she met with Appellant to review that inventory.

8. Caustic toxics were kept in a locked cabinet in the Dorm 9 floor office. Holbrook unlocked the cabinet, and conducted an inventory with Ferguson. They also reviewed the Inventory Logbook. At some point, the inmate food carts arrived.

9. It was part of Holbrook's duties to take a count of the food trays and make certain there had been proper fulfillment of dietary menus. He was also required to check one of the trays to make sure the food was at the proper temperature.

10. Correctional Officer Chambers had been in the Dorm 9 floor office during the inventory. He observed Ferguson and Holbrook reviewing the Inventory Logbook on the desk when the food carts arrived. There was a break in the conversation, and Holbrook went out to the hall to check the food carts. Ferguson called out, "Lt. Holbrook, I wasn't done talking." Chambers told her, "I think he went to get a food tray." Chambers left the office to conduct his food tray duties and saw Holbrook return to the office with a food tray. While Holbrook checked the food temperature at the desk, Ferguson reviewed the Logbook once again with him.

11. On June 8, 2015, Appellant was issued a Written Reprimand for poor work performance, which cited the incidents of May 5, 2015, and June 3, 2015 (Appellant's Exhibit 1). The Written Reprimand alleged violations of EKCC Post Order #01, Page 5, Item 26, which states:

"Employees shall maintain a courteous manner and professional decorum while communicating with supervisory staff or fellow staff members."

Also alleged was a violation of EKCC Policy 03-01-01, Code of Ethics<sup>2</sup>, Page 3, Items 27 and 28, which state:

"A staff member shall follow chain of command."

"A staff member shall follow any lawful order issued by a Supervisor."  
(Appellee's Exhibit 2.)

11. Both the Post Order #01 and EKCC Policy 03-01-01 were in full force and effect on the dates of the incidents cited in the written reprimand.

12. The Written Reprimand also stated it was issued "pursuant to 101 KAR 1:345."

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<sup>2</sup> This Policy and Procedure is actually titled "General Guidelines for Staff" and not "Code of Ethics" as cited in the Written Reprimand.

13. On June 10, 2015, Captain James Witt told Holbrook he would be assigned to a new post in Housing Unit 2. The following day, Carla Sparks became Appellant's supervisor.

14. On December 3, 2014, Keith Helton, Deputy Warden of Security at EKCC issued a memorandum to all staff in which he stated:

This is to re-emphasize that all staff shall scan in and out at the nearest Kronos scanner to their workstation. (Example of this, if your workstation is on the yard, utilize the Kronos scanner located at the basement control area.) If there are any questions feel free to contact me. (Appellee's Exhibit 11.)

Helton's predecessor had previously issued a memorandum directing employees to scan in and out at the timeclock located closest to their workstation at the beginning and end of shift.

15. The KRONOS system at EKCC consisted of four timeclocks, known as Basement Control (located downstairs at the institution, which was to be used by all line staff), Central Control, Main and Minimum Security. Helton's Memorandum was issued to remind staff of the required procedure. The procedure had been instituted to distribute the traffic of employees scanning in and out of the institution.

16. At times, the KRONOS system experienced problems accurately reporting the location where an employee scanned. The system is able to generate a KRONOS Scan Report showing the dates, times and locations where a specific employee uses his/her assigned card to scan. On March 11, 2015, Captain Witt determined, after inquiry from Deputy Warden Helton, that the system had incorrectly reversed recording the location where Appellant had scanned in.

17. The system had apparently malfunctioned previously on December 16, 2014. On that day, CO Daniel Wright, CO Jason Chambers and Lt. Holbrook all scanned in about the same time in the Basement before they proceeded together to Dorm 9 (Appellant's Exhibit 7.) Later that day, Appellant had been accused by Lt. Havens, who viewed a scan report, of scanning in at Central Control. After Appellant told Havens he did not do so and had two witnesses, he never heard about this incident again.

18. Appellee's Exhibit 15 is a KRONOS Timecard (Pages 1-12) and Audit (Pages 12-27) of Appellant's scan activity for the period of December 1, 2014, through December 10, 2015. That document recorded Appellant allegedly scanned in and out at the basement location 152 times, which accounts for approximately 76 workdays during that period out of 281 paid workdays. Appellant admitted he scanned in at Central Control a single time: June 14, 2015.

19. In mid-July 2015, Appellant was assigned to the Lobby and Gate at the beginning and end of shift on Wednesdays. On these days he was allowed to scan at Central, as it was closest to his workstation at Gate 3, and at Main, as it was closest to lobby post.

20. From 2014 to January 2016, Appellant also reported to work each Thursday at 6:00 a.m., a schedule agreed to by UA Carla Sparks. On those days, Appellant entered the institution at the main lobby. At that hour no one is present and Appellant got the attention of staff at Central in order to let him into the building. On these days, he scanned in at Central and out at 2:00 p.m. at Main.

21. During the period of December 1, 2014, through December 10, 2015, Appellant had been granted permission to scan in/out at locations other than Basement Control, depending on his workstation assignment.

22. Currently assigned to Minimum Security, a building separate from the main institution, Appellant has been required by Captain Witt to scan in at the basement. He is allowed to scan out at the end of shift wherever his assignment for the day ends: if at the Minimum Security building, he scans there; if he is called to supervise the lobby, he scans out at Main.

23. Captain Witt made inquiry with Deputy Warden Helton regarding a December 2, 2015 incident involving Appellant's alleged failure to scan in/out at the proper location. Helton examined supporting documentation and passed it along to Warden Kathy Litteral, with a recommendation that disciplinary action be taken.

24. Warden Litteral examined the information, including records of Appellant's scans.<sup>3</sup> She also asked Deputy Warden Helton to investigate the matter further.

25. After having reviewed the Progress Notes (Appellee's Exhibit 12), Appellant's personnel file, and having considered Appellant had been counseled five times on this issue and had two prior written reprimands, Warden Litteral issued an Intent to Suspend letter notifying Holbrook he would be suspended for three days. (Appellee's Exhibit 14.)

26. Appellant filed a written response to the Intent to Suspend (Appellee's Exhibit 16). He and the Warden met to discuss the matter. On January 6, 2016, Warden Litteral issued a letter placing Appellant on a three-day suspension. (Appellee's Exhibit 17.)

27. During all times mentioned in the January 6, 2016 letter, the following policy and procedure was in full force and effect:

- EKCC 03-01-01, General Guidelines for Staff, Page 3(28).

28. That cited policy states "A staff member shall follow any lawful order issued by a Supervisor."

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<sup>3</sup> It is not clear from the evidence whether Warden Litteral examined a record that was similar to, or eventually became, Appellee's Exhibit 15.

29. Appellant timely filed his appeal with the Kentucky Personnel Board.

### CONCLUSIONS OF LAW

#### The Written Reprimand of June 8, 2015

1. The June 8, 2015 Written Reprimand issued to Emanuel Holbrook by CUA I Sarah J. Ferguson referenced "Poor Work Performance," and such was issued "pursuant to 101 KAR 1:345." (Appellant's Exhibit 1.) It cited the incidents of May 5, 2015 (movement of an inmate from Dorm 5 to Dorm 9), and June 3, 2015 (review of inventory). It also cited the policies and orders alleged to have been violated (EKCC Post Order #01, Page 5, Item #26; EKCC Institutional Policy and Procedures, Code of Ethics, 03-01-01, Page 3, Item #27 and 28). Finally, it advised Appellant of his right to review the written reprimand and supporting documentation, prepare a written response, and have that response placed in his permanent personnel file alongside the written reprimand; and, that "a written reprimand, in and of itself, is not an appealable action to the Personnel Board."

2. KRS 18A.020(2)(c) provides an employee who receives a written reprimand the right to prepare and have filed in his permanent personnel file, a written response. This is normally the sole remedy for the employee.<sup>4</sup>

3. Appellant has relied on two cases decided by the Franklin Circuit Court to support his claim that because the written reprimand cited 101 KAR 1:345, it was a disciplinary action appealable to the Kentucky Personnel Board.

4. The first case is *Dorsie L. Terrill v. Transportation Cabinet*, Franklin Circuit Court Civil Action No. 15-CI-656. On October 15, 2014, Terrill received an Intent to Dismiss letter containing five allegations. After the pre-termination hearing, the notice was rescinded by the Cabinet's Appointing Authority.

On November 3, 2014, Terrill received a written reprimand, which referenced a number of the incidents cited in the previous Intent to Dismiss letter. Terrill received two copies of the written reprimand: one referenced 101 KAR 1:345; the other did not. The written reprimand and the Intent to Dismiss letter alleged falsification of timesheets and use of a state vehicle for personal use.

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<sup>4</sup> In cases where discrimination based on race, color, religion, national origin, sex, disability or age forty (40) and above, is alleged, KRS 18A.095(12) provides another avenue of redress. There are no such allegations in the instant case.

Judge Shepherd included a comprehensive discussion section in his opinion why this case was “a unique factual situation” and “in these limited circumstances” constituted “an exception to the rule” that a written reprimand could not be appealed to the Kentucky Personnel Board. The instant Hearing Officer believes extensive citation of Judge Shepherd’s discussion is required here:

In the unique circumstances of this case, the reprimand was the functional equivalent to a penalization, because it was substantively identical to [both the] Notice to Dismiss letter, and the original reprimand that referenced the administrative regulation... Thus, the employee was saddled with a reprimand that alleged dishonest conduct on his part, with no meaningful opportunity to challenge the unilateral determination of the Appointing Authority, even after virtually identical allegations in a Notice of Intent to Dismiss letter had been withdrawn after the pre-termination hearing at which the employee was able to tell his side of the story.

The evidence of record is overwhelming that the reprimand was an arbitrary, and unreliable recitation of the factual allegations of dishonesty in an effort to penalize the Petitioner after the Intent to Dismiss was revoked.

It is clear, that where the state imposes a stigma on an individual which affects more than reputation and affects future employment, procedural due process is warranted. Here, the written reprimand arises from the same circumstances and allegations involved in the termination of employment, which was dismissed as erroneous, the state cannot turn around and substitute a written reprimand for the letter of termination without allowing the Petitioner an opportunity to rebut those allegations.

This Court recognizes that every written reprimand is not appealable to the Personnel Board, and in fact, it is a very rare exception when such an appeal will be allowed. However, when an Appointing Authority makes an allegation of work-related dishonesty against an employee, initiates an action to terminate the employee, then withdraws that termination but substitutes a written reprimand repeating the allegations of dishonesty, the employee has a right to appeal to the Personnel Board. Here, the written reprimand has adversely affected the employee’s tangible interest in both his reputation and employment status, since it is highly likely that the presence of the written reprimand, with allegations of dishonesty, will adversely effect his opportunities for continued employment, advancement and promotion within the classified service. *In these limited circumstances*, Petitioner should be afforded the opportunity to be heard on the allegations. (Emphasis added.)

*This case is an exception to the rule.* This reprimand is rooted, arises from the same flawed Notice to Dismiss letter that the Cabinet withdrew. When the Appointing Authority was forced to withdraw the Notice of Intent to Dismiss letter, it cannot turn around and repeat false accusations contained in the original letter and label it a reprimand, and thereby defeat the employee's right to a hearing to contest the charges. Because the allegations were effectively resolved by the Appointing Authority when the letter of Intent to Dismiss was rescinded, the written reprimand must be removed from Petitioner's personnel file, or the employee must be granted a hearing at which he can contest the veracity of the factual allegations of dishonesty. (Emphasis added.)

5. The second, and earlier, case (cited in the *Terrill* opinion) is *David Waller v. Finance and Administration Cabinet*, Franklin Circuit Court Civil Action No. 08-CI-1506. Waller had received from his supervisor a letter dated March 14, 2007, which cited four instances of alleged inappropriate behavior. The original version of the letter cited KRS 18A.020(2)(c) and 101 KAR 1:345, Section 1. On exceptions to the full Personnel Board, the Board modified the letter to cite only the reprimand statute. The Court ruled the Board could "not unilaterally amend the documents produced by Cabinet to save an attempted reprimand or disciplinary action from being dismissed for the Cabinet's failure to follow procedure... The Board's action was arbitrary, and this Court cannot uphold it." The matter was remanded to the Personnel Board.

6. There is no allegation that the June 8, 2015 written reprimand issued to Mr. Holbrook was in any way altered. *Waller* is distinguishable from the current appeal, both on the facts and the limited ruling issued by Judge Wingate.

7. In *Terrill*, Judge Shepherd assessed the facts to show the Cabinet, by issuing a written reprimand that contained many of the same allegations as in the previously withdrawn Notice of Intent to Dismiss, essentially repeated false allegations and defeated the employee's right to a hearing to contest the charges; that the allegations had been effectively resolved by the withdrawal of the Notice of Intent to Dismiss. He reversed the Personnel Board's Final Order dismissing the action. He also ordered the written reprimand to be removed and stricken from *Terrill*'s personnel file, or in the alternative, he be granted an opportunity to contest the allegations at a hearing before the Personnel Board.

8. In the instant appeal, although Holbrook had been counseled on issues cited in the subsequent written reprimand, the written reprimand was issued on its own without any prior disciplinary action having been instituted. There were no attempts to deny him of any rights by issuing a written reprimand in place of prior disciplinary action. The mistaken inclusion of 101 KAR 1:345 of itself, and without further "unique circumstances," does not give rise to the right of an appeal of such written reprimand to the Kentucky Personnel Board.

**The Three-Day Suspension Issued January 6, 2016**

9. A classified employee with status shall not be suspended except for cause. KRS 18A.095(1). Appointing Authorities may discipline employees for lack of good behavior or the unsatisfactory performance of duties. 101 KAR 1:345, Section 1. A suspension shall not exceed 30 days. 101 KAR 1:345, Section 4(1).

10. Appellant Emanuel E. Holbrook was issued a three-day suspension by letter of January 6, 2016 (Appellee's Exhibit 17). That suspension was based on an allegation of poor work performance, specifically citing an incident of December 2, 2015, and Appellant's use of a KRONOS scanner.

11. The purpose of the use by the Department of Corrections of the KRONOS scan system is to provide accurate employee information of reporting to and leaving work. It records the date, place, and time an employee scans his/her unique ID card and allows Human Resources personnel to properly assess and categorize the amount and nature of work hours.

12. On December 3, 2014, Deputy Warden Helton issued a memorandum "...to re-emphasize that all staff shall scan in and out at the nearest KRONOS scanner to their workstation." (Appellee's Exhibit 11.) This Memorandum was issued to remind staff of a previous memorandum on this issue that had been promulgated by Helton's predecessor. The purpose was to alleviate a logjam of employees who were required to enter at the main entrance of the institution before reporting to their respective workstations throughout the building and grounds. It was a clarification of employee entry and exit procedures.

13. Appellant has argued that the Memorandum was essentially not enforceable, as it was: (1) Not contained in any adopted policy and procedure, and (2) An attempted revision of policies and procedures by institutional memorandum, which such revision is prohibited. (Appellant's Exhibit 5: Policy No. 3.14; Appellant's Exhibit 6: Policy No. EKCC 01-13-03.)

14. EKCC 03-01-01 A.9 requires:

"A staff member shall appropriately scan his ID card into and out of the institution and shall follow any entry and exit procedure."

It also requires, at A.28:

"A staff member shall follow any lawful order issued by a supervisor."

15. Deputy Warden Helton testified whether his memorandum was an "Order," "Directive," or something else. His final conclusion was that the memorandum did constitute an Order, but it was not "cut and dried." If a problem occurred with regard to the Order that was beyond an employee's control, and it constituted a valid reason for not following the



memorandum, an employee would not be penalized for failure to follow the Order.

16. The subject memorandum clarifies and supports existing policy by regulating where an employee shall scan in and out. It constituted part of the entry and exit procedure. To interpret the memorandum as desired by Appellant would mean that such memoranda as well as any post orders or regularly-given oral orders by supervisor could be challenged and be of no force and effect. As the memorandum was an Order, it required employee compliance unless an event beyond the employee's control prevented him or her from doing so. It was, therefore, enforceable in this case.

17. The evidence showed there were a number of occasional problems with the KRONOS system at EKCC, specifically on December 16, 2014, and March 11, 2015. Also, Appellee's Exhibit 15, the KRONOS timecard and audit for Appellant for the period of December 1, 2014, through December 10, 2015, was particularly troubling, as it recorded approximately 76 workday Basement scans out of 281 paid workdays. If one were to believe the data in this exhibit, it would mean Appellant did not scan in/out at the Basement for 205 workdays.

18. Appellant testified there were several times he was authorized to scan at a location other than the Basement:

- On Wednesdays, when he was assigned to the Lobby and Gate at the beginning and end of his shift. This assignment started mid-July of 2015.
- From 2014 to January 2016, he properly reported to work each Thursday at 6:00 a.m. and entered the institution at the Main Lobby, where he scanned in at Central and out at Main.

19. While the above exceptions would explain the recording of data showing Appellant scanning in/out at locations other than the Basement, it does not fully explain the discrepancies shown by Appellee's Exhibit 15.

20. KRS 18A.095(8) provides the notification requirements an employer must provide an employee prior to a suspension. It is required that a description of the specific action or activity on which the suspension is based, as well as the date, time and place of the action or activity be included. The only date of which Appellant was given notice in the January 6, 2016 suspension letter was an event specifically described as having occurred on December 2, 2015. References to the counseling sessions which occurred in December 2014, January, June and December 2015 refer to previous corrective actions taken pertaining to the issue and did not cite the time and place of the action or activity. The counseling dates do not constitute separate violations for which the Appellant was suspended.

21. Following December 2, 2015, Deputy Warden Helton asked Captain James Witt to look back at all previous incidents of Appellant clocking in and out to see if any disciplinary action should be taken. Captain Witt testified that prior to issuance of the Intent to Suspend letter, he had examined Appellee's Exhibit 15. As he had been directed to draft the intent letter, he also determined which policy had been violated.

22. If one were to lend credibility to the data reflected in Appellee's Exhibit 15, that document shows that for December 2, 2015, Appellant clocked in at Central and out at Main Hallway. The Hearing Officer takes official notice of the fact that December 2, 2015, was a Wednesday. KRS 13B.090(5). Appellant testified that beginning in mid-July 2015, on Wednesdays, he was assigned to begin his shift at the Lobby and end his shift at the Gate, and as such, he was authorized to scan in and out at the clocks closest to his assigned post for that day.

23. The evidence, at best, is conflicting as to whether Appellant violated the scanning procedures on December 2, 2015, or whether he indeed had authorization on that Wednesday to scan in and out at a location other than the Basement.

24. The Appellee has failed to show by a preponderance of the evidence that there was just cause for disciplinary action against the Appellant.

### **RECOMMENDED ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, the Hearing Officer recommends to the Kentucky Personnel Board that the appeals of **EMANUEL E. HOLBROOK VS. JUSTICE AND PUBLIC SAFETY CABINET, DEPARTMENT OF CORRECTIONS:**

1. **(APPEAL NO. 2016-045)** be **DISMISSED** with reference to the Written Reprimand of June 8, 2015; and

2. **(APPEAL NO. 2016-044)** be **SUSTAINED** with reference to the three-day suspension issued January 6, 2016. The Appellee shall remove the Suspension letter from Appellant's personnel file. Appellant should be awarded lost pay and benefits for the three days, reimbursed for any leave time used in attending pre-hearing conferences and the evidentiary hearing, and otherwise should be made whole. **[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

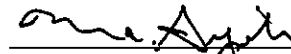
response to any exceptions that are filed by the other party within five (5) days of the date on which the exceptions are filed with the Kentucky Personnel Board. 101 KAR 1:365, Section 8(1). Failure to file exceptions will result in preclusion of judicial review of those issues not specifically excepted 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 **Hearing Officer Roland Merkel** this 20<sup>th</sup> day of February, 2017.

**KENTUCKY PERSONNEL BOARD**



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

A copy hereof this day mailed to:

Hon. Angela Cordery  
Hon. Paul Fauri