

BEFORE THE PERSONNEL BOARD OF THE STATE OF ALABAMA
IN THE MATTER OF THE APPEAL OF
ROSIE FREEMAN

ORDER

July 20, 2016

This matter came before the Board upon the dismissal of the Employee from her employment with the Alabama Department of Corrections (“DOC”). The Employee was dismissed from her employment on March 15, 2016, based on charges contained in a letter to the Employee dated March 1, 2016. This matter was assigned to Administrative Law Judge Randy C. Sallé and a hearing was held on April 28, 2016. The Administrative Law Judge’s Recommended Order is now before the Board for consideration.

DOC dismissed the Employee for the good of the service, pursuant to ALA. CODE § 36-26-27 (1975) – (“An appointing authority may dismiss a classified employee whenever he considers *the good of the service* will be served thereby, for reasons which shall be stated in writing, served on the affected employee and a copy furnished to the director...”).

A review of the Employee’s recent work history shows: two (2) Written Warnings in November 2013 for failing to use proper call-in procedures and non-compliance with policies, procedures, and regulations; and three (3) Written Reprimands between February 2011 and January 2013 for failure to

follow supervisors' instructions and abusive, profane or threatening language to other employees, inmates, or the public.

Approximately two (2) years after the Employee began work for DOC, she had knee surgery. The Employee was reassigned from the kitchen to Central Control during her rehabilitation. On or about April 17, 2013, the Employee wrote a letter asking to be hired as an Administrative Support Assistant I/Shift Clerk. The Employee tested and was placed on the register for that job classification; however, she was not reachable for appointment on the register. On April 26, 2013, the Employee was informed that she had reached her maximum limit of light duty and that if she did not qualify for another classification at the facility and if her health would not permit her to return to work as a Steward I, she would be dismissed. The Employee returned to work as a Steward I shortly thereafter, although she continued to have problems with her knee.

The Employee's physician wrote the facility and requested that she be allowed to sit constantly. On September 18, 2014, the Employee was notified that her request could not be accommodated. The work of a Steward I requires the ability to stand and walk constantly. The Employee was required to retrieve items from the pantry, monitor inmates retrieving items from the pantry, and monitor inmates who checked-out utensils (e.g., knives). On or about October 14, 2014, the Employee went into Leave Without Pay status. After exhausting her Family and Medical Leave Act ("FMLA") allowance and additional Leave

Without Pay days she was permitted to take, the Employee returned to work on March 16, 2015.

On or about April 16, 2015, the Employee's physician returned a completed Physician's Questionnaire to DOC. He indicated the Employee had arthritis and scar tissue in her knees which limited her ability to stand or walk for extended periods of time. In an effort to help, the Employee was assigned to light duty work as a Radio Operator. The Employee was scheduled to test for a clerical job and the supervisor indicated if she passed and was reachable, he would hire her for that position; he also requested that the Commissioner extend the light duty work for several months. The supervisor again indicated that if she was not able to obtain a reachable status for another position, he would be forced to dismiss her from service.

Ultimately, it became obvious that the Employee's condition would not improve and after she failed to obtain a reachable status on a register for another position, DOC dismissed her from employment. The evidence presented at hearing showed that more probably than not, the Employee was unable to perform one or more of the essential job functions of a Steward I and based upon legal precedence under the Americans with Disabilities Act ("ADA"), DOC had the authority to dismiss her from service.

The Administrative Law Judge found the totality of the evidence does warrant dismissal in this cause and recommended that the Employee's dismissal be upheld. The Board hereby adopts by reference the findings of fact

and conclusions of law as found by the Administrative Law Judge as a part of this Order as if fully set forth herein.

The Board has carefully considered the Administrative Law Judge's Recommended Order and is of the opinion that the decision of the appointing authority to dismiss the Employee is supported by the evidence and that the termination is warranted.

It is therefore the Order of this Board that the decision of the appointing authority to dismiss the Employee is hereby affirmed.



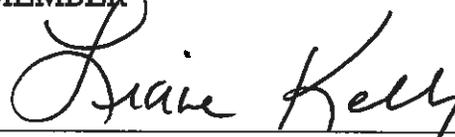
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