

**BEFORE THE STATE PERSONNEL BOARD
IN THE MATTER OF**

CEDRIC T. SPECKS,)	
)	
Appellant,)	
)	
v.)	Case No: 18-27-JJW
)	
ALABAMA DEPARTMENT OF CORRECTIONS,)	
)	
Appellee.)	

RECOMMENDED ORDER TO THE STATE PERSONNEL BOARD

The employment termination of Cedric T. Specks (hereinafter “Specks”) by the Alabama Department of Corrections (hereinafter “DOC”) gives rise to this Recommended Order. DOC charges that Specks, who in 2018 was employed as a Warden II at the St. Clair Correctional Facility (“St. Clair”), violated its Administrative Regulation (hereinafter “AR”) 208 Sections V.A.2, 6, 7, 8, 13 and 18; AR 208, Annex H Numbers 2, 3, 5, 6, 18, 25, 31 and 33; AR 012; AR 105; AR 206; AR 228; and AR 235. Additionally, DOC charges Specks violated State Personnel Board Rule 670-X-19-.01, Sections (a)(5), (a)(8), (b)(10) and (b)(13).

On February 8, 2018, the DOC Investigations and Intelligence Division (“I & I”) received information that led them to believe Specks had used his state cell phone to promote contraband into St. Clair. During the course of the investigation, the

state cell phone issued to Specks was confiscated and submitted for forensic examination.

On February 14, 2018, I & I investigators extracted data from the cell phone that contained explicit images and text messages between Specks and three women who were assigned to work at St. Clair. Two of the women were contract nurses and one was a DOC Administrative Support Assistant II (“ASA II”). On April 5, 2018, Specks admitted to the I & I investigators that he was involved in a sexual relationship with both contract nurses and had utilized both his state-issued cell phone and his state vehicle to facilitate the activity.

Specks admitted he had reached out on Facebook and in person to all three women and had each of them send him explicit photographs of their private parts. The ASA II testified she was afraid that if she did not send Specks the photographs there would be some form of reprisal from him.

Specks testified that his conduct was a common activity at DOC. He insists that his job performance was not compromised although two of his supervisors testified that they had “counseled” with Specks about his involvement with women at work after his wife had sought their assistance.¹

Specks contends his punishment is “too severe.” He says the sex was “consensual,” that others use their state-issued phones similarly for personal use, and

¹ Testimony of DeWayne Estes, DOC Warden III, and Cheryl Price, DOC Institutional Coordinator.

that the I & I investigators have brought these allegations because they could not make a case against him for promoting prison contraband.² The record does not support his contention.

Based on observation of the witnesses, the testimony, and the documentary evidence, the undersigned recommends the termination of Specks's employment with DOC be upheld.

On August 14, 2018, the undersigned conducted a *de novo* hearing ("the hearing") at the State Personnel Department Hearing Room 746 in the Folsom building in Montgomery, Alabama, during which *ore tenus* and documentary evidence was received. Robbie Alexander Hyde, Esq. appeared on behalf of DOC and Julian McPhillips, Esq. represented Specks.

At the beginning of the hearing, DOC introduced, without objection, DOC Exhibits 1-23.³ Specks offered Employee Exhibits A-C, with subparts, which were admitted. The undersigned informed the parties, without objection, that Specks's personnel file at the Alabama State Personnel Department would be included in the record as evidence in this matter.

DOC called as witnesses:

1. I & I Investigator William Colley;

² Testimony of Specks.

³ DOC Exhibits 11 and 13 were admitted, under seal.

2. Edward Ellington, DOC Institutional Coordinator (Northern);
3. A.W., Contract Nurse for DOC at St. Clair; and
4. L.M., DOC ASA II at St. Clair.

Specks called:

1. Grantt Culliver, DOC Associate Commissioner of Operations;
2. DeWayne Estes, DOC Warden III, Limestone;
3. Christopher Allen McLaurin, Correctional Officer at St. Clair;
4. Larry Baker, Correctional Lieutenant at St. Clair;
5. Kenneth Robertson, Correctional Sergeant at St. Clair;
6. Kevin White, Correctional Captain at St. Clair;
7. Cheryl Price, DOC Institutional Coordinator (Southern); and
8. Mrs. Cedric Specks.

Specks also testified on his own behalf.

I. PROCEDURAL HISTORY AND CHARGES

DOC hired Specks as a Correctional Officer Trainee.⁴ Specks became a Correctional Officer on September 13, 1997.⁵ Specks progressed through the ranks and was a Correctional Warden II at St. Clair when DOC dismissed him effective

⁴ DOC Exhibit 1, p. 50.

⁵ DOC Exhibit 1, p. 113.

June 1, 2018.⁶ The dismissal letter signed by the appointing authority, DOC Commissioner Jefferson Dunn, is dated May 31, 2018.⁷

Specks timely appealed his dismissal to the Alabama State Personnel Board, pursuant to ALA. CODE § 36-26-27(a) (1975). At the pre-hearing conference held on June 22, 2018, the appeal hearing was scheduled for August 14, 2018.

In its Statement of the Facts, DOC alleged, in pertinent part:

...

Cedric T. Specks (“Specks”) was a Correctional Warden II assigned to St. Clair Correctional Facility located in Springville, Alabama. He was employed with the ADOC for approximately twenty-one years and two months, with no breaks in service.

On February 8, 2018, the ADOC Investigations and Intelligence Division (“I & I”) received information from a confidential source that led them to believe Warden Specks may have utilized his state-issued cellular telephone to promote contraband into the St. Clair Correctional Facility. The confidential source also claimed that Nurse S.C. was assisting Warden Specks in promoting contraband into St. Clair Correctional Facility while they were in his office.

On February 14, 2018, I & I extracted data from Specks’ state-issued cellular telephone and discovered several explicit messages and images between him and three women who were currently assigned to the St. Clair Facility. Two of the women were contracted nurses (S.C. and A.W.) and one was an administrative assistant (L.M.).

On April 5, 2018, Specks was interviewed by I & I and admitted that he utilized his state-issued cellular telephone to send and receive explicit pictures and messages to both the contract and ADOC employees that were assigned to the St. Clair Correctional Facility. Specks was advised that there were 109 times that Specks had spoken with Nurse S.C. using his state-issued cellular phone. Nurse S.C. was listed as “Sgt. Champ” in the contacts. Specks admitted he used his state-issued phone so that his wife would not know of his relationships with the women employed at St. Clair. Specks also admitted that he used an app that he downloaded

⁶ DOC Exhibit 1.

⁷ DOC Exhibit 3.

onto his state phone called "calculator" to hide content on his phone such as pictures. Specks admitted that he was aware of the inappropriate messages and photographs on his state-issued phone. He received some of these of these messages and pictures during working hours. Specks stated he was involved in a sexual relationship with S.C., who was a nurse at the St. Clair Correctional Facility. He admitted that the relationship began six-seven months prior (October or November of 2017) and initially began by communicating through Facebook. Specks admitted to having met up with S.C. approximately twenty times to carry on their extra-marital affair, the first being in November 2017 and the last being in February 2018. He advised that he had left his wife in the past and met S.C. at a hotel room. Specks stated that he may have given S.C. the impression they were going to be together permanently. Specks stated he tried to separate from S.C. after their sexual meetings. Specks stated his wife found out that he was once again communicating with S.C. and advised him to leave their home, which was located on State property. Specks stated that his wife left him and that he spent two nights in a hotel with S.C. He admits to meeting S.C. in a park in Springville and meeting her at a hotel room to have sexual relations. Specks states he would use his state vehicle to meet S.C.

S.C. also sent pictures of her exposed breasts and vagina to Speaks' state-issued phone. Specks sent pictures of his exposed penis to S.C. Specks admitted to sending and receiving the pictures and admitted it was inappropriate and a violation of ADOC cell phone use policy (AR 012). Specks admitted that he was informed by a friend that I & I had access to his state-issued phone.

Specks admitted to picking up and dropping off S.C. at Walmart in Tuscaloosa, Alabama. Specks states that he believed that it was nothing unusual for staff members to have relationships with each other. While he claims to have knowledge of other staff members that use their state phones for personal phones, he also stated that he did not know for a fact that other staff members had done so. He had not reported any suspected policy violations even though it was his duty to report policy violations as a member of the executive staff.

Warden Specks contended that his effectiveness as a supervisor was not compromised by his relationships with St. Clair staff members. However, he interceded on S.C.'s behalf in an incident wherein she violated DOC policy. Specks sent an email on February 23, 2018 to DOC employee Mr. G. Culliver, where he asked Mr. Culliver to speak with MHM (medical services contractor) apparently in an attempt to lessen any potential punishment to S.C. for exiting the facility with inmates' medications in her bag. Warden Specks advised that on that day "one of our inmates needed a shot." He stated that he asked S.C. to speak with an inmate that was acting "bizarre." Warden Specks stated that he did not think about calling the sight administrator "or whatever." Specks did admit his relationship with S.C. might have influenced him to send the email to Mr. Culliver. Warden Specks stated that the inmate was taken into his office, which is not standard procedure. In fact, Nurse S.C. would often administer mental health shots

to inmates in Warden Specks' office while no other nurses were allowed to use his office. S.C. and Specks would sometimes be alone in Specks' office.

Warden Specks advised that he did not know how much medication S.C. had on her person during this incident; he just knew that she "had medicine." Warden Specks advised that it was a mental health shot. In addition, an incident report (302 report) was not completed regarding this occurrence. Warden Specks stated that it was the Correctional Officers' responsibility to type the 302 Report. Warden Specks then stated that he felt partially responsible for the incident.

Specks also admitted that he had not disclosed the sexual relationships with S.C. and A.W. to his supervisors. Nurse A.W. had also sent pictures to Specks state-issued cell phone of her exposed breasts and vagina. Further, Specks admitted that he utilized his assigned state vehicle to pick up one of the nurses at various locations and to meet the nurses at various locations. In fact, there was an "overlap" with the relationship with A.W. and S.C. Warden Specks advised like the relationship with S.C., he did not report the relationship with A.W. Warden Specks advised that the relationship with A.W. started in 2016 and ended in September or October of 2017. Specks broke off the relationship with A.W. when he started having an affair with S.C. because he did not want to cause "confusion" on the job. Specks received and read the anti-fraternization policy (AR 235), which was enacted in June 2017. Despite his knowledge of the policy, it just "did not dawn on him" to report his relationships with subordinate employees.

When interviewed by I & I, L.M., the DOC administrative assistant, stated that Specks pressured her into sending explicit pictures of her naked breasts using the telephone number for his state-issued cellular phone. She was afraid that if she did not send the photos, there would be some form of reprisal from Specks. She further stated that after she sent Specks the two explicit photos, she felt that Specks had leverage over her because of his possession of the photos. She had requested of Specks that he delete the photos, but he did not do so.

...

The memorandum of the pre-dismissal conference indicates that Specks was given an opportunity to tell his side of the story. Specks read a typed statement and stated that he has been employed with the ADOC for twenty-one years and had not received a corrective action since 2006. Specks claimed to have maintained an excellent work record at all institutions to which he was assigned. Specks stated in regard to the charges of dismissal, he did not dispute that he violated departmental rules; however, he contended that considering his overall work record, years in service and corrective action history, the punishment was excessive. ...

...

After affording Specks the opportunity to tell his side of the story and to submit any evidence, Mr. Ellington recommended that Specks be dismissed based upon his actions.

...

In accordance with Administrative Regulation 208, Section (V.) (O.), the recommended punishment for the infractions set forth above are aggravated up to dismissal based on Specks' admission that he utilized his state-issued cellular telephone to send and receive explicit pictures and messages, his admission that he used his state-issued vehicle for personal use, his admission that he had a sexual relationship with two contract employees and one ADOC support employee while they were assigned to the St. Clair Facility, and L.M.'s statement that Specks pressured her to send him explicit photos and she feared some reprisal from him if she did not send them. Having sexual relationships with ADOC and contract employees under his supervision as a warden at St. Clair Correctional Facility, transmitting/receiving explicit photos and messages on this state-issued cellular phone, and utilizing his assigned state vehicle for his person[al] use is unacceptable and inexcusable behavior for any State employee. Specks' actions also constitute a blatant misuse of his authority or position as an ADOC Warden II that cannot be tolerated. ..."

I. FACTUAL BACKGROUND

Having reviewed the documentary evidence, having heard the testimony presented at the hearing and having observed the witnesses' demeanor and assessed their credibility, the undersigned finds the greater weight of the evidence supports the following findings of fact.⁸

⁸ All references to exhibits and testimony are intended to assist the State Personnel Board in considering this Recommended Order and are not necessarily the exclusive sources for such factual findings.

A. Employee's Personnel File⁹

Specks's annual performance appraisals while at DOC reflect:

Date	Total Score	Category
06/01/2017	38	Consistently Exceeds Standards
06/01/2016	38	Consistently Exceeds Standards
06/01/2015	37	Consistently Exceeds Standards
06/01/2014	29	Consistently Exceeds Standards
06/01/2013	27	Consistently Exceeds Standards
10/01/2012	40	Consistently Exceeds Standards
10/01/2011	38	Consistently Exceeds Standards
10/01/2010	38	Consistently Exceeds Standards
08/01/2009	36	Exceeds Standards
12/15/2008	35	Exceeds Standards
08/01/2007	35	Exceeds Standards
09/30/2006	20	Meets Standards
09/01/2005	30	Exceeds Standards
09/01/2004	35	Exceeds Standards
09/01/2003	36	Exceeds Standards
11/03/2002	35	Exceeds Standards
01/01/2002	36	Exceeds Standards
01/01/2001	32	Exceeds Standards
01/01/2000	30	Exceeds Standards
01/01/1999	27	Exceeds Standards
02/28/1998	33	Exceeds Standards
08/31/1997	23	Meets Standards

Specks's prior disciplinary history at DOC includes a formal warning he received in December 2015 for making inappropriate comments regarding a correctional officer and responding inappropriately to a supervisor. He was warned

⁹ See generally State Personnel Board Rule 670-X-18-.02(5) (employee's work record, including performance and disciplinary history, considered in dismissing employee).

that, “[a]s a senior executive of the institution, care must be taken in your choice of words...” Specks was also counseled, “[t]he fallout as a result of the comments or actions could be long lasting and negatively impact the culture of the institution.”¹⁰

**B. State Personnel Board General Work Rules and DOC Policies/
Procedures Forming the Basis of the Charges**

State Personnel Board Rule 670-X-19-.01(1) General Work Rules

provides, in pertinent part:

- (1) In addition to any special rules issued by the various appointing authorities for the guidance of their employees, the following standard general work rules shall apply to all classified employees:
 - (a) Violations that normally result in disciplinary actions of increasing severity:
 -
 - 5. Abuse of equipment.
 - ...
 - 8. Violation of specific department rules.
 - (b) More serious violations that may result in suspension or discharge on the first offense.
 - ...
 - 10. Serious violation of any other department rule.
 - ...
 - 13. Conduct unbecoming a state employee.
 - ...
- (2) The listing of violations above is not meant to be all inclusive and does not imply that discipline may not be imposed for other sufficient reasons nor does it mean that termination cannot occur for the first violation.

State Personnel Board Rule 670-X-18-.02 Dismissals provides, in pertinent part:

- (1) An appointing authority may dismiss a classified employee whenever he considers the good of the service will be served thereby, for reasons which

¹⁰ DOC Exhibit 1, p. 222.

shall be stated in writing, served on the affected employee and a copy furnished to the Director, which action shall become a public record.

- ...
- (5) In all cases, before dismissing a permanent employee, the appointing authority shall consider the previous disciplinary and performance history of the employee and any progressive discipline received.

DOC Administrative Regulation 208 provides, in pertinent part:

...

V. **PROCEDURES**

- A. All ADOC employees shall adhere to the following standards:
- ...
2. Render full, efficient, and industrious service.
- ...
6. Protect and conserve funds, property, equipment, and materials.
7. Observe all laws, rules and regulations.
8. Uphold, with integrity, the public's trust involved in their position.
- ...
13. Report all instances when the ability to supervise a subordinate employee is affected by a personal and/or non-working relationship with that employee.
- ...
- B. Each employee's conduct shall, at all times, be consistent with the maintenance of proper security and welfare of the institution and of the inmates under his/her supervision.
- C. Employees shall not:
- ...
18. Use ADOC owned property or other state-owned property for his/her personal use without the approval of the Commissioner.
- ...
- ...
- N. Nothing in this regulation is intended to abrogate authority granted the Commissioner under Section 36-26-27, Code of Alabama, 1975, and 670-X-18-.02, Rules of the State Personnel Board.
- O. The Annex H table, Table of Infractions/Level of Discipline, is intended to promote consistent discipline within the ADOC and guide supervisors at all levels when the imposition of discipline becomes necessary. At times, there are mitigating or aggravating circumstances surrounding the infraction, and as such, the appropriate level of discipline may be increased or decreased in relation to the table. To maintain consistency, the imposition of

discipline that does not correspond with the table must be fully justified in writing and submitted to the ADOC Personnel Director who shall confer with the appropriate Deputy Commissioner. The Warden/Division Director requesting this variance shall be notified by the ADOC Personnel Director of the decision.

...

DOC Administrative Regulations:

- **AR 012 – USE OF TWO-WAY RADIO EQUIPMENT, CELL PHONES AND PAGERS¹¹**

- **AR 105 – USE OF STATE MOTOR VEHICLES¹²**

...

V. PROCEDURES

...

- A. Employees operating state-owned vehicles shall use these vehicles only for purposes directly related to their assigned duties and responsibilities.

...

- **AR 206 – HARRASSMENT AND DISCRIMINATION POLICY¹³**

...

II. POLICY

The ADOC:

- A. Strictly prohibits any form of harassment whether based on sex, race, color, religion, national origin, age, sexual orientation, ancestry, or disability.
- B. Strictly prohibits any form of discrimination in hiring, promotion, discharge, pay, fringe benefits, job training, classification, referral, and other aspects of employment on the basis of sex, race, color, religion, national origin, age, sexual orientation, ancestry, or disability.

...

- D. Strictly prohibits any form of reprisal or retaliation against complainants under this regulation.

¹¹ DOC Exhibit 11 (under seal).

¹² DOC Exhibit 6.

¹³ DOC Exhibit 7.

III. DEFINITION(S) AND ACRONYM(S)

A. Harassment: Any discriminatory and unwelcome conduct that is based on an individual's race, color, religion, age, sex, national origin, sexual orientation, ancestry, or disability.

B. Sexual Harassment: Any unwelcome conduct of a sexual nature, including advances, requests for favors, remarks, sounds, gestures, physical contact, and display or circulation of material, that is subjectively or objectively offensive.

...

F. Individual: Employees, contractors, volunteers, vendors, customers, visitors, and other persons involved with the ADOC.

...

• **AR 228 – EMPLOYEE SEXUAL MISCONDUCT AND SEXUAL HARASSMENT¹⁴**

...

II. POLICY

It is the policy of the ADOC to ensure that sexual misconduct or harassment by any employee is prohibited.

III. DEFINITION(S) AND ACRONYM(S)

A. Employee: For purpose of this policy only, an individual with the ADOC in a full-time, part-time, or temporary position in the state's classified or unclassified service. All other persons such as contractors, vendors, and volunteers are also subject to the ADOC's Standards of Conduct and this regulation and failure to adhere to these regulations may result in being removed and/or barred from an ADOC facility.

B. Sexual Misconduct: Any behavior or act of a sexual nature directed towards any individual by an employee, volunteer, visitor, or agency representative.

C. Sexual Harassment: Unwelcome or unsolicited sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

...

V. PROCEDURES

...

D. Examples of sexual harassment can include, but are not limited to, the following:

...

5. Conversations filled with sexually suggestive innuendoes or double meanings.

¹⁴ DOC Exhibit 9.

6. Display or transmittal of sexual suggestive images, objects, messages, or gestures.
7. Suggestions, requests for, or demands for acts of an intimate nature.

...

- **AR 235 – FRATERNIZATION POLICY**

...

- II. **POLICY**

It is the policy of the ADOC that employees must maintain a professional work environment where clear boundaries are established between employees' personal and work interactions and that their actions maintain ADOC workplace integrity.

- III. **DEFINITIONS(S) AND ACRONYM(S)**

A. **Chain of Command**: An official hierarchy of authority and supervision that dictates the activities and operations of the ADOC.

B. **Employee**: Any person employed by ADOC as a full-time, part-time, conditional, or temporary employee and all other persons such as contract employees, authorized service providers, vendors, and volunteers with any contact with ADOC.

C. **Executive Staff**: For the purposes of this AR, Commissioners, Associate/Deputy Commissioners, Division Directors, and Wardens.

D. **Inappropriate Relationships**: Relationships of whatever nature that compromise the integrity of supervisory authority or the chain of command; cause partiality or unfairness; involve the improper use of rank or position for personal gain; are exploitative or coercive in nature; create an actual or clearly predicable adverse impact on discipline, authority, morale or the ability of the ADOC to accomplish its mission.

E. **Personal Relationships**: Association between employees that includes, but is not limited to, dating, sharing living accommodations, or intimate sexual relationships.

F. **Professional Relationship**: Relationship that is formed at work that serves a critical role in the success of an employee, the employee's career, or the ADOC.

G. **Social Relationship**: Association between employees that occurs in the context of community organizations, religious activities, athletic teams and events, social functions, or family gatherings. This also includes relationships that may begin or evolve from a Professional Relationship.

...

J. **Workplace Integrity**: Involves moral judgment and character, honesty, and leadership values. Individuals who

show integrity in the workplace not only understand right from wrong, but they practice it in all they do.

IV. RESPONSIBILITIES

- A. Wardens/Division Directors shall be responsible for the implementation of this AR.
- B. All ADOC employees share the responsibility for maintaining professional relationships. All employees are responsible for the proper adherence to this AR and Institutional SOPs.

V. PROCEDURES

- A. All Personal Relationships between supervisors and an employee in his/her chain of command are prohibited.
- B. All Personal or Social Relationships are prohibited if they:
 - 1. Cause actual preference or unfairness;
 - ...
 - 3. Are unethical or threatening in nature; or
 - 4. Engage in inappropriate physical contact while on state property or during that employee's scheduled work hours; or
 - 5. Create an actual or clearly predictable adverse impact on discipline, authority, morale, or the ability of the ADOC to accomplish its mission.
- C. Disclosure of Personal Relationships by Supervisors
 - 1. Supervisors, including Executive Staff, must disclose immediately the existence of any relationship with an employee in his/her chain of command that has progressed, or is likely to progress, beyond a Professional or Social Relationship to a Personal Relationship.
 - 2. Disclosure at the institutional or divisional level shall be made to his/her Warden or Division Director. If the supervisor is part of the Executive Staff, disclosure shall be made to the ADOC EEO or the ADOC Inspector General.
 - 3. Disclosure should be in writing but may be verbal as well. The first report of this disclosure shall be documented by the designated person receiving the report.
 - 4. The receiver of the report will then take reasonable steps to mitigate the situation to remove any conflict of interest or potential conflict that may exist.
 - 5. Failure of a supervisor to voluntarily disclose the existence of any such relationship and allow the ADOC to take reasonable steps to mitigate the situation shall be subject to corrective action

pursuant to Administrative Regulation 208,
Employee Discipline.

- ...
- E. All employees shall be accountable for violations of this regulation. Violations of this policy will be subject to corrective action in accordance with AR 208.
- ...

DOC AR 208, Annex H, provides, in pertinent part:

- ...
2. Non-compliance with policies, procedures, and regulations. (First Offense: Warning; Second Offense: Written Reprimand; Third Offense: 3 days suspension; Fourth Offense: Dismissal)
3. Abuse or misuse of equipment, not causing damages. (First Offense: Warning; Second Offense: Written Reprimand; Third Offense: 3 days suspension; Fourth Offense: Dismissal)
- ...
5. Unauthorized use of telephone, bulletin boards, or other state property. (First Offense: Warning; Second Offense: Written Reprimand; Third Offense: 3 days suspension; Fourth Offense: Dismissal)
6. Participation in unauthorized activity of a minor nature at the work place. (First Offense: Warning; Second Offense: Written Reprimand; Third Offense: 3 days suspension; Fourth Offense: Dismissal)
- ...
18. Serious violations of rules, policies, procedures, regulations, laws, or reasonable conduct expectations. (First Offense: Written Reprimand; Second Offense: 2 days suspension; Third Offense: 3 days suspension; Fourth Offense: Dismissal)
- ...
25. Abuse or misuse of authority, including but not limited to departmental property and/or ADOC identification cards/items. (First Offense: Written Reprimand; Second Offense: 3 days suspension; Third Offense: Dismissal)
- ...
31. Harassment or discrimination as defined in Administrative Regulation 206, *Harassment and Discrimination Policy.* (First Offense: 3 days suspension; Second Offense: Dismissal)
- ...
33. Conduct that is disgraceful, on or off the job that does adversely affect an employee's effectiveness on the job. (First Offense: 3 days suspension; Second Offense: Dismissal)
- ...

C. Facts Forming the Basis of Dismissal

Specks abused his authority as a Warden II at DOC by engaging in predatory sexual exploitation of subordinates at St. Clair. Specks admits he reached out on Facebook and in person to three women who were employed at St. Clair. He asked for and received on his state-issued cell phone photographs of the breasts and vaginas of the two nurses and the breasts of the DOC ASA II. His request for the photos and engaging in salacious conversation with the women clearly violates AR 228. Specks's behavior closely fits the definitions and examples of both sexual misconduct and sexual harassment outlined in AR 228, DOC's Employee Sexual Misconduct and Sexual Harassment Policy. Although two of the women seemingly provided the photos willingly, there is nothing in the record that suggests his initial requests were solicited by the women. Specks claims, "everybody at DOC engages in similar conduct." However, Specks demonstrated guilty knowledge of his actions by attempting to hide the explicit photographs in an encrypted "photo vault" app on his state-issued phone that was labelled as and appeared to be a calculator, and by storing S.C.'s contact information in his phone under a misnomer.

Specks engaged in extra-marital sexual relations with Nurse S.C. and Nurse A.W. over a number of months in 2016, 2017 and part of 2018. Specks abused the use of his state-assigned vehicle by using it to facilitate his sexual trysts.

Specks claims his sexual escapades did not affect his work at DOC; however, two different supervisors testified they counseled him not to engage in extra marital activities after his wife brought his activities to their attention. Both Cheryl Price and DeWayne Estes testified they had tried to provide guidance to Specks. According to testimony at the hearing from his supervisors and subordinate correctional officers, Specks was a hands-on, highly visible, and largely effective warden. He received consistently high ratings on his annual performance appraisals. However, Specks knowingly violated AR 235, DOC's Fraternization Policy, which unequivocally states, "All personal relationships between supervisors and an employee in his/her chain of command are prohibited." AR 235 establishes by clear definition that contract employees (*i.e.*, contract nurses) are considered employees for purposes of the policy and it defines personal relationships, in part, as "intimate sexual relationships." Specks insists the sexual relationships he had with the two nurses were consensual; however, the text messages exchanged between Specks and S.C. (produced under seal in DOC Exhibit 13) detail a troubled relationship in which the nurse, at times, threatens Specks with disclosure of their affair. The relationship was less than amiable and could have potentially adversely affected St. Clair operations.

Specks seeks to paint a picture of himself as a DOC employee who has been singled out and punished for personal, incidental use of his state-issued and owned

cell phone. However, the record reflects the personal use complained of includes his not only receiving naked photos of three women he was responsible for supervising, either directly or indirectly at St. Clair, but also sending pictures of his exposed penis to at least one of the females. Further, the cell phone was used for conversations of an intimate nature that included vulgar language and to arrange trysts with the nurses. This cannot be characterized as innocent personal usage and clearly violates AR 012, DOC's Use of Two-Way Radio Equipment, Cell Phones and Pagers Policy which, in part, prohibits "communications containing obscene, indecent, profane words, language or meaning."

Specks's pressuring of L.M. to send him explicit photographs amounts to classic sexual harassment by a superior of a subordinate in violation of AR 206, DOC's Harrassment and Discrimination Policy. By virtue of his executive position, Specks manipulated the three women to follow his bidding. His conduct was egregious, abusive, unconscionable, and worthy of contempt by objective observers. Specks has rationalized his unbecoming behavior by alleging that others at DOC engage in it. Specks, in his testimony, seemed to think it was acceptable conduct. It was not, is not, and cannot be in a well-regulated institution. Not only was Specks's conduct wrong, it affected his judgment and hurt his ability to be an effective administrator. L.M. observed his spending time in his office alone with

S.C. and also knew Specks had been involved with A.W.¹⁵ On February 23, 2018, Specks sent an e-mail to Grantt Culliver, DOC Associate Commissioner of Operations, and asked him to intervene in a disciplinary matter between Nurse S.C. and her direct employer that involved her having exited the St. Clair facility with psychotropic drugs prescribed to inmates on her person.¹⁶ This e-mail was ill-advised and not in the best interest of maintaining security at St. Clair. In fact, DeWayne Estes, Warden III at St. Clair at the time of the incident, subsequently recommended S.C. be barred from all DOC properties as a result of the incident.¹⁷ The text messages exchanged between Specks and S.C. also reflect discussions involving confidential information including the movement of an inmate within the facility.¹⁸ It is also clear that Specks shared confidential information with S.C. when they spoke in person including reassignment of DOC personnel to different DOC institutions.¹⁹

¹⁵ DOC Exhibit 15.

¹⁶ DOC Exhibit 18.

¹⁷ DOC Exhibit 20.

¹⁸ DOC Exhibit 12.

¹⁹ DOC Exhibit 19.

II. ISSUE

Did DOC produce sufficient evidence to sustain Specks's dismissal based upon violations of the State Personnel Board Rules and DOC rules, regulations, policies and procedures?

III. DISCUSSION

The purpose of the administrative appeal is to determine if the termination of the employee's employment is warranted and supported by the evidence. *Kucera v. Ballard*, 485 So. 2d 345 (Ala. Civ. App. 1986); *Thompson v. Alabama Dept. of Mental Health*, 477 So. 2d 427 (Ala. Civ. App. 1985); *Roberson v. Personnel Bd. of the State of Alabama*, 390 So. 2d 658 (Ala. Civ. App. 1980). In *Earl v. State Personnel Board*, 948 So. 2d 549 (Ala. Civ. App. 2006), the Alabama Court of Civil Appeals reiterated:

“[D]ismissal by an appointing authority ... is reviewable by the personnel board only to determine if the reasons stated for the dismissal are sustained by the evidence presented at the hearing.”

Id. at 559, quoting *Johnston v. State Personnel Bd.*, 447 So. 2d 752, 755 (Ala. Civ. App. 1983).²⁰

²⁰ The Alabama Court of Civil Appeals went further to hold: “both this court and the circuit court must take the administrative agency's order as ‘prima facie just and reasonable’ and neither this court nor the circuit court may ‘substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.’” *Id.* at 559, citing ALA. CODE § 41-22-20(k) (1975); *State Dept. of Human Res. v. Gilbert*, 681 So. 2d 560, 562 (Ala. Civ. App. 1995).

In determining whether an employee's dismissal is warranted, the departmental agency bears the burden of proving the charges warrant termination by a "preponderance of the evidence." The law is well settled that a "preponderance of the evidence" standard requires a showing of a *probability* that the employee is guilty of the acts as charged. There must be more than a mere possibility or one possibility among others that the facts support the disciplinary action at issue. The evidence must establish that *more probably than not*, the employee performed, or failed to properly perform, as charged. *See Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 117 S.Ct. 1953, 138 L.Ed. 2d 327 (1997), holding that a "significant possibility" falls far short of the Administrative Procedure Act's preponderance of the evidence standard. *See also Wright v. State of Tex.*, 533 F.2d 185 (5th Cir. 1976).²¹

An administrative agency must act within its constitutional or statutory powers, supporting its decision with substantial evidence. "Substantial evidence has been defined as such 'relevant evidence as a reasonable mind might accept as adequate to support a conclusion,' and it must be 'more than a scintilla and must do more than create a suspicion of the existence of a fact to be established.'" *Alabama*

²¹ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981), the Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions handed down prior to the close of business on September 30, 1981.

Alcoholic Beverage Control Bd. v. Tyson, 500 So. 2d 1124, 1125 (Ala. Civ. App. 1986).

The undersigned has carefully observed and carefully considered the witnesses' demeanor, testimony, and all the documentary evidence in this case and finds that the preponderance of the evidence establishes Specks knowingly violated multiple DOC policies regarding anti-fraternization and sexual misconduct. Further, he grossly misused his authority, his state-owned cell phone and motor vehicle.

Specks pressured L.M. in a classic violation of DOC's Sexual Harassment Policy, and engaged in sexual trysts with two contract nurses, some occurring during normal working hours (*i.e.*, ostensibly during his lunch break). Specks demonstrated his abuse of power and his disregard for the rights of others in the screenshot of A.W., where he threatens her.²² Specks's conduct was disgraceful, and unbecoming of a state employee.

Specks feels his punishment is too severe and suggests it goes beyond the punishment outlined in AR 208. However, the undersigned finds DOC properly considered Specks's conduct pursuant to AR 208, V.O. which provides that Annex H merely serves as a "guide" and the imposed level of discipline may be increased

²² DOC Exhibit 23.

depending on “aggravating circumstances.” Among the aggravating circumstances considered were, by his own admission, that Specks had used his state-issued cell phone and vehicle in furtherance of his exploitation of the three women at St. Clair and that he had sexual relationships with the two contract nurses. The ASA II’s statements that she felt coerced into sending Specks naked photos of her breasts and afterward felt Specks had leverage over her because he had the photos were also taken into account. Edward Ellington, an Institutional Coordinator for DOC, stated in his recommendation of dismissal, “Your conduct constitutes a blatant misuse of your authority and position as Warden II at St. Clair.”²³

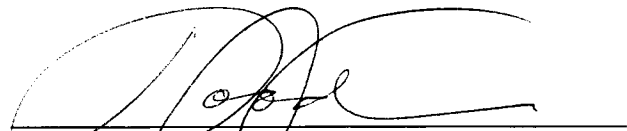
DOC Commissioner Jefferson Dunn wrote in the dismissal letter, “Having reviewed the Warden’s Notice of Intent to Recommend Dismissal including associated documents and your overall work record, I do hereby order your dismissal for the good of the service to be effective the close of business June 1, 2018.” State Personnel Board Rule 670-X-18-.02 unambiguously states, “An appointing authority may dismiss a classified employee whenever he considers the good of the service will be served thereby.” DOC AR 208 ratifies this principle under Section V.N. which reads, “Nothing in this regulation is intended to abrogate authority granted the Commissioner under Section 36-26-27, Code of Alabama, 1975, and 670-X-18-.02, Rules of the State Personnel Board.

²³ DOC Exhibit 4.

Specks believes his long tenure, performance record, and lack of extensive disciplinary history should outweigh his violations and mitigate his punishment, but these factors were not persuasive to those at DOC charged with making the decision regarding appropriate discipline for him and are not considered mitigating by the undersigned given the totality of Specks's violations.

DOC followed its own extant rules and procedures and those of the State Personnel Board and established to the satisfaction of the undersigned that the preponderance of the available direct, circumstantial and testimonial evidence supports Specks's dismissal.

Done, this the 1st day of October 2018.



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