

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

COREY SYKES,)	
)	
Appellant,)	
)	
v.)	Case No: 18-16-JJW
)	
ALABAMA DEPARTMENT OF)	
CORRECTIONS,)	
)	
Appellee.)	

RECOMMENDED ORDER TO THE STATE PERSONNEL BOARD

The employment termination of Corey Sykes (hereinafter “Sykes”) by the Alabama Department of Corrections (hereinafter “DOC”) gives rise to this Recommended Order. DOC charges that on December 12, 2017, Sykes violated its Administrative Regulation 208 (hereinafter “AR 208”), Employee Standards of Conduct and Discipline, Sections V.A.2, 7, and 8; V.C.7, 10, 12, and 20; and Annex H.2, 10, 18, 33, and 46. Additionally, DOC charges Sykes violated State Personnel Board Rule 670-X-19-.01(a)(8), (b)(10), and (b)(13).

Sykes has worked for DOC for approximately eleven years and was previously disciplined by DOC on two occasions for bringing property (*e.g.*, cell phone, laptop, i-Pod, cigarettes, Gatorade, etc.) into a DOC institution that was not previously authorized or approved by the Warden. He was suspended for three days following each incident.

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

On August 7, 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. Carrie Shaw, Esq. and Kate Jessip, Esq. appeared on behalf of DOC. Joseph Guillot, Esq. represented Sykes.

At the beginning of the hearing, DOC introduced, without objection, DOC Exhibits 1-21. Sykes offered Employee Exhibits 1-7, which were admitted, including Exhibit 6 to which DOC objected. Employee Exhibit 6 was received for such consideration as it might deserve, if any. The undersigned informed the parties, without objection, that Sykes'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. Correctional Warden III Cynthia Stewart, Holman Correctional Facility ("Holman");
2. Investigative Agent Leroy Dale, DOC Investigations and Intelligence Division ("I & I");
3. Correctional Lieutenant Michael Banks, Holman; and

4. Correctional Officer Nathan McQuirter, Holman.

Sykes called Correctional Warden II Terry Raybon, Holman, and testified on his own behalf.

I. PROCEDURAL HISTORY AND CHARGES

DOC hired Sykes on October 16, 2006 as a Correctional Officer Trainee.¹ Sykes became a Correctional Officer on December 1, 2007.² Sykes remained in that classification until DOC dismissed him effective February 23, 2018.³ The dismissal letter (“dismissal letter”) signed by the appointing authority, DOC Commissioner Jefferson Dunn, is dated February 22, 2018.⁴

Sykes 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 March 12, 2018, the appeal hearing was scheduled for May 17, 2018. The parties jointly moved for a continuance resulting in the hearing being set for August 7, 2018.

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

...

¹ DOC Exhibit 1, p. 50.

² DOC Exhibit 1, p. 113.

³ DOC Exhibit 1, p. 64.

⁴ DOC Exhibit 3.

Corey Sykes (“Sykes”) was a Corrections Officer assigned to Holman Correctional Facility located in Atmore, Alabama. He was employed with the ADOC for approximately 11 years.

On December 12, 2017, Sykes’s was observed giving an inmate, who is housed in the Restrictive Housing Unit at Holman Correctional Facility, two (2) extra-large Tupperware bowls and one (1) Tupperware cup. The bowls and cup were confiscated from the inmate’s cell. The bowls contained lasagna and salad, and the cup contained salad dressing.

During an interview with investigators, Sykes admitted to bringing the food into the facility and giving it to the inmate. Sykes did not have the authority or prior authorization from the warden to give the inmate food. When questioned where the food came from, Sykes stated it was left over from a party for Sykes’s father. It was also revealed during a search of Sykes’s personal vehicle that he had a personal firearm inside of his vehicle without the Warden’s permission.

On January 2, 2018, a preliminary notice was received from ADOC Investigations and Intelligence (“I & I”) Division regarding information obtained from Sykes’s personal cell phone. The notice reveals that Sykes intentionally gave false information to I & I about where, and/or from whom, Sykes got the food that was provided to the restrictive housing inmate. The text messages on Sykes’s phone also show that Sykes was texting another inmate who is assigned to Holman’s Death Row Unit. Sykes did not have prior authorization to communicate by text with an inmate or an inmate’s family members from the warden, as required by ADOC regulation.

Based on the aforementioned facts, it is clear that Mr. Sykes provided false information and/or verbal/written statement in connection with employment, investigation, or injury; conspired with an inmate to bring contraband and/or unauthorized items into the facility without permission; communicated with inmates and inmates’ families without permission; and jeopardized the safety and security of the inmates and staff at the facility.

In a letter dated February 5, 2018, Mr. Sykes was given notice of a pre-dismissal conference to be held on February 8, 2018. A pre-dismissal conference was held on Thursday, February 8, 2018. After affording Mr. Sykes the opportunity to tell his side of the story and to submit any evidence, Warden Cynthia Stewart recommended that Mr. Sykes be dismissed based upon his actions.

Mr. Sykes's actions violated ADOC's Administrative Regulation 208 – Employee Standards of Conduct and Discipline with respect to the following provisions:

Section V.A.2. - Employees shall render full, efficient, and industrious service;

Section V.A.7. - Employees shall observe all laws, rules, and regulations;

Section V.A.8 - Employees shall uphold, with integrity, the public's trust involved in their position;

Section V.C.7. - Employees shall not correspond or fraternize socially with an inmate or an inmate's family, unless approved by the Warden/Director of the employee and of the inmate;

Section V.C.10. - Employees shall not introduce into any institution or bring upon an ADOC state property any article or property that is not authorized by written directive nor has the approval of the Warden/Division Director;

Section V.C.12. - Employees shall not carry any weapon, chemical agents, or ammunition into the institution or on the grounds of any ADOC state property, except as authorized by the Warden/Division Director;

Section V.C.20. - Employees shall not provide false information, alter an investigation or incident report, and/or intentionally omit facts pertinent to the inquiry;

Annex H.2 - Non-compliance with policies, procedures, and regulations;

Annex H.10 - Failure to perform job properly, not resulting in actual consequences;

Annex H.18 - Serious violations of rules, policies, procedures, regulations, laws, or reasonable conduct expectations;

Annex H.33 - Conduct that is disgraceful, on or off the job that does adversely affect an employee's effectiveness on the job;

Annex H.46 - Giving false information or verbal/written statement in connection with employment, investigation, or injury.

Additionally, Mr. Sykes's actions violated State Personnel Rules, 670-X-19-.01, with respect to the following provisions:

- (a) Violations that normally result in disciplinary actions of increasing severity:
 - (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 of a state employee.

A review of Sykes's prior disciplinary action reveals the following:

1. April 27, 2017: Written Reprimand Failure to follow supervisor's instructions; non-compliance with policies and procedures; leaving assigned post before the end of the shift without permission from proper authority or relief (2/25/17).
2. March 16, 2017: Written Reprimand Failure to perform job properly, not resulting in actual consequences; violation of safety/security regulations/procedures when the consequences are serious, but consequences do not occur (1/29/17).
3. December 9, 2015: Written Reprimand Refusal of a supervisor's instruction to remain on duty during a shortage or personnel situation and/or emergency situation (7/31/15).
4. March 13, 2015: Written Reprimand Serious violations of rules, policies, procedures, regulations, laws, or reasonable conduct expectations (8/19/14).

5. February 9, 2010 Suspension Taking into any ADOC facility any article, item, or property which is not authorized by regulation, or without the approval of the Warden/Division Director; serious violations of rules, policies, procedures, regulations, laws, or reasonable conduct expectations (7/28/09).
6. April 17, 2009: Written Reprimand Failure to follow supervisor's instructions; non-compliance with policies and procedures (9/9/08).
7. June 21, 2007: Suspension Non-compliance with policies, procedures and regulations; disagreeable behavior, including lack of cooperation and insubordination; serious violation of rules, policies, procedures, regulations, laws, or reasonable conduct expectations; abuse or misuse of authority, including but not limited to departmental property and/or ADOC identification cards/items (12/7/06).

Based on the regulations as set forth in Administrative Regulation 208, Annex H, Number 46, the appropriate action for giving false information or verbal/written statement in connection with employment, investigation, or injury is dismissal on the first offense. Further, due to [the] presence of numerous aggravating circumstances as contemplated by Administrative Regulation 208.V.O, dismissal is also appropriate for Sykes's four additional infractions set forth in Annex H.2, Annex H.10, Annex H.18, and Annex H.33. Warden Cynthia Stewart and Chief of Staff Steve Brown recommended that Sykes be dismissed. Commissioner Jefferson S. Dunn then approved the dismissal by and through his designee effective at the close of business on February 23, 2018.

...

II. 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.⁵

A. Employee's Personnel File⁶

Sykes's performance appraisals while at DOC reflect:

Date Ending	Total Score	Category
04/01/2017	27	Exceeds Standards
04/01/2016	27	Exceeds Standards
04/01/2015	13	Partially Meets Standards
04/01/2014	23	Meets Standards
04/01/2013	28	Exceeds Standards
04/01/2012	28	Exceeds Standards
04/01/2011	30	Exceeds Standards
04/01/2010	11	Partially Meets Standards
04/01/2009	31	Exceeds Standards
05/31/200	32	Exceeds Standards
06/08/2007	24	Meets Standards

⁵ 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.

⁶ See generally State Personnel Board Rule 670-X-18-.02(5) (employee's work record, including performance and disciplinary history, considered in dismissing employee).

Sykes's prior disciplinary history is listed above in **I. Procedural History and Charges.**

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 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:

...

(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.

...

DOC Administrative Regulation 208 provides, in pertinent part:

...

V. **PROCEDURES**

A. All DOC employees shall adhere to the following standards:

...

2. Render full, efficient, and industrious service.

...

7. Observe all laws, rules and regulations.

8. Uphold, with integrity, the public's trust involved in their position.

...

...

C. Employees shall not:

...

6. Trade, barter or accept a gift or give a gift to an inmate, or an inmate's family, or any other person on behalf of an inmate, or those on parole.

7. Correspond or fraternize socially with an inmate or an inmate's family, unless approved by the Warden/Director of the employee and of the inmate.

...

10. Introduce into any institution or bring upon an ADOC state property any article or property that is not authorized by written directive nor has approval of the Warden/Division Director.

...

12. Carry any weapon, chemical agents, or ammunition into the institution or on the grounds of any ADOC state property, except as authorized by the Warden/Division Director.

...

20. Provide false information, alter an investigation or incident report, and /or intentionally omit facts pertinent to the inquiry.

...

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...

...

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)

...

10. Failure to perform job properly, not resulting in actual consequences. (First Offense: Written Reprimand; Second Offense: 2 days suspension; 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)

...

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)

...

46. Giving false information or verbal/written statement in connection with employment, investigation, or injury. (First Offense: Dismissal)

...

B. Facts Forming the Basis of Dismissal

On December 12, 2017, Sykes brought containers of food into Holman. Sykes admits he took the food to Inmate Demarcus Chavers ("Chavers"), who is housed in Holman's Restrictive Housing Unit, without permission from the Warden.⁷ Sykes testified he did this as a gesture to "help stop the violence" within the institution. Sykes said he determined that Chavers had influence to stop the stabbings and other violence within the facility.

⁷ DOC Exhibit 12.

Sykes testified that he was contacted by Kenyetta Robinson (“Robinson”), a friend of Chavers, through a barbershop on Holcomb Street in Mobile. Robinson asked Sykes to give some “free world food” to Chavers if he had the opportunity. Sykes testified Robinson gave him and his wife two plates of lobster and snow crab legs from Red Lobster, which she delivered to him at the Walmart located just off I-65.

Sykes says the food he brought in to Chavers was left over from a birthday party that he attended either the Saturday or Sunday before December 12, 2017. Sykes says he had already planned to give Chavers some food before Robinson asked him to do it.⁸

Immediately prior to taking the food containers to Chaver’s cell, Sykes was confronted by Correctional Officer Nathan McQuirter (“McQuirter”), who was in the cubicle. McQuirter testified he asked Sykes if he was going to “do that in front of me.” McQuirter says Sykes told him he had seen Chavers’s mother prepare the food and pack it so it was “ok.” McQuirter reported Sykes’s actions to Correctional Sergeant Earl who involved Correctional Lieutenant Michael Banks (“Lt. Banks”), the Shift Commander on December 12. McQuirter and Lt. Banks searched Chavers’s cell shortly after Sykes delivered the food to Chavers.⁹ A cell phone and

⁸ DOC Exhibits 7-10 show phone extraction reports reflecting that Sykes communicated with both Chavers and Robinson by texts and phone.

⁹ DOC Exhibit 13.

a SIM card were recovered from Chavers. McQuirter said there was a “big chunk missing from the food about the size of a cell phone.” McQuirter opined, “[e]verybody knows Sykes is dirty.”

Leroy Dale (“Dale”), I & I, investigated this matter and received “consent” to search Sykes’s vehicle, from which he recovered a Glock pistol and a cell phone. Sykes did not have the Warden’s permission to have the Glock on the premises.¹⁰ Dale seized the cell phone and got a search warrant¹¹ for it and obtained “extraction reports” which comprise DOC Exhibits 7-10. The reports show interaction between Robinson (#3047), Sykes and Chavers (#7547). Dale’s investigative report is contained in DOC Exhibit 13.

Sykes feels his punishment is too severe and suggests it goes beyond the punishment outlined in AR 208. Warden III Cynthia Stewart recommended Sykes be terminated from his employment with DOC. She considered AR 208, Section V.O. and determined that considering the totality of the circumstances, Sykes’s disciplinary record, and the fact that Sykes had brought in contraband on two prior occasions, that he was untrustworthy and that his ethics were “beyond repair.”

¹⁰ On advice of Dale, Sykes got permission from the Warden after the fact.

¹¹ DOC Exhibit 14.

III. ISSUE

Did DOC produce sufficient evidence to sustain Sykes's dismissal based upon violations of the State Personnel Board Rules and DOC Rules, Regulations, Policies and Procedures?

IV. 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).¹²

¹² 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).¹³

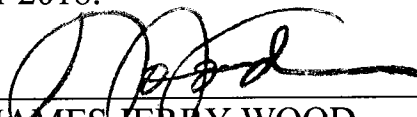
An administrative agency must act within its constitutional or statutory powers, supporting its decision with substantial evidence. "Substantial evidence has been defined as such 'relevant evidence as a reasonable mind might accept as adequate to support a conclusion,' and it must be 'more than a scintilla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

¹³ 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 Sykes is not trusted by his co-workers,¹⁴ that he willfully violated DOC's policies by bringing in food to Chavers, by interacting with Robinson, who is Chaver's friend, and accepting a gift of food from her, and that by his disciplinary record shows he may be a source of some of the ubiquitous contraband plaguing DOC. The prevailing opinion of those who recommended or endorsed his employment termination is that Sykes's "ethics are compromised beyond repair," and in his co-worker's words, Sykes "is dirty." DOC followed its own 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 Sykes's dismissal.

Done, this the 24th day of September 2018.



JAMES JERRY WOOD
Administrative Law Judge
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¹⁴ Testimony of McQuirter.

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