

**BEFORE THE PERSONNEL BOARD OF THE STATE OF ALABAMA
IN THE MATTER OF THE APPEAL OF
BRANDON D. HILL**

ORDER

November 28, 2018

This matter came before the Board upon the dismissal of the Employee from his employment with the Alabama Department of Transportation ("DOT"). The Employee was dismissed from his employment on August 8, 2018 based upon charges contained in a letter on the same day. This matter was assigned to Administrative Law Judge Randy C. Sallé and a hearing was held on this matter on October 19, 2018. The Administrative Law Judge's Recommended Order is now before the Board for consideration.

DOT charges that the Employee failed to comply with his responsibilities under the Family and Medical Leave Act ("FMLA"). The Employee violated the following standards under DOT's FMLA Policy and Procedure Manual: Restoration and Fitness for Duty, and Employee's Continued Illness after Exhaustion.

A review of the Employee's recent work history shows: one (1) Verbal Warning on October 11, 2017, for failing to follow safety precautions and failing to follow a supervisor's instructions; and one (1) Counseling on October 30, 2017 for a violation of DOT's Attendance/Punctuality Policy.

The Employee was employed by DOT as an Engineering Assistant III. In October 2017, the Employee began exhibiting erratic behavior while on the job. This included standing in the roadway with a traffic cone on his head. The Employee then stated he was a traffic cone. The Employee's erratic behavior continued over the next few months. On April 2, 2018, the Employee's Supervisor referred him to the State of Alabama Employee Assistance Program ("EAP"). On the EAP referral, the supervisor included the following reasons: absenteeism; decline in job perform; difficulty communicating or interacting with others; safety or mental health concern; and substance abuse issue or positive drug screen. During the meeting, the Employee was given FMLA paperwork and instructions. The Employee also requested and was given paperwork regarding the Americans with Disabilities Act ("ADA"). On May 7, 2018 the Employee's physician sent completed FMLA paperwork to DOT. The physician indicated that the Employee was unable to perform his job and would need to be off work from March 26, 2018 through June 26, 2018. On a letter dated May 11, 2018, the Employee was approved for FMLA leave until June 26, 2018. In the letter the Employee was reminded that he would be expected to return to work on June 27, 2018. It also stated that the Employee would need a letter from his physician stating his ability to return to work.

On June 9, 2018, the Employee returned his ADA Essential Function Questionnaire and marked that he was "ready for work" and could complete

all his required tasks “without accommodation.” However, the Employee’s form was not signed by a physician. On June 11, 2018 DOT received a letter from the Employee’s physician stating he had received the ADA Essential Function Questionnaire and concluding his letter by stating, “The patient’s present condition does not permit him to work safely and reliably. I have instructed the patient to remain off work and to apply for short term disability benefits while treatment of his past condition is pursued.” After receiving this letter, DOT extended the Employee’s FMLA leave until July 18, 2018. The Employee was sent another letter reminding him his FMLA leave would be exhausted on July 18, 2018 and that he would need a letter from his physician documenting his fitness to return to work. On July 19, 2018, DOT sent the Employee a letter notifying him that he had exhausted his FMLA leave. DOT noted that the Employee did not return to work and did not provide a return to work letter from his physician. DOT warned the Employee that if he did not return to work on the next scheduled workday with documentation of his fitness, then he would be regarded as having voluntarily resigned his employment with the State. The Employee did not return to work.

The Employee violated FLMA rules by exhausting his days without providing additional documentation from his physician. The Employee also violated FMLA by not returning to work on the date set by DOT. DOT gave the Employee ample time to consult with his physician and get cleared for work.

However, the Employee never provided DOT with a letter from his physician stating his readiness to work.

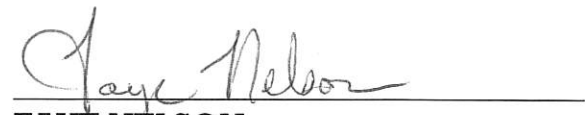
The Administrative Law Judge found the totality of the evidence does warrant dismissal in this cause and recommended that the Employee's dismissal be upheld. The Board hereby adopts by reference the findings of fact and conclusions of law as found by the Administrative Law Judge as a part of this Order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