

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

BELINDA JOHNSON,)	
)	
APPELLANT,)	
)	
v.)	CASE NO. 20-03-JJW
)	
ALABAMA BUREAU OF)	
PARDONS AND PAROLES,)	
)	
APPELLEE.)	

**RECOMMENDED ORDER TO THE
STATE PERSONNEL BOARD**

The employment termination of Belinda Johnson (hereinafter “Johnson”) by the Alabama Bureau of Pardons and Paroles (hereinafter “ABPP”) gives rise to this Recommended Order. ABPP charges that Johnson violated Alabama State Personnel Board (“SPB”) Rule 670-X-19-.01(1)(a)4, Failure to perform job properly; 670-X-19-.01(1)(b)6, Falsification of records; 670-X-19-.01(1)(b)12, Disruptive conduct of any sort; and 670-X-19-.01(1)(b)13, Conduct unbecoming a State employee.¹

Johnson was employed by ABPP as a Personnel Manager II beginning November 16, 2017. Johnson began working as a State of Alabama employee in

¹ ABPP’s Disciplinary Actions Policy (ABPP Exhibit 4) correlates with SPB General Work Rules. Johnson is charged with violating ABPP Disciplinary Actions Policy, General Work Rules, No. 4, Failure to perform job properly; No. 14, Falsification of records; No. 19, Disruptive conduct of any sort; and No. 20, Conduct unbecoming a State employee.

April 1982 with the Department of Revenue. During her tenure, she worked for the Department of Transportation, the Department of Labor (formerly, the Department of Industrial Relations), the Department of Corrections, and the Department of Insurance before coming to ABPP in November 2017. Johnson has over 21 years of experience as a personnel manager.

Johnson was previously reprimanded for failing to perform her job properly on September 17, 2012, while working for the Department of Insurance. Johnson filed a discrimination complaint in November 2009 alleging she should have been promoted to a higher classification.

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

On December 10, 2019, the undersigned conducted a *de novo* hearing ("the hearing") at the offices of the Alabama State Personnel Department in Montgomery, Alabama, during which *ore tenus* and documentary evidence was received. Greg Locklier, Assistant Attorney General, and Meridith Barnes, ABPP General Counsel, Deputy Attorney General, represented ABPP. Johnson was *pro se*.

At the beginning of the hearing, ABPP Exhibits 1-24 were admitted. The undersigned informed the parties, without objection, that Johnson's personnel file at

the Alabama State Personnel Department would be included in the record as evidence in this matter.

ABPP called as witnesses:

- (1) Tara Hetzel, General Counsel, State Personnel Department;
- (2) Jo Wood, ABPP Chief Financial Officer;
- (3) Tyler Blake, ABPP Probation and Parole Officer;
- (4) Kevin Blackburn, ABPP, Assistant Attorney General;
- (5) Charles Hawthorne, Deputy District Attorney, 15th Judicial Circuit;
- (6) Lance Driskell, State Trooper, ALEA; and
- (7) Chareka Pickens, ABPP Parole Officer Trainee.

Johnson called:

- (1) Stinetta Timmons, ABPP ASA II Personnel Division; and
- (2) Jalaine Pruitt, ABPP ASA I Personnel Division.

Johnson testified on her own behalf.

I. PROCEDURAL HISTORY AND CHARGES

Johnson began work at ABPP as a Personnel Manager II (10852) effective November 16, 2017. Johnson had previously worked in personnel and human resources positions in various State agencies. On October 18, 2019, Johnson was terminated from her employment with ABPP.

Johnson timely appealed her dismissal to the Alabama SPB, pursuant to ALA. CODE § 36-26-27(a) (1975). At the prehearing conference held on November 7, 2019, the appeal hearing was scheduled for December 10, 2019.

In its Statement of Facts, ABPP alleged, in pertinent part:

Belinda Johnson was employed with the BPP as a Personnel Manager II since November 16, 2017. By a letter dated September 11, 2019, Ms. Johnson was notified of the recommendation to terminate her employment based upon charges of failing to perform her job properly; falsification of records; disruptive conduct; and conduct unbecoming of a state employee. On September 17, 2019, Ms. Johnson appeared at her pre-disciplinary hearing with her attorney, Julian McPhillips, and responded to the charges. On October 17, 2019, the hearing officer presiding over the pre-disciplinary hearing recommended the termination of Ms. Johnson finding sufficient evidence to support each charge...

Following are the formal charges against Ms. Johnson for which she was terminated, followed by facts or references to facts supporting each charge.

A. CHARGE 1

State Personnel General Work Rule 670-X-19-.01(a)(4), Failure to perform job properly; Alabama Board of Pardon and Paroles October 25, 2018 “Disciplinary Actions” Policy – General Work Rules, Section 4 “Failure to perform job properly.”

SUPPORTING FACTS

On June 28, 2019, the State of Alabama Personnel Department (“SPD”) Director, Jackie Graham, sent Ms. Johnson a letter addressing “serious concerns” over her failure to adequately perform fundamental responsibilities of her job, including her “failure to properly process Certifications of Eligibles,” “request the appropriate register,” and “acquire approval prior to appointment.” Director Graham’s letter provided specific examples of these issues and others.

While all the errors discussed in Director Graham’s letter are serious, one of the most egregious errors was Ms. Johnson’s failure to properly code applicants on at least three certifications.

One such situation involved certifications for Probation and Parole Officer Trainee (60899), dated March 15, 2019 and May 16, 2019. Normal practice in BPP’s Personnel Division dictates that a subordinate employee handles this process

under Ms. Johnson's supervision, however, she handled this certification herself. Candidate Lance Driskell submitted his letter of availability on March 20, 2019, noting his affirmative interest in the position. He submitted an affirmative availability letter again on May 24, 2019 and June 30, 2019. Yet, Ms. Johnson wrongly coded him "F" two separate times. One time was on the March 15, 2019 certification, which was returned by Ms. Johnson on May 6, 2019 to SPD, and then again on the May 16, 2019 recertification, returned to SPD on June 19, 2019.

Another certification was for Attorney II (11532), dated April 19, 2019. Ms. Johnson also handled this certification herself. She sent letters of availability to candidates on April 25, 2019. Using a coding system, she was responsible for reporting to the SPD whether candidates had failed to respond to the letters. She knew, or should have known, that candidates who failed to respond would be placed in inactive status on the register. She subsequently coded several candidates as "F," which indicates they failed to respond. At least five Attorney II candidates she coded "F" complained to SPD and requested that the Department place them back in active status when they received notice of inactivation because Ms. Johnson falsely reported to the SPD that the five candidates failed to respond to letters of availability. Two of the five candidates, Attorneys Gregory Pool and Wendy Reese, produced email confirmations that Ms. Johnson received their letters. BPP correspondence shows Ms. Johnson sent Ms. Reese's affirmative availability letter, stamped received by her on May 8, 2019, to the hiring BPP Division head, Kevin Blackburn. Another of the five candidates, Attorney Charles Hawthorne, never received an availability letter in April 2019 (but did receive one for a previous June 2018 BPP employment process). This individual did not respond in April 2019 (because he did not know to respond.) He was surprised when he received notice of his inactive status and contacted SPD to have his status corrected, forwarding the last availability letter he received/returned. Ms. Johnson included a purported April 25, 2019 availability letter to this individual to SPD when she returned the certification and coded this individual as "F." Ms. Johnson's failure to properly process certifications and code these individuals denied them potential employment opportunities during the period of time they were in inactive status.

A similar issue involved a certification worked for Programmer Analyst (10517), dated May 14, 2019. Candidate Shealia Burton complained about being placed in inactive status after she was wrongly coded "F." This candidate submitted her affirmative interest to interview. The BPP Personnel Division sent the hiring Division head, IT Director Ira Shaw, a copy of the availability letter Ms. Burton submitted, and she was interviewed by Director Shaw. Yet, Ms. Johnson wrongly coded her "F" when she processed the certification back to SPD. The SPD also had to correct Ms. Burton's status after she complained.

Ms. Johnson also made errors, as detailed by Director Graham, on processing certifications involving the following individuals: John C. Leverette, DeMarcus Weems, Troy Buchanan, ChaReka Pickens, and Courtney Hardy. Ms. Johnson improperly requested Mr. Leverette's appointment following a requested

cancellation be “backdated.” Three of these individuals (Mr. Weems, Mr. Buchanan, and Ms. Pickens) had to be placed in exempt positions until they could be properly and legally appointed. In exempt positions, these employees’ retirement status was negatively affected, they were unable to obtain subsistence pay, and they were unable to accrue leave or compensatory time. Mr. Hardy was prematurely granted permanent status and it was necessary to recoup the increase in pay Mr. Hardy erroneously received. Because of Ms. Johnson’s numerous mistakes, the SPD had to develop an IT coping solution to limit Probation and Parole Officer Trainee (60899) and Probation and Parole Officer (60901) to conditional appointments. The SPD has had to monitor the progression of BPP’s new hires and their completion of the Alabama Peace Officers Standards and Training Commission (APOSTC) Academy, even though it does not do this for any other state law enforcement agency, after admonishing Ms. Johnson multiple times for not properly monitoring it herself, as it was her duty to do. Specifically, SPD Analyst Julie Carden was tasked with notifying Ms. Johnson by email each time a name is added to Probation and Parole Officer register.

As addressed in Director Graham’s letter, Ms. Johnson also failed to submit requests for new appointments to the Finance Director as required. Ms. Johnson’s actions were described by Director Graham as a “chronic failure to follow standard rules, policies, and procedures.” The numerous mistakes identified, and Ms. Johnson’s lack of attention to correcting those mistakes when they were brought to her attention, were deemed “unacceptable” by Director Graham, especially considering her long tenure in state service. As such, Ms. Johnson caused undue stress, unnecessary work, tension, and issues between, among, and within BPP and the SPD. In fact, systems and processes within the Department were developed solely to compensate for Ms. Johnson’s repeated errors and shortcomings.

A second letter dated August 7, 2019 from SPD Payroll Audit and Records Manager Sherry Grable to Ms. Johnson, indicated a separate failure on her part to request a raise for Tyler Blake. Ms. Grable reluctantly agreed in this letter to retroactively pay Mr. Blake to lessen further negative impact on the employee. In making the request for retroactive payment (dated July 19, 2019), Ms. Johnson attempted to blame SPD for not adding Mr. Blake to the raise list based on a document she produced after-the-fact showing Mr. Blake listed on purported November 20, 2018 correspondence. However, none of the records received by SPD from the Agency, including the actual November 20, 2018 correspondence on file at SPD, show Mr. Blake’s name.

Significant and chronic failures were also identified regarding Ms. Johnson’s responsibility to ensure that the Agency’s payroll information is properly entered into the Governmental Human Resource System (“GHRS”). Her failures included entry of incorrect information or delayed GHRS information entry. The errors caused State Finance Department’s Payroll Section to report numerous errors as “payroll rejections” to BPP and resulted in disruption and unnecessary work within and outside BPP (i.e., investigation and manual corrections by the Payroll

Section.) The following individuals were involved with reported rejection errors for which Ms. Johnson was responsible: Alicia Truss, Ken Fetzer, Randall Massey, Alton Knight, Courtney Rudolph, Diontranet Brown, John Bishop (twice), Dana Michelle Cone, Shanna Turpin, Charles Cooper and Della Zene.

Ms. Johnson's errors concerning retirement information for employees Courtney Rudolph and Ellen Tate were also identified. Once reported by Retirement Systems of Alabama ("RSA") these impacted employees were required to pay the difference in the amount due for their service period in retirement contributions. BPP was also required to pay its applicable employer contribution.

Additionally, occupational tax issues were identified for the following employees: Jessica Billingsley, Terry Cauthen, and Diontranet Brown (not paying Birmingham occupational tax); Jerald Jackson (wrongfully paying Birmingham occupational tax); and Meghan Bonify (wrongfully paying Bessemer occupational tax). These errors had to be brought to Ms. Johnson's attention for correction and negatively impacted BPP employees and local governments.

Ms. Johnson failed to return a Probation and Parole Specialist Register (60932), number 181100258 for 162 days. She submitted notice of the vacancy on November 27, 2018 and never cancelled or returned the register for recertification. SPD Analyst Thomas Patterson had to contact her to address the situation on May 8, 2019.

Ms. Johnson was also responsible for causing unjustified delay of an ASA appointment to the Agency's Vernon (Lamar County) field office. The Vernon position remained vacant for over six months to the detriment of the office, agency, and local stakeholders. It took a complaint from a local judge to prompt action necessary to fill the vacant position. Documentation specifically shows that Ms. Johnson did not submit an initial request for the matter to State Personnel Classification and Pay until March 4, 2019, when requisite approval was provided January 18, 2019. Ms. Johnson also did not follow up in writing with SPD until May 8, 2019.

Likewise, Ms. Johnson caused unnecessary delay over the processing of a 5% special merit raise for Agency Accounting Division Director Jo Wood. Ms. Wood's special merit raise was approved by the Board on May 14, 2019, yet a Finance Director approval request was not submitted by Ms. Johnson until June 5, 2019. Ms. Johnson also did not request placement of the matter on the State Personnel Board agenda until such time as all BPP matters were placed on hold pending a leadership transition.

A request with requisite BPP approval to fill two vacant positions in Andalusia remained unresolved as of the date of the Notice of Recommended Termination of Employment of Ms. Johnson. Interviews should have been

conducted to fill these critical vacancies in February 2019. When interviews were finally conducted, no candidates were interested.

Ms. Johnson also took several months to fill a vacant ASA III position in Huntsville (from the receipt of February 2019 approval to May 2019 action), a position that was ultimately filled by Monica Nash.

Finally, new employee paperwork for the Director, Angela Miller, and Dani Moore, was hand-delivered to Ms. Johnson on August 19, 2019. However, the paperwork was not timely processed. The first day of work for Ms. Miller and Ms. Moore was September 3, 2019, and the paperwork had not been processed by such date. On or about September 6, 2019, Ms. Miller learned that her new hire paperwork had not been processed and she did not have coverage for health insurance with the State Employee Insurance Board. The unprocessed paperwork which contained personally identifiable information was subsequently discovered in Ms. Johnson's Office on September 9, 2019.

The foregoing facts constitute Ms. Johnson's significant failure to perform her job properly to the detriment of the Agency, its employees and the State of Alabama.

B. CHARGE 2

State Personnel General Work Rule 670-X-19-.01(b)(6), Falsification of records; Alabama Board of Pardons and Paroles October 25, 2018 "Disciplinary Actions" Policy – General Work Rules, Section 14 "Falsification of records."

SUPPORTING FACTS

Please refer to the facts detailed after Charge 1 herein which also support Charge 2. Ms. Johnson's actions concerning her wrongful coding of candidates as "F," in conjunction with statements she made during the certification processing constitute falsification of records. Ms. Johnson made specific statements on multiple occasions to hiring supervisor Kevin Blackburn in relation to the Attorney II (11532) certification to the effect of: "you have a problem with your division" and "you need diversity." These comments and the fact that the wrongly coded Attorney II candidates who complained were all coded "1" (or white) shows Ms. Johnson intended to screen the register by manipulating candidate status to accomplish what she considered needed diversity in the Agency's Legal Division. In other words, Ms. Johnson falsely coded candidates as "F" when she knew they were actually interested because they had submitted their affirmative availability. She also failed to send an availability letter to at least one white candidate and included a purported letter to him, dated April 25, 2019, in the certification packet she returned to SPD. The evidence shows Ms. Johnson did these things in order to pare down the number of white candidates on the register.

Also, Ms. Johnson submitted correspondence to SPD on July 16, 2019, attaching manufactured correspondence that she indicated had been sent by her to SPD on November 20, 2018. Her July 16, 2019 letter suggests that SPD was responsible for the mistake involving Tyler Blake based on the manufactured correspondence, which listed Tyler Blake. However, SPD records show that the November 20, 2018 correspondence actually received by SPD from BPP does not list Tyler Blake as it should have. When Ms. Johnson realized her mistake, she created a false “correct” November 20, 2018 record after-the-fact. She used this false “correct” record to infer the error was SPD’s and not her fault, when in fact, the false “correct” record had not been sent to SPD as represented by her. Thus, Ms. Johnson’s subsequent correspondence to SPD, attaching the manufactured correspondence listing Tyler also constitutes falsification of records.

C. CHARGE 3

State Personnel General Work Rule 670-X-19-.01(b)(12), Disruptive conduct of any sort; Alabama Board of Pardons and Paroles October 25, 2018 “Disciplinary Actions” Policy – General Work Rules, Section 19 “Disruptive conduct of any sort.”

SUPPORTING FACTS

Please refer to the facts detailed after Charge 1 and Charge 2 herein which also support Charge 3. The facts constitute disruptive conduct in that Ms. Johnson’s actions, inactions, misrepresentation, and chronic inattention to her responsibilities as BPP’s Personnel Manager caused BPP employees to lose pay, benefits, and suffer other adverse impacts. Moreover, Ms. Johnson caused employees to perform work before their valid appointment and cycle in and out of positions to remedy her mistakes, creating instability and extra work for Personnel Division staff within BPP and staff at SPD, including to the point that systems and procedures have been developed by SPD solely to compensate for her failures. Ms. Johnson’s mistakes also created unnecessary work for the State Finance Department’s Payroll Section and the Retirement Systems of Alabama. Her conduct caused numerous complaints to be lodged with SPD, which SPD had to investigate and address. Ms. Johnson created administrative issues that overflowed to SPD, the State Finance Department, and RSA.

D. CHARGE 4

State Personnel General Work Rule 670-X-19-.01(b)(13), Conduct unbecoming a state employee; Alabama Board of Pardons and Paroles October 25, 2018 “Disciplinary Actions” Policy – General Work Rules, Section 20 “Conduct unbecoming a state employee.”

SUPPORTING FACTS

Please refer to the facts stated after Charge 1 through Charge 3 herein which also support Charge 4. Ms. Johnson’s conduct as detailed herein constitutes conduct unbecoming a state employee. Ms. Johnson’s actions are unacceptable and embarrassed BPP within the community of state government and impacted BPP’s relationships with SPD, the State Finance Department and RSA.

...

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.²

A. Employee’s Personnel File³

Johnson’s performance appraisals while in State service at ABPP reflect:

Date Ending	Total	Score Category
03/01/2019	35.6	Exceeds Standards
05/15/2018	34.4	Exceeds Standards

- Johnson served in the Department of Insurance from 2004 until her appointment at ABPP. All her appraisals were “Exceeds Standards” or above.

² All references to exhibits and testimony are intended to assist the SPB in considering this Recommended Order and are not necessarily the exclusive sources for such factual findings.

³ See *generally* SPB Rule 670-X-18-.02(5) (employee’s work record, including performance and disciplinary history, considered in dismissing employee).

- Johnson served two tenures at the Department of Labor, first from 1995 to 1998, and again from 2000 until her transfer to the Department of Insurance in 2004. All her appraisals were “Consistently Exceeds Standards.”
- Johnson served at Department of Corrections from 1998 until 2000. Her appraisals were “Exceeds Standards” or “Consistently Exceeds Standards.”
- Johnson served at the Department of Transportation from 1990 until 1995, where her appraisals were “Consistently Exceeds Standards.”
- Johnson served at the Department of Revenue from 1982 until 1990, where the majority of her appraisals were “Exceeds Standards.”

Johnson has no prior disciplinary history at ABPP. She received a written reprimand in 2012 while employed as a Personnel Manager I at the Department of Insurance.

B. SPB General Work Rules and ABPP Disciplinary Actions Policy

General Work Rules Forming the Basis of the Charges

SPB Rule 670-X-18-.02 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 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.

SPB Rule 670-X-19-.01 provides, in 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:

...

4. Failure to perform job properly.

...

(b) More serious violations that may result in suspension or discharge on the first offense.

...

6. Falsification of records – Application for employment, time card, doctor’s excuses, etc.

...

12. Disruptive conduct of any sort.

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.

ABPP Disciplinary Actions Policy, General Work Rules, reads in pertinent part:

In addition to any special rules issued by the Board [of Pardons and Paroles] for the guidance of agency employees, the following standard general work rules shall apply to all classified employees, in accordance with guidelines established by the State Personnel Board Rule 670-X-19-.01:

...

Violations that normally result in disciplinary actions of increasing severity:

...

4. Failure to perform job properly.

...

More serious violations that may result in suspension or discharge on the first offense, considering work record and length of service:

...

14. Falsification of records – Application for employment, time card, doctor's excuse, etc.

...

19. Disruptive conduct of any sort.
20. Conduct unbecoming a State employee.

...

C. Facts Forming the Basis of Dismissal

Johnson has served in personnel positions in five different State agencies. In late 2017, she began working at ABPP as a Personnel Manager II. The entire responsibility for all aspects of ABPP's personnel needs were now hers.

The testimony of Tara Hetzel ("Hetzel") outlining the numerous difficulties experienced by the State Personnel Department ("SPD") in dealing with the ABPP Personnel Division during Johnson's tenure supports the decision to terminate Johnson's employment. Hetzel explained the formal notice to Johnson contained in the letter to her from SPD Director Jackie Graham ("Director Graham") dated June 28, 2019.⁴ Among other things, Director Graham's letter details the egregious errors occasioned by improper coding of candidate responses which had deleterious effects on their prospects for employment in State service. Individuals were placed "inactive" on registers such that they did not appear on subsequent "certifications" to agencies seeking employees. The undersigned heard testimony from Tyler Blake, Jo Wood, Kevin Blackburn, Charlie Hawthorne, Lance Driskell and ChaReka Pickens, all of whom were adversely impacted by actions or failures to act by the ABPP Personnel Division under Johnson's supervision.⁵ Johnson says she was understaffed and had too heavy a workload, but she produced no credible evidence

⁴ ABPP Exhibit 6.

⁵ ABPP Exhibit 12.

to that effect. Similarly, Johnson did not offer any evidence indicating she had attempted to obtain additional staffing or realignment of her division's workload. The testimony of Hetzel detailed a "chronic failure on Johnson's part to follow standard rules, policies and procedures."⁶

Johnson suggests she was not given an opportunity to correct problems. However, the testimony and documentary evidence indicate the repetitive nature of many of the errors attributable to ABPP's Personnel Division under Johnson's short tenure there. Director Graham's letter succinctly reads:

More importantly, these errors have negatively impacted citizens seeking employment with the Board, employees of the Board, as well as the Board itself. This is particularly troubling, and quite frankly, unacceptable, considering your long tenure in State Government as a Departmental Personnel Manager.⁷

The testimony of Jalaine Pruitt ("Pruitt"), a subordinate who reported directly to Johnson, with reference to Tyler Blake ("Blake") is troubling and not credible. Pruitt stated that she added Blake's name to ABPP's November 20, 2018 raise list following receipt of his annual appraisal.⁸ The November 20 raise list sent from ABPP to the SPD did not include Blake's name. Johnson's involvement in Blake's name being added to the list at some point after November 20, 2018 is not clear.

⁶ ABPP Exhibit 6, p .4.

⁷ *Id.*

⁸ ABPP Exhibit 7, see pp. 188 and 193. The p. 193 document was not received by the SPD.

However, it is undisputed that Johnson later supplied former ABPP Director Eddie Cook (“Cook”) with the revised list including Blake’s name causing Cook and Blake to believe SPD had erred in not timely processing Blake’s raise. Cook sent a letter dated July 16, 2019 to SPD that read, in part, “In November 2018, we submitted a request to add Mr. Blake to the December 2018 raise list along with several others. All raises additions [*sic*] on the memo were processed except Mr. Blake’s.”⁹ Sherry Grable, SPD Payroll/Audit Manager, sent a response letter to ABPP dated August 7, 2019, which read, in part,

I am attaching our copy of the additions to the raise list submitted by Pardons and Paroles and received at SPD ... Mr. Blake clearly does not appear on any list. You should determine where the error occurred within your agency to ensure no further incidents of this nature happen as they adversely affect your employees.

Johnson’s conversations with Kevin Blackburn about the lack of diversity in ABPP’s Legal Division coupled with the subsequent incorrect coding of applicants on the Attorney II Register which resulted in them being placed on an “inactive” list for future certifications make her actions suspect.¹⁰ Johnson did the “coding” herself according to Stinetta Timmons (“Timmons”), an ASA II who worked in ABPP’s Personnel Division, who said she recognized Johnson’s handwriting on the

⁹ ABPP Exhibit 8. Johnson supplied Blake with the text from Cook’s letter that blamed SPD for the error by e-mail on July 19, 2019.

¹⁰ During the hearing, Johnson stated that she did not recall telling Kevin Blackburn the Legal Department lacked diversity. However, prior to the hearing, Johnson acknowledged she made the statement. See ABPP Exhibit 1, p. 47.

register. It is troubling that most of the adverse “code” errors were on white Attorney II applicants. Timmons testified Johnson reviewed all registers prior to their return to State Personnel, including the one involving Gregory Pool.¹¹ The record reflects five applicants were miscoded. Johnson insists there was no attempt to falsify the register and the incorrect codes were simply clerical errors. To believe the incorrect codes were not the product of falsification means Johnson made at least five mistakes in coding one register. According to Timmons, it “is out of the ordinary to have multiple errors on one register.”¹² In addition to the five Attorney II candidates, Lance Driskell and Shealia Burton, a candidate for a programmer analyst position, were also coded incorrectly on registers.

Timmons said there were communications issues in the ABPP Personnel Division, and that task processing could have been improved. Timmons says she only got some “on-the-job training” with no formal training. Timmons said she and Johnson handled most of the registers during 2019. Johnson was responsible for training, procedural processes, and workload distribution.

III. ISSUE

Did ABPP produce sufficient evidence to sustain Johnson’s dismissal based upon violations of SPB and ABPP General Work Rules?

¹¹ ABPP Exhibit 14.

¹² ABPP Exhibit 1, p. 35

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).¹³

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

¹³ 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).

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).¹⁴

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

The undersigned has carefully observed and considered the witnesses’ demeanors, testimony, and all the documentary evidence in this case and finds that the preponderance of the evidence establishes that ABPP followed extant rules and procedures, and had a proper basis and the authority to discharge Johnson from her

¹⁴ 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.

employment for chronic failure to do her job properly and her repeated failures to follow SPB policies, rules and procedures. ABPP proved by a preponderance of the evidence that Johnson violated SPB General Work Rules and corresponding ABPP Disciplinary Actions Policy General Work Rules by:

- Failing to properly process registers for vacant positions;
- Failing to timely request registers, resulting in delay of filling vacancies;
- Failing to properly code registers;
- Failing to monitor the progress of ABPP Officer Trainees, resulting in the placement of employees in exempt positions which caused the employees to lose pay and benefits;
- Recommending permanent status for employees who have not completed probation;
- Failing to submit requests to SPD with the required approval from State Finance;
- Failing to monitor information submitted into GHRS resulting in payroll errors, retirement contribution errors and occupational tax issues for several employees;
- Failing to timely process a special merit increase; and
- Failing to timely process employee annual merit increases.

These chronic failures demonstrate that Johnson is unwilling or unable to competently perform the duties of a Personnel Manager II. As the Personnel Director for ABPP, Johnson was responsible for supervising the employees of the Personnel Division and ensuring all personnel matters were processed accurately and timely. While some of the mistakes Johnson is charged with were made by her staff members, the ultimate responsibility for those errors rests with Johnson. ABPP cannot condone this volume of errors from an employee with over 21 years of personnel management experience. The errors have adversely impacted ABPP employees and ABPP job candidates. Further, the errors have served to disrupt operations in other State agencies including the SPD, the Finance Department, and the Retirement Systems of Alabama as employees in those agencies have spent inordinate amounts of time fielding communications from ABPP employees and applicants who have been negatively affected and finding solutions to the issues.

Johnson believes her long tenure with the State, performance record, and lack of extensive disciplinary history should outweigh her rule violations and mitigate her punishment, but these factors were not persuasive to those at ABPP charged with making the decision regarding appropriate discipline for her.¹⁵ Pursuant to SPB Rule 670-X-19.-01(2), the suggested progressive discipline outlined within the SPB

¹⁵ SPB Rules were amended in 2015 removing the provision that an employee's length of service should be considered in dismissal.

General Work Rules does not “mean that termination cannot occur for the first violation.” Further, ABPP’s Disciplinary Actions Policy reads, “The Board reserves the right to bypass any of the progressive discipline steps...” and, “The progressive discipline concept is not suitable for use with cases of such severe infractions that immediate disciplinary action of a more severe nature is needed.” Given the totality of Johnson’s poor job performance during her short tenure with ABPP and the fact that falsification, disruptive conduct and conduct unbecoming a State employee are serious violations of SPB General Work Rules, the undersigned finds no appropriate basis for a lesser disciplinary action than dismissal.

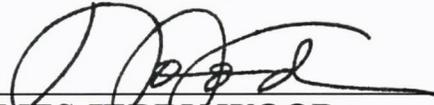
ABPP Director Charles Graddick wrote in Johnson’s dismissal letter, “... I am terminating your employment with this agency **effective immediately, October 18, 2019**. This action in my belief is for the good of the Bureau.”¹⁶ SPB Rule 670-X-18-.02 unambiguously states, “An appointing authority may dismiss a classified employee whenever he considers the good of the service will be served thereby...”

Johnson has a pending complaint against ABPP suggesting she is being discriminated and retaliated against based on race and politics. The undersigned heard no evidence on this matter in connection with this dismissal appeal.

¹⁶ ABPP Exhibit 3.

Therefore, the undersigned recommends to the SPB that the dismissal be
UPHELD.

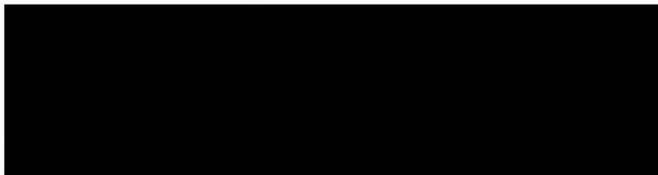
Done, this the 22nd day of January 2020.



JAMES JERRY WOOD
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