



complaint against the AOWB and Melissa Hines (“Hines”), AOWB Executive Director, in the U.S. District Court alleging racial discrimination and retaliation.<sup>2</sup>

The witnesses’ testimony, observation of the witnesses’ demeanors and the documentary evidence lead the undersigned to a recommendation that the termination of Joiner’s employment with the AOWB be upheld.

On November 8, 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. Chad Lee, Esq. appeared as counsel on behalf of Joiner and Paul R. Cooper, Esq. appeared on behalf of the AOWB.

At the beginning of the hearing, AOWB introduced Exhibits 1-17 with subparts. All exhibits except AOWB Exhibits 7, 8 and 14 were admitted. Joiner offered no exhibits. The undersigned informed the parties, without objection, that Joiner’s personnel file at the Alabama State Personnel Department would be included in the record and reviewed as evidence in this proceeding.

The AOWB called as witnesses:

- (1) Arthur “Bo” Header, a licensee of AOWB;
- (2) Melissa Hines, Executive Director of AOWB;

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<sup>2</sup> ALJF, *ibid.*, p. 3.

(3) David R. Mastin, General Manager of Cass Environmental and AOWB Member;

(4) Randall Paul Anderson, prior AOWB Chair;

(5) Leigh Willis, Alabama Department of Public Health (“ADPH”) Director of Community Environmental Protection and AOWB Member;

(6) Sherry Bradley, ADPH Health Service Administrator 4;

(7) Russell Harry, ADPH; and

(8) Tracy Welch, Secretary, AOWB.

Joiner testified on his own behalf. Hines was recalled as a rebuttal witness by AOWB.

## **I. PROCEDURAL HISTORY AND CHARGES**

Joiner was employed by AOWB on October 2, 2006 as a Licensing/Regulatory Compliance Field Officer. Joiner served as such until his dismissal by the appointing authority on September 20, 2019.<sup>3</sup>

Joiner timely appealed his dismissal to the Alabama State Personnel Board (“SPB”) pursuant to ALA. CODE § 36-26-27(a).<sup>4</sup> At the prehearing conference held on October 10, 2019, the parties selected November 8, 2019 for the hearing. The hearing was held as scheduled.

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<sup>3</sup> AOWB Exhibit 17.

<sup>4</sup> ALJF, letter (September 27, 2019).

In its amended short statement of facts, AOWB alleged, in pertinent part:

Pursuant to the Scheduling Order dated October 10, 2019, I am providing a short statement of the facts that sets forth the factual basis and the particular sections of State Personnel Board Rule 670-X-19-.01 and/or departmental agency policies, rules and regulations.

1. On July 30, 2019 – In the Quarterly Board Meeting Joiner was eating pork skins and taking phone calls which was loud and disruptive.

This violates Administrative Rule 670-X-19-.01(1)(a)3 Inattention to job – Doing anything distracting while on the job; 670-X-19-.01(1)(b)12 – Disruptive conduct of any sort; 670-X-19-.01(1)(b)13 – Conduct unbecoming a state employee.

2. On Monday, August 19, 2019, at a staff meeting, Licensing Compliance Field Officers Policy and Procedures revised (Policy ID #2019-008) was distributed to all employees. August 26, 2019, Robert signed the policy and returned to the Executive Director Melissa Hines. Mr. Joiner failed to follow these procedures as follows:

A. Does not prepare itinerary according to policy.

B. Did not provide Executive Director a folder with ODAR (Onsite Daily Activity Report), itinerary, expense report and activity sheets from the previous week.

C. Did not provide detailed itinerary of coming week.

D. Failed to follow investigation procedure on the Junior Olvera complaint.

This violates Rules 670-X-19-.01(1)(b)2 – Insubordination – Failure to follow an order, disobedience; 670-X-19-.01(1)(a)4 – Failure to perform job properly; Licensing Compliance Field Officers Policy and Procedures revised (Policy ID 2019-008). ODAR Policy #2019-005.

This has been an ongoing problem with the failure to follow the procedures under Licensing Compliance Field Officers Policy and Procedure as revised (Policy ID # 2019-008); and its predecessor, Policy # 2018-060518, and ODAR Policy # 2019-005.

3. On August 22, 2019, Joiner visited a licensee and discussed confidential information regarding another licensee. A formal complaint was filed against Joiner by the licensee. This violates 670-X-19-.01(1)(b)13 – Conduct unbecoming a state employee; 670-X-19-.01(2) – Other sufficient reasons: Breach of confidentiality, discussing complaint information regarding a licensee with the public; defaming, or slandering a licensee, bringing the name and integrity of the Board in jeopardy, actions which result in a threat of legal action against the Board.

4. On Tuesday, September 10, 2019, Joiner did not communicate his whereabouts with the Executive Director or staff at any time during the day.

This violates 670-X-19-.01(1)(a)1 – Unreported absence; 670-X-19-.01(1)(b)2 – Insubordination – Disobedience, Failure to follow an order; 670-X-19-.01(1)(a)4 – Failure to perform job properly; 670-X-19-.01(2) Not reporting whereabouts, skipping work.

5. On Wednesday, September 11, 2019, Joiner failed to follow policy/protocol regarding the investigation of a complaint by going to the Shelby County Health Department and enlisting them without the Executive Director's approval.

This violates 670-X-19-.01(1)(a)4 – Failure to perform job properly; 670-X-19-.01(1)(b)2 – Insubordination, and Licensing Compliance Field Officers Policy and Procedures revised (Policy ID # 2019-008).

6. That Joiner has a history of insubordination and being disciplined as noted in the February 2019 disciplinary hearing and resulting Order of the Hearing Officer, which resulted in his suspension for 14 days.

a. On July 30, 2018, a staff meeting was called to discuss professional conduct and maintaining confidentiality [of] the operations of the Board. Joiner stated that he was a grown man and that the Executive Director, Melissa Hines, couldn't tell him who he could and could not talk to. Then, he refused to sign the memo of the staff meeting.

b. Failure to follow Compliance Officers Procedures (Policy 2018-060518) – On August 6, 2018, Joiner was issued a written warning to follow procedures – he failed to submit weekly schedules for director's approval and failed to call in on August 3, 2018.

c. On January 24, 2019 at a Board Meeting, Joiner displayed un-professionalism and discourtesy by talking over board members during their reports, arguing unnecessarily with board members, meeting with installers before and after the Board Meeting in the lobby and informing them what to do, exhibiting discourteous hand and eye gestures when disagreeing with board members at the board meeting, displaying a lack of respect at board meetings, interrupting the Executive Director continuously when she is speaking to an audience, group, or board members.

d. During the latter part of 2018 to January 2019, Joiner failed to follow policy and procedures 2018-060518 by failing to complete weekly itineraries such as scheduling compliance visits and turning in activity sheets.

These acts violated Rules 670-X-19-.01(1)(b)2 – Insubordination – Failure to follow an order, disobedience; 670-X-19-.01(1)(a)4 – failure to perform job properly; Licensing Compliance Field Officers Policy and Procedures Policy # 2018-060518.

7. Other acts of insubordination, lack of professionalism, discourtesy, and disrespect are as follows:

a. On June 7, 2017, while at the Lee County Health Department in regard to the Health Department's portable restroom complaint against an individual, you became discourteous and

argumentative on the phone with Lee Willis, of the State Health Department, in front of her employees.

b. That on June 19, 2017 in Wedowee (Lake Side Marina), Joiner exhibited discourtesy, a lack of professionalism and protocol toward Leigh Willis, a Health Department employee in regard to the closure of a restaurant in regard to a Health Department Complaint on the closure of a restaurant for septic tank problems.

c. On May 1, 2019 in a telephone call, Joiner intimidated fellow staff member Tracy Welch, and accused her and another staff member of being untruthful before the Board, and the reason for being laid off, which he was not.

These violate Rule 670-X-19-.01(1)(b)2 – Insubordination; 670-X-19-.01(1)(b)5 – use of abusive or threatening language; 670-X-19-.01(1)(b)12 – Disruptive conduct; 670-X-19-.01(1)(b)13 – Conduct unbecoming of a state employee; and 670-X-19-.01(2) – Intimidation and threatening of a witness in regard to a disciplinary hearing, and false accusations against fellow staff members.

Joiner was dismissed from employment with AOWB effective September 20, 2019 based on Joiner’s violations of 670-X-19-.01(1)(a)1, 3, 4, 8; (b)2, 12, and 13; and (2).

## II. FACTUAL BACKGROUND

Having reviewed the documentary evidence, having heard the witnesses’ testimony, having observed the witnesses’ demeanor and assessed their credibility, the undersigned finds the greater weight of the evidence supports the following findings of fact.<sup>5</sup>

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<sup>5</sup> 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 fa

**A. Employee's Personnel File<sup>6</sup>**

Joiner's performance appraisals while at AOWB reflect:

<b>Date Ending</b>	<b>Total Score</b>	<b>Category</b>
02/01/2019	33.3	Exceeds Standards
02/01/2018	35.7	Exceeds Standards
02/01/2017	38.3	Consistently Exceeds Standards
02/01/2016	33.0	Exceeds Standards
02/01/2015	30.0	Exceeds Standards
02/01/2014	28.0	Exceeds Standards
02/01/2013	29.0	Exceeds Standards
02/01/2012	33.0	Exceeds Standards
02/01/2011	30.0	Exceeds Standards
02/01/2010	27.0	Exceeds Standards
02/01/2009	29.0	Exceeds Standards
02/01/2008	34.2	Exceeds Standards
04/01/2007	20.0	Meets Standards

Joiner was suspended for 14 calendar days on May 6, 2019 for "continued" violations of SPB Rules 670-X-19-.01(1)(a)(3)(4)(8); (b)(2)(12)(13). Joiner was given a written reprimand on June 19, 2017 for improper protocol involving the interaction with ADPH regarding the Lakeside Marina Restaurant closure and the Lee County/Robert Saggus portable restroom complaint.<sup>7</sup>

In matters of insubordination, SPB Rule 670-X-19-.01(b)2 provides for possible termination on a first offense.

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<sup>6</sup> See generally SPB Rule 670-X-18-.02(5) (employee's work record, including performance and disciplinary history, considered in dismissing employee).

<sup>7</sup> AOWB Exhibit 1, pp. 1-2. Joiner rebutted this discipline at AOWB Exhibit 1, pp. 3-4.

## **B. SPB General Work Rules and AOWB Policies/Procedures**

### **Forming the Basis of the Charges**

SPB Rules 670-X-19-.01(1)(a)(3)(4)(8); (1)(b)(2)(12)(13); and (2) provide, in pertinent parts:

(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:

....

3. Inattention to job – Doing anything distracting while on the job.

4. Failure to perform job properly.

...

8. Violation of specific department rules.

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

...

2. Insubordination – Failure to follow an order; disobedience; failure to submit to authority as shown by demeanor or words, with the one exception of not following an order which the employee has good reason to believe is unsafe or illegal.

...

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.

### **C. Facts Forming the Basis of Dismissal**

The facts of this matter are reasonably clear and uncomplicated. Joiner was employed by AOWB in 2006 as a Licensing/Regulatory Field Compliance Officer. Joiner was able to live in Roanoke, Alabama and work from there coming to the AOWB offices in Montgomery as required and setting his weekly schedule each Monday.

When Joiner came to work at AOWB, Hines was Executive Secretary for the Director. Hines became the Executive Director of AOWB in November 2017. Joiner's conduct beginning in 2017 demonstrates a lack of respect for Hines's authority and a lack of appreciation that she and the AOWB were his bosses and the appointing authority. Joiner is a licensee of the AOWB in addition to being a state employee. Joiner's conduct as a state employee of AOWB has specific duties and parameters beyond those he has as a citizen and AOWB licensee.

His disdain for authority is reflected in Joiner's comment that "he was a grown man and Ms. Hines could not tell him whom he could talk to and what he could say."

Certainly, Joiner has “freedom of speech” and is entitled to express his personal opinions in appropriate circumstances. As an employee of AOWB, Joiner was not free to be disruptive in involving himself in matters under the jurisdiction and regulatory authority of the ADPH. Both Leigh Willis (“Willis”) and Sherry Bradley (“Bradley”), who are employees of ADPH, found Joiner to be loud, unprofessional, argumentative and disruptive. Willis, in a January 28, 2019 letter to AOWB, complained about Joiner’s continuing “disrespect” during AOWB meetings, stating, “This is not the first time Mr. Joiner has acted unprofessionally and, in several instances, has treated myself, along with my position, with disregard and disrespect.”<sup>8</sup>

Joiner overtly involved himself inappropriately in the matter of the closure of Lakeside Marina Restaurant by ADPH. In his testimony, Joiner suggested that both AOWB and ADPH engaged in selective enforcement of the laws and rules under their respective jurisdictions.<sup>9</sup>

The testimony of Arthur “Bo” Header (“Header”), an AOWB licensee, suggested that Joiner had inappropriately commented and “badmouthed him and his business” to Anthony Burrow revealing pending AOWB complaint issues involving Header, which caused Header to file complaints with the AOWB against Joiner.

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<sup>8</sup> Joiner’s AOWB Personnel File, p. 51.

<sup>9</sup> Transcript, pp. 197-209.

Header threatened to sue the AOWB over Joiner's actions, which he believed to be harmful to his business interests.<sup>10</sup>

Hines testified about her efforts to have the AOWB staff be more professional and respectful of the AOWB during quarterly board meetings.<sup>11</sup> Hines implemented a revised Licensing/Regulatory Compliance Officers Policy # 2019-008, which Hines says Joiner failed to comply with by failing to turn in his folders each Monday for her approval. Hines says Joiner "insubordinately" failed to comply with her direct instruction in the Junior Olvera matter. Joiner failed to tell Hines his planned weekly schedule or whereabouts on September 10, 2019, in violation of Policy 2019-008.

Hines testified that Joiner, by his actions and overt "non-compliance" with her efforts to implement policies leading to more professional staff behaviors, was disruptive. Joiner's conduct "intimidated" Hines, even though she was his supervisor.<sup>12</sup>

David Mastin, an AOWB Board Member, testified concerning Joiner's disruptive and unprofessional behavior during AOWB meetings on January 24, 2019 and July 24, 2019.<sup>13</sup>

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<sup>10</sup> Transcript, pp. 29 - 32; AOWB Exhibit 15.

<sup>11</sup> AOWB Exhibit 6-6.

<sup>12</sup> Transcript, pp. 73.

<sup>13</sup> Transcript, pp. 105-113.

Randall Paul Anderson (“Anderson”), former AOWB Chair, testified Joiner engaged in a “disrespectful” discussion with AOWB Member Willis. Anderson participated in the pre-suspension meeting which resulted in Joiner’s 14-day suspension.<sup>14</sup>

Bradley, a DPH Health Services Administrator 4, who has been with ADPH for 42 years, testified that she was listening on a phone call between Joiner and Willis, during which Joiner was “loud, unprofessional and disruptive.”<sup>15</sup>

### III. ISSUE

Did AOWB, as the appointing authority, have sufficient evidence to sustain Joiner’s dismissal based upon violations of SPB Rules and AOWB’s 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*

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<sup>14</sup> Transcript, pp. 115-123 and AOWB Exhibit 4A.

<sup>15</sup> Transcript, pp. 140-141.

*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).<sup>16</sup>

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

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<sup>16</sup> 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” falls far short of the APA’s preponderance of the evidence standard. *See also Wright v. State of Tex.*, 533 F.2d 185 (5<sup>th</sup> Cir. 1976).<sup>17</sup>

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).

AOWB has demonstrated by a preponderance of the evidence that it had a proper basis for the discharge of Joiner from his employment as a Licensing and Regulatory Field Compliance Officer. This is not a “he said, she said” situation. Numerous witnesses, including co-workers, AOWB Members, two employees of another state agency and one AOWB licensee testified that Joiner was openly disrespectful, disruptive, insubordinate, and unprofessional.

The record reflects Joiner was afforded progressive discipline for prior violations of SPB General Work Rules when he was suspended for a 14-day period in May 2019 and issued a written warning in June 2019. Unfortunately, Joiner’s

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<sup>17</sup> 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.

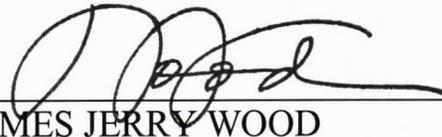
behavior did not improve, and his rule violations continued. Having already attempted to modify Joiner's work habits through lesser disciplinary actions, AOWB was left with no recourse other than dismissal.

The undersigned has considered Joiner's answer denying he engaged in the charged conduct. There was no substantive evidence presented to the undersigned about racial discrimination and retaliation against Joiner. Joiner testified that he was not given a key to AOWB offices, that he had a tracking device on his state vehicle, his office was given to another compliance officer and he was given another office in AOWB's Montgomery space. Even if these actions did occur, they do not rise to the level of being adverse employment actions.

Joiner believes he has suffered racial discrimination and retaliation and has a pending federal complaint. The evidence presented in this employment discharge appeal does not support Joiner's claims.

The undersigned has carefully considered all the evidence in this case and finds that AOWB has, by a preponderance of the available evidence, established a basis for its termination of Joiner's employment with AOWB. The undersigned finds no basis for mitigation or a lesser disciplinary action than dismissal. Accordingly, the undersigned finds the preponderance of the evidence warrants dismissal in this case. Therefore, the undersigned recommends to the State Personnel Board that the dismissal of Joiner be UPHELD.

Done, this the 3<sup>rd</sup> day of January 2020.



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