

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

**ROSHUNDA STEWARD,** )  
 )  
 **Appellant,** )  
 )  
 v. )  
 )  
 **ALABAMA ALCOHOLIC** )  
 **BEVERAGE CONTROL** )  
 **BOARD,** )  
 )  
 **Appellee.** )

**Case No: 20-02-JJW**

**RECOMMENDED ORDER TO THE STATE PERSONNEL BOARD**

The employment termination of Roshunda Steward (hereinafter “Steward”) by the Alabama Alcoholic Beverage Control Board (hereinafter “ABC”) is the subject of this Recommended Order.

Steward was an employee of ABC, having served since January 15, 2013 as an ABC Sales Associate. Steward worked at ABC Store 177 in Mobile County. ABC dismissed Steward on September 27, 2019, by letter from the appointing authority.

Steward was the person in charge at ABC Store 177 on Saturday, August 24, 2019. Steward failed to make the “bank drop” deposit. This resulted in \$3,503.44 being left unsecure in the store over the weekend. Steward has a history of failing to properly secure and account for cash receipts pursuant to ABC rules and procedures.

She has been disciplined on prior occasions for failure to follow ABC policies and procedures with regard to safeguarding ABC store funds. Steward was suspended for five days in November 2018 for failing to properly handle ABC funds. Steward received a three-day suspension in October 2018 for failing to secure the ABC store safe. Steward received a warning in August 2018, a reprimand and a warning in November 2017, a reprimand in January 2017, and counseling in March 2016.

The testimony, observation of the witnesses' demeanor, documentary evidence and Steward's employment history lead to a recommendation, based on a preponderance of the available credible evidence, that the termination of Steward's employment with ABC should be upheld.

On December 17, 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. The hearing began at 10:00 a.m. an hour after its scheduled starting time owing to the failure of Steward to appear. Steward was represented by Jason Lee Manasco, Esq. Robert L. Martin III, Esq. appeared on behalf of ABC. Steward did not appear. Steward's attorney, Jason Manasco was present and represented Steward as the hearing proceeded without her personal presence pursuant to the provisions of the Alabama Administrative Procedures Act, ALA. CODE § 41-22-12(d).

At the beginning of the hearing, ABC introduced, without objection, Exhibits 1-8. Steward did not introduce any exhibits. The undersigned informed the parties, without objection, that Steward's personnel file at the Alabama State Personnel Department would be included in the record and reviewed as evidence in this proceeding.

ABC called as witnesses;

- (1) Marty Dale Robertson, Store Manager III, ABC Store 20; and
- (2) Lynsey Coston-Haynie, Supervisor ABC Stores, District 2.

No witnesses testified on behalf of Steward.

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

Steward was employed by ABC in 2013 as a Sales Associate. Steward was promoted to Sales Associate II effective November 16, 2016 and served in that position at the time of the termination of her employment on September 27, 2019.

Steward timely appealed her dismissal to the Alabama State Personnel Board, pursuant to ALA. CODE § 36-26-27(a) (1975). At the prehearing conference held on October 31, 2019, the parties selected December 17, 2019, for the hearing.

In the short plain statement of facts, ABC alleged, in pertinent part:

...

Roshunda Steward was separated from State Service effective September 27, 2019 for the following:

Violation of ABC Personnel Policies and Procedures:

## **ABC-4-10-.02 GENERAL WORK RULES**

### **(1) Minor Violations**

- (d) Inattention to job
- (e) Failure to perform job properly.

**(8) Accountability for Money and property** – any money, property or other items of value received by or coming into the custody of an employee in connection with the performance of his/her job must be accounted for, deposited, or otherwise disposed of in accordance with established procedures.

## **ABC-7-57-.01 STORE RECEIPTS**

(2) After the store manager/PIC [person in charge] has received the money, it becomes his/her responsibility for safekeeping until deposited in the bank ...

(3) Money will not be kept under the counter, in drawers, or in any other location other than the cash drawer ...

## **ABC-7-57-.03 Safeguarding Monies.**

(3) Losses due to negligence in the safekeeping of money/checks can be charged to the employee involved.

Ms. Lynsey Coston Haynie, Supervisor, received a call from Mr. Marty Robertson, Manager III, on Monday, August 26, 2019, to tell her that he was at the bank to make his two (2) deposits for the weekend and the bank did [not] know where the drop bags were. Mr. Robertson waited while the bank employees tried to locate the deposit bags. They reviewed the camera footage and searched the drop hatch again to see if they were dropped off by anyone from the store.

While they were looking, Mr. Robertson spoke with Ms. Roshunda Steward and Ms. Natalya Matthews to make sure the money was actually dropped at the bank. Ms. Steward told Mr. Robertson that she found the bags in the safe. Mr. Robertson returned to the store,

verified the money, and returned to the bank to make the deposits for the previous Friday and Saturday.

Ms. Coston-Haynie went to the store and reviewed the DVR and found Ms. Steward was the PIC on Saturday, August 24, 2019. She is seen getting her money together for her drop around 4:30 p.m. Ms. Matthews verified the money and signed the drop bags. She left the office and Ms. Steward wrapped her bags and placed them in the filing cabinet.

...

... Ms. Steward, while PIC, left two deposit bags that contained \$3,503.44 unsecured in an unlocked drawer from Saturday afternoon to Monday afternoon.

...

A consideration of the foregoing facts and of Roshunda Steward's work history with the agency is the basis for her dismissal.

...

## **II. FINDINGS OF FACT**

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>1</sup>

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<sup>1</sup> 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 File<sup>2</sup>**

Steward's performance appraisals while working for ABC reflect:

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
03/01/2019	7.3	Partially Meets Standards
03/01/2018	13.0	Partially Meets Standards
03/01/2017	15.5	Partially Meets Standards
05/15/2016	27.5	Exceeds Standards
07/01/2015	24.3	Meets Standards
12/15/2014	27.1	Exceeds Standards
11/01/2013	30.0	Exceeds Standards
07/18/2013	21.4	Meets Standards

Steward's prior disciplinary actions include:

- November 26, 2018 – 5-day Suspension for failure to safeguard monies and store receipts, and failure to perform job properly.
- October 2, 2018 – 3-day Suspension for not locking the store safe and failure to perform job properly.
- November 21, 2017 – Reprimand for failure to perform job properly and failure to maintain good customer relations.
- November 6, 2017 – Warning for eating while working on the floor and failure to perform job properly.
- March 14, 2017 – Counseling for personal visitors and personal phone call.
- January 3, 2017 – Reprimand for tardiness, inattention to job, violation of dress code, and failure to perform job properly.
- August 22, 2016 – Warning for tardiness.

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<sup>2</sup> See generally State Personnel Board Rule 670-X-18-.02(5) (employee's work record, including performance and disciplinary history, considered in dismissing employee).

- March 21, 2016 – Counseling for tardiness.

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

State Personnel Board General Work Rule 670-X-19-.01(1)(a)(3)(4)(8); and

(1)(b)(10) provides, 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.

...

10. Serious violation of any other department rules.

...

(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.

...

ABC Personnel Policies and Procedures provide, in pertinent parts:

**ABC-4-10-.02 GENERAL WORK RULES**

**(1) Minor Violations**

...

(d) Inattention to job.

(e) Failure to perform job properly.

...

**(8) Accountability for Money and Property** – Any money, property, or other items of value received by or coming into the custody of an employee in connection with the performance of his/her job must be accounted for, deposited, or other disposed of in accordance with established procedures.

**ABC-7-57-.01 STORE RECEIPTS**

...

(2) After the store manager /PIC has received the money, it becomes his/her responsibility for safekeeping until deposited in the bank...

(3) Money will not be kept under the counter, in drawers, or in any location other than the cash drawer ...

...

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

In this case, Steward failed to appear for her properly noticed hearing. Her attorney was present and participated. The failure of Steward to follow ABC's procedures regarding bank drop deposits is undisputed. Steward was the person in charge, and she neglected her responsibilities.

Steward attended her Pre-Termination Conference held on September 11, 2019. During the conference, Steward acknowledged that she did not make the bank drop deposit on August 24, 2019. Steward stated that she placed two deposit bags in a filing cabinet because she had previously been instructed to "hide the deposit bags in the file cabinet while the store was open as a protection against robberies."<sup>3</sup> This action by Steward resulted in a substantial amount of money being left unsecured from Saturday afternoon to Monday afternoon (*i.e.*, August 26, 2019) and it directly contradicts ABC-7-57-.01(3) STORE RECEIPTS, which reads, in part, that while money is in the store that it "... will not be kept under the counter, in drawers, or in any location other than the cash drawer, till, or store safe."

Steward has previously been disciplined for failure to follow ABC rules and policies regarding the handling and safeguarding of money. She served a three-day suspension for failure to lock the store safe in October 2018, followed by a five-day suspension for failure to make a bank deposit in November 2018. Considering her

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<sup>3</sup> ABC Exhibit 3.

disciplinary history, it is clear that Steward understands ABC rules and policies but chooses not to adhere to them.

### III. ISSUE

Did ABC, as the appointing authority, have sufficient evidence to sustain Steward's dismissal based upon violations of ABC Policies and Procedures and State Personnel Board Rules?

### 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 ABC 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>4</sup>

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<sup>4</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

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 (1197), 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 (5<sup>th</sup> Cir. 1976).<sup>5</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*

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ALA. CODE § 41-22-20(k) (1975); *State Dept. of Human Res. v. Gilbert*, 681 So. 2d 560, 562 (Ala. Civ. App. 1995).

<sup>5</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.

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

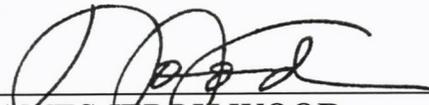
Steward's history at ABC establishes a reason for concern about her handling of deposits and financial transactions. The preponderance of the undisputed evidence supports the action taken by ABC in discharging Steward from her employment.

Clearly, for one whose responsibility is to account for the monies for which she is responsible as the person in charge, it is critical to follow the applicable procedures and rules of her employer. Over the course of her employment this has been a recurring issue for Steward. Her progressive discipline and disciplinary record show she has been given every opportunity to comply with ABC's policies, rules and regulations.

The undersigned has carefully considered all the evidence in this case and finds no basis for a lesser disciplinary action than dismissal. ABC followed its rules and procedures and all applicable laws. ABC has an obligation to protect the financial resources entrusted to it by the taxpayers. ABC considered Steward's disciplinary history including her record of issues with following procedures to safeguard bank deposits. Accordingly, the undersigned finds the preponderance of the evidence warrants dismissal in this case.

The undersigned finds no mitigation leading to a lesser punishment. Therefore, the undersigned recommends to the State Personnel Board that the dismissal be UPHELD.

Done, this 27<sup>th</sup> day of January 2020.



JAMES JERRY WOOD  
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