

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

|                              |   |                           |
|------------------------------|---|---------------------------|
| <b>ANITA BROWN,</b>          | ) |                           |
|                              | ) |                           |
| <b>APPELLANT,</b>            | ) |                           |
|                              | ) |                           |
| <b>v.</b>                    | ) | <b>CASE NO: 15-15-JJW</b> |
|                              | ) |                           |
| <b>ALABAMA DEPARTMENT OF</b> | ) |                           |
| <b>CORRECTIONS,</b>          | ) |                           |
|                              | ) |                           |
| <b>APPELLEE.</b>             | ) |                           |

**RECOMMENDED ORDER TO THE STATE PERSONNEL BOARD**

The employment termination of Anita Brown (hereinafter “Brown”) by the Alabama Department of Corrections (hereinafter “DOC”) gives rise to this Recommended Order. DOC charges that Brown, who in 2015 was employed as a Correctional Officer at the Birmingham Work Release Facility, violated its Administrative Regulation 208 (hereinafter “AR 208”), Employee Standards of Conduct and Discipline, with respect to the following:

- Section V.A.1 – Employees shall report for work on time and in a condition to perform their job properly.
- Section V.A.2 – Employees shall render full, efficient, and industrious service.
- Section V.A.4 – Employees shall exercise courtesy and tact.
- 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 in their position.
- Annex H, Number 18 – Serious violations of rules, policies, procedures, regulations, laws or reasonable conduct expectations.
- Annex H, Number 29 – Fighting, assault, physical violence or disruptive behavior.
- Annex H, Number 33 – Conduct that is disgraceful, on or off the job, that does adversely affect an employee’s effectiveness on the job.
- Brown’s actions also violated Alabama State Personnel Board Rule 670-X-19-.01, General Work Rules, with respect to the following:
  - (a) Violations that normally result in disciplinary actions of increasing severity:
    - ...
    - 7. Disruptive conduct of any sort.
    - ...
  - (b) More serious violations that may result in suspension or discharge on the first offense, considering work record and length of service.
    - 4. Fighting.
    - ...
    - 10. Serious violation of any other department rule.
    - ...

On October 31, 2014, Brown contacted the Birmingham Work Release Facility (also called the Birmingham Community Based Facility) to report she was ill and would not report for her scheduled duty. Brown was not truthful. Brown was in jail. Brown had been arrested as a result of a domestic violence incident at her residence and was in police custody pending making bail. Brown posted bail on November 1, 2014.

On November 10, 2014, the Birmingham Police Department again arrested Brown on charges of harassment and domestic violence. Brown made bond on November 11, 2014. Brown missed work at DOC on November 11 and 12, 2014.

On or about December 30, 2014, Brown was arrested on two felony warrants issued by the Jefferson County District Attorney on the charges of attempted murder and shooting into an occupied vehicle. Randy Brown filed a police report with the Irondale Police Department on December 25, 2014, alleging Brown had fired shots at him which resulted in the criminal charges against her.<sup>1</sup>

Brown and her then estranged husband, Randy Brown, both worked for DOC in 2014 at two different facilities. They had personal issues and differences and were not living together at the time of Brown's arrest. Brown swore out a warrant against Randy Brown alleging he attempted to strangle her in June 2014.<sup>2</sup> Brown

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<sup>1</sup> Brown Hearing Exhibit 1.

<sup>2</sup> Brown Hearing Exhibit 4.

sought a protective order against Randy Brown.<sup>3</sup> At the time of her dismissal from employment, Brown had worked for DOC for 14 years and five months.

The undersigned stayed action on Brown's appeal of her dismissal from DOC until her criminal charges were adjudicated. Brown was found not guilty of the two felony charges by a verdict in a jury trial in Birmingham on July 30, 2019.<sup>4</sup> The affidavit of Jefferson County Deputy District Attorney Matthew Casey provides context for Brown's trial and for the strangulation allegations against Randy Brown.<sup>5</sup>

After her acquittal, Brown moved to have her appeal from her discharge from employment restored to the docket of the undersigned. The case was restored to the docket and after a couple of continuances was set for January 28, 2020. The undersigned conducted a *de novo* hearing ("the hearing") that date at the State Personnel Department in the Folsom building in Montgomery, Alabama, during which *ore tenus* and documentary evidence was received. Bart Harmon, Esq. appeared on behalf of DOC. Brown was represented by Starr Culpepper, Esq.

At the beginning of the hearing, Brown moved to strike certain DOC exhibits. That motion was denied. DOC offered Exhibits 1-31. which were admitted, subject to any offers of proof Brown wanted to put in the record. The undersigned

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<sup>3</sup> Brown Hearing Exhibit 5.

<sup>4</sup> Brown Hearing Exhibit 3.

<sup>5</sup> Brown Hearing Exhibit 2.

informed the parties, without objection, that Brown's personnel file at the Alabama State Personnel Department would be included in the record as evidence in this matter. Brown submitted five exhibits which were admitted and marked Brown Hearing Exhibits 1-5.

DOC called four witnesses:

1. Randy Brown, DOC Correctional Officer;
2. Patrice Renae (née Richie) Jones, Correctional Warden III;
3. Cheryl Price, DOC Regional Director, Southern Region; and,
4. Brown, former employee.

Brown also testified on her own behalf.

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

...

Anita Brown was a Correctional Officer at Birmingham Community Based Facility ("CBF") located in Birmingham, Alabama. She was employed with the ADOC for fourteen years and five months.

On or about October 31, 2014, Ms. Brown contacted Birmingham CBF and advised that she was feeling ill and would not be coming into work. It was later discovered, however, that the Birmingham Police Officers and Evidence Technicians were dispatched to her residence that night relating to an altercation that occurred at her residence. On November 1, 2014, Ms. Brown admitted that she was actually placed under arrest on October 31, 2014 and could not post bond until the next morning. On or about November 10, 2014, Ms. Brown was again arrested on charges of harassment and domestic violence and was released on bond on November 11, 2014. Due to these actions she was not able to come to

work as scheduled on November 11 or 12, 2014. On or about December 30, 2014, information was received from law enforcement authorities that two felony warrants for arrest – one for Discharging a Firearm into a Building and one for Attempted Murder – were issued for Ms. Brown by the Jefferson County District Attorney’s Office relating to an incident that occurred on or about December 25, 2014...

... A pre-dismissal conference was held on February 12, 2015. After affording Ms. Brown the opportunity to tell her side of the story, Warden Patrice Richie recommended that she be terminated based upon her actions.

...

Based on the regulations as set forth in Administrative Regulation 208, a request to increase the prescribed punishment to termination pursuant to Section V.O. was made and approved by the requisite authorities due to the aggravating circumstances and severity of the offenses, and physical violence and negative behavior exhibited by Ms. Brown as described above. Warden Patrice Richie and Deputy Commissioner Wendy Williams recommended the dismissal of Ms. Brown. Commissioner William G. Sharp, Jr., by and through his appointed designee, then approved the dismissal effective March 6, 2015.<sup>6</sup>

## **I. 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.<sup>7</sup>

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<sup>6</sup> DOC’s Statement of Facts.

<sup>7</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>8</sup>**

Brown's performance appraisals while at DOC reflect:

| <u>Date Ending</u> | <u>Total Score</u> | <u>Category</u>           |
|--------------------|--------------------|---------------------------|
| 12/01/2014         | 13                 | Partially Meets Standards |
| 12/01/2013         | 26                 | Meets Standards           |
| 12/01/2012         | 26                 | Meets Standards           |
| 12/01/2011         | 25                 | Meets Standards           |
| 12/01/2010         | 19                 | Meets Standards           |
| 12/01/2009         | 17                 | Meets Standards           |
| 12/01/2008         | 27                 | Exceeds Standards         |
| 12/01/2007         | 27                 | Exceeds Standards         |
| 12/01/2006         | 7                  | Partially Meets Standards |
| 12/01/2005         | 5                  | Does Not Meet Standards   |
| 12/01/2004         | 32                 | Exceeds Standards         |
| 12/01/2003         | 16                 | Meets Standards           |
| 12/01/2002         | 18                 | Meets Standards           |
| 12/01/2001         | 25                 | Meets Standards           |
| 01/30/2001         | 21                 | Meets Standards           |

Brown has an extensive disciplinary history at DOC that reflects four suspensions, 11 warnings, seven written reprimands, two memos for the record, and one counseling session. Her disciplinary history action details are as follows:

| <u>Date</u> | <u>Action</u> | <u>Offense</u>                      |
|-------------|---------------|-------------------------------------|
| -----       | Suspension    | Failure to Report to Work (07/2014) |
| 06/18/2014  | Suspension    | Late for Work                       |

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<sup>8</sup> See generally State Personnel Board Rules 670-X-18-.02(5) and 670-X-19-.01(1)(b) (employee's work record and length of service, including performance and disciplinary history, considered in dismissing employee).

|            |                    |   |
|------------|--------------------|---|
| 12/09/2013 | Written Reprimand  | Late for Work                               |
| 12/09/2013 | Written Reprimand  | Disagreeable Behavior                       |
| 10/15/2013 | Warning            | Non-compliance with Policies                |
| 07/11/2013 | Warning            | Late for Work                               |
| 03/24/2012 | Warning            | Late for Work                               |
| 06/15/2011 | Warning            | Failure to Approve Timecard                 |
| 01/11/2011 | Suspension         | Failure to Follow Supervisor's Instructions |
| 11/04/2010 | Warning            | Non-compliance with Policies                |
| 10/15/2010 | Written Reprimand  | Disagreeable Behavior                       |
| 08/19/2010 | Written Reprimand  | Late for Work                               |
| 08/19/2009 | Written Reprimand  | Late for Work                               |
| 08/19/2009 | Written Reprimand  | Failure to Follow Supervisor's Instructions |
| 04/09/2009 | Written Reprimand  | Disagreeable Behavior                       |
| 12/23/2008 | Warning            | Late for Work                               |
| 06/12/2006 | Warning            | Late for Work                               |
| 06/04/2006 | Counseling Session | Late for Work                               |
| 01/07/2006 | Suspension         | Failure to Report to Work                   |
| 09/07/2005 | Warning            | Use of Abusive or Profane Language          |
| 07/21/2005 | Warning            | Incorrect Count                             |
| 06/11/2005 | Memo for Record    | Failure to Report to Work                   |
| 04/07/2005 | Memo for Record    | Late for Work                               |
| 04/07/2005 | Warning            | Failure to Follow Proper Call-in Procedures |
| 03/11/2005 | Warning            | Failure to Report to Work                   |

**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(1) 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:

...

7. Disruptive conduct of any sort.

...

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

4. Fighting.

...

10. Serious violation of any other department rule.

...

(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.

DOC Administrative Regulation 208 provides, in pertinent part:

...

## V. PROCEDURES

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

1. Report for work on time and in a condition to perform their job properly.

2. Render full, efficient and industrious service.
- ...
4. Exercise courtesy and tact.
- ...
7. Observe all laws, rules and regulations.
8. Uphold, with integrity, the public's trust involved in their position.
- ...

...

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...

...

Brown's actions also constitute violations of DOC AR 208, Annex H, which reads, in pertinent part:

...

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)

...

29. Fighting, assault, physical violence or disruptive behavior. (First Offense: 3 days suspension; Second 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)

...

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

Correctional Warden III Patrice Renae (née Richie) Jones ("Warden Jones"), a 29-year veteran at DOC was Warden I at the Birmingham Community Based Facility in 2014 and 2015 and conducted the pre-dismissal hearing for Brown. Warden Jones testified she prepared DOC Exhibit 2, the Notice of Pre-Dismissal. She recommended Brown's dismissal based on her entire work record, her disciplinary history, and the lack of mitigating circumstances for a punishment less than dismissal.

Randy Brown testified as to Brown's violent actions against him including her firing a weapon into a vehicle occupied by him early on Christmas morning, December 25, 2014. Randy Brown was on his way to work at DOC's Donaldson Correctional Facility at the time.

DOC Regional Director Cheryl Price ("Director Price") previously served as a warden. She testified she got a report on the December 25, 2014 shooting

incident involving shots fired by Brown at Randy Brown. Director Price said she advised Randy Brown to go to the nearest police station and report the incident. Director Price testified Brown was arrested at work. Director Price was aware the Browns had domestic disagreements and that Randy Brown was concerned for his safety.

Brown admits her record “is not perfect.” She urges that she was the victim of domestic violence. Brown says she is being held to a higher standard than others and that she feels that she is being selectively prosecuted and punished. She resents that DOC has not punished her “aggressor” (*i.e.*, Randy Brown) who is still employed at DOC.

On matters of credibility, the undersigned has considered Brown’s lack of truthfulness about why she was not at work when she claimed to be ill but was in jail; and her dismissal from the Birmingham Police Department for issues bearing on trust and credibility.<sup>9</sup>

## II. ISSUES

Did DOC produce proof, by a preponderance of the evidence, to sustain Brown’s dismissal based upon violations of State Personnel Board Rules and DOC rules, regulations, policies and procedures?

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<sup>9</sup> DOC Exhibits 25-28.

### III. 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).<sup>10</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

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<sup>10</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 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 (5<sup>th</sup> Cir. 1976).<sup>11</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).

Brown was terminated, in part, for not reporting for work on time and in a condition to perform her job properly. It is undisputed that Brown did not report for work on October 31, 2014; November 11, 2014; or November 12, 2014. She admits that she was initially untruthful about why she did not come to work on

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<sup>11</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.

October 31, 2014 but avers that she subsequently told the truth the next day. Regarding November 11 and 12, in the statement she submitted in connection with her pre-dismissal conference, she stated unequivocally, “On November 10, I wasn’t arrested by Birmingham.” She went on to say, “The 10<sup>th</sup> of November, I wasn’t arrested by Birmingham and I was off on Family Leave.”<sup>12</sup> DOC Exhibit 7 includes an Alabama Uniform Incident/Offense Report dated November 10, 2014. The narrative reads, in part, “R/O placed the offender [Brown] under arrest at this time for domestic violence harassment since she was continuing to follow her husband causing annoyance and alarming him.” This report directly contradicts Brown’s statements that she was not arrested on November 10, 2014. Prior to October 31, 2014, Brown had been suspended three times (one pending at the time of her dismissal) and had been issued three written reprimands and six warnings for matters relating to tardiness and absenteeism. She had also received one counseling session and two memos for record detailing her absenteeism.

Brown was also terminated for not observing all laws, rules and regulations and failing to uphold the public’s trust involved in her position. She was charged with serious violations of DOC rules, policies, procedures, and regulations; disruptive behavior; and disgraceful conduct. The exhibits produced by DOC detail not only Brown’s arrest for allegedly Shooting into an Occupied Vehicle and

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<sup>12</sup> DOC Exhibit 4a.

Attempted Murder, both charges for which she was acquitted by a jury, but also the November 10, 2014 arrest for Domestic Violence 3<sup>rd</sup>. Further, DOC Exhibits 13-18 reflect six different incidents between October 26, 2014 and November 24, 2014 that the Birmingham Police Department received and responded to reports from Randy Brown and/or Jackie Russell regarding Brown's continuing harassment.<sup>13</sup> Brown believes she should be restored to employment with DOC because she was acquitted of the felony charges stemming from her arrest for events that occurred on December 25, 2014. This is an overly simplistic view focusing on only once incident. The record clearly reflects Brown had other arrests and negative contact with law enforcement separate from her arrest on December 30, 2014.<sup>14</sup> Further, termination for failure to observe laws, rules and regulations; disruptive behavior; and disgraceful conduct is not predicated on an employee being convicted of a crime.

Brown complained profusely at the time of her pre-dismissal conference that it was unfair for her employment to be terminated if DOC was going to allow Randy Brown to continue to work. At the hearing, she testified that it was unfair he was

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<sup>13</sup> Jackie Russell was an acquaintance of Randy Brown who reported being called, followed, harassed, and physically threatened by Brown. According to Deputy District Attorney Matthew Casey's affidavit, Ms. Russell declined to testify at Brown's criminal trial based on fear of retaliation from Brown. See DOC Exhibit 11.

<sup>14</sup> Some of Brown's arrests pre-date her employment with DOC. In 2000, she pled guilty to a charge of Stalking and was convicted of Criminal Trespass 3<sup>rd</sup> based on events occurring in 1997. At the time of these events, Brown was employed by the Birmingham Police Department. Her employment was terminated in 1997 after she twice went to her then-husband's place of employment in her police uniform and became involved in verbal altercations with him. See DOC Exhibits 25-28. These prior arrests lend credence to a continuing pattern of behavior.

not being punished because she considers him to have been the aggressor. Notwithstanding, the only matter before the undersigned is the issue of whether DOC presented proof, by a preponderance of the evidence, that Brown's employment dismissal should be upheld.

Brown feels termination of her employment is too severe for her actions. However, the undersigned finds DOC properly considered Brown's conduct pursuant to AR 208, V.O. which provides that Annex H merely serves as a "guide" and the imposed level of discipline may be increased depending on "aggravating circumstances." Among the aggravating circumstances considered were the "... severity of the offenses, and physical violence and negative behavior exhibited..."<sup>15</sup>

DOC Commissioner William Sharp wrote in Brown's dismissal letter, "Having reviewed the Warden's Notice of Intent to Recommend Dismissal, including associated documents, and your overall work record, I do hereby order your dismissal for the good of the service to be effective the close of business March 6, 2015." State Personnel Board 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." DOC AR 208 ratifies this principle under Section V.N. which reads, "Nothing in this regulation is intended to abrogate

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<sup>15</sup> DOC's Statement of Facts

authority granted the Commissioner under Section 36-26-27, Code of Alabama, 1975, and 670-X-18-.02, Rules of the State Personnel Board.”

The undersigned has 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 Brown violated State Personnel Board rules and DOC’s rules, regulations, policies and procedures and was appropriately discharged for the good of the service.

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 Brown’s dismissal. Brown’s termination should be upheld.

Done, this the 12<sup>th</sup> day of March 2020.



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**JAMES JERRY WOOD**  
Administrative Law Judge  
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