



DOC charges that Steed, who in 2019 was employed as a Correctional Officer at Donaldson Correctional Facility (“Donaldson”), violated its Administrative Regulation 208 (hereinafter “AR 208”), Employee Standards of Conduct and Discipline, with respect to the following:

- 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 involved in their position.
- Annex H, Number 33 – Conduct that is disgraceful, on or off the job that does adversely affect an employee’s effectiveness on the job.

Steed’s actions also violated Alabama State Personnel Board Work Rules 670-X-19-.01, with respect to the following:

(a) Violations that normally result in disciplinary actions of increasing severity:

...

(8) Violation of specific department rules.

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

...

(10) Serious violation of any other department rule.

...

(13) Conduct unbecoming a state employee.

...

Based on observation of the witnesses, the testimony, and the documentary evidence, the undersigned recommends the termination of Steed's employment by DOC be upheld, owing to his conduct unbecoming a state employee. He had served at DOC for 19 plus years. Prior to his 2019 performance appraisal, his 2014-2018 appraisals were "Exceeds Standards."

On May 14, 2020, the undersigned conducted a *de novo* hearing ("the hearing") at the State Personnel Department Hearing Room in the Folsom Administration Building in Montgomery, Alabama, during which *ore tenus* and documentary evidence was received. Bart Harmon, Esq. appeared on behalf of DOC. Julian McPhillips, Jr., Esq. represented Mr. Steed.

At the beginning of the hearing, DOC introduced DOC Exhibits 1-6, which were admitted. Steed offered his Exhibits A - J (1 - 10), which were admitted. The undersigned informed the parties, without objection, that Steed's personnel file at the Alabama State Personnel Department would be included in the record as evidence in this matter.

DOC called three (3) witnesses:

1. Gwendolyn Givens, Correctional Warden II, ADOC;
2. Sterling Steed, Appellant; and,
3. Brian Casey, Investigator, ADOC Law Enforcement Services Division.

Steed called five (5) witnesses:

1. Charles Dean, ADOC Correctional Officer;
2. Mohammad Jenkins, ADOC Correctional Officer;
3. James Brown, Sergeant, Bessemer Police Department;
4. Joseph Cunningham, Officer, Bessemer Police Department; and
5. Erin Rodgers, Officer, Bessemer Police Department.

### **PROCEDURAL HISTORY AND CHARGES**

Steed was employed at DOC as a Correctional Officer I on August 7, 2000.

Steed was a Correctional Officer at the time of his dismissal from employment.

Steed was terminated from his employment by letter dated March 4, 2020 from the appointing authority to be effective March 5, 2020.

Steed appealed his dismissal to the State Personnel Board, pursuant to ALA. CODE § 36-26-27(a) (1975). At the prehearing conference held on March 24, 2020 the appeal hearing was scheduled for May 14, 2020. It was heard on that date as scheduled.

In its Statement of Facts filed on March 23, 2020, DOC alleged, in pertinent part:

...

"On December 31, 2019, the Correctional Warden received Investigative Report Case No. 19-1608A from the Regional Director concerning the employee, Sterling Steed. The investigative report concluded that Steed was involved in a road rage dispute with a civilian. He was captured in a video where he was seen yelling at the civilian over a traffic dispute and the civilian's political beliefs. Steed was also seen waving his personal weapon in the presence of a civilian. Steed's inappropriate behavior led him to physically kicking the civilian and fighting with him on the side of the road. All occurred while Steed was in uniform. His conduct is unacceptable and unbecoming of a Correctional Officer or/State Employee."

"Following a review of the administrative hearings and consideration of the aggravating and /or mitigating circumstances in this case the Commissioner found Steed guilty of the following standards under Administrative Regulation 208, Employee Standards of Conduct and Discipline:

1. Employees shall render full, efficient, and industrious service. (Section V, Paragraph A2)
2. Employees shall exercise courtesy and tact. (Section V, Paragraph A4)
3. Employees shall observe all laws, rules and regulations. (Section V, Paragraph A&)
4. Employees shall uphold, with integrity, the public's trust involved in their position. (Section V, Paragraph A8)
5. Each employee's conduct shall, at all times, be consistent with the maintenance of proper security and welfare of the institution and of the inmates under his supervision. (Section V, Paragraph B)"

"Steed's conduct also violated Alabama State Personnel Board's Employee Work Rules, 670-X-19-.01, with respect to the following provisions:

(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 and shall apply to all classified employees:

(a) Violations that normally result in disciplinary actions of increasing severity:

8. Violation of specific department rules.

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

- 4. Fighting
- 5. Use of abusive or threatening language
- 10. Serious violation of any other department rule.
- 12. Disruptive conduct of any sort.
- 13. Conduct unbecoming a state employee.

In determining the appropriate corrective action for the above violations, the Warden and the Commissioner considered the following infraction(s):

- 1. Disagreeable behavior, including lack of cooperation and insubordination. (Administrative Regulation 208, Annex H, Number 13)
- 2. Serious violations of rules, policies, procedures, regulations, laws or reasonable conduct expectations. (Administrative Regulation 208, Annex H, 18)
- 3. Use of abusive, profane, or threatening language to other employees, inmates or the public. (Administrative Regulation 208, Annex H, Number 20)
- 4. Fighting, assault, physical violence or disruptive behavior. (Administrative Regulation 208, Annex H, Number 29)
- 5. Conduct that is disgraceful, on or off the job that does adversely affect an employee's effectiveness on the job. (Administrative Regulation 208, Annex H, Number 33)

A review of Steed's overall work record reveals the following corrective actions:

1. February 11, 2019 - Three (3) Day Suspension Fighting, assault, physical violence or disruptive behavior: Conduct that is disgraceful, on or off the job that does adversely affect an employee's effectiveness on the job (4-27-18)
2. December 12, 2018 - Written Reprimand Inattention to the job (10-28-2018)
3. June 10, 2013 - Three (3) day Suspension Failure to report to work (unexcused absence) (11-24-12)
4. April 8, 2016 - Two (2) day Suspension Failure to report to work (unexcused absence) (09-14-12)
5. December 10, 2012 - Three (3) day suspension Late for work (tardiness) failure to follow proper call-in procedure (3-24-12)
6. January 9, 2012 - Three (3) day suspension Late for work (tardiness) failure to follow proper call-in procedures (06-14-11)
7. December 5, 2011 - Three (3) day suspension Late for work (tardiness) failure to follow proper call-in procedures (04-24-11)
8. September 19, 2011 - Three (3) day suspension) Late for work (tardiness) failure to follow proper call-in procedures (04-14-11)
9. August 8, 2011 - Three (3) day suspension Late for work (tardiness failure to follow proper call-in procedures (04-10-11)
10. June 3, 2011 - Written Reprimand Late for work (tardiness) failure to follow proper call-in procedures (04-05-11)
11. *Sic.* (Same as 10)

12. November 25, 2010 - Written Reprimand Serious violations of rules, policies, procedures, regulations, laws or reasonable conduct expectations. (09-21-10)
13. October 4, 2010 - Warning Late for work (tardiness) failure to follow proper call-in procedures. (09-15-2010)
14. April 28, 2009 - Written Reprimand Leaving assigned post, and/or workstation before the end of the shift/workday without permission from proper authority and of inmates under his/her supervision. (03-20-09)
15. March 31, 2010 - Two (2) day suspension Failure to report to work (unexcused absence). (08-21-09)
16. May 20, 2018 - Warning Late for work (tardiness)/failure to follow proper call-in procedures. (04-12-08)
17. August 20, 2007 - Two (2) day suspension Sleeping or giving the appearance of sleeping on duty. (05-13-07)
18. January 21, 2007 - Two (2) day suspension Late for work (tardiness) failure to follow proper call-in procedures. (10-10-06)
19. October 6, 2006 - Written Reprimand Late for work (tardiness) failure to follow proper call-in procedures. (09-12-06)
20. June 16, 2006 - Warning Non-compliance with policies, procedures and regulations. (04-28-06)
21. May 22, 2006 - Two (2) day suspension failure to report to work (unexcused absence). (01-27-06)
22. April 17, 2006 - Two (2) day suspension Late for work (tardiness)/failure to follow proper call-in procedures. (01-22-06)
23. December 30, 2005 - Warning Non-compliance with policies, procedures and regulations. (11-30-05)

24. June 9, 2005 - Warning Late for work (tardiness)/failure to follow proper call-in procedures. (05-01-05)
25. July 9, 2004 - One (1) day suspension Refusal of a supervisor's instruction to remain on duty during a shortage of personnel situation and/or an emergency situation. (02-01-04)
26. July 15, 2001 - Warning Failure to report to work.”

On February 10, 2020, Warden Gwendolyn Givens conducted a pre-dismissal conference. Steed was present. Steed’s actions violated ADOC’s Administrative Regulation 208, Employee Standards of Conduct and Discipline, with respect to the following provisions of Section V:

- Section A – Employees should:
  - o A/2 - Render full, efficient, and industrious service.
  - o A/4 - Exercise courtesy and tact.
  - o A/7 - Observe all laws, rules and regulations.
  - o A/8 - Uphold with integrity, the public’s trust involved in their position.

Further, pursuant to Administrative Regulation 208, Annex H, the facts related above warranted an increase in the level of discipline (termination) due to Steed’s actions.

- o H/33 - Conduct that is disgraceful, on or off the job that does adversely affect an employee’s effectiveness on the job – 1st offense.

Additionally, Steed’s actions violated State Personnel Rules, 670-X-19.01 (b) (1) - Violation of Safety Rules; (b)(10) - Serious violation of any other department rule; (b)(12) - Disruptive conduct of any sort; [and] (b)(13) - Conduct unbecoming a state employee.

...

## 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>1</sup>

### A. Employee's Personnel File<sup>2</sup>

Steed's performance appraisals while at DOC reflect:

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
12/9/2019	19.0	Meets Standards
12/1/2018	36.0	Exceeds Standards
12/1/2017	36.0	Exceeds Standards
12/1/2016	36.0	Exceeds Standards
12/1/2015	36.0	Exceeds Standards
12/1/2014	36.0	Exceeds Standards
12/1/2013	19.0	Meets Standards
12/1/2012	13.0	Partially Meets Standards
12/1/2011	11.0	Partially Meets Standards
12/1/2010	10.0	Partially Meets Standard
12/1/2009	24.0	Meets Standards
12/1/2008	30.0	Exceeds Standards
12/1/2007	14.0	Partially Meets Standards
12/1/2006	12.0	Partially Meets Standards

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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.

<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).

12/1/2005	29.0	Exceeds Standards
12/1/2004	14.0	Partially Meets Standards
12/1/2003	36.0	Exceeds Standards
12/1/2002	32.0	Exceeds Standards
12/1/2001	27.0	Exceeds Standards
2/6/2001	21.0	Meets Standards

**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:

...

8. Violation of specific departmental rules.

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

...

10. Serious violation of any other department rule.

...

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.

**DOC Administrative Regulation 208** provides, in pertinent part:

...

**V. PROCEDURES**

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

...

2. Render full, efficient, and industrious service.

...

7. Observe all laws, rules and regulations.

8. Employees shall uphold, with integrity, the public's trust involved in their position.

...

B. Each employee's conduct shall, at all times, be consistent with the maintenance of proper security and welfare of the institution and of the inmates under his/her supervision.

...

N. Nothing in this regulation is intended to abrogate authority granted the Commissioner under Section 36-26-27, Code of Alabama, 1975, and 670-X-18-.02, Rules of the State Personnel Board.

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. To maintain consistency, the imposition of discipline that does not correspond with the table must be fully justified in writing and submitted to the ADOC Personnel Director who shall confer with the appropriate Deputy Commissioner. The Warden/Division Director requesting this variance shall be notified by the ADOC Personnel Director of the decision.

**DOC AR 208, Annex H** provides, in pertinent part:

...

33. Conduct that is disgraceful, on or off the job that does not adversely affect an employee's effectiveness on the job. (First Offense: 3 days suspension; Second Offense: Dismissal)

...

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

Steed was not on duty at Donaldson when this "road rage" matter occurred. No evidence was offered that Steed's admittedly troublesome conduct off duty "adversely affected Sneed's effectiveness on the job." This case is problematic because Steed's 2014-2018 annual appraisals show him to "exceed standards." Steed's coworkers, Charles Dean and Mohammad Jenkins, testified he was a very good officer. Dean said he would trust him with his life.

The Bessemer Police officers who testified indicated Steed was calm and collected in their presence. The Bessemer Police do not arrest for misdemeanors not committed in their presence. When Steed and Sudduth were sent on their way by the

Bessemer Police officers, the police assumed it was a resolved matter. Subsequently, they determined Shane Sudduth had posted his version of the events and his cell phone video on Facebook.

This video became the basis for the investigative report prepared by DOC Senior Agent Brian Casey.<sup>3</sup> The Bessemer Police authorities posted on Facebook a statement that Sudduth's (posted) video was only part of the incident and not a depiction of the total event.<sup>4</sup>

DOC Warden Gwendolyn Givens testified she conducted Steed's pre-dismissal hearing. She summarized the pre-dismissal conference for Commissioner Dunn.<sup>5</sup> Correctional Lieutenant Eddie Darnell Watts testified as to Steed's character.<sup>6</sup> Lieutenant Watts has supervised Steed, found him honorable and an asset on shifts they were on together.

Lt. Watts testified Steed was a good officer and should be retained in his job. Lt. Watts observed the lack of evidence considering "there is a lot that was not seen."<sup>7</sup>

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3 DOC Exhibit 6.

4 DOC Exhibit 6, p. 2.

5 DOC Exhibit 4.

6 DOC Exhibit 4.

7 DOC Exhibit 4, p. 2.

Warden Given's concludes "...I am not here to judge; I am following the policies of this pre-dismissal conference. It is not up to me whether or not Officer Steed is dismissed, the final decision will be based on the Commissioner."<sup>8</sup> Warden Givens sent the proposed dismissal to the appointing authority in DOC Exhibit 4.

Warden Givens acknowledges that Steed told her about his "PTSD" from his military service and his ongoing treatment. Steed did not know about the Employee Assistance Program (EAP) for employees of The State of Alabama. Steed testified he was unaware of the availability of EAP. Warden Givens testified she would have considered a lesser discipline for Steed if she could have.<sup>9</sup>

Considering Steed's almost twenty years of service with DOC, his honorable military service, his self-sought anger management counseling, considering this was an off duty road rage incident initially provoked by Sudduth and exacerbated by Sudduth's vengeful post of part of the story on Facebook after the Bessemer Police thought it had been peaceably resolved and considering that there is no evidence before the undersigned that the element of Annex H-33 involving the "adverse effect" on Steed's work effectiveness is met. The appointing authority had a factual basis to consider mitigation but did not.

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8 DOC Exhibit 4, p. 3.

9 Givens' testimony on cross-examination.

## II. ISSUE

Did DOC produce, by a preponderance of the evidence, a sufficient basis to sustain Steed's dismissal based upon violations of the State Personnel Board Rules and DOC rules, regulations, policies and procedures?

## 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>

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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).

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 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*

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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.

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

### **Steed's conduct**

DOC Commissioner Jefferson Dunn wrote in the 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 May 1, 2019." 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 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 available evidence establishes the Commissioner, under these facts, had no choice but to dismiss Steed for conduct unbecoming a state employee.

Steed's reaction to being provoked by Sudduth was inappropriate, unacceptable and not to be tolerated. Steed's reaction and his self-described PTSD

for which he is getting treatment create workplace concerns about his possible reactions to situations with inmates. Given Steed's nineteen and one-half years of service, and his mental health issues may implicate a disability retirement consideration by the appointing authority.

Done, this 11th day of June 2020.



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