BEFORE THE STATE PERSONNEL BOARD
IN THE MATTER OF

TIAYON T. TAYLOR,	)	
	)	
Appellant,	)	
	)	
v.	)	**CASE NO. 20-06-JJW**
	)	
ALABAMA STATE DEPARTMENT OF EDUCATION,	)	
	)	
	)	
Appellee.	)	

RECOMMENDED ORDER TO THE STATE PERSONNEL BOARD

The employment termination of Tiayon T. Taylor (hereinafter "Taylor") by the Alabama State Department of Education (hereinafter "ALSDE") gives rise to this Recommended Order.

Taylor has worked in State service for approximately 15 years, most recently as a Senior Disability Specialist in the Disability Determination Service (hereinafter "DDS") of ALSDE. He has also worked for the Alabama Department of Transportation ("ALDOT") from 2002 until 2008.[1]

Taylor, during his most recent tenure at DDS had received evaluations of "consistently exceeds standards." He had two counseling sessions of record in 2013

[1] ALSDE Exhibit 11 and SPD file and SPB Order dated December 10, 2008. Taylor was discharged from ALDOT on August 18, 2008 for sleeping on the job. Taylor was not found to be credible on page 7 of her order by ALJ Julie Weller (Case No. 08-49-JJW) during his termination from employment appeal hearing.

and 2014 for not following DDS and ALSDE rules.[2] Taylor has received Sexual Harassment Training.[3] Taylor has received and acknowledged receipt of ALSDE's and DDS's Policy Manual and Policies.[4] Taylor received and acknowledged receipt of the Employee Work Rules of the Alabama State Personnel Board ("SPB").[5]

In its pre-termination letter dated October 8, 2019,[6] ALSDE charges Taylor violated four SPB Rules and ALSDE Departmental Policies and Work Rules as follows:

(a) *Policy Against Sexual Harassment (and harassment of any kind)* – "It continues to be the policy of the Alabama State Department of Education (ALSDE) that each employee be allowed to work in an environment free from any form of sexual harassment. *Policy Manual for Employees, Alabama State Department of Education, p. 5[; State Personnel Board Rule 670-X-19-.01(1)(b)10].*

(b) *Work Rules – Disruptive Conduct of any Sort* – All employees in state service shall comply with ALDSE rules and policies and shall adhere to the general work rules. *Alabama Department of Education Policy Manual for Employees; State Personnel Board Rule 670-X-19-.01(1)(b)12.*

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[2] ALSDE's Exhibit 6.

[3] ALSDE's Exhibit 1, p. 270.

[4] ALSDE's Exhibit 1, pp. 271, 281.

[5] ALSDE's Exhibit 1, p. 282.

[6] ALSDE's Exhibit 2.

(c) *Failure to Adhere to Standards of Conduct* – All employees of the State Department of Education have a special concern for the integrity and the success of the Department in reaching its goals and objectives – all of which are intended to advance the quality of education in Alabama. Employees should remember that we are public relations representatives of the State Department of Education and that our courtesy and tact in carrying out our responsibilities help build a positive image of the Department. *Alabama Department of Education Policy Manual for Employees; State Personnel Board Rule 670-X-19-.01(1)(a)8.*

(d) Work Rules – Failure to Comply with Rules – All employees shall conform to established departmental rules and policies and shall also adhere to the general work rules of the State Personnel Board Rule No. 670-X-19-.01. *Policy Manual for Employees, Alabama State Department of Education, p. 36.*

...

On January 17, 2020, the undersigned conducted a *de novo* hearing ("the hearing") at the offices of the Alabama State Personnel Department ("SPD") in Montgomery, Alabama, during which *ore tenus* and documentary evidence was received. Terri S. Morgan, Esq. and Susan Crowther, Esq. appeared as counsel on behalf of ALSDE. John Saxon, Esq. represented Taylor.

At the beginning of the hearing, ALSDE introduced, without objection, 14 exhibits marked ALSDE Exhibits 1-14. Taylor introduced without objection, Employee Group Exhibit 1, consisting largely of his ALSDE performance appraisals. The undersigned informed the parties, without objection, that Taylor's

personnel file at the SPD would be considered and included in the record as evidence in this matter.

ALSDE called as witnesses:

(1) James R. Methvin, Assistant State Superintendent of Education, DDS Director, ALSDE;

(2) Tim Huggins, Investigator, SPD; and

(3) LaRhonda Turner-Williams, Senior Disability Specialist, ALSDE.

Taylor testified on his own behalf.

I. PROCEDURAL HISTORY AND CHARGES

Taylor timely appealed his dismissal to the SPB, pursuant to ALA. CODE § 36-26-27(a) (1975). At the prehearing conference held on December 13, 2019 the appeal hearing was scheduled for January 17, 2020.

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

...

> On Friday, August 2, 2019, a Disability Determination Services ("DDS") employee, Disability Specialist Ms. LaRhonda Turner, made a verbal and written sexual harassment complaint against Mr. Taylor. On August 5, 2019, Mr. Jim Methvin, DDS Director, assembled an interview team to obtain statements. On August 6, 2019, Mr. Methvin and Ms. Tanya King met with Mr. Taylor to inform him of the harassment complaint. Mr. Methvin directed Mr. Taylor not to go to the unit/section where Ms. Turner was working. He also instructed Mr. Taylor not to have any interaction or contact with Ms. Turner.

On August 12, 2019, the Department requested that Mr. Taylor be placed on mandatory leave effective immediately. Mr. Taylor was placed on mandatory leave effective August 13, 2019.

Mr. Timothy Huggins, an outside investigator [appointed] by the Department, was tasked with completing an investigation of the harassment claim and submitting a report. Based on the findings of the investigation, Mr. Methvin recommended Mr. Taylor be terminated from his employment with DDS.[7]

...

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.[8]

A. Employee's Personnel File[9]

Taylor's performance appraisals while in State service reflect:

ALSDE

Date Ending	Total	Score Category
03/01/2019	40.0	Consistently Exceeds Standards
03/01/2018	40.0	Consistently Exceeds Standards
04/30/2017	40.0	Consistently Exceeds Standards

[7] ALSDE Exhibit 8.

[8] 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.

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

08/11/2015	40.0	Consistently Exceeds Standards
08/01/2014	35.0	Exceeds Standards
09/30/2013	32.5	Exceeds Standards
07/01/2012	30.0	Exceeds Standards
07/01/2011	30.0	Exceeds Standards
08/31/2010	26.3	Exceeds Standards

ALDOT

Date Ending	Total	Score Category
01/01/2008	22.2	Meets Standards
01/01/2007	26.7	Exceeds Standards
01/01/2006	0	Does Not Meet Standards
01/01/2005	16.0	Partially Meets Standards
01/01/2004	7.3	Partially Meets Standards
02/25/2003	24.0	Meets Standards

B. State Personnel Board General Work Rules and Regulations, and ALSDE Policies and Procedures Forming the Basis of the Charges

State Personnel Board General Work Rules, 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:

...

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 departmental rule.

...

12. Disruptive conduct of any sort.

...

The ALSDE Policy Manual for Employees[10] provides, in pertinent part:

...

Compliance with Rules (p. 39)

All employees shall conform to established departmental rules and policies and shall also adhere to the general work rules of the State Personnel Board Rule No. 670-X-19-.01. Violations of work rules normally result in disciplinary actions of increasing severity; however, more serious violations may result in suspension or discharge on the first offense. The following will be considered on all disciplinary actions for serious violations of work rules: work rule violated, work record of employee, and length of service of employee.

...

Standards of Conduct (p. 40)

All employees of the State Department of Education have a special concern for the integrity and the success of the Department in reaching its goals and objectives — all of which are intended to advance the quality of education in Alabama. Employees should remember that we are public relations representatives of the State Department of

[10] ALSDE Exhibit 5, pp. 88-148.

Education and that our courtesy and tact in carrying out our responsibilities help build a positive image of the Department. …

…

ALSDE's Policy Against Sexual Harassment (and harassment of any kind)[11] provides, in pertinent part:

> It continues to be the policy of the State Department of Education that each employee be allowed to work in an environment free from any form of sexual harassment. In particular, this policy is to further clarify that sexual harassment of employees or applicants for/in employment or employees of local school districts or institutions of higher education in any form is unacceptable conduct and will not be tolerated.
>
> *Definition of Sexual Harassment*
>
> Sexual harassment is defined as unwelcome sexual advances, unwelcome requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature from or involving an employee's supervisors, peers, subordinates or any other persons in contact with an employee during the course of the conduct of the employee's business when:
>
> 1. Submission to such conduct is made either directly or indirectly a term or condition of employment, for example, hiring and/or firing.
> 2. Submission to or rejections of such conduct by an individual is used as the basis for employment decisions affecting such individuals.
> 3. Such conduct has the purpose or effect of interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment.
>
> …[n]o supervisor or other employee shall behave or conduct themselves in sexual conduct that produces a hostile, intimidating, or

[11] ALSDE Exhibit 7.

> offensive working environment, or has the effect of hindering the work performance of an employee due to that conduct.
>
> Sexual harassment also includes, but is not limited to, unwelcome sexual flirtations, advances or propositions; verbal abuse of a sexual nature; discussions of work turning into sexual innuendoes; subtle pressure or request for sexual activities; preferential or derogatory treatment based on gender; unnecessary touching of an individual; graphic verbal commentaries about an individual's body or sex life; sexually degrading words used to describe an individual; a display in the workplace of sexually suggestive objects or pictures; sexually explicit or offensive jokes; or physical assault.
>
> ...
>
> Any employee who is determined, after an investigation, to have engaged in sexual harassment in violation of this policy will be subject to appropriate discipline, up to and including termination...
>
> ...

C. Facts Forming the Basis of Dismissal

Taylor was a Senior Disability Specialist at DDS beginning in May 2016. In January 2019, Taylor become a Senior Case Consultant to a five-employee unit supervised by Sandra Robinson ("Ms. Robinson"). His job was to assist Ms. Robinson and other Disability Determination Specialists in keeping their caseloads current. The other members of the unit were all female.

Taylor had been at DDS almost ten years and had historically good performance appraisals. In 2016, during an in-service training session, Taylor

engaged the trainer leading the session in a loud exchange and disagreement in front of 40 or so co-workers, some of whom found his conduct disturbing.

Taylor is married. His wife has a photography business. Taylor sometimes assists her. Taylor reportedly carried his cell phone with him at work and sometimes asked co-workers if he could photograph them. Some co-workers objected to being photographed by him. Taylor does not like to drive and frequently asked co-workers if he could ride with them at lunch.

In July 2019, LaRhonda Turner-Williams ("Turner-Williams"), a Senior Disability Specialist, called in to say she would not be at work because she was experiencing knee pain. Taylor took the call and asked her to describe her knee issue so he could communicate it to Ms. Robinson. When Turner-Williams returned to work the next day, Taylor came into her office and touched her knee saying it "looks swollen." Taylor suggested Turner-Williams lie on the floor so he could show her some exercises. She declined. Turner-Williams testified she did not want Taylor to touch her knee and did not want his help with exercises since she had her own orthopedic physician. Taylor was persistent and asked Turner-Williams to stand up so he could see the back of her knee. She said initially he had talked about one of her cases. She did not feel comfortable telling him "no" but felt "odd." Taylor turned on the light on his phone to look at the back of her knee. Taylor asked her to move her leg to the side causing her legs to open. Turner-

Williams looked down and saw the light from Taylor's phone going up her dress. Her office door was closed, and she was standing while he was sitting. Taylor touched her knee again on July 3, 2019. Afterward, Turner-Williams wore pants to work for a time. She wore a dress again on July 10, 2019. That day, Taylor came to her office ostensibly to review her files. He had her stand up to retrieve a file. Taylor slid his chair behind her with his phone light on and "poked" her leg behind her knee. On August 1, 2019, Taylor came into Turner-Williams's office and touched her knee causing her to yell, "I'm good!" Later that day at about 3:20 p.m., Taylor called Turner-Williams to his office and closed the door. There was no place for her to sit. He had her stand up and type updates to her 70-day report. She typed standing with her legs crossed. Taylor told her he liked her shoes. Taylor had his cell phone in his hand and told her to "keep typing." Taylor touched her right shoe and her left shoe. Turner-Williams realized that Taylor was videoing or taking pictures up her dress. She testified she was uncomfortable and embarrassed that she had not previously known what Taylor was doing. This day she saw his phone light and camera were on shining up her dress. Turner-Williams expressed fear of retaliation and of what Taylor might do. She expressed concern that Taylor had a close relationship with their supervisor and that Ms. Robinson was fond of Taylor. Emotionally distraught and suffering "crying episodes," Turner-Williams reported Taylor to her supervisors the next day on August 2, 2019.

DDS Director James Methvin ("Director Methvin") reassigned Turner-Williams and appointed an internal interview team to investigate. He reported this issue to the State Superintendent's Office. An investigator, Timothy Huggins ("Huggins"), was hired to interview and examine witnesses in the case. Huggins interviewed other women at DDS who expressed their discomforting experiences with Taylor, all of which are detailed and documented in Huggins's report.[12]

Taylor denies ever touching Turner-Williams. He insists he only was doing his job in helping her get and stay current with her case load. He was interviewed by Huggins. When asked, Taylor declined to make his cell phone available for forensic examination.

On November 15, 2019, Taylor wrote State Superintendent of Education Eric Mackey ("Superintendent Mackey") to tell his side of the story.[13] Taylor contests the allegations of inappropriate conduct. He claims to be a tenured, exemplary employee with consistently high appraisals. Taylor says even if the allegations of Turner-Williams were true and "if he crossed a boundary once or twice," he does not deserve to be terminated from his employment.

Director Methvin of DDS recommended the termination of Taylor's employment. Superintendent Mackey, the appointing authority, determined Taylor

[12] ALSDE Exhibit 8.

[13] ALSDE Exhibit 10.

should be discharged from his employment for the good of the service effective November 19, 2019.[14]

III. ISSUE

Did ALSDE produce sufficient evidence to sustain Taylor's dismissal based upon violations of ALSDE'S rules, regulations, policies and procedures and SPB General Work 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 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).[15]

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[14] ALSDE Exhibit 3.

[15] 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

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 (5th Cir. 1976).[16]

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

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'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).

[16] 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.

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' demeanor, testimony, and all the documentary evidence in this case and finds that the preponderance of the evidence establishes that ALSDE followed its rules and procedures and had a proper basis and the authority to discharge Taylor from his employment. In evaluating Taylor's lack of credibility, the undersigned considered that he had lied to a police officer in December 2010[17] and falsely answered a question on his sworn application in 2015.[18]

The undersigned finds no appropriate basis for a lesser disciplinary action than dismissal. Taylor's actions were egregious and displayed a conscious disregard and a lack of respect for his female co-workers. The undersigned recommends to the SPB that the dismissal be UPHELD.

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[17] ALSDE Exhibit 13.

[18] ALSDE Exhibit 1, p. 71, and ALSDE Exhibit 14.

Done, this the 9th day of March 2020.

JAMES JERRY WOOD
Administrative Law Judge
State of Alabama Personnel Department
64 North Union Street
Montgomery, Alabama 36130
Telephone: (334) 242-8353
Facsimile: (334) 353-9901

COPIES VIA E-MAIL AND FIRST-CLASS U.S. MAIL:

John D. Saxon, Esq.
John D. Saxon, P.C.
2119 3rd Avenue North
Birmingham, Alabama 35203
Telephone: (205) 324-0223
Facsimile: (205) 323-1583
E-mail: jsaxon@saxonattorneys.com

Terrie S. Morgan, Esq.
Susan Crowther, Esq.
Alabama State Department of Education
Gordon Persons Building
50 North Ripley Street
Montgomery, Alabama 36130-2101
Telephone: (334) 694-4900
E-mail: terrie.morgan@alsde.edu