

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

CASSIE TRIGGS,)
)
 Appellant,)
)
 v.)
)
 ALABAMA ALCOHOLIC)
 BEVERAGE CONTROL)
 BOARD,)
)
 Appellee.)

Case No: 20-19-JJW

RECOMMENDED ORDER TO THE STATE PERSONNEL BOARD

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

Ms. Triggs was an employee of ABC, having served since December 26, 2017 as an ABC Sales Associate I (11706). Ms. Triggs worked at ABC Store 18 in District 14 in Jefferson County. ABC dismissed Ms. Triggs from State service effective May 6, 2020, by letter from the appointing authority.

The testimony, observation of the witnesses’ demeanor, documentary evidence and Ms. Triggs’ employment history lead to a recommendation, based on a preponderance of the available credible evidence, that the termination of Ms. Triggs’ employment with ABC should be upheld. On July 20, 2020, 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 9:00 a.m. Robert L. Martin III, Esq. appeared on behalf of ABC. Ms. Triggs appeared *pro se*.

At the beginning of the hearing, ABC introduced, without objection, Exhibits 1-7. Ms. Triggs did not introduce any exhibits. The undersigned informed the parties, without objection, that Ms. Triggs’ personnel file at the Alabama State Personnel Department would be included in the record and reviewed as evidence in this proceeding.

ABC called one (1) witness, ABC Store District 14 Supervisor Genevieve Richardson. Ms. Triggs called no witnesses but did comment and ask questions of Ms. Richardson.

I. PROCEDURAL HISTORY AND CHARGES

Ms. Triggs 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 June 4, 2020 the parties selected July 20, 2020, for the hearing.

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

...

"Cassie R. Triggs was separated from State Service effective May 6, 2020 for the following:

Violation of ABC Personnel Policies and Procedures:

- ABC-4-10-.02 GENERAL WORK RULES**
- ABC-4-1-.02 Employee Rights and Responsibilities**
 - (2) Disgraceful conduct on or off the job**
- ABC- 4-10-.02 General Work Rules**
 - (1) Minor Violations**
 - (b) Absenteeism**
 - (2) Serious Violations**
 - (j) Serious violation of any other Agency Rule.**
- ABC-4-10-.03 Employee Standards of Conduct**
 - (1) Professional Behavior and Conduct**
 - (4) Hours of Work**
 - (14) Conformance to Laws**
- ABC-4-9-.01 Leave (General)**

"Discussion: On Saturday, April 25, 2020, at 8:36am, Ms. Genevieve Richardson, Supervisor, received a call from Ms. Triggs' sister saying that Ms. Triggs had a family emergency and would not be able to be at work. Ms. Richardson asked if Ms. Triggs was able to speak with her personally, and her sister said "No."

At 5:20pm, Ms. Triggs called Ms. Richardson, but she missed her call. Ms. Triggs did not leave a voice message. Ms. Richardson then received a text from Ms. Triggs stating she had some family issues in Livingston and had left her phone in Birmingham because of leaving in a hurry. She apologized for missing work.

At 7:43 pm, Ms. Richardson, in a text message, was sent a mug shot of Ms. Triggs, who was arrested on April 24, 2020 for Unlawful Possession of a Controlled Substance and Possession of Marijuana, First Degree Not for Personal Use. Each charge had a \$2500.00 bond.

Ms. Triggs did not notify anyone of her arrest.

At the conference, Ms. Triggs admitted the arrest and the two (2) felony charges, but insisted she was merely in a friend's car and was 'caught up in the whole thing.' Ms. Triggs is adamant that she will be exonerated and cleared of the charges.

A review of her overall work history reveals the following disciplinary actions taken against Cassie R. Triggs:

- Warning for ABC 4-10-.02(1)(c), Tardiness on February 8, 2018; and,
- Suspension for ABC 4-10-.02(2)(b), Insubordination on August 27, 2019.

Ms. Triggs was dismissed from State Service on February 16, 2018 for absenteeism but was later re-instated after she acquired dependable transportation.

A consideration of the foregoing facts and of Cassie Triggs 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.¹

A. Employee's Personnel File²

Ms. Triggs' performance appraisals while working for ABC reflect:

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
09/01/2019	22.9	Meets Standards
11/15/2018	22.9	Meets Standards

Triggs' prior disciplinary actions include:

- August 27, 2019 – 3-day Suspension for Insubordination
- October 3, 2018 – Counseling Tardiness - Not on the job ready to work
- February 16, 2018 – Dismissal - Probationary Separation from Service-Absenteeism during probationary period.

¹ 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.

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

- February 8, 2018 - Warning - ABC-4-10-.02 General Work Rules (1) minor Violations c) Tardiness- Not on the job ready to work at the beginning of the shift. e) Failure to perform job.
- ABC Exhibit 1, p. 95 shows a discipline for Ms. Triggs on December 5, 2017, which is prior to her date of employment.

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)(4)(8); and

(1)(b)(10) (13) 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:

...

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.

...

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 following facts are undisputed. Ms. Triggs was arrested on April 24, 2020 and charged with two felonies. At the time of this hearing those charges were still pending. Ms. Triggs did not tell her employer she had been arrested. Her arrest caused her to miss work. She had her sister call Ms. Richardson and say she had a family emergency. Ms. Triggs, according to the ABC's plain statement of facts, told Mr. Martin at the pre-termination hearing she "was merely in a friend's car and got caught up in this whole thing." At the hearing before the undersigned, Ms. Triggs indicated she was in her vehicle on her way home when she was arrested.

The failure of Ms. Triggs to follow ABC's procedures is undisputed.

Ms. Richardson testified almost verbatim to the facts outlined in the plain statement of facts. The fact that she received the call from Ms. Triggs' sister and the text from Ms. Triggs; the receipt by her of the arrest mug shot showing Ms. Triggs, that Ms. Triggs missed work and did not report her arrest to anyone.

III. ISSUE

Did ABC, as the appointing authority, have sufficient evidence to sustain the dismissal of Cassie Triggs 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).³

In determining whether an employee's dismissal is warranted, the departmental agency bears the burden of proving the charges warrant termination by

³ 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).

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).⁴

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).

⁴ 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.

The preponderance of the undisputed evidence supports the action taken by ABC in discharging Ms. Triggs from her employment. 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 considered Ms. Triggs' disciplinary history. 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 29th day of July 2020.



JAMES JERRY WOOD
Administrative Law Judge
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cc:

Ms. Cassie Triggs



(E-mail and First-Class Mail)

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