

BEFORE THE PERSONNEL BOARD OF THE STATE OF ALABAMA
IN THE MATTER OF THE APPEAL OF
ESPANOLIA N. ROWE

ORDER

January 20, 2016

This matter came before the Board upon the dismissal of the Employee from her employment with the Alabama Department of Corrections (“DOC”). The Employee was dismissed from her employment on July 31, 2015, based on charges contained in a letter to the Employee dated July 22, 2015. This matter was assigned to Administrative Law Judge Randy C. Sallè and a hearing was held on October 21, 2015. The Administrative Law Judge’s Recommended Order is now before the Board for consideration.

DOC charges that the Employee violated Administrative Regulation 208, Employee Standards of Conduct and Discipline: V.A.2. – (Render full, efficient, and industrious service); V.A.3. – (Respond promptly to directions and instructions of supervisor); V.A.7. – (Observe all laws, rules and regulations); V.A.8. – (Uphold, with integrity, the public’s trust involved in their position); V.A.12. – (Promptly report any incidents of sexual misconduct); V.C.8. – (Show partiality toward or become emotionally involved with an Alabama State inmate or parolee); Annex H, Number 18 – (Serious violations of rules, policies, procedures, regulations, laws, or reasonable conduct expectations); Annex H, Number 31 – (Harassment or discrimination as defined in Administrative

Regulation 206, Harassment and Discrimination Policy); Annex H, Number 33 – (Conduct that is disgraceful, on or off the job that does adversely affect an employee's effectiveness on the job).

A review of the Employee's recent work history shows: one (1) Supervisory Instruction in February 2002 for use of force; five (5) Warnings between March 2002 and January 2012 for late for work, non-compliance with policies and rules, failure to follow Labor Management, and use of abusive language; four (4) Written Reprimands between April 2009 and January 2013 for late for work, abusive or profane language, and failure to follow Supervisor's instructions; one (1) three-day suspension in May 2002 for abusive or excessive physical force and serious violations of other rules, procedures, laws, or reasonable conduct expectations; one (1) five-day suspension in October 2008 for abusive or excessive physical force; and one (1) six-day suspension in July 2007 for fighting, assault, physical violence or disruptive behavior.

The Employee was employed with DOC as a Correctional Officer. On Friday, December 12, 2014, an Inmate reported a sexual relationship she had with another Correctional Officer to the Correctional Warden II and a subsequent investigation ensued. The Employee was the subject of part of the investigation. In his proposal for discipline of the Employee, the Correctional Warden II concluded that she committed a serious violation of rules, policies, procedures, regulations, laws or reasonable conduct expectations by failing to

report two (2) separate situations: (1) a conversation she had with the Inmate on December 14, 2014; and (2) a "confrontation" the Employee had with the Correctional Officer about his relationship with the Inmate. DOC terminated the employment of the Employee after it alleged she failed to report the incidents and also retaliated against the Inmate. The evidence presented by DOC during the hearing failed to support DOC's allegation that Employee retaliated against an inmate. The evidence showed the Employee failed to report two (2) incidents that were approximately six (6) years apart.

The Administrative Law Judge found the totality of the evidence does not warrant dismissal in this cause. The discipline imposed was aggravated to termination because of alleged retaliation and the Employee's habitual failure to report. However, the evidence did not support the aggravation of discipline from suspension to termination. In fact, the evidence presented by DOC during the hearing failed to support DOC's allegation that the Employee retaliated against an inmate. The evidence showed the Employee failed to report two incidents that were approximately six (6) years apart. Based on the totality of the evidence, the Employee's dismissal is due to be reversed. The Board hereby adopts by reference the findings of fact and conclusions of law as found by the Administrative Law Judge as a part of this Order as if fully set forth herein.

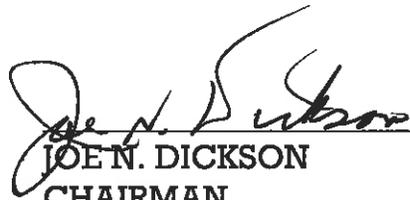
The Board has carefully considered the Administrative Law Judge's Recommended Order and is of the opinion that the decision of the appointing

authority to dismiss the Employee is not supported by the evidence and that the termination is not warranted.

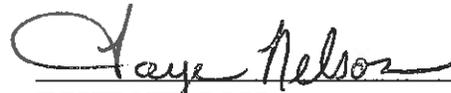
It is therefore the Order of this Board that the decision of the appointing authority to dismiss the Employee is hereby denied and the Employee should be reinstated with full back pay and benefits, offset by a three-day suspension and any interim earnings.



JACKIE GRAHAM
SECRETARY



JOE N. DICKSON
CHAIRMAN



FAYE NELSON
MEMBER



JOHN CARROLL
MEMBER



LIANE KELLY
MEMBER



MYRON PENN
MEMBER

Donahey, Lynn

From: Donahey, Lynn
Sent: Wednesday, January 20, 2016 1:00 PM
To: 'jbolton@hillhillcarter.com'; 'ecarter@hillhillcarter.com'; Sees, Elizabeth (DOC)
Subject: State Personnel Board Order - Espanolia Rowe v. DOC
Attachments: BO - Rowe, Espanolia.pdf

Good afternoon Counsel,

The Board Order in connection with the dismissal appeal filed by Espanolia Rowe is attached. Please do not hesitate to contact me if you experience any problems opening the attachment.

Sincerely,

Lynn M. Donahey

Legal Assistant to Alice Ann Byrne, Deputy Director

Tara S. Hetzel, General Counsel

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