

**BEFORE THE PERSONNEL BOARD OF THE STATE OF ALABAMA
IN THE MATTER OF THE APPEAL OF
EUGENE M. LAVINE**

ORDER

February 17, 2016

This matter came before the Board upon the dismissal of the Employee from his employment with the Alabama Department of Corrections (“DOC”). The Employee was dismissed from his employment on November 26, 2015, based on charges contained in a letter to the Employee dated November 2, 2015. This matter was assigned to Administrative Law Judge James Jerry Wood and a hearing was held on January 26, 2016. The Administrative Law Judge’s Recommended Order is now before the Board for consideration.

DOC charges that the Employee violated State Personnel Board Rule 670-X-19-.01(1)(a)(6) – (Unauthorized and/or unlicensed of vehicles, machinery, or equipment); 670-X-19-.01-(1)(a)(8) – (Violation of specific department rules); 670-X-19-.01-(1)(b)(3) – (Theft or unauthorized possession of company property); and 670-X-19-.01-(1)(b)(10) – (Serious violation of any other department rule). DOC further charged that the Employee violated DOC Administrative Regulation 208 V(A)(2) – (Render full, efficient and industrious service); V(A)(6) – (Protect and conserve funds, property, equipment and materials); V(A)(7) – (Observe all laws, rules and regulations); V(A)(8) – (Uphold, with integrity, the public’s trust involved in their position); V(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); V(C)(9) – (Take any article or property whatsoever from any institution or from state property not specifically authorized by regulation); V(C)(18) – (Use ADOC owned property or any state-owned property for his/her personal use without the approval of the Commissioner); and V(C)(20) – (Provide false information, alter an investigation or incident report, and/or intentionally omit facts pertinent to the inquiry). DOC further charged the Employee violated DOC Administrative Regulation 208 Annex H (33) – (Conduct that is disgraceful, on or off the job that does adversely affect an employee's effectiveness on the job); Annex H (37) – (Theft or unauthorized possession of ADOC or another individual's property); and Annex H (46) – (Giving false information or verbal/written statement in connection with employment, investigation, or injury).

A review of the Employee's recent work history shows: One (1) Warning in September of 2010 for non-compliance with policies; One (1) Written Reprimand in May of 2012 for serious violations of rules, policies, procedures, regulations, laws, or reasonable conduct expectations; One (1) Suspension in August of 2013 for sleeping on duty; One (1) Written Reprimand in May of 2014 for violation of safety/security regulations/procedures when no consequences occur; One (1) Warning in July of 2014 for non-compliance with policies; One

(1) Written Reprimand in October of 2014 for leaving assigned post and/or work station before the end of shift without permission from proper authority or proper relief and no serious consequences occur; and One (1) Warning in December of 2014 for late for work.

The Employee was employed by DOC as a Correctional Officer. The Employee's Supervisor received a phone call on July 10, 2015, that a William E. Donaldson Correctional Facility ("Donaldson") Critical Emergency Response Team ("CERT") van was located in Birmingham, Alabama. The Correctional Warden determined that no employees had authorized use of the CERT van and that it should be in the Donaldson parking lot. Once the Correctional Warden realized that the van was not on the property, she immediately ordered a lock down of the facility and bed check of the inmates.

The Employee admitted that he took the CERT van from State property without authorization for personal use. At first, the Employee did not tell the truth about how he obtained the keys or about his taking of the CERT van. With the CERT van not on property, the Correctional Warden had to interrupt the routine operations of the facility which included: a lockdown of the facility, a bed check of the inmates, and two co-workers being sent to retrieve the CERT van from Birmingham.

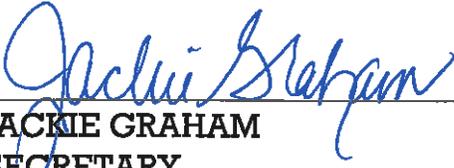
The Employee maintained that his punishment was too harsh for the offense he committed. However, the Correctional Warden determined that

dismissal from employment with DOC was the appropriate discipline for his unauthorized taking of the CERT van. The incident caused disruption of work at Donaldson, and had potential consequences should there have been an emergency situation requiring the CERT van.

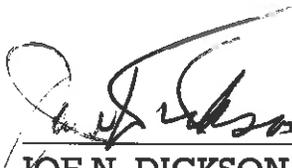
The Administrative Law Judge found the totality of the evidence does warrant dismissal in this cause and recommended that the Employee's dismissal be upheld. The Board hereby adopts by reference the findings of fact and conclusions of law as found by the Administrative Law Judge as a part of this Order 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 supported by the evidence and that the termination is warranted.

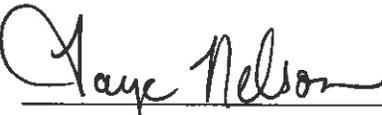
It is therefore the Order of this Board that the decision of the appointing authority to dismiss the Employee is hereby affirmed.



JACKIE GRAHAM
SECRETARY



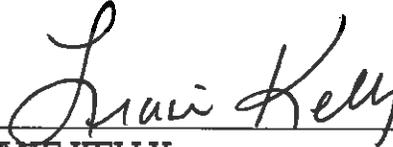
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Donahey, Lynn

From: Donahey, Lynn
Sent: Wednesday, February 17, 2016 12:51 PM
To: Butler, Albert (DOC)
Subject: Board Order - Eugene Lavin
Attachments: BO - Lavine, Eugene.pdf

Good afternoon, Mr. Butler:

Attached is the Board Order in connection with the dismissal appeal filed by Eugene Lavine. Please do not hesitate to contact me if you experience any problems opening the attachment.

Respectfully,

Lynn M. Donahey

Legal Assistant to Alice Ann Byrne, Deputy Director

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