

**BEFORE THE PERSONNEL BOARD OF THE STATE OF ALABAMA**  
**IN THE MATTER OF THE APPEAL OF**  
**TERA A. McMILLIAN**

**ORDER**

**February 17, 2016**

This matter came before the Board upon the dismissal of the Employee from her employment with the Alabama Department of Youth Services (“DYS”). The Employee was dismissed from her employment on August 21, 2015 based on charges contained in a letter to the Employee dated the same. This matter was assigned to Administrative Law Judge Randy C. Sallé and a hearing was held on October 27, 2015. The Administrative Law Judge’s Recommended Order is now before the Board for consideration.

DYS charges that the Employee violated State Personnel Board Rule 670-X-19-.01(1)(a)(4) – (Failure to perform job properly); 670-X-19-.01-(1)(b)(2) – (Insubordination); 670-X-19-.01-(1)(b)(5) – (Use of abusive or threatening language); 670-X-19-.01-(1)(b)(10) – (Serious violation of any other department rule). DYS further charged the Employee with violating Mt. Meigs Complex Procedural Manual, Sections 2 (d) and (e) relating to student movement.

A review of the Employee’s recent work history shows: One (1) Written Warning in December of 2005 for failure to attend a staff meeting and mandatory training; One (1) Verbal Counseling in June of 2011 for failure to report to work; One (1) Written Warning in December of 2011 for failure to

follow proper call-in procedures; One (1) Written Reprimand in December of 2011 for failure to report to work; One (1) Written Reprimand in July of 2012 for failure to follow proper call-in procedures; One (1) Verbal Counseling in December of 2012 for failure to conduct a count; One (1) Written Warning in March of 2013 for failure to attend a staff meeting and possession of a personal cell phone on the premises; One (1) Written Warning in March of 2013 for failure to adhere to a prior Corrective Action Plan by not following proper call-in procedures; and One (1) Written Reprimand in April of 2015 for unapproved leave.

The Employee was employed by DYS as a Youth Services Aide. The Employee's dismissal from service is based upon her actions on three (3) occasions. On May 13, 2015, the Employee's supervisor testified that she served a Written Reprimand to the Employee. The Employee responded to the disciplinary action with an expletive laced tirade around other employees. During the tirade, a threat was made against the Employee's coworkers.

On May 24, 2015, the Employee was working at the Phyfer B Dorm and was escorting six (6) boys to pill call. Only four (4) out of the six (6) boys were supposed to go to pill call. After going to pill call, the Employee took all six (6) boys back to the dorm and the Employee was the first one back in the dorm. With the Employee at the front of the line, the two (2) boys that were not supposed to go to pill call took off running. The Employee violated procedures regarding student movement to and from facilities by failing to properly

conduct her assigned pill call, failing to maintain eyes-on supervision, failing to conduct counts, failing to be aware of the location of students assigned to her, and failing to immediately report students attempting to escape.

The Employee's supervisor held a fact finding hearing for the Employee on June 17, 2015 regarding the first two (2) incidents. The Employee was asked numerous questions about her version of the events and she refused to respond. When she did respond, the Employee stated that she would submit a written statement at a later date. The Employee's supervisor felt the Employee was insubordinate for not giving a verbal answer to the questions that were being asked.

The Employee believed her dismissal was related to the Family and Medical Leave Act ("FMLA") leave she had taken. However, the Employee's FMLA file was not submitted as evidence. The limited evidence entered into the record concerning the Employee's FMLA history supported a finding that the Employee was permitted to take FMLA leave and no one interfered with her right to such leave. Even though her supervisors were "not happy" about the Employee being off work so much, there was no evidence they prevented or interfered with her taking approved FMLA leave and the evidence failed to support a retaliation claim.

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.

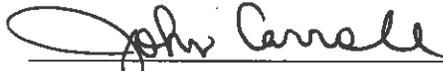
The Board has carefully considered the Administrative Law Judge's Recommended Order and is of the opinion that the decision of the appointing authority to dismiss the Employee is supported by the evidence and that the termination is warranted.

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

  
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JACKIE GRAHAM  
SECRETARY

  
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JOE N. DICKSON  
CHAIRMAN

  
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FAYE NELSON  
MEMBER

  
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MEMBER

  
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LIANE KELLY  
MEMBER

  
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MYRON PENN  
MEMBER

## **Donahey, Lynn**

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**From:** Donahey, Lynn  
**Sent:** Wednesday, February 17, 2016 12:50 PM  
**To:** 'julianmcphillips@msg-lawfirm.com'; Thrower, Lynne  
**Subject:** Board Order - Tera McMillian  
**Attachments:** BO - McMillian, Tera.pdf

Good afternoon, Counsel:

Attached is a copy of the Board Order in connection with the dismissal appeal filed by Tera McMillian. 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**

**Tara S. Hetzel, General Counsel**

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