

BEFORE THE PERSONNEL BOARD OF THE STATE OF ALABAMA
IN THE MATTER OF THE APPEAL OF
SOLOMON ABNER

ORDER

JUNE 15, 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 February 29, 2016, based on charges contained in a letter to the Employee dated the same. This matter was assigned to Administrative Law Judge James Jerry Wood and a hearing was held on April 21, 2016. The Administrative Law Judge's Recommended Order is now before the Board for consideration.

DOC charges that the Employee violated State Personnel Board Rules 670-X-19-.01(1)(b)(5) – (Use of abusive or threatening language) and 670-X-19-.01-(1)(b)(12) – (Disruptive conduct of any sort). DOC further charged the Employee violated DOC Administrative Regulation 208, Employee Standards of Conduct and Discipline: V(A)(1) – (Report to work on time and in a condition to perform their job properly); V(A)(2) – (Render full, efficient, and industrious service); V(A)(3) – (Respond promptly to directions and instructions of supervisor); V(A)(4) – (Exercise courtesy and tact); V(A)(7) – (Observe all laws, rules and regulations); and V(C)(4) – (Use profane, abusive, or threatening

language in communication with other employees, the public, or when supervising inmates).

A review of the Employee's recent work history shows: two (2) Pending Suspensions for sleeping and disagreeable behavior in July 2015; nine (9) Suspensions between June of 2008 and December of 2015 for inattention to the job/sleeping, failure to report for work, failure to follow supervisor's instruction, violations of the sexual misconduct statute, disagreeable behavior, and taking into any ADOC facility any article, item, or property, etc.; eight (8) Written Reprimands between December of 2007 and May of 2014 for late for work, failure to follow supervisor's instruction, disagreeable behavior, leaving assigned post, misuse of state equipment, and use of abusive, profane, etc.; three (3) Warnings between May of 2007 and June of 2015 for late for work and non-compliance with policies; and one (1) Informal Warning in May of 2015 for late for work.

The Employee was employed with DOC at Elmore Correctional Facility as a Correctional Officer. On September 23, 2015, the Employee was working third shift where he was assigned to a dorm. The Employee's coworker called on the state-issued handheld radio to say he needed a kitchen worker from the Employee's dorm. The Employee responded on the radio, "10-4 Officer 'Laqueer.'" The coworker asked the Employee to repeat what he said, and the Employee gave the same response. Several other coworkers heard the responses on the radio, including a Correctional Sergeant who affirmed that he

“unequivocally” recognized the Employee’s voice referring to the coworker as “Officer Laqueer.” The coworker felt that the Employee disrespected him and believed the Employee had called him a “queer.”

The Employee contends that the allegations are false, and he suggested that his radio transmission was “stepped on” by other radio traffic. A Correctional Captain conducted an investigation into the incident and received confirmation from five (5) of the Employee’s coworkers that the Employee made the alleged statement. He also testified that the Employee himself admitted to making the statement. However, the Employee denies this admission and suggested he was a “whistleblower” and was being retaliated against by his coworkers. The supervisor denied that there had been any retaliation against the Employee.

At the hearing, the Employee had no witnesses or exhibits. In the closing argument, the Employee recounted a series of incidents in which he alleged various coworkers resented and took exception to his actions, which the Employee said were to do right and follow the law and the rules. The Employee also said that he “reports stuff” and other coworkers resent that and have fabricated lies about him.

In determining the level of discipline, DOC considered Annex H, Number 13, which allows for dismissal on the fourth offense of disagreeable behavior, including lack of cooperation and insubordination. Given the Employee’s previous disciplinary history, DOC dismissed the Employee for the good of the

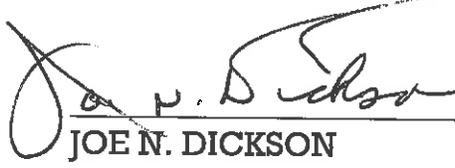
service. The Administrative Law Judge found the totality of the evidence does warrant dismissal in this cause and recommended that the Employee's dismissal be upheld. The Board hereby adopts by reference the findings of fact and conclusions of law as found by the Administrative Law Judge as a part of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



JOE N. DICKSON
CHAIRMAN

FAYE NELSON
MEMBER



LIANE KELLY
MEMBER


MYRON PENN
MEMBER


CLINTON P. CARTER
MEMBER

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