

BEFORE THE PERSONNEL BOARD OF THE STATE OF ALABAMA
IN THE MATTER OF THE APPEAL OF
CURWIN LANCASTER

ORDER

June 15, 2016

This matter came before the Board upon the dismissal of the Employee from his employment with the Alabama Department of Human Resources ("DHR"). The Employee was dismissed from his employment on January 25, 2016, 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 April 11, 2016. The Administrative Law Judge's Recommended Order is now before the Board for consideration. The Board has also had the benefit of oral argument.

DHR charges that the Employee violated State Personnel Board Rules: 670-X-19-.01(1)(a)(3) – (Inattention to job); 670-X-19-.01(1)(a)(4) – (Failure to perform job properly); 670-X-19-.01(1)(a)(6) – (Unauthorized and/or unlicensed operation of vehicles, machinery, or equipment); 670-X-19-.01(1)(a)(7) – (Participation in unauthorized activity or solicitations on work premises); 670-X-19-.01(1)(b)(10) – (Serious violation of any other department rule); 670-X-19-.01(1)(b)(12) – (Disruptive conduct of any sort); 670-X-19-.01(1)(b)(13) – (Conduct unbecoming a state employee). DHR further charges

that the Employee violated DHR's rule concerning Religious Expression and Government Employees.

A review of the Employee's recent work history shows one (1) Warning in October 2015 for disruptive conduct.

The Employee was employed with DHR as a Financial Support Supervisor. Following his August 2013 promotion to a supervisory position, the Employee engaged in several actions that led to his dismissal. DHR alleged that the Employee: (1) improperly used religion in the workplace; (2) failed to properly supervise his employees to ensure they completed the minimum work required by Federal and State standards; and (3) failed to properly supervise employees' outside employment and use of DHR resources for personal matters.

In 2010, DHR General Counsel sent a series of memorandums to all DHR employees via email, which served as notice of the Alabama Religious Freedom Amendment and federal law on religious freedom. Among the permissible forms of expression, the memorandums acknowledged that prayer, reading Bible verses, and other religious expression may be included in DHR meetings IF staff are advised that they do not have to participate or be present for that portion of the meeting. The Employee claimed he was unaware of the memorandums concerning religion. The Employee frequently used religious quotes, Bible verses, and prayer to motivate his employees, participated in prayer meetings with his employees, and included religious material in

monthly unit meetings. The Employee asserted that subordinates were aware these meetings were voluntary, but could not describe how they were made aware of that fact. Several employees testified that they thought the meetings were mandatory and the Employee did not advise them that participation was optional and they were free to leave.

Secondly, the Employee supervised the Macon County DHR Food Assistance Program. Pursuant to State standards, counties must maintain a delinquency error rate of 5% or less each month. Macon County had an insufficient delinquency error rate in October 2014 (6.11%); August 2015 (6.18%); September 2015 (6.90%); October 2015 (10.71%); and November 2015 (9.70%). Macon County was placed on a corrective action plan for failing to maintain the specified rate. An error rate results in qualified individuals not receiving food assistance in a timely manner. The Employee, as supervisor of Macon County, was ultimately responsible for this failure.

Thirdly, an employee under the Employee's supervision operated a private entity during work hours. The employee wrote books, poems, and inspirational materials and maintained a Facebook page. On September 17, 2015, the employee recorded a video challenge in the Macon County DHR Office and posted it to his Facebook page at approximately 10:11 a.m. Individuals could win a gift basket valued at \$50.00 by tagging someone in the post. The Employee himself participated that afternoon at 2:43 p.m. The subordinate employee testified that he was never told that he needed approval

for outside employment or that he could not market his material on State property during work hours. He also recalled a time when the Employee stated it was permissible for him to use the DHR computer if he was caught up on his other work. The Employee also violated computer policy by asking a subordinate to use her DHR computer to help him scan and organize the portfolio for his doctoral thesis.

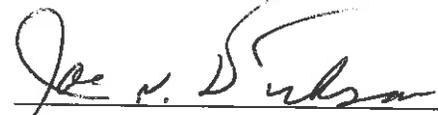
The Administrative Law Judge found the totality of the evidence does warrant dismissal in this cause and recommended that the Employee's dismissal be upheld. The Board hereby adopts by reference the findings of fact and conclusions of law as found by the Administrative Law Judge as a part of this Order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

The Board has carefully considered the Administrative Law Judge's Recommended Order and the oral argument presented in this matter 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

recuse

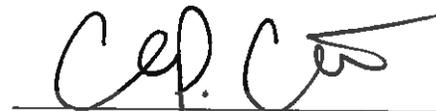
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MEMBER



LIANE KELLY
MEMBER



MYRON PENN
MEMBER



CLINTON P. CARTER
MEMBER