

On June 13, 2016, the undersigned conducted a *de novo* hearing (“the hearing”) at the offices of the Alabama State Personnel Department in Montgomery, Alabama, during which *ore tenus* and documentary evidence was received. Elizabeth A. Sees, Esq., appeared as counsel on behalf of DOC. Bradley was *pro se*.

At the beginning of the hearing, DOC introduced, without objection, DOC Exhibits 1 – 6C. Bradley offered no exhibits. The undersigned informed the parties, without objection, that Bradley’s personnel file at the Alabama State Personnel Department would be included in the record as evidence in this matter.

DOC called as witnesses:

- (1) Janorris Bradley, Appellant and former Correctional Officer; and
- (2) Walter Myers, Correctional Warden III, DOC;

Bradley also testified on his own behalf.

I. PROCEDURAL HISTORY AND CHARGES

DOC hired Bradley on June 9, 2014 as a Correctional Officer Trainee. Bradley was promoted to Correctional Officer on February 1, 2015 and he remained in that classification until DOC dismissed him effective May 9, 2016.¹ The dismissal letter signed by the appointing authority, DOC Commissioner Jefferson S.

¹ See DOC Exhibit 3.

Dunn, is dated May 6, 2016.²

Bradley timely appealed his dismissal to the Alabama State Personnel Board, pursuant to ALA. CODE § 36-26-27(a) (1975). At the prehearing conference held on May 25, 2016, the appeal hearing was scheduled for June 13, 2016.

In its Statement of the Facts, DOC alleged, in pertinent part:

...

Janorris Bradley (“Bradley”) was a Correctional Officer at the Easterling Correctional Facility located in Clio, Alabama. He was employed with the ADOC for one year and four months.

On September 25, 2015, Bradley was scheduled to work on the 6:00 p.m. shift. At approximately 1:35 p.m.[,] he called Easterling to report he would not be coming to work because he had injured his back and was going to the Emergency Room. At approximately 7:00 p.m., after Bradley failed to report to work, Easterling phoned Bradley who indicated he would not be reporting for duty and had been to the doctor. The following day, Bradley called Easterling at 3:22 p.m. to report he would not be coming in for his assigned 6:00 p.m. shift due to his back injury, and that he had medical documentation indicating he should be excused from work from September 25 – September 27. Bradley also failed to report for work on September 27, 2016.

Shortly thereafter, a social media entry indicated Bradley had participated in events preparing for a wedding on September 25, and attended the wedding on September 26. Because of these activities,

² See DOC Exhibit 3.

the absences were unexcused by Bradley's supervisor. On October 1, 2015, when questioned, Bradley acknowledged attending the events and accepted responsibility for his actions because he was aware of a staff shortage.

Bradley was given notice of a pre-dismissal conference in a letter dated December 7, 2015, which gave him notice of the conference on December 17, 2015, advised him of the charges against him and notified him of his ability to present his side of the story. During the conference on December 17, 2015, Bradley was permitted to present his defense, and answered questions asked by Warden Walter Myers. At the conclusion of the hearing Warden Myers informed Bradley he planned to submit a recommendation that Bradley be dismissed for his actions.

Bradley's actions violated ADOC's Administrative Regulation 208 – Employee Standards of Conduct and Discipline with respect to the following provisions:

Section V.A.1 – Employees shall report for work on time and in a condition to perform their job properly.

Section V.A.2 – Employees shall render full, efficient, and industrious service.

Section V.A.7 – Employees shall observe all laws, rules, and regulations.

Section V.A.18 – Employees shall obtain approval for absence from work. Tardiness, failure to follow proper call-in procedure, and unexcused absence shall subject the employee to disciplinary action.

Bradley's prior disciplinary actions are as follows:

- | | | |
|--------------------|------------|--|
| 1. October 5, 2015 | Warning | Minor violation of Departmental or Institutional rules, policies, or procedures that do not result in serious consequences (9/8/15) |
| 2. Pending | Suspension | Failure to Report to Work (8/22/15) |
| 3. Pending | Suspension | Failure to Report for Work (8/8/15) |
| 4. Pending | Suspension | Failure to Report for Work (7/2/15) |
| 5. March 27, 2015 | Warning | Minor violation of Departmental or Institutional rules, policies, or procedures that do not result in serious consequences (3/24/15) |

In determining the appropriate corrective action for violating the standards of conduct, the Commissioner considered the following infraction under Administrative Regulation 208:

Failure to Report to Work (unexcused absence). (AR 208, Annex H, #27).

Based on the guidelines set forth in Administrative Regulation 208, the recommendation of termination was made and approved by the requisite authorities due to the fact that this was Bradley's fourth (4th) offense for Failure to Report for Work in a twelve (12) month period. Warden Walter Myers, Institutional Coordinator Gwen Mosley, and Associate Commissioner Grantt Culliver recommended the dismissal of Bradley. Commissioner Jefferson S. Dunn, by and through his designee, then approved the dismissal effective at the close of business on May 9, 2016. Bradley's actions were in violation of ADOC Regulations, he was provided with due process as enumerated by the same.

...

II. FACTUAL BACKGROUND

Having reviewed the documentary evidence, having heard the testimony presented at the hearing and having observed the witnesses' demeanor and assessed their credibility, the undersigned finds the greater weight of the evidence supports the following findings of fact.³

A. Employee's Personnel File⁴

Bradley's performance appraisals while in State service at DOC reflect:

Date Ending	Total	Score Category
07/31/2015	24	Meets Standards
12/08/2014	23	Meets Standards

Bradley's prior disciplinary history at DOC is detailed in DOC Exhibits 1 – 3 and in DOC's Statement of Facts set out above. It includes three suspensions and two warnings in his one year and four month career at DOC.

B. DOC Regulations, Policies and Procedures Forming the Basis of the Charges

AR 208, provides in pertinent part:

...

V. PROCEDURES

A. All ADOC employees shall adhere to the following

³ All references to exhibits and testimony are intended to assist the State Personnel Board in considering this Recommended Order and are not necessarily the exclusive sources for such factual findings.

⁴ See *generally* State Personnel Board Rule 670-X-18-.02(5) (employee's work record, including performance and disciplinary history, considered in dismissing employee).

standards:

1. Report to work on time and in a condition to perform their job properly.
2. Render full, efficient, and industrious service.
- ...
7. Observe all laws, rules and regulations.
- ...
18. Obtain approval for any absence from work. Tardiness, failure to follow proper call-in procedures, and unexcused absence shall subject the employee to disciplinary action.
- ...

AR 208, Annex H: TABLE OF INFRACTIONS and LEVEL OF DISCIPLINE:

...

27. Failure to report to work (unexcused absence). (**First Offense**: 2 days suspension; **Second Offense**: 3 days suspension; **Third Offense**: 3 days suspension; **Fourth Offense**: Dismissal)

...

C. Facts Forming the Basis of Dismissal

Bradley was employed by DOC for only sixteen months or less. During that time Bradley failed to report for scheduled work on several occasions without being excused. Bradley was suspended for failure to show up on July 2, 2015; August 8,

2015; and August 22, 2015. Bradley did not report for his scheduled shifts September 25 – 27, 2015. Bradley claimed to have a back injury, which kept him from working, but was involved in wedding activities on September 25 and 26. Bradley admitted he did not ask off for those dates. Bradley tendered an excuse from an urgent care provider that purported to show he was under medical care on September 27, 2015 and was able “... to return to work ...”⁵ The return to work document does not indicate what, if any injury, Bradley was treated for.

Bradley says he was overworked and argued he was caused to work mandatory overtime on successive weekend days in violation of DOC policies. Bradley does not dispute that he failed to show up on days he was scheduled to work. Bradley admits he should have handled his attendance issues differently.

Bradley believes the dismissal from his DOC employment is too severe. He admits making mistakes, but insists that he had become a better officer after being disciplined for these failures to report to work. Bradley wants to maintain employment with DOC.

III. ISSUE

Did DOC produce sufficient evidence to sustain Bradley’s dismissal based upon violations of DOC rules, regulations, policies and procedures?

⁵ See DOC Exhibit 4, p. 6. Bradley’s supervisor did not accept the ambiguous document, especially in light of Bradley’s attendance at the wedding as posted on a social media site. The wedding photographs are depicted in DOC Exhibit 4, pp. 9-10.

IV. DISCUSSION

The purpose of the administrative appeal is to determine if the termination of the employee's employment is warranted and supported by the evidence. *Kucera v. Ballard*, 485 So. 2d 345 (Ala. Civ. App. 1986); *Thompson v. Alabama Dept. of Mental Health*, 477 So. 2d 427 (Ala. Civ. App. 1985); *Roberson v. Personnel Bd. of the State of Alabama*, 390 So. 2d 658 (Ala. Civ. App. 1980). In *Earl v. State Personnel Board*, 948 So. 2d 549 (Ala. Civ. App. 2006), the Alabama Court of Civil Appeals reiterated:

“[D]ismissal by an appointing authority ... is reviewable by the personnel board only to determine if the reasons stated for the dismissal are sustained by the evidence presented at the hearing.”

Id. at 559, quoting *Johnston v. State Personnel Bd.*, 447 So. 2d 752, 755 (Ala. Civ. App. 1983).⁶

In determining whether an employee's dismissal is warranted, the departmental agency bears the burden of proving the charges warrant termination by a “preponderance of the evidence.” The law is well settled that a “preponderance of the evidence” standard requires a showing of a *probability* that the employee is guilty of the acts as charged. There must be more than a mere possibility or one

⁶ The Alabama Court of Civil Appeals went further to hold: “both this court and the circuit court must take the administrative agency's order as ‘prima facie just and reasonable’ and neither this court nor the circuit court may ‘substitute its judgment for that of the agency as to the weight of the evidence on questions of fact.’” *Id.* at 559, citing ALA. CODE § 41-22-20(k) (1975); *State Dept. of Human Res. v. Gilbert*, 681 So. 2d 560, 562 (Ala. Civ. App. 1995).

possibility among others that the facts support the disciplinary action at issue. The evidence must establish that *more probably than not*, the employee performed, or failed to properly perform, as charged. See *Metropolitan Stevedore Co. v. Rambo*, 521 U.S. 121, 117 S.Ct. 1953, 138 L.Ed. 2d 327 (1997), holding that a “significant possibility” falls far short of the Administrative Procedure Act’s preponderance of the evidence standard. See also *Wright v. State of Tex.*, 533 F.2d 185 (5th Cir. 1976).⁷

An administrative agency must act within its constitutional or statutory powers, supporting its decision with substantial evidence. “Substantial evidence has been defined as such ‘relevant evidence as a reasonable mind might accept as adequate to support a conclusion,’ and it must be ‘more than a scintilla and must do more than create a suspicion of the existence of a fact to be established.’” *Alabama Alcoholic Beverage Control Bd. v. Tyson*, 500 So. 2d 1124, 1125 (Ala. Civ. App. 1986).

Bradley’s conduct constituted violations of DOC’s AR 208, Employee Standards of Conduct and Discipline, V.A.1, 2, 7 and 18. AR 208, Annex H, No. 27, warrants dismissal for the fourth offense of failure to report to work in a twelve-

⁷ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions handed down prior to the close of business on September 30, 1981.

month period. That, considering Bradley's overall disciplinary history in his short tenure, compels his separation from employment at DOC.

The undersigned has carefully observed and considered the witnesses' demeanor, testimony, and all the documentary evidence in this case and finds that the preponderance of the evidence establishes that DOC followed its rules and procedures, and had a proper basis and the authority to discharge Bradley from his employment.

The undersigned finds no basis for a lesser disciplinary action than dismissal. Therefore, the undersigned recommends to the State Personnel Board that the dismissal be UPHELD.

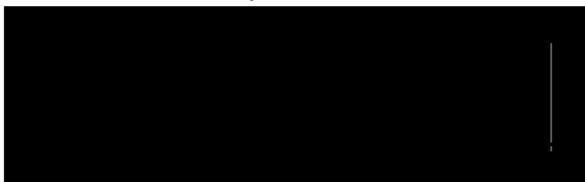
Done, this the 29th day of June, 2016.



JAMES JERRY WOOD
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