

BEFORE THE PERSONNEL BOARD OF THE STATE OF ALABAMA
IN THE MATTER OF THE APPEAL OF
MARCUS KIMBROUGH

ORDER

September 14, 2016

This matter came before the Board upon the dismissal of the Employee from his employment with the Alabama Department of Youth Services (“DYS”). The Employee was dismissed from his employment on April 12, 2016 based on charges contained in a letter to the Employee dated April 7, 2016. This matter was assigned to Administrative Law Judge Randy C. Sallé and a hearing was held on June 21, 2016. The Administrative Law Judge’s Recommended Order is now before the Board for consideration.

DYS charges that the Employee violated State Personnel Board Rules 670-X-19-.01(1)(a)(1) – (Absenteeism); 670-X-19-.01(1)(a)(2) – (Tardiness); 670-X-19-.01(1)(a)(3) – (Inattention to job); 670-X-19-.01(1)(a)(4) – (Failure to perform job properly); 607-X-19-.01(1)(b)(2) – (Insubordination); 670-X-19-.01(1)(b)(6) – (Falsification of records); 670-X-19-.01(1)(b)(9) – (Walking off the job); 670-X-19-.01(1)(b)(10) – (Serious violation of any other department rule); and 670-X-19-.01(1)(b)(11) – (Leaving job station without permission).

A review of the Employee’s recent work history shows: one (1) Verbal Counseling in June 2011 for reporting late for work; one (1) Written Counseling in March 2010 for reporting late for work, two (2) Written Warnings in July and

August 2011 for contacting a student's mother and failure to follow proper call-in procedures; and five (5) Written Reprimands between January 2011 and January 2015 for leaving his assigned post without being properly relieved, failing to attend a mandatory training class, failing to call his supervisor before taking leave, and failure to follow proper call-in procedures.

The Employee was employed with DYS as a Youth Services Security Officer. On or about November 6, 2015, the Vacca Campus Administrator ("Administrator") attended a meeting with the campus security officers. At this meeting, the Administrator discussed issues that had been brought to her attention, such as tardiness, poor attendance, officers not properly signing in and out of the e-Start system, and officers leaving the campus without proper permission. The Administrator instructed the officers to obtain approval from supervisors if they planned to leave campus at any time during their shift and to sign in and out of the timekeeping system. At the meeting, the Employee asked a question about whether officers could take a lunch break. At Vacca, security officers work an 8-hour straight shift, without a specified lunch break. Officers are permitted to eat during their normal two (2) 15-minute breaks during their shift. The Administrator clarified that officers were not permitted to combine their two 15-minute breaks into one longer 30-minute break. The Employee's direct supervisor testified that following a review of the allegations, all of the officers were disciplined in one manner or another. The Employee received a reprimand while other officers received warnings.

The Employee reported to work tardy on many occasions. Pursuant to his time sheets for 2015, the Employee reported late to work on more than 100 occasions during the year. Following the November 2015 meeting, the Employee's arrival time improved slightly for a short time, but soon reverted back to significant tardiness. A DYS Special Investigator ("Investigator") was assigned the task of investigating the claims that security officers were leaving campus without permission or without properly signing out of the timekeeping system. The Investigator reviewed video footage after the November 6, 2015, meeting and compared it to the corresponding time sheets. After he reviewed the video, the Investigator determined the Employee walked to the gatehouse from off-campus, clocked out, and then left campus again. After varying times off campus, some 25 minutes and other times more than an hour, the Employee would return from the off-campus parking area, clock back in and then return to campus.

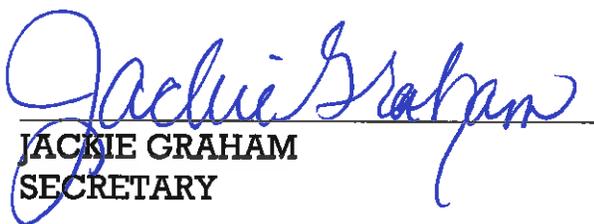
According to the Employee, he would first ask for permission before leaving campus. The Employee testified he would ask for permission to leave the campus to get food prior to the administrator leaving at 9:00 p.m., but that there would not be a log for his request because the administrator never wrote anything in the log book. The Employee also explained he would leave his post to take smoke breaks in the parking lot since smoking is not allowed on Vacca premises. However, the Employee acknowledged he did not request leave using the e-Start program when he planned to leave. The Employee was given

multiple opportunities to change his poor work performance but failed to improve.

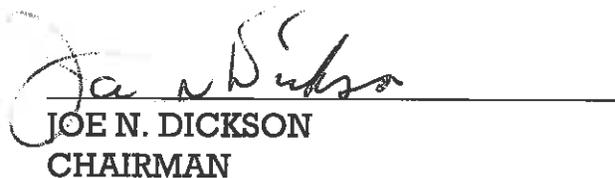
The Administrative Law Judge found the totality of the evidence does warrant dismissal in this cause and recommended that the Employee's dismissal be upheld. The Board hereby adopts by reference the findings of fact and conclusions of law as found by the Administrative Law Judge as a part of this Order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

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MYRON PENN
MEMBER

A handwritten signature in black ink, appearing to read "Clinton P. Carter", written over a horizontal line.

CLINTON P. CARTER
MEMBER