

**BEFORE THE STATE PERSONNEL BOARD
IN THE MATTER OF**

JARVIS WELLS,)	
)	
Appellant,)	
)	
v.)	Case No: 18-26-RCS
)	
ALABAMA DEPARTMENT OF)	
MENTAL HEALTH,)	
)	
Appellee.)	

RECOMMENDED ORDER TO THE STATE PERSONNEL BOARD

This Recommended Order arises from an employment termination action by the Alabama Department of Mental Health (hereinafter “DMH”). DMH terminated the employment of Jarvis Wells (hereinafter “Wells” or “the employee”) based upon his submission of falsified doctor’s excuses. The evidence presented by DMH during the hearing demonstrated Wells submitted multiple falsified doctor’s excuses. Therefore, DMH’s decision to dismiss Wells was within its authority and should be upheld.

A hearing was held on July 17, 2018, at Bryce Hospital in Tuscaloosa, Alabama. David Huddleston, Esq., appeared as counsel on behalf of DMH. Jason L. Manasco, Esq. appeared as counsel for Wells.

DMH introduced into evidence seven exhibits consecutively numbered DMH Exhibits 1-7. Wells did not introduce any exhibits. Wells’s personnel file at the

Alabama State Personnel Department is included in the record as evidence in this cause.

DMH called as witnesses:

- (1) Brandy Kemp, DMH Personnel Specialist; and
- (2) Shelia Penn, Bryce Facility Director.

Wells failed to appear at the hearing and testify on his own behalf.

I. PROCEDURAL HISTORY AND CHARGES

Wells began State employment in July 2017 as a Mental Health Worker I when he was hired by DMH at Bryce Hospital (“Bryce”). Wells remained in that classification until his dismissal.

DMH terminated Wells’s employment, effective close of business May 17, 2018. *See* DMH Exhibit 1 (dismissal letter dated May 14, 2018, signed by Shelia Penn, Bryce Facility Director). DMH determined Wells violated DMH Policy 70-5, *Employee Conduct and Accountability*; II.1.aa., Alteration and/or falsification of Department and/or facility documents/records. *See* dismissal letter. DMH further determined:

...

You submitted medical statements from DCH Health System to support your absences from work on December 30, 2017, February 16, 2018, February 23, 2018, and March 7, 2018. A representative from the Bryce Hospital Human Resources Department verified these medical statements with DCH Health System. The written report received

from DCH Health Systems verified that there was no medical information concerning you at DCH on any of the dates mentioned above.

Additionally, your absence on March 7, 2018 where you left work sick at 4:50 a.m., was your second occasion of unexcused absence. Prior to this incident, you received a written reprimand on February 14, 2018 for your first occasion of unexcused absence on January 28, 2018.

...

Wells timely appealed his employment dismissal to the State Personnel Board and requested a hearing, pursuant to ALA. CODE § 36-26-27(a) (1975).

In its Short Plain Statement of Facts, DMH reiterated its charges against Wells and cited the same DMH policies listed in the charge and dismissal letters.

On July 17, 2018, the undersigned conducted a *de novo* hearing, at which *ore tenus* and documentary evidence was received.

II. FACTUAL BACKGROUND

Having reviewed the documentary evidence and 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.¹

¹ 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.

A. Employee's Personnel File²

Wells's annual performance appraisals while at DMH reflect:

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
01/18 ³	23.0	Meets Standards

Wells's prior disciplinary actions include:

- Verbal Counseling on December 6, 2017 for absenteeism.
- Verbal Counseling on December 27, 2017 for violation of Dress Code Policy.
- Written Reprimand on January 18, 2018 for insubordination.
- Written Reprimand on February 1, 2018 for unexcused absences.
- Written Reprimand on March 15, 2018 for absenteeism.

B. DMH Policies/Procedures Forming the Basis of the Charges

DMH's Policy #70-5, Employee Conduct and Accountability provides, in pertinent part:

I. POLICY:

All Department employees will adhere to accepted standards of professional and personal conduct. Violation of these standards may result in disciplinary action.

II. STANDARDS:

1. The listing of violations below is not meant to be all inclusive and does not imply that discipline may not be imposed for other sufficient reasons. Unacceptable conduct is defined as, but not limited to, the following:

² See generally State Personnel Board Rule 670-X-18-.02(5) (employee's work record, including performance and disciplinary history).

³ First Probationary Performance Appraisal.

...

- aa. Alteration and/or falsification of Department and/or facility documents/records.

...

State Personnel Board General Work Rule, 670-X-19-.01 provides, in part:

(1) In addition to any special rules issued by the various appointing authorities for the guidance of their employees, the following standard general work rules shall apply to all classified employees:

(a) Violations that normally result in disciplinary actions of increasing severity:

1. Absenteeism – Unexcused absence, unreported absence, a pattern of absences, or excessive absences.

...

(b) More serious violations that may result in suspension or discharge on the first offense.

...

6. Falsification of records – Application for Employment, time card, doctor’s excuse, etc.

...

C. Facts Forming the Basis of Dismissal

Wells worked for Bryce for a little over nine months. He had a recurring problem with absenteeism and unexcused absences. Brendy Kemp (“Kemp”), Personnel Specialist for Bryce, was responsible for verifying doctor’s excuses

submitted by employees. Kemp testified that employees bring in doctor's excuses and provide them to their supervisor. The supervisor then provides the doctor's excuse to the Associate Director of Nursing ("ADON"). Kemp testified that if the ADON suspects something suspicious with a doctor's excuse, she will forward the excuse to the Director of Nursing for further evaluation. Kemp testified that ultimately it is her responsibility to verify suspicious doctor's excuses.

Kemp received multiple doctor's excuses submitted by Wells for her to verify.⁴ Wells's doctor's excuses originated from the Druid City Health System ("DCH"). Kemp faxed a copy of Wells's excuses to Kayla McCoreey ("McCoreey"), a worker in DCH's Medical Records Division. Kemp asked McCoreey to verify Wells's doctor's excuses for March 7, 2018; February 23, 2018; February 16, 2018; February 9, 2018; January 28, 2018; December 30, 2017; and November 11, 2017. McCoreey replied to Kemp's facsimile and indicated Wells **did not** visit a DCH medical facility on four out of the seven dates in question: March 7, 2018; February 23, 2018; February 16, 2018; and December 30, 2017.⁵

Wells submitted doctor's excuses from both DCH – Regional Medical Center and DCH – Northport Medical Center. Kemp testified that McCoreey worked for

⁴ DMH Exhibit 6.

⁵ DMH Exhibit 6, p. 69.

both DCH facilities and her medical records include all of the patient visits for both facilities.

Shelia Penn (“Penn”), Bryce Facility Director, testified at the hearing. Penn testified she dismissed Wells because he falsified multiple doctor’s excuses and had multiple unexcused absences. Penn testified Wells failed to provide any set of circumstances or explanation that would mitigate his discipline. Penn determined dismissal was appropriate because Wells submitted multiple falsified doctor’s excuses and had a long history of discipline in his short tenure as an employee at Bryce.

In his letter of appeal, Wells made several contentions: He contended he was treated unfairly; he contended Penn’s decision to dismiss him from employment was based on retaliation; and he contended other employees at Bryce committed far worse infractions and were not dismissed from service. During his pre-dismissal conference with Penn, Wells was given an opportunity to tell his side of the story. Wells asked to see a copy of the verification from DCH and was permitted to have a copy after the hearing. Wells indicated during the hearing he had nothing to say, but rather that he just wanted to know who they had spoken with and wanted a copy of the information sent from DCH.

Wells failed to appear at the hearing and explain the contentions he listed in his dismissal appeal letter. Wells did not provide witness testimony or written

evidence that he was treated unfairly, that Penn's decision to dismiss him from employment was retaliatory, or that other similarly situated employees were treated more favorably.

III. ISSUE

Did DMH produce sufficient evidence to warrant dismissal of Wells?

IV. DISCUSSION

Standard of Review

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

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

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. **Thus, there must be more than a mere possibility or one 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*

ALA. CODE § 41-22-20(k) (1975); *State Dept. of Human Res. v. Gilbert*, 681 So. 2d 560, 562 (Ala. Civ. App. 1995).

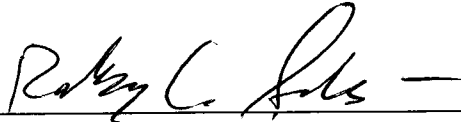
⁷ In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions handed down prior to the close of business on September 30, 1981.

Alcoholic Beverage Control Bd. v. Tyson, 500 So. 2d 1124, 1125 (Ala. Civ. App. 1986).

In the present case, DMH provided substantial evidence Wells violated DMH Policy 70-5, Employee Conduct and Accountability, II.1.aa., Alteration and/or falsification of Department and/or facility documents/records. Wells's action also violated State Personnel Board General Work Rule 670-X-19-.01(1)(b)(6) – Falsification of records – Application for Employment, time card, doctor's excuse, etc. Wells falsified four doctor's excuses over a four-month period. Wells was employed for a little over nine months and had a lengthy disciplinary history. DMH cannot condone such behavior from its employees, for the good of the service.

Accordingly, the undersigned finds the totality of the evidence warrants dismissal in this cause. Therefore, the undersigned recommends to the State Personnel Board that the dismissal be UPHELD.

Done, this the 20th day of August 2018.



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