

fourteen exhibits consecutively marked as Employee Exhibits 1-14. The undersigned informed the parties that Jackson's personnel file at the Alabama State Personnel Department was included as evidence in this cause.

I. PROCEDURAL HISTORY AND CHARGES

Jackson began State employment in April 1996 as a Senior Service Social Worker with DHR. Jackson was promoted to Senior Social Worker Supervisor in April 2002. Jackson remained in that classification until her dismissal on June 24, 2016. *See* June 24, 2016, dismissal letter ("dismissal letter") signed by Montgomery County DHR Director, Karen H. Smith ("Smith").¹

In the dismissal letter, Smith stated:

This is to inform you that effective immediately your employment with the Montgomery County Department of Human Resources will be terminated. This action has been made necessary because of your actions while employed as a Senior Social Work Supervisor in the Family and Children's Services Division of the Montgomery County Department of Human Resources.

An Administrative Hearing was held on May 4, 2016 and June 14, 2016, at the office of the Montgomery County Department of Human Resources in Montgomery, AL. You were charged with violating the Rules of the State Personnel Board, Chapter 670-X-19-.01 General Work Rules, (1)(a)4 – Failure to perform job properly; (1)(a)8 – Violation of Specific Departmental Rules [Individualized Service Plans Policy, Child Protective Services Policy, and Family Services Case Record Policy, and Administrative Letters 7143, 7028, and 7051]; (1)(b)1 – Violations of safety rules; and (1)(b)2 – Insubordination – Failure to follow an order. The Hearing Officer who heard the facts in this personnel matter has found that the evidence and testimony support

¹ *See* DHR Exhibit 3.

all charges. A copy of the recommendation to the appointing authority is attached.

For the reasons cited above and for the good of the service, I have decided to terminate your employment as a Senior Social Work Supervisor ...

Jackson timely appealed her dismissal to the Alabama State Personnel Board, pursuant to ALA. CODE § 36-26-27(a) (1975). On August 11, 2016, the undersigned conducted a *de novo* hearing (“the 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.²

A. Employee’s Personnel File³

Jackson’s annual performance appraisals while at DHR reflect:

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
09/15	13.0	Partially Meets Standards
09/14	30.0	Exceeds Standards
09/13	27.1	Exceeds Standards
09/12	27.1	Exceeds Standards

² 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.

³ See generally State Personnel Board Rule 670-X-18-.02(5) (employee’s work record, including performance and disciplinary history considered in dismissing employee).

09/11	28.8	Exceeds Standards
09/10	27.1	Exceeds Standards
09/09	27.1	Exceeds Standards
09/08	27.1	Exceeds Standards
09/07	28.6	Exceeds Standards
09/06	25.7	Meets Standards
09/05	24.3	Meets Standards
09/04	21.4	Meets Standards
09/03	32.9	Exceeds Standards
10/02	27.1	Exceeds Standards ⁴
08/00	22.0	Meets Standards
08/99	23.0	Meets Standards
08/98	28.0	Exceeds Standards
08/97	27.0	Exceeds Standards
10/96	24.0	Meets Standards ⁵

Jackson's prior disciplinary actions while employed with DHR included:

- Written Reprimand on May 20, 2015 for failure to perform job properly, violation of safety rules, and insubordination.

B. State Personnel Board Policies/Procedures and DHR Specific Department Rules Forming the Basis of the Charges

State Personnel Board General Work Rule, 670-X-19-.01 provides, in part:⁶

(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:

...

⁴ Final Probationary Performance Appraisal – Senior Social Work Supervisor.

⁵ Final Probationary Performance Appraisal – Senior Service Social Worker.

⁶ DHR has general work rules which mirror the language of the State Personnel Board General Work Rules.

4. Failure to perform job properly.

...

8. Violation of specific department rules.

...

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

1. Violations of safety rules.

2. Insubordination – Failure to follow an order; disobedience; failure to submit to authority as shown by demeanor or words...

...

(2) The listing of violations above is not meant to be all inclusive and does not imply that discipline may not be imposed for other sufficient reasons nor does it mean that termination cannot occur for the first violation.

Applicable DHR Specific Department Policies/Rules:

- *Individualized Service Plans* – II.A. Assessment and II.C. Developing the Individualized Service Plan (*i.e.*, II.C.5.; II.C.7.-II.C.11);⁷
- *Child Protective Services Policy* – Safety Assessment – I.A. Determining Safety of Children; II.A. Developing Safety Plans; II.B. Assessing Persons Responsible for Protecting Children; II.C. Types of Safety Plans (*i.e.*, II.C.1.-II.C.2.b., II.C.3.); II.E. Monitoring and Transfer of Cases with Safety Plans; III.A. Content of Safety Plan Document; III.B. Case Record Documentation; IV.A. Present Danger Threats; IV.B. Impending Danger Threats; V.A. Behavioral Protective Capacities; V.B. Cognitive Protective

⁷ See DHR Exhibit 5(b), pp. 2-4 and 6-23.

Capacities; and V.C. Emotional Protective Capacities;⁸

- *Family Services Case Record Policy – III. Documentation and Narrative Recording;*⁹
- *Administrative Letter 7143 – In-Person Contact Entries on FSS;*¹⁰
- *Administrative Letter 7028 – In-Person Contact Requirements;*¹¹
- *Administrative Letter 7051.*

C. Facts Forming the Basis of Dismissal

Jackson was recommended for dismissal because of her action and/or inaction in multiple Protective Services cases.¹²

L.C. and M.C. Case:

In this case, M.C. was a diabetic and was not receiving appropriate medical care by her parents. M.C. was hospitalized and DHR became involved. M.C.'s parents were divorced in 2012.¹³ M.C.'s mother was the custodial parent pursuant to the final divorce decree. On September 9, 2015, Jackson approved a Safety Plan that placed M.C. and her sibling L.C. in the home of their aunt and uncle, S.W. and

⁸ See DHR Exhibit 5(c), pp. 1-7, 9, 11, and 12-35.

⁹ See DHR Exhibit 5(d), pp. 1-2.

¹⁰ See DHR Exhibit 5(e), pp. 1-3.

¹¹ See DHR Exhibit 5(e), pp. 4-10.

¹² The names of the minor children are protected; therefore, their names will be referenced by their first and last initials.

¹³ See DHR Exhibit 4A-5.

L.W. In summary, a Safety Plan identifies threats to children and also identifies responsible parties to care for children. Safety Plans are used by DHR to ensure the safety of children placed in its care. The Safety Plan for this case was incomplete because Section III, the section that identifies professional evaluations that need to be completed to understand “family conditions which are influencing child safety,” was left blank by one of Jackson’s employees, Social Worker Diana Henderson (“Henderson”).¹⁴ Jackson’s supervisor, Amanda Faulk (“Faulk”), testified the Safety Plan was also deficient because it was entered into with the children’s father who was the non-custodial parent.¹⁵ Without the custodial parent’s signature and acknowledgement of the Safety Plan, DHR subjects itself to further court proceedings if the custodial parent takes custody of the children.

Furthermore, the children were placed in the home of L.W., their uncle, who had a lengthy criminal history.¹⁶ Faulk testified that when children are placed out of the home with a Safety Plan, a Form 2110(a) should be attached.¹⁷ The 2110(a) is a criminal history check on the individuals who will care for the children. A 2110(a)

¹⁴ See DHR Exhibit 4a-4, p. 2. Jackson testified her signature is on p. 2; however, she stated that she was not the person who dated the form.

¹⁵ See DHR Exhibit 4, pp. 17-18 (June 14, 2016 Pre-dismissal Hearing Transcript).

¹⁶ See DHR Exhibit 4a-6.

¹⁷ See DHR Exhibit 4, p. 22 (June 14, 2016 Pre-dismissal Hearing Transcript). Faulk stated she believed the form number was 2010(a), but it is actually 2110(a).

was not attached to the September 9, 2015 Safety Plan regarding M.C. and L.C. Faulk testified that the children's mother, who was the custodial parent, was concerned with the children's placement and contacted Faulk directly. The children's mother explained to Faulk that L.W. had a recent Driving Under the Influence arrest and she was concerned for the children's safety.¹⁸ At Faulk's direction, Jackson investigated L.W.'s criminal history and created a new Safety Plan with the custodial parent on November 4, 2015, placing the children in a safer environment with different relatives.

In her testimony, Jackson acknowledged that a Safety Plan is ineffective until the underlying issues that should be included in Section III of the Safety Plan are identified so that they can be addressed.¹⁹ Jackson acknowledged she signed and approved the Safety Plan, but stated she had "conditions" that were not placed in writing on the Safety Plan.²⁰ Jackson testified she told Henderson she approved the initial Safety Plan with the understanding that Henderson would conduct a criminal background check. Jackson also testified she believed at the time of the Safety Plan that the children's parents were still married and the father was a custodial parent. Jackson acknowledged that a Safety Plan signed by a non-custodial parent was

¹⁸ See DHR Exhibit 4, pp. 23-24 (June 14, 2016 Pre-dismissal Hearing Transcript).

¹⁹ See DHR Exhibit 4, p. 45 (May 4, 2016 Pre-dismissal Hearing Transcript).

²⁰ See DHR Exhibit 4, pp. 45-46 (May 4, 2016 Pre-dismissal Hearing Transcript).

ineffective.²¹ Furthermore, Jackson testified that Henderson told her a background check was run on “the relative.”²² Jackson testified she relied on Henderson’s 17 years of experience at DHR.

Ultimately, Jackson signed and approved a Safety Plan that was incomplete and did not have a 2110(a) attached. As a result, the children were initially placed in a home that threatened their safety and well-being and later had to be moved to a safer environment.

J.A. Case:

The Montgomery County DHR Child Abuse and Neglect Unit received an allegation of child abuse on or about May 13, 2015.²³ J.A. was a vulnerable child, under six years old, who sustained an injury to his groin area while at home with his mother’s boyfriend, G.W. According to the investigation, J.A.’s injury was the result of abuse and J.A.’s mother was either unable or unwilling to protect against identified threats.²⁴ A Safety Plan was entered into with J.A.’s mother, B.N., on May 14, 2015. J.A. was placed in a home with his grandparents, C.H. and A.H. Jackson testified a Safety Plan is only effective for 90 days. At the end of 90 days,

²¹ See DHR Exhibit 4, p. 51 (May 4, 2016 Pre-dismissal Hearing Transcript).

²² See DHR Exhibit 4, p. 357 (June 14, 2016 Pre-dismissal Hearing Transcript).

²³ See DHR Exhibit 4a-7.

²⁴ See DHR Exhibit 4a-7, p. 4.

either the child returns home or DHR petitions the court for custody. J.A.'s case was assigned to Jackson's Unit on or about June 3, 2015.²⁵ On June 3, 2015, an Individualized Service Plan ("ISP") was conducted with J.A.'s mother, G.W., and A.H. The parties decided to work toward reunification of J.A. with his mother, B.N.

Charles Dubose ("Dubose"), Jackson's employee assigned to the case, failed to include in the June 3, 2015 case narrative the steps J.A.'s mother and G.W. needed to complete in order for reunification to be a viable option. There was nothing about parenting classes, counseling, or in-home services. On June 9, 2015, Dubose conducted an in-home visit with J.A.'s grandparents. His narrative described the condition of J.A.'s home placement, but did not address steps necessary to make his mother's home a safe environment.

On June 16, 2015, DHR received a phone call from an anonymous caller alleging he saw J.A. hit on the head with a belt buckle by one of his grandparents. The caller also alleged both grandparents were active drug users. The Child Abuse and Neglect Unit investigated the allegations. The workers determined that a former worker of C.H. was disgruntled and had threatened to call DHR with false allegations. After an in-home visit and checking J.A. for marks or bruises, the Child Abuse and Neglect Unit determined the allegations were false and no further action

²⁵ See DHR Exhibit 4a-10.

was taken by DHR other than routine in-home visits. The Child Abuse and Neglect Worker did not order a drug screen for the grandparents. Furthermore, Jackson did not order a drug screen for the grandparents. Sometime in July 2015, the case was transferred from Dubose to April Mills (“Mills”). Mills conducted an in-home visit in July and her entire narrative read, “The family was seen in their home on this date. Further narrative will be added as soon as possible.”²⁶ Jackson reviewed the case narratives on September 13, 2015.²⁷ The Safety Plan expired and J.A. went back into the home with his mother and G.W.

On October 26, 2015, J.A. suffered a broken nose while at home with G.W. The hospital determined the broken nose was not the result of an accident, but rather was indicative of abuse. Another Safety Plan was created and J.A. was placed back in the home of C.H. and A.H. At this point, Faulk was apprised of the facts of the case. Faulk reviewed the case file in its entirety to determine how the child ended up back in the presence of G.W. Faulk determined the case narratives were insufficient to provide adequate updates on the case and certainly insufficient to show the home was safe for J.A.’s return.²⁸ Faulk also instructed the grandparents be drug tested based upon the June 16, 2015 allegation. On November 17, 2015,

²⁶ See DHR Exhibit 4a-10, p. 4.

²⁷ See DHR Exhibit 4a-10, p. 5.

²⁸ See DHR Exhibit 4, pp. 50-52 (June 14, 2016 Pre-dismissal Hearing Transcript).

C.H., A.H., and their adult child J.H. were drug tested. On November 23, 2015, the drug test results were returned showing C.H. and A.H. tested positive for cocaine and marijuana.²⁹ J.H. tested positive for marijuana.³⁰ J.A. was removed from his grandparents' home and placed with a more safe and suitable family.

It was unclear based upon the case narratives when or why J.A. was placed back in his mother's home with G.W. Jackson testified she told Mills not to put the child back in the home with his mother. Jackson testified she did not discipline Mills for placing the child back with his mother without proper steps in place for in-home services. Jackson also testified she could not explain how DHR received a complaint of drug use by J.A.'s grandparents and they were not tested.³¹

W.D. Case:

On May 7, 2015, DHR was called by Baptist South concerning a mother who had used flea dip and "pyrthim" to treat her young daughter for worms and scabies.³² The mother was determined to have drug-induced psychosis. A Safety Plan was created by DHR's Child Abuse and Neglect Unit on or about May 29, 2015, which placed W.D. with her father, P.S., while her mother underwent treatment at St. Vincent's hospital in Birmingham, Alabama. Following an initial ISP, the case was

²⁹ See DHR Exhibit 4a-11, pp. 2-3.

³⁰ See DHR Exhibit 4a-11, p. 1.

³¹ See DHR Exhibit 4, p. 105.

³² The hospital determined the girl did not have worms or scabies.

transferred to Jackson's Unit. During a July 17, 2015 visit, Jackson's employee, Yolanda Davis ("Davis"), was directed by Jackson to ask P.S. about placing W.D. in day care because she had concerns with W.D. being in the home with P.S. all day.³³ P.S. refused to place W.D. in day care and expressed his position to Davis. W.D.'s mother called Faulk and expressed concern about W.D.'s placement. P.S. had a history of sexual abuse and W.D.'s mother feared W.D. would not be safe in his custody. The timing of when W.D. was taken out of her father's home and placed with a family friend, M.S., is unclear in the evidence and the witnesses did not recall the specific dates. The case narratives did not address the specific move dates; however, it can be inferred from the narratives that W.D. was moved between July 17, 2015 and August 21, 2015. A new Safety Plan was not created when W.D. was moved from P.S. to M.S. Jackson testified she allowed the mother to place W.D. with her friend, M.S., because the father filed a petition for custody with the court and Jackson was still investigating the case.³⁴

A Safety Plan is only valid for 90 days. The initial Safety Plan was entered on May 29, 2015. That plan expired by operation of law on August 27, 2015. Jackson agreed that cases under her unit's supervision without a valid Safety Plan

³³ See DHR Exhibit 4a-12, p. 3.

³⁴ See DHR Exhibit 4, p. 149 (May 4, 2016 Pre-dismissal Conference Transcript).

created safety threats for those children.³⁵

At some point in the case, W.D.'s father withdrew his petition for custody with the court. In December 2015, M.S. contacted Faulk and expressed a desire to cease her custody arrangement for W.D. Faulk met with Davis and Jackson on December 18, 2015 about the case. On December 20, 2015, Jackson instructed Davis to prepare a petition for custody in the W.D. Case by Monday, December 21, 2015 at 2:00 p.m. On the morning of December 21, 2015, Faulk replied and added the petition needed to ask for an expedited hearing. Davis responded at 1:00 p.m. and asked for additional time to prepare the petition.³⁶ The petition for custody was not filed until March 16, 2016.³⁷ During her pre-dismissal hearing, Jackson was asked, "Did you follow up?" Her response was, "She started it, but she hadn't completed it."³⁸

A.H. Case:

A.H. was born on February 20, 2015. A.H.'s mom tested positive for illegal drugs. A.H. was placed in a foster home and an ISP was conducted on April 8, 2015. A.H. remained in the foster home for a short time. DHR filed a petition for

³⁵ See DHR Exhibit 4, p. 151 (May 4, 2016 Pre-dismissal Conference Transcript).

³⁶ See DHR Exhibit 4a-14.

³⁷ See DHR Exhibit 4a-16.

³⁸ See DHR Exhibit 4, p. 161 (May 4, 2016 Pre-dismissal Conference Transcript).

dependency custody which was denied by the court.³⁹ The court kept the case open, allowing DHR to continue to monitor A.H. A.H.'s mother was placed in the Lighthouse Program. Jackson testified that several of the case narratives lacked sufficient information to properly document the case. In August 2015, Jackson's Unit asked A.H.'s mother to submit to a drug test. A.H.'s mother did not go to take the test, therefore a "positive" result was entered. Jackson testified that DHR treats a failure to attend a drug test as a "positive" test result. Jackson testified that the "positive" should have triggered an ISP.⁴⁰ Jackson did not recall whether she saw the "positive" in the narrative when she read it on September 14, 2015. The file did reflect that A.H.'s mother made progress in treatment during September 2015, but the October 2015 narrative and the November 2015 narrative did not sufficiently address any progress made.

On December 9, 2015, the court scheduled a status hearing on A.H.'s case. Jackson's employee assigned to the case, Mills, was going to be out of work on medical leave and unable to attend. Mills failed to complete a court report on the case and submit it 14 days prior to the status hearing. DHR Attorney David Smith ("Smith") went to the status hearing; however, no one from Jackson's Unit attended. Following the hearing, the court closed the case. After Mills returned from medical

³⁹ Testimony of Jackson. DHR Exhibit 4, p. 172 (May 4, 2016 Pre-dismissal Conference Transcript).

⁴⁰ Testimony of Jackson. DHR Exhibit 4, p. 191 (May 4, 2016 Pre-dismissal Conference Transcript).

leave, she sent an E-mail to Jackson, Smith, and Faulk.⁴¹ Mills appeared surprised the case had been closed and explained her access to A.H. was cut off. Mills then reported that A.H.'s mother had missed 20 unexcused drug treatment sessions within the month of November at Lighthouse. Mills scheduled an ISP to be held two days later. Jackson responded to Mills's E-mail later that evening. Jackson wrote, "... April, you never made me aware in my meetings with you on November 24, 2015 and December 4, 2015 that Ms. L.N. [A.H.'s mom] had missed 20 unexcused days from drug treatment you mislead [*sic*] me to believe that everything was going well with this case..."⁴² Jackson also pointed out to Mills that she failed to include the 20 missed sessions in her November 2015 narrative.

Jackson testified she was told by Mills that Smith had expressed to Mills she did not need to go to court because it was just a status hearing.⁴³ Faulk testified it was Jackson's responsibility to make sure an employee attended the status hearing. Further, a court report was not completed on the case prior to the status hearing; therefore, the court did not have documentation *or* testimony that it could utilize when considering the status of the case.

⁴¹ See DHR Exhibit 4a-18, p. 2.

⁴² See DHR Exhibit 4a-18, p. 2.

⁴³ Testimony of Jackson. DHR Exhibit 4, p. 207 (May 4, 2016 Pre-dismissal Conference Transcript).

Other Charges:

(1) Missed Required Visits

Faulk testified that during a six-month period, September 2015 through February 2016, Jackson's Unit failed to visit 73 children who required visits under DHR guidelines.⁴⁴ In most instances, the reason the visit was not completed was not noted by Jackson's employees in the appropriate section of DHR's tracking system. Faulk testified Jackson's Unit had significantly more missed required visits than other units under Faulk's supervision. Faulk also testified there was no other way to properly assess the welfare of the children in DHR's care than in-home visits.

(2) Overdue ISP's

Faulk testified that from December 2015 through February 2016, Jackson's Unit had 41 overdue ISP's.⁴⁵ Faulk testified that Jackson's Unit does not keep up with ISP's as well as other units under her supervision. Initial ISP's are supposed to be completed within 30 days of opening a case.

(3) Failure to Properly Update CFA's

Faulk testified that a CFA is a Comprehensive Family Assessment. Faulk explained that CFA's drive ISP's. Faulk sent an E-mail to Jackson on October 23, 2015 explaining that one of Jackson's employees, Navaris Andrews ("Andrews"),

⁴⁴ See DHR Exhibit 4a-26.

⁴⁵ Testimony of Faulk. DHR Exhibit 4, pp. 146-148 (June 14, 2016 Pre-dismissal Hearing Transcript). See also DHR Exhibits 21-23.

was shortcutting his CFA's. Faulk instructed Jackson to meet with Andrews and place him on a work plan.⁴⁶ In April 2016, Faulk ran a report in DHR's F.A.C.T.S. database that showed approximately 19 CFA's approved by Jackson that were mostly blank documents.⁴⁷ Faulk testified it was Jackson's responsibility to review the CFA's and approve them so the ISP's would be appropriate.⁴⁸

(4) Checklist

In November 2015, Faulk instructed Jackson to do a 100% review of all her cases. Faulk also instructed Jackson to use a checklist she E-mailed to her. Jackson acknowledged Faulk gave her the instruction; however, she chose to adopt and use a checklist used in Lowndes County, not the check list sent to her by Faulk. Jackson did not discuss using the alternate form with Faulk or the Montgomery County Assistant Director Jan Casteel ("Casteel"). Jackson testified she conducted a 100% review of all her cases. Jackson testified that while she did not write in the individual case narratives, she did keep a checklist.⁴⁹

Jackson testified that she believed Montgomery County Director Karen Smith ("Smith") and Casteel had preconceived notions about her. Jackson believed leadership wanted to oust her as early as April 1, 2015. Jackson described events

⁴⁶ See DHR Exhibit 31.

⁴⁷ See DHR Exhibit 32.

⁴⁸ Testimony of Faulk. DHR Exhibit 4, pp. 167-168 (June 14, 2016 Pre-dismissal Hearing Transcript).

⁴⁹ Testimony of Jackson. DHR Exhibit 4, pp. 325-327 (June 14, 2016 Pre-dismissal Hearing Transcript).

leading to her May 20, 2015 Reprimand which were not part of the factual allegations of this case. During her pre-dismissal conference, Jackson was asked by the hearing officer, "What's the most important part of your job?" Jackson simply replied, "Safety." Jackson explained that her issues at work were with her employees. Jackson indicated she trusted her workers to her detriment. Jackson believed if her workers wrote more in their narratives she would have been more fully informed and would have made better decisions. Jackson stated that she did discipline her employees and also placed them on work plans.

Jackson's employees sought overtime in order to catch up on their workload. Jackson attempted to approve additional compensatory time for her employees. However, DHR has a policy that limits compensatory time for workers to 20 hours. After an employee reaches 20 hours of compensatory time they are not allowed additional compensatory time. Jackson approved compensatory time for her employees over the 20-hour limit. Faulk testified that Jackson's employees had more compensatory time than was allowable. At one point, Jackson forwarded an employee's request for compensatory time to Faulk who denied it because the employee was over the 20-hour limit. Faulk was frustrated with Jackson because Jackson blamed Faulk for not approving the request when Jackson knew prior to sending it that anyone who had over 20 hours of compensatory time should not be approved for more.

Jackson voiced concern over her management's supervisory skills. Jackson testified she hoped management improved and did not continue to micromanage people in the future. Jackson recalled other people not wanting to come to work because of what she described as a hostile environment where "people are constantly watching you" and management believes things told to them about different employees."⁵⁰ Jackson also testified her unit was not the only unit in Protective Services that struggled with ISP's, CFA's, and other issues.⁵¹

Smith testified Jackson was recommended for dismissal because of the amount of time it took to oversee her unit. Smith believed the risk of injury to children in Jackson's Unit, as well as Jackson's lack of follow through with her employees, was significant enough to skip a suspension and recommend dismissal.

Smith testified that if the only infraction found in Jackson's Unit had been the facts of how the J.A. case was handled, she would have recommended dismissal based solely on that case.

Smith further testified that when the charge letter was presented to Jackson, she refused to sign it. Smith explained to Jackson that her signature did not denote agreement with the charges, it only acknowledged receipt of the letter. Smith also explained that failure to sign the document would add a charge of insubordination

⁵⁰ Testimony of Jackson. DHR Exhibit 4, pp. 360-362 (June 14, 2016 Pre-dismissal Hearing Transcript).

⁵¹ Testimony of Jackson. DHR Exhibit 4, p. 364 (June 14, 2016 Pre-dismissal Hearing Transcript).

to the list of violations. Jackson still refused to sign the charge letter. Subsequently, an amended charge letter was drafted to include insubordination for failing to sign the original charge letter. The amended charge letter was presented to Jackson. Jackson refused to sign the amended charge letter as well.

Casteel testified she was concerned with the types of problems Jackson had in her unit. At one point, she attempted to assist Jackson with a disciplinary action on one of Jackson's employees, Jacqueline Jones. Casteel asked Jackson to provide a draft of the proposed disciplinary action for her review. Jackson provided a document which lacked sufficient information and also included facts from a prior discipline. Casteel sent the document back to Jackson with instructions to rewrite and resubmit. Jackson never returned a second draft. Casteel testified she spent more time ensuring Jackson's Unit was running properly than any other unit she supervised.

III. ISSUE

Did DHR produce sufficient evidence to warrant Jackson's dismissal?

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).⁵²

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

⁵² 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).

the evidence standard. *See also Wright v. State of Tex.*, 533 F.2d 185 (5th Cir. 1976).⁵³

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).

In the present case, DHR presented sufficient evidence warranting Jackson’s dismissal. The preponderant weight of the evidence proved in the L.C. and M.C. Case that Jackson violated State Personnel Board General Work Rules and DHR specific department rules as outlined in the charge letter dated April 6, 2016 and the amended charge letter dated April 13, 2016.⁵⁴ Jackson violated these rules by entering into a Safety Plan with a non-custodial parent; placing the children with their paternal uncle who had a lengthy criminal history, including recent arrests for driving under the influence; and failure to complete a Form 2110(a) before

⁵³ 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.

⁵⁴ See DHR Exhibit 2 and Section II.B. of this Recommended Order.

placement of the children. Jackson also failed to ensure the case narratives contained adequate information.

The preponderant weight of the evidence proved in the J.A. Case that Jackson violated State Personnel Board General Work Rules and DHR specific department rules as outlined in the charge letter dated April 6, 2016 and the amended charge letter dated April 13, 2016. Jackson violated these rules by failing to drug test J.A.'s grandparents after an allegation was received by DHR that they were drug users. Months later a drug test was conducted and they both tested positive for cocaine and marijuana. Furthermore, J.A. was returned home to his mother where he sustained a second serious injury because Jackson did not make sure her worker adequately completed case narratives. Jackson failed to confirm the worker had ensured J.A.'s mother was competent to recognize threats and protect J.A. from those threats.

The preponderant weight of the evidence proved in the W.D. Case that Jackson violated State Personnel Board General Work Rules and DHR specific department rules as outlined in the charge letter dated April 6, 2016 and the amended charge letter dated April 13, 2016. Jackson violated these rules by permitting the original Safety Plan to expire without filing a petition for custody with the court; permitting the young girl to be placed with her father who had a history of sexual abuse; and failing to make sure her employee timely filed a petition for custody with the court after she was instructed to by Faulk.

The preponderant weight of the evidence proved in the A.H. Case that Jackson violated State Personnel Board General Work Rules and DHR specific department rules as outlined in the charge letter dated April 6, 2016 and the amended charge letter dated April 13, 2016. Jackson violated these rules by failing to ensure her employee's case narratives provided adequate information to accurately track the case and failing to attend, or ensure a worker from her unit attended, a status hearing on the case. Based upon the absence of a court report and/or a worker to discuss the case, the court closed the case. Jackson claimed to believe everything in the case was progressing in a positive manner until her worker returned from medical leave and told her the mother missed 20 drug treatment sessions. That information had not been included in the case narrative.

Furthermore, Jackson disobeyed direct orders by Faulk on multiple occasions. Faulk gave a case tracker format to Jackson on October 26, 2015, and told her to implement the tracking system in her unit by November 2015. Jackson disregarded the case tracker given to her by Faulk. Jackson maintained she used her own case tracker, but acknowledged she was told to use the case tracker provided by Faulk. Faulk instructed Jackson's employee to file a petition for custody in the W.D. Case in December 2015. Jackson knew about the directive; however, the petition was not filed until March 16, 2016. Jackson did not take any action to ensure her employee filed the petition timely. Jackson's failure to follow Faulk's orders violated State

Personnel Board General Work Rule 670-X-19-.01(1)(b)2 – Insubordination. A violation of insubordination is considered a more serious violation that may result in suspension or discharge on the first offense, considering work record.⁵⁵

Jackson’s unit also had many ISP’s and CFA’s not completed correctly or in a timely fashion. Jackson’s failure to supervise her employees in an effective manner concerning the proper and timely completion of ISP’s and CFA’s violated State Personnel Board General Work Rules 670-X-19-.01(1)(a)(4) – Failure to perform job properly; and 670-X-19-.01(1)(a)(8) – Violation of specific department rules.”⁵⁶

Jackson acknowledged during the hearing that the safety of the children under her unit’s care was the most important aspect of her job. After a thorough review of the record, it is clear that Jackson is incapable of supervising her unit. Jackson’s failure to adequately supervise her employees not only placed multiple children in harm’s way, it resulted in a significant injury to J.A. Jackson’s inability to properly perform her duties cannot be condoned by DHR and dismissal is the only appropriate action in this matter. Dismissal of Jackson is for the good of the service; permitting Jackson to remain in the employ of DHR would jeopardize the health, welfare, and

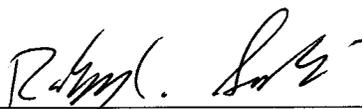
⁵⁵ Jackson was also charged with insubordination after she refused to sign for receipt of the charge letter dated April 6, 2016 and the amended charge letter dated April 13, 2016. Her refusal to sign for the charge letter was a clear act of insubordination and should be considered with the rest of the evidence.

⁵⁶ See DHR Exhibit 2, pp. 6-7 for a list of the specific department rules.

safety of the most vulnerable citizens in Alabama.

The undersigned has carefully considered mitigation in this case, but finds no grounds for mitigation exist justifying a lesser disciplinary action than dismissal. 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.⁵⁷

Done this the 17th day of October, 2016.



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⁵⁷ Having found sufficient evidence to uphold dismissal, any/all remaining issues are moot.

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