

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

**TIMOTHY WILLIAMS,** )  
 )  
 **Appellant,** )  
 )  
 **v.** )  
 )  
 **ALABAMA DEPARTMENT OF** )  
 **MENTAL HEALTH,** )  
 )  
 **Appellee.** )

**Case No: 20-33-RCS**

**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 Timothy Williams (hereinafter “Williams” or “the employee”) based upon his physical abuse of a patient at Bryce Hospital. DMH relied on video evidence, testimony and the specific language of DMH Policy #19-10 and #70-5. The evidence presented by DMH during the hearing demonstrated Williams violated DMH rules and policies by physically abusing a patient at Bryce Hospital. Therefore, DMH’s decision to dismiss Williams was within its authority and should be upheld.

A hearing was held on October 23, 2020, at a DMH office in Tuscaloosa, Alabama. David Huddleston, Esq., appeared as counsel on behalf of DMH. Jason Manasco, Esq. appeared as counsel on behalf of Williams.

DMH introduced into evidence eight exhibits consecutively numbered DMH Exhibits 1 – 8. The undersigned informed the parties Williams’ personnel file at the Alabama State Personnel Department is included in the record as evidence in this cause.

DMH called as witnesses:

- (1) Perry Goins, Staff Development Director; and
- (2) Audrey McShan, Bryce Facility Director.

Williams called as witnesses:

- (1) Marlon Nevins, MHW I; and
- (2) Chris Townsend, MHW I.

Williams testified on his own behalf.

## **I. PROCEDURAL HISTORY AND CHARGES**

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

Following the pre-dismissal conference conducted on August 21, 2020, DMH terminated Williams’ employment, effective close of business August 25, 2020. *See* DMH Exhibit 1 (dismissal letter dated August 25, 2020, signed by Audrey L. McShan, Bryce Hospital Director). DMH determined Williams violated DMH Policy 19-10, Abuse, Neglect, Mistreatment, and Exploitation, Physical abuse as

defined in the ADMH Incident Management Plan; and 70-5, Employee Conduct and Accountability; II Standards 1(a) Client abuse, mistreatment, neglect or exploitation.

See dismissal letter. DMH further determined:

...

On July 26, 2020, a patient reported that you assaulted him. As a result of this report, an investigation was conducted and camera data reviewed. The investigation was completed and there is sufficient evidence to support the alleged violation of the above policy.

A pre-disciplinary conference (PDC) was held for you on August 21, 2020, to discuss the alleged policy violations. During the PDC, you presented insufficient information to refute the allegations against you. Therefore, it is my decision to dismiss you from employment at Bryce Hospital.

*Id.*

Williams 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 Williams and cited the same DMH policies listed in the charge and dismissal letters.

A prehearing conference was held on September 10, 2020. The parties selected October 23, 2020 for the hearing. On October 23, 2020, 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.<sup>1</sup>

**A. Employee's Personnel File<sup>2</sup>**

Williams' annual performance appraisals while at DMH reflect:

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
12/19	17.0	Meets Standards
12/18	17.0	Meets Standards
01/18 <sup>3</sup>	23.0	Meets Standards

Williams' prior disciplinary actions include, in reverse chronological order:

- Written Reprimand on October 3, 2019 for refusing mandatory overtime and insubordination.
- Written Reprimand on June 21, 2018 for refusing mandatory overtime and insubordination.

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

DMH's Policy #19-10 provides, in pertinent part:

I. POLICY:

Any form of recipient abuse, neglect, exploitation or mistreatment will not be tolerated. The ADMH will immediately investigate and provide for appropriate legal and administrative actions based upon such investigation in any

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<sup>1</sup> 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.

<sup>2</sup> See generally State Personnel Board Rules 670-X-18-.02(5) and 670-X-19-.01(1)(b) (employee's work record, including performance and disciplinary history, and length of service considered in dismissing employee).

<sup>3</sup> Final Probationary Performance Appraisal.

state-operated facility. (Reference ADMH Incident Management Plan)

## II. PURPOSE:

This policy establishes standards for addressing findings of recipient abuse, neglect, mistreatment, exploitation, and other similar incidents in all ADMH facilities. While this policy also attempts to ensure consistent and equitable treatment of both employees and recipients, it is not intended to ignore extenuating circumstances and the individuality of situations that arise; but rather, to be the starting point and common ground from which decisions are to be made.

## III. STANDARDS:

1. It is the responsibility of ADMH employees to treat all recipients with dignity and respect, to ensure that all recipients receive appropriate care and treatment, and to provide all recipients with protection from abuse and neglect, mistreatment or exploitation. (Reference Department Policy Number 20-40, "Protection from Harm").

2. Employees found in violation of this policy shall be subject to disciplinary actions as follows. Facilities will utilize progressive discipline as appropriate to the extent possible (See ADMH Policy Number 60-40, "Progressive Discipline"); however, the ADMH reserves the right to take more or less stringent disciplinary action as applicable to the offense(s) by the employee.

- a. Physical Abuse as defined in the ADMH Incident Management Plan shall result in disciplinary action of termination.

...

DMH's Policy #70-5 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:

a. Client abuse, mistreatment, neglect and exploitation

...

dd. Violation of specific Department/Division/Facility rules, regulations, and policies.

...

DMH's Incident Management Plan, defines abuse as:

Any assault by an employee upon a patient and includes, but not limited to hitting, kicking, pinching, slapping, or otherwise striking a patient or using excessive force regardless of whether an injury results. Assaults are defined by this policy implies intent. (Reference: DMH Policy and Procedure 19-10.)<sup>4</sup>

### **C. Facts Forming the Basis of Dismissal**

On July 26, 2020 at approximately 2:17 p.m., Williams brought a rolling cart to the Group Therapy room in Bryce Hospital for a hydration break. The group therapy room had six patients and at least one staff member. Williams entered the

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<sup>4</sup> DMH Exhibit 2, page 30.

room and pulled the cart into the doorway behind him. On the cart was lemonade and some apple sauce. Williams served one patient lemonade and then took apple sauce across the room to another patient. The patients then lined up and waited to be served. The first patient Williams served, moved quickly to the front of the line and received a refill of lemonade by Williams. Patient D.E. stood up from his chair and moved to the front of the line. It appears Williams refused to serve D.E. because he cut in line. Williams served three other patients and then poured a glass of lemonade for D.E. D.E. quickly drank his lemonade close to Williams and seemed to try and block another patient from getting lemonade as well. D.E. finished his lemonade, looked toward Williams and then suddenly walked toward Williams, getting very close to him.

Williams grabbed D.E.'s right arm with his right hand and then grabbed the top of D.E.'s shirt with his left hand and pushed D.E. forward and then spun D.E. around and pinned him against a wall. D.E. swung at Williams with his free arm. Williams then grabbed D.E. by his shirt collar and lifted him off the ground against the wall, then he slung him down onto the ground across the room and landed on top of D.E. After pinning D.E. on the ground for a short period of time, Williams got up, other staff intervened, and Williams backed the cart out of the doorway. Another staff member escorted D.E. to his room, past Williams.

Bryce Facility Director Audrey McShan (“McShan”) testified that after Williams left for the day, D.E. reported he was assaulted by Williams. McShan initiated an investigation into the incident. Bryce’s Clinical Investigator reviewed video footage and recommended Williams’ dismissal for patient abuse to the Incident Review Panel (“IRP”). The IRP, made up of various hospital administrators, reviewed the investigation report and video and concurred with the Clinical Investigator’s recommendation to dismiss Williams. The IRP recommendation was forwarded to McShan. McShan reviewed the evidence and scheduled a pre-dismissal conference (“PDC”) with Williams. During the PDC, Williams told McShan he reacted because D.E. invaded his personal space which concerned Williams due to COVID-19. Williams asked McShan to review the video footage before she made a final decision. McShan told Williams she would review the video footage before making a final decision. McShan re-watched the video footage and determined Williams abused D.E. and termination was appropriate since there were no exceptional circumstances present.

McShan testified the video supported Williams dismissal from service. McShan watched Williams initiate the physical interaction with D.E. McShan noted that when D.E. stepped toward Williams, Williams had the opportunity to step backwards and move away from D.E. McShan also noted Williams escalated the



incident by his physical interactions and did not de-escalate the situation pursuant to training protocol. D.E. suffered minor scratches and possible bruising.

Staff Development Manager Perry Goins (“Goins”) testified at the hearing on behalf of DMH. Goins is responsible for training and developing staff in physical intervention skills and nonviolent crisis intervention. New employees are trained initially and then given an annual refresher course. Goins was shown the video of the incident and testified he saw nothing in the video that warranted the actions Williams took with D.E. Goins pointed out that even though there was no audio, D.E. did not initiate the physical confrontation. Goins testified that even if Williams decision to intervene physically with D.E., Williams did not use any appropriate techniques taught by DMH.

On cross-examination, Goins was asked whether it looked like D.E. tried to strike Williams. Goins stated D.E.’s physical interaction with Williams occurred after he “was grabbed up” by Williams.

MHW I Marlon Nevins (“Nevins”) testified on behalf of Williams. Nevins testified he heard D.E. cussing and fussing at Williams after jumping in line. Nevins also heard Williams tell D.E. to go to the back of the line. D.E. alleged Williams called him “gay” in his statement, but Nevins testified he did not hear that.<sup>5</sup> Nevins testified he was off camera during the initial confrontation but can be seen

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<sup>5</sup> DMH Exhibit 3, page 1.

pinning D.E.'s legs after Williams threw D.E. to the ground. He also testified that when D.E. was on the floor he instructed D.E. to calm down.

MHW I Chris Townsend ("Townsend") also testified on behalf of Williams. Townsend was on camera sitting 1:1 with a patient Williams served early in the video. Townsend testified he told D.E. to sit down multiple times and heard Williams tell D.E. to sit down multiple times. Townsend did not hear Williams call D.E. gay and when Williams and D.E. went to the floor he thought to himself, "dang, they [are] tussling now."

Williams testified on his own behalf. Williams testified D.E. wanted apple sauce, but he ran out. Williams believed D.E. was mad because he did not get any apple sauce. Williams claimed D.E. called him a "B\*\*\*\*." Williams testified when D.E. stepped up to him he was in imminent danger of being hit. Williams testified he tried to redirect D.E. three times and D.E. refused to sit down. Williams also showed D.E.'s arm in the video where he thought D.E. was going to hit him.

### **III. ISSUE**

Did DMH produce sufficient evidence to warrant dismissal of Williams?

### **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).<sup>6</sup>

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*,

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<sup>6</sup> 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).

521 U.S. 121, 117 S. Ct. 1953, 138 L.Ed. 2d 327 (1997), holding that a “significant possibility” falls far short of the APA’s preponderance of the evidence standard. See also *Wright v. State of Tex.*, 533 F.2d 185 (5<sup>th</sup> Cir. 1976).<sup>7</sup>

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, DMH provided substantial evidence Williams violated DMH Policy 19-10 “Abuse” and 70-5 Employee Conduct and Accountability; II Standards 1(a) Client abuse. Williams was approached by a patient, who got in Williams’ face. The patient did not raise a fist or attack Williams, he just got in Williams’ personal space. Williams made no attempt to remove himself from the situation. Rather, Williams engaged the patient physically without using any of the techniques taught by DMH’s staff development classes. Williams grappled with D.E., raised him off the ground by his shirt collar and then slung D.E. across the room

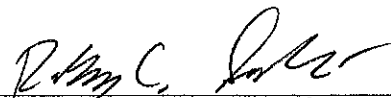
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<sup>7</sup> In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir.1981), the Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions handed down prior to the close of business on September 30, 1981.

until he landed on top of D.E. and was ultimately assisted by Nevins. Williams did not de-escalate, rather he continued to escalate the events until D.E. was on the ground.<sup>8</sup> Williams' reasons for escalation are not supported by the preponderant weight of the evidence and are therefore insufficient to mitigate 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.

Done this the 7<sup>th</sup> day of December 2020.



RANDY C. SALLÉ  
Administrative Law Judge  
State Personnel Department  
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<sup>8</sup> Williams claimed he could not remove himself from the situation when D.E. stepped up to him because the cart was in the doorway, blocking him. The cart was in the doorway and on wheels. It moved easily. Williams had no intention of retreating ground and met D.E.'s "step-up" with immediate force. This reaction is contrary to training and detrimental to the safety and welfare of D.E. and other patients in Williams' care.

VIA E-MAIL AND FIRST-CLASS U.S. MAIL

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