BEFORE THE STATE PERSONNEL BOARD
IN THE MATTER OF

QUENTA D. TURNER, )
) Appellant,
) )
v. ) ) Case No: 22-05-JJW
) )
ALABAMA ALCOHOLIC )
BEVERAGE CONTROL )
BOARD, )
) Appellee.
) )

RECOMMENDED ORDER TO THE STATE PERSONNEL BOARD

The employment termination of Quenta D. Turner (hereinafter “Turner”) by
the Alabama Alcoholic Beverage Control Board (hereinafter “ABC”) is the subject
of this Recommended Order.

Turner was an employee of ABC, having served since June 16, 2020, as an
ABC Sales Associate I. Turner worked at ABC Store 177 in District 2 in Jefferson
County. ABC dismissed Turner on October 22, 2021, by letter from the appointing
authority. Turner was charged with violating ABC’s policy ABC-4-10.02
Prohibition of harassment and discrimination; disruptive conduct, inattention to job,
isubordination, and use of abusive and threatening language.

Turner received a warning on March 8, 2021, for a violation of ABC 4-10-.02
(1) (d) Inattention to job.
The testimony, observation of the witnesses' demeanor, documentary evidence and Turner's employment history lead to a recommendation, based on a preponderance of the available credible evidence, that the termination of Turner's employment with ABC should be upheld.

On January 13, 2022, 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. The hearing began at 9:00 a.m. Ms. Turner failed to appear for her hearing although her attorney, Jason Lee Manasco, Esq. was present. Robert L. Martin III, Esq. appeared on behalf of ABC. Mr. Martin moved for a default judgment. Turner's attorney, Jason Manasco was present and represented Turner as the hearing proceeded without her personal presence pursuant to the provisions of the Alabama Administrative Procedures Act, Ala. Code § 41-22-12(d).

At the beginning of the hearing, ABC introduced, without objection, exhibits 1, 2, 3, 5, 7 and 8. Turner did not introduce any exhibits. The undersigned informed the parties, without objection, that Turner's personnel file at the Alabama State Personnel Department would be included in the record and reviewed as evidence in this proceeding.

ABC called as witnesses:

1. Marchelle Denise Bailey and
2. Marty Dale Robertson, Store Manager III, ABC Store 177; and

No witnesses testified on behalf of Turner.

I. PROCEDURAL HISTORY AND CHARGES

Turner was employed by ABC in 2020 as a Sales Associate and served in that position at the time of the termination of her employment on October 22, 2021.

Turner timely appealed her dismissal to the Alabama State Personnel Board, pursuant to Ala. Code § 36-26-27(a) (1975). At the prehearing conference held on November 9, 2021, the parties selected January 13, 2022, for the hearing.

In the short plain statement of facts, ABC alleged, in pertinent part:

...“Quenta Turner was separated from State Service effective October 22, 2021, for the following:

Violation of ABC Personnel Policies and Procedures:

ABC-4-2-.02 PROHIBITION OF HARASSMENT AND DISCRIMINATION

It is the policy of the Agency that the work environment be free of unlawful discrimination and harassment. Harassing behavior, either physical or verbal, will not be tolerated within the Agency.

(1) Harassment – has the purpose or effect of creating an intimidating, hostile or offensive work environment.

Harassing conduct includes, but is not limited to, epithets, slurs or negative stereotyping, threatening, intimidating or hostile acts.
ABC-4-10-.02 GENERAL WORK RULES

(1) Minor Violations
   (d) Inattention to job …
   (g) Disruptive Conduct of any sort including a lack of cooperation and an unpleasant behavior toward fellow employees and/or supervisor.

(2) Serious Violations
   (b) Insubordination – Failure to follow an order, disobedience; failure to submit to authority as shown by demeanor or words.…
   (e) Use of abusive or threatening language.
   (J) Serious violation of any other agency rule.

ABC-4-10-.03 EMPLOYEE STANDARDS AND CONDUCT

(1) Professional Behavior and Conduct—An attitude of cooperation and respect is expected of every employee. Interaction with fellow employees must not cause dissent or discord. Malicious or excessive griping; loud disruptive talking that affects activities of other employees; vulgar, abusive or threatening language or emotional outbursts at another individual of the agency are examples of inappropriate conduct that will not be tolerated.

Employees are expected to perform their assigned duties conscientiously and to respond readily to the direction of supervisors. Failure to comply with a supervisor’s instructions, arguing with a supervisor, and resisting authority are unacceptable and will subject the employee to disciplinary action.

(17) Workplace Violence—Agency employees are entitled to a workplace which is safe and free from both verbal and physical threats made by any other individual.

These violations arose from several incidents that occurred on or about September and October 2021. Ms. Turner denies refusing to accept Person in Charge responsibilities on September 21, 2021, after being directed to do so by Mr. Marty Robertson. This is a contradiction to Mr. Robertson’s recollection of his giving her that directive. Ms. Turner also denies arguing with or saying anything offensive to Ms. Walker at
the time clock while clocking out. Instead, Ms. Turner states Ms. Walker verbally attacked her with no provocation. …

A consideration of the foregoing facts and of Turner’s work history with the agency is the basis for her dismissal.”

…

II. FINDINGS OF FACT

Having reviewed the documentary evidence, having heard the witnesses’ testimony, 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

A. Employee’s Personnel File²

Turner’s performance appraisals while working for ABC reflect:

<table>
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<th>Date Ending</th>
<th>Total Score</th>
<th>Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>10/01/2021</td>
<td>24.3</td>
<td>Meets Standards</td>
</tr>
<tr>
<td>12/15/2020</td>
<td>24.3</td>
<td>Meets Standards</td>
</tr>
</tbody>
</table>

Turner’s prior disciplinary actions include:

- Warning- March 8, 2021, Violation of ABC 4-10-.02(1) (d) Inattention to Job.

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.

² See generally State Personnel Board Rule 670-X-18-.02(5) (employee’s work record, including performance and disciplinary history, considered in dismissing employee).
B. State Personnel Board General Work Rules and ABC Policies and Procedures Forming the Basis of the Charges

State Personnel Board General Work Rule 670-X-19-.01(1)(a)(3)(4)(8); and (1)(b)(2)(10) provides, in pertinent parts:

(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:

... 

3. Inattention to job – Doing anything distracting while on the job.

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.

... 

2. Insubordination

... 

10. Serious violation of any other department rules.

... 

(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.
...

ABC Personnel Policies and Procedures provide, in pertinent parts:

**ABC-4-10-.02 GENERAL WORK RULES**

(1) **Minor Violations**

...

(d) Inattention to job.

(e) Failure to perform job properly.

...

...

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

The testimony of Marchelle Bailey and that of Marty Robertson provide a proper basis for the termination of Turner’s employment. She was insubordinate, threatening and disruptive in the workplace. The appointing authority had no choice given Turner’s actions.

III. **ISSUE**

Did ABC, as the appointing authority, produce by a preponderance of the available evidence enough to sustain Turner’s dismissal based upon violations of ABC Policies and Procedures and State Personnel Board Rules?
IV. DISCUSSION


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


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

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³ 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 (1197), 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).\(^4\)

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).

Turner’s conduct during September and October 2021 in her interactions with her supervision and co employees justifies her dismissal for being insubordinate and disruptive at her job at ABC store 177. The preponderance of the undisputed

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\(^4\) 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.
evidence supports the action taken by ABC in discharging Turner from her employment.

The undersigned has carefully considered all the evidence in this case and finds no basis for a lesser disciplinary action than dismissal. ABC followed its rules and procedures and all applicable laws.

The undersigned finds no mitigation leading to a lesser punishment. Therefore, the undersigned recommends to the State Personnel Board that the dismissal be UPHELD.

Done, this 2\textsuperscript{nd} day of February 2022.

\begin{center}
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Administrative Law Judge \\
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VIA E-MAIL AND FIRST-CLASS MAIL

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