BEFORE THE STATE PERSONNEL BOARD
IN THE MATTER OF

WILLIE D. JONES, Jr.,

Appellant,

v.

ALABAMA DEPARTMENT OF
MENTAL HEALTH,

Appellee.

Case No: 22-04-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 Willie Jones (hereinafter “Jones” or “the employee”) after he was accused of physically abusing patient J.H. on September 3, 2021 and interfering with the subsequent investigation. The evidence presented by DMH during the hearing showed that Jones, more probably than not, violated DMH rules and policies. Therefore, DMH’s decision to dismiss Jones was within its authority and Jones’ dismissal was appropriate.

A hearing was held on February 4, 2022, at Taylor Hardin Secure Medical Facility (“Taylor Hardin”) in Tuscaloosa, Alabama. David Huddleston, Esq., appeared as counsel on behalf of DMH. Jason Manasco, Esq., appeared as counsel
DMH introduced into evidence eight exhibits consecutively numbered 1-8. Jones did not introduce any additional exhibits. The undersigned informed the parties Jones’ personnel file at the Alabama State Personnel Department is included in the record as evidence in this case.

DMH called as witnesses:

(1) Victor Lee, Mental Health Worker I;

(2) Ponsopa Malone, Mental Health Worker I;

(3) Chenteyanna Bishop, Mental Health Worker I;

(4) Eric Owens, Director of Risk Management at Taylor Hardin;

(5) Lorraine Watkins, C.R.N.P.; and

(6) Kimberly McAlpine, Facility Director of Taylor Hardin.

Jones testified on his own behalf.

I. PROCEDURAL HISTORY AND CHARGES

Jones began State employment in December 2020 as a Mental Health Worker Trainee when he was hired by DMH at Taylor Hardin. Jones was promoted to Mental Health Worker I at the end of his probationary period and remained in that classification until his dismissal.
Following the pre-dismissal conference conducted on October 12, 2021, DMH terminated Jones’ employment, effective close of business October 18, 2021. See DMH’s Exhibit 1 (dismissal letter, dated October 14, 2021, and signed by Kimberly McAlpine, M.S., Facility Director). DMH determined Jones violated DMH Policy 19-10 Abuse, Neglect Mistreatment and Exploitation; regarding the care of a patient and violated DMH policy 80-20 Employee Cooperation in Investigations. See dismissal letter. DMH further determined:

On September 3, 2021, on the CARE program, it was reported that you “beat up” a patient over whom you were assigned 1:1 accountability. After conducting an investigation of the allegations, it was substantiated that you physically abused, mistreated and/or neglected your assigned patient.

...

Id.

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

In its short plain statement of facts, DMH reiterated its charges against Jones and cited the same DMH policies it had in the charge and dismissal letters.

A pre-hearing conference was held on November 1, 2021. The parties selected December 16, 2021, for the hearing. A continuance was granted on December 9, 2021, due to the unavailability of an essential witness. The case was
re-set for hearing on February 4, 2022. On February 4, 2022, 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 facts.¹

**A. Employee’s Personnel File²**

Jones’ annual performance appraisals (“APA”) while at DMH reflect:

<table>
<thead>
<tr>
<th>Date Ending</th>
<th>Total Score</th>
<th>Category</th>
</tr>
</thead>
<tbody>
<tr>
<td>06/21³</td>
<td>18</td>
<td>Meets Standards</td>
</tr>
</tbody>
</table>

Jones prior disciplinary actions, include, in reverse chronological order:

- A 3-days suspension from August 16, 2021, through August 18, 2021, for failure to perform routine patient checks, neglect.

- A Written Warning on April 29, 2021, for sleeping on the 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* SPB 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).

³ Final Probationary Performance Appraisal.
An Information Education session on January 20, 2021, for leaving bathroom unattended.

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

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

I. POLICY:

Any form of client abuse, neglect, exploitation or mistreatment will not be tolerated. The DMH will immediately investigate and provide for appropriate legal and administrative actions based upon such investigation in any state-operated facility.

...

III. STANDARDS:

1. It is the responsibility of DMH employees to treat all clients with dignity and respect, to ensure that all clients receive appropriate care and treatment, and to provide all clients with protection from abuse and neglect, mistreatment or exploitation.

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

   a. Physical abuse as defined in the DMH Incident Management Plan shall result in disciplinary action of termination.
DMH's Incident Management Plan provides, in pertinent part:

IV. DEFINITIONS

B. DEFINITIONS CONCERNING INCIDENTS:

2. Abuse: An employee/agent acts, or incites another to act, in a manner that willfully, intentionally, or recklessly causes or may cause pain, physical or emotional injury.

   (i) Physical Abuse: Any assault by an employee/agent upon a recipient and includes, but is not limited to, hitting, kicking, pinching, slapping, or otherwise striking a recipient or using excessive force regardless of whether an injury results. Assault as defined by this Policy implies intent.

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 or exploitation.

... 

r. Disruptive conduct of any sort.

... 

aa. Failure to perform job properly.

... 

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

... 

ff. Violation of Department policies on Investigations and/or Employee Cooperation in Investigations.

... 

DMH's Policy #80-20 provides, in pertinent part:

I. POLICY:

It shall be the duty and obligation for any employee of the Alabama Department of Mental Health to cooperate with a departmental investigation.
II. DEFINITIONS:

1. Cooperation shall include, responsively answering questions pertaining to the performance of their official job duties or their possible knowledge of the subject matter of the investigation.

...

C. Facts Forming the Basis of Dismissal

On Thursday, September 2, 2021, Jones was assigned 1:1 with patient J.H. Jones worked with J.H. from 6:45 a.m. until 11:15 p.m. Following Jones’ shift, another Mental Health Worker, Ponsopa Malone (“Malone”) was assigned 1:1 with J.H. Malone helped J.H. lie down in bed and saw J.H.’s facial expression show pain. She determined J.H. was hurt on his right side. After Malone worked with J.H. she passed him off to LaTonya Brifford (“Brifford”). Brifford was told by another patient, E.C., that Jones beat up J.H. Brifford reported what she heard to

4 1:1 means the Mental Health Worker must always remain within arms-length of the patient during the shift.

5 Malone was a Mental Health Worker Trainee during the timeframe of events.

6 DMH Exhibit 3, Bates Stamp 23. Malone testified at the hearing but was difficult to understand.

7 E.C. was J.H.’s roommate. E.C. did not witness any of the events and was known for making false accusations in the past, although McAlpine testified there was usually “some truth” in what E.C. would report.
another Mental Health Worker, Chenteyanna Bishop ("Bishop"). Bishop later told Brifford that she reported the incident to a nurse.\(^8\)

Bishop testified at the hearing. Bishop testified she heard J.H. was beat up by Jones. J.H. complained of a rib injury to Bishop during her shift. Bishop initially reported what she heard to a Contract Nurse, Angela Pierson ("Pierson"). Bishop testified Pierson was nonchalant about the report, so Bishop contacted Taylor Hardin’s Director of Nursing, Vann Wilhite ("Wilhite"). Bishop also included in her written statement that J.H. pointed Jones out to her and told her Jones beat him up.\(^9\) Bishop testified she asked Jones what happened, and Jones told her, "we was trying to put his clothes on and he hit me with his nub."\(^{10}\)

On Friday, September 3, 2021, after the morning meeting, Wilhite requested several staff members to remain behind to discuss an issue. Included in that meeting was Taylor Hardin’s Medical Nurse Practitioner Lorraine Watkins ("Watkins"). Watkins testified the staff members were made aware of an allegation of abuse. Watkins was assigned to assess J.H.’s injuries. Watkins checked J.H.’s

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8 DMH Exhibit 3, Bates Stamp 24.

9 J.H. was also heard asking E.C. what happened as he was questioned.

10 DMH Exhibit 3, Bates Stamp 26. J.H.’s leg was amputated.
physical condition while the Facility’s Chief Psychiatrist interviewed J.H. Watkins noticed J.H. grimaced in pain and had several scratches so she sent him to Northport Medical Center for an X-ray. The X-ray showed a fractured rib. Watkins ordered pain medication for J.H. and reported the findings to the Director of Risk Management, Eric Owens (“Owens”). Watkins also testified that while she was interviewing J.H., Jones was walking around the area and remarked, “I did what I had to do.”

Owens forwarded the details of the alleged abuse to Facility Director Kimberly McAlpine (“McAlpine”) and she ordered an investigation. Owens testified he interviewed both Jones and Victor Lee (“Lee”). Owens testified Jones told him during the interview that J.H. urinated on himself and needed to be changed. Jones indicated that J.H. was not compliant, so Jones asked Lee to assist him. Jones and Lee changed J.H. Following the interview, Owens asked Jones to write an Investigation Statement. Jones submitted his statement. Owens testified he asked Jones to elaborate on some of the details in his written statement since his verbal answers were more detailed. Jones declined to revise his statement. Some of the

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11 Watkins’ testimony largely affirmed her statements in her Investigation Statement. This particular interaction with Jones was not included in Watkins Investigation Statement. See DMH Exhibit 3, Bates Stamp 27-28.

12 Owens testified he chose to interview Jones, specifically, because Jones has a difficult temperament and tends to be hostile while interviewed.
information Owens asked Jones to elaborate on included: what J.H. did that was uncooperative, why Jones had to change him, J.H.'s comments to Jones, and how Lee assisted him during the interaction with J.H. Owens testified Jones was much more descriptive in what he said but did not include those details in his written statement.

After completing his investigation, Owens provided the report to the Investigation Review Committee, a multi-disciplinary committee comprised of seven individuals with different backgrounds. The Committee determined the evidence supported the allegation of abuse and proceeded with recommending formal charges against Jones.

McAlpine reviewed the information provided by Owens and recommended Jones’ dismissal. McAlpine testified she based her decision on multiple factors, including: the witness statements, the injury itself, inconsistencies by Jones, his refusal to add more details to his investigation statement, Jones entire work record, and a text message Jones sent Lee during the investigation.\textsuperscript{13} McAlpine testified that in all her experience she has never seen a worker text another worker and coach

\textsuperscript{13} The text was sent on Tuesday, September 7, 2021, at 9:24 a.m. and stated, “Good morning. [E.C.] the patient said you and I beat [J.H.] yesterday. He told Bishop and Hamilton (Bones) came down took pictures but their wasn’t any bruises. [emoji’s indicating “praise God”] ...I just wanted to give you an heads up if they call & question you. No one has questioned me. But if they do, all you have to say that you help me change J.H. or assistance changing clothes and pull up.” See DMH Exhibit 4.
them on what to say if questioned. McAlpine testified safety is her number one priority and requested the Board to uphold Jones dismissal.

Jones testified at the hearing. Jones acknowledged he was 1:1 with J.H. on September 2, 2021. Jones testified J.H. did not show any signs of injury while under his care. Jones does not know how J.H. got a fractured rib. Jones admitted J.H. was uncooperative and he asked Lee for help with changing J.H. Jones also acknowledged that J.H. tried to kick him with the nub of his leg, which was the event that led him to ask Lee for assistance. Jones indicated he and J.H. were alone in J.H.'s room until Jones asked Lee for assistance. J.H.’s roommate, E.C., was not in the room at all during the alleged incident. Jones testified he regularly worked with J.H. and knew his behaviors well. Jones was also aware that J.H. had dementia. When asked why he sent a text message to Lee, Jones explained he wanted Lee to know what was going on and that “false accusations” were being made. Jones wanted Lee to know what was being said about them.

Lee testified as well. Lee testified Jones called him to help change J.H. Lee testified he went in, helped Jones change J.H. and then left. Lee testified he did not observe any issues with J.H. Lee also testified J.H. was checked by a nurse 15-30 minutes after he and Jones changed J.H. Lee described J.H. as calm, relaxed and cooperative. Lee also testified he replied, “Wow” to Jones’ text. Lee did not know
why Jones sent a text. Lee ended his testimony by explaining that Jones never asked
him to lie.

III. ISSUE

Did DMH produce sufficient evidence to warrant Jones' dismissal?

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
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).\(^\text{14}\)

\(^{14}\) 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 APA’s preponderance of the evidence standard. See also Wright v. State of Tex., 533 F. 2d 185 (5th Cir. 1976).15

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

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15 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.
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 sufficient evidence to uphold Jones' dismissal. DMH accused Jones of abuse and failure to cooperate with an investigation. There was no video evidence of abuse by Jones. The circumstantial evidence is compelling. Jones was 1:1 with J.H. The worker who replaced Jones 1:1 was the first staff member to notice J.H. was injured. J.H. suffered an actual injury, a broken rib. J.H. suffers from dementia, but he identified Jones as the individual who hurt him. Finally, when Watkins was speaking with J.H. in a common area, Jones was close by and she heard Jones say, "I did what I had to do." These facts indicate that Jones, more probably than not, retaliated against J.H. after J.H. tried to hit him with the nub of his leg.

Furthermore, there is substantial evidence that Jones failed to cooperate during the investigation and interfered with DMH's efforts to properly ascertain the truth. Jones refused to add details to his written statement that would more closely resemble what he told Owens during his interview, but more significantly than that; Jones texted Lee, informed him of the allegations, used a praying emoji after disclosing there were no bruises, and told him what to say if Lee was asked any questions. Owens and McAlpine both expressed a lack of trust toward Jones. Jones does not
have a lengthy career or sterling track record. He has only been an employee of DMH for a little more than a year and received progressive discipline up to and including a 3-day suspension. Any additional infraction, no matter how great or small, after his August 2021 suspension, would provide DMH sufficient grounds to dismiss Jones from employment. Jones’ conduct in this matter violated DMH rules and policies, therefore, Jones’ dismissal would be for the good of DMH’s service.

Wherefore Premises Considered, the undersigned recommends to the State Personnel Board that Jones’ dismissal be UPHELD.

Done, this the 22\textsuperscript{nd} day of March 2022.

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