



On February 22, 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. Bart Harmon, Esq., appeared as counsel on behalf of DOC. Mahone was pro se.

At the beginning of the hearing, DOC introduced, without objection, DOC Exhibits 1 – 6. Mahone offered five (5) exhibits. The undersigned informed the parties, without objection, that Mahone’s personnel file at the Alabama State Personnel Department would be included in the record as evidence in this matter.

DOC called as witnesses:

- (1) Tiara Mahone, former Correctional Security Guard;
- (2) Jeffery Baldwin, Acting Warden III, Elmore Correctional Facility;
- (3) Brenda Gullatte, Correctional Officer at Staton Correctional Facility and ADOC Drug Test Officer;
- (4) Jason Grindle, RN, ADOC Director of Medical Services; and
- (5) Rolanda Calloway, Warden III, Elmore Correctional Facility

Mahone testified on her own behalf.

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

DOC hired Mahone in January 2019 as a Steward I. She was promoted to Correctional Security Guard effective September 16, 2019. She remained in that

classification until DOC dismissed her effective December 7, 2021.<sup>1</sup> The dismissal letter signed by the appointing authority, DOC Commissioner Jefferson S. Dunn, is dated December 3, 2021.<sup>2</sup>

Mahone 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 December 15, 2021, the appeal hearing was scheduled for January 26, 2022. The hearing was continued and rescheduled to February 22, 2022.

In its Statement of the Facts, DOC alleged, in pertinent part:

“...On October 2, 2021, at approximately 11:22 a.m. Ms. Mahone submitted a urine specimen to be tested for the use of illegal drugs. On October 5, 2021, Ms. Mahone’s specimen was tested at Staton’s Drug Lab and the results were positive for the use of Marijuana. On October 12, 2021, Ms. Mahone’s specimen was tested by an independent laboratory and the results were confirmed for the use of Marijuana. ... Following a review of the administrative hearings and consideration of the aggravating circumstances in this case, the Commissioner found Mahone guilty of violating the standards under Administrative Regulation 208, Employees Standards of Conduct and Discipline:

1. Employees shall observe all laws, rules and regulations. (Section V.

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<sup>1</sup> See DOC Exhibit 3.

<sup>2</sup> See DOC Exhibit 3.

Paragraph A7)

2. Employees shall uphold with integrity, the public's trust in their position.

(Section V, Paragraph A8)

In determining the appropriate corrective action for the above violations, the Commissioner considered the following infraction(s):

1. Possession of illegal drugs or a positive drug screen. (Administrative Regulation 208, Annex H, Number 41)

Having reviewed the Warden's Notice of Intent to Recommend Dismissal, the Commissioner of the Alabama Department of Corrections ordered Mahone's dismissal for the good of the service to be effective the close of business December 7, 2021." ...

Additionally, Mahone's conduct violates the General Work Rules of the Alabama State Personnel Department, Administrative Code Section 670-X-19-.01:

For violations which would normally result in suspension or termination in the first offense as enumerated in section (b) - 7. Possession and/or use of alcohol, narcotics, or other illegal substances and/in state property; and 13. Conduct unbecoming a state employee.

## **II. FACTUAL BACKGROUND**

Having reviewed the documentary evidence, the parties' stipulation, 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>3</sup>

**A. Employee's Personnel File<sup>4</sup>**

Mahone's performance appraisals while in State service at DOC reflect:

<b>Date Ending</b>	<b>Total</b>	<b>Score Category</b>
01/01/2021	27	Exceeds Standards
03/15/2020 <sup>5</sup>	28	Exceeds Standards
07/01/2019 <sup>6</sup>	27.10	Exceeds Standards

**B. State Personnel Board General Work Rules and DOC Regulations, Policies and Procedures Forming the Basis of the Charges**

State Personnel Board Rule 670-X-19-.01 provides, in pertinent 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:

...

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

...

7. Possession and/or use of alcohol, narcotics, or other illegal substance on/in state property.

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<sup>3</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>4</sup> See *generally* State Personnel Board Rule 670-X-18-.02(5) (employee's work record, including performance and disciplinary history, considered in dismissing employee).

<sup>5</sup> Final Probationary Appraisal as Correctional Security Guard

<sup>6</sup> Final Probationary Appraisal as Steward I

...

13. Conduct unbecoming a state employee.

...

**AR 208, provides in pertinent part:**

...

**V. PROCEDURES**

- A. All ADOC employees shall adhere to the following standards:

...

2. Render full, efficient, and industrious service.

...

7. Observe all laws, rules and regulations.

...

...

- C. Employees shall **not**:

1. Report for duty or exercise supervision or control over inmates while under the influence of an intoxicant and/or illegal drug; and

...

3. While on duty, use or be under the influence of intoxicants or illegal drugs.

...

**AR 208, Annex H: TABLE OF INFRACTIONS and LEVEL OF DISCIPLINE:**

...

41. Possession of illegal drugs or a positive drug screen. The first offense is punishable by dismissal.

...

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

Mahone was sitting in her vehicle in the Prison VIP parking area eating when she was subjected to a drug dog search of her vehicle. Mahone insists she does not “smoke” marijuana and is the victim of a mistake. She gave a urine sample which she insists was not collected consistent with protocols. She did not wash her hands and she said she did not fill the urine sample cup. She suggests that her positive test may be the result of “cross-contamination” since she had handled some prisoners’ electronic tablets prior to giving the test sample. Mahone provided results of two tests she had conducted after her positive test at ADOC. Mahone received procedural due process and was given opportunities to call witnesses for her case. She called no witnesses other than herself. ADOC presented the testimony of Brenda Gullatte, the Drug Testing Officer who handled the ADOC test and the confirmatory test done at SalvusLabs. Gullatte’s testimony was compelling. The Wardens who testified had to rely on what they had been told by others but followed existing procedures and the undersigned found them credible.

Mahone was adamant that she did not “smoke” marijuana, but the test indicated she was positive for THC on October 2, 2021.<sup>7</sup>

Mahone’s confirming test from SalvusLabs validated the ADOC test.

The undersigned carefully reviewed all the evidence. The documentary evidence and the preponderance of the evidence as a whole support the Commissioner’s decision to terminate Mahone’s employment for the good of the service.

### III. ISSUE

Did DOC produce sufficient evidence to sustain Mahone’s dismissal based upon violations of DOC rules, regulations, policies and procedures and State Personnel Board General Work Rules?

### 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:

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<sup>7</sup> ADOC Exhibit 6.



“[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>8</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. 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. 1997, 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).<sup>9</sup>

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<sup>8</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).

<sup>9</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.

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).

Mahone’s conduct constituted violations of DOC’s AR 208, Employee Standards of Conduct and Discipline, V.A 7 and V.A 8 AR 208, Annex H, No. 41, warrants dismissal

The undersigned has carefully observed and considered the witnesses’ demeanor, testimony, and all the documentary evidence in this case and finds that the preponderance of the evidence establishes that DOC followed its rules, procedures, and had a proper basis and the authority to discharge Mahone from her employment.

The undersigned finds no appropriate basis for a lesser disciplinary action than dismissal. Therefore, the undersigned recommends to the State Personnel Board that the dismissal be UPHELD.

Done, this the 16<sup>th</sup> day of March 2022.



**JAMES JERRY WOOD**

Administrative Law Judge

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