BEFORE THE STATE PERSONNEL BOARD
IN THE MATTER OF

MYRIS BELL, )
 )
 )
 )
v. )
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 )
ALABAMA DEPARTMENT OF CORRECTIONS, )
 )
 )
 )
Appellee.
 )
 )
Case No: 22-06-RCS

RECOMMENDED ORDER TO THE STATE PERSONNEL BOARD

The recommended order arises from an employment termination action by the Alabama Department of Corrections (hereinafter “DOC”). DOC terminated the employment of Myris Bell (hereinafter “Bell” or “the Employee”) after he failed to perform his job properly, failed to follow his supervisor’s instructions, and engaged in disagreeable behavior, including lack of cooperation and insubordination. The evidence presented by DOC during the hearing showed that more probably than not, Bell violated multiple rules and policies and his actions warranted his dismissal from State service.

A hearing was held on February 3, 2022, at the offices of the Alabama State Personnel Department in Montgomery, Alabama. Bart Harmon, Esq., appeared as counsel on behalf of DOC. John R. Campbell, Esq., appeared as counsel on behalf
At the beginning of the hearing, DOC introduced into evidence, without objection, exhibits consecutively marked as DOC’s Exhibits 1 - 8. Bell introduced into evidence, without objection, one exhibit marked Employee’s Exhibit 1. The undersigned informed the parties that Bell’s personnel file at the Alabama State Personnel Department is included in the record as evidence in this cause.

DOC called Rose Easley, DOC Correctional Captain Latonya Scott, and DOC Correctional Warden Kenneth Peters to testify on its behalf. Bell testified on his own behalf.

I. PROCEDURAL HISTORY AND CHARGES

Bell was dismissed from employment with DOC on October 25, 2021. See October 14, 2021, dismissal letter ("dismissal letter") signed by DOC Commissioner Jefferson S. Dunn. Bell timely appealed his dismissal to the Alabama State Personnel Board, pursuant to Ala. Code 1975, § 36-26-27(a).

In the dismissal letter, DOC alleged:

... 

On May 14, 2020, [at] approximately 6:36 A[.]M., you called in and reported that you were not reporting to work because you currently were on FMLA for your grandson. At approximately 7:00 P.M., Captain LaTonya Scott

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1 See DOC’s Exhibit #3.
called you and instructed you to bring in current FMLA documentation for your grandson when you return to work. You then said, “I ain’t bringing in nothing, I gave payroll everything she needs.” You also said, “Captain, this isn’t toward you, I don’t give a damn about the D.O.C. You tell the Warden that I said he can strike it up because we are going to war. I have a lawyer for the DOC.” Captain Scott then ended the conversation with you and notified Warden Peters of the conversation. Payroll confirmed that you had not turned in any current paperwork.

....

On February 3, 2022, 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 facts.²

A. Employee’s Personnel File³

Bell began his employment with DOC in January 2002, as a “Correctional Officer I.” In 2008, Bell was promoted to “Correctional Sergeant” but volunteered

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 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).
to a demotion on June 16, 2009. In February 2014, Bell was again promoted to “Correctional Sergeant.” In 2015, Bell was promoted to “Correctional Lieutenant.” Bell remained in that classification until his dismissal.

Bell’s annual performance appraisals (“APA”) while at DOC reflect:

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<tr>
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<td>07/02⁷</td>
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</tr>
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</table>

⁴ Final probationary Appraisal as Correctional Lieutenant.
⁵ Final probationary Appraisal as Correctional Sergeant.
⁶ Final probationary Appraisal as Correctional Sergeant.
⁷ Final probationary Appraisal as Correctional Officer I.
Bell’s prior disciplinary history at DOC includes the following disciplinary action (in reverse chronological order):

- 3-days suspension, served on October 22, 2021, through October 24, 2021, for non-compliance with policies, procedures, and regulations; failure to perform job properly; failure to follow supervisor’s instructions, non-compliance with policies and procedures; and conduct that is disgraceful, on or off the job that does adversely affect an employee’s effectiveness on the job. (Committed on May 14, 2020).

- Written Reprimand, served on June 7, 2018, for disagreeable behavior, including lack of cooperation and insubordination; and serious violations of rules, policies, procedures, regulations, laws, or reasonable conduct expectations. (Committed on May 9, 2018).

- Warning, served on May 17, 2018, for minor violations of Departmental or Institutional rules, policies, or procedures that do not result in serious consequences. (Committed on April 27, 2018).

- Warning, served on September 22, 2017, for non-compliance with policies, procedures, and regulations. (Committed on September 11, 2017).

- 3-days suspension, served from September 13, 2016, through September 15, 2016, for conduct that is disgraceful, on or off the job that does adversely affect an employee’s effectiveness on the job. (Committed on June 1, 2016).

- 3-days suspension, served from January 12, 2016, through January 14, 2016, for abusive or excessive physical force in dealing with inmates. (Committed on May 31, 2015).

- Warning served on January 2, 2014, for late for work (tardiness)/failure to follow proper call-in procedures. (Committed on December 15, 2013).

- Written Reprimand served on September 28, 2016, for conviction of driving under the influence (DUI)/driving while intoxicated (DWI). (Committed on November 7, 2011).
3-days suspension, served from May 20, 2011, through May 22, 2011, for Conduct that is disgraceful, on or off the job that does adversely affect an employee’s effectiveness on the job. (Committed on November 20, 2010).

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

DOC Administrative Regulation 208 provides, in pertinent part:

V. PROCEDURES

A. All DOC employees shall adhere to the following standards:

1. Employees shall report for work on time and in a condition to perform their job properly.

2. Employees shall render full, efficient, and industrious service.

3. Employees shall respond promptly to directions and instructions of a supervisor.

4. Employees shall exercise courtesy and tact.

...  

7. Employees shall observe all laws, rules and regulations.

...  

B. Each employee’s conduct shall, at all times, be consistent with the maintenance of proper security and welfare of the institution and of the inmates under his/her supervision.

C. Employees shall not:

...
4. Use profane, abusive, or threatening language in communication with other employees, the public, or when supervising inmates.

ANNEX H

2. Non-compliance with policies, procedures, and regulations. (First Offense – Warning; Second Offense – Written Reprimand; Third Offense – 3 days suspension; Fourth Offense – Dismissal).

10. Failure to perform job properly, not resulting in actual consequences. (First Offense – Written Reprimand; Second Offense – 2 days suspension; Third Offense – 3 days suspension; Fourth Offense – Dismissal).

11. Failure to follow supervisor’s instructions; non-compliance with policies and procedures. (First Offense – Written Reprimand; Second Offense – 2 days suspension; Third Offense – 3 days suspension; Fourth Offense – Dismissal).

13. Disagreeable behavior, including lack of cooperation and insubordination. (First Offense – Written Reprimand; Second Offense – 2 days suspension; Third Offense – 3 days
18. Serious violations of rules, policies, procedures, regulations, laws, or reasonable conduct expectations. (First Offense – Written Reprimand; Second Offense – 2 days suspension; Third Offense – 3 days suspension; Fourth Offense – Dismissal).

...  

33. Conduct that is disgraceful, on or off the job that does adversely affect an employee’s effectiveness on the job. (First Offense – 3 days suspension; Second Offense – Dismissal).

...

SPB General Work Rules Forming the Basis of the Charges

Rule 670-X-19-.01 provides, in 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:

(a) Violations that normally result in disciplinary actions of increasing severity:

...  

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 – Failure to follow an order; disobedience; failure to submit to authority as shown by demeanor or words, with the one exception of not following an order which the employee has good reason to believe is unsafe or illegal.

... 

10. Serious violation of any other department rule.

... 

13. Conduct unbecoming a state employee.

... 

C. Facts Forming the Basis of Dismissal

On February 12, 2020, Bell submitted Certification of Health Care Provider For Family Member’s Serious Health Condition to Correctional Warden III Gwendolyn Givens (“Givens”) at Donaldson requesting approved leave through the Family and Medical Leave Act (“FMLA”). Bell requested FMLA leave to care for his minor grandson who was born in 2017 with some significant health issues. Bell completed the employee portion of the Certification and had a medical doctor fill
out the remaining portion.

At the end of February and beginning of March 2020, COVID-19, a highly contagious upper respiratory illness, became a challenging problem for State agencies. The State took an aggressive approach at attempting to minimize exposure and DOC permitted employees to take leave if they were in direct contact with someone who had COVID-19 or may have had COVID-19. Bell was out of work for COVID-19 related exposure on March 17, 2020, through March 19, 2020. Bell also missed work on March 28, 2020, and April 2, 2020, through April 30, 2020, for COVID-19 related exposure. In his testimony, Bell recalled missing 14 days due to quarantine and testified he stayed in a hotel to protect his family. Bell also testified that he took FMLA approved leave for the entire month of May 2020.

On May 14, 2020, Bell called Correctional Captain LaTonya Scott ("Scott"), his immediate Supervisor, and reported he would not report that day and was taking FMLA leave. Scott informed Bell his FMLA leave was not approved, and he was to report to Donaldson to work his shift. Bell argued with Scott and told her he was, in fact, on FMLA approved leave. Scott asked Bell to bring in additional, more up-to-date paperwork for his FMLA application. Bell told Scott he was NOT going

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8 DOC Exhibit 6, page 15.
to do that.

DOC alleged that after Scott told Bell to bring in additional paperwork, he replied, “I ain’t bringing in nothing, I gave payroll everything she needs. Captain, this isn’t towards you, I don’t give a damn about the DOC. You tell that Warden that I said he can strike it up because we are going to war. I have a lawyer for the DOC.” During his testimony, Bell denied using such verbiage. Bell admitted he communicated to Scott he was not bringing in any more paperwork. Scott’s recollection was fuzzy, but she recalled Bell saying he did not give a damn and told her to tell acting Correctional Warden III at Donaldson, Kenneth Peters (“Peters”), to strike it up, [Bell] had a lawyer. Scott testified Bell defied her authority over the phone and refused to report to work or provide additional FMLA related paperwork. Scott also testified that she spoke with Bell on numerous occasions, and she never communicated to Bell he was approved for FMLA leave. Scott testified she only communicated to Bell he was not approved. Scott also testified she spoke to Givens who told her Bell was not approved for FMLA leave.

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9 Even though Scott’s recollection was fuzzy, Bell’s insubordinate attitude recorded in the pre-dismissal letter portrays a similar attitude reflected in other documents found in Bell’s personnel file. On May 9, 2018, Bell submitted a written rebuttal to a disciplinary action he received from Correctional Captain Clatys Jenkins. Bell wrote, “I stated to Captain Jenkins that; I have too much personal stuff going on with my Grandson and, I don’t give a f*** what he does.” Bell’s personal life has dictated his words and actions toward Supervisors before and it appears more probably than not that it did again in this case. See DOC Exhibit 1, pages 18-20.
On May 21, 2020, Peters wrote a letter to Bell stating, “You are instructed to produce current paperwork to justify your FMLA status. This paperwork must be received in this office no later than Tuesday, June 2, 2020. Failure to produce this paperwork will result in any further absences being charged as LWOP and corrective action will ensue.”

On May 26, 2020, Bell called Peters after he received Peters May 21, 2020, letter. Peters told Bell he was not approved for FMLA leave and needed to report back to work. Peters testified he was unaware of anyone who told Bell he was approved for FMLA leave. Peters testified he was unaware of anyone from Montgomery telling or sending approval to Bell for FMLA leave. Peters testified Donaldson is running at approximately 30 percent staffing and all employees are needed at work, barring exceptional circumstances. Peters testified Bell’s insubordination toward Scott was unacceptable and could not be tolerated since it would trickle down to Correctional Officers and then inmates.

Bell testified that when he spoke to Scott on May 14, 2020, he spoke in a normal tone and was not aggressive. While speaking with Scott, Bell believed he did not need to turn in additional paperwork because he already submitted documents on February 12, 2020. Bell acknowledged he refused to turn in

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10 DOC Exhibit 6, page 2.
additional paperwork when he spoke with Scott but affirmed he provided additional paperwork after speaking with Peters.

Many years before this incident, on or around April 13, 2017, Bell received a Notice of Eligibility and Rights and Responsibilities ("Notice") from DOC regarding an application he filed for use of FMLA to provide care for his grandson. DOC indicated in the notice Bell was eligible for FMLA.¹¹ Under Part B of the notice, the notice stated: "However, in order for us to determine whether your absence qualifies as FMLA leave, you must return the following information to us by 4/19/2017...Sufficient documentation to establish the required relationship between you and your family member. Bell was also informed that, "While on leave you will be required to furnish us with periodic reports of your status and intent to report to work..."¹² Interestingly, on that same date, Bell received a Designation Notice indicating he had been approved for FMLA leave.

Bell testified he was approved for FMLA leave back in 2017 and therefore, expected to be approved in 2020. Bell testified someone in payroll, Darlene Holmes, communicated to him his FMLA application in 2020 was approved. He also testified Scott told him his FMLA was approved. Scott testified at the hearing

¹¹ DOC Exhibit 6.

¹² DOC Exhibit 6, page 25.
and denied she ever communicated to Bell his FMLA was approved. Holmes was not called by either party to testify.

Rose Easley ("Easley") testified at the hearing. Easley worked with payroll but in a different capacity. She explained how FMLA is filed and ultimately approved by DOC Personnel in Montgomery, Alabama ("Montgomery"). Easley testified no one in Montgomery approved Bell’s February 2020 FMLA request. Ultimately Bell was approved by Montgomery for FMLA in June 2020, but that was for an unrelated back issue. Easley explained that someone errantly put in the payroll log that Bell was approved for FMLA. She explained that is why the payroll documents in DOC Exhibit 6 includes FMLA approved leave. It was keyed in as approved until the mistake was discovered.

III. ISSUE

Did DOC produce sufficient evidence to warrant Bell’s dismissal?

IV. DISCUSSION

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).\(^\text{13}\)

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.

\(^{13}\) 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 1975, § 41-22-20 (k); State Dept. of Human Res. v. Gilbert, 681 So.2d 560, 562 (Ala.Civ.App. 1995).
See also Wright v. State of Tex., 533 F.2d 185 (5th Cir. 1976).\textsuperscript{14}

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, DOC presented sufficient evidence to warrant Bell’s dismissal.\textsuperscript{15} The preponderance of the evidence proved Bell violated DOC Administrative Regulation 208, Annex H #2 - Non-compliance with policies, procedures and regulations (2\textsuperscript{nd} Offense), by failing to comply with a request for additional FMLA documentation; Administrative Regulation 208, Annex H #10 – Failure to perform job properly, not resulting in actual consequences (2\textsuperscript{nd} Offense), by failing to provide supporting documentation when requested; DOC

\textsuperscript{14} 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.

\textsuperscript{15} There was evidence that suggested there was confusion between Bell and Donaldson staff regarding his FMLA leave status; however, he refused to acknowledge Scott’s authority during their May 14, 2020, phone conversation and refused to comply with her lawful commands until the Warden sent a letter to him days’ later. The FMLA is a cooperative effort between an employee and their employer. Bell was not cooperative during the May 14, 2020, phone call and threatened legal action even though the FMLA paperwork he previously received indicated he may be responsible for providing additional documentation in the future.
Administrative Regulation 208, Annex H #11 – Failure to follow supervisor’s instructions (2nd Offense), by failing to follow Scott’s May 14, 2020 commands to return to work and provide additional FMLA paperwork; Administrative Regulation 208, Annex H #13 – Disagreeable behavior, including lack of cooperation and insubordination (1st Offense) by arguing and disobeying Captain Scott on May 14, 2020; and Administrative Regulation 208, Annex H #33 – Conduct that is disgraceful, on or off the job that does adversely affect an employee’s effectiveness on the job (2nd Offense) by being insubordinate to a Supervisor and failing to follow lawful commands which may trickle down to other employees and inmates. Marshall’s conduct also violated several State Personnel Board General Work Rules, including Failure to perform job properly (670-X-19-.01(1)(a)(4)), Violation of specific department rules (670-X-19-.01(1)(a)(8)), Insubordination (670-X-19-.01(1)(b)(2)), Serious violation of any other department rule (670-X-19-.01(1)(b)(10)), and Conduct unbecoming a state employee (670-X-19-.01(1)(b)(13)).

The undersigned has carefully considered mitigation in this case. The undersigned 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.\textsuperscript{16}

Done, this the 8\textsuperscript{th} day of March 2022.

\textbf{COPIES TO:}

\textbf{VIA E-MAIL AND FIRST-CLASS U.S. MAIL}

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\textsuperscript{16} Having found sufficient evidence to uphold the dismissal, any/all remaining issues are moot.