

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

ASHLEY BETTIS,)	
)	
Appellant,)	
)	
v.)	CASE NO. 19-10-JJW
)	
ALABAMA DEPARTMENT OF)	
HUMAN RESOURCES,)	
)	
Appellee.)	

**RECOMMENDED ORDER TO
THE STATE PERSONNEL BOARD**

This Recommended Order arises from an employment termination action by the Alabama Department of Human Resources (hereinafter “DHR”). DHR terminated the employment of Ashley Bettis (hereinafter “Bettis”) on November 30, 2018. Bettis began her employment at DHR on January 2, 2015 as a Social Service Caseworker assigned to work in DHR’s Child Protective Services Division in Bullock County. DHR, in its charge letter dated August 27, 2018, advised Bettis it proposed to terminate her employment for alleged violations of the following Rules of the State Personnel Board:

670-X-19.01 General Work Rules.

(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.

...

7. Participation in unauthorized or solicitations on work premises.

8. Violation of specific department rules. (DHR Personnel Policies and Procedures – Chapter 13.32 Use of Official Position or Office for Personal Gain)

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

1. Violations of safety rules.

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.

...

6. Falsification of records – Application for employment, time card, doctor's excuse, etc.

...

10. Serious violation of any other department rule. (DHR Personnel Policies and Procedures – Chapter 13.32 Use of Official Position or Office for Personal Gain)

...

13. Conduct unbecoming a state employee.

...

DHR conducted an administrative hearing on November 2, 2018 at which it presented testimonial and documentary evidence supporting DHR’s decision to dismiss Bettis.¹ Bettis was represented by Chase Estes, Esq. DHR was represented by Joshua Lane, Esq. Mary B. Ashcraft (“Ashcraft”) acted as the Administrative Hearing Officer and recommended that Bettis’s employment with DHR be terminated. Bettis was dismissed from her employment with DHR on November 30, 2018.² On December 10, 2018, Bettis timely appealed her dismissal to the State Personnel Board. On December 18, 2018, a Scheduling Order was issued setting the hearing for Bettis on February 18, 2019. On February 7, 2019, Bettis asked for a continuance and her hearing was reset for February 25,

¹ DHR Exhibits 3 and 4.

² DHR Exhibit 3, p. 1.

2019. On Sunday, February 24, 2019, at 5:53 p.m. (*i.e.*, the day before the hearing was scheduled to begin), Bettis sent an e-mail advising she would not be attending the hearing owing to a non-specified medical condition.

Bettis did not appear for the hearing on February 25, 2019, at 9:00 a.m. DHR filed a Motion for Default Judgment and Payment of Costs. Pursuant to the terms of the Scheduling Order in this case the undersigned admitted DHR Exhibits 1-6.

Bettis did not file an answer in this matter and did not enter any objection to any of the exhibits including the transcript of her hearing before Hearing Officer Ashcraft. The undersigned has considered the documentary evidence including the transcript of the testimony at the DHR Administrative Hearing.

DHR acted within State Personnel Board rules and its rules, policies, and statutory authority.

II. FACTUAL BACKGROUND

Having reviewed the available documentary evidence admitted at the hearing the undersigned finds the greater weight of the evidence supports the following findings of fact.³

³ 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.

A. Employee's Personnel File⁴

Bettis's annual performance appraisals while at DHR reflect:

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
08/01/2018	24	Meets Standards
08/01/2017	25	Meets Standards
08/01/2016	26.7	Exceeds Standards
10/01/2015	24	Meets Standards
07/01/2015	17.8	Meets Standards

Following her hire on January 2, 2015, Bettis's six-month probationary period was extended for 90 days because she did not meet standards in all of her responsibilities.⁵ Bettis's prior disciplinary history at DHR consists of a Warning on April 26, 2018 for failure to perform job properly and insubordination.⁶

B. Rules of the State Personnel Department and DHR Policies/Procedures Forming the Basis of the Charges

The State Personnel Rules allegedly violated by Bettis forming the basis of the charges against her are outlined hereinabove.

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

⁵ DHR Exhibit 1, pp. 20 and 23.

⁶ DHR Exhibit 6, p. 1.

III. ISSUE

Did DHR produce sufficient evidence to warrant Bettis's dismissal by a preponderance of the available evidence?

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:

“[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).⁷

In determining whether an employee's dismissal is warranted, the departmental agency bears the burden of proving the charges warrant termination by a

⁷ 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).

“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 Administrative Procedure Act’s preponderance of the evidence standard. See also *Wright v. State of Tex.*, 533 F.2d 185 (5th Cir. 1976).⁸

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).

⁸ 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.

In the present case, DHR presented sufficient evidence warranting Bettis's dismissal. The evidence sustains the appointing authority's charges of violations of State Personnel Board Rules 670-X-19-.01(1)(a)4; (1)(a)7; (1)(a)8; (1)(b)1; (1)(b)2; (1)(b)6; (1)(b)(10); and (1)(b)(13).

DHR acted within its authority to terminate Bettis's employment. The preponderance of the evidence supports DHR's actions. The undersigned finds no basis for a lesser discipline than discharge from employment for Bettis. There is no basis for mitigation in favor of Bettis. In fact, Bettis's repeated, documented insubordination⁹ and her demeanor in refusing to answer questions from Hearing Officer Ashcraft during her pre-dismissal hearing¹⁰ strongly weigh against mitigation.

Bettis did not attempt to follow the Scheduling Order. She did not file an answer or any other pleadings except a timely request for continuance on February 7, 2019, which was unopposed by DHR and was granted. Bettis subsequently waited until the Sunday night before the hearing to indicate by e-mail she would be unable to appear. Neither the undersigned nor DHR's attorney became aware of

⁹ Warning for insubordination on April 26, 2018 and having been charged with insubordination by DHR again for the actions in August 2018 which led to her dismissal.

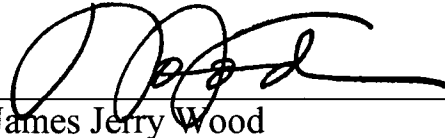
¹⁰ DHR Exhibit 4, pp. 52-53.

the e-mail until the morning of the hearing (*i.e.*, less than one hour before the hearing was scheduled to begin). DHR objected to a continuance as three witnesses were en route from Bullock County, a court reporter had been engaged, and costs had been incurred. The Scheduling Order issued December 18, 2018, reads as follows regarding continuances:

... A request for continuance must be filed as soon as a reason for a continuance is identified and the request must be specific. Prior to filing a request for continuance, the party requesting the continuance should contact the opposing party and, if possible, reach a mutual agreement on the motion. If such an agreement is reached, a joint written motion should set out this fact. A hearing will be continued only upon a timely showing of good cause...

The Scheduling Order further reads, "The ALJ may enter a default judgment for the Agency based upon the Employee's failure to prosecute his/her case should the Employee fail to appear at the hearing." These matters considered, the undersigned grants DHR's Motion for a Default Judgment and Payment of Costs and recommends the termination of Bettis's employment with DHR be upheld and that costs be taxed against Bettis in the amounts contained in DHR's motion which is attached hereto as Exhibit A.

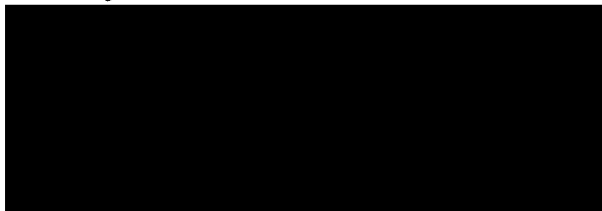
Done, this 1st day of April 2019.



James Jerry Wood
Administrative Law Judge Division
State Personnel Department
64 North Union Street
Montgomery, Alabama 36130
Telephone: (334) 242-8353
Facsimile: (334) 353-9901

VIA CERTIFIED AND FIRST-CLASS U.S. MAIL

Ashley Bettis, *Pro se*



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

Joshua Lane, Esq.
Department of Human Resources
Gordon Persons Building – 2nd Floor
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Montgomery, Alabama 36130-4000
Telephone: (334) 242-9336
Facsimile: (334) 242-0689
E-Mail: josh.lane@dhr.alabama.gov

BEFORE THE ALABAMA STATE PERSONNEL BOARD

IN THE MATTER OF)	
)	
ASHLEY BETTIS-PRITCHETT,)	
)	
APPELLANT,)	
)	
VS.)	CASE NO.: 19-10-JJW
)	
DEPARTMENT OF HUMAN)	
RESOURCES)	
)	
APPELLANT)	

**MOTION FOR DEFAULT JUDGMENT AND
PAYMENT OF COSTS**

Comes now the Bullock County Department of Human Resources (DHR) and moves Your Honor to enter a default judgment against the Appellant/Employee Ashley Bettis-Pritchett (Bettis) and order her to pay for reasonable costs associated with this action. As grounds in support thereof, the following are shown:

1. On August 7, 2018, Ms. Bettis was served with a pre dismissal letter alleging violations of the general work rules. (DHR Exhibit 2)¹ After a pre-dismissal hearing on November 2, 2018, the hearing officer recommend Ms. Bettis’ dismissal. (DHR Exhibit 3) Pursuant to that recommendation, Ms. Bettis was dismissed from her employment with the Bullock County Department of Human Resources on November 30, 2018. (DHR Exhibits 3 and 4A1)

¹ Exhibits designated with a number are referenced from the Exhibit List and attendant exhibits submitted as part of the record by DHR pursuant to Your Honor’s scheduling order. Any exhibit referenced with a letter designation are exhibits attached hereto in support of the present motion.

2. Ms. Bettis timely appealed her dismissal to the Alabama Personnel Board. After a pre-trial conference in which Ms. Bettis participated, Your Honor entered a scheduling order on December 18, 2018 setting forth specified requirements for continuance, the admission of evidence, and pleading charges and defenses.

3. Prior to the scheduling order, on December 13, 2018, DHR submitted a short plain statement of facts pursuant to *Ala. Code* §41-22-12(b)(3) and (4), (1975, as amended). That statement adopted by reference and incorporated fully the August 27, 2018 pre-dismissal letter that set forth the detailed allegations of Ms. Bettis' work rules violations. (DHR Exhibit 2)

4. As of the date of this motion, Ms. Bettis has not filed any response as required by *Ala. Code* §36-26-27(a) (1975, as amended) and as required by Your Honor's scheduling order.

5. The Department has entered exhibits pursuant to Your Honor's pre-trial scheduling order including the transcript and attendant exhibits from Ms. Bettis' pre-dismissal hearing. Ms. Bettis entered no objection to the admission of these exhibits. Pursuant to the scheduling order, these exhibits were deemed admitted on February 13, 2019.

6. The evidence presented at the pre-dismissal hearing, which is now before Your Honor, will remain entirely unchanged for the purposes of DHR's present case before Your Honor. The evidence at the pre-dismissal hearing was largely uncontested. The Department asserts that even for those matters contested by Ms. Bettis (for instance the falsification of Ms. Bettis' time card) the evidence clearly and convincingly establishes Ms. Bettis' violation of the work rules including serious violations of DHR policy, rules, and regulations intended to protect vulnerable adults in need of protective supervision. Ms. Bettis' lack of remorse indicates that she is unlikely to understand the seriousness of her actions or to improve her conduct in the future. DHR asserts that the evidence supports the findings of the pre-termination hearing

officer's recommendation for dismissal and the decision of the appointing authority to accept that recommendation. The evidence further establishes that any further progressive discipline is unlikely to be productive or even earnestly received.

7. On Sunday, February 24, 2019, at 5:53 p.m. (the day before the hearing was scheduled to occur) Ms. Bettis notified the court that she would not be attending the hearing due to a non-specified medical condition and that she wished to cancel the hearing. This is not the procedure for continuance set forth in Your Honor's scheduling order.

8. At the scheduled hearing before Your Honor, DHR proffered that the evidence presented at the pre-dismissal hearing in support of the dismissal of Ms. Bettis.

9. DHR objects to the continuance of this matter. DHR was prepared to present its case, at some expense as outlined below. Under the circumstances of this case DHR compelled three employees with other important job responsibilities to spend the day away from those responsibilities so that Your Honor could be fully informed of the facts of this case.

10. Ms. Bettis delay in notifying the Court of her intention to abandon her appeal means that the court reporter's appearance could not be cancelled before her arrival at the hearing. The cost for the court reporter's appearance is two hundred twenty-five dollars (\$225.00). (See Exhibit A)

11. Furthermore, in order to comply with Your Honor's scheduling order and in order to protect Ms. Bettis' right to due process, DHR was compelled to incur the cost of obtaining a copy of the court reporter's transcript from the pre-dismissal hearing. DHR incurred a cost of seven hundred forty-one dollars and twenty-five cents (\$741.25) for the transcript. (See Exhibit B)

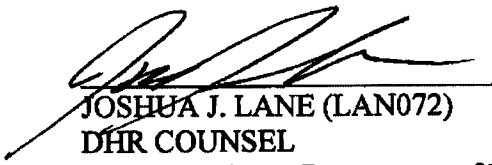
12. Furthermore, DHR's witnesses, as employees of the DHR, were compelled to attend the February 25, 2019 hearing². Pursuant to *Ala Code* §36-7-22 (1975, as amended), the State of Alabama has set mileage rates for travel at \$0.58 per mile effective January 1, 2019. The one way distance from the Bullock County Department of Human Resources is 44.5 miles. (See Exhibit C) Accounting for a a roundtrip of 89 miles, travel reimbursement will equal fifty one dollars and sixty-two cents (\$51.62).

13. Ms. Bettis initiated this appeal; however, she has failed to answer the charges against her, present a defense, or even appear at the hearing. The only effect of this appeal has been to cause DHR to incur a cost of one thousand seventeen dollars and eighty seven cents (\$1,017.87) to prepare a case where it does not appear that there was ever any serious intention by Ms. Bettis to pursue.

WHEREFORE, PREMISES CONSIDERED, request is respectfully made that Your Honor enter an order of default and/or recommend to the Personnel Board that Ms. Bettis' termination be affirmed.

Furthermore, request is respectfully made that Ms. Bettis be taxed reasonable costs incurred as a result of her now abandoned appeal of her dismissal in the amount of one thousand seventeen dollars and eighty seven cents (\$1,017.87).

RESPECTFULLY SUBMITTED, this the 26th day of February, 2019.


JOSHUA J. LANE (LAN072)
DHR COUNSEL
State of Alabama Department of Human Resources
Legal Office

² In order to mitigate costs to the Department, the three employees agreed to carpool.

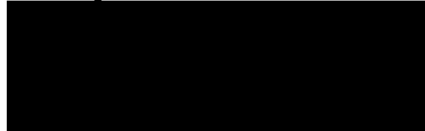
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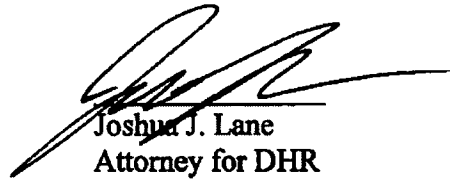
CERTIFICATE OF SERVICE

I hereby certify that I have served the forgoing by hand deliver, by U.S. postage first class prepaid on February 26, 2018, and/or by electronic mail onto the following:

Hon. James Jerry Wood
Administrative Law Judge

Ashley Bettis-Pritchett




Joshua J. Lane
Attorney for DHR

**Freedom Court Reporting, A Veritext Company
Southeast Region**

2031 Shady Crest Drive
Hoover AL 35216
Tel. 877.373.3660 Fax.
Fed. Tax ID: 20-3132569



Bill To: gall.grobe@dhr.alabama.gov
Alabama Department of Human Resources
50 Ripley Street
Suite 2122
Montgomery, AL, 36130

Invoice #: AL3671838
Invoice Date: 2/25/2019
Balance Due: \$225.00

Case:	Bettis, Ashley v. Alabama DHR
Job #:	3219580 Job Date: 2/25/2019 Delivery: Immediate
Billing Atty:	Gail Grobe
Location:	Alabama State Personnel 64 North Union Street Room 746. Please arrive 15 minutes earl Montgomery, AL 36104
Sched Atty:	Joshua Lane Alabama Department of Human Resources

Witness	Description	Amount
Personnel Hearing	Professional Attendance	\$225.00
Notes: Reporter: Stacey Johnson **Attendance** Thank you, we appreciate your business!		Invoice Total: \$225.00 Payment: \$0.00 Credit: \$0.00 Interest: \$0.00 Balance Due: \$225.00

TERMS: Payable upon receipt. Accounts 30 days past due will bear a finance charge of 1.5% per month. Accounts unpaid after 90 days agree to pay all collection costs, including reasonable attorney's fees. Contact us to correct payment errors. No adjustments will be made after 90 days. For more information on charges related to our services please consult <http://www.veritext.com/services/all-services/service-information>

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Bill To: Gail Grobe
Alabama Department of Human Resources
50 Ripley Street
Suite 2122
Montgomery, AL, 36130

Invoice #: AL3623719
Invoice Date: 1/18/2019
Balance Due: \$741.25

Case:	Department Of Human Resources v. Ashley Bettie-Pritchett
Job #:	3070621 Job Date: 11/2/2018 Delivery: Normal
Billing Atty:	Gail Grobe
Location:	Bullock Co. DHR 201 North Powell Street Union Springs, AL 36089
Sched Atty:	Joshua Lane Alabama Department of Human Resources

Witness	Description	Units	Quantity	Amount
	Original with 1 Certified Transcript	Page	218.00	\$730.30
Ashley Bettie-Pritchett	Litigation Package (all Electronic Files)	1	1.00	\$0.00
	Electronic Delivery and Handling	Package	1.00	\$0.00

Notes:	Invoice Total:	\$730.30
	Payment:	\$0.00
	Credit:	\$0.00
	Interest:	\$10.95
	Balance Due:	\$741.25

TERMS: Payable upon receipt. Accounts 60 days past due will bear a finance charge of 1.5% per month. Accounts unpaid after 90 days agree to pay all collection costs, including reasonable attorney's fees. Contact us to correct payment errors. No adjustments will be made after 90 days. For more information on charges related to our services please consult <http://www.veritext.com/services/all-services/services-information>

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Chicago IL 60694-1303

Invoice #: AL3623719
Job #: 3070621
Invoice Date: 1/18/2019
Balance: \$741.25

YOUR TRIP TO:

50 N Ripley St

53 MIN | 44.5 MI

Est. fuel cost: \$2.70

This time based on traffic conditions as of 11:42 AM on February 24, 2018. Current Traffic: Moderate

Print a full health report of your car with NMM vehicle diagnostics (800) 908-3301

1. Start out going south on Powell St toward Blackman Ave/US-82 W/US-82 W/AL-6.
Then 0.10 miles 0.10 total miles
2. Take the 1st right onto Blackman Ave/US-82 W/AL-6.
Then 0.29 miles 0.34 total miles
3. Turn slight left onto Bazkin St/US-82 W/AL-6. Continue to follow US-82 W/AL-6.
US-82 W is 0.1 miles past Fiville St.
Then 2.73 miles 3.07 total miles
4. Turn slight right onto Highway 110.
Then 8.01 miles 11.09 total miles
5. Highway 110 becomes Vaughn Rd/AL-110.
Then 15.09 miles 26.04 total miles
6. Merge onto I-85 E/AL-106 E.
Then 2.17 miles 28.21 total miles
7. Merge onto I-85 S via the exit on the left toward Montgomery.
Then 13.36 miles 41.57 total miles
8. Merge onto N Union St via EXIT 1 toward State Capitol/Alabama State Univ.
Then 0.79 miles 42.36 total miles
9. Turn right onto Polham St.
Polham St is just past Washington Ave.
If you are on N Union St and reach Polham St you've gone a little too far.
Then 0.09 miles 42.45 total miles
10. Take the 1st left onto N Ripley St.
If you reach N Jackson St you've gone a little too far.
Then 0.04 miles 42.49 total miles
11. 50 N RIPLEY ST is on the right.
If you reach Monroe St you've gone a little too far.

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201 Powell St N to 50 N Ripley St Directions - MapQuest

