BEFORE THE STATE PERSONNEL BOARD
IN THE MATTER OF

LaKesha Hopkins, )
) ) Case No: 22-13-JJW
Appellant, )
) vs.
Department of Public Health, )
) Appellee.
)

RECOMMENDED ORDER TO THE STATE PERSONNEL BOARD

The employment termination of Lakesha Hopkins (hereinafter “Hopkins”) by the Department of Public Health (hereinafter “DPH”) is the subject of this recommended order. Hopkins had been employed by DPH since 2016. Her employment performance appraisals have historically "exceeded" standards.

DPH terminated Hopkins' employment as a DPH Health Services Administrator I for violating DPH Policy Against Workplace Threats and Violence (2017-007), Professional Conduct (2020-002), and Employee Handbook for Semi-Monthly Employees (2018-003) when she verbalized threats of violence toward coworkers. Hopkins began employment at DPH in 2016 as an Administrative Support Assistant II. Hopkins was appointed to the position of Health Services Administrator I with the DPH Bureau of Health Provider Standards effective August
16, 2018. On April 1, 2021, Hopkins was administratively transferred within DPH from Division Code HCF 2000 to HPS 1600. This realignment of position locations was requested by Denise Milledge (hereinafter “Milledge”), Hopkins' immediate supervisor. It did not affect Hopkins' compensation or title. Milledge became Hopkins' rating supervisor when Dennis Blair retired. Hopkins did not acclimate well to the transition. Hopkins expressed a preference for emails as a means of communication with her supervisor. Milledge and Hopkins did not relate well to each other. Milledge was one of the persons about whom Hopkins indicated "she would like to kill her."

Hopkins was disappointed that she was not promoted to a Health Services Administrator II position within DPH.¹

Hopkins' "draft" performance appraisal for December 1, 2021, rated Hopkins "unsatisfactory in cooperation with coworkers" specifying "responsiveness to supervisor" meaning Milledge.²

On December 28, 2021, and in prior months she stated, "She just don't know me," and "would hurt someone." Statements were made in the workplace by Hopkins that she was angry with her supervisor and that she "didn't want to hurt you

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¹ DPH Exhibit 1, p.199, 209.
² DPH Exhibit 1, p. 66.
(supervisor) but kill you (supervisor)."\textsuperscript{3} Shelia Rudolph (hereinafter "Rudolph") worked with Hopkins and provided testimony concerning credible threats of violence directed at her. Rudolph made Brent Hatcher (hereinafter "Hatcher") and Dr. Mary (hereinafter "Dr. McIntyre") aware of Hopkins' comments about her feelings concerning Milledge and other DPH employees. Hatcher and Dr. McIntyre caused an investigation to be conducted. Rudolph resigned her position as an Administrative Support Assistant II at DPH effective January 13, 2022. Rudolph warned Milledge that she considered Hopkins to be "extremely dangerous" and Tamika Shepherd told her Hopkins said, "I'm going to kill that bitch."\textsuperscript{4}

Hopkins was placed on mandatory leave from DPH effective January 10, 2022, while the DPH investigated. On January 28, 2022, Sherry Bradley served as the Pretermination Conference Chair and heard the evidence and Hopkins' response to the charges against her. Sherry Bradley recommended Hopkins' termination. Dr. Scott Harris, as the appointing authority, accepted that recommendation and terminated Ms. Hopkins' employment for the "good of the service."

On April 5, 2022, the undersigned conducted a scheduled \textit{de novo} hearing ("the hearing") on Hopkins' requested appeal of her dismissal by DPH at the offices

\textsuperscript{3} DPH Exhibit 1, p.167 January 18, 2022. Memorandum from Jacqueline D. Milledge to Brent Hatcher.

\textsuperscript{4} DPH Exhibit 1, p. 196.
of the State Personnel Department ("SPD") in Montgomery, Alabama. DPH presented evidence showing that "more probably than not" Hopkins violated DPH's Policies and Procedures and the State Personnel Board Rules and Policies. DPH was acting within its authority in the discharge of Hopkins from employment with DPH.

Carol Gerard, Esq. represented DPH. Carol Gerard moved the admission into evidence of DPH's Exhibits 1-11. DPH's Exhibits 1-11, including subparts, were admitted, without objection. Hopkins' personnel file in SPD is in evidence. DPH called three witnesses: 1. Brent Hatcher, DPH Director of Human Resources; 2. Jacqueline Denise Milledge, DPH Director of Bureau of Health Provider Standards; 3. Mary McIntyre, M.D. DPH Chief Medical Officer. Hopkins appeared pro se. Hopkins testified on her own behalf. She did not offer any exhibits.

The record does not support any basis for mitigation or lesser discipline. While the evidence is in dispute and Hopkins denies making the statements charged, the preponderance of the available credible evidence supports DPH's determination to terminate Hopkins' employment for the good of the service. The undersigned recommends that the dismissal of Hopkins by DPH be upheld.

I. PROCEDURAL HISTORY AND CHARGES

Hopkins came to DPH as an Administrative Support Assistant II ("ASA II") in the Bureau of Health Provider Standards, effective April 1, 2016. Hopkins was
discharged from her employment with DPH effective January 31, 2022, by Dr. Scott Harris, the appointing authority.

Hopkins timely appealed her dismissal to the Alabama State Personnel Board, pursuant to Ala. Code 1975, § 36-26-27(a). At the pre-hearing conference held on February 18, 2022, the parties selected April 5, 2022, for the hearing.

II. FACTUAL BACKGROUND

Having reviewed all the available evidence, the undersigned finds the greater weight of evidence supports the following findings of facts. ⁵

A. Employee’s Personnel File ⁶

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B. SPB General Work Rules and DPH Policies/Procedures Forming the Basis of the Charges

SPB Rules 670-X-19-.01 General Work Rules provide in pertinent part:

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⁵ 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.

⁶ 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).
(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:

... 

(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 by demeanor or words, with the exception of not following an order which the employee has good reason to believe is unsafe or illegal.

... 

5. Use of abusive or threatening language.

... 

12. Disruptive conduct of any sort.

... 

13. Conduct unbecoming a state employee.

DPH’s Policy No. 2020-002 Professional Conduct Policy provides in pertinent part:

“III. EMPLOYEES MUST CONDUCT THEMSELVES PROFESSIONALLY

...
Interaction with fellow employees must not cause dissension or discord. Gossip; malicious or excessive griping; loud, disruptive talking that affects the activities of other employees; vulgar, abusive, or threatening language; and emotional outbursts are examples of inappropriate behavior that will not be tolerated. Any such misconduct or any action that causes disruption in the workplace may be cause for disciplinary action.

DPH's Policy Against Workplace Threats and Violence (Policy ID No. 2017-007 provides in pertinent part:

...  

Violence, threats, harassment, intimidation, and other disruptive behavior in our workplace or in locations where the Department's business is conducted will not be tolerated; that is, all reports of incidents will be taken seriously and dealt with accordingly.

...  

DPH’s Employee Handbook Policy ID No. 2018-003 provides in pertinent part:

...  

Workplace Violence  
... Violence, threats, harassment, intimidation, and other disruptive behavior in the workplace or in the field will not be tolerated; all reports of incidents will be taken seriously and handled accordingly. Such behavior may include oral or written statements, gestures, or expressions that communicate a direct or indirect threat of physical harm.
C. Facts Forming the Basis of Dismissal

The DPH short statement of facts provided in pertinent part:

"The Alabama Department of Public Health (hereinafter "the Department") dismissed LaKesha Hopkins from employment as a Health Services Administrator I on January 31, 2022, for threatening a coworker and her supervisor with violence. She stated in the workplace that she was angry with her supervisor and that she “didn’t want to hurt [her] but kill [her]. Ms. Hopkins also voiced that “she just don’t know me,” and “[I] would hurt someone.” These threats occurred in early January 2022.

Such conduct violated the Department’s Policy Against Workplace Violence and Threats (Policy ID No. 2017-007, the Department’s Professional Conduct Policy (Policy No. 2020-002), and the Department’s Employee Handbook (Policy ID No. 2018-003), when Ms. Hopkins engaged in such threatening behavior.

In her position as a Health Services Administrator I in the Bureau of Health Provider Standards ("BHPS"), Ms. Hopkins served as the Human Resources Director, making sure all personnel needs are met efficiently and timely.

Ms. Hopkins became an employee of the Department on April 1, 2016. ..."

The DPH investigated after Rudolph disclosed to Hatcher matters contained in a communication from her to him dated January 7, 2022. The letter disclosed conduct by Hopkins who was Rudolph’s direct supervisor. It included disclosures of conversations with Tamika Shepherd who told Rudolph about
concerns that Hopkins had verbalized threats against Rudolph.\textsuperscript{7} Rudolph testified by Affidavit claiming she feared for her safety because of Hopkins’ threats.\textsuperscript{8}

\textbf{III. ISSUE}

Did DPH, as the appointing authority, establish by a preponderance of the evidence, that Hopkins violated DPH's Policies and Procedures Against Workplace Threats and Violence (2017-007), Professional Conduct (2020-002) and Employee Handbook for Semi-Monthly Employees (2018-003) by verbalizing threats of violence toward coworkers?

\textbf{IV. DISCUSSION}


[D]ismissal by an appointing authority ... is reviewable by the personnel board only to determine if the reasons stated for the dismissal are

\textsuperscript{7} DPH Exhibit 10.

\textsuperscript{8} DPH Exhibit 11.
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 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).

An administrative agency must act within its constitutional or statutory powers, supporting its decision with substantial evidence. “Substantial evidence

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9 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).
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).

The DPH upon becoming aware of the alleged threats by Hopkins to harm Milledge and Rudolph caused an investigation into the threats. Hatcher, Dr. McIntyre and Milledge gathered information and testimony relative to the threats. Dr. McIntyre testified that in early December 2021 she had met with Hopkins to discuss her work habits, keeping her office door closed, communicating only by email, etc. Dr. McIntyre met with Hopkins on December 7, 2021, and discussed insubordination with Hopkins. On December 28, 2021, Rudolph sent Milledge the following email:

“Denise,
On yesterday LaKesha walked into my cubicle and placed Theresa Harrison’s file in my basket while I was at lunch. On today, she placed 4 confidential envelopes in my basket and proceeded to walk away. I stopped her and asked her what was in the envelopes and what did she want me to do with them. I also stated to her that she couldn’t keep placing things in my basket and not tell me what she wants me to do with them. She replied, “you can’t tell me what to I can and cannot do”, “look in them, it’s work.” I did not say anything back to her. After she left my desk, she texted and called Tamika Shepherd and said, “I’m going to kill that bitch.” Tamika said she asked her who she was referring to and she said, me. Tamika called me after work

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10 DPH Exhibit 1, pp180-81.
today to inform me that LaKesha had been calling and texting her saying she wants to kill me and that Patricia Watson has turned me against her. Tamika also informed me to “watch my back” because LaKesha is car[ry]ing a weapon, (didn’t specify what kind), and that I need to let someone know about this. It was also brought to my attention by Tamika that LaKesha said if I cause her to lose her job she’s going to kill me. Tamika also said LaKesha had been calling her for the past few weeks telling her about the meeting she has had with Dr. Mac and Danita Rose. She also stated LaKesha has been speaking extremely bad to her about me. She said when LaKesha called her on today, her tone on the phone and text was that of someone she did not recognize. Tamika stated LaKesha was furious and that she never heard her talk this way before from all the years she had worked with her at HPS. Tamika said that she’s afraid for my safety and felt the need to warn me. She said LaKesha is plotting to “do something” to me, but she doesn’t know what. She warned me numerous of times before ending the call to be extremely careful. I am suffering from extreme anxiety and do not feel comfortable working anywhere near LaKesha. This is the same exact comment made to me about you in her office because she was angry that you were questioning her about her work. She said she didn’t want to hurt you but kill you. LaKesha is extremely dangerous, and something had to be done immediately!”

After the threats of violence Dr. McIntyre met with Hopkins and questioned her on December 29, 2021. DPH placed Hopkins on Mandatory leave on January 10, 2022. The evidence is clear that Hopkins felt Milledge was “bullying” her as early as May 2021. Hopkins admitted she was upset because Milledge did not agree that her current duties in May qualified her to be promoted and to get a raise. Throughout the evidentiary file including Hopkins’ predissmissal hearing it is clear she resented not making $40,000.00.

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11 DPH Exhibit 8, p. 21.
12 DPH Exhibit 1, pp. 176-79.
Hopkins, on November 15, 2021, on the subject of “HSA II Reallocation/Hostile Work Environment” stated “With all due respect... My position being reallocated to a HSA II had been brought to Ms. Milledge’s attention since February, it has been approved by you since 2019, yet she refuses to take action on it and her reasoning is personal feelings. I did not receive a misappraisal nor any direction, expectations, or valid complaints in regard to my work. Also, I would like to inform you of the hostile work environment created by...condoned, approved and joined by Ms. Milledge. ...”\textsuperscript{13}

DPH Policies do not condone threats of violence. The statements attributed to Hopkins by Rudolph violate the Employee Handbook for Semi-Monthly Employees (Policy ID# 2018-003);\textsuperscript{14} DPH Professional Conduct Policy, (Policy 2020-002);\textsuperscript{15} and DPH Policy Against Workplace Threats and Violence, (Policy ID# 2017-07).\textsuperscript{16}

Rudolph provided information to Hatcher, Milledge and Dr. McIntyre who incorporated it along with her sworn affidavit into the investigative file.\textsuperscript{17}

The undersigned has carefully considered all the available evidence in this

\textsuperscript{13} DPH Exhibit 1, pp. 209-210.

\textsuperscript{14} DPH Exhibit 5a, 4-6.

\textsuperscript{15} DPH Exhibit 5b, p. 8.

\textsuperscript{16} DPH Exhibit 5c.

\textsuperscript{17} DPH Exhibits 10 and 11.
case and finds no basis for a lesser disciplinary action than dismissal. There is no evidentiary basis for mitigation. Accordingly, the undersigned finds the preponderance of the evidence warrants dismissal in this case. Therefore, the undersigned recommends to the State Personnel Board that the dismissal be UPHELD.

Done, this the 29th day of April 2022.

JAMES JERRY WOOD
Administrative Law Judge
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