

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

| | | |
|------------------------------|---|---------------------------|
| TWYLER JORDAN, |) | |
| |) | |
| Appellant, |) | |
| |) | |
| v. |) | CASE NO. 21-12-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 Twyler Jordan (hereinafter "Jordan") on March 5, 2021. Jordan began her employment at DHR on September 24, 2018, as a Social Service Caseworker I assigned to work in DHR's Child Protective Services Division in Conecuh County. DHR, in its charge letter dated March 2, 2021, advised Jordan 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:

1. Absenteeism – Unexcused absence, unreported absence, a pattern of absence, or excessive absences.

2. Tardiness – Not on the job ready to work at the beginning of the shift.

4. Failure to perform job properly.

...

8. Violation of specific department rules. (Child Protective Services Policy, CAN Allegations and Definitions, Medical Neglect; Child Welfare Out-of-Home Policy II B3; Child Welfare Individualized Service Plans Policy II C 6-12)

(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, timecard, doctor’s excuse, etc.

...

13. Conduct unbecoming a state employee.

DHR conducted an administrative hearing on February 23, 2021, at which it presented testimonial and documentary evidence supporting DHR’s decision to dismiss Jordan.¹ Jordan was represented by Christopher Edwards, Esq. DHR was represented by Jonathan Schlenker, Esq. Sharonda Pettaway, MSW, acted as the Administrative Hearing Officer and recommended that Jordan’s employment with DHR be terminated.² Jordan was dismissed from her employment with DHR on March 5, 2021.³ On March 15, 2021, Jordan timely appealed her dismissal to the State Personnel Board. On March 19, 2021, a Scheduling Order was issued setting the hearing for Jordan on May 13, 2021. Jordan denied DHR’s charges.

The hearing was held on May 13, 2021. Jason Manasco, Esq. represented Jordan. Jonathan Schlenker, Esq. represented DHR. DHR called two witnesses:

¹ DHR Exhibits 3.

² DHR Exhibit 6.

³ DHR Exhibit 2.

Stephanie Paul (hereinafter “Paul”), Jordan’s supervisor, and Jodie Nata (hereinafter “Nata”), DHR Director for Conecuh County, Alabama. DHR offered fifty-eight (58) exhibits which were admitted without objection. Jordan offered no exhibits.

The undersigned has considered the documentary evidence including the transcript of the testimony at the DHR Administrative Hearing. Consideration has been given to the testimony of Paul and Nata on behalf of DHR. The testimony of Jordan was also considered. The testimony of Nata about providing one-on-one training, herself to Jordan, was clear and convincing. It is clear from the evidence that Jordan was given every opportunity to succeed at DHR with co-workers and supervisors who wanted her to succeed. Jordan’s tardiness, absenteeism, insubordination, failure to do her job properly, medical negligence putting DHR’s client JB at serious risk, failure to properly fill out her “Day” (time) sheets, and other inattention to detail ultimately gave Jordan’s DHR appointing authority no choice but to terminate Jordan’s employment. There is a preponderance of evidence to support and sustain each of the charges against Jordan.

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.⁴

A. Employee's Personnel File⁵

Jordan's annual performance appraisals while at DHR reflect:

| <u>Date Ending</u> | <u>Total Score</u> | <u>Category</u> |
|--------------------|--------------------|-------------------------|
| 02/01/2021 | 5 | Does Not Meet Standards |
| 02/01/2020 | 18 | Meets Standards |
| 03/23/2019 | 22 | Meets Standards |

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

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

III. ISSUE

Did DHR establish, by a preponderance of the available evidence, that Jordan's employment termination by the appointing authority should be upheld?

⁴ 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.

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

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).⁶

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

⁶ 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).

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).⁷

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, DHR presented more than sufficient evidence warranting Jordan’s dismissal. The evidence sustains the appointing authority’s charges of violations of State Personnel Board Rules 670-X-19-.01(1)(a)1; 2; 4; 8; (1)(b)1;

⁷ 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.

(1)(b)2; (1)(b)6; (1)(b)(10); and (1)(b)(13) and DHR's Child Protective Services Policies; Child Abuse and Neglect (CAN) policies; Child Welfare Out-of-Home Policy II B 3; Child Welfare Individualized Service Plans Policy II A and II C 6-12.

V. CONCLUSION

DHR acted within its authority to terminate Jordan'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 Jordan. There is no basis for mitigation in favor of Jordan. In fact, Jordan's repeated, documented insubordination, her failure to document records and record them in the DHR FACTS system, her failure to timely create CFAs, ISPs and other documentation despite directives to do so and her failure to act to promptly get critical medication for J.B. put J.B. at risk and caused her to need hospitalization when she ran out of Lovonox. This child with a compromised immune system was put unnecessarily at risk by Jordan's medical neglect.⁸ In addition to tardiness and absences, Jordan violated the DHR COVID exposure policy by coming to work after being exposed to a person with COVID 19 and exposing her co-workers.⁹ This willful disregard for

⁸ Testimony of Stephanie Paul.

⁹ DHR Exhibit 54 and Paul testimony.

the health and safety of Jordan's co-workers at DHR in violation of the published COVID 19 policy is conduct unbecoming a state employee.

VI. RECOMMENDATION

The undersigned recommends upholding of the termination of Jordan's employment by DHR's appointing authority based on a compelling preponderance of evidence introduced at Jordan's hearing.

Done, this 26th day of May 2021.



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