

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

TRAVIS MARSHALL,

Appellant,

v.

ALABAMA DEPARTMENT OF
CORRECTIONS,

Appellee.

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Case No: 20-20-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 Travis Marshall (hereinafter “Marshall” or “the Employee”) after he failed to perform his job properly, failed to follow his supervisor’s instructions, misused state equipment, and committed conduct that was disgraceful on the job that adversely affected his effectiveness on the job. The evidence presented by DOC during the hearing showed that more probably than not, Marshall violated multiple rules and policies and his actions warranted his dismissal from State service.

A hearing was held on March 18, 2021, at the offices of the Alabama State Personnel Department in Montgomery, Alabama. Carrie G. Shaw, Esq., appeared as counsel on behalf of DOC. Jason Manasco, Esq., appeared as counsel on behalf

of Marshall.

At the beginning of the hearing, DOC introduced into evidence, without objection, exhibits consecutively marked as DOC's Exhibits 1 - 18. The undersigned informed the parties that Marshall's personnel file at the Alabama State Personnel Department is included in the record as evidence in this cause.

DOC called DOC Auditor, Jamie Robinson ("Robinson"), retired and DOC Regional Director Cynthia Stewart ("Stewart") to testify on its behalf. Marshall testified on his own behalf and called DOC Account Clerk, Betty Jo Edeker ("Edeker"), retired, to testify on his behalf.

I. PROCEDURAL HISTORY AND CHARGES

Marshall was dismissed from employment with DOC on May 14, 2020. *See* May 13, 2020, dismissal letter ("dismissal letter") signed by DOC Commissioner Jefferson S. Dunn.¹ Marshall 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 April 13, 2020, a Notice of Intent to Recommend Dismissal was served on you, the Staff Accountant. An examination was conducted of the General Fund, Institution Contingency Fund (ICF), Inmate Trust Fund (ITF) and the Canteen Fund records for the audit period from August 1, 2017 to September

¹ *See* DOC's Exhibit #3.

30, 2019 revealed that you violated numerous Accounting Manual Procedures. During an interview with Corrections Investigative Agent, you admitted to violating the computer usage policy by allowing others to use your password to log on the computer.

Several findings noted during the previous audit were not corrected and reflected as repeat findings during the current audit. Discrepancies were noted in three of the four funds audited. There were approximately twelve (12) reported findings to include, but not limited to the following:

Internal Control Assessment (ICA-1): Outstanding checks and adjustments to the bank reconciliation was not cleared in a timely manner. (Repeat Finding)

Internal Control Assessment (ICA-2): The single signature checks exceeded the allowable threshold.

Institution Contingency Fund (ICF-2): Purchase orders, supporting documentation and Commissioner's Designee's approval *was* not available for review. (Repeat finding)

Inmate Trust Fund (ITF-1): Bank reconciliations were improperly prepared throughout the audit period.

Inmate Trust Fund (ITF-2): Check stubs for July - August 2018 were unavailable for audit review.

Inmate Trust Fund (ITF-3): Monthly fee reports were not being maintained for audit review. (Repeat Finding)

Inmate Trust Fund (ITF-4): Inmate withdrawal documentation utilized to verify com1 ordered payments for selected audit samples was not available for audit review.

Canteen Fund (CF-1): Canteen vendor payment summaries were not available for audit review.

Canteen Fund (CF-2): A Physical count of all products listed as inventory on hand for Holman's Canteen as of August 16, 2019, revealed a shortage of \$8,406.72 less overage of \$5,524.37 for a total \$2,882.35 shortage. (Repeat Finding)

Canteen Fund (CF-3): Net inventory shortage (shortage less overages) and inventory written off as spoilage throughout the audit period totaled (\$176,437.62).

Canteen Fund (CF-4): An inmate canteen worker received canteen credit totaling \$11,210.22.

Your actions resulted in a violation of several ADOC regulations and in direct violation of the manual of ADOC accounting procedures. Your inability to account for inventories and failure to report the canteen losses jeopardized profits and the reputation of the ADOC with existing vendors. Your failure to perform your duties and responsibilities had a negative impact on the ADOC Accounting Division, the sustainability of Holman's Institutional Contingency Fund and the integrity of the Alabama Department of Corrections.

....

On March 18, 2021, 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

Marshall began his employment with DOC in April 2009, as an “Accountant” and assigned to Atmore Work Release (“Atmore”). In 2011, Marshall was promoted to “Staff Accountant” and moved to Holman Correctional Facility

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).

(“Holman”). Marshall remained in that job classification until DOC dismissed him in May 2020.

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

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
11/19	27.0	Exceeds Standards
11/18	33.0	Exceeds Standards
11/17	31.0	Exceeds Standards
11/16	35.0	Exceeds Standards
11/15	36.0	Exceeds Standards
11/14	36.0	Exceeds Standards
11/13	29.0	Exceeds Standards
11/12	38.0	Consistently Exceeds Standards
12/11 ⁴	35.0	Exceeds Expectations
08/11	31.0	Exceeds Standards
08/10	37.0	Consistently Exceeds Standards
09/09 ⁵	33.0	Meets Standards

Marshall’s prior disciplinary history at DOC includes the following disciplinary action (in reverse chronological order):

- 3-days Suspension, served on February 11, 2020, for Borrowing/receiving money, or other items from, giving money/items to inmate(s) or inmate family members, corresponds with an inmate, or an inmate’s family, in any capacity that is not officially required and in the line of duty. (Committed on August 14, 2019); and
- Written Reprimand, served on October 15, 2013, for Serious violation of rules, policies, procedures, regulations, laws, or reasonable conduct

⁴ Final probationary Appraisal as Staff Accountant.

⁵ Final probationary Appraisal as Accountant.

expectations. (Committed on March 12, 2013).

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:

...

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

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

...

6. Employees shall protect and conserve funds, property, and equipment and materials.

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

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

...

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:

...

8. Show partiality toward or become emotionally involved with an Alabama State inmate or parolee.

15. Deliberately or carelessly misuse state equipment or supplies in loss or damage.

...

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).

...

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).

19. Misuse of state equipment or supplies resulting in loss or damage. (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.

...

10. Serious violation of any other department rule.

...

13. Conduct unbecoming a state employee.

...

C. Facts Forming the Basis of Dismissal

On December 16, 2019, Internal Auditor Jamie Robinson (“Robinson”) submitted an Audit of Holman to DOC Fiscal Director Rodney Blankenship (“Blankenship”).⁶ Robinson audited Holman for the period beginning on August 1, 2017 through September 30, 2019. Robinson outlined 12 total findings, including four “repeat findings” which were not properly addressed after a prior audit. The findings included issues with the General Fund (“ICA”), the Inmate Trust Fund (“ITF”), the Institution Contingency Fund (“ICF”) and the Canteen Fund (“CF”). During her testimony, Robinson walked through her findings and explained the

⁶ DOC Exhibit 8, pages 4-9.

problem associated with each fund. Her testimony summarized the same information contained within Marshall's dismissal letter (Supra.) and his pre-dismissal letter.⁷ The dismissal letter left off one of Robinson's findings, ICF-1 "Some materials and services that should have been purchased using appropriated funds were instead purchased with ICF funds."⁸ Robinson's testimony supported the findings she listed in her Audit report.

Marshall and then Correctional Warden III, Cynthia Stewart ("Stewart"), submitted a written reply to Robinson's audit on or about February 4, 2020.⁹ The response explained remedial measures that would be taken so the findings would not be repeated. They concluded their list of corrective actions by stating, "Upon review, I find this audit to be fair and in accordance with ADOC Accounting/Operating Procedures. We will work toward a clean audit upon our next review."

On April 13, 2020, Marshall received a "Notice of Intent to Recommend Dismissal" based upon the audit report findings. Marshall appeared at a pre-dismissal conference with a representative from ASEA. Correctional Warden III

⁷ DOC Exhibit 2, 3 and 8, pages 4-9.

⁸ DOC Exhibit 8, page 1 and page 5. When the charges were listed in the dismissal letter, the letter stated, "There were approximately twelve (12) reported findings to include, but not limited to the following: ..."

⁹ DOC Exhibit 8, pages 1-3.

Terry Raybon (“Raybon”) conducted the pre-dismissal conference. During the pre-dismissal conference, Marshall was able to address the audit report findings and explain why each finding occurred. Marshall told Raybon during the course of the conference that the following reasons caused the findings: He had to work in the Canteen so he did not have time to review work done by others; he did not know that some checks did not have the required two signatures; his Account Clerk failed to get proper authorization for some purchases; he had a bad cell in Microsoft excel on one worksheet; his Account Clerk failed to maintain all fee reports; his Account Clerk did not properly maintain documentation; he could not locate paperwork that was moved while he was away from the institution; power was continually knocked out which caused large amounts of spoilage; and he had issues with inventory for a while.¹⁰

During his testimony, Marshall was afforded an opportunity to elaborate on his statements to Raybon. Marshall testified that the trouble started in 2017 when his Canteen Manager was arrested and subsequently fired from DOC. Marshall and Stewart placed a request with DOC Personnel for another Canteen Manager, but that request has not been fulfilled to-date. Marshall testified that since he had no Canteen Manager, he had to perform the job functions of the Canteen Manager as

¹⁰ See DOC Exhibit 4, Pre-Dismissal Conference summary from Raybon to Dunn.

well as his own. Marshall had help during the 2017-2019 period, but employees came and went. Marshall had several Account Clerks, and others, who assisted him in the canteen responsibilities, including McBride, Edeker, Cynthia Holsonback (“Holsonback”) and Cleveland Williams (“Williams”). Marshall testified he self-trained himself on the Canteen Manager responsibilities and then trained his employees on the basics.

Marshall did not dispute the findings in the Audit, but alleged he was set up to fail.¹¹ Marshall testified improper staffing of the Canteen caused his problems. He spent so much time in the Canteen, he did not have time to conduct all the checks as the Staff Accountant. Marshall argued that when he was fully staffed from 2011 – 2017, he had no issues.

Marshall testified that after several weekends he would return to the Canteen and the power would be off and need to be re-set. Marshall said this happened on multiple occasions and played a significant role in Holman having a high spoilage amount, \$176,437.62. Stewart testified Marshall never told her about the power outages, therefore an incident report was never completed, and the issue was not addressed. Stewart testified she expected to be notified of these types of issues.

¹¹ This characterization was overstated. Yes, Marshall did not have a full staff, but Marshall also failed to follow the guidance of his Warden by making his female employees work the Canteen so he could perform his other responsibilities. His failure to manage his staff was just as significant as his inability to perform his essential job functions properly.

Stewart testified she knew about the absence of a Canteen Manager but expected Marshall to work well without one because she saw that at other institutions. Stewart helped Marshall put in a request for a replacement, but staffing was low, and they had to wait for DOC Central Office to approve a register and send them candidates. Marshall testified he worked in the Canteen much of the time because his female workers were scared to work there. Stewart testified Marshall told her about his female employees being fearful of working in the Canteen. Stewart instructed Marshall to direct his Account Clerks to work in the Canteen. Initially he did, but soon the Account Clerks found a way to work mostly in the office. Stewart testified she understands why women would be apprehensive to work in the Canteen, but women work in the kitchen and in other areas of the prison as part of their job. Stewart also testified she saw Marshall in the Business Office during lunch hours or later in the day on many occasions. Marshall testified he did not take lunch some days because he had so much work to do; Stewart testified Marshall was directed to take a lunch break.

Stewart testified the spoilage amount was high and the \$11,210.22 credit an inmate Canteen worker received was unusual. Stewart testified she had no knowledge of other inmates that had that much credit.

Finally, during his pre-dismissal conference, Marshall told Raybon he did not

allow others to use his computer log-in credentials. However, during the hearing, Marshall testified he would log into the computer in the Canteen and then walk away from time to time, for the bathroom, etc., leaving the computer unattended. Marshall testified several employees would “ring up” tickets in the Canteen, depending on who was working at the time.

One of Marshall’s employees, Edeker testified at the hearing. She described in detail some of the things she was exposed to as she worked in the Canteen. She also described the violence that occurred at Holman during this time and that she told Marshall she did not want to work in the Canteen.

III. ISSUE

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

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). Recently, 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).¹²

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. 1997, 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).¹³

¹² 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).

¹³ In *Bonner v. City of Pritchard*, 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).

In the present case, DOC presented sufficient evidence to warrant Marshall’s dismissal.

As the Staff Accountant at Holman, Marshall was responsible for making sure various funds were managed properly. An audit revealed that many of the details on the ICA, ICF, ITF and CF funds were not adequate; the required approvals were not obtained, the required documentation was not maintained, monthly reports were not up-to-date, withdrawal documentation was not available, payment summaries did not exist, spoilage was high due to power outages that were not reported to Stewart, and an inmate Canteen worker had a large amount of credit. Marshall failed to perform his job properly and ensure his employees performed their jobs properly. This conduct cannot be condoned by DOC.


The preponderance of the evidence proved Marshall violated DOC

Administrative Regulation 208, Annex H #2 by failing to comply with ADOC Accounting/Operating procedures; Administrative Regulation 208, Annex H #10 by failing to perform his job properly; DOC Administrative Regulation 208, Annex H #11 by failing to follow the Stewart's instruction to make his female employees work in the Canteen, which resulted in his inability to fulfill his responsibilities in the Business Office; Administrative Regulation 208, Annex H #18 by having at least four audit findings left unresolved from a prior audit and failing to address the problems; Administrative Regulation 208, Annex H #19 by logging into his computer and then walking away, thereby allowing others unfettered access to his computer credentials; and Administrative Regulation 208, Annex H #33 by failing to demonstrate control over his area of responsibility and his failure to properly manage his staff to accomplish the work assigned to his areas of responsibility. 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)), 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.¹⁴

Done, this the 17th day of May 2021.


RANDY C. SALLÉ
Administrative Law Judge
State of Alabama
Personnel Department
64 North Union Street
Montgomery, Alabama 36130
Telephone: (334) 242-8353
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¹⁴ Having found sufficient evidence to uphold the dismissal, any/all remaining issues are moot.

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