

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

**PERRY D. BUCHANAN,**

)

**Appellant,**

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)

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**v.**

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**CASE NO. 19-19-RCS**

)

**ALABAMA DEPARTMENT OF  
CORRECTIONS,**

)

)

)

**Appellee.**

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**RECOMMENDED ORDER**  
**TO THE STATE PERSONNEL BOARD**

This Recommended Order arises from an employment termination action by the Alabama Department of Corrections (hereinafter “DOC”). DOC terminated the employment of Perry Buchanan (hereinafter “Buchanan” or “the employee”) based upon his use of excessive force and providing false information during the investigation of the incident. The evidence presented by DOC during the hearing demonstrated Buchanan violated multiple DOC policies and procedures, used excessive force on an inmate, and gave false information during the investigation of the incident. Therefore, DOC’s decision to dismiss Buchanan was within its authority and should be upheld.

A hearing was held on May 7, 2019, at the Alabama State Personnel Department in Montgomery, Alabama. Bart Harmon, Esq. appeared as counsel on behalf of DOC. Buchanan proceeded *pro se*.

DOC introduced into evidence six exhibits consecutively marked DOC Exhibits 1-6. Buchanan did not present any exhibits for consideration. Buchanan's personnel file at the Alabama State Personnel Department is included in the record as evidence in this cause.

DOC called the following individuals as witnesses during the hearing:

- (1) Correctional Sergeant Lakeith Thompkins;
- (2) Correctional Lieutenant Brian Thompkins; and
- (3) Correctional Warden III Walter Myers.

Buchanan testified on his own behalf.

## **I. PROCEDURAL HISTORY AND CHARGES**

Buchanan began State employment in August 2014 as a Correctional Officer Trainee when he was hired by DOC. Buchanan was promoted to Correctional Officer in April 2015 and remained in that classification until his dismissal.

Following the pre-dismissal conference conducted on January 22, 2019, DOC terminated Buchanan's employment, effective close of business March 1, 2019. *See* DOC Exhibit 3 (dismissal letter dated February 25, 2019, signed by Commissioner Jefferson S. Dunn). DOC determined:

...

On Friday, August 24, 2018, you were involved in an unreported use of force incident with an inmate inside of the Easterling Restricted Housing Unit. During the investigation, it was discovered that you initiated a verbal conflict with the inmate during the daily pill call. The inmate alleged that you cursed and used racial slurs towards him during the verbal exchange. You called for assistance from nearby officers to assist with the inmate. The inmate was handcuffed to the rear and escorted to the Restricted Housing Unit and into the RHU Commander's office where your Sergeant was waiting. You were still visibly upset by the altercation, then you ordered the inmate to repeat the racial slur he used during the earlier exchange to your Sergeant. At that point, you put on a pair of black search gloves, and began slapping and striking the inmate in the face while he was still handcuffed to the rear.

You did not report the incident nor allow the inmate to receive medical treatment after the altercation. [I]n fact, the incident was not reported until the following day, when the inmate approached your Lieutenant and alleged that he was assaulted while handcuffed by you the previous evening. The Investigative and Intelligence (I&I) Division's investigation further revealed that you were not truthful during questioning and admitted only to grabbing the inmate. You denied slapping or striking the inmate in the face while he was handcuffed.

...

Having reviewed the Warden's Notice of Intent to Recommend Dismissal including associated documents and your overall work record[,] I do hereby order your dismissal for the good of the service to be effective the close of business March 1, 2019.

...

Buchanan timely appealed his employment dismissal to the State Personnel Board (“SPB”) and requested a hearing, pursuant to ALA. CODE § 36-26-27(a) (1975).

In its Short Plain Statement of Facts, DOC reiterated its charges against Buchanan and cited the same DOC policies listed in the charge and dismissal letters.

On May 7, 2019, the undersigned conducted a *de novo* 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 fact.<sup>1</sup>

### A. Employee’s Personnel File<sup>2</sup>

Buchanan’s annual performance appraisals while at DOC reflect:

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
8/18	30.0	Exceeds Standards
8/17	28.0	Exceeds Standards

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<sup>1</sup> All references to exhibits and testimony are intended to assist the SPB in considering this Recommended Order and are not necessarily the exclusive sources for such factual findings.

<sup>2</sup> See generally SPB Rule 670-X-18-.02(5) (employee’s work record, including performance and disciplinary history, considered in dismissing employee.)

8/16	11.0	Partially Meets Standards
9/15	26.0	Meets Standards
2/15 <sup>3</sup>	24.0	Meets Standards

Buchanan’s prior disciplinary actions include:

- April 8, 2015 – Warning for being late for work.
- November 23, 2015 – Written Reprimand for failure to perform job properly not resulting in actual consequences.
- March 28, 2016 – Suspension for sleeping or giving the appearance of sleeping.

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

Administrative Regulation 208, Employee Standards of Conduct and

Discipline provides, in part:

...

**V. PROCEDURES**

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

...

2. Render full, efficient, and industrious service.
3. Respond promptly to directions and instructions of supervisors.

...

7. Observe all laws, rules and regulations.

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<sup>3</sup> Correctional Officer Probationary Performance Appraisal.

8. Uphold, with integrity, the public's trust involved in their position.

...

15. Complete a written report (DOC Form 302-A, Incident Report) of all unusual incidents that occur during a tour of duty.

...

20. Cooperate with investigations to include, but not limited to, providing information or verbal/written statements in connection with employment, investigation, or incident reports.

...

C. Employees shall not:

...

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

5. Abuse inmates in any manner.

...

17. Apply physical force to an inmate, except and only to the degree that is reasonably necessary in self-defense, to prevent an escape, to prevent an injury to a person or the destruction of property, to quell a disturbance, or to restrain an inmate who exercises physical resistance to a lawful command. (Refer to AR 327, Use of Force)

20. Provide false information, alter an investigation or incident report, and/or intentionally omit facts pertinent to

the inquiry.

## ANNEX H

...

46. Giving false information or verbal/written statement in connection with employment, an investigation, or inquiry. (First Offense – Dismissal)

...

### **SPB General Work Rules Forming the Basis of the Charges**

SPB Rule 670-X-19-.01(1)(a) provides, in pertinent part:

- (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.

....

4. Fighting.

5. Use of abusive or threatening language.

...

10. Serious violation of any other department rule.

....

12. Disruptive conduct of any sort.

13. Conduct unbecoming a state employee.

...

### **C. Facts Forming the Basis of Dismissal**

On August 23, 2018, Buchanan worked a 12-hour shift at Easterling Correctional Facility (“Easterling”), beginning at 6:00 p.m. on Thursday, August 23, 2018 and ending at 6:00 a.m. on Friday, August 24, 2018. At approximately 10:30 p.m. on August 23, 2018, Buchanan was assigned to pill call. Buchanan’s responsibility included controlling access and flow of inmates who were receiving medication. One inmate, Marcus Bolden (“Bolden”), was walking toward the dormitory door in an effort to leave the dorm to get his medication as Buchanan was closing it. Buchanan reopened the door for Bolden and allowed him to leave the dorm. Buchanan made it clear in his testimony he did nothing to impede or block Bolden from leaving the dorm.

Buchanan testified that after Bolden left the dorm he began cursing Buchanan. Buchanan testified Bolden called him a “[s]tupid a\*\* n\*\*\*\*\*.” Buchanan testified he responded by telling Bolden that he had no need to speak to him in that manner. Buchanan testified that at this point Bolden turned to a line of inmates and asked



them if they heard what Buchanan had said to him. According to the testimony of Buchanan, Bolden credited what he had said to Buchanan as something Buchanan said to him. Buchanan became concerned and called Sergeant Boyd (“Sgt. Boyd”) over the radio to assist. Buchanan testified he felt Bolden was trying to incite a riot. Sgt. Boyd met with Buchanan and handcuffed Bolden’s hands behind his back. Sgt. Boyd continued with the pill call duties while Buchanan escorted Bolden to the restricted housing unit to remove him from the immediate vicinity of the other inmates.

Buchanan escorted Bolden to the restricted housing shift office where Sergeant Lakeith Thompkins (“Sgt. Thompkins”) was working as the shift commander. Once inside the shift office, Buchanan stood Bolden up with his back to a wall, hands still cuffed behind him, and then Buchanan stepped about five feet away from Bolden. Buchanan asked Bolden to repeat to Sgt. Thompkins what he said to Buchanan outside the dorm. Bolden told Sgt. Thompkins that Buchanan called him a “[s]tupid a\*\* n\*\*\*\*\*.” At this point, Buchanan and Bolden began arguing.<sup>4</sup> Sgt. Thompkins testified he watched Buchanan approach Bolden and open hand slap him in the facial area. Sgt. Thompkins testified he observed that Buchanan was wearing non-DOC gloves that looked like mechanic gloves. Sgt. Thompkins also testified he saw Buchanan push Bolden up against the wall with enough force

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<sup>4</sup> Testimony of Buchanan and Sgt. Thompkins.

to knock the bulletin board off the wall. Sgt. Thompkins intervened and separated Buchanan from Bolden. Sgt. Thompkins then escorted Bolden to pill call and sent Buchanan back to his regular shift.

Buchanan denied slapping Bolden. Buchanan testified Bolden was bobbing his head and placed his foot against the wall as if he were about to launch himself at Buchanan to headbutt him. Buchanan testified he placed his hands on Bolden's shirt to restrict Bolden's movement away from the wall in order to protect himself. Sgt. Thompkins testified he did see Bolden bob his head, but testified he saw nothing threatening enough from Bolden to justify Buchanan's use of force. Buchanan did not deny he shoved Bolden back against the wall, but indicated it was necessary to keep Bolden on the wall.

Sgt. Thompkins testified he was called after his shift ended by a Correctional Captain who advised him to send an email explaining what happened in the office between Buchanan and Bolden. Sgt. Thompkins drafted and sent an email approximately three hours after his shift concluded. Sgt. Thompkins testified he omitted the open hand slap from his email because he was told to write a quick statement; but he did mention Buchanan "... grabbed the inmate and "jacked" him up against the wall, knocking the board off the wall." Sgt. Thompkins reiterated in his testimony during the hearing that he did see Buchanan slap Bolden in the shift office.

Sgt. Thompkins testified he was subsequently disciplined for not following proper DOC protocol after the incident he witnessed; specifically, he failed to draft an incident report and he failed to take Bolden and Buchanan to the infirmary to get body charts after the altercation.

At approximately 8:00 a.m., Lieutenant Brian Thompkins (“Lt. Thompkins”), first cousin of Sgt. Thompkins, reported to work. While he was starting his shift, a group of inmates that represented the Nation of Islam approached him and told him one of their brothers, Bolden, was assaulted by a correctional officer the night before and they were going to “set it off” if something was not done. Lt. Thompkins testified “set it off” meant the inmates were threatening to riot. Lt. Thompkins testified he located Bolden, questioned him, and then took him to have a body chart and pictures made. Lt. Thompkins forwarded his findings up the chain of command. Lt. Thompkins did not have any first-hand knowledge of the events of the incident.

Buchanan testified he was interviewed by Cedric Thomas, DOC I & I Investigator, about the incident. Buchanan testified that during his interview he denied slapping Bolden and denied he used the sort of language that Bolden alleged. On cross-examination, Buchanan admitted that during a prior DOC investigation he had voluntarily surrendered a cell phone which contained video footage of him using the “N word.”<sup>5</sup>

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<sup>5</sup> Buchanan did not believe the video footage should be used against him in this case. The video footage was

Walter Myers (“Warden Myers”), Correctional Warden III, testified at the hearing. Warden Myers testified he did not have any first-hand knowledge of the incident; however, based upon the findings by the I & I Division, he recommended dismissal because Buchanan was not truthful during his interview, used excessive force with an inmate, and used inappropriate language while communicating with an inmate. Myers testified the discipline was appropriate for the infractions.

### III. ISSUE

Did DOC produce sufficient evidence to warrant dismissal of Buchanan?

### IV. DISCUSSION

#### Standard of Review

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

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not introduced into the record as an exhibit. Buchanan was asked about it and he acknowledged it existed. This is rebuttal evidence, as well as character evidence, which are both permissible in administrative hearings when it relates to a witness’s truthfulness.

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).<sup>6</sup>

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 Administrative Procedure Act’s preponderance of the evidence standard. *See also Wright v. State of Tex.*, 533 F.2d 185 (5<sup>th</sup> Cir. 1976).<sup>7</sup>

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

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<sup>6</sup> 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).

<sup>7</sup> In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11<sup>th</sup> 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.

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 provided sufficient evidence to support its decision to dismiss Buchanan. Buchanan violated AR 208 Annex H #46 by giving multiple false statements during an investigation. An infraction of giving a false statement in connection with an investigation is grounds for dismissal.<sup>8</sup> Buchanan denied slapping Bolden; however, Sgt. Thompkins testified he saw Buchanan slap Bolden. Furthermore, Buchanan told the I & I Investigator that he did not use the type of language Bolden accused him of using; however, Buchanan admitted during the hearing he had previously been captured on video footage using the “N word.” Buchanan’s failure to be truthful cost him credibility during the hearing and caused him to lose the trust of his supervisors. Based on the significance of safety and security within DOC facilities, correctional officers must be truthful and honest during investigations. Buchanan demonstrated he cannot be relied upon to give honest answers during an investigation and therefore, his dismissal from DOC is appropriate.<sup>9</sup>

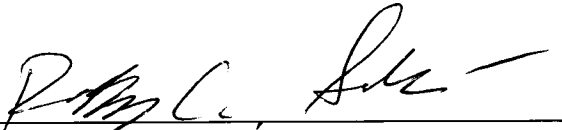
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<sup>8</sup> See DOC Exhibit 5.

<sup>9</sup> Buchanan also contested his dismissal based upon the fact he was arrested for his conduct in September 2018, but was not given his pre-dismissal letter until January 2, 2019. AR 208 M outlines the guidelines for formal

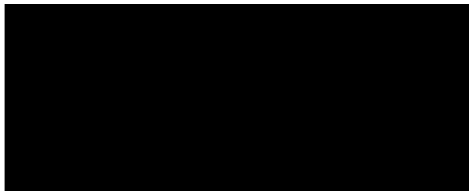
Accordingly, the undersigned finds the totality of the evidence warrants dismissal in this cause. Therefore, the undersigned recommends to the State Personnel Board that the dismissal be UPHELD.<sup>10</sup>

Done, this the 25<sup>th</sup> day of June 2019.

  
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RANDY C. SALLÉ  
Administrative Law Judge  
State Personnel Department  
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Montgomery, Alabama 36130  
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**VIA E-MAIL, CERTIFIED AND FIRST-CLASS U.S. MAIL**

Perry Buchanan, Esq.



corrective action pertaining to dismissals. According to the regulation, the warden should submit a notice of pre-dismissal within ten working days of the incident or at the conclusion of all outside investigations. The division then has 20 days to review the action and request changes, if any are necessary. No evidence was provided that detailed when the investigation concluded or whether changes to the original pre-dismissal letter were requested. Buchanan did not call any witnesses from the DOC Central Office to testify about the time frame of his dismissal action. Buchanan's blanket statement, without more evidence, is insufficient to prove his assertion.

<sup>10</sup> Having found sufficient evidence to uphold the dismissal, any/all remaining issues are moot.

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