BEFORE THE STATE PERSONNEL BOARD
IN THE MATTER OF

CHARLES JOHNSON  

APPELLANT,

v.  

ALABAMA BUREAU OF  
PARDONS AND PAROLES,

APPELLEE.

CASE NO. 22-22-JJW

RECOMMENDED ORDER TO THE  
STATE PERSONNEL BOARD

The employment termination of Charles Johnson (hereinafter “Johnson”) by
the Alabama Bureau of Pardons and Paroles (hereinafter “ABPP”) gives rise to this
Recommended Order. ABPP charges that Johnson violated Alabama State
Personnel Board (“SPB”) Rule 670-X-19-.01(1)(a)4, Failure to perform job properly;
and 670-X-19-.01(1)(b)6, Falsification of records.

Johnson was employed by ABPP as a Probation and Parole Officer beginning
in February 2004. Johnson’s employment was terminated by the appointing authority
on April 19, 2022.

In January 2006, Johnson received a warning for failure to comply with general
work rules. In March 2015, Johnson received a Warning for failure to accurately
document hours worked. Johnson received a Reprimand on July 24, 2015, for
insubordination. On October 25, 2017, Johnson received a Reprimand for unauthorized and/or unlicensed operation of vehicle, machinery or equipment and conduct unbecoming a state employee.

On March 15, 2022, Johnson was served a disciplinary charge letter notifying him he was charged with violating SPB Rules 670-X-19.01(a)4, Failure to perform job properly and 670-X-19.01(b)6, Falsification of records. Johnson admitted the facts alleged in the charge letter were accurate. Johnson took responsibility for entering inaccurate information into the ABPP Oasis computer system. Johnson contends he made a mistake. The preponderance of the credible evidence supports the ABPP charges against Johnson and the evidence is consistent with an overt, deliberate, conscious failure to do his job properly and the making of false entries into the ABPP records system indicating Johnson had made visits with clients that he didn’t make. The evidence is clear that Johnson failed to accurately do the fundamental, core functions of his job. The evidence supports Johnson’s pattern and practice of making false entries in the ABPP records. Johnson admits he made wrong and misleading entries. He claims he just made mistakes and did not intentionally and deliberately enter false information.

Based on observation of the witnesses, the witnesses’ testimony and demeanor and the documentary evidence, the undersigned recommends the termination of Johnson’s employment with ABPP be upheld.
On June 7, 2022, the undersigned conducted a *de novo* hearing ("the hearing") at the offices of the Alabama State Personnel Department in Montgomery, Alabama, during which *ore tenus* and documentary evidence was received. Claudia K. Smith, ABPP General Counsel, represented ABPP. Johnson was represented by Julian L. McPhillips, Jr., Esq. and Andrea Hatchcock, Esq.

At the beginning of the hearing, ABPP Exhibits 1-9 were admitted. Johnson offered Exhibits 1-10, which were admitted, without objection. The undersigned informed the parties, without objection, that Johnson’s personnel file at the Alabama State Personnel Department would be included in the record as evidence in this matter.

ABPP called as witnesses:

1. Jomo Johnson, ABPP Pardon and Parole Officer
2. Juan Vault, ABPP Senior Probation and Parole Officer
3. Kortney Bryant, ABPP Senior Probation and Parole Officer
4. Elie Wilson, ABPP Senior Probation and Parole Officer
5. Terry Cauthen, ABPP Birmingham District Manager.

Johnson called:

1. Charles Johnson
2. Lawrence Flute, ABPP Parole and Probation Officer
3. Ben Hill, ABPP Parole and Probation Officer
I. PROCEDURAL HISTORY AND CHARGES

Johnson began work at ABPP in February 2004. Johnson was terminated from his employment with ABPP effective April 19, 2022.

Johnson timely appealed his dismissal to the SPB, pursuant to Ala. Code § 36-26-27(a) (1975). At the prehearing conference held on April 28, 2022, the appeal hearing was scheduled for June 7, 2022.

In its Statement of Facts, ABPP alleged, in pertinent part:

... 

“Charles Johnson began his employment with the agency in February 2004 as a Probation and Parole officer. Following a disciplinary hearing, the Executive Director decided to terminate Johnson’s employment on April 19, 2022.

In January 2006, Johnson received a warning for failing to comply with general work rules. In March 2015 Johnson received a Warning for failure to accurately document hours worked. Johnson received a Reprimand on July 24, 2015, for insubordination. On October 25, 2017, Johnson received a Reprimand for unauthorized and/or unlicensed operation of vehicle, machinery or equipment and conduct unbecoming a state employee.

On March 15, 2022, Johnson was served with a disciplinary charge letter notifying him that he was charged with violating Alabama State Personnel Board Rule, #670-X-19.01(a)(4), Failure to Perform Job Properly and Alabama State Personnel Board Rule # 670-X-19.01(b)(6), Falsification of Records. EXHIBIT A.

A disciplinary hearing was held on April 15, 2022, during which Johnson was afforded the opportunity to rebut the charges against him and present his own evidence. Johnson admitted the facts stated in the Charge Letter were accurate and submitted a statement taking full responsibility for failing to enter correct information. Johnson did not contest the facts of the Charge Letter but instead sought punishment less than termination. EXHIBIT B. The hearing officer, Steve Simmon, found Johnson guilty of both charges. A report of his findings was provided to Executive Director Cam Ward. EXHIBIT C.

Supporting documentation as referenced in this letter is enclosed …”
II. FACTUAL BACKGROUND

Having reviewed the documentary evidence, 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.¹

A. Employee’s Personnel File²

Johnson’s performance appraisals while in State service at ABPP reflect:

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<td>32</td>
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<tr>
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<td>23</td>
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<tr>
<td>09/01/2005</td>
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¹ 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.

² See generally SPB Rule 670-X-18-.02(5) (employee’s work record, including performance and disciplinary history, considered in dismissing employee).
B. SPB General Work Rules and ABPP Disciplinary Actions Policy

General Work Rules Forming the Basis of the Charges

SPB Rule 670-X-18-.02 provides, in pertinent part:

(1) An appointing authority may dismiss a classified employee whenever he considers the good of the service will be served thereby, for reasons which shall be stated in writing, served on the affected employee and a copy furnished to the Director, which action shall become a public record.

...

(5) In all cases, before dismissing a permanent employee, the appointing authority shall consider the previous disciplinary and performance history of the employee and any progressive discipline received.

SPB 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.

...

(b) More serious violations that may result in suspension or discharge on the first offense.
6. Falsification of records – Application for employment, time card, doctor’s excuses, etc.

(2) The listing of violations above is not meant to be all inclusive and does not imply that discipline may not be imposed for other sufficient reasons nor does it mean that termination cannot occur for the first violation.

**ABPP Disciplinary Actions Policy**, General Work Rules, reads in pertinent part:

In addition to any special rules issued by the Board [of Pardons and Paroles] for the guidance of agency employees, the following standard general work rules shall apply to all classified employees, in accordance with guidelines established by the State Personnel Board Rule 670-X-19-.01:

...  

Violations that normally result in disciplinary actions of increasing severity:

...  

4. Failure to perform job properly.

...  

More serious violations that may result in suspension or discharge on the first offense, considering work record and length of service:

...  

6. Falsification of records – Application for employment, time card, doctor’s excuse, etc.
C. Facts Forming the Basis of Dismissal

The ABPP Officer Jomo Johnson became aware on February 22, 2022, as he supervised Probationer Torace Laster, who had received a stolen vehicle from Tajuan Gosha, that Tajuan Gosha was deceased even though the ABPP Oasis system indicated Gosha was active, currently reporting and had been reporting to Johnson for the past year with interactions. Officer Jomo Johnson brought the information to the attention of Senior Probation Officer Juan Vault ("Vault"), who on February 23, 2022, advised ABPP District Manager Terry Cauthen ("Cauthen") there was a possibility that falsified information on client Tajuan Gosha had been entered into the ABPP Oasis Journal Notes by Johnson.

Vault confirmed that Tajuan Gosha was transferred to Johnson on April 22, 2021. Tajuan Gosha died on March 28, 2021, but Johnson placed notes in the Oasis files as if he were actively supervising him until February 23, 2022. Cauthen reviewed the Oasis notes entered by Johnson and noted the entries made it seem as if the client had been reporting monthly after his death.

On February 24, 2022, Cauthen sent Probation Officer Elie Wilson ("Wilson") to verify Johnson had been making home visits to 1500 8th St. NW Birmingham Al 35215 as listed in the Oasis notes. Wilson contacted the client’s mother, Shaunte

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3 ABPP Exhibit 9.
Gosha ("Gosha"), who verified her son was deceased. Wilson asked Gosha if an officer had been to her home since her son’s death. Gosha stated that no one had been to her home since Tajuan Gosha’s fatal car accident on March 28, 2021.

When Johnson was confronted by Cauthen, Vault and Wilson, he claimed he was confused because he had another client named Gosha. When asked if he had made a home visit to Tajuan Gosha and to whom he talked, Johnson could not recall. Johnson had recorded home visits for both Tajuan Gosha and Jerome Gosha. Johnson stated he was “only human and it was a simple mistake” because you have a lot of clients that you supervise.

On February 25, 2022, Cauthen sent Officer Kortney Bryant ("Bryant") to conduct a home visit on Jerome Gosha at his listed address of 536 4th Court West, Birmingham AL 35204. Bryant went to the address and left his card. At approximately 11:04 a.m. Bryant received a call from Pamela Scott ("Scott") who advised she did not know anyone named Jerome Gosha. Scott advised she had lived there since Nov 2021. She further advised Jerome Gosha did not live there and no one looking for Gosha had been there. Cauthen phoned Scott who confirmed no one had been to her residence asking any questions about a Jerome Gosha prior to Bryant’s visit. Johnson entered a note in Oasis claiming he did a home visit on January 10, 2022. Scott stated she has resided there since November 2021.
According to Oasis Johnson claimed to have conducted two home visits on November 22, 2021, and November 30, 2021, with Probationer Heather Gach. Ms. Gach and her husband, Joe Lambert, stated to Vault that Johnson never conducted a home visit at their residence.

The above facts make it clear that Johnson did not properly do his job and his computer entries in the Oasis system are inaccurate, falsified and warrant termination of Johnson’s employment.

III. ISSUE

Did ABPP produce sufficient evidence to sustain Johnson’s dismissal based upon violations of SPB and ABPP General Work Rules?

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

4 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).

5 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.
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).

The undersigned has carefully observed and considered the witnesses’ demeanors, testimony, and all the documentary evidence in this case and finds that the preponderance of the evidence establishes that ABPP followed extant rules and procedures and had a proper basis and the authority to discharge Johnson from his employment for his admitted failure to accurately document his contacts with probation and parole clients assigned to him. From April 2021 to February 2022 Johnson made entries in Oasis suggesting his active supervision of Tajuan Gosha. Tajuan Gosha died in an automobile accident on March 28, 2021. Johnson claimed to make home visits he didn’t make. Johnson did not perform his job and he falsified computer records.

Therefore, the undersigned recommends to the SPB that the dismissal be UPHELD.
Done, this the 6th day of July 2022.


JAMES JERRY WOOD
Administrative Law Judge
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