

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

MEIKO MARTIN)	
)	
Appellant,)	
)	
v.)	CASE NO. 21-21-JJW
)	
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 Meiko Martin (hereinafter “Martin”) on June 4, 2021. Martin began her employment on March 1, 2010, as a Financial Support Worker in the Prichard Food Stamp Office in the Mobile County DHR. DHR, in its charge letter dated February 1, 2021, advised Martin 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:

3. Inattention to job – doing anything distracting while on the job.

4. Failure to perform job properly.

5. Abuse of equipment.

6. Unauthorized and/or unlicensed operation of equipment.

...

8. Violation of specific department rules. (DHR Personnel Policies and Procedures – Chapter 13.27 Confidentiality; Memorandum dated September 24, 2018, “Handling Sensitive and Confidential Information on Alabama Citizens”);

(b) More serious violations that may result in suspension or discharge on the first offense.

1. Violation 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.

3. Theft or unauthorized possession of company property.

...

10. Serious violation of any other department rules (DHR Personnel Policies and Procedures Manual, Chapter 13.27 Confidentiality; Memorandum dated September 24, 2018 “Handling Sensitive and Confidential Information on Alabama Citizens”; Memorandum dated December 4, 2020 “Employee Requirements Relating to COVID -19”), and

...

13. Conduct unbecoming a state employee.

DHR conducted an administrative hearing on May 13, 2021, at which it presented testimonial and documentary evidence supporting DHR’s decision to dismiss Martin.¹

Martin was represented by Christopher Edwards, Esq. DHR was represented by Joshua Lane, Esq. Sharronda M. Pettaway acted as the Administrative Hearing Officer and recommended that Martin’s employment with DHR be terminated. Martin was dismissed from her employment with Mobile County Department of Human Resources on June 4, 2021.²

On June 11, 2021, Martin timely appealed her dismissal to the State Personnel Board.³ On June 15, 2021, a Scheduling Order was issued setting the

¹ DHR Exhibit 4.

² DHR Exhibits 3.

³ ALJF

appeal hearing for Martin on August 6, 2021. Martin did not appear for the August 6, 2021, hearing although her attorney, Jason Manasco, Esq., was present. Mr. Manasco indicated he had not received notice from his client that she would not appear. The hearing was delayed for fifteen minutes after 9:00 a.m. to see if Martin would appear. DHR filed an oral motion for default judgment pursuant to Rule 670-X-5-.07(2) and Section 41-22-12(d) Code of Alabama, 1975, as amended. Pursuant to the terms of the Scheduling Order, the undersigned admitted DHR Exhibits 1- 7, including sub-parts 1 – 25 of Exhibit 4A.

Martin admitted, in her answer to the DHR charges, that she sent confidential materials to her personal email address but denied she had breached confidentiality. In her administrative hearing she admitted violating the chain of command rules and personal use of DHR's email facilities. Martin did not object to any of the DHR exhibits including the administrative hearing transcript. The undersigned has considered the documentary evidence including the Martin testimony at the DHR Administrative Hearing.

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 facts.⁴

A. Employee's Personnel File⁵

Martin's annual performance appraisals while at DHR reflect:

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
05/01/2021	22.5	Meets Standards
05/01/2020	21.2	Meets Standards
05/01/2019	21.4	Meets Standards
05/01/2018	26.2	Meets Standards
05/01/2017	27.5	Exceeds Standards
06/30/2016	23.8	Meets Standards
04/01/2015	26.3	Meets Standards
04/01/2014	37.5	Consistently Exceeds
09/16/2013	30.0	Exceeds Standards
Resigned 09/07/2012		Rehired 06/17/2013
07/01/2012	38.8	Consistently Exceeds
07/01/2011	40.0	Consistently Exceeds
08/31/2010	35.7	Exceeds Standards

Martin's prior disciplinary history at DHR consists of a Warning on January 2, 2020.⁶

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

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).

⁶ DHR Exhibit 1 p.43.

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

III. ISSUE

Did DHR produce sufficient evidence to warrant Martin's dismissal by a preponderance of the available evidence?

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).⁷

In determining whether an employee's dismissal is warranted, the

⁷ 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).

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 (5th Cir. 1976).⁸

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.

⁸ 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.

Civ. App. 1986).

In the present case, DHR presented sufficient evidence warranting Martin's dismissal. The evidence sustains the appointing authority's charges of violations of State Personnel Board Rules 670-X-19-.01(1)(a) 3, 4, 5, 6, 8; (1)(b) 1, 2, 3, 10 and (1)(b)(13).

DHR acted within its authority to terminate Martin'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 Martin. There is no basis for mitigation in favor of Martin on these facts.

Martin did not appear for her hearing. Witnesses had been called, a court reporter had been engaged although the court reporter contracted COVID-19 and the hearing was conducted with a tape-recorded record. Costs had been incurred. These matters considered the undersigned recommends the DHR's Motion for a Default Judgment be granted and further recommends the termination of Martin's employment with DHR be upheld.

Done this 11th day of August 2021.



James Jerry Wood
Administrative Law Judge Division
State Personnel Department
64 North Union Street
Montgomery, Alabama 36130
Telephone: (334) 242-8353
Facsimile: (334) 353-9901

VIA EMAIL and FIRST-CLASS U.S. MAIL:

Jason Manasco, Esq.
Alabama State Employee Association
110 N. Jackson Street
Montgomery, Alabama 36104
Telephone: (334) 293-3037
E-Mail: Jason_Manasco@asea.org

Joshua Lane, Esq.
Madeline Lewis, Esq.
Department of Human Resources
Gordon Persons Building – 2nd Floor
P.O. Box 304000
Montgomery, Alabama 36130-4000
Telephone: (334) 242-9330
Facsimile: (334) 242-0689
E-mail: Josh.Lane@dhr.alabama.gov
Madeline.Lewis@dhr.alabama.gov