

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

<b>ELIZABETH SHANE GRIFFIS,</b>	)	
	)	
<b>Appellant,</b>	)	
	)	
<b>v.</b>	)	<b>CASE NO. 20-23-RCS</b>
	)	
<b>ALABAMA STATE BOARD</b>	)	
<b>OF VETERINARY MEDICAL</b>	)	
<b>EXAMINERS,</b>	)	
	)	
<b>Appellee.</b>	)	

**RECOMMENDED ORDER TO THE STATE PERSONNEL BOARD**

This recommended order arises from an employment termination action by the Alabama State Board of Veterinary Medical Examiners (hereinafter “ASBVME”). ASBVME terminated the employment of Elizabeth Shane Griffis (hereinafter “Griffis” or “the employee”) after she allegedly engaged in insubordination, disruptive conduct of any sort and conduct unbecoming a state employee. The evidence presented by ASBVME during the hearing showed that Griffis violated State Personnel Board Rules and its decision to dismiss Griffis should be upheld by the State Personnel Board.

A hearing was held on August 20, 2020, at the State Personnel Department in Montgomery, Alabama. Olivia Martin, Esq., appeared as counsel on behalf of ASBVME. Griffis proceeded *Pro se*.

At the beginning of the hearing, ASBVME introduced into evidence exhibits consecutively marked as ASBVME's Exhibits 1 - 13. Griffis did not introduce any additional exhibits into the record. The undersigned informed the parties that Griffis' personnel file at the Alabama State Personnel Department is included in the record as evidence in this cause.

ASBVME called as witnesses:

- (1) Tammy Cargile, Executive Director of ASBVME;
- (2) Charles David Phillips, Executive Assistant; and
- (3) Dale O'Banion, ASBVME Investigator.

Griffis testified on her own behalf.

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

ASBVME hired Griffis on May 1, 2017 as a "Clerk." Griffis was promoted to "Mail Clerk" in November 2019. Griffis remained in that classification until her dismissal on June 25, 2020. *See* June 11, 2020, Notice of pre-dismissal letter ("pre-dismissal letter") signed by ASBVME Executive Director Tammy Cargile.<sup>1</sup>

In the pre-dismissal letter, Cargile stated:

Pursuant to Rule 670-X-18-02 of the State Personnel Board Rules and Regulations, it is recommended, that you be dismissed from employment with the Alabama State Board of Veterinary Medical Examiners. The following information has been submitted.

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<sup>1</sup> *See* DOT's Exhibit #3.

On December 19, 2019[,] you were verbally discipline[d] regarding your being confrontational with licensees and consumers [who] called into the ASBVME Office, instead of just assisting with their issues.

On November 18, 2019[,] you were verbally disciplined by your supervisor for becoming confrontational to another employee in the ASBVME office regarding that individual taking their annual leave.

On June 5, 2020, your supervisor was attempting to explain to you and another coworker how to answer a question regarding continuing education, instead you became confrontational with your supervisor, and your supervisor has to wait until you finished so that she could finish instructing the other employee.

On June 9, 2020, you were given a directive by your supervisor, and instead of just performing the duty you instead commenced to argue with your supervisor in front of other employees.

If true, your actions constitute the following violations:

1. Insubordination.
2. Disruptive conduct of any sort.
3. Conduct unbecoming of a state employee.

...

In ASBVME's short statement of facts, they reiterated the same facts and charges that were contained within the pre-dismissal letter.<sup>2</sup>

Griffis timely appealed her dismissal to the Alabama State Personnel Board, pursuant to *Ala. Code 1975*, § 36-26-27(a). On August 20, 2020, the

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<sup>2</sup> See ALJ file.

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.<sup>3</sup>

### A. Employee’s Personnel File<sup>4</sup>

Griffis’ annual performance appraisals (“APA”) while at DOT reflect:

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
05/20 <sup>5</sup>	40.0	Consistently Exceeds Standards
09/19	40.0	Consistently Exceeds Standards
09/18	40.0	Consistently Exceeds Standards
10/17 <sup>6</sup>	40.0	Consistently Exceeds Standards

Griffis’ prior disciplinary history at ASBVME includes the following disciplinary actions (in reverse chronological order):

- Verbal warning on November 18, 2019 for disruptive conduct of any sort.<sup>7</sup>
- Verbal warning on December 19, 2019 for disruptive conduct of

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<sup>3</sup> 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.

<sup>4</sup> 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).

<sup>5</sup> Final Probationary Performance Appraisal for “Mail Clerk.”

<sup>6</sup> Final Probationary Performance Appraisal for “Clerk.”

<sup>7</sup> ASBVME Exhibit 7.

any sort.<sup>8</sup>

Verbal warning on June 5, 2020 for insubordination and disruptive conduct of any sort.<sup>9</sup>

## **B. 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:

...

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

...

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.

...

12. Disruptive conduct of any sort.

13. Conduct unbecoming a state employee.

...

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<sup>8</sup> ASBVME Exhibit 8.

<sup>9</sup> ASBVME Exhibit 9. ASBVME also included a written account of Griffis' June 9, 2020 behavior and titled the document "Verbal Discipline," however, the actual discipline for the June 9, 2020 incident proposed by Cargile was dismissal. It appears Cargile added the write-up to document the events of June 9, 2020. See ASBVME Exhibit 10.

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

#### **Background:**

During 2018, the ASBVME moved office locations. In the new office setting, Griffis sat behind a large desk viewable from a glass entry door. Beside Griffis' desk is the Boardroom.<sup>10</sup> Behind Griffis' desk is a doorway that leads to a small hallway that contains two bathrooms, a men's restroom closer to Griffis' desk and then a women's restroom that was further away from Griffis' desk. There was also a supply closet and a door to the Boardroom.

#### **Incident:**

On June 9, 2020, ASBVME Executive Director Tammy Cargile ("Cargile") instructed Griffis to leave the door behind her desk open. Cargile explained she was preparing for a board meeting and set up a desk and chair in the board room that blocked the doorway from the boardroom to the small hallway with the bathrooms. Cargile testified that Griffis did not want to leave the doorway open that led to the bathrooms and became very irate with Cargile. Cargile testified Griffis had an outburst and went on a rant about having to leave the door to the hallway open that day. Griffis complained she could hear the men in the office go to the bathroom when the door was

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<sup>10</sup> See ASBVME Exhibit 12-1.

left open. Griffis told Cargile on June 9, 2020 that it was her desk and her door and she wanted it shut. Cargile testified Griffis said, “God help Tammy [Cargile]” and called Cargile “stupid” and “dumb.” Cargile also recalled Griffis stating to her, “We all know that you have the big office.” Cargile described Griffis as disruptive and uncontrollable on June 9, 2020.

Cargile believed Griffis’ actions were troubling since she previously gave Griffis a verbal warning on June 5, 2020 for not listening to instructions and talking over Cargile.

On June 11, 2020, Cargile called Griffis into her office to discuss the June 9, 2020 incident. Cargile placed Griffis on mandatory leave pending formal discipline. Cargile testified Griffis was calm in that meeting. Later that day, Cargile sent Griffis a letter outlining the various incidents that occurred since November 2019 and scheduled a pre-dismissal conference. Cargile testified she referenced Griffis’ prior verbal counselings because they were the same sort of conduct Griffis committed on June 9, 2020.

Cargile included in her statement of facts that she also charged Griffis with clocking in late and failing to pay certain bills in a timely fashion.<sup>11</sup> Cargile provided text messages that showed Griffis was running late on at least two separate occasions. After pulling up Griffis’ time records it showed

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<sup>11</sup> Griffis was afforded an opportunity to address clocking in late at her pre-dismissal conference, however ASBVME added a charge for failing to pay bills timely well after she was dismissed, therefore, the undersigned gave no weight to that charge or testimony about that charge.

that Griffis clocked into Kronos from her phone well before she was actually at work on both occasions.<sup>12</sup>

ASBVME Executive Assistant Charles David Phillips (“Phillips”) also testified at the hearing. Phillips testified he was the recipient of Griffis’ text messages about running late. Phillips acknowledged that although Griffis indicated in her text messages she was running late, she signed in “on time” on Kronos from her phone. Phillips also testified he was present when Griffis argued with Cargile during June 9, 2020. He affirmed Cargile’s testimony about the incident. Phillips described Griffis as argumentative with Cargile and heard Griffis remark, “Oh Lord, help Tammy [Cargile]!”

The final witness for ASBVME was Investigator Dale O’Banion (“O’Banion”). O’Banion testified he and Griffis argued about his annual leave. Griffis was not in O’Banion’s chain of command, she would just complain when she knew he was taking time off. O’Banion also testified there was no consistency with Griffis’ mood. O’Banion also testified Griffis would make sure the door behind her desk was always closed and even put a sign on it that read, “Do not open this door.”

Griffis asked that her notice of appeal letter be read in her defense. In her letter, Griffis recalled her prior discipline issues. Specifically, Griffis

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<sup>12</sup> ASBVME Exhibit 1.



indicated she did not know her December 19, 2019 meeting with Cargile was disciplinary in nature. Griffis spoke with Cargile about some personal issues in her life and recalled Cargile giving her some good advice on how to cope with change. Griffis also recalled her November 18, 2020 incident and acknowledged she was in a verbal disagreement with a co-worker. Griffis recalled Cargile yelling at both employees to “shut the hell up” and Griffis wrote she complied. Griffis wrote she was not in the office on June 5, 2020 and that was when she “got a gut feeling something wasn’t right...”

On June 9, 2020, Griffis recalled asking Cargile if the door to the small hallway could remain closed. Griffis pointed out the door had been shut for the past few months. Cargile denied Griffis’ request. Griffis said “there were other words exchanged...” but failed to specify what words. Griffis pointed out Cargile had her own private bathroom that no one else was allowed to use. Griffis admitted she continued to question Cargile about the door which resulted in Cargile sending Griffis home for the day.

Griffis denied insubordination by claiming she did everything Cargile instructed her to do. Griffis also did not agree with the charge for disruptive conduct because lines in the office were gray; sometimes there was horseplay or joking and other times things were serious. Finally, Griffis denied conduct unbecoming a state employee because it was Cargile who acted inappropriately by punching, kicking and verbally abusing her employees, as

well as using racial slurs and foul language.<sup>13</sup>

During her testimony, Griffis reiterated the same things she placed in her notice of appeal letter. Griffis denied calling Cargile “stupid” or “dumb” and asserted she called the whole situation “stupid” and “dumb.”

In defense of her use of Kronos while not at work, Griffis explained that it was not uncommon for the office to go to lunch together and though they may come back late, they were allowed to clock back in on their phones before arriving back to the office.<sup>14</sup>

Griffis did not believe her conduct toward Cargile crossed any lines.<sup>15</sup> Griffis did not believe she was the villain in “all of this.” Griffis contended things were blown out of proportion and she was shocked when she was told she was dismissed on June 11, 2020. Griffis acknowledged the Board only met one time a month and it was during board meetings that the door behind her desk was left open. Griffis wondered aloud during her testimony on why she and Cargile acted like 14-year-old schoolgirls.

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<sup>13</sup> Several employees were called to testify during the hearing. Their testimony did not corroborate this allegation.

<sup>14</sup> The distinction here is that while the office was together at lunch, they had permission to log back into Kronos before arriving back at the office, while Griffis was charged with logging into Kronos before arriving at the office in the morning to start the day without express permission.

<sup>15</sup> Cargile testified on direct examination that she and Griffis were friends before she hired Griffis to work for her as a Clerk.

### III. ISSUE

Did ASBVME produce sufficient evidence to warrant Griffis' 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).<sup>16</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

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<sup>16</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 1975, § 41-22-20 (k); *State Dept. of Human Res. v. Gilbert*, 681 So.2d 560, 562 (Ala.Civ.App. 1995).

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 APA’s preponderance of the evidence standard. *See also Wright v. State of Tex.*, 533 F.2d 185 (5<sup>th</sup> Cir. 1976).<sup>17</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 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, ASBVME provided substantial evidence that Griffis violated: State Personnel General Work Rule 670-X-19.01(1)(b)2 –

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<sup>17</sup> 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.

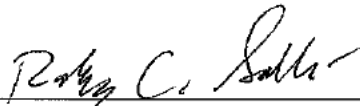
Insubordination by repeatedly arguing with Cargile about the door behind her desk area; State Personnel General Work Rule 670-X-19.01(1)(b)12 – Disruptive conduct of any sort by arguing with her supervisor in front of other staff; and State Personnel General Work Rule 670-X-19.01(1)(b)13 – Conduct unbecoming a state employee by filling out her time and attendance inaccurately.

The undersigned considered mitigation in this case. Cargile hired a friend to work under her supervision. Obviously, Cargile now realizes the difficulties that such a hire can create. The ASBVME office is similar to many offices throughout the state; there are times for fun and times that demand professionalism. Regardless of the atmosphere, employees must submit to the authority of their supervisor, so long as that supervisor is not asking them to do anything illegal. In this case, Griffis wanted to close a door that led to bathrooms so she would not have to hear people using those bathrooms. Ultimately, Cargile demanded the door remain open until after the Board meeting. There was nothing illegal about her demand. Griffis refused to accept the instruction and continued to argue about it. That action is untenable, and fosters an unproductive, toxic workplace. Furthermore, Griffis clocked in to work “on time” while running late which is conduct unbecoming a state employee. Employees of the State are civil servants and are expected to be honest and forthright in their jobs. Griffis was charged

with violations that may result in dismissal on the first offense. The substantial weight of the evidence proved Griffis more probably than not committed those violations.

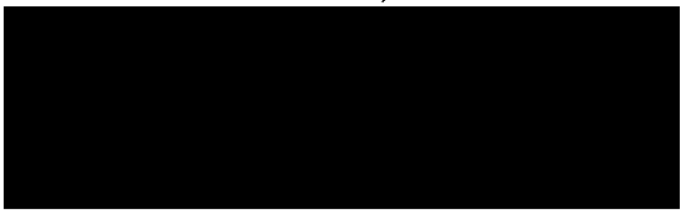
Wherefore Premises Considered, the undersigned recommends to the State Personnel Board that Griffis' dismissal be UPHELD.

Done this the 29th day of September 2020.

  
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Randy C. Sallé  
Administrative Law Judge  
State Personnel Department  
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**VIA EMAIL AND FIRST-CLASS U.S. MAIL**

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