

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

ANETHA ROBINSON

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Appellant,

Case No: 20-36-JJW

vs.

**ALABAMA DEPARTMENT OF
PUBLIC HEALTH,**

Appellee.

RECOMMENDED ORDER TO THE STATE PERSONNEL BOARD

This recommended order concerns an employment termination action by the Alabama Department of Public Health (hereinafter "ADPH"). ADPH terminated the employment of Anetha Robinson, (hereinafter "Ms. Robinson") for repeated instances of insubordination and failure to perform her job properly.¹

Ms. Robinson was classified as a Health Services Administrator II in the Aids Prevention and Control Division of ADPH at the time of her dismissal. Ms. Robinson was a Health Services Administrator I when she laterally transferred into this position within the ADPH on December 1, 2017, from ADPH's Emergency Preparedness Division.

¹ ADPH Exhibit 3.

Ms. Robinson was the Fiscal Administrator for Alabama's Ryan White HIV/AIDS Program (RWHAP) Part B and AIDS Drug Assistance Program (ADAP). She cleared invoices for payment. She was responsible for tracking budget expenditures, collecting and tracking ADAP 340B drug rebate claims level data and ensuring timely submission of quarterly rebate information to drug manufacturers so the program received a steady flow of rebates to which it was entitled. Ms. Robinson was sent to training and engaged in self-training from available published guidance for her position.²

The evidence presented by ADPH showed, more probably than not, Ms. Robinson violated State Personnel Board Rules and policies as well as ADPH Departmental Rules and policies. Ms. Robinson was insubordinate on multiple occasions with her immediate supervisor, Ms. Allison Hatchett. ADPH's decision to dismiss Ms. Robinson was within its authority.

A hearing was held on October 19, 2020, at the State Personnel Department in Montgomery, Alabama. Tara Armistead, Esq., appeared as counsel for ADPH. Jason Manasco, Esq., represented Ms. Robinson.

ADPH offered Exhibits 1 - 24. Ms. Robinson objected to Exhibits 15 - 19. Ultimately, the undersigned admitted all ADPH's Exhibits 1 - 24. Ms. Robinson

² ADPH Employee Training Reports.

offered no exhibits. The undersigned advised the parties that he would consider Ms. Robinson's personnel file maintained by the State Personnel Department.

ADPH called as witnesses:

- (1) Allison Hatchett, MPH, Director of the WIC program at ADPH and previously Ms. Robinson's supervisor in the Ryan White Program. Ms. Hatchett directed the Ryan White Program from 2015-2020. She assumed her WIC role in May 2020.
- (2) Sharon Jordan, MPH, Director of HIV Prevention and Care at ADPH for 31 years.

Ms. Robinson testified on her own behalf.

I. PROCEDURAL HISTORY AND CHARGES

Ms. Robinson first worked for the State of Alabama as a Clerk-Steno II for the Board of Pardons and Paroles beginning on June 13, 1994 and ending September 13, 1994. Ms. Robinson was appointed by Governor Don Siegelman as an administrative assistant in his office on November 17, 1999. Ms. Robinson was next appointed as an ASA II in the Department of Education beginning on March 1, 2002.

ADPH hired Ms. Robinson on May 17, 2003, as an ASA III in its Health Care Facilities Division. Ms. Robinson resigned this position effective May 15, 2006. Ms. Robinson was rehired by ADPH effective July 10, 2006. Ms. Robinson resigned November 16, 2006, to become Executive Director of the State of Alabama Board

of Examiners of Assisted Living Administrators. Ms. Robinson resigned that position effective May 12, 2007. Ms. Robinson was next employed as an ASA III by the State Department of Education effective May 16, 2007. Ms. Robinson qualified as a Health Services Administrator I and was employed by ADPH in the Health Statistics Division effective March 16, 2008. Ms. Robinson transferred into a Health Services Administrator I position with the ADPH Bureau of Health and Chronic Disease effective August 16, 2009. Ms. Robinson laterally transferred to ADPH Center for Emergency Preparedness on March 1, 2017. Ms. Robinson laterally transferred to ADPH HIV/AIDS effective December 1, 2017. Ms. Robinson was promoted to a Health Services Administrator II position effective April 16, 2018.

Ms. Robinson repeatedly failed to enter data on a shared drive even after being specifically instructed to do so by her supervisor. Ms. Robinson declined to attend meetings her supervisor expected her to attend. Ms. Robinson insubordinately declined to adjust her schedule to attend a March 12, 2019, meeting concerning her work.

During much of 2019 and into 2020, Ms. Robinson developed an attitude of hostility toward her immediate supervisor, Allison Hatchett; her supervisor Sharon Jordan; and Dr. Mary McIntyre, ADPH's Chief Medical Officer. After reviewing verbal and written interactions between Ms. Robinson and her immediate

supervisors, Dr. McIntyre advised Ms. Robinson of the definition of "insubordination" under ADPH and State Personnel Board Rules and verbally advised Ms. Robinson to follow instructions from her supervisor, Ms. Robinson sought approval to transfer to another position contingent upon the approval of Human Resources. Ms. Robinson's transfer was not approved.

Dr. McIntyre wrote on May 5, 2020: "...Since we have met repeatedly and have had to deal with issues related to insubordination, failure to follow supervisory chain directions, failure to report to work as requested and disruptive behavior in the workplace and it was made clear to you by me what the definition of insubordination was (hard copy given to you) ..."

The appointing authority, Scott Harris, M.D., State Health Officer, in a letter dated September 2, 2020, terminated Ms. Robinson's employment with ADPH for failure to perform her job properly and insubordination and for the good of the Department effective at the close of business on September 2, 2020.

Ms. Robinson timely appealed her dismissal to the Alabama State Personnel Board, pursuant to *Ala. Code 1975*, § 36-27-27(a).

On October 19, 2020, the undersigned conducted a *de novo* hearing ("the hearing"), at which ore tenus and documentary evidence was received.

Allison Hatchett, MPH, was Ms. Robinson's direct supervisor in ADPH's Ryan White HIV/AIDS Program Part B. Ms. Hatchett held that position from 2015

until May 2020. This program involves funding of \$70 Million dollars annually. Ms. Hatchett had supervision of six employees including Ms. Robinson, who was the Ryan White Fiscal Administrator. From December 1, 2017, until May 1, 2020, Ms. Hatchett had direct supervision of Ms. Robinson. Issues arose when Ms. Robinson declined to follow Ms. Hatchett's instructions to place fiscal data on the shared drive. Ms. Robinson insubordinately refused to attend certain meetings that Ms. Hatchett asked her to attend and which were integral to Ms. Robinson's job as the Ryan White Fiscal Administrator. The refusal of Ms. Robinson to recognize and to submit to authority caused serious communication and performance problems. Ms. Robinson directly refused to attend a site visit meeting with a lead agency on March 12, 2020.³ There were other meetings Ms. Robinson declined to attend "because she determined other matters took priority." Ms. Robinson acted as if she could make independent determinations of whether she worked from home or in the office without regard for her supervisor's expectations or instructions.

Sharon Jordan, MPH and Director of ADPH's Office of HIV Prevention and Care, testified concerning her efforts to have Ms. Robinson cooperate and communicate in an appropriate and professional manner with Ms. Hatchett and to have Ms. Robinson respect Ms. Hatchett's authority to request and require her use of the shared drive for fiscal data for the Ryan White Program. Ms. Robinson

³ ADPH Exhibits 6, 8, 9

ultimately decided that Ms. Hatchett, Ms. Jordan and Dr. Mary McIntyre were all bullying her. She says she “had a target on her back.” Ms. Robinson demonstrated a continuing lack of respect for authority. Ms. Robinson’s demonstrated a misconception of her role. Ultimately, Ms. Jordan testified her team discovered 470 unpaid Amerisource-Bergen invoices totaling \$1.4 million dollars dating back to October 2019. Ms. Jordan discovered Ms. Robinson had materials on her ADPH work computer that appeared to be work for a trucking company, a ministerial association, a church and some political entity. None of this work was authorized, approved or should have been work done on ADPH’s time and equipment. Ms. Robinson’s explanation that she was “backing up” her home computer was not credible. Her use of a person thumb drive to introduce data into ADPH’s network was not authorized and was prohibited. Ms. Robinson showed a willful disregard for the rules of her workplace and was overtly insubordinate.

After involving the Chief Medical Officer to try to salvage Ms. Robinson as a productive employee it became clear to Dr. McIntyre that Ms. Robinson’s repeated insubordination and recalcitrant attitude made her dismissal necessary.

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.⁴

A. Employee’s Personnel File⁵

Ms. Robinson’s annual performance appraisals (“APA”) while a State of Alabama employee reflect:

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
08/01/2020	14.4	Partially Meets Standards
08/01/2019	21.1	Meets Standards
10/15/2018	30.0	Exceeds Standards
07/01/2017	26.7	Exceeds Standards
07/01/2016	37.1	Consistently Exceeds Standards
07/01/2015	37.1	Consistently Exceeds Standards
07/01/2014	32.9	Exceeds Standards
07/01/2013	35.7	Exceeds Standards
07/01/2012	34.3	Exceeds Standards
07/01/2011	32.9	Exceeds Standards
07/01/2010	34.0	Exceeds Standards
07/01/2009	25.7	Meets Standards
09/15/2008	23.3	Meets Standards
03/01/2008	33.0	Exceeds Standards
08/15/2007	32.0	Exceeds Standards
10/09/2006	30.0	Exceeds Standards
03/01/2006	27.5	Exceeds Standards
03/01/2005	27.5	Exceeds Standards
03/01/2004	27.5	Exceeds Standards
12/12/2003	27.5	Exceeds Standards
01/01/2003	31.0	Exceeds Standards
12/01/2002	26.0	Meets Standards
08/31/2002	20.0	Meets Standards
09/13/1994	17.7	Meets Standards

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.

⁵See 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).

Ms. Robinson received a written warning on March 10, 2020 for insubordination, failure to accept assignments and to comply with directives.

See generally State Personnel Board Rule 670-X-18-.02(5); State Personnel Board Rule 670-X-19-.01(1)(b) (prior work record, including performance and disciplinary history, and length of service considered in dismissing employee).

B. State Personnel Board Rules Forming Basis For Dismissal

Rules of the State Personnel Board (670-X-19-.01):

(1) In addition to any special rules issues 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, considering work record and length of service.

...

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.

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II. ISSUE

Did ADPH produce sufficient evidence to warrant Ms. Robinson's dismissal?

III. 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 755 (Ala.Civ.App. 1983).⁶

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

⁶ 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).

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.*, 553 F.2d 185 (5th Cir. 1976).⁷

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, ADPH presented sufficient evidence warranting Ms. Robinson's dismissal for insubordination and her failure to perform her job properly. Her immediate supervisor, Ms. Hatchett, succinctly summarized the basis for recommending Ms. Robinson’s dismissal on April 21, 2020, as follows:

⁷ 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.

“The Office of HIV Prevention and Care (OHPC) recommends employee Anetha Robinson be terminated. Ms. Robinson currently holds merit status as a Health Services Administrator II. Her working title within OHPC is Ryan White Fiscal Administrator.

“Ms. Robinson has demonstrated an unwillingness to be cooperative in carrying out day-to-day activities to fulfill her roles and responsibilities as indicated in her job description and as expected by the program director, her supervisor. Ms. Robinson’s attitude, behavior, verbal and non-verbal communication, and conduct has been disruptive and unprofessional for some time despite opportunities to improve and show a willingness to become a more productive and cooperative employee. Refusals and non-responsiveness to work directives on a routine basis have impacted team morale, caused a substantial amount of time by the supervisor and Office Director in managing her actions and created delays in the workflow and completion of assignments and requests. Difficulty with communication and unwillingness to effectively work with program partners harms Alabama’s Ryan White Program, and the Department as a whole. Ms. Robinson fails to follow instructions, ignores written/verbal requests and directives, and often informs her superiors what she will and will not do and will not participate in without valid reasons. It has been the hope of her supervisor and the Office Director that Ms. Robinson would transform her ways to become a cooperative, well-functioning

employee. In addition, significant time and effort intended to improve Ms. Robinson's performance have been provided by the Department's Chief Medical Officer. Unfortunately, Ms. Robinson's insubordinate behavior and unwillingness to make improvements or fully accept her assigned roles and responsibilities have proved not to be an asset to the OHPC and the Department."

The undersigned has carefully considered possible mitigation in this case. The undersigned finds no grounds for mitigation exist that would justify a lesser disciplinary action than dismissal. Accordingly, the undersigned finds the preponderance and totality of the evidence warrants dismissal in this cause. Therefore, the undersigned recommends to the State Personnel Board that the dismissal be UPHELD.

Done this the 12th day of November 2020.



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