

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

VERNUS MILES,)	
)	
APPELLANT,)	
)	
v.)	CASE NO: 23-07-JJW
)	
ALABAMA DEPARTMENT OF CORRECTIONS,)	
)	
APPELLEE.)	

RECOMMENDED ORDER TO THE STATE PERSONNEL BOARD

The employment termination of Vernus Miles (hereinafter “Miles”) by the Alabama Department of Corrections (hereinafter “DOC”) gives rise to this Recommended Order.

DOC charges that Miles, who in 2022 was employed as a Correctional Lieutenant at Limestone Correctional Facility, violated its Administrative Regulation 208 (hereinafter “AR 208”), Employee Standards of Conduct and Discipline, with respect to the following:

- Section V.A.2 - Employees shall render full, efficient, and industrious service.

- Section V.A.4 - Exercise courtesy and tact.

- Section V.A.6 - Protect and conserve funds, property, and equipment and materials.
- Section V.A.7 - Observe all laws, rules, and regulations.
- Section V.A.8 - Uphold with integrity, the public's trust involved in their position.
- Section V.C. - Employees shall not:

...

9. Take any article or property whatsoever from any institution or from state property not specifically authorized by regulation.

...

19. Provide any information relative to the ADOC to any source including newspapers, radio, television, or any other source or agency except as directed by ADOC regulations.

- Miles' actions also violated Alabama State Personnel Board Rule 670-X-19-.01, General Work Rules, with respect to the following:

...

- (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.

1. Violations of safety rules.
- ...
10. Serious violation of any other department rule.
- ...
12. Disruptive conduct of any sort.
13. Conduct unbecoming a state employee.
- ...

I. PROCEDURAL HISTORY

Miles was employed by DOC as a Correctional Officer I effective January 16, 2001. Miles was employed at DOC for over twenty-one (21) years. Miles was a Correctional Lieutenant when he was dismissed by the appointing authority by letter dated November 7, 2022.

On February 3, 2023, the undersigned conducted an appeal hearing timely requested by Miles. Matthew Ward, Esq., represented DOC. Miles was *pro se*. DOC offered Exhibits 1-18 with sub-parts, which were admitted, without objection. The undersigned informed the parties, without objection, that Miles' personnel file at the Alabama State Personnel Department would be considered as evidence in this matter.

DOC requested and the undersigned granted a Protective Order dated January 13, 2023, for DOC Exhibits 5a, 5b, 6a, 14 and 15 and any other Exhibit marked “Confidential,” “Restricted”, or “Under Seal”.

DOC called one (1) witness:

1. ADOC Warden II Chadwick Crabtree, Limestone Correctional Facility.

Miles testified on his own behalf.

In its Statement of the Facts, DOC alleged, in pertinent part:

“On August 15, 2022, WAAY TV Channel 31 News aired a story about staffing levels, security issues and practices at Limestone Correctional Facility. The person being interviewed has their voice disguised. On August 18, 2022, during an interview with Warden Chadwick Crabtree and Warden William Streeter, Appellant admitted to speaking to a reporter from WAAY TV Channel {sic} 13 News about staffing levels and security posts/practices at Limestone Correctional Facility (the “Facility”). Appellant further stated that he was mad and had been venting /complaining about the Facility and Departmental Leadership to subordinate and other supervisory employees. When questioned about facility documents that were shared with the reporter, Appellant stated that any of his employee(s) could have gotten the documents from his ADOC e-mail account because Appellant allowed his employees to use his ADOC credentials. Appellant’s actions compromised his ability to lead.

Warden Chadwick Crabtree charged Appellant with violating the following standards under ADOC Administrative Regulation (“AR”) No, 208, *Employees Standards of Conduct and Discipline*:

IV. RESPONSIBILITIES

[...]

E. It is the responsibility of all employees to adhere to the contents of this regulation.

V. PROCEDURES

A. All ADOC employees shall adhere to the following standards.

[...]

2. Render full, efficient, and industrious service.

[...]

4. Exercise courtesy and tact.

[...]

6. Protect and conserve funds, property, and equipment and materials.

7. Observe all laws, rules, and regulations.

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

[...]

C. Employees shall **not**:

[...]

9. Take any article or property whatsoever from any institution or from state property not specifically authorized by regulation.

[...]

19. Provide any information relative to the ADOC to any source including newspapers, radio, television, or any other source or

agency except as directed by ADOC regulations. (Refer to AR 005, Public and Community Relations)

[...]

Based on the policy set forth in Administrative Regulation 208, Warden Crabtree also relied upon AR No. 005, *Public Information*, in determining Appellant violated the following standards:

IV. RESPONSIBILITIES

A. The Alabama Department of Corrections Public Information Officer (PIO) is responsible for:

1. Disseminating information about the Department in an accurate and timely manner to the public, the media, and other state agencies.

2. Representing the department as the official spokesperson on matters or policies regarding the agency.

[...]

C. All ADOC and contracted employees are responsible for adhering to this regulation.

[...]

V. PROCEDURES

[...]

B. Media Contact:

1. Release of information to the news media or public concerning ADOC shall be authorized by the Commissioner or a designee through the Public Information Office.

[...]

2. If a reporter or news media representative contacts an employee of ADOC for an interview, that employee or their supervisor shall notify the ADOC Departmental PIO and gain approval before speaking with the news media.

[...]

C. Interviews with Employees

[...]

2. Employees on duty may be interviewed by the news media with their consent, provided the interview does not interfere with institution security. The Institutional PIO will be notified in advance of any employee interview, with approval obtained through the necessary authority.

Based on the policy as set forth in AR 208, Warden Crabtree relied upon Annex H to AR 208, *Table of Infractions and Level of Discipline*, in charging Appellant with the following infractions:

[...]

2. Non-compliance with policies, procedures, and regulations.

[...]

5. Unauthorized use of telephone, bulletin boards, or other state property.

[...]

11. Failure to follow supervisor's instructions; non-compliance with policies and procedures.

[...]

13. Disagreeable behavior, including lack of cooperation and insubordination.

[...]

18. Serious violations of rules, policies, procedures, regulations, laws or reasonable conduct expectations.

[...]

23. Unauthorized use of computer systems.

[...]

25. Abuse or misuse of authority, including but not limited to departmental property and/or ADOC identification cards/items.

[...]

33. Conduct that is disgraceful, on or off the job that does adversely affect an employee's effectiveness on the job.

[...]

Additionally, ADOC submits that Appellant's conduct also violated the following sections of Alabama Administrative Code Rule 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:

[...]

8. Violation of specific department rules.

(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.

[...]

5. Use of abusive or threatening language.

[...]

10. Serious violation of any other department rule.

[...]

12. Disruptive conduct of any sort.

[...]

Although these actions alone justify termination in this case, Appellant's entire personnel file was also reviewed in making this determination. Appellant's prior disciplinary actions are as follows:

October 19, 2016	Written Reprimand	Inattention to job (July 31, 2016)
June 10, 2009	Verbal Warning	Non-compliance with policies, procedures and regulations. (June 6, 2009)

Because of the seriousness of the alleged violations, Warden Crabtree utilized Section V., Paragraph O. of AR 208 to aggravate the recommended punishment to dismissal in this case. ...”

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

Date Ending	Total Score	Category
06/01/2022	38	Consistently Exceeds Standards
06/01/2021	40	Consistently Exceeds Standards
06/01/2020	40	Consistently Exceeds Standards
06/01/2019	40	Consistently Exceeds Standards
06/01/2018	36	Consistently Exceeds Standards
06/01/2017	30	Exceeds Standards
07/01/2016	37	Consistently Exceeds Standards
08/01/2015	40	Consistently Exceeds Standards
08/01/2014	40	Consistently Exceeds Standards
08/01/2013	40	Consistently Exceeds Standards
08/01/2012	39	Consistently Exceeds Standards
08/01/2011	39	Consistently Exceeds Standards

¹All 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.

²See generally State Personnel Board Rules 670-X-18-.02(5) and 670-X-19-.01(1)(b) (employee’s work record and length of service, including performance and disciplinary history, considered in dismissing employee).

08/01/2010	37	Consistently Exceeds Standards
09/30/2009	38	Consistently Exceeds Standards
05/01/2009	40	Consistently Exceeds Standards
05/01/2008	40	Consistently Exceeds Standards
05/01/2007	40	Consistently Exceeds Standards
05/01/2006	38	Consistently Exceeds Standards
05/01/2005	38	Consistently Exceeds Standards
05/01/2004	38	Consistently Exceeds Standards
05/01/2003	36	Exceeds Standards
05/01/2002	32	Exceeds Standards
05/01/2001	20	Meets Standards

Miles had a disciplinary history at DOC. His disciplinary history details are as follows:

- Written Reprimand – Inattention to job (07/31/2016)
- Warning – Non-compliance with policies, procedures, and regulations. (09/10/2009)

B. State Personnel Board General Work Rules and DOC

Policies/Procedures Forming the Basis of the Charges

The charges are outlined above in both the DOC Statement of Facts and the introduction to this recommendation.

C. Facts Forming the Basis of Dismissal

On August 15, 2022, WAAY TV Channel 31 News (“WAAY”) aired a story about staffing levels, security issues and practices at Limestone Correctional Facility. The person being interviewed had their voice disguised by a filter.

On August 18, 2022, during an interview with Warden Chadwick Crabtree Miles admitted to speaking to a reporter from WAAY about Limestone's staffing levels and security practices.

Miles admitted he had allowed members of his staff to utilize his credentials on his computer at Limestone to facilitate their work in violation of ADOC's computer usage policies.

Miles admitted he made a mistake. He admitted he was mad and had vented and complained about the Limestone Facility and its leadership to his subordinates and to other supervisory employees.

Miles denies he gave any ADOC documents to WAAY. Someone with access gave WAAY copies of critical staffing reports and security information.

On September 30, 2022, Miles was served with a Notice of Intent to Recommend Dismissal. On October 11, 2022, Warden Crabtree conducted a Pre-Dismissal Conference with Miles. Regional Director Edward Ellington and Deputy Commission Wendy Williams approved the recommended dismissal of Miles. On November 7, 2022, Commissioner John Hamm sent Miles a letter indicating his employment with ADOC was terminated effective November 10, 2022.

III. ISSUE

Did DOC produce proof, by a preponderance of the evidence, to sustain Miles' dismissal based upon violations of State Personnel Board Rules and DOC rules, regulations, policies and procedures?

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).³

³ 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).

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).⁴

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*

⁴ 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.

Alcoholic Beverage Control Bd. v. Tyson, 500 So. 2d 1124, 1125 (Ala. Civ. App. 1986).

V. RECOMMENDATION

The undersigned has observed and carefully considered the witnesses' demeanor, testimony, and all the documentary evidence in this case and finds that the preponderance of the evidence establishes Miles violated State Personnel Board rules and DOC's rules, regulations, policies and procedures and was appropriately discharged for the good of the service.

DOC followed its own rules and procedures and those of the State Personnel Board and established to the satisfaction of the undersigned that the admissions by Miles and the preponderance of the available direct, circumstantial and testimonial evidence supports Miles' dismissal. Miles' termination should be upheld.

Done, this the 14th day of February 2023.

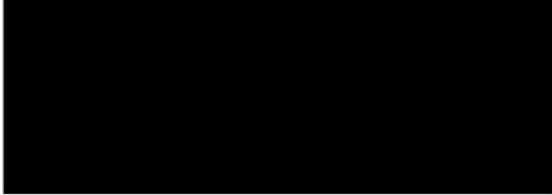


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