

to the Governor from January 27, 2003 until his classified service appointment in 2010.⁴

By a preponderance of the available evidence, DCNR established Jinks's conduct in the workplace was inattentive, insubordinate and disruptive to the extent that it interfered with the effective discharge of his responsibilities and the effective work of his co-workers and supervisors. DCNR was justified in terminating the employment of Jinks.

On November 16, 2015, 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. William A. Gunter IV, Esq. appeared as counsel on behalf of DCNR. Jinks was represented by Robert R. Riley, Jr., Esq., and Jeremiah Mosley, Esq.

DCNR introduced DCNR Exhibits 1 – 7, which were admitted without objection. Jinks introduced Employee Exhibits 1 – 12, which were admitted without objection. The undersigned informed the parties, without objection, that Jinks's personnel file at the Alabama State Personnel Department would be included in the record as evidence in this matter.

DCNR called as witnesses:

- (1) Gregory M. Lein, Director, Alabama State Parks Division;

⁴ DCNR Exhibit 1, p. 130.

- (2) John “Randy” Jinks, Appellant; and
- (3) Robert W. Grant, Jr., Assistant Director, Alabama State Parks Division.

Jinks also testified on his own behalf.

I. PROCEDURAL HISTORY AND CHARGES

Jinks timely appealed his dismissal to the Alabama State Personnel Board, pursuant to ALA. CODE § 36-26-27(a) (1975). At the prehearing conference held on September 24, 2015, the parties selected November 16, 2015 for the hearing.

In its short plain statement of facts, DCNR alleged, in pertinent part:

...

On or about July 15, 2015, the State Parks Director, Greg Lein, received reports that Randy Jinks had been making negative and disparaging remarks about Michael Jefferys and the management at Guntersville State Park when Randy was at a recent promotional event in Huntsville. Further, these remarks were being made to other peers of the Parks Division who work in the tourism trade and who were attending the Huntsville show in that capacity. He also learned through Rob Grant, the Assistant Parks Director, that this might be related to another matter Randy made Rob aware of regarding the dismissal of a staff member from Guntersville State Park who Randy Jinks had a former personal relationship with (*i.e.*, former girlfriend). Rob explained this other situation to me, and mentioned that he had advised Randy to essentially “stay out of that.”

Based on the corroborating information Director Lein was able to secure through multiple discussions with parties who were present during the show, it appears that supporting evidence confirms that Randy was [*sic*] in fact been involved in conversations while in his employment capacity that undermine the authority and responsibilities of other park system staff and leadership. More specifically, his conduct shows an inattention to his true responsibilities while at this tourism and promotion event, disruptive conduct to the team effort

among our staff and peers within the tourism community who are jointly working to promote the State Parks in the Tennessee Valley, and generally insubordinate in respect to the instructions that had been given to him by Rob Grant. It is for these collective reasons, coupled with a pattern of recent similar disciplinary actions, his length of service and work history, that Mr. Jinks was terminated.⁵

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.⁶

A. Employee's Personnel File⁷

Jinks's performance appraisals while at DCNR reflect:

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
05/01/2015	8.0	Partially Meets Standards
05/01/2014	22.5	Meets Standards
05/01/2013	10.5	Partially Meets Standards
05/01/2012	23.7	Meets Standards
05/01/2011	23.7	Meets Standards
01/15/2011	23.75	Meets Standards

Jinks's prior disciplinary history at DCNR includes the following disciplinary

⁵ DCNR's Brief Statement of Facts

⁶ 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.

⁷ See generally State Personnel Board Rule 670-X-18-.02(5) (employee's work record, including performance and disciplinary history, and length of service considered in dismissing employee).

actions:

- Three (3) day suspension – March 19-23, 2015 – Failure to perform job duties in a proper manner, insubordination, disruptive behavior, and poor judgment (r. 670-X-19-.01(4), (5), (7), and 670-X-19-.01(b)(2)).⁸
- Counseling Letter – April 30, 2014 – Cooperation with co-workers.⁹
- Reprimand – May 1, 2013 – Work performance bordering on “Does Not Meet Standards.”¹⁰

B. State Personnel Board General Work Forming the Basis of the Charges

State Personnel Board Rules 670-X-19-.01(1)(a)(3) and 670-X-19-.01(1)(b)(2) and (12) provide, in pertinent 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:
 - ...
 3. Inattention to job – Doing anything distracting while on the job.
 - ...

⁸ DCNR Exhibit 1, pp. 9-12.

⁹ DCNR Exhibit 1, p. 24.

¹⁰ DCNR Exhibit 1, pp. 33-34.

- (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...

...

- 12. Disruptive conduct of any sort.

...

- (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.

C. Facts Forming the Basis of Dismissal

Jinks came to DCNR as Parks Advertising and Marketing Manager in July 2010. His rating supervisor was M. S. Easterwood (“Easterwood”). Easterwood rated Jinks performance as “Meeting Standards” in 2010 and 2011. Jinks’s duties included developing and implementing an annual marketing plan for Alabama State Parks for which performance Easterwood gave Jinks a “1” (Partially Meets Standards). Jinks also was to manage the Alabama State Parks website for which Easterwood gave Jinks a “1” (Partially Meets Standards). Jinks was given a “4” for coordinating special events for which Easterwood rated Jinks “Consistently

Exceeds Standards.”¹¹

Gregory M. Lein (“Lein”) became Jinks’s rating supervisor in 2012. Jinks’s performance appraisal at May 1, 2012 was the same as he received under Easterwood.¹² In 2013, Jinks’s performance appraisal was overall a “10.5” indicating he partially met standards. Jinks was given an “Unsatisfactory” rating for cooperation with co-workers and for compliance with rules.¹³ Lein reprimanded Jinks telling him his overall work performance bordered on not meeting standards.¹⁴ Lein pointed out specific areas of needed improvement in performance. Jinks filed a rebuttal letter.¹⁵ Lein documented the issues that resulted in the low performance appraisal. Jinks thought others should have handled themselves differently in the matters raised by Lein. In 2014, Lein rated Jinks overall as meeting standards, a “22.5.” Lein rated Jinks as “Unsatisfactory” in cooperation with co-workers.¹⁶ Jinks was told he needed to be more professional in his conduct with park staff and others. He was told, “Derogatory comments about park and non-park personnel, or other comments made that undermine an

¹¹ DCNR Exhibit 1, p. 118.

¹² DCNR Exhibit 1, p. 111.

¹³ DCNR Exhibit 1, pp. 31-48.

¹⁴ DCNR Exhibit 1, pp. 33-34.

¹⁵ DCNR Exhibit 1, pp. 44-48.

¹⁶ DCNR Exhibit 1, p. 22.

individual's authority or reputation have no place within our workforce..."¹⁷ Jinks's performance and conduct were continuing concerns. Jinks acknowledged the counseling received by signing it on April 30, 2014.

In February 2015, Jinks sent an unauthorized e-mail communication to all parks staff. Lein viewed the communication as a demonstration of poor judgment by Jinks, insubordinate, disruptive to the work of Parks managers, and inattentive to Jinks's job.¹⁸ Jinks received a three-day suspension for violations of State Personnel Board Rules 670-X-19-.01(a)(4), (5) and (7) and, 670-X-19-01(b)(2).¹⁹ Jinks acknowledged that he should not have sent this e-mail and that he "accidentally" sent the e-mail to all field staff, rather than his expressed intention to only send it to Montgomery DNCR personnel. Jinks admitted his e-mail was a mistake.²⁰

Jinks received an "8" on his performance appraisal at May 1, 2015. On July 8, 2015, Jinks initiated a conversation with Assistant Parks Director Robert W. Grant, Jr. ("Grant") in which he expressed his "extreme displeasure" with a decision Michael Jeffreys ("Jeffreys"), Superintendent of Lake Guntersville State Park, had

¹⁷ DCNR Exhibit 1, p. 24.

¹⁸ DCNR Exhibit 1, p. 14.

¹⁹ DCNR Exhibit 1, p. 12.

²⁰ DCNR Exhibit 1, p. 13.

made regarding Cynthia Eldridge (“Eldridge”), a former girlfriend of Jinks. Jeffreys had terminated Eldridge’s employment as a waitress at the Lake Guntersville restaurant. Grant said, “... on this day he [Jinks] was the most angry as I have ever seen him. He criticized the managerial and leadership abilities of several key staff of Lake Guntersville State Park, including District Superintendent Michael Jeffreys...” Grant says he told Jinks he would look into the matter, “... but I instructed him to control his anger, refrain from interfering with this employment action which did not directly involve him and not talk about the matter to anyone.”²¹

Jinks attended a trade show in Huntsville on the weekend of July 10-12, 2015. Jinks discussed his disagreement with Jeffreys’s decision to fire Eldridge with Tim Haney (“Haney”), Superintendent of Parks Northwest Alabama. In his written statement, Haney said, “... he was pretty negative toward Michael [Jeffreys].”²² Jeffreys became aware of Jinks’s disparaging comments about him and advised Lein and Grant. Jeffreys told them he was at the Marshall County CVB Director’s Office and Katy Norton (“Norton”) told him Jinks, at the Tennessee Valley Outdoor Expo, was “... dogging you to several people including numerous Mountain Lakes Tourism Association board members, a business associate employed for the Mayor

²¹ DCNR Group Exhibit 7, p. 1.

²² DCNR Group Exhibit 7, p. 2.

of Guntersville, and Lord knows who else.”²³ Norton described, “... how he [Jinks] was complaining about everything and everyone related to the state parks including “that superintendent at the gulf.”²⁴ Norton told Jefferys Jinks said he did not know how to properly manage his employees and should not be Superintendent at the Lake Guntersville State Park.²⁵

When these matters came to Lein’s attention, he investigated them and asked Jinks to tell him what had transpired.²⁶ Jinks responded that if there was a controversy, it had been created by Norton and Jeffreys.²⁷

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:

²³ DCNR Group Exhibit 7, p. 3.

²⁴ DCNR Group Exhibit 7, p. 3.

²⁵ DCNR Group Exhibit 7, p. 3.

²⁶ DCNR Group Exhibit 7, p. 5.

²⁷ DCNR Group Exhibit 7, p. 4.

“[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).²⁸

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 Procedures Act’s preponderance of the evidence standard. See also *Wright v. State of Tex.*, 533 F.2d 185 (5th Cir. 1976).²⁹

²⁸ 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).

²⁹ 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).

In this case, DCNR has followed progressive discipline. Jinks’s personnel file demonstrates counseling, a suspension, and a reprimand. Jinks was advised by Lein in 2013, “In the future do not initiate any complaints to parties outside the Conservation Department without getting my prior approval.” Jinks was repeatedly told not to make critical and disparaging remarks about Parks personnel and if he had issues to raise to bring them to Lein. Jinks was told by Grant to stay out of the Eldridge personnel matter and not to discuss it with anyone. That weekend Jinks vociferously expressed his displeasure with Jeffreys. His conduct was disruptive to the orderly functioning of DCNR and was insubordinate directly violating instructions given to him by Grant. Jinks engaged in this conduct while representing DCNR. Jinks denies he has failed to cooperate with his co-workers and tourism peers, denies being insubordinate, and claims to have been given no explicit directives. He avers that he has only exercised his free speech

constitutional rights. Jinks believes his situation is directly related to the relationship, or lack of relationship, he had with his supervisor, Lein. Jinks presents as personable and has performed well in many of his responsibilities at DCNR. Unfortunately, Jinks failed to respond to the successive attempts by DCNR to have him cooperate with co-workers and to comply with extant work rules. DCNR has complied with its own rules, the rules of the State Personnel Board, applicable statutes and constitutional requirements. DCNR has attempted to have its Parks Advertising and Marketing Manager be successful in his necessary interaction with Parks Superintendents and other DCNR personnel.

The preponderance of the documentary and testimonial evidence establish that Jinks violated State Personnel Rules 670-X-19-.01(a)3 and 670-X-19-.01(b)2 and 12 as charged by DCNR. The undersigned finds no basis for mitigation.

The undersigned recommends the dismissal of Jinks by DCNR be upheld.

Done this the 10th day of December, 2015.



JAMES JERRY WOOD
Administrative Law Judge
State Personnel Department
64 North Union Street
Montgomery, Alabama 36130
Telephone: (334) 242-8353
Facsimile: (334) 353-9901

COPIES VIA E-MAIL AND FIRST CLASS U.S. MAIL TO:

Robert R. Riley, Jr., Esq.
Jeremiah Mosley, Esq.
Riley & Jackson, P.C.
3530 Independence Drive
Birmingham, Alabama 35209
Telephone: (205) 879-5000
Facsimile: (205) 879-5901
E-mail: Jeremiah@rileyjacksonlaw.com; Rob@rileyjacksonlaw.com

William A. Gunter IV, Esq.
Jennifer Weber, Esq.
Department of Conservation and Natural Resources
64 North Union Street, Suite 474
Montgomery, Alabama 36130-1450
Telephone: (334) 242-3486
Facsimile: (334) 242-1883
E-mail: William.Gunter@dcnr.alabama.gov; Jennifer.Weber@dcnr.alabama.gov