



a warning.

On November 24, 2015, Adams was given a warning, which she refused to sign. After being given opportunities to acknowledge receipt of the warning by her supervisor, Adams responded: "I have not been late and I am not signing this. Y'all can fire me if you want to." Later that day, Adams met with Keisha Crenshaw, her supervisor; Deputy Director of Communications, Demetree Collins; and the head of her unit, Director of Communications, Captain James Patterson. Adams continued to refuse to sign the warning document to acknowledge her receipt of it. Adams's conduct violated ALEA Personnel Policies and Procedures, Chapter 10, Section II, General Work Rules(1)(b)2, Insubordination; and (1)(b)12, Disruptive Conduct of any sort. Adams was placed on mandatory leave by ALEA on December 9, 2015.

Adams waived her right to a pre-disciplinary hearing. The appointing authority terminated Adams's employment with ALEA on December 21, 2015.

## **JURISDICTION**

Adams was on mandatory leave on December 21, 2015. ALEA Personnel Director Stan Goolsby ("Goolsby") called and sent an E-mail to Adams notifying her that her employment with ALEA had been terminated. Goolsby attached Secretary of ALEA Spencer Collier's December 21, 2015 letter terminating Adams's employment to the E-mail.<sup>1</sup> Adams, by Rule, had ten business days to

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<sup>1</sup> ALEA Exhibit 6.

file her appeal with the State Personnel Board (“Board”).

On December 24, 2015, Adams ( [REDACTED] ) sent an E-mail addressed to “Personnel” with a subject line “General Questions” which read: “Can you advise me what procedures I will need to take to withdraw from state service with the Alabama state government. I have been informed by my agency that I have been terminated from state service. I work for the Alabama law enforcement agency. I am classified as a security systems operator.” The E-mail was sent by Sylvia Adams from IP address 74.227.128.50. No mention was made by Adams of any desire to appeal her dismissal from employment with ALEA. “Personnel,” by E-mail dated December 31, 2015, advised Adams to refer to her dismissal letter and to contact Stan Goolsby of ALEA with any specific questions.

Adams E-mailed a request to appeal her termination from employment on Sunday, January 10, 2016. The undersigned was asked to determine the question of jurisdiction to hear the appeal since it was apparently not within the ten days from Adams’s December 21, 2015 dismissal from employment with ALEA.

ALA. CODE § 36-26-27(a) (1975, as amended), provides in pertinent part, “... the dismissed employee may, within 10 days, after notice, appeal from the action of the appointing authority by filing with the board and the appointing authority a written answer to the charges.” Administrative Rule 670-X-18-.02(2) provides in pertinent part: “The dismissed employee may, within 10 days after receipt of written

notice, appeal from the action of the appointing authority by filing with the Board and the appointing authority a written answer to the charges. The Board shall, if demand is made in writing by the dismissed employee within 10 days after receipt of written notice of discharge, order a public hearing....”

On December 21, 2015, ALEA notified Adams of her discharge from employment. Adams’s E-mail to “Personnel” on December 24, 2015 acknowledged she had been discharged from her employment with ALEA. Adams claims she did not receive the appointing authority’s letter dated December 21, 2015 until January 4, 2016. Even considering that the period December 21, 2015 to January 10, 2016 contained three holidays, Adams’s notice of appeal was 20 days after her employment with ALEA was terminated. Adams did not file an answer to the charges with the Board or with the appointing authority. The undersigned recommends that the Board find that Adams did not perfect her appeal in a timely fashion, did not comply with the requirement that she answer the charges, and did not file such answer with the Board and the appointing authority.

Should the Board determine that Adams is entitled to a hearing and has met the jurisdictional prerequisites, the undersigned, having carried the jurisdictional question to the day of the hearing, and all the witnesses being present, conducted a hearing establishing no precedent beyond the unique facts of this case.

The testimony, observation of the witnesses’ demeanor and the documentary

evidence lead to a recommendation that the termination of Adams's employment with ALEA be upheld.

On February 11, 2016, 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. F. Tim McCollum, Esq., appeared as counsel for ALEA. Sylvia Adams was *pro se*.

At the beginning of the hearing, ALEA introduced, without objection, Exhibits 1 – 7 and Adams introduced, with objections, Exhibits 1 – 3. The undersigned informed the parties, without objection, that Adams's personnel file at the Alabama State Personnel Department would be included in the record and reviewed as evidence in this proceeding.

ALEA called as witnesses:

- (1) Demetree Juanita Collins, ALEA Deputy Director of Communications;
- (2) Keisha Crenshaw, ALEA Communications Manager; and
- (3) Captain James Drake Patterson, ALEA Director of Communications.

Adams testified on her own behalf.

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

Adams was first employed in the State of Alabama Department of Finance in July 1993, as a Security Systems Operator. She served in several divisions of the Department of Finance including with the Capitol Police. Adams's duties involved

security of the State Capitol complex, primarily its security cameras and card key access. Adams experienced many changes with the security system as it was upgraded and changed. Adams's duties included monitoring and maintaining the closed circuit cameras (CCTV) and Card Access System. Adams served as a point of contact with vendors and technicians. Adams operated and maintained photographic and video cameras, received and reviewed requests for card access, and communicated with security coordinators. Adams was transferred from Capitol Police Protective Services to Capitol Police Administrative Division within the Public Safety Department in April 2011. Adams's job classification remained Security Systems Operator. When the law enforcement agencies were combined into ALEA on January 1, 2015, pursuant to Act 2013-67, Adams became a Security Systems Operator with the Communications Division. Adams complained that her duties were given to others and she was moved out of a private office into a dispatch area with several others where she was to monitor security cameras. Adams did not adjust well to the changes brought by the consolidation of law enforcement agencies into ALEA.

Adams may have untimely appealed her dismissal to the Board, pursuant to ALA. CODE § 36-26-27(a) (1975). The jurisdictional question was carried forward to the hearing. At the pre-hearing conference held on January 19, 2016, the parties

selected February 4, 2016, for the hearing. The hearing was rescheduled to February 11, 2016, by agreement of the parties.

In its Statement of Facts, ALEA alleged, in pertinent part:

...

1. Sylvia Adams (hereinafter "Adams") was counseled on April 7, 2015 during her mid-appraisal counseling session regarding tardiness. Then again an Employee Counseling form was given to her regarding tardiness on July 23, 2015.

2. On November 14, 2015, Adams' supervisor attempted to counsel her regarding tardiness, and presented Adams with a form indicating that she was being warned about her tardiness.

3. Adams became belligerent and refused to sign the form.

4. It was explained that the form would not signify agreement, only receipt, and Adams continued to refuse to sign, even after being ordered to do so.

5. Later that same day a meeting was held with the Division Commander, Captain James Patterson, who ascertained that Adams was refusing to sign the form.

6. On December 7, 2015, a letter was sent to Adams regarding a recommendation for termination from Kevin Wright, Information Bureau Director, outlining his recommendation for termination. In that letter, Director Wright supported his decision to recommend termination based on her behavior regarding this most recent counseling for tardiness and found Adams in violation of ALEA Policies and Procedures Chapter 10 Section II (1)(b)(2) (insubordination) and (1)(b)(12) disruptive conduct of any sort. The

language in these rules are [*sic*] identical to 670-X-19-.01(b)(2) and 670-X-19-.01(a)(7) respectively.

7. This recommendation letter also informed Adams that her previous work record was considered in the recommendation for termination. Specifically, Adams was informed of the following conduct:

- a. 11/14/2012 Written reprimand - insubordination;
- b. 5/20/2013 Suspension - insubordination;
- c. 10/17/2013 Suspension - conduct unbecoming/absent without authorization;
- d. 7/23/2015 Counseling - tardiness;
- e. 11/24/2015 Warning-tardiness/Leaving job station without permission.

8. The 11/24/2015 Warning was the warning she was to sign for, which resulted in the recommendation for termination for her refusal and insubordinate and disruptive behavior.

9. On December 10, 2015 Keisha Crenshaw drafted a memo that outlined the insubordinate behavior.

10. In that memorandum Keisha Crenshaw delineated the departmental rules violation [*sic*] and found that Adams had violated Chapter 10 of the ALEA Policies and Procedures, and more specifically Section II(c) and (f). The language in Sections II(c) and (f) are [*sic*] identical to General Work Rules 670-X-19-.01(1)(a)(3) and (6), regarding tardiness.

11. On December 11, 2015 Captain Patterson wrote a memorandum to the ALEA Personnel Unit to request termination of Adams because of her insubordinate behavior.

12. On December 21, 2015 after Adams' opportunity for a pre-termination hearing, and her failure to exercise that option, Secretary Collier reviewed the facts as outlined above and agreed with the recommendation for termination and signed a letter that same day making Adams' termination effective at the close of business that day as well.

...

## II. FACTUAL BACKGROUND

Having reviewed the documentary evidence, having heard the witnesses' testimony, having observed the witnesses' demeanor and assessed their credibility, the undersigned finds the greater weight of the evidence supports the following findings of fact.<sup>2</sup>

### A. Employee's Personnel File<sup>3</sup>

Adams's performance appraisals while in State service reflect:

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
11/1/2015	26	Meets Standards
11/1/2014	28	Exceeds Standards
11/1/2013	1	Does Not Meet Standards
11/1/2012	24	Meets Standards
11/1/2011	35.7	Exceeds Standards
11/1/2010	34.3	Exceeds Standards
11/1/2009	34.3	Exceeds Standards
11/1/2008	32.9	Exceeds Standards
11/1/2007	30	Exceeds Standards

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<sup>2</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>3</sup> 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).

11/1/2006	27.1	Exceeds Standards
11/1/2005	31.1	Exceeds Standards
11/1/2004	24.3	Meets Standards
11/1/2003	35.7	Exceeds Standards
11/1/2002	31.4	Exceeds Standards
11/1/2001	32.5	Exceeds Standards
11/1/2000	30	Exceeds Standards
11/1/1999	30	Exceeds Standards
11/1/1998	30	Exceeds Standards
11/1/1997	30	Exceeds Standards
11/1/1996	30	Exceeds Standards
11/1/1995	26	Exceeds Standards
11/1/1994	30	Exceeds Standards
10/19/1993	28	Exceeds Standards

**B. State Personnel Board General Work Rules and ALEA Policies/Procedures Forming the Basis of the Charges**

Board Rules 670-X-19-.01(1)(a)(2), (8) and (1)(b)(2), (9), (11), (12) and (13)

provide, in pertinent parts:

**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:

....

2. Tardiness – not on the job ready to work at the beginning of the shift.

...

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 ...

...

9. Leaving before the end of the normal scheduled work hours/walking off the job.

...

11. Leaving job station without permission.

12. Disruptive conduct of any sort.

13. Conduct unbecoming a state employee.

...

## **ALEA PERSONNEL POLICIES AND PROCEDURES**

...

## **II. GENERAL WORK RULES**

(1) In addition to any special rules implemented by the various Division Directors for the guidance of their employees, the following standard general work rules shall apply to all Agency employees. The lists are not all-inclusive and there is no implication that discipline may not be imposed for other sufficient reasons. These rules are consistent with those of the Rules of the State Personnel Board, as amended, Chapter 670-X-19-.01.

(a) Violations that normally result in disciplinary actions of increasing severity:

...

2. **Tardiness** – not on the job ready to work at the beginning of the shift.

...

- (b) More serious violations that may result in suspension or termination on the first offense:

...

2. **Insubordination** – Failure to follow an order; disobedience; failure to submit to authority as shown by demeanor or words ...

**Note:** The State Personnel Board considers “disrespectful and disruptive conduct” to be insubordination. The Board has also consistently found that failure to obey a direct order is insubordination. ...

...

### III. FACTS FORMING BASIS FOR DISMISSAL

The facts are largely undisputed. Adams refused to sign the warning form presented by her supervisor during a counseling session even after being advised that her signature only acknowledged receipt of the document, not agreement with the charges related to her alleged tardiness. This activity was a continuation of Adams’s insubordinate behavior over a period of more than two years. In 2013, Adams was recommended for termination for conduct unbecoming an employee, but was allowed by the appointing authority to remain employed and only sustained a two-day suspension. Colonel Hugh McCall, in his October 2013 letter, admonished Adams for being absent from her assigned duties, conduct for which

Adams had previously been counseled. McCall described Adams's conduct during an interaction with her supervisor as "sullen, insolent and disrespectful."

Adams has not adjusted to the consolidation of law enforcement functions under ALEA. Adams resents that some of her prior duties have been assumed by others and that she no longer has a private office, controls no budget, and has no contact with vendors. She does not enjoy her current assigned duties. Adams, even when she is in the same room, communicates with her supervisor by E-mail, which sometimes delays important communications. Adams insists she has not been late as often as reported. Adams is not happy that PCO III Cathy Dawson now has a private office and has been assigned some of the responsibilities that Adams once had. This unhappiness has colored Adams's attitude in the workplace leading to her being disciplined. Adams says her personnel file does not reflect all her awards and letters of recommendation/commendation. Adams's Exhibits 1 – 3 contain some of the materials Adams believes should have been in her personnel file. Adams contends that only matters subsequent to January 1, 2015 should be considered by the undersigned since ALEA began as an agency at that time.

Adams does not deny that she refused to sign the warning form, which gave rise to this incidence of insubordination. Adams's refusal to acclimate to the conditions brought about by the ALEA consolidation and the realignment of her duties has caused a workplace disruption that left ALEA with no choice but

termination of Adams's employment.

#### IV. ISSUE

Did ALEA, as the appointing authority, have sufficient evidence to sustain Adams's dismissal based upon violations of ALEA and State Personnel Board Rules?

#### V. 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).<sup>4</sup>

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<sup>4</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 § 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 (5<sup>th</sup> Cir. 1976).<sup>5</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.

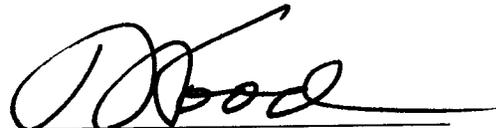
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<sup>5</sup> In *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981), the Eleventh Circuit adopted as binding precedent all Fifth Circuit decisions handed down prior to the close of business on September 30, 1981.

1986).

The undersigned has carefully considered all the evidence in this case and finds no basis for a lesser disciplinary action than dismissal. ALEA has counseled, warned, suspended and encouraged Adams in an attempt to have her function as a productive worker in the consolidated agency. Adams so greatly resents the changes in her work environment that she cannot conform her conduct to the applicable rules and cannot interact appropriately with her supervisors. Accordingly, the undersigned finds the preponderance of the evidence warrants dismissal in this case. Therefore, the undersigned recommends to the Board that the dismissal of Sylvia Adams by ALEA be UPHELD.

Done, this the 7<sup>th</sup> day of March, 2016.

  
JAMES JERRY WOOD  
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