



The following exhibits were admitted into evidence: DOT Exhibits 1 – 20 and Maddox’s personnel file maintained at the State Personnel Department. Maddox offered one exhibit during the hearing which was admitted, without objection, as Employee Exhibit 1.

The following DOT employees testified on behalf of DOT during the hearing:

- (1) Rhonda Brooks, DOT Equal Employment Officer;
- (2) Ken Couch, P.E., DOT Maplesville District Manager;
- (3) Steve Dukes, DOT Personnel Director;
- (4) Jonathan Jones, Transportation Worker;
- (5) Bruce Coleman, Transportation Worker;
- (6) Dorothy Simmons, Transportation Worker Senior; and,
- (7) Linda Laister, Transportation Worker Senior.

Maddox testified on her own behalf.

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

On January 8, 2016, a pre-dismissal conference was held. Based upon Maddox’s responses to the charges against her and the evidence introduced during the conference, DOT dismissed Maddox from service effective January 11, 2016. DOT Exhibit 3 (dismissal letter, dated January 11, 2016, and signed by John R. Cooper, Transportation Director) states in part:

A pre-dismissal conference was scheduled for you on Friday, January 8, 2016. Present at the conference were Mr. David Hand and you.

During this time, you were provided an opportunity to present any relevant information regarding your proposed dismissal, and you thus provided an oral response to the reasons for your dismissal. After considering your response, I have concluded that your dismissal is warranted.

Consequently, for the reasons stated below, you are hereby notified of your dismissal from the Alabama Department of Transportation effective at the close of business Monday, January 11, 2016.

After receiving a harassment and discrimination complaint, an Equal Employment Officer was dispatched to investigate. During interviews held on December 17, 2015, witnesses were interviewed and statements collected from coworkers that indicate you used racial slurs and racially divisive phrases, on a regular basis, regarding African-American employees, as well as the general public. Some of those comments overheard by witnesses include:

- Referring to a coworker as “black and lazy”
- Referring to a coworker as not working at a fast pace because they are “black”
- The use of the word “nigger” on multiple occasions
- The use of the phrase “black people look like monkeys”
- The phrase “look at those two niggers” referring to two visitors that entered the rest area lobby

During the same set of interviews, it came to light about an incident that occurred two weeks prior to December 17, 2015. According to witness statements, an interracial couple came into the rest area lobby, while you were behind the counter. Once the couple entered the building, you were overheard stating, “That’s nasty. This is an abomination. They should be with their own color.” The female visitor then asked you to repeat what you said, to which you were witnessed stating something to the effect of “you heard me.” Subsequently, the female visitor tried to jump over the counter after you, but was stopped by the male visitor.

In addition to all of this, during your interview with the Equal Employment Officer, you began to tell her how you felt her supervisor

treated other employees and you stated that your supervisor treated another subordinate like the “house nigger.”

Your actions constitute violations of the following rules and policies:

- 670-X-19-.01(1)(b)(5) Use of abusive or threatening language
- 670-X-19-.01(1)(b)(13) Conduct unbecoming a state employee
- 670-X-19-.01(1)(a)(4) Failure to perform job properly
- 670-X-19-.01(1)(b)(12) Disruptive conduct of any sort
- 670-X-19-.01(1)(a)(8) Violation of specific department rules
  - b. ALDOT’s Harassment and Discrimination Policy (Policy 12)

...

Maddox timely appealed her dismissal to the State Personnel Board and requested a hearing, pursuant to ALA. CODE § 36-26-27(a) (1975). In addition to the dismissal letter, the administrative appeal record also contains DOT’s Plain Statement of Facts, in which DOT essentially reiterates the same charges/allegations contained in the dismissal letter.

## **II. FINDINGS OF FACT**

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 sufficient evidence supports the following findings of fact.<sup>1</sup>

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<sup>1</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.

### **A. Employee's Personnel File and Career History<sup>2</sup>**

Maddox began her State employment with DOT in October 2005 as a Highway Maintenance Technician I. Maddox's job classification was renamed Transportation Worker in 2008. Maddox remained in that classification until her dismissal, effective close of business January 11, 2016.

Maddox's annual performance appraisals while at DOT reflect:

<u>Date Ending</u>	<u>Total Score</u>	<u>Category</u>
02/15	27.8	Exceeds Standards
02/14	27.8	Exceeds Standards
02/13	28.9	Exceeds Standards
02/12	31.1	Exceeds Standards
02/11	28.9	Exceeds Standards
02/10	30.0	Exceeds Standards
02/09	27.2	Exceeds Standards
02/08	27.1	Exceeds Standards
02/07	10.1	Partially Meets Standards
04/06	27.1	Exceeds Standards <sup>3</sup>

Maddox's disciplinary history at DOT includes:

- 2-day Suspension (8/19/2006 – 8/20/2006) for failure to perform job properly and sleeping.

### **B. State Personnel Board General Work Rules and DOT Work Rules Forming the Basis of the Charges**

Rule 670-X-19-.01 provides, in part:

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<sup>2</sup> See generally State Personnel Board Rule 670-X-18-.02(5) (employee's work record, including performance and disciplinary history considered in dismissing employee).

<sup>3</sup> Final Probationary Evaluation.

(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:

...

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.

...

5. Use of abusive or threatening language.

...

12. Disruptive conduct of any sort.

...

13. Conduct unbecoming a state employee.

...

DOT's Harassment and Discrimination Policy states, in pertinent part:

...

## II. POLICY

A. Prohibits any form of harassment whether based on race, age, gender, religion, national origin, disability or any other statutorily-protected right.

...

### III. DEFINITIONS

A. Harassment: Any verbal or physical conduct that denigrates or shows hostility or aversion toward an individual because of that person's race, skin color, religion, gender, national origin, age, or disability. Harassment does one or more of the following:

- has the purpose or effect of creating an intimidating, hostile, or offensive work environment
- has the purpose or effect of unreasonably interfering with an individual's work performance
- otherwise adversely affects an individual's employment opportunities

...

C. Racial Harassment: Any offensive or demeaning treatment of an individual, where such treatment is based on prejudiced stereotypes of a group to which that individual may belong. It includes, but is not limited to, objectionable epithets, threatened or actual physical harm or abuse, or other intimidating or insulting conduct directed against the individual because of his/her race.

...

#### **C. Facts Leading to Dismissal**

On or about November 12, 2015, Transportation Worker Jonathan Jones ("Jones"), a white male, submitted a Harassment and Discrimination Report form to DOT's Central Office. In the complaint, Jones reported harassing communications from another Transportation Worker, Maddox. Jones and Maddox worked together at the northbound rest area in Clanton, Alabama. Jones complained that Maddox

directed hostile comments toward him, other rest area workers, and the general public who stop at the rest area. Jones also reported that Maddox uttered racially divisive comments within earshot of the general public and coworkers.<sup>4</sup>

The complaint was assigned to DOT's Equal Employment Officer, Rhonda Brooks ("Brooks") for investigation. Brooks interviewed Jones and Maddox as well as other northbound rest area employees, including: Bruce Coleman ("Coleman"), Linda Laister ("Laister"), and Dorothy Simmons ("Simmons").

Brooks interviewed Jones on or about December 17, 2015. Jones told Brooks about a discussion he had with Laister in the rest area breakroom about career advancement. Jones contended that during the conversation, Maddox interjected herself into the conversation and berated Jones, stating he was not smart enough to take the Engineering Assistant's examination. Laister confirmed Maddox's actions during her testimony. Jones also reported he heard Maddox say, "Blacks look like monkeys," within earshot of the general public.<sup>5</sup> Jones told Brooks that Maddox spoke about African-Americans in a very negative way. According to his statement, Jones heard Maddox complain that coworker, Ashley, worked slowly and remarked, "You know what it is? She is black and Dorothy is black."<sup>6</sup> Jones also

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<sup>4</sup> See DOT Exhibit 12.

<sup>5</sup> See DOT Exhibit 14.

<sup>6</sup> See DOT Exhibit 14.

heard Maddox describe a third shift employee, David, as “black and lazy.” Jones heard about an incident that occurred in the rest area between Maddox and an interracial couple, but he did not have firsthand knowledge of what actually happened.

Brooks also interviewed Coleman, a black male. Coleman witnessed an incident between Maddox and an interracial couple that occurred between the time Jones filed his complaint and Brooks conducted her investigation. According to Coleman, an interracial couple entered the rest area and Maddox remarked, “That’s nasty. They should be with their own color.”<sup>7</sup> At that point, Coleman testified the woman attempted to get at Maddox. The woman’s boyfriend stopped her and the woman then went into the bathroom crying. When the woman came out of the bathroom she was still very upset; however, her boyfriend told her they did not want trouble and they left. Coleman also testified on a different occasion, he heard Maddox remark, “Look at those two n\*\*\*\*\*.” Coleman testified that Maddox did not call him a racially divisive term; however, he testified she stopped short on one occasion when Laister was present. Laister confirmed the interaction during her testimony.

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<sup>7</sup> See DOT Exhibit 15.

Brooks interviewed Simmons, a black female, who is Maddox's former supervisor. Simmons told Brooks that Maddox had good days and bad days. On good days, Maddox was able to get along with everyone; however, on bad days, Maddox could not get along with anyone. Simmons did not hear Maddox call people racially offensive terms. Simmons told Brooks she thought Maddox had an issue with black people in general. Simmons recalled Maddox telling her that if Maddox's grandfather was alive and she was dating a black guy, he would hang both of them.<sup>8</sup>

Brooks also interviewed Maddox's current supervisor, Laister, a black female. Laister confirmed Maddox called Jones stupid and said he was not going anywhere. Laister told Maddox to stop, but Maddox continued. Laister also heard Maddox make rude remarks to the public. Laister testified she heard Maddox use the term "n\*\*\*\*\*" on August 10, 2015. Laister testified she documented the incident and counseled Maddox not to use the term again.<sup>9</sup>

Following her investigation, Brooks completed an Investigation Report and submitted it to a committee in DOT's Central Office. Brooks's investigation summarized her interviews and concluded Maddox used harassing and discriminatory language toward coworkers and the general public. In fact, during

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<sup>8</sup> See DOT Exhibit 16.

<sup>9</sup> See DOT Exhibit 10.

Brooks's interview with Maddox, after Maddox denied using racially offensive language, Maddox told Brooks that Laister treated Coleman like "the house n\*\*\*\*\*." Brooks asked her to elaborate on what she meant. Maddox explained Laister made Coleman do all the work. Brooks included this in her initial summary of Maddox's interview; however, Maddox refused to sign it because she denied using the work "n\*\*\*\*\*." Brooks removed that portion from the interview summary; however, Brooks called DOT's Maplesville District Manager Ken Couch ("Couch") and informed him of what Maddox said.

Couch testified he met with Maddox and Laister on or about November 23, 2015. Couch gave Maddox a warning based upon the August 10, 2015 incident. Couch also referred Maddox to the Employee Assistance Program because he detected some personal issues that created family stress. Following the release of Brooks's investigative report, DOT's Central Office made the decision to dismiss Maddox from employment. Couch testified he agreed with the decision because the comments she made at work were unacceptable and cannot be condoned by DOT. Couch also detailed security measures he took in response to alleged threats by Maddox. Several employees heard Maddox say if anything happened at the rest area she would call her boys (*i.e.*, sons) up to take care of it. DOT's Central Office instructed Couch to pay for law enforcement to guard the northbound rest area and give the employees peace of mind.

Maddox testified on her own behalf. Maddox testified she never used the “N word.” Maddox also testified she loves black people, she just would not date one. Maddox testified that was based upon her beliefs, but she was not prejudicial. Maddox denied an incident occurred at the rest area between her and an interracial couple. However, during her cross-examination of Coleman, Maddox asked him whether she moved her chair back as the woman approached the counter. This question essentially supported Coleman’s testimony that Maddox said something to the couple that caused the woman to approach her. Maddox was simply not credible. Maddox voluntarily attended four counseling sessions with Renee Smith and Associates, Inc.<sup>10</sup> Maddox’s counselor submitted a letter dated January 6, 2016, detailing the work done through counseling sessions.

### **III. ISSUE**

Did DOT produce sufficient evidence to warrant dismissal of Maddox?

### **IV. DISCUSSION**

#### **Standard of Review**

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*

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<sup>10</sup> See Employee Exhibit 1.

*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>11</sup>

In determining whether an employee's dismissal is warranted, the departmental agency bears the burden of proving the charges warrant dismissal 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. 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

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<sup>11</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).

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>12</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).

ALA. CODE (1975) states in pertinent part: “An appointing authority may dismiss a classified employee whenever he considers the good of the service will be served thereby, for reasons which shall be stated in writing, served on the affected employee and a copy furnished to the director...” (§ 36-26-27(a) *see also* State Personnel Board Rule 670-X-18-.02(1)). Case law in Alabama defines “for the good of the service” as:

Removal for the good of the service means that the employee must be discharged for a cause. The cause for which the employee is discharged must “interfere with the effective discharge of the employee’s duties and/or

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<sup>12</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.

the effective discharge of the duties of the department for which he works, so as to make his continued employment harmful to the public interest.” Citing *Maddox v. Clark*, 422 So. 2d 791 (Ala. Civ. App. 1982). *Fulton v. Department of Public Health*, 494 So. 2d 73 (Ala. Civ. App. 1986)

### **The Facts Warrant Dismissal**

In the present case, DOT provided sufficient evidence to support Maddox’s dismissal. Substantial evidence showed that Maddox continually used harassing and discriminatory language on the job. Maddox used abusive language toward Jones, Coleman, and the general public. Her words were hostile and racially derogatory. Use of abusive language violates State Personnel Board Rule 670-X-19-.01(1)(b)(5). Furthermore, Maddox’s derogatory and insensitive remarks to the interracial couple who visited the northbound rest area were disruptive conduct and violated State Personnel Board Rule 670-X-19-.01(1)(b)(12) – disruptive conduct of any sort. Violations of these two General Work Rules are considered more serious violations that may result in suspension or discharge on the first offense. Maddox’s conduct also violated State Personnel Board Rule 670-X-19-.01(1)(b)(13) – Conduct unbecoming a State employee, and DOT’s Harassment and Discrimination Policy because it denigrated and showed hostility. Maddox’s position at DOT placed her in close proximity with the general public. State employees who work around the general public are the face of the State. Maddox’s language and attitude toward her coworkers and the general public are untenable. Permitting Maddox to remain

employed with DOT would interfere with DOT's discharge of its duties and is harmful to the public interest.

The undersigned has carefully considered mitigation in this case.<sup>13</sup> The undersigned finds no grounds for mitigation exist justifying a lesser disciplinary action than dismissal. The undersigned finds the totality of the evidence warrants dismissal in this cause; therefore, the undersigned recommends to the State Personnel Board that the dismissal be UPHOLD.<sup>14</sup>

Done, this the 24<sup>th</sup> day of March, 2016.



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Randy C. Sallé  
Administrative Law Judge  
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Personnel Department  
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<sup>13</sup> While it is commendable that Maddox participated in counseling to address her personal issues and the stress in her life, DOT has authority to discipline Maddox for prior work rule infractions. *See* DOT Exhibit 8.

<sup>14</sup> In recommending to uphold the dismissal, the undersigned has considered Maddox's work record. *See* A. Employee's Personnel File and Career History, *supra*. Having found sufficient evidence to uphold the dismissal, any/all remaining issues are moot.

COPIES TO:

**VIA CERTIFIED AND FIRST CLASS U.S. MAIL**

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