

**BEFORE THE PERSONNEL BOARD OF THE STATE OF ALABAMA
IN THE MATTER OF THE APPEAL OF
ROBERT WILKINS**

ORDER

July 20, 2016

This matter came before the Board upon the dismissal of the Employee from his employment with the Alabama Department of Corrections (“DOC”). The Employee was dismissed from his employment on March 8, 2016, based on charges contained in a letter to the Employee dated March 7, 2016. This matter was assigned to Administrative Law Judge James Jerry Wood and a hearing was held on June 14, 2016. The Administrative Law Judge’s Recommended Order is now before the Board for consideration.

DOC charges that the Employee violated State Personnel Board Rules 670-X-19-.01(1)(b)(7) – (Possession and/or use of alcohol, narcotics, or other illegal substance on/in state property) and 670-X-19-.01-(1)(b)(13) – (Conduct unbecoming a state employee). DOC further charged the Employee violated DOC Administrative Regulation 208, Employee Standards of Conduct and Discipline: V(A)(1) – (Report to work on time and in a condition to perform their job properly); V(A)(2) – (Render full, efficient, and industrious service); V(A)(7) – (Observe all laws, rules and regulations); V(C)(1) – (Report for duty or exercise supervision or control over inmates while under the influence of an intoxicant and/or illegal drug; and); V(C)(3) – (While on duty, use or be under

the influence of intoxicants or illegal drugs); and Annex H, Number 33 – (Conduct that is disgraceful, on or off the job that does adversely affect an employee's effectiveness on the job).

A review of the Employee's recent work history shows: one (1) Suspension in April of 2015 for failure to report/unexcused absence; one (1) Suspension in July of 2015 for conduct that is disgraceful; one (1) Warning in December of 2015 for late for work; and one (1) Pending Written Reprimand for failure to follow instructions;.

The Employee was employed with DOC as a Correctional Officer at Easterling Correctional Facility in Clio, Alabama. The Employee was employed with DOC for just over nineteen (19) years. His performance appraisals up until 2015 exceeded standards, but his performance appraisals during 2015 were not up to standard. In March of 2015, the Employee was suspended for conduct that is disgraceful and admitted to drinking vodka and taking Z-Quil prior to coming to work.

On December 1, 2015, the Employee was noticed by a coworker staggering on the sidewalk and stumbling up the stairs to the segregation unit. The coworker approached the Employee to question him, and at that time smelled alcohol on his breath. The Employee denied drinking, but admitted to taking Z-Quil earlier that day to sleep. A breathalyzer test was performed on the Employee, which tested positive for alcohol at a BAC level of .27. He also submitted a urine sample which tested positive for alcohol. Following the

positive tests, it was determined that the Employee was in no condition to drive home. Another coworker had to be reassigned from his post to take the Employee home. After the Employee was questioned by his supervisor, the Employee submitted a written statement acknowledging that he had an alcohol problem, explaining that he signed up for the Employee Assistance Program ("EAP"), and admitting that he had taken some Z-Quil and consumed three (3) shots of vodka before coming to work on December 1, 2015.

The Employee admitted his actions that occurred on December 1, 2015. He also showed documentation that he was actively taking part in the EAP, with the first appointment made on December 3, 2015. However, while the EAP provides assistance to persons who may be suffering from substance abuse and other issues, nothing under the law or the EAP prohibits an employer from enforcing its own established rules, nor does it shield an employee from disciplinary action if he/she reports to work intoxicated. After considering the Employee's violations, the supervisor made the recommendation that the Employee be dismissed from DOC.

The Administrative Law Judge found the totality of the evidence does warrant dismissal in this cause and recommended that the Employee's dismissal be upheld. The Board hereby adopts by reference the findings of fact and conclusions of law as found by the Administrative Law Judge as a part of this Order as if fully set forth herein.

The Board has carefully considered the Administrative Law Judge's Recommended Order and is of the opinion that the decision of the appointing authority to dismiss the Employee is supported by the evidence and that the termination is warranted.

It is therefore the Order of this Board that the decision of the appointing authority to dismiss the Employee is hereby affirmed.



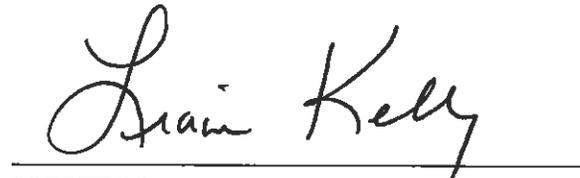
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