BEFORE THE
STATE EMPLOEES' APPEALS COMMISSION

IN THE MATTER OF:

PETER DAZA Petitioner,	))	ISSUED
	) SEAC No. 01-16-007	NOV 13 2018
vs.	))	
INDIANA DEPARTMENT OF TRANSPORTATION Respondent.	)))	STATE EMPLOYEES' APPEALS COMMISSION

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND NON-FINAL ORDER

I. Introduction and Summary

This administrative review is conducted pursuant to Ind. Code § 4-15-2.2 *et seq.* (the "Civil Service System") and Ind. Code § 4-21.5-3 *et seq.* ("AOPA"). The operative pleading is Petitioner Peter Daza's ("Petitioner") Complaint filed January 21, 2016, with the State Employees' Appeals Commission ("SEAC") against Respondent Indiana Department of Transportation ("Respondent"). Petitioner was an unclassified (at-will) employee working as a Geologist 2 for Respondent at the time of his termination. The issue before SEAC is whether Petitioner was terminated in contravention of a law, rule or public policy.[1]

An evidentiary hearing in this matter was held on August 21, 22, and 23, 2018, before the undersigned Chief Administrative Law Judge. Petitioner Daza appeared by counsel, Mr. Richard Darst. Respondent appeared by counsel, Ms. Linda Jelks and Mr. James Boyer. Following the hearing, the ALJ gave each party an opportunity to file proposed findings of fact and conclusions of law, which Petitioner and Respondent did on October 15, 2018. Having reviewed the arguments, witness testimony, admitted evidence, applicable law, and proposals, and being duly advised, the ALJ issues the following Findings of Fact, Conclusions of Law, and Non-Final Order. Petitioner was unable to prove by a preponderance of the credible evidence that Petitioner's termination breached public policy. Judgment for Respondent.

---

[1] *See,* Ind. Code § 4-15-2.2-24(b) (stating that an unclassified employee may be terminated for any reason that does not contravene public policy).

II. Legal Standard

Under the Civil Service System, a state agency may dismiss, demote, discipline, or transfer an employee in the unclassified service "for any reason that does not contravene public policy." Ind. Code § 4-15-2.2-24(b). "An employee in the unclassified service is an employee at will and serves at the pleasure of the employee's appointing authority." I.C. § 4-15-2.2-24(a). "Indiana generally follows the employment at-will doctrine, which permits both the employer and the employee to terminate the employment at any time for a good reason, bad reason, or no reason at all." *Meyers v. Meyers Construction,* 861 N.E.2d 704, 706 (Ind. 2007) (citations omitted).

Recognized exceptions to the at-will doctrine based on public policy have traditionally only been found where an employee was terminated or disciplined for exercising a statutory right or refusing illegal conduct that would lead to personal liability. Put another way, the courts ask whether the termination or discipline itself was illegal in light of applicable statutory law;[2] a merely foolish or arbitrary choice by an employer to terminate or discipline does not invoke an exception. *Baker v. Tremco Inc.*, 917 N.E. 2d 650, 653-655 (Ind. 2009); *Meyers*, 861 N.E.2d at 706-707 (Ind. 2007); *Orr v. Westminster Village North, Inc.*, 689 N.E.2d 712 (Ind. 1997); *Frampton v. Cent. Indiana Gas Co.*, 297 N.E.2d 425 (Ind. 1973); and *Tony v. Elkhart County*, 851 N.E.2d 1032 (Ind. Ct. App. 2006).

---

[2] Non-comprehensive examples include illegal discrimination on the basis of race, national origin, sex, age, disability, veteran status, religion, free speech, political affiliation; or retaliation for filing a discrimination complaint or exercising statutory rights such as workers' compensation rights.

III. Findings of Fact

1. Petitioner began his employment with Respondent in 1993, as a Geologist 4 in the Vincennes District Testing Department ("VD") (Pet'r Test.).

2. In 2006, Petitioner was reclassified to the position of Geologist 2 (Pet'r Test.).

3. Petitioner was a Geologist 2 for the remainder of his employment (Pet'r Test.).

4. Petitioner was in a supervisory role as a Geologist 2 (Pet'r Test.).

5. Petitioner supervised Terry Goff ("Goff") (Pet'r Test.).

6. On August 9, 2011, Goff complained to Valerie Cockrum ("Cockrum"), the Technical Services Director for the VD that he did not received a promotion for which he had interviewed (Pet'r Ex. 20).

7. On August 13, 2011, Petitioner emailed Cockrum and stated his belief that Goff did not receive the promotion because he was a Democrat (Pet'r Ex. 21).

8. On August 15, 2011, Goff emailed Rusty Fowler ("Fowler"), District Deputy Commissioner for the VD, and stated his belief that he was being discriminated against based on his political affiliation (Pet'r Ex. 21a).

9. In December 2011, Petitioner gave Goff an overall rating of "outstanding" on Goff's performance appraisal (Pet'r Ex. 29).

10. Troy Woodruff ("Woodruff"), Chief of Staff, emailed Fowler and Cockrum, questioning the "outstanding" rating given to Goff (Pet'r Ex. 22a).

11. Goff's final performance appraisal was thereafter changed to an overall rating of "exceeds expectations" (Pet'r Ex. 27).

12. On March 12, 2013, Petitioner received a Written Reprimand for exhibiting defiant and insubordinate behavior evidenced by his refusal to comply with a direct agency expectation when Fowler directed employees to keep their work cell phone on after normal business hours in the event questions arose during the I-69 construction project (Pet'r Ex. 31, Resp't Ex. D).

13. Petitioner did not believe that having his phone on at all times during the I-69 construction project was part of his job description (Pet'r Test.).

14. Employees were allowed to request authorization to flex their time if they were being asked to work after normal business hours (Pet'r Test).

15. Petitioner's 2013 performance appraisal indicated that "on at least two occasions" in 2013, Petitioner's supervisor discussed with him the need to remain professional and respectful when dealing with colleagues (Pet'r Ex. 36).

16. Petitioner's 2013 performance appraisal also stated that Petitioner needed to "improve upon his method of delivery and professionalism" (Pet'r Ex. 36).

17. On March 4, 2014, Nina Daniel ("Daniel"), VD Human Resource Manager, Fowler, Cockrum, and Brent Schmitt, VD Engineer, held a meeting to discuss the issues they had been having with Petitioner. (Resp't Ex. B).

18. On March 5, 2014, Daniel emailed Jeff Sullivan[3] regarding Petitioner. In part, Daniel discussed the consistent issues, specifically behavioral, that Respondent was experiencing with Petitioner (Resp't Ex. B).

19. Daniel discussed whether Petitioner was "salvageable", and if so, a meeting needed to be held with Petitioner to again discuss his behavior[4] (Resp't Ex. B).

20. On July 31, 2014, Goff emailed Woodruff complaining that Woodruff was responsible for Goff missing out on promotional opportunities because of Goff's political affiliation (Pet'r Ex. 46a).

21. On November 19 and 22, 2015, a letter written by Petitioner's mother to the editor of the Evansville Courier & Press criticizing then-Governor Mike Pence's handling of the Syrian Refugees was published online and in print (Pet'r. Exs. 58 and 59).

22. Petitioner told Cockrum that his mother wrote the letter and that then-Governor Mike Pence responded (Pet'r Test.).

23. Petitioner did not speak to any other employees regarding the letter (Pet'r Test.).

---

[3] Sullivan's title is not clear from the record.

[4] It is not clear from the record whether or not a meeting with Petitioner was held.

24. On December 3, 2015, Petitioner attended a Management Training event (Resp't Ex. J).

25. While at the event, Sheryl Proctor "Proctor", Senior Talent Development Specialist, informed Heather Devocelle, Proctor's supervisor, of Petitioner's behavior. The information was forwarded to Daniel and Fowler (Resp't Ex. J).

26. Proctor stated that Petitioner was observed frequently leaning "back in his chair with his arms crossed over his chest", failing to take notes or follow along with the handouts, and with his eyes often closed (Resp't Ex. J).

27. Participants at the training were asked to write a brief recognition note for a coworker that they would deliver to them the following day. Petitioner did not participate in writing a recognition note and when asked to discuss with a partner was overheard by Proctor saying "this is fucking gay" (Resp't Ex. J).

28. Petitioner informed Proctor that he did not need to write the recognition note because he often times verbally told his employees that they were doing a good job and felt that recognition notes were not taken seriously (Resp't Ex. J; Pet'r Test.).

29. Devocelle indicated that she did not want Petitioner to attend the second day of training "as is" and therefore Petitioner did not attend the second day of training (Resp't Ex. J; Pet'r Test.).

30. On December 7, 2015, Petitioner informed several of his employees that he had nominated them for a $1,000 spot bonus.[5] Petitioner told the employees that he was aware "some would argue [informing the employees of their nominations] is ill advised" and "if the nomination is denied, it fosters hard feelings and resentment" but Petitioner preferred to "look at it another way" and felt the nominees deserved to know that someone was recognizing their contributions (Resp't Ex. E).

31. On December 7, 2015, Cockrum asked Fowler if he approved of the recommendation of a suspension and the removal of Petitioner's supervisory duties in response to the aforementioned issues (Resp't Ex. R).

---

[5] Respondent's Bonus Program is designed to reward employees by recognizing exceptional performance and results. Awards are given to recognize outstanding performance "on-the-spot" following a nomination and subsequent approval by the nominator's supervisor (Resp't Ex. H; Indiana State Personnel Department Employee Handbook).

32. Fowler indicated that he felt a suspension and demotion would "send a message that the behavior is acceptable for an employee. Also, by letting him remain as an employee, not a supr [sic], it says that we are ok with non-supr [sic] having this attitude or behavior" (Resp't Ex. R).

33. Petitioner was terminated on December 10, 2015 (Resp't Ex. A).

34. In or around April 2016, Respondent attempted to hire Robert Dyer to replace Daza as district Geologist 2, but Dyer was not interested in the position (Daza Test.).

35. On October 11, 2017, Respondent posted an open position for a Geologist 2 in the VD online (Pet'r Ex. 106).

36. On December 18, 2017, Mr. Logan Mort-Jones was hired for the Geologist 2 position (Resp't Ex. 112).

IV. Conclusions of Law

1. SEAC is a creature of statute, charged with fairly and impartially administering Civil Service System appeals. Ind. Code § 4-15-2.2 *et seq.* SEAC's jurisdiction over such appeals is divided into classified (just cause claims) and unclassified (at-will claims). Ind. Code §§ 4-15-2.2-23, 24. Petitioner was an unclassified employee at all relevant times.

2. The general at-will employment law is well settled: An employee in the unclassified service is an employee at will and serves at the pleasure of the employee's appointing authority." Ind. Code § 4-15-2.2-24(a). "An employee in the unclassified service may be dismissed, demoted, disciplined, or transferred for any reason that does not contravene public policy." I.C. § 4-15-2.2.-24(b).

3. Recognized exceptions to the at-will doctrine based on public policy have traditionally only been found where an employee was terminated or disciplined for exercising a statutory right or refusing illegal conduct that would lead to personal criminal liability. Put another way, the courts ask whether the termination in question was illegal in light of applicable statutory law. A merely foolish or arbitrary choice by an employer to terminate or discipline does not invoke an exception. *See Baker v. Tremco Inc.*, 917 N.E.2d 650, 653-655 (Ind. 2009); *Meyers v. Meyers Construction*, 861 N.E.2d 704, 706-707 (Ind. 2007); *Orr v. Westminster Village North, Inc.*, 689 N.E.2d 712 (Ind. 1997); *Frampton v. Cent. Ind. Gas Co.*, 297 N.E.2d 425 (Ind. 1973); *Tony v. Elkhart County*, 851 N.E.2d 1032 (Ind. Ct. App. 2006).

4. "Indiana generally follows the employment at will doctrine, which permits both the employer and the employee to terminate the employment at any time for a 'good reason, bad reason, or no reason at all.'" *Meyers*, 861 N.E.2d at 706 (Ind. 2007) (quoting *Montgomery v. Bd. of Trustees of Purdue Univ.*, 849 N.E.2d 1120, 1128 (Ind. 2006); *Cantrell v. Morris*, 849 N.E.2d 488, 494 (Ind. 2006); *Sample v. Kinser Ins. Agency*, 700 N.E.2d 802, 805 (Ind. Ct. App. 1998), trans. not sought. Correspondingly, a claim that a termination was arbitrary or unfair does not state an at-will exception allowing SEAC jurisdiction. A viable public policy exception must be present for the Controlling Complaint to survive.

5. In the unclassified (at-will) context, absent a breach of public policy, Respondent may discipline inconsistently or without sufficient evidence. I.C. § 4-15-2.2-24, 42. *See further, Baker v. Tremco Inc.*, 917 N.E. 2d 650, 653-655 (Ind. 2009); and *Meyers v. Meyers Construction*, 861 N.E.2d 704, 705-706 (Ind. 2007).

6. Petitioner alleges that his termination by Respondent was discriminatory based on Petitioner's political affiliation and his age.[6]

7. Allegations of discrimination are handled under Title VII of the Federal Civil Rights Act of 1964, as amended. *See also*, the Indiana Civil Rights Act (I.C. 22-9), which prohibits national origin employment discrimination under state law. The Title VII discrimination analysis is often referred to as the modified *McDonnell Douglas* burden-shifting framework. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *See also Pantoja v. American NTN Bear. Manuf. Corp.*, 495 F.3d 840, 845 (7th Cir 2007). There are three steps to this analysis. First, the petitioner-employee "has the initial burden of establishing a prima facie case of discrimination" through either direct or indirect evidence. *Ind. Civil Rights Comm'n v. S. Ind. Gas & Elec. Co.*, 648 N.E.2d 674 (Ind. Ct. App. 1995). While indirect evidence is merely circumstantial, direct evidence "establishes [discrimination] without resort to inferences from circumstantial evidence." *Pantoja v. American NTN Bear. Manuf. Corp.*, 495 F.3d 840, 845 (7th Cir 2007).

---

[6] On October 7, 2016, the ALJ granted in part and denied in part Respondent's June 17, 2016, Motion for Summary Judgment. The ALJ granted summary judgment with regards to Petitioner's progressive discipline, national origin, race, age, and disability claims and denied summary judgment with regards to petitioner's claims of political discrimination (the "Order"). On March 8, 2018, Petitioner filed new information regarding a younger employee Respondent hired to fill Petitioner's position. The ALJ construed the new information as a Motion to Set Aside the Order under Ind. T.R. 60(B) and a Motion to Submit a Supplemental Pleading under Indiana Trial Rule 15(D). The ALJ granted Petitioner's motions on March 13, 2018. Therefore, the claims that Petitioner could present at the hearing were that of discrimination on the basis of age and political affiliation.

8. Second, if the petitioner-employee establishes a prima facie case of discrimination, the burden shifts to the respondent-agency to show a legitimate, nondiscriminatory reason for the adverse employment action(s). *Id.* Third, once the respondent-agency shows such reason, the burden shifts back to the petitioner-employee to "present evidence that the stated reason was just a 'pretext' which in turn permits an inference of unlawful discrimination." *Coleman v. Donahoe*, 667 F.3d 835 (7th Cir. 2012) (citing *McDonnell Douglas*, 411 U.S. 804). "Evidence is evidence," and are means to consider whether one fact . . . caused another . . .) and therefore are not "elements" of any claim." *Id.* at 763. The legal standard is merely "whether the evidence would permit a reasonable factfinder to conclude that the plaintiff's race, ethnicity, sex, religion, or other proscribed factor caused the discharge or other adverse employment action." *Id.* at 765.

9. "The plaintiff in such a case must first establish a 'prima facie' case of discrimination." *Filter Specialists, Inc. v. Brooks*, 906 N.E.2d 835, 839 (Ind. 2009). "Once the plaintiff has established a prima facie case, unlawful discrimination is presumed." *Id.* at 840. The defendant-employer can rebut this presumption by producing evidence that the adverse employment action was taken "for a legitimate, nondiscriminatory reason." *Id.* (internal citations omitted). "Should the defendant-employer carry this burden, the plaintiff must have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant-employer are but a pretext for discrimination." *Id.*

10. While the *McDonell Douglas* analysis is still employed, under the doctrine first laid out under *Ortiz v. Werner Enters., Inc.*, 834 F.3d 760 (7th Cir. 2016), using the *McDonnell Douglas* direct v. indirect analysis on various piles of evidence is too cumbersome. *Ortiz v. Werner Enters., Inc.*, 834 F.3d 760, 763 (7th Cir. 2016). Instead, 7th circuit courts are now directed to look at the evidence as a whole when analyzing claims of discrimination under *McDonnell Douglas*. *Id.* at 764. "Evidence must be considered as a whole, rather than asking whether any particular piece of evidence proves the case by itself- or whether just the "direct" evidence does so, or the "indirect" evidence." *Ortiz*, 834 F.3d at 763. While the decision does not specifically extend to administrative bodies such as SEAC, the ALJ nevertheless finds that the *Ortiz* decision persuasive in this case. *David v. Bd. of Trs. of Cmty. Coll. Dist. No. 508*, 846 F.3d 216 (7th Cir. 2017).

11. In order to show discrimination, the Petitioner must present evidence that, considered as a whole, would allow a reasonable juror (here, the ALJ) to conclude that the plaintiff was discriminated against due to a protected characteristic." *Knapp v. Evgeros, Inc.*, 205 F. Supp. 3d 946, 956 (N.D. Ill. 2016). If when considering the collective evidence there remains unanswered questions regarding material facts of discrimination against a plaintiff, that would be sufficient to defeat a motion for summary judgment. *Simonis v. City of Fort Wayne*, No. 1:15-CV-235-PPS, 2017 U.S. Dist. LEXIS 71015 (N.D. Ind. May 10, 2017).

12. The Age Discrimination in Employment Act ("ADEA") makes it unlawful for an employer to take an adverse action against an individual "because of such individual's age" 29 U.S.C. § 623(a)(1).

13. Petitioner contends that he was subject to discrimination based on his age when Respondent hired a man twenty years his junior to fill Petitioner's previously held position of Geologist 2.

14. To prove that he was discriminated based specifically on his age, Petitioner would need to meet the following requirements: "(1) that he or she is a member of a protected age group, (i.e., age 40 or over); (2) that he or she was performing his or her job at a level that met his or her employer's legitimate expectations; (3) that he or she was demoted; and (4) that he or she was replaced by a younger person." *Ind. Dep't of Envtl. Mgmt. v. West*, 838 N.E.2d 408 (Ind. 2005).

15. While Petitioner meets two (2) of the requirements to show age discrimination (he is a member of a protected age group and he was disciplined), Petitioner fails to meet the other two requirements.

16. First, Petitioner was not performing his job at a level that met Respondent's legitimate expectations. On several occasions throughout the months and even years leading to Petitioner's termination, he showed an inability to comply with Respondent's behavioral and cultural expectations.

17. Second, Respondent initially attempted to hire Bobby Dyer ("Dyer"), who was *older* than Petitioner, but Dyer eventually was not interested in the position. Petitioner proposes that Respondent changed the qualifications for the supervisory position to not include the requirement of an engineering degree so that they could try to hire Dyer and preempt any age discrimination claim by Petitioner. Petitioner also claims that Respondent attempted to hire someone unqualified for the position in an attempt to "cover up" their age discrimination.

18. However, Petitioner's mere belief that an individual was not qualified to replace him is not indicative of pretext or "strong evidence of age discrimination an attempt to cover it up." *Johnson v. Nordstrom, Inc.*, 260 F.3d 727 (7th Cir. 2001). Further, it is not this forum's "place to evaluate the wisdom of an employer's business decisions" *Id.* citing *Gordon v. United Airlines, Inc.*, 246 F.3d 878, 889 (7th Cir. 2001). It is only required that "an employer honestly believed its reason for its actions, even if its reason is 'foolish or trivial or even baseless.'" *Id.* citing *Brill v. Lante Corp.*, 119 F.3d 1266, 1270 (7th Cir. 1997). In other words, it is not the ALJ's position to conjecture as to whether or not Respondent made a good business decision in hiring someone who may have been less qualified; rather he is tasked with determining whether Respondent's actions were indicative of discrimination against Petitioner. Thus the ALJ finds that Respondent's choice to try to hire Dyer is not evidentiary of discrimination nor an attempt to "cover up" discrimination on behalf of Respondent.

19. Further, while Petitioner was eventually replaced with a younger person, Logan Mort-Jones, the replacement occurred nearly two (2) years after Petitioner was terminated. The fact that Petitioner was replaced by someone younger after such a substantial period of time had elapsed holds little weight for Petitioner's age discrimination claim. *Daza v. Indiana*, 2018 U.S. Dist. LEXIS 148935 (S.D. Ind. Aug. 31, 2018); *K.H. v. Secretary of the Department of Homeland Security*, 263 F.Supp.3d 788, 802 (N.D. Cal. 2017) (holding that evidence is entitled to less weight because the hiring of new younger employees occurred two (2) years after the closure of Plaintiff's office); *Rose v. Wells Fargo & Co.*, 902 F.2d 1417 (9th Cir. 1990) (holding that Plaintiff's claim of age discrimination was substantially weakened because a younger co-worker did not assume Plaintiff's responsibilities until six (6) or (7) months after Plaintiff's termination).

20. Similar to the situation with Dyer, regardless of the new hire's skills, or lack-thereof, Petitioner has not shown that Respondent acted in a discriminatory fashion when they hired Mort-Jones in December of 2017. *Johnson v. Nordstrom, Inc.*, 260 F.3d 727 (7th Cir. 2001).

21. Further, Petitioner fails to put forth any evidence that Fowler, or anyone else involved in the decision making process concerning Petitioner's discipline, discussed or considered Petitioner's age when making the ultimate decision to terminate Petitioner. Thus, the ALJ finds that Petitioner's allegation of discrimination on the basis of his age fails.

22. Petitioner also contends that he was discriminated against based on his affiliation with the Democratic Party, his defense of Goff, who was also a Democrat, and Petitioner's mother's opinion letter in the newspaper discussing the Governor's handling of Syrian refugees. Similar to his age discrimination claim, Petitioner fails to show a prima facie case of political discrimination.

23. Petitioner fails to show that his defense of Goff was in any way considered during Fowler's decision to terminate Petitioner. Petitioner indicates that after he and Mr. Goff complained that Goff was facing political discrimination, Goff's performance appraisal was lowered after it had already been approved. Petitioner fails to show how this incident was related to his own termination. Further, this occurred several years before Petitioner was terminated.

24. "The fact that a plaintiff's protected speech may precede an adverse employment decision alone does not establish causation. The inference of causation weakens as the time between the protected expression and the adverse action increases, thus requiring additional proof of a causal nexus." *Mullin v. Gettinger*, 450 F.3d 280 (7th Cir. 2006); *Graber v. Clarke*, 763 F.3d 888 (7th Cir. 2014) (holding that the employee's suspension was not due to his comments made nearly six (6) months prior to his adverse employment action because too much time had passed for a causal link to exist). Because Petitioner's defense of Goff occurred several years before Petitioner's termination, a causal link between Petitioner supporting Goff's complaints and his termination are unsubstantiated.

25. Petitioner offers no evidence indicating that Fowler, the ultimate decision maker in his termination, took Petitioner's political affiliation into consideration when making his decision. Petitioner merely makes a "kitchen-sink approach" in trying to formulate some notion that his termination was discriminatory. *Daza v. Indiana*, 2018 U.S. Dist. LEXIS 148935 (S.D. Ind. Aug. 31, 2018).

26. While Petitioner is correct to note that he often received satisfactory marks on his appraisals and that Respondent found him to have a good work ethic and expansive knowledge regarding geology, it is without a doubt clear that Petitioner did not meet the cultural and behavioral expectations set forth by Respondent.

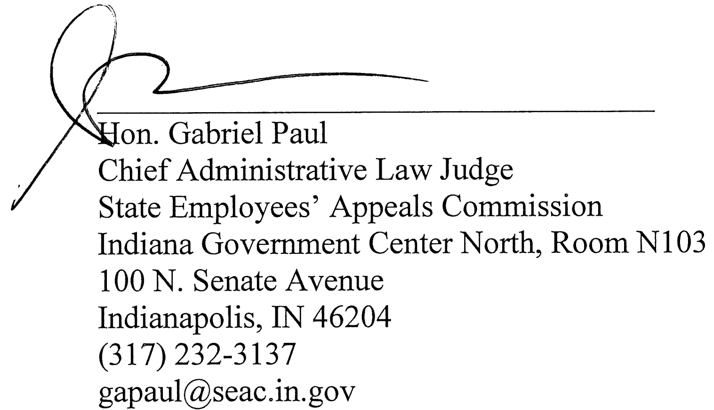
27. The allegations put forth by Petitioner do not lead the ALJ to believe that he was discriminated against in any fashion. Petitioner's allegations do not lead to a pattern of discrimination by the Respondent nor any employees under its command. Petitioner's discipline was a result of his failure to meet Respondent's expectations on multiple occasions. Therefore, the ALJ finds that Petitioner's claim of discrimination based on age and political affiliation fails.

Prior sections are hereby incorporated by reference, as needed. To the extent a given finding of fact is deemed a conclusion of law, or a conclusion of law is deemed to be a finding of fact it shall be given such effect.

V. **Non-Final Order**

Judgment is entered in favor of Respondent. Petitioner's termination is **UPHELD**. The Parties shall bear their own fees and costs.

DATED: November 13, 2018



Hon. Gabriel Paul
Chief Administrative Law Judge
State Employees' Appeals Commission
Indiana Government Center North, Room N103
100 N. Senate Avenue
Indianapolis, IN 46204
(317) 232-3137
gapaul@seac.in.gov

A copy of the foregoing was sent by mail to the following:

Richard Darst
Cohen Garelick & Glazier
8888 Keystone Crossing Blvd.
Suite 800
Indianapolis, Indiana 46204
rdarst@cgglawfirm.com

Linda Turner Jelks
James Boyer
Counsel
Indiana Department of Transportation
100 North Senate
Room N501
Indianapolis, Indiana 46204
ljelks@indot.in.gov
JBoyer3@indot.in.gov

Courtesy copy to:

David Fleischhacker
Counsel
Indiana Department of Correction c/o
State Personnel Department
302 West Washington Street
Room W161
Indianapolis, Indiana 46204
dfleischhacker1@spd.in.gov

BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

PETER DAZA Petitioner,	))) SEAC No. 01-16-007	ISSUED
vs.	)	NOV 13 2018
INDIANA DEPARTMENT OF TRANSPORTATION Respondent.	))))	STATE EMPLOYEES' APPEALS COMMISSION

NOTICE OF FILING OF FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH NON-FINAL ORDER OF ADMINISTRATIVE LAW JUDGE

The attached "Findings of Fact, Conclusions of Law and Non-Final Order of Administrative Law Judge" has been entered as required by I.C. § 4-21.5-3. To preserve an objection to the document, either the Petitioner or the Respondent must submit a written objection that:

1. Identifies the basis of the objection with reasonable particularity.
2. Is filed at the following physical and/or email address, with service to the other party, by **November 23, 2018**

State Employees' Appeals Commission
Indiana Government Center North
100 N. Senate Avenue, Room N103
Indianapolis, IN 46204-2200
gapaul@seac.in.gov

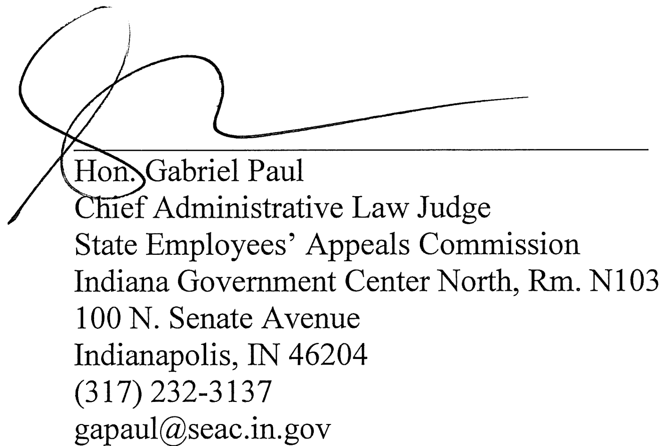
Since the Commission has designated the Administrative Law Judge as the "trier of fact" for this cause, objections will not include items of evidence. If evidence is included with the objections it will be struck. The objections may include a brief addressing the applicable law being relied upon by the party.

If objections are filed within the time specified, the State Employees' Appeals Commission (SEAC) will hear the objections at a regularly scheduled meeting.[1] Prior to that meeting any motions filed regarding the objections will be dealt with by the Administrative Law Judge.

[1] The next Commission meeting will be held on November 27, 2018, at 10:00 A.M.

During the time specified above any member of SEAC may express the desire to review any specific issue addressed in the "Findings of Fact and Conclusions of Law" pursuant to I.C. 4-21.5-3-29(e). If such a review is ordered, it will be conducted at a regular scheduled meeting of the SEAC, and each party will be notified.

A party may move to strike any objections believed to be untimely. The Administrative Law Judge shall act upon a motion to strike. If the Administrative Law Judge grants the motion, the attached document will become final absent any desire to review an issue expressed by a member as discussed above. If the Administrative Law Judge denies the motion to strike, the findings and non-final order shall be reviewed by the SEAC as outlined above.



DATED: November 13, 2018

Hon. Gabriel Paul
Chief Administrative Law Judge
State Employees' Appeals Commission
Indiana Government Center North, Rm. N103
100 N. Senate Avenue
Indianapolis, IN 46204
(317) 232-3137
gapaul@seac.in.gov

A copy of the foregoing was sent via email to the following:

Richard Darst
Cohen Garelick & Glazier
8888 Keystone Crossing Blvd.
Suite 800
Indianapolis, Indiana 46204
rdarst@cgglawfirm.com

Linda Turner Jelks
James Boyer
Counsel
Indiana Department of Transportation
100 North Senate
Room N501
Indianapolis, Indiana 46204
ljelks@indot.in.gov
JBoyer3@indot.in.gov

Courtesy copy to:

David Fleischhacker
Counsel
Indiana Department of Correction c/o
State Personnel Department
302 West Washington Street
Room W161
Indianapolis, Indiana 46204
dfleischhacker1@spd.in.gov