

**BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION**

IN THE MATTER OF:

DENISE DONALDSON)
Petitioner,)
) SEAC No. 01-18-005
vs.)
)
INDIANA DEPARTMENT OF)
CHILD SERVICES)
Respondent)
)

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ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

On September 4, 2018, Respondent Indiana Department of Child Services ("Respondent"), by counsel filed a Motion for Summary Judgment under Indiana Trial Rule 56 ("T.R. 56") ("Motion") seeking to dismiss Petitioner Denise Donaldson's ("Petitioner") Complaint. Petitioner, by counsel, responded to the Motion on October 9, 2018. Respondent thereafter filed a surreply on October 24, 2018.

This case considers Petitioner's Written Reprimand in lieu of a five (5) day suspension for unacceptable behaviors under Respondent's policies. Under Ind. Code § 4-15-2.2-42(g), the agency (here, Respondent) must prove that it had just cause to issue the discipline. The controlling pleadings for purposes of this decision are the Complaint originally received on January 16, 2018, Respondent's Motion, Petitioner's reply to the Motion and Respondent's surreply. In order to survive a T.R. 56 Motion, material issues of fact must exist such that judgment as a matter of law for the moving party would be inappropriate.

The ALJ finds that no issues of material fact exist with regard to Petitioner's claims such that this matter should continue. Therefore, Respondent's Motion for Summary Judgment is hereby GRANTED. The following additional findings of fact, conclusions of law, and order are entered.

I. The Summary Judgment Standard

Summary Judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Simon Prop. Grp., L.P. v. Acton Enterprises, Inc.*, 827 N.E.2d 1235, 1238 (Ind. Ct. App. 2005). A party seeking summary judgment bears the burden to make a prima facie case showing that there are no genuine issues of material fact and that the party is entitled to judgment as a matter of law. *Id.* See also *Am. Mgmt., Inc. v. MIF Realty L.P.*, 666 N.E.2d 424, 428 (Ind. Ct. App. 1996). Once the moving party satisfies this burden through evidence designated to the trial court pursuant to T.R. 56, the nonmoving party may not rest on its pleadings, but must designate specific facts demonstrating the existence of a genuine issue for trial. *Simon Prop. Grp., L.P.*, 827 N.E.2d at 1238; *Am. Mgmt., Inc.*, 666 N.E.2d at 428.

The court must accept as true those facts alleged by the nonmoving party, construe the evidence in favor of the nonmovant, and resolve all doubts against the moving party. *Simon Prop. Grp., L.P.* at 1238; *Shambaugh & Son, Inc. v. Carlisle*, 763 N.E.2d 459, 461 (Ind. 2002). A fact is ‘material’ if its resolution would affect the outcome of the case, and an issue is ‘genuine’ if a trier of fact is required to resolve the parties’ differing accounts of the truth ... or if the undisputed material facts support conflicting reasonable inferences. *Celebration Worship Ctr., Inc. v. Tucker*, 35 N.E.3d 251, 253 (Ind. 2015).

II. Findings of Fact

1. At all relevant times, Petitioner was a Family Case Manager 2 (Pet'r Compl.)
2. On August 9, 2017, Petitioner's husband began exchanging text messages with his ex-wife regarding their daughter (Petitioner's step-daughter) (Pet'r Compl).
3. The ex-wife previously had a case open with Respondent regarding allegations of physical abuse, which was reported by Petitioner's husband (Pet'r Compl).
4. On August 12, 2017, Petitioner's step daughter was involved in an incident regarding her attendance at a school track meet (Pet'r Compl).
5. Petitioner's husband became concerned when, after waiting for some time, his daughter failed to show at the track meet (Pet'r Compl).
6. Fearing for the child's safety, both Petitioner and her husband (the child's father) contemplated making a report to Respondent's Child Abuse Hotline, but contacted local law enforcement in the meantime in order to obtain a welfare check on the child (Pet'r Compl).
7. While Petitioner's husband awaited word from the police, Petitioner accessed her step-daughter's case file in Respondent's case management system (hereinafter referred to as MaGIK) (Pet'r Compl).
8. Petitioner accessed the file in order to obtain information about the child's mother that Petitioner felt could potentially be reported to law enforcement and/or Respondent (Pet'r Reply).
9. Thereafter, the police reported back that they had conducted a welfare check and determined the child was safe (Pet'r Reply).
10. Both Petitioner and her husband then decided that no further action was necessary (Pet'r Reply).
11. On August 13, 2017, Petitioner contacted her supervisors and related to them the events of August 11, 2017, including her MaGIK access on August 11, 2017 (Pet'r Compl).
12. On August 21, 2017, Respondent received a formal complaint about Petitioner from the mother of Petitioner's step-daughter regarding Petitioner's actions (Pet'r Reply).

13. On October 27, 2017, following a predeprivation hearing, Respondent issued a Written Reprimand in lieu of a five (5) day suspension to Petitioner, determining that Petitioner did not have a justifiable business reason to access her step-daughter's case file, which was in violation of Chapter 2, Section 8 of Respondent's Child Welfare Policy, which pertains to MaGIK access, along with the Confidentiality provisions of Respondent's Code of Conduct and the Indiana State Personnel Department (SPD) discipline policy (Pet'r Compl).

III. 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 a classified employee at all relevant times.
2. As a classified employee, Respondent must show that just cause existed for its decision to reprimand Petitioner. I.C. § 4-15-2.2-42 (g).
3. Petitioner's main contention is that she did not violate the Policies cited above, since her actions were justified in that Petitioner was concerned for her step-daughter's safety and accessed her case file solely for the purpose of obtaining any information which might help law enforcement and/or help Petitioner and her husband decide whether to report the August 11, 2017 incident to Respondent's Child Abuse Hotline. (Pet'r Reply).
4. Petitioner also alleges that Respondent violated its internal affairs policy when it did not conduct a formal investigation into the incidents described above (Pet'r Reply).
5. Chapter 2, Section 8 of Respondent's Child Welfare Manual ("Manual") states that Respondent's employees will access MaGIK records for work purposes only (Resp't Motion, Ex. F)
6. The Manual then states that if an employee has a question about whether he/she should view a case file that is not assigned to them, the employee should staff with their supervisor to discuss (Resp't Motion, Ex. F)
7. The Manual concludes by stating that when discussing whether access should be granted, the employee is required to justify the reason for the proposed access (Resp't Motion, Ex. F).
8. Petitioner contends that she was using her training as a Family Case Manager when she decided to access the file (Pet'r Reply). She also states that the Manual states that access is authorized when there is a potential safety concern (Pet'r Reply).

9. Petitioner was rightly concerned for her step-daughter's safety and wisely contacted local law enforcement to perform a welfare check. However, Petitioner's actions should have stopped there. In the alternative, Petitioner could also have made a report to Respondent's Child Abuse Hotline without accessing her step-daughter's file.
10. Petitioner's Complaint goes into great detail about previous run-ins both she and her husband had with the mother in question. It is therefore reasonable to conclude that Petitioner had all the information she needed at the time of the track meet incident if Petitioner wished to take further steps to ensure the child's safety.
11. Further, Petitioner violated the Manual when she contacted her supervisor after the fact. The language in the Manual contemplates that if an employee has questions about whether they should access a file they otherwise were not authorized to open, the discussion should happen before, not after the incident.
12. Since Petitioner waited until after the incident in question to contact her supervisor, Petitioner ostensibly knew that she shouldn't have accessed the file and hoped that the language in the Manual pertaining to potential safety risks would shield Petitioner from discipline.
13. Despite Petitioner's assertions to the contrary, the ALJ finds that Petitioner did not have a justifiable reason to access her step-daughter's file. While Petitioner's husband had a difficult time dealing with his ex-wife, as noted above, that did not serve as a reason for Petitioner to have unfettered access to her step-daughter's case file.
14. Petitioner next contends that Respondent violated its internal Policy regarding investigations.
15. Respondent's Policy No. HR 3-9 ("Policy"), contained within Respondent's Administrative Policies and Procedures establishes guidelines for the operation of Respondent's Internal Affairs Unit (Resp't Motion, Ex. G).
16. Under Section III of the Policy, Respondent's Internal Affairs Unit may conduct an investigation "when deemed appropriate" (Resp't Motion, Ex. G).
17. No further guidance on what is deemed appropriate appears in the Policy, but some examples are listed which could trigger a formal investigation, such as misuse of position/authority and misuse of state property (Resp't Motion, Ex. G).
18. While not expressly plead as such, Petitioner's Complaint seems to imply that since she was disciplined for unauthorized access to her step-daughter's case file, her actions fall under both of the examples listed above, which meant that witnesses should have been interviewed and formal conclusions presented (Pet'r Compl).

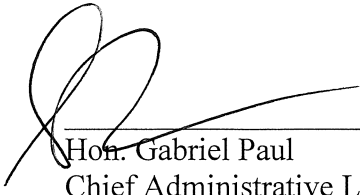
19. Respondent nevertheless was free to take any action it deemed appropriate given the situation. An interpretation given a statute (or, by extension, a policy in this case) by an administrative agency charged with the duty of enforcing the statute is entitled to great weight. *See Indiana Dep't of Natural Resources v. United Minerals*, 686 N.E.2d 851 (Ind. Ct. App. 1997).
20. In this case, following the receipt of the formal complaint against Petitioner, Respondent did conduct its own investigation, given the fact that over a month elapsed between its receipt of the complaint and issuance of Petitioner's reprimand (Pet'r Compl).
21. Despite Petitioner's contentions, Respondent was under no obligation to conduct a formal investigation. While the examples listed above certainly qualify as instances where a formal investigation could take place, the Policy clearly gives Respondent the ability to decide whether to undertake an investigation on a case by case basis by the Policy's inclusion of the phrase "when deemed appropriate" (Resp't Motion, Ex. G).
22. The ALJ therefore concludes that Respondent's actions taken after its receipt of the formal complaint, but before issuing Petitioner's reprimand were allowable under its Policy.
23. No further arguments were advanced by Petitioner.¹
24. The ALJ therefore concludes that Respondent had just cause to issue Petitioner a Written Reprimand in lieu of a five (5) day suspension, when Petitioner did not have a justifiable business purpose for accessing her step-daughter's case file in Respondent's MaGIK system.
25. 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.

IV. Additional Conclusions of Law and Order

Respondent's Motion for Summary Judgment is hereby GRANTED. Respondent's imposition of a Written Reprimand in lieu of a five (5) day suspension was issued with just cause and is hereby upheld. The Complaint, and this action, are hereby **DISMISSED** with prejudice. This is the Final Order of the Commission in this matter. A person who wishes to seek judicial review must file a petition in an appropriate court within thirty (30) days of this order and must otherwise comply with IC § 4-21.5-5. So Ordered.

¹ Petitioner, in addition to the violations noted above, was also disciplined for violating the State's Information Resource Use Agreement, which outlines how state employees may use electronic state resources such as computers, as well as the State's general discipline policy (Pet'r Compl). Since Petitioner did not refute or otherwise address these allegations either in her Complaint or her Reply, the ALJ will construe them as a tacit admission by Petitioner that she was guilty of violating them.

DATED: November 5, 2018



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