BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

LANETTA INMAN Petitioner,	)	
	)	SEAC No. 01-19-004
vs.	)	
INDIANA FAMILY AND SOCIAL SERVICES ADMINISTRATION Respondent.	)	

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

I. Introduction and Summary

On May 10, 2019, the Indiana Family and Social Services Administration ("Respondent") by counsel, filed a Motion ("Motion") for Summary Judgment under Ind. T.R. 56, seeking to dismiss Petitioner Lanetta Inman's ("Petitioner") Complaint ("Complaint"). On August 27, 2019, Petitioner filed a Reply to Respondent's Motion. Thereafter, Respondent filed a surreply on September 13, 2019.

Thus, the ALJ makes this decision based upon Petitioner's original Complaint filed on January 2, 2019, Respondent's Motion, Petitioner's Reply and Respondent's surreply.[1] This case considers Petitioner's suspension for working unauthorized overtime. Petitioner contends that the discipline given to her was unfair, given that others supposedly were not disciplined for working unauthorized overtime.

After review of the pertinent pleadings noted above, the ALJ finds Respondent's Motion meritorious and hereby **Grants** it. Petitioner's Complaint, with its factual allegations accepted as true, fails to state a material issue of fact, which could cause SEAC to retain jurisdiction over this matter. Respondent must show that as a classified employee under I.C. § 4-15-2.2-23, Petitioner's discipline was issued for just cause under I.C. § 4-15-2.2-42(g), which it has done. Thus, this case must be dismissed. The following additional findings of fact, conclusions of law, and final order of dismissal for lack of jurisdiction are entered.

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[1] Commission proceedings are governed by the Administrative Orders and Procedures Act (AOPA), I.C. § 4-21.5 et seq. *See* I.C. § 4-15-1.5-6(1). Accordingly the Commission has delegated to its Administrative Law Judges pursuant to I.C. § 4-21.5-3-28 of AOPA, the authority to issue final orders in this class of proceedings.

II. 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).

I. Findings of Fact

The facts relevant to the instant Motion's resolution, as construed in favor of the non-movant Petitioner, are as follows:

1. At all relevant times, Petitioner was a State Eligibility Consultant for Respondent's Hammond, Indiana office (Pet'r Compl.).

2. On September 21, 2018, Petitioner's entire office was notified via email of voluntary and mandatory overtime for the pay periods spanning September 23, 2018-October 6, 2018 and again from October 7, 2018-October 20, 2018 (Resp't Motion, Ex. A.).

3. The notice stated that six (6) hours of mandatory overtime were required on both Saturday, October 6, 2018 and Saturday, October 20, 2018 (Resp't Motion, Ex. A.).

4. In addition, the notice stated that between September 23, 2018-October 5, 2018 and October 7, 2018-October 19, 2018 an additional ten (10) hours of voluntary overtime for each pay period could be earned in addition to the mandatory overtime described above. Thus, a total of sixteen (16) hours of overtime was available for each pay period (Resp't Motion, Ex. A).

5. The notice made clear that the only exceptions to the mandatory overtime days were for a death in the family, medical reasons or pre-arranged vacations (Pet'r Compl., Resp't Motion, Ex. A).

6. Upon receiving the notice, Petitioner asked her supervisor if she could be excused from working overtime on October 20, 2018, in order to attend a religious event that Petitioner attended annually on that date (Pet'r Compl.).

7. Petitioner was told that religious exemptions were not contemplated in the notice and therefore did not apply (Pet'r Compl.).

8. Petitioner then proceeded to work sixteen (16) voluntary overtime hours between October 7, 2018-October 19, 2018 (Pet'r Compl.).

9. On October 18, 2018, Petitioner asked her supervisor if she could be excused from working the mandatory overtime on October 20, 2018, since she had completed her sixteen hours as of the next day (October 19, 2018), but was again told that her religious exemption was not an approved reason (Pet'r Compl., Resp't Motion, Ex. D).

10. Petitioner thereafter worked the mandatory overtime on October 20, 2018, which gave her twenty-two (22) hours of overtime for the pay period ending October 20, 2018—six (6) hours over the time allotted in the Notice[2] (Pet'r Compl.).

11. Following a predeprivation meeting on October 22, 2018, Petitioner was issued a one (1) day suspension for working over the allotted number of overtime hours (Pet'r Compl.).

[2] Despite this, Petitioner was paid the overtime rate for the time she worked on October 20, 2018 (Resp't Motion).

II. Conclusions of Law

1. SEAC is a creature of statute, charged with fairly and impartially administering Civil Service System appeals. I.C. § 4-15-2.2 *et seq*. SEAC's jurisdiction over such appeals is divided into classified (just cause claims) and unclassified (at-will claims). I.C. §§ 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." I.C. § 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); and *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. Nor does such an assertion state a claim for which relief can be granted in an unclassified—at-will—Civil Service System case. *Meyers,* 861 N.E.2d at 704; I.C. § 4-15-2.2-42. A viable public policy exception must be present for the Complaint to survive.

5. Petitioner's main contention is that she believes her religious exemption should have been approved, which would have excused her from working on October 20, 2018.[3]

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[3] In her Complaint and Reply, Petitioner makes a fleeting reference to other employees who were allowed to miss the mandatory overtime on October 20, 2018 for non-exempted reasons and also mentions two (2) employees who were willing to testify and/or provide evidence but for fear of losing their jobs. Finally, Petitioner contends that other employees were given excused absences for religious reasons. As to the former, Petitioner provides no further proof in support of these contentions. As to the latter, the law is clear that Respondent may not retaliate against any employee for providing testimony. *See Robert v. City of S. Bend*, 2018 U.S. Dist. Lexis 540 at *9 (N.D. Ind. January

6. The State's overtime policy clearly states that overtime-eligible employees (like Petitioner) are prohibited from working overtime unless authorized in advance by management in specific circumstances (Resp't Motion, Ex. B).

7. Respondent followed the policy by specifying to its employees the conditions attached to the number of overtime hours allowed for the pay periods described above.

8. Therefore, every employee was on notice about the types of exemptions allowed.

9. Those exemptions did not include religious ones.

10. Thereafter, Petitioner, knowing that her religious exemption was not permissible, nevertheless chose to work what amounted to sixteen (16) hours of voluntary overtime between October 7, 2018-October 19, 2018.

11. In doing so, Petitioner ignored the directive given by Respondent to its Hammond office employees.

12. Given the fact that Petitioner was told twice about the denial of her religious exemption (first on September 21, 2018 and again on October 19, 2018), Petitioner in essence was overpaid for the same pay period compared to her colleagues.

13. While Respondent could have chosen not to pay Petitioner for working on October 20, 2018, it instead followed the Policy, which states that overtime-eligible employees will be compensated for all hours worked (Resp't Motion, Ex. B).

14. Instead, Respondent chose to discipline Petitioner, which was its right.

15. It is worth noting that the incident described above was not the first time Petitioner was disciplined for the same offense.

16. In October, 2017, Petitioner was issued a Written Reprimand for working over the number of allotted overtime hours twice between August, 2017 and October, 2017. (Resp't. Motion, Ex. C). Therefore, Petitioner should have known better than to commit the same offense a third time. The fact she did so gives further credence to Respondent's decision to issue Petitioner a suspension.

2, 2018). Petitioner therefore had the opportunity during discovery to obtain such testimony but failed to do so. Finally, as to Petitioner's last contention in her Reply that other employees were allowed to miss mandatory overtime for religious reasons, without proof, the ALJ can only postulate that such may have been the case in other instances in which Respondent required its employees to work mandatory overtime, but for purposes of this matter, Respondent's directions were clear as to the type of exemptions allowed.

17. The ALJ further finds that Respondent also followed the State's Discipline Policy, which provides for progressive discipline for classified employees. https://www.in.gov/spd/files/discpol.pdf.

18. Since Petitioner was previously issued a Written Reprimand in 2017, the next progressive disciplinary step could reasonably be construed as a suspension.

19. Thus, in essence, Petitioner's argument is one of fairness, which, without more, does not persuade the ALJ to overturn Petitioner's suspension. *See Harper v. C.R. Eng., Inc.*, 687 F.3d 297, 313 (7th Cir. 2012).

20. Petitioner did not advance any further arguments. Thus, the ALJ concludes that she failed to show why her suspension was not supported by just cause.

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.

III. Final Order of Dismissal

Respondent's Motion for Summary Judgment is GRANTED. This action is hereby dismissed with prejudice. All case management deadlines are vacated.

This is the final order of the Commission. 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 Ind. Code § 4-21.5-5.

DATED: September 23, 2019

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Chief Administrative Law Judge
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