

**BEFORE THE  
STATE EMPLOYEES' APPEALS COMMISSION**

IN THE MATTER OF:

BRYAN VEALE )  
Petitioner, )  
 )  
vs. ) SEAC No. 02-19-018  
 )  
INDIANA DEPARTMENT OF )  
TRANSPORTATION )  
Respondent. )

**ISSUED**

**FEB 22 2019**

**STATE EMPLOYEES'  
APPEALS COMMISSION**

**NOTICE OF PROPOSED DISMISSAL  
FOR LACK OF JURISDICTION UNDER IND. CODE § 4-15-2.2-42(e)**

On February 20, 2019, Petitioner Bryan Veale (“Petitioner”), pro se, filed with the State Employees’ Appeals Commission (“SEAC”) a Complaint<sup>1</sup> for administrative review governed by the State Civil Service System under Ind. Code §§ 4-15-2.2-1 *et seq.*, 42 (the “Civil Service System”) and Ind. Code § 4-21.5-3 *et seq.* (“AOPA”). A copy is attached and hereby considered the instant Complaint. Petitioner is an unclassified (at-will) state employee, a Highway Engineer 1 for Respondent Indiana Department of Transportation (“Respondent”).

**Summary and Complaint Factual Allegations**

Petitioner challenges his overall rating of “Needs Improvement” on his 2018 annual performance appraisal (“Appraisal”) Petitioner attached supporting documentation and asserts that he should have received a rating of “meets” expectations on both competencies.

SEAC has an independent statutory obligation to assess its jurisdiction at the initial stage of the proceeding, and as a case might continue. Ind. Code § 4-15-2.2-42(e). It appears from the Complaint that Petitioner does not have a remedy available through SEAC, nor does the Complaint assert an employment action taken by Respondent for which Petitioner can appeal. Thus, the case must be proposed for dismissal at this time. The following additional findings of fact, conclusions of law, and notice of proposed order of dismissal for lack of jurisdiction are entered.

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<sup>1</sup> The Step II number below was PS #17194.

## Legal Standards and Analysis

Dismissal proceedings test the legal sufficiency of the Complaint. All facts plead in the petitioner's complaint, and reasonable inferences therefrom, are taken as true. However, when a party's complaint is legally insufficient or fails to plead essential elements of the claim(s), the complaint should be dismissed. *Meyers v. Meyers Construction*, 861 N.E.2d 704, 705-706 (Ind. 2007); *Huffman v. Office of Env'tl. Adjudication*, 811 N.E.2d 806, 814 (Ind. 2004); *Gorski v. DRR, Inc.*, 801 N.E.2d 642, 644 (Ind. Ct. App. 2003); and *Steele v. McDonald's Corp. et al.*, 686 N.E.2d 137 (Ind. Ct. App. 1997). *See also*, Ind. Trial Rule 12(b)(1) and (6).

### No Remedy Available

Petitioner's Complaint shows that he received a "needs improvement" rating on the "Planning and Organizing", "Staff Development", "On-Time/On Budget-Quality Assurance and Unit Cost" competencies.<sup>2</sup>

Indiana Code § 4-15-2.2-24(b) states that: "An employee in the unclassified service may be dismissed, demoted, disciplined, or transferred for any reason that does not contravene public policy." Thereafter I.C. § 4-15-2.2-42 delineates the complaint procedure under which an "employee in the civil service system may file a complaint . . ." Taken together, these two components of the Civil Service System allow an unclassified employee to file a Complaint with SEAC, after first filing a Step I and II complaint, only if an employer takes a material adverse employment action against the Petitioner. The Civil Service System does not contemplate every employment action taken by an employer to be appealable by an employee in the state civil service system. I.C. § 4-15-2.2-24(b) includes four actions which are appealable by an unclassified civil service employee, and absent some employment action taken subsequent to a subpar performance appraisal, a performance appraisal on its own is not appealable.

Petitioner was not dismissed, demoted, disciplined, or transferred subsequent to his receiving a less than stellar Appraisal, and thus, it is not appealable. Additionally, as noted in Petitioner's Step 2 response, Ind. Code § 4-1-6-5 describes the minimum procedures which must be followed by an agency maintaining a personal information system, under which Respondent qualifies. This portion of the code allows an employee to challenge their Appraisal by submitting a 200-word rebuttal if they disagree with the information contained therein. Thus, Petitioner is not without remedy given her displeasure with his Appraisal; however, as stated above, SEAC does not have jurisdiction to grant Petitioner such remedy. I.C. § 4-15-2.2-42.

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<sup>2</sup> The ALJ declines to state the reasons given in the Appraisal for said ratings given his decision that SEAC lacks jurisdiction to hear this appeal.

### Additional Conclusions of Law and Order

From a review of the Complaint, Petitioner does not establish a claim to SEAC's statutory or subject matter jurisdiction recognized by I.C. § 4-15-2.2-42(e). Petitioner must complain, and support with factual allegations and a cogent theory, that he suffered employment discipline that was in violation of Indiana public policy. See I.C. § 4-15-2.2-24, 42 and I.C. § 4-21.5-3-24.

Petitioner has **fifteen (15) days** from the date of this notice to file a motion or amended complaint requesting a final order of dismissal not be imposed. Petitioner must demonstrate the public policy basis relied upon for the request. In such motion, Petitioner should specifically address each jurisdictional reason discussed above by the Administrative Law Judge for the dismissal. It is the Petitioner's burden of proof to cure the jurisdictional defects if possible, and show that SEAC has jurisdiction over this matter. I.C. § 4-15-2.2-42(e) and (f).

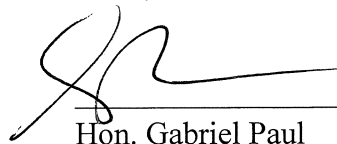
Motions and pleadings should be filed with the Administrative Law Judge at the address shown below. As an alternative to the U.S. Mail, service may be made upon the Administrative Law Judge by facsimile copy. Parties are cautioned, however, that while service through the U.S. Mail may be perfected upon mailing, service by facsimile copy is perfected only upon actual receipt. The facsimile number is (317) 233-9372. A copy of each motion or pleading must also be served upon all parties of record or their attorneys/representatives. *Parties are reminded not to contact the Administrative Law Judge without serving and including the other party on a communication.* Currently, the parties are as identified in the caption above.

If no appropriate motion or amended complaint is timely filed showing jurisdiction exists, the Administrative Law Judge will enter a final order of dismissal pursuant to I.C. 4-15-2.2-42(e), and I.C. 4-21.5-3-24(c).<sup>3</sup>

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<sup>3</sup>Commission proceedings are additionally 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 the AOPA, the authority to issue final orders in this class of proceedings. The final order entered by the Administrative Law Judge for this class of proceeding shall be considered a final order under I.C. § 4-21.5-3-27, pursuant to this delegation.

DATED: February 22, 2019



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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  
Email: gapaul@seac.in.gov

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

Bryan Veale  
303 Eastside Park Road  
Washington, Indiana 47501  
bveale@indot.in.gov

Linda Jelks  
Counsel  
Indiana Department of Transportation  
100 North Senate  
Room N730  
Indianapolis, Indiana 46204  
Linda.jelks@indot.in.gov

Courtesy Copy to:

David Fleischhacker  
Indiana State Personnel Department  
402 West Washington Street  
Room W161  
Indianapolis, Indiana 46204  
dfleischhacker1@spd.in.gov