BEFORE THE
STATE EMPLOEES' APPEALS COMMISSION

IN THE MATTER OF:

BRIGITTE J. KEPHART Petitioner,	)	
v.	)	SEAC No. 04-15-029
INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT Respondent.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND NON-FINAL ORDER OF THE ADMINISTRATIVE LAW JUDGE

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 Brigitte Kephart's ("Petitioner") Complaint filed April 24, 2015, with the State Employees' Appeals Commission ("SEAC") against Respondent the Indiana Department of Workforce Development ("Respondent"). Petitioner was an unclassified (at-will) employee working as an Audit Examiner III for Respondent at the time of her 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 February 23, 2016, before the undersigned Chief Administrative Law Judge. Petitioner Kephart appeared by counsel, Mr. Dennis Wilson II. Respondent appeared by counsel, Ms. Cynthia Lee and Mr. Jack Gannon. Having reviewed the arguments, witness testimony, admitted evidence, applicable law, and proposals,[2] 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.

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[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).

[2] Both parties were given an opportunity to submit post-hearing briefs or proposals, which each subsequently filed.

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;[3] a merely foolish or arbitrary choice by an employer to terminate or the 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).

III. Findings of Fact

1. Petitioner began her employment with Respondent on April 28, 2014. (Pet'r. Compl.).

2. At all times relevant to this decision, Petitioner was employed as an Audit Examiner III in Respondent's Status Unit. (Pet'r. Compl.).

3. As an Audit Examiner III, Petitioner was responsible for applying knowledge and techniques in assisting employers with Unemployment Insurance ("UI") Tax Account issues within the scope of her authority, as well as Respondent's policies and tax guidelines. (Resp't. Ex. 1). No writing skills were required for this position. (Huffman Test.).

[3] 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.

4. When Petitioner first started working for Respondent, she was trained by Ms. Lola Stainbrook ("Stainbrook") on core competencies to become an Audit Examiner III. (Stainbrook Test.). Core competencies are sections that every incoming Audit Examiner III received training in, which consisted of Demographics, Adjustments, Wage Records, Tax Law, Delinquencies, Inactivation/Revivals, New Account Set Up and Successorships. *Id.*

5. Stainbrook has been a UI Tax Training Supervisor since 2014 for the UI Compliance Division. (Stainbrook Test.). Her role as a trainer was to prepare training materials for new employees, schedule and teach training classes and review and grade assignments submitted by new employees. *Id.*

6. In order to become an Audit Examiner III, Petitioner was required to complete ten (10) assignments for each section and pass each assignment with a score of ninety (90) percent or higher. (Stainbrook Test.). Once Petitioner passed a section, she was then certified to work on the items in that section. *Id.*

7. Petitioner was certified in Demographics and Wage Records on May 15, 2014, Adjustments on May 28, 2014, and Tax Law on May 30, 2014. (Stainbrook Test.; Resp't. Ex. 47). Petitioner was not certified in any other sections, but because of a subsequent change in management, Petitioner no longer had to be certified in Delinquencies in order to work on them. (Stainbrook Test.).

8. From the beginning of Petitioner's training until the end of July, 2014, Petitioner was supervised by Ms. Beverly Korobkin ("Korobkin"). (Korobkin Test.). Korobkin was the supervisor for the Collection and Enforcement Unit in the Tax Department working on Delinquencies. *Id.*

9. Korobkin stated that Petitioner was present at the first welcome class meeting that was held on April 29, 2014. (Korobkin Test.; Resp't. Ex. 45 at 1). During this meeting, documents were handed out to each new employee that listed Respondent's expectations. (Korobkin Test.; Resp't. Ex. 45 at 12). Within these documents were copies of Respondent's Policy and Procedures, specifically DWD Policy 2013-09 on Personal Use of State Resources ("Respondent's Policy"). (Resp't. Ex. 45 at 4-5; Ex. 23). Respondent's Policy recognizes that state employees occasionally need to use state resources for emergencies and other personal activities that cannot be handled away from the work place. (Resp't. Ex. 23 at 1). For that reason, the policy allows for use of state resources that are quick and that do not interfere with work performance. *Id.*

10. Petitioner was required to initial the documents after she read and understood them. (Korobkin Test.). Petitioner initialed the documents and submitted them on May 1, 2014. (Resp't. Ex. 45 at 2)

11. At this meeting, Petitioner was given an Internal Training Plan ("Plan"), which laid out the number of work items that needed to be worked on by Petitioner within thirty (30), sixty (60), and ninety (90) days. (Resp't. Ex. 45 at 2).

12. Petitioner was also trained on the State of Indiana's Information Resources Use Agreement ("IRUA"). (Resp't. Ex. 22). This agreement was used by Respondent and laid out the appropriate usage, prohibited activities, storage information policy, and disciplinary actions taken when using all State hardware, software, data, information, network, personal computing devices, phones, or any other information technology. *Id.*

13. On April 30, 2014, Korobkin emailed Petitioner asking her if she had any general questions about the first meeting, to which Petitioner responded that she did not. (Korobkin Test.; Resp't. Ex. 45 at 6).

14. Under Korobkin's supervision and with the training schedule set by Stainbrook, Petitioner did not have a set break or lunch schedule[4]. (Stainbrook Test.; Korobkin Test.). Instead, the time of these breaks depended on Petitioner's workload. *Id.* Korobkin stated that the standard one (1) hour lunch break fell between 11:30 A.M. and 1:00 P.M. and the two (2) 15 minutes breaks that were given fell between 9:00 A.M. and 10:15 A.M. and again between 2:00 P.M. to 3:15 P.M. (Korobkin Test.).

15. Petitioner testified that she often lumped her morning, afternoon, and lunch breaks together so that she could take one long break at the end of the day. (Pet'r. Test.). She also stated that when she was busy and worked into her normal break schedule, she would take breaks later than the set time frame. (Pet'r. Test.). Korobkin stated that Petitioner was not allowed to lump her break and lunch times together because it would allow other employees to lump their time and apply it at the end of the day, thus disrupting the work schedule. (Korobkin Test.).

16. From the end of July 2014, until Petitioner's termination on February 5, 2015, Ms. Elizabeth Huffman ("Huffman") took over as Petitioner's supervisor in the Status Unit. (Korobkin Test.).

[4] Petitioner's two (2) 15 minute breaks and one (1) hour lunch break not only applied to her training schedule, but also carried into her regular work schedule. (Pet'r. Test.; Huffman Test.).

17. Once Petitioner was trained, a typical work week consisted of working the phones or on work items assigned to Petitioner. (Huffman Test.). Huffman stated that Petitioner's work load was very high (Huffman Test.) and because each employee was taught to self-assign themselves work (Stainbrook Test.), there was always work to do. (Resp't. Ex. 7; Huffman Test.).

18. Petitioner was given a phone schedule from September, 2014 to December, 2014, which told her when she had to work the phones each week. (Huffman Test.). Petitioner was also given a Status Unit schedule on August 4, 2014, and October 27, 2014, which told Petitioner her work schedule for that time period. (Huffman Test.). These work schedules were posted at the end of Petitioner's cubicle and Huffman also had a copy. *Id.*

19. If Petitioner was scheduled to work the phones, but wanted to take her break in between talking phone calls, Huffman required her to code her phone. (Huffman Test.). Coding one's phone was very important when taking a break because that informed other employees where the employee was at that time or if they needed help covering their phone during that period. (Huffman Test.)

20. On October 15, 2014, Petitioner sent Huffman an email indicating that she had forgotten to decode her phone that day, which made it look as if she was on break for an hour. (Huffman Test.; Resp't. Ex. 11 at 2). Again, on January 15, 2015, Petitioner sent Huffman an email saying that she forgot to decode her phone that day, making it look as if she was on break for twenty-nine (29) minutes. (Huffman Test.; Resp't Ex. 11 at 4).

21. Huffman stated that if Petitioner could not take a morning break, afternoon break, or a lunch break at a regularly scheduled time because of phone duties, Petitioner was to email her to adjust the time of her breaks accordingly. (Huffman Test.) However, Petitioner stated that she did not regularly do this. (Pet'r. Test.).

22. Petitioner was never allowed to take more than fifteen (15) minutes per break, nor was she allowed to take longer than one (1) hour for lunch. (Huffman Test.).

23. At times, Petitioner would stay later than her working hours and would request Huffman to offset the extra time that she had worked. (Resp't. Ex. 13; Huffman Test.). Huffman had no issue with offsetting Petitioner's extra time if she had stayed late to complete her work. (Huffman Test.).

24. Starting in August, 2014, Petitioner had performance issues at work. On August 1, 2014, Huffman emailed Petitioner to remind her to arrive to work at her scheduled work time because she had been arriving late. (Huffman Test.; Resp't. Ex. 12 at 1).

25. On November 19, 2014, Petitioner, without authorization, advised an employer that she would remove the estimation on their account. (Huffman Test.; Resp't. Ex. 15 at 5). Huffman stated that she had to give approval for every estimate that was removed from an employer's account. (Huffman Test.)

26. On December 30, 2014, Petitioner sent a Notice of Demand for Payment to the wrong address and employer. (Huffman Test.; Resp't. Ex. 15 at 2-3).

27. On January 23, 2015, Huffman went to Petitioner's cubicle to speak with her about work items. (Huffman Test.). Although Petitioner was not at her desk, Huffman noticed there was what appeared to be a story entitled "Shore Maiden Murders" that Petitioner was writing on her computer screen. *Id.* Usual protocol when an employee was not at their desk was to lock (code) the desktop screen so that no one could view it. *Id.* On this particular day, however, Petitioner's screen was not locked. *Id.* Sensing that the document was not work related, Huffman printed a hard copy and also scanned and sent the document to her work email account. *Id.*

28. Huffman then contacted Mr. James McQuiston ("McQuiston"), the Senior Information Security Analyst for Respondent to notify him about the document. (Huffman Test.). McQuiston's role was to determine if the matter should be escalated to Respondent's Human Resources Department, ("HR"). *Id.*

29. McQuiston informed Huffman to contact Ms. Laura Twyman ("Twyman"), the Director of HR, about the document found on Petitioner's computer. (Huffman Test.).

30. On January 23, 2015, Huffman emailed Twyman about this issue and forwarded her the document from Petitioner's computer. (Huffman Test.; Resp't. Ex. 14).

31. On February 4, 2015, Twyman met with Gwendolyn Winderlich ("Winderlich"), Respondent's Director of UI integrity, to see whether a predeprivation meeting was necessary in this case. (Winderlich Test.). Twyman forwarded Winderlich an email from Huffman with the non-work related item that was found on Petitioner's computer. *Id.* Also, McQuiston gave Winderlich access to files and emails belonging to Petitioner located on the home drive on the computer. *Id.*

32. Winderlich created spread sheets and took screen shots of the folders Petitioner had on her computer and documented when Petitioner had worked on each item. (Winderlich Test.; Resp't. Ex. 17). Petitioner kept a folder on the home drive named "Writing Folder." (Resp't. Ex. 17 at 1; Winderlich Test.). Within this folder, there were six (6) additional subfolders named "Critiques," "Duplicates," "Miscellaneous Personal and Writing," "Ron and Albert story," "SPA," and "Train." (Resp't. Ex. 17 at 2-8; Winderlich Test.).

33. Through Winderlich's investigation into Petitioner's computer use at work, she found that about fifty (50) percent of the documents in the "Critiques" folder were worked on by Petitioner during non-break working hours. (Resp't. Ex. 29; Ex. 30; Winderlich Test.).

34. According to Winderlich, it was permissible to work on non-work related items under the IRUA, but only during authorized breaks and before/after work hours. (Winderlich Test.). Winderlich found two-hundred eighty-seven (287) non-work related emails on Petitioner's computer sent and received between May, 2014 and January, 2015. (Winderlich Test.; Resp't. Ex. 30). Out of those emails, she found that one-hundred seven (107) of those emails were impermissible because they were worked on during non-break hours and were not *de minimis*. *Id.* She deemed the amount of impermissible emails sent and received by Petitioner was excessive in number and violated the IRUA and Respondent's Policy. (Winderlich Test.).

35. The subfolder "Train" had three (3) non-work related files in it. (Resp't. Ex. 18 at 3). One of these files contained a contract in it that was entered into by Petitioner with a publisher, James Ward Kirk Fiction, on May 21, 2014, for the publication rights of her story "Summer Train." (Resp't. Ex. 43; Winderlich Test.). Petitioner alleged that she did not receive any payment from this contract (Pet'r. Test.), but the contract ensured that Petitioner would receive two Editor's choice awards of $25 each sent to her PayPal account. (Resp't. Ex. 43 at 2).

36. After reviewing all of the non-work related documents on Petitioner's computer, Winderlich decided that a predeprivation meeting was necessary because of both an excessive amount of personal documents Petitioner worked on during business hours, as well as a high frequency of non-work related emails sent and received from Petitioner's computer during work hours. (Winderlich Test.; Resp't. Ex. 19).

37. On February 5, 2015, Huffman notified Petitioner in person that she needed to appear for a predeprivation meeting at 11:00 a.m. (Huffman Test.; Resp't. Ex. 21). Petitioner was also told that she could bring a silent witness. *Id.*

38. Winderlich conducted the predeprivation meeting on February 5, 2015, (Resp't. Ex. 21; Winderlich Test.). Petitioner did not bring a silent witness. (Winderlich Test.).

39. At the meeting, Winderlich discussed with Petitioner why the meeting was being held and why she believed Petitioner violated the IRUA policy.[5] (Winderlich Test.).

40. During the meeting, Petitioner told Winderlich that she did not know that she was not allowed to work on her writings at work and stated that Huffman knew she was in a writing club. (Winderlich Test.; Pet'r. Test.). Petitioner also stated that Huffman authorized her to work on non-work related items at work because she did not have a personal computer at home. *Id.* Further, Petitioner stated that she only worked on non-work related items during breaks and before/after work, not during work hours. (Pet'r. Test.).

41. Winderlich met with Huffman after the predeprivation meeting and learned that Huffman had not in fact authorized Petitioner to work on non-work related items at work. Huffman was also unaware that Petitioner was in a writing club, and was unaware that Petitioner did not have a personal computer. (Winderlich Test.; Huffman Test.).

42. Winderlich also met with Jeffrey Gill ("Gill"), Respondent's General Counsel, after the meeting to discuss both the IRUA and Respondent's Policies and to further discuss the meaning of *de minimis* and "personal use". (Winderlich Test.). These policies limit personal use on State computers and only allow *de minimis* use on occasion. *Id.* Winderlich believed *de minimis* use to mean a quick, short email sent about once a day. *Id.* According to Winderlich, "personal use" under Respondent's Policy meant sending a personal email quickly to a caregiver or spouse and then getting back to work. *Id.* After consulting with Gill, Winderlich decided that Petitioner had violated the IRUA policy and Respondent's Policy. (Winderlich Test.).

43. Ultimately, Winderlich made the decision to terminate Petitioner on February 5, 2015, without first imposing progressive discipline because of the volume of emails sent and received, transactions completed, and the amount of non-work related files saved to her work computer during work hours. (Winderlich Test.; Resp't. Ex. 25). She also believed that the personal transactions made by Petitioner on her state computer could have been handled outside of work and there was nothing that Petitioner worked on that could have been deemed an emergency or fall under the IRUA policy as being *de minimis*. (Winderlich Test.).

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[5] Respondent's Policy was amended on July 1, 2015 as DWD Policy 2015-02. The amended policy states that limited personal use of State Resources "must be in accordance with the current version of the Information Resources Use Agreement ("IRUA")." Further, if Petitioner violated Respondent's Policy then she violated the IRUA.

IV. Conclusions of Law

1. Indiana follows the at-will employment doctrine, which permits an employer to dismiss, demote, discipline, or transfer an employee "for any reason that does not contravene public policy." I.C. § 4-15-2.2-24(b).

2. Petitioner bears the burden of proving "that a public policy exception to the employment at will doctrine was the reason for the employee's discharge." I.C. § 4-15-2.2-42(f).

3. Petitioner was responsible for knowing and following the State of Indiana's IRUA policy and Respondent's Policy. (Resp't. Ex. 23). Both the IRUA and Respondent's Policies describe that Petitioner was to use her State computer for work purposes only. Since Petitioner was working on non-work related items during work hours, she could be disciplined or terminated for misusing State property. (Resp't. Exs. 22, 23).

4. The IRUA states that an employee may use the State's Information Resources[6] primarily for the business of the state government, to only store state owned information, and to not intentionally sustain high volume transactions or network traffic for non-business purposes. (Resp't. Ex. 22). If an employee violates the IRUA by inappropriately using the State's Information Resources "it may result in disciplinary action, up to and including immediate dismissal from employment." (Resp't. Ex. 22).

5. Respondent's Policy recognizes that state employees would occasionally need to use state property or resources for emergencies and other personal activities that cannot be handled away from the work place. (Resp't. Ex. 23 at 1). These "personal activities" include contacting children's schools, child-care providers, physicians and others. *Id.* Permissible use of state property or resources means the use does not interfere with work responsibilities, it is infrequent, short, and may not be for the purpose of conducting business related to an outside commercial activity. *Id.*

6. Both the IRUA and Respondent's Policies discuss the parameters of permissible use for state property and resources. (Resp't. Ex. 22, 23). Both require that if state property or resources are going to be used for non-work related use, it should be authorized by Respondent before the action is taken. (Resp't. Ex. 22 at 1; Resp't. Ex. 23 at 3). Petitioner did not comply with either of these policies when using her state owned computer, and accordingly Petitioner was not authorized to write stories, send and receive an excess amount of non-work related

[6] Information Resources according to the IRUA includes "all State hardware, software, data, information, network, personal computing devices, phones, and other information technology."

emails on non-break time, and store non-work related documents on her state computer. Therefore, Petitioner violated both policies because she did not use the State's Information Resources primarily for the business of State government. (Resp't. Ex. 22 at 1).

7. Without pre-approved authorization from Respondent or Petitioner's supervisor as to Petitioner's non-work related use of the State's information resources, Petitioner was subject to "disciplinary action, up to and including immediate dismissal from employment." Petitioner claimed that she would have ceased from working on non-work related documents during work hours if she would have been notified that this was not allowed of her by her supervisor (Pet'r. Test.), but the IRUA states that Respondent was not required to give Petitioner any prior warnings or disciplinary action before her termination. (Resp't. Ex. 22 at 2).

8. At no time did Petitioner ask Huffman if she could use her work computer for personal use. (Huffman Test.). If Petitioner had asked Huffman if she could use her work computer for personal use, Huffman stated that she would not have allowed it. *Id.* Similarly, at no time did either Stainbrook or Korobkin know that Petitioner was using her work computer to write and critique stories. (Korobkin Test.). Therefore, none of Respondent's key personnel gave Petitioner any authority to use the State's information resources for her own personal use.

9. Petitioner was given a copy of Respondent's Policy and underwent an online training of the IRUA and signed/initialed both, indicating her understanding of these policies. (Winderlich Test.; Resp't. Ex. 45 at 4; Ex. 22). Although Petitioner read and signed both policies, she still continued to use her work computer for personal non-work related purposes. *Id.*

10. Petitioner sent two-hundred eighty-seven (287) non-work related emails during work hours. (Resp't. Ex. 19). Further, Petitioner sent twenty-one (21) non-worked related emails with attachments from her work computer with ten (10) of these emails having been sent during non-break work hours. (Resp't. Ex. 42). Therefore, Petitioner violated the justifiable use of resources under the IRUA because Petitioner intentionally sustained high volume transactions or network traffic for non-business purposes. (Resp't. Ex. 22 at 2).

11. While Petitioner worked for Respondent and was getting paid as an Audit Examiner III, she used non-break work time to enter a writing contest to win prize money. (Resp't. Ex. 19 at 11). She also entered into a contract with a publisher for two (2) Editor's choice awards of $25 dollars each. (Resp't. Ex. 43 at 2). The contract states that Petitioner would get these two payments/awards in exchange for allowing the publisher to use her story in a "train theme print Anthology and electronic publication."

12. The ALJ further finds *sua sponte* that Petitioner violated the Outside Employment section of the state of Indiana Employee Handbook ("Handbook") which serves as a guide for all personnel policies and procedures for the employment relationship between the state and its employees. *Found at http://www.in.gov/spd/files/eehandbook.pdf.* According to the Handbook, "use of state equipment, materials, premises or time in connection with outside employment is prohibited." Petitioner violated the Handbook's rule on outside employment because she was using the state's information resources during her work hours to work on outside employment, which is prohibited.[7]

13. At the time of Petitioner's work training, Korobkin emailed Petitioner asking her if she had any questions about the training or about anything else that they had covered in the meeting and Petitioner responded that she did not. (Korobkin Test.; Resp't. 45 at 6). Also, Huffman stated that Petitioner never asked her any questions about the IRUA policy or Respondent's Policy. (Huffman Test.).

14. It is clear by looking at the stories Petitioner had written, the critiques, the emails, and all the non-work related items stored on her work computer that her use of the state's property or resources was not infrequent, short in duration, or for occasional emergency purposes. (Resp't. Ex. 18; Ex. 19; Ex. 20; Ex. 30). Further, Winderlich testified that about 50% of the documents that Petitioner critiqued were worked on during work hours (Winderlich Test.; Resp't. Ex. 30). Due to the high percentage of documents being worked on by Petitioner during work hours, it cannot be said that the use of state property or resources was infrequent or short in duration. (Resp't. Ex. 23 at 1).

15. Also, Petitioner's unauthorized use interfered with the performance of her work responsibilities as seen in the drop of her work performance from August, 2014 through December, 2014, by coming into work late, forgetting to code out of her phone on breaks, removing the estimation on an employer's account without receiving approval from her supervisor, and sending a notice of demand for payment to the wrong address and employer.

16. Petitioner believed that her employment description called for her to be a skilled writer, which is one of the reasons she stated she was in writing clubs and worked on personal writing at work, but Petitioner's work description did not call for her to be a skilled writer. (Resp't. Ex. 1).

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[7] Also, the ALJ finds *sua sponte* that Petitioner violated the Indiana Ethics Code. Specifically, Petitioner violated 42 IAC 1-5-13- Ghost Employment, which states that an employee should not work on anything outside of their official job duties. Similarly, Petitioner violated 42 IAC 1-5-12- Use of State Resources, which states that an employee may not use state equipment other than for state business, unless their agency has a policy for such use approved by the State Ethics Commission. Aside from her termination, Respondent chose not to bring an action against Petitioner for these violations, but the ALJ raises them here in further support of his findings.

17. From the start of Petitioner's employment on April 28, 2014, Petitioner underwent extensive training to become an Audit Examiner III. She also underwent training to learn Respondent's Policy and Procedures along with IRUA training. She signed Respondent's policy and procedures indicating that she had read and understood them and never asked her supervisors any questions about them when asked. Despite this, Petitioner continued to use state resources to write stories, critique stories, send and receive personal emails, and store non-work related items on her work computer all while during work hours. Petitioner's actions violated both the IRUA and Respondent's Policies. The excessive amount of information worked on during work hours and the large number of personal emails sent and received by Petitioner lead the ALJ to conclude that Respondent was within its rights to terminate Petitioner's employment without first issuing progressive discipline.

18. Respondent's termination of Petitioner did not violate public policy. Petitioner has failed to present sufficient evidence to sustain her burden of proving that a public policy exception to employment at-will existed regarding her termination by Respondent.

19. All prior sections are incorporated by reference as necessary. To the extent a conclusion of law stated herein is a finding of fact or the reverse, it shall be deemed and remain effective.

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: May 23, 2016

Hon. Gabriel Paul
Chief Administrative Law Judge
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