BEFORE THE
STATE EMPLOEES' APPEALS COMMISSION

IN THE MATTER OF:

BRIGITTE J. KEPHART Petitioner,	)	
v.	) SEAC No. 04-15-029	SEAC ISSUED JUN 20 2016
INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT Respondent.	)	

REVISED FINDINGS OF FACT, CONCLUSIONS OF LAW, AND NON-FINAL ORDER OF THE ADMINISTRATIVE LAW JUDGE UNDER TRIAL RULE 60

I. Introduction and Summary[1]

The ALJ issued the original Findings of Fact, Conclusions of Law, and Non-Final Order on May 23, 2016, and now *sua sponte* issues this revised Findings of Fact, Conclusions of Law, and Non-Final Order to clarify certain sections regarding Petitioner's employee classification.[2]

The Findings of Fact, Conclusions of Law, and Non-Final Order were previously discussed in the original Non-Final Order and are hereby incorporated by reference. Under Ind. Trial Rule 60 (A), "clerical mistakes in judgments, orders or other parts of the record and errors therein arising from over sight or omission may be corrected by the trial court at any time before the Notice of Completion of Clerk's Record is filed under Appellate Rule 8." *KeyBank Nat. Ass'n v. Michael*, 770 N.E.2d 369, 375 (Ind. Ct. App. 2002). The reason for this rule is in the case of mechanical error, "the interests of fairness outweigh the interests of finality that attend the prior adjudication. *Id.* (internal citations omitted). The ALJ does not need to rehash the evidence again because even after clarifying Petitioner's classification status, the outcome of the case does not change. Respondent terminated Petitioner for just cause without implementing progressive discipline because Petitioner violated both the IRUA and Respondent's Policies by

[1] The ALJ issues this corrected opinion to remedy the error relating to Petitioner's employee classification and the burden of proof necessary to prevail discovered subsequent to the issuance of the ALJ's original opinion on May 23, 2016. These errors do not change the outcome of the case.

[2] The ALJ gave the parties an opportunity to submit objections, which Petitioner did on June 14, 2016.

working on large amounts of personal work during work hours and because she was sending and receiving numerous persona emails during non-break working hours.

II. Legal Standard

The following legal standard regarding Petitioner's employee classification is revised:

This is a classified (just cause) case under the Civil Service System. A state agency may only terminate or take material adverse employment actions against a classified state employee for just cause. I.C. § 4-15-2.2-23. In a disciplinary case involving a classified employee the state agency has the initial and ultimate burden of proving by a preponderance of the credible evidence that there was just cause for imposing the adverse employment action. Ind. Code § 4-15-2.2-42(g); see *Non-Final and Final Orders in Miller v. FSSA*, SEAC No. 05-12-060 (2012); *Non-Final and Final Orders in Cole v. DWD*, SEAC No. 02-12-019 (2013); *Non-Final and Final Orders in Johnson v. DWD,* SEAC No. 05-13-034 (2014). Therefore, if the Respondent does not establish just cause, the challenged adverse employment action is invalid.

To establish just cause, the Respondent may refer to the Petitioner's work performance or service rating. I.C. § 4-15-2.2-36(e). An agency's service ratings and employee performance standards "must be specific, measurable, achievable, relevant to the strategic objective of the employee's state agency or state institution, and time sensitive." *Id.* Therefore, in determining whether just cause was established, SEAC may consider Petitioner's performance as compared to the Respondent's employee performance standards. I.C. § 4-15-2.2-12, 36 and 42.

Additionally, the inquiry focuses on the reasonableness of the employer agency's workplace expectations. Employer expectations must be reasonably well communicated and consistently applied to similarly situated employees. *See Miller, Cole* and *Johnson, supra.* The reasonable expectations of the Respondent may include its communicated employee performance standards and expected outcomes. *Id.* The just cause standard requires the Respondent to act with reasonableness, not perfection. See *Conklin v. Review Bd. of DWD*, 966 N.E.2d 761, 764 (Ind. Ct. App. 2012); *Ghosh v. Ind. State Ethics Com'n*, 930 N.E.2d 23 (Ind. 2010); *Tacket v. Delco Remy*, 959 F.2d 650 (7th Cir. 1992) (just cause standards in other contexts in Indiana similarly looks to the reasonable expectations of the employer).

At-will employment is the default in Indiana, and most state employees are considered non classified in that regard. I.C. §§ 4-15-2.2-22, 24. However, the General Assembly also recognized some employees as classified given federal regulations and laws, but did not define "just cause" in the Civil Service System. Therefore, the ALJ first looks to Indiana law, but also to the federal standard. The federal employment just cause standard is defined as "[s]uch cause

as will promote the efficiency of the service." 5 U.S.C. § 7513(a). See also *Free Enterprise Fund v. PCAOB*, 561 U.S. 477, 477 (2010) (federal system looks at factors such as inefficiency, neglect of duty, and reasons provided by the legislature).

If an agency establishes just cause, "the [C]ommission shall defer to the appointing authority's choice as to the discipline imposed . . . " I.C. § 4-15-2.2-42(g). The ALJ is not authorized to substitute his own judgment after the agency proves it had just cause to impose the adverse employment action.

III. Conclusions of Law

The following Conclusions of Law are hereby revised:

1. Indiana Code § 4-15-2.2-23(a) states that: "An employee in the state classified service who has successfully completed a working test period may be dismissed, demoted, or suspended only for just cause, including cause under section 49 of this chapter."

2. The state agency has the initial and ultimate burden of proving by a preponderance of the credible evidence that there was just cause for imposing the adverse employment action. Ind. Code § 4-15-2.2-42(g).

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 established just case to terminate Petitioner's employment without first issuing progressive discipline.

18. The ALJ finds that Respondent has sustained their burden of proving by a preponderance of the credible evidence that there was just cause for imposing Petitioner's termination.[3]

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[3] Under Ind. Trial Rule 61, "no error in either the admission or the exclusion of evidence and no error or defect in any ruling or order in anything done or omitted by the court or by any of the parties is ground for granting relief under a motion to correct errors or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order or for reveal on appeal unless refusal to take such action appears to the court inconsistent with

IV. 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: June 20, 2016

Hon. Gabriel Paul
Chief Administrative Law Judge
State Employees' Appeals Commission
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substantial justice." The court will not reverse its ruling if the ruling constituted harmless errors. In this case, in light of all the evidence, the error is so minor as not to affect Petitioner's substantial rights. *Kimbrough v. Anderson*, No. 53A05-1507-PL-883, 2016 WL 2943392, at 5 (Ind. Ct. App. May 20, 2016)

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