**BEFORE THE**
**STATE EMPLOYEES' APPEALS COMMISSION**

IN THE MATTER OF:

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| JARRED EIB<br>Petitioner, | ) | |
| | ) SEAC No. 04-17-021 | |
| vs. | ) | SEAC ISSUED<br>AUG 17 2018 |
| INDIANA DEPARTMENT OF CHILD SERVICES<br>Respondent | ) | |

**ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

On June 11, 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 Jarred Eib's ("Petitioner") Complaint. Petitioner, pro se, responded to the Motion on July 12, 2018. Respondent declined the opportunity to file a surreply.

This case considers Petitioner's termination for ongoing deficiencies in meeting his professional work competencies and expectations, along with unacceptable behaviors under both Indiana State Personnel ("SPD") and Respondent's policies. Under Ind. Code § 4-15-2.2-42(f), an unclassified employee's complaint must demonstrate a violation of a law, rule or public policy to oppose the challenged employment decision.[1] The controlling pleadings for purposes of this decision are the Complaint originally received on March 29, 2017, Petitioner's Amended Complaint received on April 20, 2017, 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 material issue of fact exists with regard to Petitioner's claims. Therefore, Respondent's Motion for Summary Judgment is hereby GRANTED. The following additional findings of fact, conclusions of law, and order are entered.

[1] The ALJ notes that on February 9, 2018, he found that Petitioner was an unclassified employee for purposes of this matter. Petitioner thereafter filed a Motion to Correct Error, which the ALJ denied on March 9, 2018.

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. Petitioner began his employment with Respondent on May 20, 2013. (Pet'r Am. Compl.)

2. Petitioner was hired directly by Respondent, and was not appointed by the Governor, or any other executive within Respondent's agency. (Pet'r Am. Compl).

3. Petitioner was a staff attorney for Respondent at all times during his employment (Pet'r Am. Compl.)

4. On January 6, 2017, Petitioner was terminated by Respondent. (Pet'r Compl).[2]

[2] The ALJ recognizes that his Findings of Fact in this matter are sparse. However, neither party provided further facts such that the ALJ could include in this opinion.

## 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 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." Ind. Code § 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); *Tony v. Elkhart County,* 851 N.E.2d 1032 (Ind. Ct. App. 2006).

4. "Indiana generally follows the employment at will doctrine, which permits the employer to discipline the employment at any time for a 'good reason, bad reason, or no reason at all.'" *See 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 the discipline was arbitrary or unfair does not state an at-will exception allowing SEAC jurisdiction. A viable public policy exception must be present for the Controlling Complaint to survive.

5. Petitioner's main contentions are that he was a classified employee for purposes of this appeal because Respondent is an agency under which classified employees work, as well as the fact that Petitioner does not fall under any of the exemptions to the classified service described below. Petitioner also argues that because he successfully completed a working test period, Respondent owed him certain duties before terminating him and also argues that as a classified employee, Respondent must show just cause under I.C. § 4-15-2.2-42(g). *See also* I.C. § 4-15-2.2-23. *See also* *https://www.in.gov/spd/files/discrandp.pdf.*

6. Petitioner also argues that he should be granted a default judgment because SPD failed to reply to his Step II Complaint in a timely manner. [3] The ALJ thus summarizes Petitioner's argument that throughout his employment with Respondent, he was a classified employee because Respondent is an agency contemplated by I.C. § 4-15-2.2-21 and that he completed a working test period under I.C. § 4-15-2.2-34 and 31 IAC 5-3-1. (Pet'r Reply).

7. I.C. § 4-15-2.2-4 defines a classified employee as an employee who has been appointed to the state classified service, has completed a working test period and has been certified by the appointing authority for that classification.

8. I.C. § 4-15-2.2-21 defines the state classified service as consisting of those positions in programs that have a federal statutory or regulatory requirement for the establishment and maintenance of personnel standards on a merit basis, and includes examples of such positions as falling under Employment Security, Federal Payments for Foster Care and Adoption Assistance, Medicaid and Social Security, among others. *See* I.C. § 4-15-2.2-42(a).

[3] The ALJ previously dismissed Petitioner's timeliness claim by Order dated May 5, 2017, which is hereby incorporated by reference. Thus, the ALJ declines to address it further. Also, Petitioner continues to argue for the ALJ's recusal in this matter, based on his perceived bias. The ALJ previously addressed these contentions and denied recusal in an Order dated May 7, 2017, which is also incorporated by reference. The ALJ thus declines to further address these issues here and will rather focus on Petitioner's other contentions.

9. I.C. § 4-15-2.2-34 states that every employee appointed to the classified service shall complete a working test period of at least six (6) months, which may be extended up to twelve (12) months if need be. Also, during the working test period, a classified employee receives a performance appraisal ("Appraisal"), which is used to measure the (classified) employee's work, and also to ascertain whether the working test should be extended, whether the classified employee has successfully completed it, or whether the classified employee should be terminated. *See also* 31 IAC 5-3-1.

10. However, I.C. § 4-15.2.2-21(b) contains exemptions to the classified services. They consist of the following:

(1) Those employees appointed by the governor or lieutenant governor.
(2) A deputy, an administrative assistant, a secretary, or another position in a confidential relationship to an officer or employee described in subdivision (1).
(3) An employee who holds an executive level position:
  (A) who is the head of a division or major unit within a state agency;
  (B) who is a regional director or manager for a state agency, regardless of the title of the position; or
  (C) who, as a substantial part of the position's duties, provides meaningful input on:
    (i) the development of policy goals; or
    (ii) the implementation of policy.
(4) The superintendent or director of a state institution.
(5) The highest ranking employee of a state agency who:
  (A) holds an executive level position; and
  (B) has primary responsibility for one (1) or more of the following functions:
    (i) Public information.
    (ii) Legal matters.
    (iii) Fiscal matters.
    (iv) Security or internal affairs.

11. It is undisputed that Respondent is an agency in which classified employees work.

12. It is also undisputed that Petitioner does not fall under the vast majority of the exemptions listed in I.C. § 4-15-2.2-21(b). There remains, however, some argument as to whether Petitioner is exempt from the classified service under I.C. § 4-15-2.2-21(b)(3)(C), which exempts those employees who hold executive level positions who are the head of a division and who provide meaningful input on the development of policy goals or the implementation of policy.

13. While the ALJ previously found that Petitioner fell under I.C. § 4-15-2.2-21(b)(3)(C) based upon the fact that Petitioner most likely provided input on the development of Respondent's policy or the implementation of those policies, he now finds that in the absence of any evidence to that effect, such a determination cannot now be made. *See* Resp't. Ex. B). Rather, the focus should be on whether Petitioner presented any evidence that leads the ALJ to find that Petitioner was classified under I.C. § 4-15-2.2-4.

14. Petitioner's argument has been throughout this entire matter that he was a classified employee because Respondent is an agency contemplated by I.C. § 4-15-2.2-21 and that he completed a working test period under I.C. § 4-15-2.2-34 and 31 IAC 5-3-1. (Pet'r Reply).

15. Traditionally, those classified employees who are enrolled in a working test period receive a specialized appraisal. *See https://www.in.gov/spd/2394.htm* (Classified Working Test Appraisal, State Form 53740).

16. However, Petitioner provided no evidence to show that he received such an Appraisal.

17. Petitioner also failed to submit any evidence showing that he was enrolled in a working test period under I.C. § 2.2-15-4.

18. Similarly, Petitioner failed to provide any evidence that he was certified by Respondent for inclusion into the classified service by virtue of his completion of a working test period. *Id.*

19. The ALJ therefore finds that Petitioner was not a classified employee under I.C. § 4-15-2.2-4, but was rather an unclassified employee within the unclassified service.

20. The unclassified service under I.C. § 4-15-2.2-22 consists of all other positions within state government other than those in the classified service. *See* I.C. § 4-15-2.2-22.

21. This statute also separates the unclassified from the classified service and states that the human resource management systems applicable to the state classified service do not apply to the unclassified service. *Id.*

22. I.C. 4-15-2.2-24 further states that an employee in the unclassified service serves at will and at the pleasure of Respondent. *See* I.C. § 4-15-2.2-24(a).

23. As such, an unclassified employee may be dismissed, demoted, disciplined or transferred for any reason that does not contravene public policy. I.C. § 4-15-2.2-24(b).

24. In order to prevail, Petitioner has the burden of proof to show that a public policy exception to the employment at will doctrine was the reason for his discharge. *See* I.C. § 4-15-2.2-42(f).

25. Petitioner submitted no evidence to show that he was otherwise performing up to Respondent's expectations, nor does he point to any federal or state law which Respondent may have violated when terminating him or public policy violation by Respondent.

26. In the absence of such evidence, the ALJ cannot conclude that Respondent violated public policy when it terminated Petitioner.

27. Respondent has successfully shown that no material issues of fact exist that would warrant further proceedings. Petitioner failed to follow Respondent's workplace standards as evidenced above. Respondent's termination of Petitioner did not violate public policy and is hereby UPHELD.

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 and Petitioner's Complaint is hereby DISMISSED. This is the final order of the Commission. A person who wishes to seek judicial review must file a petitioner in an appropriate court within thirty (30) days of this order and must otherwise comply with I.C. § 4-21.5-5. So Ordered.

DATED: August 17, 2018

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Chief Administrative Law Judge
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