BEFORE THE
STATE EMPLOEES' APPEALS COMMISSION

IN THE MATTER OF:

SANDRA BROWN Petitioner,	))	
	) SEAC Nos. 04-17-025	
vs.	) 06-17-034	
	)	
INDIANA DEPARTMENT OF CHILD SERVICES Respondent.	)))	

SEAC ISSUED
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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND NON-FINAL ORDER

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 pleadings are Petitioner Sandra Brown's ("Petitioner") Complaints filed April 26, 2017, and June 27, 2017 with the State Employees' Appeals Commission ("SEAC") against Respondent Indiana Department of Child Services ("Respondent"). Petitioner is a classified (just cause) employee with the Collaborative Care Unit, a part of the Indiana Department of Child services ("Respondent"). The issue before SEAC is whether Petitioner was reprimanded and demoted for just cause. Petitioner contends that her discipline was discriminatory and in violation of the Americans with Disabilities Act as well as without just cause.

An evidentiary hearing in this matter was held on September 13, 2018, before the undersigned Chief Administrative Law Judge. Petitioner Brown appeared pro se and with a personal representative, Mr. Tom Seabold. Respondent appeared by counsel, Ms. Rachel Russell and Ms. Whitney Fritz. Following the hearing, the ALJ gave each party an opportunity to file proposed findings of fact and conclusions of law, which both parties declined to do. Having reviewed the arguments, witness testimony, admitted evidence, and applicable law, and being duly advised, the ALJ issues the following Findings of Fact, Conclusions of Law, and Non-Final Order. Respondent was able to prove by a preponderance of the credible evidence that Petitioner's reprimand and demotion were for just cause. Judgment for Respondent.

II. Legal Standard

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 unclassified 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. Findings of Fact

1. Petitioner began employment with Respondent on October 21, 2002 (Pet'r Compl).

2. At the time of Petitioner's first Civil Service Complaint,[1] she was a Family Case Manager 3 ("3CM") in Lake County, Indiana. (Pet'r Compl).

3. Petitioner had been approved for Family Medical Leave ("FML") for approximately five (5) to six (6) years due to migraines (Pet'r. Test.).

4. On January 12, 2017, Petitioner was scheduled to attend a Collaborative Care Management meeting in Indianapolis (Pet'r Ex. 1, Teagardin Test.).

5. Collaborative Care Management meetings are held on a monthly basis in Indianapolis, Indiana and are mandatory for all 3CM supervisors across the state (Teagardin Test.).

6. Petitioner called Heather Teagardin ("Teagardin"), Collaborative Care Division Manager that morning and told Teagardin that she had experienced a tough morning with her son, who has a heart condition, and the weather was too bad for her to attend the meeting in Indianapolis (Teagardin Test.).

7. Respondent allowed Petitioner to attend the meeting telephonically (Pet'r Ex. 1, Teagardin Test.).

8. Teagardin discussed with Heather Kestian ("Kestian"), Collaborative Care Field Director, what should be done regarding Petitioner missing the January 12, 2018, meeting (Teagardin Test.).

9. Teagardin and Kestian decided that the best course of action would be to give Petitioner a letter of counseling, which they did on January 20, 2017 (Teagardin Test., Resp't Ex. F).

[1] SEAC No. 04-17-025 filed June 27, 2017.

10. On January 19, 2017, Petitioner received an email from Katrina Mullen ("Mullen"), Collaborative Care Case Manager Supervisor, asking if Petitioner could have someone from her team attend a court hearing the next day at 1:00 PM because the previously scheduled 3CM, Andreya Davis ("Davis"), had been in the hospital (Pet'r Ex. P).

11. Petitioner agreed to have someone from her team attend the hearing but questioned the time of the hearing and requested that Mullen send her the court report (Pet'r Ex. P).

12. Approximately eight (8) minutes later, Davis attached the court report to an email to Petitioner (Resp't Ex. Q, Pet'r Ex. 4).

13. The court report, however, indicated that the hearing was set for January 20, 2017, at 9:30 AM, not 1:00 PM (Resp't Ex. Q).

14. Petitioner assigned the court appearance to a member of her staff but did not open the court report to confirm the time of the hearing before doing so (Pet'r Ex. 8).

15. Petitioner's assigned staff member also failed to open the court report to confirm the time of the hearing (Pet'r Test.).

16. As a result, Petitioner's staff member went to court at 1:00 PM, missing the 9:30 AM hearing (Teagardin Test., Resp't Ex. O).

17. On January 24, 2017, a separate court hearing was held in a case involving a probation youth in St. Joseph County, Indiana (Teagardin Test.).

18. In order for youth to access collaborative care, the youth must turn eighteen (18) years old while on juvenile probation. Respondent must work with the court and the probation officer to close the probation case on the same day as Respondent files a petition to open a collaborative care case. The collaborative care case should be opened in the same county where the juvenile probation case lied. If the youth lives in a different county, the court will then venue the case to that county (Teagardin Test., Resp't Ex. S).

19. 3CM supervisors are expected to know this procedure (Teagardin Test.).

20. At the January 24, 2017, hearing, the youth's probation case was closed in St. Joseph County and the collaborative care paperwork was going to be later filed in Lake

County by Elizabeth Blackmon ("Blackmon"), Collaborative Care Case Manager, at the direction of Petitioner (Teagardin Test., Resp't Ex. T, Resp't Ex. U).

21. Teagardin questioned Petitioner as to why she did not follow protocol and open the collaborative care case in St. Joseph County, which the court would then venue to Lake County (Teagardin Test., Resp't Ex. T, Resp't Ex. U).

22. On February 2, 2017, Petitioner received a written reprimand related to her performance and personal judgment in the above mentioned situations (Pet'r Ex. 8).

23. On February 22, 2017, Blackmon was contacted by Audrey Cooley ("Cooley"), Foster Care Case Manager for The Villages, a foster care placement facility (Pet'r Ex. 17).

24. Cooley asked Blackmon about the placement of a particular child and how Respondent wanted to proceed with billing for the time that the child was with The Villages (Pet'r Ex. 17).

25. Blackmon responded on February 27, 2017, that Respondent would close the child's case with The Villages on "the 16th" and could authorize a five (5) day bed hold (Pet'r Ex. 17).

26. On March 1, 2017, Cooley asked Blackmon if she meant "the 16th of February?" (Pet'r Ex. 17).

27. Blackmon told Cooley, "[y]es with a five day bed hold so the 21st" (Pet'r Ex. 17).

28. On March 23, 2017, Blackmon was contacted by Marlene Hayes-Rogers ("Hayes-Rogers"), Accounting Specialist (Pet'r Ex. 16).

29. Hayes-Rogers asked Blackmon to create a new Individual Child Placement Referral ("ICPR") to cover placement for the child from January 17, 2017 to February 21, 2017, so Respondent could be billed for the child's placement (Pet'r Ex. 16).

30. Blackmon responded indicating the child had left the foster home on January 16, 2017 (Pet'r Ex. 16).

31. On March 29, 2017, Hayes-Rogers again asked Blackmon if a new ICPR could be sent to The Villages so Respondent could be billed for January 17, 2017 through February 21, 2017 (Pet'r Ex. 16, 17).

32. Blackmon informed Teagardin about the issue with The Villages and how she had incorrectly agreed to pay for dates in February during which the child was not actually at The Villages (Teagardin Test.).

33. Blackmon was told by Petitioner that Blackmon would need to make the new ICPR and pay for the dates because she had already agreed via email that she would. Blackmon informed Teagardin of the situation while at a management meeting (Blackmon Test., Teagardin Test.).

34. On March 30, 2017, Blackmon forwarded the email chains containing her conversations with The Villages to Teagardin and cc'd Petitioner (Pet'r Ex. 16, 17).

35. On April 11, 2017, Petitioner participated in a pre-deprivation meeting to discuss her conduct as it related to case management and supervision (Pet'r Ex. 14).

36. On April 13, 2017, Petitioner was demoted to a Family Case Manager 2 (Pet'r Ex. 14).

IV. **Conclusions of Law**

1. The ALJ will first address Petitioner's contentions that she was discriminated against under the Americans with Disabilities Act for her migraines.

2. Allegations of discrimination are handled under Title VII of the Federal Civil Rights Act of 1964, as amended. *See also*, the Indiana Civil Rights Act (I.C. 22-9), which prohibits national origin employment discrimination under state law. The Title VII discrimination analysis is often referred to as the modified *McDonnell Douglas* burden-shifting framework. *See McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973); *See also Pantoja v. American NTN Bear. Manuf. Corp.*, 495 F.3d 840, 845 (7th Cir 2007). There are three steps to this analysis. First, the petitioner-employee "has the initial burden of establishing a prima facie case of discrimination" through either direct or indirect evidence. *Ind. Civil Rights Comm'n v. S. Ind. Gas & Elec. Co.*, 648 N.E.2d 674 (Ind. Ct. App. 1995). While indirect evidence is merely circumstantial, direct evidence "establishes [discrimination] without resort to inferences from circumstantial evidence." *Pantoja v. American NTN Bear. Manuf. Corp.*, 495 F.3d 840, 845 (7th Cir 2007).

3. Second, if the petitioner-employee establishes a prima facie case of discrimination, the burden shifts to the respondent-agency to show a legitimate, nondiscriminatory reason for the adverse employment action(s). *Id.* Third, once the respondent-agency shows

such reason, the burden shifts back to the petitioner-employee to "present evidence that the stated reason was just a 'pretext' which in turn permits an inference of unlawful discrimination." *Coleman v. Donahoe*, 667 F.3d 835 (7th Cir. 2012) (citing *McDonnell Douglas*, 411 U.S. 804). "Evidence is evidence," and are means to consider whether one fact . . . caused another . . .) and therefore are not "elements" of any claim." *Id.* at 763. The legal standard is merely "whether the evidence would permit a reasonable factfinder to conclude that the plaintiff's race, ethnicity, sex, religion, or other proscribed factor caused the discharge or other adverse employment action." *Id.* at 765.

4. "The plaintiff in such a case must first establish a 'prima facie' case of discrimination." *Filter Specialists, Inc. v. Brooks*, 906 N.E.2d 835, 839 (Ind. 2009). "Once the plaintiff has established a prima facie case, unlawful discrimination is presumed." *Id.* at 840. The defendant-employer can rebut this presumption by producing evidence that the adverse employment action was taken "for a legitimate, nondiscriminatory reason." *Id.* (internal citations omitted). "Should the defendant-employer carry this burden, the plaintiff must have an opportunity to prove by a preponderance of the evidence that the legitimate reasons offered by the defendant-employer are but a pretext for discrimination." *Id.*

5. While the *McDonell Douglas* analysis is still employed, under the doctrine first laid out under *Ortiz v. Werner Enters., Inc.*, 834 F.3d 760 (7th Cir. 2016), using the *McDonnell Douglas* direct v. indirect analysis on various piles of evidence is too cumbersome. *Ortiz v. Werner Enters., Inc.*, 834 F.3d 760, 763 (7th Cir. 2016). Instead, 7th circuit courts are now directed to look at the evidence as a whole when analyzing claims of discrimination under *McDonnell Douglas*. *Id.* at 764. "Evidence must be considered as a whole, rather than asking whether any particular piece of evidence proves the case by itself- or whether just the "direct" evidence does so, or the "indirect" evidence." *Ortiz*, 834 F.3d at 763. While the decision does not specifically extend to administrative bodies such as SEAC, the ALJ nevertheless finds that the *Ortiz* decision persuasive in this case. *David v. Bd. of Trs. of Cmty. Coll. Dist. No. 508*, 846 F.3d 216 (7th Cir. 2017).

6. Per the Americans with Disabilities Act ("ADA"), "[t]he term 'disability' means, with respect to an individual (a) a physical or mental impairment that substantially limits one or more of the major life activities of such individual; (b) a record of such an impairment; or (c) being regarded as having such an impairment." 42 U.S.C. § 12102 (1).

7. "[T]he determination of whether or not a person has an ADA disability is to be made on an individualized case-by-case basis. The determination of whether an individual

has a disability is not necessarily based on the name or diagnosis of the impairment the person has, but rather on the effect of that impairment on the life of the individual. Some impairments may be disabling for particular individuals but not for others, depending on the stage of the disease or disorder, the presence of other impairments that combine to make the impairment disabling or any number of other factors." *Merry v. A. Sulka & Co.*, 953 F. Supp. 922 (N.D. Ill. 1997).

8. Although Petitioner may have migraines, Petitioner has not offered any evidence of such occurrences nor any evidence showing that her migraines constitute a disability under the ADA. In other words, Petitioner has failed to offer proof that her migraines substantially limit one or more major life activities nor can she provide documentation of such (Pet'r Test.).

9. Additionally, Petitioner has not offered any evidence of discrimination nor has she shown that her discipline was discriminatory. The allegations put forth by Petitioner do not lead the ALJ to believe that she was discriminated against in any fashion. Petitioner's allegations do not lead to a pattern of discrimination by the Respondent nor any employees under its command. Petitioner's discipline was a result of her failure to meet Respondent's expectations on multiple occasions. Therefore, the ALJ finds that Petitioner's claim of discrimination under the ADA fails.

10. The ALJ now turns to Petitioner's allegation that her discipline was not for just cause.

11. Petitioner, as a classified employee, was subject to discipline for just cause. (Resp't Ex. C-1). Just cause can include behavior such as failing to perform assigned duties or negligence in performing assigned duties. *Id.*

12. Petitioner, on several instances, did not meet the reasonable expectations of Respondent and failed to perform her assigned duties (Respt' Ex. A).

13. For instance, Petitioner incorrectly instructed her staff on how to open collaborative care cases (Teagardin Test.). Respondent had been doing these cases the same way since 2012 and Petitioner received the same training as Teagardin regarding the protocol for opening cases (Teagardin Test.). Petitioner could have accessed the policy online or talked to her supervisor if she did not know the correct way to open the cases, but failed to do either and decided instead to pursue actions outside of the policy (Teagardin Test.).

14. Additionally, when Petitioner's staff member missed court, Petitioner failed to take responsibility. Petitioner relied on the 1:00 PM time in the email instead of opening the court report to check the time. Petitioner attempts to place all the blame on her staff

member but it was Petitioner's responsibility as a supervisor to confirm the correct time[2] (Teagardin Test., Kestian Test.).

15. In another situation, Petitioner failed to correctly advise Blackmon on how to correct her mistake when she gave the wrong dates to The Villages. Petitioner should have reached out to The Villages, apologized for the error and fixed the dates (Kestian Test.). However, Petitioner instead chose to tell Blackmon to leave the wrong date of February 16, 2017, on the ICPR (Blackmon Test.). (Teagardin Test.).

16. Petitioner's supervisors found that she had a pattern of giving bad direction to staff and failing to seek clarification from supervisors before giving direction to her own staff (Teagardin. Test.). Petitioner's supervisor had been working with her for a number of years on these issues and had provided opportunities for growth, but Petitioner still continued to fail to ask her supervisor for clarification or give sound advice to her staff (Teagardin Test.).

17. Petitioner received progressive and corrective discipline in line with Respondent's discipline policy (Respt' Ex. C-1).

18. By a preponderance of the credible evidence, Respondent proved just cause for Petitioner's termination. Petitioner fell short of satisfying the reasonable performance expectations and policies of Respondent. These expectations and policies were clearly communicated to Petitioner, and similar expectations were applied to others working in a similar capacity. Two of Petitioner's managers felt that she lacked good judgment and progressive discipline was followed. Respondent thus established its burden of required proof to show just cause for the termination under Ind. Code § 4-15-2.2 *et seq.*, Ind. Code § 4-21.5-3 *et seq*.

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.

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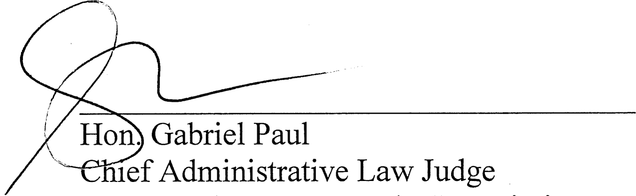
[2] Petitioner's staff member who missed the court hearing was likewise disciplined (Kestian Test.).

V. Non-Final Order

Judgment is entered in favor of Respondent. Petitioner's written reprimand and demotion are UPHELD The Parties shall bear their own fees and costs. So Ordered.

DATED: October 17, 2018



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