

**BEFORE THE  
STATE EMPLOYEES' APPEALS COMMISSION**

IN THE MATTER OF:

LEONARD LOVE	)	
Petitioner,	)	
	)	SEAC No. 04-18-023
vs.	)	
	)	
INDIANA STATE PRISON	)	
BY INDIANA DEPARTMENT	)	
OF CORRECTION	)	
Respondent.	)	

**ISSUED**

**DEC 26 2018**

**STATE EMPLOYEES'  
APPEALS COMMISSION**

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

I.     Introduction and Summary

On October 1, 2018, Respondent Indiana State Prison, which is a part of the Indiana Department of Correction ("Respondent"), by counsel, filed a Motion for Summary Judgment regarding Petitioner's Complaint ("Motion"). Petitioner Leonard Love ("Petitioner"), by counsel, timely replied to the Motion on December 3, 2018. Thereafter, on December 6, 2018, Respondent filed a response in support of its Motion and to Petitioner's Motion to Strike.

This case considers Petitioner's termination on March 5, 2018, for failing remove his ex-wife from Petitioner's state-administered health insurance policy.<sup>1</sup> At the time of his termination, Petitioner was an unclassified, at-will Correctional Officer with Respondent. Petitioner asserts that upon his divorce becoming final, he spoke to Respondent about removing his ex-wife, but that Respondent never took such action. Petitioner also raises a claim of retaliation in his Reply, which the ALJ declines to analyze in great depth, as explained below.

Under Ind. Code § 4-15-2.2-42, an unclassified employee's complaint must demonstrate a violation of a law, rule, or public policy to oppose the challenged employment decision. The controlling pleadings for purposes of this decision is the Complaint originally received on January 25, 2018, Petitioner's amended Complaint received on February 27, 2018, Respondent's Motion, Petitioner's reply to Respondent's Motion and Respondent's surreply.

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<sup>1</sup> Jurisdiction was granted to the State Employees' Appeals Commission under Ind. Code § 4-15-2.2 *et seq.* ("Civil Service System"); and the Administrative Orders and Procedures Act, Ind. Code § 4-21.5-3 *et seq.* ("AOPA").

After review of the pertinent pleadings noted above, the ALJ finds Respondent's Motion meritorious and hereby **Grants** it. Petitioner's Complaint, with its factual allegations accepted as true, fails to allege a violation of a law, rule, or public policy exception to Indiana's at-will employment law, and this case must therefore be dismissed under I.C. § 4-15-2.2-42. The following additional findings of fact, conclusions of law, and final order of dismissal for lack of jurisdiction are entered.

#### I. 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 was first hired by Respondent in 1995 (Resp't Motion, Ex. G).
2. From 1995, until his termination, Petitioner worked for Respondent as a Correctional Officer (Resp't Motion, Ex. G).
3. From December, 2014, until May, 2017, Petitioner was on long-term disability leave from Respondent (Resp't Motion, Ex. J).
4. On May 26, 2016, Petitioner was formally divorced from his then-wife, by order of the Lake County, Indiana Superior Court (Resp't Motion, Ex. C).
5. On May 27, 2016, Petitioner called Respondent's facility directly to report that he was now divorced and that his ex-wife should be removed from his health insurance plan (Pet'r Compl.)
6. Petitioner received no follow up from Respondent and did not contact Respondent again regarding this matter (Resp't Motion, Ex. E).
7. On October 31, 2016, Petitioner entered his benefits elections for 2017, as part of Respondent's Open Enrollment period, which included his health insurance selections (Resp't Motion, Exs. F, F-2).
8. Petitioner, when enrolling, included his now ex-spouse as a beneficiary on his health insurance (Resp't Motion, Exs. F, F-2).
9. Petitioner's ex-wife remained as a covered beneficiary under his state-administered health insurance until December 31, 2017, after an investigation by the Indiana State Personnel Department ("SPD") revealed the discrepancy (Resp't Motion).<sup>2</sup>
10. On February 23, 2018, a predeprivation meeting was held with Petitioner, during which Petitioner's supervisor gave Petitioner until February 26, 2018, in which to provide documentation proving that Respondent failed to act (Resp't Motion, Ex. H).
11. Petitioner failed to provide any documentation to Respondent by February 26, 2018. *Id.*
12. Petitioner's supervisor thereafter gave Petitioner more time in which to provide him with supporting documentation. *Id.*

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<sup>2</sup> Petitioner's ex-wife remained as a covered beneficiary under Petitioner's state-administered life insurance until February, 2018, when SPD discovered this discrepancy as well (Resp't Motion, Exs. F, F-2).

13. On February 28, 2018, Petitioner provided a letter and receipt to his supervisor, neither of which showed any changes to Petitioner's elections. *Id.*
14. Respondent thereafter concluded on March 5, 2018, that Petitioner violated the SPD Handbook when he continued to list his ex-wife as a beneficiary of Petitioner's on Petitioner's health insurance beyond the thirty (30) day grace period and terminated Petitioner the same day (Pet'r Compl)

### 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. sec. 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); and *Tony v. Elkhart County*, 851 N.E.2d 1032 (Ind. Ct. App. 2006).
4. "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*, 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 a termination was arbitrary or unfair does not state an at-will exception allowing SEAC jurisdiction. Nor does such an assertion state a claim for which relief can be granted in an unclassified—at-will—Civil Service System case. *Meyers*,

861 N.E.2d at 704; I.C. § 4-15-2.2-42. A viable public policy exception must be present for the Complaint to survive.

5. The ALJ will first address Petitioner's contentions regarding the notice he allegedly gave to Respondent on May 27, 2016, regarding the removal of his ex-wife as a beneficiary. In doing so, the ALJ notes that Petitioner spends the bulk of his Reply attempting to argue that, since he contacted Respondent, he assumed that Respondent would remove his ex-wife from his insurance. Petitioner also spends a great deal of time arguing the fact that he never successfully entered his elections for 2017. As explained below, though, the ALJ finds that Petitioner did not successfully change his elections, since he contacted the wrong entity, as well as the fact that the evidence shows that Petitioner did in fact submit elections on October 31, 2016, despite his being on long term disability.<sup>3</sup>

6. The Indiana State Personnel Employee Group Insurance Benefit Handbook ("SPD Handbook") lists several categories of people who can be covered as a beneficiary under the State's health insurance. They include spouses and children age twenty-six (26) and under (Resp't Motion Ex. D, P.5).

7. Also, the SPD Handbook allows for a thirty (30) day grace period in which to remove any beneficiary who no longer qualifies for coverage under the State's insurance plan (Resp't Motion, Ex. D). Failure to do so can result in disciplinary action, including dismissal. *Id.*

8. Finally, the SPD Handbook lists categories of people who do not qualify for such coverage. They include, among others, ex-spouses. *Id.*

9. Petitioner, in support of his position, submitted evidence that he called Respondent's facility on May 27, 2016. However, he cannot recall to whom he spoke. (Resp't Motion, Exs. E, I).

10. Regardless of who Petitioner may have spoken with at Respondent's facility on May 27, 2016, Respondent was not the correct entity to which Petitioner should have reported his qualifying event (in this case, his 2016 divorce).

11. The SPD Handbook is clear when it states that all changes, along with supporting documentation, must be reported to the SPD Benefits Hotline (Resp't Motion, Ex. D, p. 7)

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<sup>3</sup> Petitioner also makes an argument in passing that he should not have been terminated because he sought help in the past in completing his elections (Pet'r Compl.). However, Petitioner submitted no proof that Respondent terminated him based upon this. The record is clear that Petitioner was terminated based upon his carrying his ex-wife on his insurance.

12. Petitioner contends that by speaking with Respondent on May 27, 2016, he fulfilled his obligation under the SPD Handbook. (Pet'r Reply). However, this assumption, as noted above, is wrong.

13. Petitioner further states that he never received notice of his ability to enter his elections during the 2016 Open Enrollment Period because he was on long term disability (Pet'r Reply). Again, though, the evidence proves otherwise.

14. Laura Bastain ("Bastain"), a Business Systems Consultant Senior for SPD, stated that due to her position, she has access to employees' personnel files, including their benefits elections (Resp't surreply, Ex. J). As a result, she accessed Petitioner's personnel file and discovered that he had entered benefit elections on October 31, 2016 for 2017. *Id.* Bastain also noted that Petitioner successfully completed his Open Enrollment elections in 2014 and 2015 without issue. *Id.*

15. Thus, as a longtime employee, Petitioner cannot claim ignorance as to his actions. He was aware of what he was doing and successfully entered his elections without issue in previous years.

16. If Petitioner did not receive notice, it stands to reason that he would not have entered benefit elections during the Open Enrollment Period. Therefore, the ALJ finds this argument unpersuasive.

17. Petitioner understood Respondent's Open Enrollment process and successfully completed it in years past.

18. If Petitioner had questions, the SPD Handbook states that Petitioner should have either asked Respondent or SPD for help (Resp't Motion, Ex. D).

19. Also, during the selection process, boxes next to each dependent are clearly delineated and may checked or unchecked with ease (Resp't Motion Ex. F-1).

20. Additionally, before submission, Petitioner, like all employees, was given the opportunity to review his elections. *Id.*

21. Despite these prompts, Petitioner failed to uncheck the box next to his ex-wife on October 31, 2016. *Id.*

22. Therefore, the ALJ finds that Petitioner did not successfully remove his ex-wife within the thirty (30) day grace period as provided by the SPD Handbook after his divorce was finalized. Therefore, Respondent was entitled to terminate Petitioner.

23. Petitioner next advances a claim for retaliation, but, as Respondent correctly notes, such allegations were not submitted as part of an amended Complaint, but were rather advanced for the first time in Petitioner's Reply (Resp't Motion).

23. Indiana Trial Rule 15(A) states that an amended Complaint may be submitted before a responsive pleading is served and thereafter either upon leave of the Court or by written consent of the opposing party and that such leave will be granted when justice so requires. *See Palacios v. Kline*, 566 N.E.2d 573 (Ind. Ct. App. 1991).

24. “An attempt to alter the factual basis of a claim at summary judgment may amount to an attempt to amend the complaint.” *Chessie Logistics Co. v. Krinos Holdings, Inc.*, 867 F.3d 852 (7th Cir. 2017).

25. “When a new argument is made in summary judgment briefing, the correct first step is to consider whether it changes the complaint's factual theory, or just the legal theories plaintiff has pursued so far. In the former situation, the plaintiff may be attempting in effect to amend its complaint, and the court has discretion to deny the de facto amendment and to refuse to consider the new factual claims.” *Id.*

26. In considering this argument, the ALJ acknowledges that, from the time he filed his Complaint on April 9, 2018, until counsel entered an appearance on his behalf on August 30, 2018, Petitioner was proceeding *pro se* in this matter. Nevertheless, “[a] pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented.” *Zavodnik v. Harper*, 17 N.E.3d 259 (Ind. 2014).

27. Therefore, the ALJ concludes that Petitioner, if he wished to amend his Complaint to include a retaliation claim, should have followed T.R. 15.

28. More importantly, however, once Petitioner obtained legal representation, his counsel could have filed for leave to amend the Complaint. Instead, on October 18, 2018, Petitioner’s counsel simply filed a Motion requesting that the deadline to file his reply to Respondent’s Motion for Summary Judgment be extended until December 3, 2018, which the ALJ granted on October 19, 2018.

29. Therefore, the ALJ concludes that by attempting to raise a retaliation argument at this stage of the proceedings without following T.R. 15, Petitioner was trying to change his factual theory of why Respondent violated public policy under I.C. § 4-15-2.2-42.

30. As a result, Petitioner was attempting to amend his Complaint when it was past the time to do so.

31. Thus, given the discretion noted above, the ALJ hereby rejects Petitioner’s attempt to raise a claim of retaliation.

32. No other public policy exception has been raised by Petitioner, and therefore, the ALJ concludes that SEAC lacks subject matter jurisdiction to further consider Petitioner’s Complaint. Thus, Respondent’s Motion must be granted.

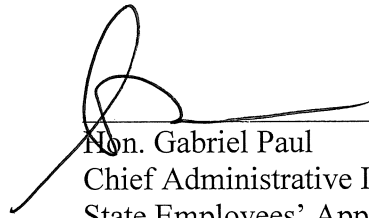
To the extent a finding of fact is deemed a conclusion of law, or a conclusion of law is deemed a finding of fact, it shall be given such effect.

IV. Final Order of Dismissal

Respondent's Motion for Summary Judgment is GRANTED. This action is hereby dismissed with prejudice. All case management deadlines are vacated.

This is the final order of the Commission. A person who wishes to seek judicial review must file a petition in an appropriate court within thirty (30) days of this order and must otherwise comply with Ind. Code § 4-21.5-5.

DATED: December 26, 2018



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Hon. Gabriel Paul  
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