BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

TROY CAMBE Petitioner,	)	
	) SEAC No. 04-19-030	
vs.	)	
MIAMI CORRECTIONAL FACILITY BY INDIANA DEPARTMENT OF CORRECTION Respondent.	)	

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

I. Introduction and Summary

On August 16, 2019, the Miami Correctional Facility, a part of the Indiana Department of Correction ("Respondent") by counsel, filed a Motion for Summary Judgment ("Motion") under Ind. T.R. 56, seeking to dismiss Petitioner Troy Cambe's ("Petitioner") Complaint ("Complaint"). On September 24, 2019, Petitioner, pro se, filed a Reply to Respondent's Motion. Thereafter, on October 2, 2019, Respondent filed its surreply.[1] This case considers Petitioner's Written Reprimand in lieu of a one (1) day suspension for failing to follow Respondent's policy related to how offenders are treated when put into a special area of Respondent's facility. Petitioner contends that the discipline given to him was unfair, given that his subordinates allegedly disobeyed Petitioner's orders.

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.

[1] Commission proceedings are governed by the Administrative Orders and Procedures Act (AOPA), I.C. § 4-21.5 *et seq.* *See* I.C. § 4-15-1.5-6(1). Accordingly, the Commission has delegated to its Administrative Law Judges pursuant to I.C. § 4-21.5-3-28 of the AOPA, the authority to issue final orders in this class of proceedings

II. 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. Once the moving party satisfies this burden through evidence designated to the trial court pursuant to Trial Rule 56, the nonmoving party may not rest on its pleadings, but must designate specific facts demonstrating the existence of a genuine issue for trial." *Id.* (citing *Am. Mgmt., Inc*, 666 N.E.2d 424, 428 (Ind. Ct. App. 1996)).

"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." *Id.* (citing *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) (internal citations omitted).

I. Findings of Fact

The facts relevant to the instant Motion's resolution, as construed in favor of the non-movant Petitioner, are as follows:

1. At all relevant times, Petitioner was the Deputy Warden of Operations at Respondent's facility (Pet'r Compl.).

2. Petitioner began his employment with Respondent in 1990 at the Indiana State Prison, moving to the Westville Correctional Facility between 2012 and July, 2018, and then to Miami Correctional Facility thereafter (Resp't Motion, Ex. B).

3. On November 1, 2018, Petitioner issued an order regarding two (2) offenders who were involved in an incident concerning the assault of officers working at Respondent's facility (Pet'r Compl.).

4. Petitioner ordered the offenders be transferred to Respondent's Restrictive Housing Unit ("RHU"), where they could be more closely monitored (Resp't Motion, Ex. D.).

5. Since the offenders threatened the safety of the facility, Petitioner further ordered that the offenders be placed, for seventy-two (72) hours, in a "stripped cell" (Pet'r Compl.).

6. Offenders placed in a "stripped cell" are only allowed a mattress, blanket (if the offender is deemed non-suicidal) and the clothes worn by those within the RHU (Pet'r Compl., Resp't Motion, Ex. D, F).

7. On November 28, 2018, the Warden at Respondent's facility emailed one of Petitioner's subordinates concerning complaints from the offenders who were placed in the "stripped cell" (Pet'r Compl.).

8. The complaints stated that the offenders were placed in their "stripped cells" with only a pair of boxer shorts and nothing else. Additionally, the offenders complained that they were not given regular meals but forced to eat strip sacks from the time of their placement until November 11, 2018, when they were released from their "stripped cells" (Pet'r Compl.).

9. Petitioner replied to the email on November 28, 2018, by stating that his orders were for the offenders to remain in their "stripped cells" for only seventy-two (72) hours, not the ten (10) days they ultimately spent. Petitioner further stated that his orders were for the offenders to be otherwise treated in compliance with Respondent's RHU Policy (Pet'r Compl.).

10. Respondent thereafter conducted an investigation featuring members of Respondent's facility, as well as Respondent's regional Investigations and Intelligence Division (Pet'r Compl., Resp't Motion).

11. Upon conclusion of the investigation, Respondent determined that Petitioner had issued the orders in question and was issued a Written Reprimand in lieu of a one (1) day suspension on February 1, 2019, for violation of Respondent's policies with regard to "stripped cells" (Pet'r Compl.)

II. 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." I.C. § 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); 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. Petitioner's main contention is that he believes those under his command deliberately disobeyed Petitioner's orders, then attempted to make Petitioner the scapegoat for the incident.

6. In support, Petitioner merely states that his subordinates disobeyed Petitioner's order and because they were also disciplined, were responsible for giving the order described above. (Pet'r Reply).

7. Under Respondent's RHU Policy No. 02-04-102 regarding "stripped cells", only certain people, such as Petitioner, had the authority to place offenders in a "stripped cell". (Resp't Motion, Ex. F).

8. Petitioner, in his Complaint, identified his subordinates as a Sergeant, Lieutenant, and Captain, none of which were authorized to give the order in question. (Resp't Motion Ex. F, G).

9. Petitioner submitted no further proof to substantiate his claim that his subordinates were the ones who violated Respondent's RHU Policy.

10. Petitioner admitted that Respondent conducted an investigation into the matter;[2] therefore, the ALJ finds that Respondent's conclusions are entitled to deference, absent any showing by Petitioner that the investigation was not conducted properly. *See Auer v. Robbins*, 519 U.S. 452, 461 (1997); (Resp't Ex. G).

11. Petitioner has not shown how Respondent's investigation was lacking. Therefore, he cannot succeed upon this theory.

12. Petitioner next makes reference to the fact that one of the three subordinates involved in the incident in question was not disciplined. The ALJ thus construes this as a claim for disparate treatment.

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[2] In his Complaint, Petitioner stated that he wished to see copies of Respondent's investigative reports. However, whether or not he received them, Petitioner failed to submit the reports with his Reply. Thus, the ALJ will not consider them in this decision.

13. "All things being equal, if an employer takes an action against one employee in a protected class but not another outside that class, one can infer discrimination." *Filar v. Bd. of Educ. of City of Chi.*, 526 F.3d 1054, 1061 (7th Cir. 2008). In presenting a similarly-situated employee, "the comparator must . . . be similar enough 'to eliminate confounding variables, such as differing roles, performance histories, or decision-making personnel, [so as to] isolate the critical independent variable: complaints about discrimination.'" *Id* (internal citations omitted).

14. In the present matter, the comparator cited by Petitioner was Petitioner's subordinate, which Petitioner was responsible for supervising. It stands to reason that a subordinate, acting at the direction of a supervisor, would be subject to a reduced level of discipline than the supervisor himself.

15. Respondent did not, therefore, treat Petitioner differently from his proffered comparator. Thus, the ALJ concludes that Petitioner was not the victim of disparate treatment.

16. Petitioner next cites to the State's Discipline Policy ("Policy") with the premise that he was not given progressive discipline. (Pet'r Compl.). However, the Policy clearly states that it is only applicable to classified employees, which Petitioner was not. Therefore, this argument also fails.

17. Since Petitioner admits that he was not the victim of any other form of discrimination, nor does he state that he was the victim of retaliation, Petitioner, in essence, argues that his discipline was merely unfair. (Resp't Motion, Ex. G).

18. However, without more, the ALJ finds that Petitioner's unfairness argument is not a viable exception under the employment at will doctrine. *Pierce v. Zoetis, Inc.*, 818 F.3d 274 (7th Cir. 2016).

19. As a supervisor, Petitioner was ultimately responsible for his subordinates' actions, as noted by the Policy, which clearly places the onus on supervisors for enforcing all rules and policies by monitoring the performance of subordinate staff. (Resp't Motion, Ex. A). While the evidence is unclear as to why the offenders ultimately spent more than the necessary time in their stripped cells, the fact remains that as the one who issued the original order, Petitioner was in the best position to ensure that his orders were being followed, which he failed to do.

20. Petitioner cited no further evidence in support of his claims; thus, the ALJ finds that Petitioner has not shown that a material issue of fact exists such that this case should continue. Petitioner failed to cite to a law, rule, or public policy under I.C. § 4-15-2.2-42 which Respondent violated. Therefore, the ALJ finds that Petitioner's discipline did not violate Indiana's at-will employment law.

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.

III. 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: October 21, 2019

Hon. Gabriel Paul
Chief Administrative Law Judge
State Employees' Appeals Commission
Indiana Government Center North, Rm. N103
100 N. Senate Avenue
Indianapolis, IN 46204
(317) 232-3137
Fax: (317) 972-3109
Email: gapaul@seac.in.gov

A copy of the foregoing was sent via email to the following:

Troy Cambe
4 Arrowhead Drive
Logansport, Indiana 46947
tcambe@idoc.in.gov

Natalie Stidd
Counsel
Indiana Department of Correction
302 West Washington Street
Room W341
Indianapolis, Indiana 46204
natalie.stidd@idoc.in.gov

Courtesy Copy to:

David Fleischhacker
State Personnel Department
402 W. Washington Street
IGCS, Room W161
Indianapolis, IN 46204
dfleischhacker1@spd.in.gov