

**BEFORE THE  
STATE EMPLOYEES' APPEALS COMMISSION**

IN THE MATTER OF:

KELLY TALIAFERRO )  
Petitioner, )  
 ) SEAC No. 04-19-031  
vs. )  
 )  
INDIANA DEPARTMENT OF )  
CHILD SERVICES )  
Respondent. )

**ISSUED**

**DEC 19 2019**

**STATE EMPLOYEES'  
APPEALS COMMISSION**

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

On October 4, 2019, 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 Kelly Taliaferro's ("Petitioner") Complaint. Petitioner, by counsel, responded to the Motion on November 8, 2019. Respondent thereafter filed a surreply on November 25, 2019.

This case considers Petitioner's termination for failing to adhere to Respondent's policies on multiple occasions. Under Ind. Code § 4-15-2.2-42(g), the agency (here, Respondent) must show that it had just cause to issue the discipline. The controlling pleadings for purposes of this decision are the Complaint originally received on April 22, 2019, 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 issues of material fact exist with regard to Petitioner's claims such that this matter should continue. Therefore, Respondent's Motion for Summary Judgment is hereby GRANTED. The following additional findings of fact, conclusions of law, and order 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 hired by Respondent in March, 2016 (Pet’r Compl.).
2. At all relevant times, Petitioner was a Family Case Manager (Pet’r Compl.).
3. On May 26, 2016, Respondent received complaints that Petitioner was having unprofessional conversations regarding Petitioner’s personal life and had also invited a personal guest into Petitioner’s office in order to continue one of these conversations (Resp’t Motion, Exs. E-G).
4. On June 20, 2016, Petitioner was counseled by her supervisor in writing not to have such conversations (Resp’t Motion, Ex. H).
5. On September 14, 2016, Petitioner received a Performance Appraisal (“Appraisal”), which noted her deficiencies in several areas, including job knowledge, interpersonal relations, judgment and problem solving (Resp’t Motion, Ex. J).
6. On October 25, 2016, Petitioner was counseled in writing by her supervisor for failing to answer the phone while at work (Resp’t Motion Ex. I).

7. On June 12, 2017, Petitioner received a written counseling from her supervisor for not following proper procedures when Petitioner prematurely closed a case, mistakes on Petitioner's reports and for failing to properly communicate with Petitioner's supervisor regarding a background check (Resp't Motion Ex. M).
8. On October 13, 2017, Petitioner received a written counseling from her supervisor for incorrectly entering a note regarding a child in Respondent's case management system (Resp't Motion Ex. N).
9. On November 29, 2017, Petitioner received a written counseling from her supervisor for failing to notify the on-call supervisor that a child's placement had been disrupted, which caused the child to wait alone in a hospital for several hours (Resp't Motion, Ex. O).
10. In early 2018, Petitioner received her annual Appraisal, which noted that, despite meeting expectations, Petitioner still showed deficiencies in the areas noted above (Resp't Motion, Ex. Q).
11. On March 12, 2018, Petitioner received a five (5) day suspension for falsely documenting her work activities and for working an adjusted schedule without prior approval (Resp't Motion Ex. R).
12. In November, 2018, Petitioner informed her Division Manager that a child (named Q.S.) was being released from a juvenile detention facility and needed to be placed in a home. Despite reminding Petitioner that any potential home would need to be screened beforehand, Petitioner nevertheless placed the child in the home without first completing the proper procedures (Resp't Motion, Exs. S-X).
13. On December 5, 2018, Respondent was notified that Petitioner failed to timely submit adoption paperwork for one of Petitioner's cases, which unnecessarily delayed the adoption process (Resp't Motion, Exs. Y-CC).
14. On December 11, 2018, Respondent received a complaint from a provider that it had yet to receive notes from Petitioner regarding a team meeting that occurred on October 25, 2018 (Resp't Motion, Ex. DD).
15. On December 31, 2018, Respondent received a complaint from a foster mother involving one of Petitioner's cases describing Petitioner's interaction with the children as intimidating and bully-like (Resp't Motion, Ex. EE).
16. On December 31, 2018, Respondent visited Q.S., who at this time was back in a juvenile detention facility. At this visit, Petitioner brought Q.S. a can of soda and candy, which were concealed in her bag (Resp't Motion Ex. D).

17. On January 1, 2019 (a state holiday), Petitioner visited the facility to drop off stamps and hygiene products for Q.S., even though Petitioner knew the facility provided those items to its residents (Resp't Motion Ex. PP).
18. On January 4, 2019, Petitioner received a written counseling from her supervisor for failing to ensure that a child in one of Petitioner's cases (a newborn) had a safe sleeping environment in its mother's home and providing false information regarding the same to the on call supervisor (Resp't Motion, Ex. QQ).
19. On January 10, 2019, Respondent received a complaint from a provider that it had not received an intake packet for one of Petitioner's cases, which was required to begin services, despite asking for it over a month and a half prior (Resp't Motion, Exs. RR-TT).
20. On January 14, 2019, Respondent received a complaint from a school when the school noticed that Petitioner had enrolled a child in one of her cases under misleading information, then failing to subsequently notify the school of the child's placement change (Resp't Motion, Exs. UU-XX.).
21. On January 14, 2019, Respondent received a complaint from Q.S.' detention center that Petitioner was acting in an unprofessional manner with Q.S, based on, among other things, Petitioner's admission that on a prior occasion, while waiting for the conclusion of Q.S.' court hearing, Petitioner took Q.S. to a restaurant called "Twin Peaks"<sup>1</sup>, so Q.S. could "see some nice racks" because it was Q.S.' birthday, as well as Petitioner's visit on January 1, 2019 to drop off stamps and hygiene products for Q.S., even though Petitioner knew the facility provided those items to its residents (Resp't Motion Ex. PP).
22. On January 23, 2019, Petitioner, without prior approval, contacted Q.S.' facility in an effort to speak with the judge assigned to the case. When informed that the judge wasn't available, Petitioner proceeded, without permission, to speak to the facility director about Q.S. (Pet'r Compl.).
23. As a result of the above two (2) incidents, Respondent opened an investigation into all of Petitioner's cases. In addition to verifying the information described above, Respondent also discovered that Petitioner had falsified case notes in eight (8) other of Petitioner's cases by copying and pasting the same information on a monthly basis for each case (Resp't Motion, Exs. ZZ-GGG).
24. On January 31, 2019, Respondent conducted a predeprivation meeting with Petitioner, after which it found that as a result of Petitioner's pattern of unprofessional behavior, termination was warranted. Petitioner was then terminated that same day (Pet'r Compl.).

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<sup>1</sup> Twin Peaks, while a popular television show in the 1990s (and 2018 reboot) is, for these purposes, a restaurant in the same vein as "Hooters", whereby the wait staff (which are primarily female) are dressed in tight-fitting shirts and shorts, which accentuate their features. <https://twinpeaksrestaurant.com>.

### 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 a classified employee at all relevant times.
2. As a classified employee, Respondent must show that just cause existed for its decision to reprimand Petitioner. Ind. Code § 4-15-2.2-42 (g).
3. Petitioner essentially alleges that her termination was unfair, while simply disputing the facts as delineated above. As shown below, however, Respondent has proven that Petitioner violated multiple sections of its Code of Conduct ("Code").
4. Respondent first alleges that Petitioner violated its Code concerning accuracy and documentation of work, which states in relevant part that, "[s]taff members are expected to recognize training needs . . . and obtain the necessary training . . . Obstacles to completion of assignments must be immediately discussed with a Supervisor . . . Under no circumstances will an employee falsely document his or her activities, actions or decisions." (Resp't Motion, Ex. III).
5. Petitioner was counseled on multiple occasions about her work and given proper direction by her supervisors, yet failed to alter her behavior.
6. While the ALJ recognizes that a counseling is not considered formal discipline, he does, nevertheless find that the State's Discipline Policy ("Policy") clearly states that counselings may serve as notice that failure to correct the performance or repetition of the misconduct may result in disciplinary action. <https://www.in.gov/spd/files/discrandp.pdf>.
7. Additionally, Petitioner received a suspension in March, 2018, for falsifying her work records which was a violation of the Code. Therefore, if nothing else, Petitioner was on notice that she needed to improve her work.
8. In her Reply, Petitioner merely states that Respondent failed to provide proof of the above-mentioned violations, while alleging that summary judgment is not appropriate because Petitioner disputes the facts. In order to overcome summary judgment, though, Petitioner was required to present evidence concerning her version of the facts, which she failed to do. Simply denying the facts, without more, is insufficient to overcome Respondent's Motion. "It is not the duty of the court to scour the record in search of evidence to defeat a motion for summary judgment; rather, the nonmoving party bears the responsibility of identifying the evidence upon which he relies." *Baker v. Department of Children & Family Servs.*, 2001 U.S. Dist., LEXIS 988, 14 (N.D. Illinois) (citation omitted). Therefore, Respondent has shown that there is no material issue of fact with regard to this section of the Code.

9. Respondent next alleges that Petitioner was in violation of its Code concerning Personal Relationships when she engaged with Q.S. on several occasions as noted above in a non-professional manner. The Code prohibits the same if the relationship creates, or has the potential to create, a conflict of interest (Resp't Motion, Ex. III).
10. In response, Petitioner states that she hugs all of her children, alleges that Q.S.' facility never told Petitioner she could not bring candy and drinks into the facility, argues that Q.S.' aunt sanctioned the visit to Twin Peaks and says that her visit to the facility on New Year's Day was brief, did not involve a face to face meeting with Q.S. and was done because Petitioner alleged that the facility did not provide Q.S. with stamps or hygiene products (Pet'r Compl; Pet'r Reply).
11. While the ALJ finds that some of Petitioner's behavior could be construed as innocent (hugging), the other instances noted above demonstrate that Petitioner had more than a professional interest in Q.S.
12. For instance, regarding the visit to Twin Peaks, the ALJ finds that if Q.S. wanted to go out on his birthday for a meal, Petitioner should have cleared it with her supervisor ahead of time. The fact that Q.S.' aunt may have sanctioned the visit is immaterial. Petitioner likened Twin Peaks to Chili's, Ruby Tuesday, or Texas Roadhouse (Pet'r Compl.; Pet'r Reply); however, those restaurants do not feature female servers in suggestive outfits. Therefore, it is reasonable to assume that Q.S. was not interested in going to Twin Peaks in order to ascertain who killed Laura Palmer and that Respondent would not sanction a visit to such a restaurant. If Q.S. wanted a meal, Petitioner should have asked her supervisor for permission to take him to a place like Chili's or Ruby Tuesday, which Respondent may have been willing to do. At a minimum, Petitioner exhibited a gross lack of judgment by taking Q.S. to Twin Peaks and at worst, violated Respondent's Code, which lends further credence to the ALJ's decision that Petitioner was terminated in part for violating this section.
13. Further, with regard to the facility visit on New Year's Day, Respondent stated (and Petitioner did not refute) that hygiene products and stamps were provided by the facility. Therefore, despite the fact that Petitioner did not see Q.S. on this visit, she still had no business reason (especially on a holiday she was not otherwise slated to work) to stop by the facility, however brief. Therefore, the ALJ finds that Petitioner violated this section of Respondent's Code.
14. Respondent next argues that Petitioner violated its Code section regarding responsibilities to partner agencies, which states in relevant part that employees are to quickly respond to questions and provide as much information about a case as possible (Resp't Motion, Ex. III).

15. In support, Respondent noted the November, 2017 hospital incident, the December, 2018 adoption mishap, the above-mentioned New Year's Day facility visit, along with the school district placement mentioned above, serving as proof that Petitioner violated this section of the Code.
16. The ALJ finds that since Respondent has shown just cause that the above-described incidents constitute violations of the Code that support Petitioner's termination.
17. Respondent next argues that Petitioner violated its Policy on Background checks, which states that Respondent will evaluate the results of Fingerprint-Based Checks on all required persons for the purpose of unlicensed out-of-home placements (Resp't Motion, Ex. X).
18. In this case, Respondent points to the June, 2017 incident noted above where Petitioner used incorrect forms, which caused an unnecessary delay in the adoption process. Respondent also references Petitioner's December, 2018 placement of Q.S. in a home without first completing the appropriate background check.
19. Petitioner presented no evidence rebutting either of these instances; therefore, the ALJ finds that Petitioner was in violation of the Policy when she failed to complete the necessary background checks in the cases noted above.
20. Respondent finally alleges that Petitioner was in violation of its Meaningful Contacts Policy ("MCP"), which provides in relevant part that, "monthly face to face contact . . . with every child under DCS care and supervision who is identified as "at imminent risk of placement" is required. Such contact must include time spent alone with the child, along with a photograph of the child taken on each visit." The MCP finally states that any new information gathered is to be documented. (Resp't Motion, Ex. JJJ).
21. Upon review of the evidence submitted, it is clear that Petitioner did in fact copy and paste nearly verbatim the same notes for eight (8) of her cases. (Resp't Motion, Exs. ZZ-GGG). Therefore, the ALJ questions whether Petitioner actually made such visits as required. While the evidence fails to show whether such visits were in fact conducted, the notes themselves lead to a plausible conclusion that Petitioner, in an effort to meet her caseload, simply copied and pasted the notes in the hopes that nobody would notice.
22. Petitioner attempts to rebut this conclusion when she states in her Complaint that her supervisor allowed Petitioner (and other FCMs) to "fluff" their reports (Pet'r Compl; Pet'r Reply). However, Petitioner provides no proof for this statement, so the ALJ cannot conclude that this was an allowable action.
23. The above, combined with Petitioner's previous suspension<sup>2</sup> for falsifying her work records (which Respondent alleged and the ALJ agrees with is a violation of Respondent's HR Policy on Work Hours and Schedules, *see* Resp't Motion, Ex. MMM) led Respondent to conclude that it could no longer employ Petitioner.

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<sup>2</sup> The ALJ notes that Petitioner did not appeal this suspension; thus, the ALJ will consider it as part of Petitioner's progressive discipline.

24. Petitioner's Reply simply instructs the ALJ to find that since Petitioner denies the accusations described above (aside from the suspension), he should find that Respondent is not entitled to summary judgment.
25. While this approach could be acceptable under the federal summary judgment standard, it does not pass muster under the Indiana summary judgment standard. *Celotex v. Catrett*, 477 U.S. 317 (1994) ("We find no express or implied requirement in [Federal] Rule 56 that the moving party support its motion with affidavits or other similar materials negating the opponent's claim"); *contra Jarobe v. Landmark Community Newspapers*, 644 N.E.2d 118 (Ind. 1994) ("Under Indiana's standard, the party seeking summary judgment must demonstrate the absence of any genuine issue of fact as to a determinative issue, and only then is the non-movant required to come forward with contrary evidence . . . In this respect, Indiana's summary judgment procedure abruptly diverges from federal summary judgment practice").
26. Respondent has produced evidence in support of each of its allegations above. In response, Petitioner was required to provide evidence to rebut the same, which she did not. Therefore, the ALJ is under no obligation to simply accept Petitioner's denials, without more, as reason to deny Respondent summary judgment.
27. Respondent gave Petitioner numerous opportunities to improve her work during her nearly three (3) year term. In each instance, however, Petitioner either showed an unwillingness or an inability to do so. The result is the same. As a result, summary judgment is appropriate.

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. Petitioner's termination was issued with just cause and is hereby upheld. The Complaint, and this action, are hereby **DISMISSED** with prejudice. This is the Final Order of the Commission in this matter. 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 IC § 4-21.5-5. So Ordered.



DATED: December 19, 2019



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