BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

FREDERICK JEFFREY Petitioner,	)	
	) SEAC No. 06-19-038	
vs.	)	
WABASH VALLEY CORRECTIONAL INSTITUTE BY INDIANA DEPARTMENT OF CORRECTION Respondent.	)	

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

I. Introduction and Summary

On September 27, 2019, Respondent Indiana Department of Correction ("Respondent") by counsel, filed a Motion to Dismiss Petitioner's Complaint under Ind. T.R. 12(B)(6) ("Motion"). Petitioner Frederick Jeffrey ("Petitioner"), pro se, failed to file a response, despite repeated attempts by the ALJ to ascertain whether Petitioner wished to do so. The ALJ thus closed briefing on November 19, 2019 and has duly considered the parties' filings, arguments and the pleadings, and now finds that this matter is ripe for ruling.[1]

This case considers Petitioner's challenge of his termination on March 20, 2019, for inappropriate conduct and unprofessional behavior when he allegedly made inappropriate comments to new staff members. Petitioner alleges that he was terminated without a full investigation into the accusations against him. Petitioner also suggests that termination was a drastic and harsh decision and that progressive discipline was not followed.

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 both state a claim upon which relief could be granted and allege a violation of a law, rule, or public policy exception to Indiana's at-will employment law. Thus, this case must be dismissed under Ind. Code § 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). Ind. Code § 4-21.5 *et seq.* *See* Ind. Code § 4-15-1.5-6(1). Accordingly the Commission has delegated to its Administrative Law Judges pursuant to Ind. Code § 4-21.5-3-28 of AOPA, the authority to issue final orders in this class of proceedings.

I. Motion to Dismiss Standard

Dismissal proceedings test "the legal sufficiency of the complaint." *Right Reason Publications v. Silva*, 691 N.E.2d 1347, 1349 (Ind. Ct. App. 1998) (citation omitted). All facts plead in Petitioner's complaint, and reasonable inferences therefrom, are taken as true. *Bee Windows, Inc. v. Turman*, 716 N.E.2d 498, 500 (Ind. Ct. App. 1999). However, when a party's complaint is legally insufficient or fails to plead essential elements of the claim, the complaint or deficient claim should be dismissed. *Meyers v. Meyers Construction*, 861 N.E.2d 704, 705-706 (Ind. 2007); *Huffman v. Office of Envt'l Adjudication*, 811 N.E.2d 806, 814 (Ind. 2004); *Gorski v. DRR, Inc.*, 801 N.E.2d 642, 644 (Ind. Ct. App. 2003); and *Steele v McDonald's Corp. et al.*, 686 N.E.2d 137 (Ind. Ct. App. 1997). *See also*, Ind. T.R. 12(B)(1) and 12(B)(6).

II. 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 a Correctional Officer for Respondent's Wabash Valley Correctional Facility (Pet'r Compl.).

2. On two (2) previous occasions prior to his termination, Petitioner met with Human Resources ("HR") and was questioned about his interactions with two (2) On the Job Trainee Correctional Officers (OJTs) (Pet'r Compl., Resp't Motion).[2]

3. The OJTs claimed that Petitioner had asked them about their sexual preferences. *Id.*

4. Upon returning to his assigned location in the F Housing Unit from his first HR meeting, Petitioner's supervisor, Sargent Steven Lantrip ("Lantrip"), and Officer Daniel Loveall ("Loveall"), were called to the Office of Investigations and Intelligence ("I&I"). *Id.*

5. Lantrip and Loveall were questioned about Petitioner supposedly telling the OJTs that he was "black" and therefore "could say the 'N' word in [the] F Housing Unit". *Id.*

6. Petitioner was not questioned by HR about this allegation. *Id.*

7. Petitioner was not asked to provide his own written statement or have his oral statement recorded. *Id.*

8. Petitioner was terminated on March 20, 2019. *Id.*

[2] Petitioner does not indicate in his Complaint as to when he was called into HR nor does he specify during which meeting the particular conversations were held.

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." 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 first attempts to use his favorable decision in front of the Indiana Department of Workforce Development ("DWD") as evidence that he did not violate Respondent's policies. However, a decision rendered by DWD is inadmissible at SEAC.

6. "Any finding of fact, judgment, conclusion, or final order made by a person with the authority to make findings of fact or law in an action or proceeding under this article is not conclusive or binding and shall not be used as evidence in a separate or subsequent action or proceeding between an individual and the individual's present or prior employer in an action or proceeding brought before an arbitrator, a court, or a judge of this state or the United States regardless of whether the prior action was between the same or related parties or involved the same facts." Ind. Code § 22-4-17-12(h). Therefore, Petitioner's DWD decision, however favorable, is not binding on SEAC and will not be considered further.

7. Petitioner next provides a "Letter of Appreciation" dated January 10, 2019, received for his assistance in conducting cell searches on January 4, 2019. Petitioner also provides evidence of a "Cash Spot Bonus" which Petitioner received on September 24, 2018, for assisting with the move of over 230 beds in Respondent's facility. (Pet'r Compl.).

8. While Petitioner may have received commendations in late 2018 and early 2019, "the critical inquiry is [Petitioner's] performance at the time of [his] termination." *Burks v. Wisconsin Dep't of Transp.*, 464 F.3d 744, 753 (7th Cir. 2006). Although prior performance can be relevant in some circumstances, it does not by itself "demonstrate the adequacy of performance at the crucial time when the employment action is taken." *Id.* Respondent found that at the time of his termination, Petitioner was not acting in accordance with Respondent's policies concerning its employees' expected behavior and conduct.

9. Petitioner next cites to the State's Discipline Policy ("Policy") with the premise that he was not given progressive discipline. (Pet'r Compl.; https://www.in.gov/spd/files/discpol.pdf). However, the Policy clearly states that it is only applicable to classified employees, which Petitioner was not. Therefore, this argument also fails.

10. Petitioner, in essence, argues that his discipline was merely unfair or overly harsh, which is not a viable exception under the employment at will doctrine. *Groce v. Eli Lilly & Co.*, 193 F.3d 496, 502 (7th Cir. 1999) ("In its most recent explication of the at-will doctrine, the Supreme Court of Indiana recognized three exceptions to that doctrine, three ways to rebut the presumption that the employment is at-will, and thus to require the employer to show good cause for termination: (1) adequate independent consideration; (2) public policy; and (3) promissory estoppel."); *Orr*, 689 N.E.2d at 717 ("[I]n Indiana, the presumption of at-will employment is strong, and a court is disinclined to adopt broad and ill-defined exceptions to the employment-at-will doctrine.").

11. Petitioner failed to raise any additional claims. The ALJ thus finds that Petitioner has failed to state a claim upon which relief can be granted and which are incapable of supporting relief under any set of circumstances under Ind. T.R. 12(B)(6). *McQueen v. Fayette County Sch. Corp.*, 711 N.E.2d 62, 65 (Ind. Ct. App. 1999). Therefore, dismissal 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. Final Order of Dismissal

Respondent's Motion to Dismiss 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 11, 2019

Hon. Gabriel Paul
Chief Administrative Law Judge
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