BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

MARY DAULTON,	)	
Petitioner,	)	
	)	
v.	)	SEAC No. 07-12-079
	)	
MIAMI CORRECTIONAL FACILITY	)	
BY INDIANA DEPARTMENT	)	
OF CORRECTION	)	
Respondent.	)	

FINDINGS OF FACT, CONCLUSIONS OF LAW AND NON-FINAL ORDER GRANTING SUMMARY JUDGMENT TO RESPONDENT MCF

On October 11, 2012, Respondent MCF, by counsel, moved for summary judgment. Petitioner Daulton, pro se, did not respond. This case considers, under the Indiana Civil Service System (I.C. 4-15-2.2-1 et seq., 42), the Petitioner's written reprimand in lieu of a one day suspension (the "reprimand") from Respondent MCF on April 25, 2012. Petitioner Daulton is an unclassified, at-will employee who alleges that the reprimand in question arose from unlawful denial of her requested Family and Medical Leave Act (FMLA) request contrary to public policy.

Having duly reviewed the record, the Administrative Law Judge (ALJ) determines there are no genuine issues of material fact and Respondent MCF is entitled to judgment as a matter of law. Respondent MCF has advanced a lawful, non-discriminatory reason for denying Petitioner's request for Family Medical Leave (FML), and for issuing a reprimand for unauthorized leave. Petitioner has not rebutted this reason or shown any unlawful pretext. Additionally, Respondent has demonstrated compliance with the FMLA. No public policy exception is applicable to the reprimand. Respondent MCF's Motion for Summary Judgment is therefore **GRANTED**.

I. The Summary Judgment Standard

Summary judgment proceedings before SEAC are governed by Indiana Trial Rule 56. I.C. 4-21.5-3-23. Summary judgment is only appropriate when the designated evidence shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.

Swineheart v. Keri, 883 N.E.2d 774, 777 (Ind. 2008). All inferences from the designated evidence are drawn in favor of the non-moving party. *Id*. "The burden is on the moving party to prove the nonexistence of material fact; if there is any doubt, the motion should be resolved in favor of the party opposing the motion." *Oelling v. Rao (M.D.) et al*, 593 N.E.2d 189, 190 (Ind. 1992).

When a non-moving party fails to timely respond to a summary judgment motion, a court should accept the designated factual materials of the moving party. *Marvin Miller M.D. v. Tiffany Yedlowski et al*, 916 N.E.2d 246, 249-252 (Ind. App. 2009). See also, *Naugle et al. v. Beech Grove City Sch.*, 864 N.E.2d 1058, 1062 (Ind. 2007)(review is limited to those materials timely designated to the court).

II. Employment at Will doctrine & Parties' Contentions

Petitioner Daulton is an unclassified state employee for Respondent MCF. Indiana follows the employment at will doctrine which allows an employer or an employee to terminate the employment at any time for a "good reason, bad reason, or no reason at all." *Meyers v. Meyers Construction*, 861 N. E.2d 704, 705 (Ind. 2007). However, there are three recognized exceptions to the at will doctrine including "a public policy exception . . . if clear statutory expression of a right or duty is contravened." *Ogden v. Robertson*, 962 N.E.2d 134, 145 (Ind. App. 2012). Whether public policy was violated is the issue in this instant Civil Service System matter. A termination or lesser discipline of an unclassified, at will state employee may not violate public policy. I.C. 4-15-2.2-42. Otherwise, an unclassified state employee may be "dismissed, demoted, disciplined or transferred for any reason that does not contravene public policy." I.C. 4-15-2.2-24(b).

Petitioner Daulton challenges her reprimand as the product of an unlawful denial of her request to take FML. (See, Complaint) An unlawful denial of FML, if proven true, would violate federal law. 29 U.S.C.A § 2601 et seq., and 29 C.F.R. § 825.220(a). The Indiana State Personnel Department (SPD) has adopted a "Family – Medical Leave Policy", dated August 1, 2012, stating: "This policy applies to employees in the state civil service. It is the policy of the State of Indiana to allow eligible employees to take leave for the following qualifying events in accordance with the Family and Medical Leave Act of 1993, as amended…"[1] The Respondent's Motion affirmatively, and correctly, asserts full compliance by the state with the FMLA in this case. Correspondingly, the state accurately asserts that it had the right to reprimand for unauthorized leave because Petitioner was not eligible for FML for the leave in question.[2]

[1] Official notice of this policy is taken by the ALJ and a copy is available on SPD's website. See, http://www.in.gov/spd/2396.htm

[2] See, *Purdy v. Wright Tree Serv., Inc*., 835 N.E.2d 209, 215 (Ind. App. 2005) In *Purdy*, the Indiana Court of Appeals found that an injured employee who was discharged after returning from exhausted family medical leave

III. Family Medical Leave Act and Americans with Disabilities Act

It is unlawful for an employer to interfere with an employee's attempt to exercise her rights under the FMLA statute. 29 U.S.C.A § 2601 et seq., and 29 C.F.R. § 825.220(a). In order to prevail on an FMLA-interference claim[3] a petitioner must prove that: "1) she was eligible for FMLA protection; 2) her employer was covered by the FMLA; 3) she was entitled to take leave under the FMLA; 4) she provided sufficient notice of her intent to take leave; and 5) her employer denied her FMLA benefits to which she was entitled." *Pagel v. TIN, Inc*., 695 F.3d 622, 627 (7th Cir. 2012). An eligible employee is one who has been employed for at least twelve (12) months by the employer for at least 1,250 hours of service during the previous twelve month period. 29 U.S.C.A. § 2611(2)(A). The first two requirements for FML are not at issue in this matter, and discussion follows on the remaining elements taken together – here Respondent was entitled to deny the leave request under the applicable law.

The FMLA entitles eligible employees "to take up to twelve weeks of unpaid leave per year for "(A) the care of a newborn son or daughter; (B) the adoption or foster-care placement of a child; (C) the care of a spouse, son, daughter, or parent with a serious medical condition; and (D) the employee's own serious health condition." *Coleman v. Court of Appls. of Maryland*, 132 S.Ct. 1327, 1329 (2012). Under the FMLA, a "son or daughter" means either (A) a person under eighteen years of age or a child of the employee who is **(B) eighteen years of age or older and incapable of self-care because of a mental or physical disability**. 29 U.S.C.A § 2611(12) (emphasis added). Per statute, when an employee, like Petitioner, is caring for a child **over the age of eighteen**, the child must have a **qualifying disability** for purposes of FML entitlement.[4]

The analysis must turn to the ADA to determine if Petitioner's child, over 18 years of age, had a qualifying disability.[5] An individual is considered to have a disability under the Americans with Disabilities Act if "(1) he has an impairment that substantially limits one or more of his major life activities; (2) he has a record of such an impairment; or (3) his employer regards him as having such an impairment." *Burnett v. LFW Inc.*, 472 F.3d 471, 483 (7th Cir. 2006). The term "substantially limits" refers to the inability to perform a major life activity, such as caring for oneself, eating and walking, as compared to the average person in the general

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and still unable to return to work did not suffer retaliatory discharge for a related worker's compensation claim. See also, *Frampton v. Central Ind. Gas Co*., 297 N.E.2d 425, 428 (Ind. 1973).

[3] The FMLA also supports retaliation claims for intentional retaliation for the exercise of FMLA rights. Petitioner does not raise a retaliation claim in this case – only an interference claim. To the degree Petitioner does raise a retaliation claim, the analysis comes out the same. Respondent is entitled to judgment as a matter of law.

[4] Congress has chosen to make the Section B prong for adult children a more restrictive prong to satisfy. The multiple federal District Court opinions cited in Respondent's Brief are not repeated here, but have generally found that limited duration, non-chronic injuries, such as those arising from car accidents, do not satisfy this prong of the FMLA for an adult child.

[5] In other words, the FMLA and ADA must be applied in conjunction because Petitioner's child is over 18 years of age.

population or a significant restriction as to the condition, manner or duration that a person can perform a particular activity. *Serednyj v. Beverly Healthcare, LLC*, 656 F.3d 540, 554 (7th Cir. 2011).

To determine whether a disability substantially limits a person from performing a major life activity, courts consider the nature, severity and duration of the impairment. *Id*. Generally, short-term, temporary impairments – such as those caused by acute injuries in car or other accidents but leaving no continuing disability – do not render a person disabled for purposes of the ADA because "in order to be substantially limiting an injury or illness must have a continuing or lingering effect." *Snow v. HealthSouth Corp*., WL 395124 at 25 (S.D. Ind. 2001).

IV. Findings of Fact

The following facts are taken from the designated evidence, as construed in the light most favorable to the Petitioner:

1. Petitioner Daulton is an unclassified, at-will state employee, a Correctional Casework Manager, for Respondent MCF. (Complaint; I.C. 4-15-2.2).

2. Petitioner Daulton was issued a written reprimand in lieu of a one day suspension (the reprimand) on April 25, 2012 for taking 52.5 hours of unauthorized leave. (Respondent Exhibit D)

3. It is state policy to follow the federal FMLA. (See, the Indiana State Personnel Department's "Family – Medical Leave Policy", dated August 1, 2012) Petitioner requested to use FML on April 9, 2012 for an indefinite amount of time in order to care for her daughter who sustained injuries in a car accident on April 9, 2012. (Resp. Ex. A) In that accident, Petitioner's daughter suffered from multiple injuries including a lacerated spleen lacerated liver and broken bones. (Resp. Ex. A)

4. Petitioner's daughter was nineteen (19) years old at the time the FML was requested. (Resp. Ex. A)

5. Petitioner's daughter was in the hospital from April 9 through April 14, 2012, about six days. On April 17, 2012, Petitioner's daughter was readmitted to the hospital due to complications from the accident. The record shows that the child's total hospitalization period was about a week. (Petitioner's Complaint p. 6)

6. Petitioner Daulton was scheduled to work but did not work on April 9, 10, 11, 12, 13, 16 and 17, 2012. (Cooper Affidavit ¶ 5)

V. Conclusions of Law & Analysis

1. Indiana follows the at will employment doctrine. Under this doctrine, "an [unclassified state] employee may be dismissed, demoted, disciplined, or transferred for any reason that does not contravene public policy." I.C. 4-15-2.2-24(b). There are public policy exceptions to the at will doctrine, but in this case Respondent MCF has affirmatively demonstrated that Petitioner Daulton was reprimanded for taking unauthorized leave that was lawfully denied under the FMLA (and the ADA).

2. Petitioner's daughter was over the age of eighteen at the time FML was requested and therefore Petitioner also needed to demonstrate not just a "serious health condition" but the additional requirement that her adult daughter was "disabled" under the ADA. See, 29 U.S.C.A. § 2611(12)(B).

3. The designated evidence of Petitioner's daughter's condition does not meet the threshold for a disability under the ADA for purposes of FML. With due sympathy that a car accident causing personal injury to any child is an unhappy event, a seven day period of hospitalization is insufficient to qualify for ADA disability, and thus FML. The daughter's impairment was of a temporary, non-chronic nature and therefore would not be considered "substantially limiting" for purposes of rendering a person "disabled" under the ADA. *Serednyj v. Beverly Healthcare, LLC*, 656 F.3d 540, 554 (7th Cir. 2011).

4. Respondent also argues that because Petitioner's daughter was in the hospital that Petitioner does not qualify for FML for the days the daughter was being cared for in the hospital. However, the FMLA does allow for *inpatient care* in a hospital for a child, parent, or spouse. See, 29 U.S.C.A. § 2611(11)(A). Instead, the dispositive issue in this case is whether Petitioner's adult daughter qualifies as "disabled" under the ADA for purposes of the FMLA regardless of her inpatient or outpatient status.

5. Respondent has demonstrated that for purposes of the FMLA, Petitioner's daughter does not qualify as "disabled" and therefore the FML requested by Petitioner was lawfully denied.

6. Prior sections above 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.

VI. Non-Final Order Granting Respondent's Motion for Summary Judgment

Summary Judgment Motion is entered in favor of Respondent MCF. There are no genuine issues of material fact to require an evidentiary hearing. Respondent is entitled to judgment as a matter of law against all claims of the Complaint. Respondent has satisfied the movant's burden under Ind. T.R. 56. Petitioner Daulton has not rebutted this burden. Petitioner's complaint is denied. Respondent's reprimand of Petitioner Daulton is upheld. All case management deadlines are vacated.

DATED: January 3, 2013

Hon. Aaron R. Raff
Chief Administrative Law Judge
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IN THE MATTER OF:

MARY DAULTON, Petitioner, v. MIAMI CORRECTIONAL FACILITY BY INDIANA DEPARTMENT OF CORRECTION Respondent.	)))))))))	SEAC No. 07-12-079

NOTICE OF FINAL ORDER
OF THE STATE EMPLOYEES' APPEALS COMMISSION

On January 3, 2013 the ALJ issued notice and a copy of "Findings of Fact and Conclusions of Law with Non-Final Order of Administrative Law Judge Granting Summary Judgment to Respondent MCF" ("ALJ's Order"), which is incorporated by reference herein. No objections were received by either party within the time of January 22, 2013 provided. Accordingly, the ALJ's Order, in its entirety, is hereby the Findings of Fact, Conclusions of Law and Final Order of the Commission pursuant to statute and Commission delegation. Ind. Code §§ 4-21.5-3-27 to 29.

The Commission is the ultimate authority, and the action is its Final Order and determination in this matter. A person who wishes to seek judicial review must file a petition with an appropriate court within thirty (30) days and must otherwise comply with I.C. 4-21.5-5.

DATED: February 11, 2013

Hon. Aaron R. Raff
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