BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

BRIAN HOLLIS Petitioner, vs. MIAMI CORRECTIONAL FACILITY BY INDIANA DEPARTMENT OF CORRECTION Respondent.	))) SEAC No. 07-18-054)))))	ISSUED MAR 06 2019 STATE EMPLOYEES' APPEALS COMMISSION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

I. Introduction and Summary

On January 8, 2019, Respondent Miami Correctional Facility, a part of the Indiana Department of Correction, ("Respondent"), by counsel, filed a Motion for Summary Judgment regarding Petitioner's Complaint ("Motion"). Petitioner Brian Hollis ("Petitioner"), pro se, timely replied to the Motion on February 8, 2019. Thereafter, on February 19, 2019, Respondent filed a response in support of its Motion.

This case considers Petitioner's Written Reprimand on April 24, 2018, for failing to follow instructions regarding food handling to offenders and failing to complete the proper paperwork for offender photos. The controlling pleadings for purposes of this decision is the Complaint originally received on July 30, 2018, Respondent's Motion, Petitioner's reply to Respondent's Motion and Respondent's surreply.

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]

[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. *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).

III. Findings of Fact

1. At all pertinent times Petitioner was an unclassified, at-will Recreation Leader (Pet'r Compl.).

2. Between January, 2018, and March, 2018, Petitioner was assigned to assist with offender picture printing, in which offenders could have up to three (3) photos taken during their recreation time and subsequently printed (Pet'r Compl.; Resp't Motion).

3. Petitioner was responsible for retrieving the camera, picture documentation and issuing a ticket (essentially a receipt showing the offender paid for the photos), which were completed by the custody staff, and was also responsible for printing and returning the pictures and documentation to the Correctional Officers' desk for distribution to offenders (Pet'r Compl. Ex. 5).

4. In April, 2018, Recreation Leader and Field Training Officer Michael Hubler ("Hubler"), took over the picture printing responsibilities (Resp't Motion Ex. I).

5. Hubler discovered that between twenty (20) and thirty (30) unaccounted and unprocessed photo tickets for offender photos were left in a folder (Resp't Motion Ex. I).

6. On March 22, 2018, Petitioner attended the monthly Recreation meeting where instructions regarding the March Madness[2] event were provided (Resp't Motion Ex. E).

7. Prior to April, 2018, Petitioner had been in charge of three (3) separate sports viewing parties at Respondents facility, including the World Series, College Football Championship Game, and Super Bowl (Resp't Motion Ex. G).

8. On April 2, 2018, a March Madness party was held at Respondent's facility for offenders (Pet'r Compl. Ex. 9).

9. Petitioner, along with other Recreation staff, handed out food, including sodas, chips and hot dogs to participating offenders during the event (Pet'r Compl.).

10. There were approximately 300 hot dogs provided for the event, some of which were burnt, which Petitioner determined were unfit to be served (Resp't Surreply Ex. L-1; Pet'r Reply).

11. On April 24, 2018, Petitioner received a Written Reprimand surrounding his actions involving the offender photos and the March Madness event (Resp't Motion Ex. B).

IV. 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. § 4-15-2.2.-24(b).

[2] March Madness commonly refers to the annual NCAA Division I Men's Basketball Tournament.

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. *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 contends that he was issued a written reprimand for violating a picture procedure that he was not responsible for completing in the first place (Pet'r Compl.).

6. Respondent had two (2) procedures regarding the offender picture program. The Picture Taking Procedure ("PTP") applied to Custody personnel while the Printing Picture Procedure ("PPP") applied to Recreation personnel (Pet'r Reply Ex. 2, 3). The PTP, in part, required custody staff to take the approved number of pictures—per the offender's purchased ticket—and subsequently fill out a form with the offender's name, DOC number, camera picture numbers, and bed location (Pet'r Reply Ex. 2). The PPP, in part, required Recreation staff to obtain the camera and picture documents and print the pictures, assuring all of the necessary photos were printed (Pet'r Reply Ex. 3).

7. Petitioner suggests that he, a Recreation Leader, was not responsible for completing the paperwork regarding offender photos; rather, he contends that the paperwork was the responsibility of custody staff who follow a separate chain of command (Pet'r Compl. Ex. 3). Further, Petitioner suggests it is impossible for Recreation staff to complete the paperwork because they are not stationed in the location the photos are taken (Pet'r Compl.).

8. However, Petitioner misunderstands Respondent's position. Respondent does not claim that Petitioner was responsible for completing the paperwork with offenders' information at the time the photo was taken (Pet'r Compl. Ex. 3); Rather, Respondent indicates that the paperwork Petitioner failed to complete involved the twenty (20) to thirty (30) tickets that were not processed, which were Petitioner's responsibility (Resp't Motion at 8; Resp't Motion Ex. B, C).

9. Petitioner contends that some the tickets in question may not have been legitimate and therefore declined to print the photos unless it was confirmed that the ticket had been paid for by the offender (Pet'r Compl.). The facts, however, support the notion that Petitioner put the extra tickets in a folder, without determining their legitimacy, and subsequently failed to complete the paperwork required of a Recreation Leader under the PPP.

10. Therefore, Petitioner was not issued a written reprimand for failing to complete paperwork for which he was not responsible as he suggests, but instead received the discipline for failing to process a sizeable number of photo tickets—in direct violation of Respondent's PPP (Resp't Motion Ex. C, H; Pet'r Reply Ex. 3).

11. Petitioner next contends that he was not given proper, if any, instructions for distributing hot dogs at the March Madness Event and thus should not be reprimanded for the manner in which he handled the food (Pet'r Compl.).

12. In an email from Recreation Coordinator Scott Kenworthy ("Kenworthy") before the event, Petitioner was made aware that he should pass out "one pop and one bag of chips . . . if hot dogs are left over, it can be first come first serve until gone." (Pet'r Compl. Ex. 7; Resp't Reply Ex. D).

13. In conjunction with Kenworthy's email, Petitioner also received verbal instructions from Kenworthy regarding the hotdogs at the Recreation Meeting (Resp't Motion Ex. H).

14. Further, Petitioner claims that when he received the food, many hot dogs were burnt, so Petitioner told his staff to pass out one (1) hotdog to each offender, since he was unsure if offenders would accept the burnt ones. However, Petitioner admits that the offenders did, in fact, take the burnt hotdogs (Pet'r Compl.). Therefore, Petitioner's contention that he only allowed one (1) hot dog per offender because of the hot dogs' burnt nature fails.

15. In addition, Petitioner had previously worked at three (3) other sports viewing events without issue. Therefore, it is reasonable to conclude that Petitioner received proper instruction as to how food should be handled at those events and knew from previous experience what the general food handling protocol for events such as this were, but ultimately failed to follow said instructions (Resp't Motion Ex. G).

15. Thus, the ALJ finds that Petitioner had the experience and the instructions necessary to properly handle the March Madness event, but failed to do so.

16. The ALJ will lastly address Petitioner's contention that "[t]his situation meets the legal definition of a hostile work environment." (Pet'r Compl.).

17. "In determining whether a workplace is objectively hostile, [the ALJ must] consider the totality of the circumstances, including: 'the frequency of the discriminatory conduct; its severity; whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee's work performance.'" *Alamo v. Bliss,* 864 F.3d 541 (7th Cir. 2017) (citations omitted).

18. "[T]he specific circumstances of the working environment and the relationship between the harassing party and the harassed also bear on whether that line is crossed." *Id. See also Robinson v. Sappington*, 351 F.3d 317, 330 (7th Cir. 2003). "Still, this liability has limitations, and Title VII was not designed to become a 'general civility code.'" *Alamo*, 864 F.3d at 550; *see also Faragher v. City of Boca Raton*, 524 U.S. 775, 788 (1998).

19. "Instead, although a workplace need not be 'hellish' to constitute a hostile work environment, it must be so pervaded by discrimination that the terms and conditions of employment are altered." *Alamo* 864 F.3d at 550. *See also Vance v. Ball State Univ.*, 133 S. Ct. 2434, 2441 (2013) (citations omitted).

20. Despite alleging the existence of a hostile work environment, Petitioner fails to go any further in his allegations. Petitioner fails to present evidence of nor show that his reprimand constituted a hostile environment. Petitioner does not provide any evidence that would suggest a hostile work environment existed. Rather, Petitioner instead asserts that he did not have any personal or professional conflict with other staff members and was able to carry out his work assignments—directly in contradiction of what constitutes a hostile work environment. (Pet'r Reply). Mere conclusory assertions will not survive summary judgment and allegations must be supported by material facts. *Sanders v. Kelly*, 1993 U.S. App. 3112 (7th Cir. February 23, 1993). Therefore, Petitioner has not shown that he was subject to hostility in any fashion and so the ALJ finds that Petitioner's claim of hostile work environment fails.

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.

V. 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: March 6, 2019

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Chief Administrative Law Judge
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