BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

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<tr><td>JAMES BARKER
    Petitioner,

vs.

PUTNAMVILLE CORRECTIONAL
FACILITY BY INDIANA DEPARTMENT
OF CORRECTION
    Respondent.</td><td>)
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) SEAC No. 07-20-041
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STATE EMPLOYEES'
APPEALS COMMISSION</td></tr>
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ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

I. Introduction and Summary

On January 29, 2021, the Putnamville Correctional Facility ("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 James Barker's ("Petitioner") Complaint ("Complaint"). Petitioner, pro se, replied on March 2, 2021. Respondent then filed its surreply on March 17, 2021. The ALJ's decision therefore relies upon Petitioner's Complaint, Respondent's Motion, Petitioner's Reply and Respondent's surreply.

This case considers Petitioner's demotion for failing to appropriately supervise employees under his command.

Upon review of the pertinent pleadings, the ALJ hereby **GRANTS** Respondent's Motion for Summary Judgment. 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. This case must therefore be dismissed under Ind. Code § 4-15-2.2-42. The following additional findings of fact, conclusions of law, and order are entered.

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).

III. 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. Petitioner, at the time of his demotion, was a Correctional Lieutenant at Respondent's facility, an unclassified, at-will position (Pet'r Compl.).

2. On November 17, 2017, Petitioner received a written reprimand for failing to ensure that offender mail was properly delivered (Resp't Motion, Ex. B-2).

3. On June 19, 2018, Petitioner received a written reprimand in lieu of a one (1) day suspension for engaging in unprofessional conduct (Resp't Motion, Ex. B-3).

4. In January, 2020, Keith Hatrzell ("Hartzell"), the Deputy Warden of Respondent's facility, instructed Petitioner to oversee a project concerning the containment of a mice problem in Respondent's facility (Resp't Motion, Ex. D)

5. Hartzell more specifically instructed Petitioner to supervise two (2) other employees, whose job it was to eradicate the infestation (Resp't Motion, Exs. D-F).

6. Around the same time, Hartzell also instructed Petitioner to keep the control room in an area of Respondent's facility clean and free of dead bugs which had accumulated near a window (Resp't Motion, Ex. D).

7. In February, 2020, Hartzell asked Petitioner for an update on both projects, since he had not heard from Petitioner. *Id.*

8. Hartzell noticed that as the weeks progressed, neither issue he instructed Petitioner to address was complete, nor was any progress made (Resp't Motion, Exs. D-E).

9. On April 16, 2020, Respondent demoted Petitioner to a Correctional Sergeant for failing to properly supervise the eradication of the mice problem, as well as Petitioner's failure to clean the Control Room as instructed by Hartzell.

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." 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, 653-55 (Ind. 2009); *Meyers v. Meyers Construction*, 861 N.E.2d 704, 706-7 (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); *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. Examples of exceptions to the Indiana employment at-will doctrine include illegal discrimination based on a protected class, retaliation for exercising a statutory right or refusing to engage in illegal conduct. *McClanahan v. Remington Freight Lines*, 517 N.E.2d 390 (Ind. 1988); *Frampton v. Cent. Indiana Gas Co.*, 297 N.E.2d 425 (Ind. 1973).

6. At the outset, the ALJ will address Respondent's argument that Petitioner untimely raised the argument that Petitioner was the victim of retaliation.

7. Under Indiana Trial Rule 15, Petitioner, if he wished to properly raise this argument, should have asked the ALJ to amend his complaint in order to do so. Petitioner did not avail himself of this opportunity.

8. Additionally, arguments raised for the first time at the summary judgment stage are waived. *Citizens Against Ruining the Env't v. E.P.A.*, 535 F.3d 670, 676-7 (7th Cir. 2008).

9. Therefore, Petitioner's retaliation argument is hereby waived and will not be further considered.

10. Petitioner is thus left with arguments related to his involvement in the projects.

11. Petitioner mainly argues that he did follow up with those he was told to supervise, but since they were not of a lower rank than Petitioner, Petitioner had no jurisdiction to enforce the mandate issued by Hartzell (Pet'r Compl.).

12. In support, Petitioner points to a series of emails between him and those he was to supervise, whereby Petitioner sought constant feedback (Resp't Motion, Exs. F-G). Thus, Petitioner attempts to argue that despite the dereliction of duty shown by those Petitioner supervised, Petitioner should not be held accountable.

13. However, as Respondent noted in its Motion, Petitioner was directly charged by Hartzell with overseeing the project and told to supervise the employees (Resp't Motion, Ex. D).

14. Further, there exists no evidence that Petitioner sought Hartzell's help at any time during the course of either project. While Petitioner alleges that he contacted Hartzell via email about the lack of cooperation, no such emails were produced by Petitioner.

15. Additionally, if Petitioner were frustrated with the lack of cooperation, Petitioner could have contacted Hartzell for intervention. The fact that Petitioner did not leads the ALJ to conclude that Petitioner felt like he could properly supervise the project.

16. As to Petitioner's argument that he had no control over the other employees, Respondent has clearly shown that Hartzell specifically directed Petitioner to supervise the project. Therefore, despite whatever titles the other employees held, Petitioner was given direct authority to supervise them. The fact that Petitioner failed to do so led to his demotion.

17. Petitioner's remaining argument concerns Respondent's alleged forgery of documents related to the directions given to him by Hartzell.

18. Petitioner alleges that Hartzell fraudulently backdated the fact file entry regarding his original directive to Petitioner, which constitutes reversable error (Pet'r Compl.; Pet'r Reply).

19. Ind. T.R. 61 dictates that a court (here, the ALJ) must disregard any error that has no effect on the substantial right of Petitioner. *See also Kimbrough v. Anderson*, 55 N.E.3d 325 (Ind. Ct. App. 2016).

20. In this case, Hartzell admits that he had the fact file entry created after he first told Petitioner of his assignment, but did so because, despite Hartzell's instruction, no such entry was created at the time (Resp't Motion, Ex. D).

21. Doing so did not substantially infringe upon Petitioner's rights, since he was told in person about the assignment by Hartzell.

22. Additionally, Petitioner, when presented with the backdated entry, signed it, so Petitioner cannot now seek to argue that the creation of it was unfair (Resp't Motion, Ex. D-1).

23. While the ALJ admonishes Respondent for allowing a backdated entry to be created and used here and further counsels Respondent that such actions may result in a different result depending on the facts in an ensuing case, Hartzell's actions here were not such that harmed Petitioner.

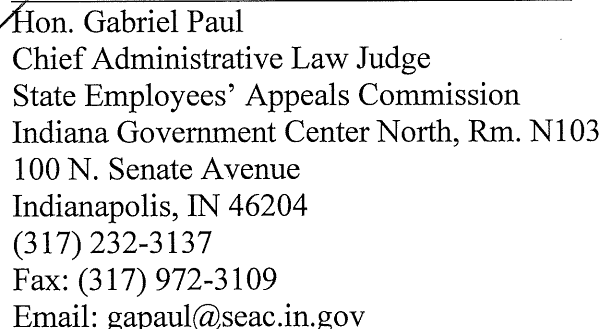
24. Petitioner presented no further arguments on his behalf.[1] Thus, the ALJ concludes that Petitioner has not shown that his demotion was a violation of a law, rule or public policy under I.C. §4-15-2.2-42 such that this case should continue.

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 much file a petitioner in an appropriate court within thirty (30) days of this order and must otherwise comply with I.C. § 4-21.5-5.



DATED: April 6, 2021

Hon. Gabriel Paul
Chief Administrative Law Judge
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[1] The ALJ notes in passing that Petitioner also argues that the timeline of the project noted above was incorrect. Petitioner contends that the project began in March, 2020, not January, 2020 (Resp't Motion, Ex. F). However, Respondent has clearly shown and the ALJ has sufficiently found that the project began in January, 2020.

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

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