BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

RENEE TRAIVARANON Petitioner,	)	SEAC ISSUED MAY 07 2018
	) SEAC No. 12-17-061	
vs.	)	
INDIANA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT Respondent.	)	

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

I. Introduction and Summary

On February 23, 2018, Respondent Indiana Department Environmental Management ("Respondent") by counsel, filed a Motion to Dismiss Petitioner's Complaint ("Motion"). Petitioner Renee Traivaranon ("Petitioner"), pro se, submitted a response to Respondent's Motion on April 15, 2018. Thereafter, on April 24, 2018, Respondent filed a response in support of its Motion. The ALJ has duly considered the parties' filings, arguments and the pleadings, and this matter is ripe for ruling.

This case considers Petitioner's challenge of the fairness of her termination for failing to satisfactorily complete her assigned job duties. Petitioner challenges the ability to appeal her termination based on timeliness. Petitioner bases her challenge on information she was allegedly given by her human resources representative at the time of her termination, whereby she was told to submit her Step I appeal to the Indiana State Personnel Department ("SPD"), rather than with Respondent. Petitioner also alleges discrimination based on her age, sex and national origin, along with a charge of retaliation.

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 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.

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). 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. Trial Rule 12(b)(1) and 12(b)(6).

II. Findings of Fact

The facts relevant to the instant Motion's resolution, and construed in favor of the non-movant Petitioner, are as follows:

1. At all times relevant to this matter, Petitioner was an unclassified, at-will employee, an Environmental Manager II, for Respondent (Pet'r. Compl.).

2. On October 5, 2017, Petitioner was terminated from her position while attending a meeting with Mr. Matt Stuckey ("Stuckey"), who serves as Respondent's Deputy Assistant Commissioner in Respondent's Office of Air Quality.

3. During the meeting, Petitioner was given a formal termination letter, which states at the bottom that, "This action may be appealable with IC 4-15-2.2-42" (Pet'r. Compl.).

4. On October 6, 2017, Petitioner attempted to call Mr. Bruno Pigott ("Pigott"), Respondent's Commissioner, about her termination, but was not able to speak with him (Pet'r. Compl.).

5. On either October 6 or 10, 2017, Petitioner received a return call from Respondent's Chief of Staff, Mr. Brian Rockensuess ("Rockensuess"), who discussed Petitioner's termination with Petitioner (Pet'r. Reply, Ex. 1).

6. During the phone call, Petitioner was told that if she felt she had been wrongly terminated, then she should file an appeal with SPD (Pet'r. Reply, Ex. 1).

7. Thereafter, but before November 3, 2017, Petitioner again spoke with Stuckey via phone. During this conversation, Petitioner was told to send her appeal to SPD (Pet'r Reply, Ex. 1).

8. On November 3, 2017, Petitioner sent a letter to Ms. Britni Saunders ("Saunders"), SPD's Director. In her letter, Petitioner indicated that she was filing it with SPD per Stuckey's direction (Pet'r. Compl.; Pet'r.Reply, Ex. 1).

9. On November 6, 2017, Bruce Baxter, SPD's Director of Employee Relations, sent a letter to Petitioner stating that she had initiated Step I with the wrong agency and that if she wished to preserve her appeal rights under I.C. § 4-15-2.2-42, she should resend her complaint to Respondent within the time period allowed for appeal. The letter also stated that failure to do so would cause Petitioner to waive her right to appeal her termination (Pet'r. Compl.).

10. Sometime after November 6, 2017, but before December 1, 2017, Petitioner sent a follow up letter to SPD, inquiring about the status of her appeal (Pet'r. Reply, Ex. 1).

11. On December 1, 2017, SPD sent Petitioner a letter stating that because she failed to initiate the complaint procedure within the time period provided by statute, Petitioner's appeal was being dismissed (Pet'r Compl.).

12. Petitioner filed the instant action on December 21, 2017.

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 contends that the statutory timeline to submit a civil service complaint should not apply in this matter because she was allegedly told to file her appeal with SPD (Pet'r. Reply).

6. The Civil Service Statute is clear about filing deadlines. *See* I.C. § 4-15-2.2-42 (c)(e). Under subsection c, Petitioner was required to file her Complaint not more than thirty (30) days after the date the employee became aware of her termination. The statute is also clear that if Petitioner fails to adhere to this procedure, she waives the right to file a complaint. Under subsection (e), the procedure begins when the appeal is sent to the agency's appointing authority.

7. Appointing Authority is defined as the head of a department, division, board, or commission, or an individual or group of individuals who have the power by law or by lawfully delegated authority to make appointments in the state civil service. I.C. § 4-15-2.2-2.

8. Petitioner relies on part upon the definition of "department", as used in the Civil Service statute. The definition states that department refers to SPD. *See* I.C. § 4-15-2.2-6.

9. Despite this reliance, the Civil Service statute makes it clear that SPD is the second step in the appeal process.

10. This is further enforced by the language contained in the Civil Service statute as it relates to Step II. That language states that if an employee is unsatisfied at Step I, they may file with the director at Step II within fifteen (15) days of receiving the Step I reply. *See* I.C. § 4-15-2.2-42 (e). Director is defined as the SPD director. I.C. § 4-15-2.2-7.

11. In interpreting the statute, the ALJ will not rely on an interpretation that leads to a result the legislature did not intend. *See Evansville Concrete Supply Co. v. Indiana Dep't of State Revenue*, 571 N.E.2d 1350 (Ind. Tax Court, 1991).

12. Further, when the language of a statute is unambiguous, its language governs. *See Id.*

13. If the ALJ were to adopt Petitioner's interpretation of the statute, Steps I and II would be sent to the same agency-namely, SPD. Clearly this is not what the legislature intended. Instead, the statute clearly lists three (3) different agencies in each of the steps. Step I begins with the filing of an appeal to the agency's appointing authority, while Step II continues with SPD and Step III with SEAC. Each agency is tasked with evaluating the merits of an appeal and determining whether relief can be granted. *See* I.C. § 4-15-2.2-42(e).

14. Petitioner's termination letter gives the citation for the Civil Service Statute and also provides an SPD website where more information can be obtained. (Petr. Compl.)[1]

15. The website states that in order to properly initiate an appeal at Step I, it should be sent to the employee's appointing authority or designee within thirty (30 days) of the action.

16. Therefore, despite Petitioner's belief that SPD was the correct agency in which to initiate her appeal, Respondent was the correct venue in which to file.

17. Therefore, in order for Petitioner's appeal to be properly perfected at Step I, it must have been sent to Respondent.

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[1] *See* http://www.in.gov/spd/2399.htm.

18. Respondent presented evidence from multiple people within the agency who all stated that Petitioner's appeal was never received. Corliss White ("White"), an employee of SPD who serves as Respondent's HR Director[2], stated in two (2) separate affidavits that she did not receive an appeal from Petitioner. (Resp't. Motion, Ex. C; Resp't. surreply, Ex. D). Also, in her second affidavit, White stated that Petitioner's complaint was never forwarded to her (Resp't. surreply, Ex. D).

19. Similarly, Pigott stated that he never received an appeal from Petitioner (Resp't. Motion, Ex. B).

20. Despite Petitioner's belief that her appeal would be forwarded, SPD was under no obligation to do so under the statute. In order to perfect her appeal, Petitioner needed to file it with Respondent by November 5, 2017.

21. Petitioner stated that her letter to SPD on November 6, 2017 was to be construed as her appeal (Pet'r. Reply Ex. 1). Since this date was past the deadline and because SPD was under no obligation to forward Petitioner's Complaint (despite her assertions to the contrary), the ALJ finds that Petitioner's appeal was not timely filed at Step I. Thus, Petitioner may not pursue this appeal further under this theory.

22. Petitioner finally attempts to resurrect this appeal by arguing that she detrimentally relied on both Stuckey and Rockensuess' statements that Petitioner could file her appeal at Step I with SPD.

23. The doctrine of equitable estoppel applies when there is "[a] promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance [and] is binding if injustice can be avoided only by the enforcement of the promise." *McCalment v. Eli Lilly & Co.*, 860 N.E.2d 884 (Ind. Ct. App. 2007). "Equitable estoppel is [generally] available if one party, through its representations or course of conduct, knowingly misleads or induces another party to believe and act upon his conduct in good faith and without knowledge of the facts. The elements of equitable estoppel are: (1) a representation or concealment of a material fact, (2) made by a

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[2] Respondent, in its Motion, argues that even if Petitioner's appeal had been sent in a timely manner to White, it would not be sufficient to meet the statutory requirement, since White is not Respondent's appointing authority, since she was employed by SPD. The ALJ wholly rejects this argument and points out that even though White was technically an SPD employee, the fact that she served as Respondent's HR Director gave her the power (the ALJ assumes by) delegation from Respondent's Commissioner to make appointments in the Civil Service, which in this case means to Respondent's agency. Thus, if Petitioner had shown that her appeal was timely filed, Respondent would have been ordered to cease any further reliance upon this theory going forward. The ALJ notes it here for future reference.

person with knowledge of the fact and with the intention that the other party act upon it, (3) to a party ignorant of the fact, (4) which induces the other party to rely or act upon it to his detriment. The reliance element has two prongs: (1) reliance in fact and (2) right of reliance." *Wabash Grain, Inc. v. Smith*, 700 N.E.2d 234 (Ind. Ct. App. 1998).

24. Nevertheless, despite what Petitioner may have been told by an employee of the State, "Indiana courts have been hesitant to allow an estoppel in those cases where the party claiming to have been ignorant of the facts had access to the correct information." *Cablevision of Chi. v. Colby Cable Corp.*, 417 N.E.2d 348 (Ind. Ct. App. 1981). In other words, "ignorance of the law is no defense." *Strowmatt v. Ind. Dep't of Corr.*, 57 N.E.3d 898 (Ind. Ct. App. 2016).

25. Additionally, even if Petitioner could prove she detrimentally relied on information given to her by an agent of the State, "[a]s a general rule, equitable estoppel will not be applied against governmental authorities." *Story Bed & Breakfast, LLP v. Brown Cty. Area Plan Comm'n*,, 819 N.E.2d 55 (Ind. 2004).

26. Stuckey, in his affidavit, stated he did not tell Petitioner that she could file her appeal with SPD. (Resp't. surreply, Ex. E.). He also told Petitioner that if she wished to file an appeal, she should follow the instructions given to her in the termination letter. *Id.*

27. Similarly, Rockensuess stated that during his phone call with Petitioner following Petitioner's termination, he told Petitioner that if she wished to file an appeal, Petitioner needed to follow the steps outlined in the packet Petitioner received upon her termination. (Resp't. surreply, Ex. F).

28. Taken together, these statements prove that Petitioner was not given incorrect information regarding where to direct her appeal. Therefore, her estoppel argument fails.

29. Respondent has successfully shown that Petitioner failed to perfect her Step I complaint in a timely manner and has also proved that Petitioner did not detrimentally rely upon any statements made by Respondent regarding where to file her appeal. Petitioner was made aware of the statute and was given the resources needed to properly perfect her Step I appeal, which she failed to do. Respondent's termination of Petitioner did not violate public policy and is hereby UPHELD.[3]

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[3] The ALJ notes that Petitioner filed an amended Complaint on January 16, 2018, whereby she added claims of discrimination and retaliation. However, Respondent's Motion did not address these claims, nor did Petitioner show how she was discriminated or retaliated against in her Reply. Thus, the ALJ deems these arguments waived.

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: May 7, 2018

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Chief Administrative Law Judge
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