

**BEFORE THE  
STATE EMPLOYEES' APPEALS COMMISSION**

IN THE MATTER OF:

TREDDIA CROUCH,	)	
Petitioner,	)	
	)	
v.	)	SEAC NO. 01-12-001
	)	
PENDLETON CORRECTIONAL	)	
FACILITY,	)	
Respondent.	)	

**ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT**

On August 17, 2012, Respondent PCF, by counsel, moved for summary judgment (the "Motion"). Petitioner Crouch, by counsel, timely responded to the Motion on September 19, 2012. Having considered the parties' submissions, and as further discussed herein, the ALJ determines there are one or more genuine issues of material fact that need to be resolved at an evidentiary hearing. Respondent PCF's Motion for Summary Judgment is therefore **DENIED**.

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).

II. Employment At Will and Title VII Discrimination and Retaliation

In this Indiana Civil Service System case, Petitioner Crouch is a former unclassified state employee for Respondent PCF. An unclassified state employee is at will, and serves at the appointing authority's pleasure. However, a termination or lesser discipline of an unclassified, at will state employee may not violate public policy. I.C. 4-15-2.2-1 et seq., 42 (Civil Service System). Petitioner Crouch challenges her termination from state employment, and an earlier reprimand, as the product of race or sex discrimination and retaliation, including for the filing of a prior EEOC<sup>1</sup> Charge. Prohibited discrimination or retaliation, if proven true by Petitioner Crouch at an evidentiary hearing, would violate federal and state law, and public policy.

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<sup>1</sup>Equal Employment Opportunity Commission, a federal agency that enforces Title VII and other anti-discrimination laws. The Indiana Civil Rights Commission is the parallel state agency.

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 the instant matter. I.C. 4-15-2.2-42.

Title VII, 42 U.S.C. § 2000e (the Civil Rights Act of 1964, as amended), makes it unlawful under federal law for an employer to discriminate by terminating or disciplining an employee “because of that person’s race or sex, among other grounds.” Retaliation against an employee for the filing of an EEOC Charge or the reporting of discrimination to the employer is also unlawful. *Coleman v. Donahoe*, 667 F. 3d 835, 845 (7<sup>th</sup> Cir. 2012). Indiana civil rights laws contain similar, state law based, public policy prohibitions. I.C. 22-9-1 (Indiana Civil Rights Act); See also, I.C. 4-15-2.2-1 et seq., 12, and 42.

The application of the Title VII analysis, at the summary judgment stage, in termination cases is often referred to as the *McDonnell Douglas* burden shifting framework, which has evolved and been modified over time in federal law.<sup>2</sup> See *Pantoja v. American NTN Bear. Manuf. Corp.*, 495 F.3d 840,845 (7<sup>th</sup> Cir 2007) discussing *McDonnell Douglas v. Green*, 411 U.S. 792 (1973). Indiana civil rights laws look to federal law for guidance. *Filter Specialists, Inc. v. Dawn Brooks et al.*, 906 N.E.2d 835, 839-842 (Ind. 2009). At the summary judgment stage, Indiana courts use the modified *McDonnell Douglas* analysis in race and sex based discrimination (and retaliation) cases. *Id.*

Under the current form of the *McDonnell Douglas* analysis, a petitioner/plaintiff may prove discrimination either through direct or indirect evidence. A petitioner can present either a single motive or mixed-motive theory of discrimination. *Coleman at 845; Filter Specialists, Inc. at 839-840.*<sup>3</sup> To establish a *prima facie* case of discrimination using the indirect method, the petitioner must offer evidence that: (1) she is a member of a protected class, (2) her job performance met the employer’s legitimate expectations, (3) she suffered an adverse employment action, and (4) another similarly situated individual who was not in a protected class was treated more favorably than the petitioner. *Id.* Once a petitioner establishes a *prima facie* case of discrimination the burden then shifts to the employer to show a legitimate,

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<sup>2</sup> At trial (an evidentiary hearing in AOPA parlance), the inquiry collapses to a factual, evidence specific one of whether the plaintiff/petitioner can prove by a preponderance of the evidence that the employer/respondent intentionally discriminated in violation of the law. *Filter Specialists, Inc. at 845-846.*

<sup>3</sup> Mixed motive cases involve the plaintiff/petitioner showing that impermissible discrimination played a “motivating part” or was a “substantial factor” in the adverse employment decision. *Filter Specialists Inc. at 840-841* (Indiana Supreme Court citing and discussing *Price Waterhouse v. Hopkins*, 940 U.S. 228 (1989) and *Desert Palace, Inc. v. Costa*, 539 U.S. 90 (2003)). After a respondent employer offers a legitimate basis for the employment decision, a petitioner can rebut the showing in a mixed motive case by either showing the offered reason was false – a pretext; or that the employer’s decision was motivated at least in part by a prohibited basis.

nondiscriminatory reason for the adverse employment action. *Id.* Once the employer has presented this reason the burden shifts back to the petitioner “who must present evidence that the stated reason is a ‘pretext,’ which in turn permits an inference of unlawful discrimination.” *Coleman* at 845; *and see, Filter Specialists Inc.* at 847 (describing possible pretext proofs).

Under Title VII “[u]nlawful retaliation occurs when an employer takes an adverse employment action against an employee for opposing impermissible discrimination.” *Williams v. Lovchik*, 830 F. Supp. 2d 604, 620 (S.D. Ind. 2011). A petitioner/plaintiff asserting a claim of retaliation under Title VII can prove her case with either direct or indirect methods of proof. *Id.* In order to prove retaliation, the petitioner must present evidence, direct or circumstantial, demonstrating that: (1) she engaged in statutorily protected activity; (2) she suffered an adverse employment action by the employer; and (3) a causal connection exists between the two. *Id.* Filing an EEOC Charge of Discrimination is considered a statutorily protected activity. *Id.*

### III. Respondent PCF’s asserted grounds for the Motion.

Respondent PCF’s Motion is on a pair of relatively narrow grounds, including over causation, a classic area of argument in Title VII termination cases. Petitioner Crouch alleges unlawful discrimination on the basis of race and sex, as well as retaliation for the filing of an EEOC charge. With the causation issue discussed below, Respondent’s Motion does not focus on the *prima facie* elements of Petitioner’s case, but instead focuses on the second step of the Title VII burden shifting analysis for discrimination claims.<sup>4</sup> Respondent’s Motion and designated evidence offer legitimate reasons for the adverse employment actions taken against Petitioner. Those reasons include: Petitioner failed to attend a mandatory staff training, Petitioner refused a direct order to stand mainline, and Petitioner failed to provide a doctor’s note for sick time used. (Downey Aff. pp.1-3)

Additionally, Respondent attempts to show a break in the causal chain, which is best viewed as an attack on the *causation* prima facie elements of both the discrimination and retaliation claims. Respondent’s argument here is focused on showing that another, more senior official, Respondent’s Assistant Superintendent, Mr. Helming, made the adverse termination decision, independent of Mr. Downey. Mr. Helming testified:

I based my decision solely on Petitioner’s actions. I reached the determination for termination because Petitioner made deliberate attempts to defraud and mislead the Indiana Department of Correction. Petitioner’s behavior over the previous months showed a pattern of increasing erratic and insubordinate behavior. Petitioner continued to show a pattern of inappropriate behavior through her attendance.

(Helming Aff. ¶ 6; see also, Helming Aff. ¶ 7.)

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<sup>4</sup> To the degree the Motion challenges other prima facie elements such as whether Petitioner’s performance was meeting the employer PCF’s reasonable expectations, Petitioner’s submissions are sufficient to establish a prima facie case under the summary judgment framework, as discussed herein.

Because the Respondent has designated evidence to show legitimate reasons for the termination and to break causation, the Petitioner may not rest on her pleadings, but must designate sufficient evidence to demonstrate there is a triable issue(s) of genuine, material fact.

In this case, Petitioner's designations of evidence are sufficient to create such a question, requiring the Motion's denial. Petitioner establishes the elements of her *prima facie* case for discrimination and retaliation, and additionally raises factual questions of whether the state's articulated, legitimate, non-discriminatory reasons were actually unlawful pretexts (or at least a mixed unlawful motive) under the modified *McDonnell Douglas* burden shifting analysis. *Coleman* at 845; *Filter Specialists Inc.* at 839-840, 847.

IV. The evidence submitted by the non-movant Petitioner Crouch demonstrates one or more genuine issue(s) of material fact for evidentiary hearing.

The affidavit testimony submitted by a non-movant (Petitioner Crouch), at this stage, must generally be taken as true and inferences drawn in non-movant's favor<sup>5</sup>:

1. Petitioner, an African-American female, is a member of two protected classes. (Crouch Aff., ¶ 2)
2. Petitioner received adequate performance ratings for her work for PCF. (Crouch Aff., ¶¶ 4-10)
3. Petitioner was working as a case manager and asserts that in August, 2011, supervisor "Karl Downey harassed me and discriminated against me by giving me more job duties, by talking to me in a degrading manner, and other actions." (Crouch Aff. ¶ 27)
4. Petitioner asserts that in September, 2011, "Karl Downey told me that in his opinion this is no place for women and women should not be here." (Crouch Aff., ¶ 28)
5. Petitioner disputes the circumstances surrounding her failure to attend a mandatory staff training on September 27, 2011 and her subsequent Reprimand. (Crouch Aff., ¶¶ 30-39) Petitioner asserts that it has never been a routine practice to impose disciplinary action upon staff for missing forty (40) hour training. (Petitioner's Complaint, p.15)
6. Petitioner disputes Respondent's assertion that she was at work under the influence of alcohol. Respondent has provided no evidence that petitioner was at work under the influence of alcohol. (Petitioner's Brief, p. 1)
7. Petitioner disputes Respondent's assertion that she refused a direct order by her supervisor. (Crouch Aff., ¶¶ 42-43)

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<sup>5</sup> This list from Petitioner's designated affidavit is not exhaustive.

8. Petitioner disputes Respondent's assertion that she failed to report to work without notifying her chain of command.<sup>6</sup> (Crouch Aff., ¶ 48)
9. Petitioner filed an EEOC Charge of Discrimination on November 14, 2011. (Crouch Aff., ¶ 59). The affidavit also recounts less recent alleged prior reports of discrimination to Downey or PCF. (Crouch Aff. ¶¶ 12 and 14)
10. On about December 14, 2011 the Petitioner was verbally told that she was terminated because of Karl Downey.<sup>7</sup> (Crouch Aff., ¶ 61)

Taken collectively, Petitioner has demonstrated a *prima facie* showing of discrimination and retaliation based on sex or race or both. Petitioner's affidavit offers both direct and indirect evidence of discrimination and retaliation, including testimony about harassing conduct, an adverse employment decision following an EEOC charge, testimony that she was in fact meeting expectations contrary to the proffered, 'non-discriminatory' reasons submitted in the Respondent's affidavits, and comments directed to her sex by Mr. Downey.

The elements of Petitioner's claims under the *McDonnell Douglas* burden shifting method are each sufficiently supported at the summary judgment stage. Petitioner, an African American female, is in two protected classes, she suffered the adverse employment decisions of termination and reprimand, she testifies that she met the legitimate expectations of her position and the Respondent treated other similar co-employees, or applied state workplace policy to her, differently. Similarly, Petitioner has supported by affidavit the *prima facie* elements of retaliation: she engaged in a protected activity (filed an EEOC complaint), suffered an adverse employment action (termination), and provides evidence of causation as described immediately below.

As to causation, Petitioner has sufficiently rebutted the Respondent's proffered legitimate reasons for the termination. Petitioner has raised the question of unlawful pretext (a single discrimination theory), or at least raised a question of mixed unlawful motive. There is some inference of suspicious timing; the adverse employment decision follows and is coupled close in time with harassing behavior and EEOC charge filing. More significantly, Petitioner Crouch designates specific testimony evidence that Mr. Downey may have been involved in, or influenced, Mr. Helming's decision<sup>8</sup>, creating a question of material fact over whether Helming was making an independent, lawful decision. For instance, the same day Helming made his decision, following Petitioner's EEOC complaint filing, Petitioner "was verbally told [she] was terminated because of charges started by Karl Downey." (Crouch Affidavit ¶ 61) For summary

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<sup>6</sup> Respondent acknowledges that whether Petitioner obeyed orders or had proper workplace attendance are factually disputed by Petitioner. (Respondent's Motion, p.3). Petitioner's brief is correct that identified disputes of material fact cannot form the basis of summary judgment.

<sup>7</sup> Petitioner received the written notice of termination on December 20, 2011. Petitioner had direct contact with Downey around that time. Petitioner also testifies Downey questioned her about a doctor's visit, demanded proof of the visit and used that as an excuse to cause termination. (Crouch Aff., ¶¶ 63-70)

<sup>8</sup> Restated, Petitioner Crouch shows a question of genuine material fact over whether Mr. Downey was involved in both sides of the transaction, the alleged harassment as a supervisor and the employer's adverse decision making.

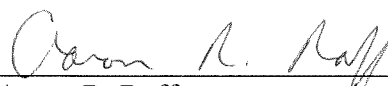
judgment purposes, Petitioner thus repairs the causal chain, a required element under both of her *prima facie* claims.

V. Conclusions of Law and Order

In order to be granted summary judgment there can be no genuine issue of material fact. The movant, Respondent PCF, bears the burden of establishing that there is no genuine issue of material fact. The Respondent has asserted that the Petitioner Crouch's actions were legitimate reasons to terminate her employment and that the decision to terminate the Petitioner was based solely on her actions. These reasons put forth by the Respondent have been factually disputed by the non-movant Petitioner's affidavit. Questions of material fact and credibility surround the pretext issue and the causation element. The Respondent has not met its burden of showing that there is no genuine issue of material fact under Title VII and Indiana civil rights law. An evidentiary hearing is necessary to determine under what circumstances the Petitioner was terminated.

Summary judgment is **DENIED**. The case shall proceed to an evidentiary hearing on **December 4th, 2012** as presently set.

DATED: October 19, 2012



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