BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

TRAVIS C. COX	)
Petitioner,	)
	) SEAC NO. 07-13-058
vs.	)
	)
INDIANA DEPARTMENT OF	)
CHILD SERVICES	)
Respondent.	)

FINAL ORDER OF DISMISSAL

You are notified the Administrative Law Judge, acting on behalf of the State Employees' Appeals Commission, now enters a final order of dismissal as to the Complaint of Petitioner McNutt because SEAC lacks statutory jurisdiction. The reasons for the initial proposed dismissal are set forth in the ALJ's August 1, 2013, "Notice of Proposed Dismissal For Lack of Jurisdiction Under Ind. Code §4-15-2.2-34, 42" entered previously (the "Notice"). The Notice is fully incorporated by reference herein.

Petitioner Cox timely responded to the Notice on August 9, 2013 (the "Response"). The Response is treated both as argument and an Amended Complaint to give every inference in Petitioner's favor to the pleadings for purposes of this review. Petitioner Cox's Response is discussed herein, but not availing to rescue the Complaint's jurisdictional defect. Namely, Petitioner was terminated by DCS inside a working test period, and so SEAC cannot review his Complaint under the pled facts and relevant law.

I. Background

The original Notice proposed to dismiss the Complaint because the pleading showed that Petitioner Cox was still inside an initial or properly extended working test period at the time of discharge. The Notice contains an in-depth discussion of the working test period and the ALJ's construction of the relevant statutes, SPD rules/regulations and Employee Handbook.

For better context, a portion of the original Notice is quoted:

> "According to the SPD Rules and Handbook the length of a working test period is at least six (6) months for new full time employees, but can be extended up to twelve (12) months purely at state discretion. As Cox was a full-time employee prior to the working test period, the six-month period could be extended to a year-long test period. Moreover, an employee must be expressly certified as completing the working test period by SPD and retained by the agency (DCS) to

have classified status. Contrary to Petitioner's assertion, successful working test certification does not happen automatically. The time frames also vary, but the six month minimum for full time employees can be doubled at state discretion. See, I.C. 4-15-2.2-34(a-b), 31 IAC 5-3-1 and Handbook, p. 43. It was noted in the SPD's denial letter that the director had not yet certified the working test period. Similarly, DCS also declined to continue to employ Petitioner under Section 34(b,d). Petitioner Cox's dismissal was inside a year and prior to his becoming classified.

Finally, the disputed request for the personal day on June 7, 2013 admittedly fell within the Petitioner's version of the working test period. The mere fact that the personal day taken and the formal termination occurred during the next business week (June 10-13, 2013) does not save the Complaint. As explored above, the plain language of Section 34 of the Civil Service System, and also the SPD Rules or Handbook, did not restrict the working test period to exactly six (6) months. Id. Six months is the minimum, but SPD allows a period up to a year for full time employees."

II. The Response

Petitioner Cox's Response shifts gears away from arguing that he had completed or ended his working test period. Petitioner agrees that the working test period was either still in effect or extended. Petitioner clarifies that the original Complaint allegations on that point were intended to make sure the SEAC understood the dates of the state's actions and discipline.

Instead, Petitioner Cox writes that being fired for using an accrued/eligible personal day off is improper. He argues that being discharged for using such personal time could not be done even on working test status. For example, Petitioner asks the question: "Could someone be fired for going to the doctor if they were in their work test period as long as they were utilizing this benefit appropriately?" In essence, he suggests that the discharge for using personal time is some form of public policy exception to at-will or working test status.

SEAC cannot answer this question or reach Petitioner's argument today. Petitioner may be correct or incorrect – he may have a good point or not – but he cannot make his specific working test period claim at SEAC. SEAC is an administrative creature of statute. The General Assembly has clearly divested SEAC of statutory jurisdiction over working test status employees, with exception(s) that do not apply to Petitioner. Petitioner may or may not have a claim in another forum, but SEAC, as an administrative forum, cannot entertain a working test period claim where the General Assembly has directed not to.

The clear terms of I.C. 4-15-2.2-34(e) entitled "Classified service; work test period" require jurisdictional dismissal stating:

> "Sections 23 [classified service discipline] and 42 [Complaint Procedure] of this chapter do not apply to an employee who is removed during a working test period for the initial classification in the state classified service to which the employee is appointed."

(See further the Notice, hereby incorporated, which quotes and discusses the entire statutory section and related administrative rules and the Handbook.)

The Complaint, and this action, is hereby **DISMISSED** with prejudice as to the SEAC forum. SEAC simply lacks statutory jurisdiction over Petitioner Cox given working test status regardless of the merit or lack of merit of his leave time usage or working condition arguments. This is the Final Order of the Commission in this matter. 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 I.C. 4-21.5-5.

DATED: September 16, 2013

Hon. Aaron R. Raff
Chief Administrative Law Judge
State Employees' Appeals Commission
Indiana Government Center North, Rm N501
100 N. Senate Avenue
Indianapolis, IN 46204
(317) 232-3137
Email: araff@seac.in.gov

A copy of the foregoing was sent to the following:

Travis Cox
Petitioner
17287 Weaver Road
Mooreland, IN 47360

Doris Tolliver, Acting Chief of Staff/HR Director
Indiana Department of Child Services
402 W. Washington Street, Room W393
(Room DCS Central Admin)
Indianapolis, Indiana 46204

Tamara Wilson
Respondent Staff Counsel
Indiana Department of Child Services
302 W. Washington Street, Room E-306
(Room OGC – Legal)
Indianapolis, Indiana 46204

Bruce Baxter & Joy Grow
State Personnel Department
IGCS, Room W161
402 W. Washington Street
Indianapolis, IN 46204