**BEFORE THE**
**STATE EMPLOEES' APPEALS COMMISSION**

IN THE MATTER OF:



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| DELBRA SELLERS | ) | |
| Petitioner, | ) | |
| | ) | |
| v. | ) | SEAC No. 08-15-062 |
| | ) | |
| INDIANA FAMILY AND SOCIAL | ) | |
| SERVICES ADMINISTRATION | ) | |
| Respondent. | ) | |

**FINDINGS OF FACT, CONCLUSIONS OF LAW, AND NON-FINAL ORDER OF THE ADMINISTRATIVE LAW JUDGE**

## I. Introduction and Summary

This administrative review is conducted pursuant to Ind. Code § 4-15-2.2 *et seq.* (the "Civil Service System") and Ind. Code § 4-21.5-3 *et seq.* ("AOPA"). The operative pleading is Delbra Sellers' ("Petitioner") Complaint filed August 13, 2015, with the State Employees' Appeals Commission ("SEAC") against the Indiana Family and Social Services Administration ("Respondent"). Petitioner was a classified (just cause) employee working as a State Eligibility Consultant in Respondent's Division of Family Resources ("DFR"). The issue before SEAC is whether Petitioner was terminated for just cause.[1]

An evidentiary hearing in this matter was held on March 8, 2016, before the undersigned Chief Administrative Law Judge. Petitioner Sellers appeared pro se. Respondent appeared by counsel, Ms. Erin McQueen. Having reviewed the arguments, witness testimony, admitted evidence, applicable law, and proposals,[2] and being duly advised, the ALJ issues the following Findings of Fact, Conclusions of Law, and Non-Final Order. Respondent proved by a preponderance of the credible evidence that Petitioner's termination was for just cause. Judgment for Respondent.

[1] *See,* Ind. Code § 4-15-2.2-23(a) stating that a classified employee may only be terminated for just cause.

[2] The ALJ asked if Petitioner wished to submit a post-hearing brief, which she subsequently filed.

## II. Legal Standard

Under the Civil Service System, a state agency may dismiss, demote, or suspend an employee in the classified service who has completed a working test period "Only for just cause." Ind. Code § 4-15-2.2-23(a).

## III. Findings of Fact

1. Petitioner began her employment with Respondent on October, 1995. (Resp't. Ex. L).

2. At all relevant times, Petitioner worked in Respondent's Division of Family Resources ("DFR") as a State Eligibility Consultant, where she was responsible for approving benefits related to the State's Supplemental Nutrition Assistance program ("SNAP" or "food stamps") to those in need, among other things. (Resp't. Ex. B).

3. Mary Medler ("Medler"), Respondent's DFR Regional Manager, testified that all DFR employees received a regular caseload with numbers as identifiers. (Medler Test.).

4. Wendy Connolly, Petitioner's supervisor, testified that if after entering the case, a DFR employee recognized that the names contained therein were either relatives, agency staff members or close friends, they were instructed to close the case and alert their supervisor, who would then reassign it. (Connolly Test.; Resp't. Ex. J). These were known as "Protected Cases". *Id.*

5. Failure to do so would subject the employee to discipline, up to and including termination. (Resp't. Ex. J).

6. On March 18, 2015, Petitioner received a case which, after entering into it, was found to contain the name of her daughter. (Medler Test.).

7. As a result, the case fell under the Protected Cases classification. (Medler Test.; Resp't. Ex .J).

8. Respondent's policy in such cases was to close out of the file and report the issue to a supervisor, who would then reassign the case. (Medler, Connolly Test.; Resp't. Ex. K).

9. Rather than alert her supervisor, Petitioner proceeded to make changes to the case file, which necessarily affected her daughter's benefits. (Medler Test.; Resp't. Ex. H).

10. Petitioner argued that she only viewed the file and did not actually change anything within it. (Pet'r. Test.).

11. Respondent explained that its system differentiates between merely viewing a file (as signified by the abbreviation "V") and changing things inside the case (as signified by the letter "C"). (Medler Test.; Resp't. Ex. H).

12. Respondent submitted evidence showing that on March 18, 2015, Petitioner made a series of five (5) unauthorized changes to her daughter's case. (Resp't. Ex. H).

13. In response, Petitioner alleged that perhaps another coworker had made the changes using Petitioner's User ID. (Pet'r. Test.).

14. Petitioner, however, submitted no proof of such malfeasance. Even if she had, Petitioner would have been found in violation of Respondent's Information Resource User Agreement, which, among other things, prohibits the sharing of user IDs. (Medler Test.).

15. After making the changes, Petitioner closed herself out of the file and alerted Connolly. (Pet'r. Test.).

16. Connolly testified that she first believed that Petitioner had followed the correct protocol, so the case was initially reassigned to another employee, who, before accessing the file, learned that the file contained the name of Petitioner's daughter, and as such, felt she had a conflict. The case was then assigned to a third co-worker. (Connolly Test.).

17. The third co-worker, upon receiving the file, discovered that she was not able to access it, after which she alerted Connolly. (Connolly Test.).

18. The file was unable to be opened because Respondent's system was designed to "lock out" any attempt to access the file by subsequent individuals for twenty four (24) hours, for security reasons. (Medler, Connolly Test.).

19. Upon reporting that she was unable to access the file, Connolly alerted Medler, who then requested an investigation be opened in the matter. (Connolly, Medler Test.).

20. Duane Davis, an employee of Respondent's Internal Affairs Department, conducted the investigation on behalf of Respondent. (Resp't. Ex. G; Davis Test.).

21. Davis' report, in addition to verifying Petitioner's unauthorized access to her daughter's file on March 18, 2015, also uncovered that Petitioner previously accessed her daughter's case file without authorization in April of 2012. (Resp't. Ex. G; Davis Test.).

22. Further, Petitioner failed to report the April, 2012 incident to her supervisor. (Resp't. Ex. G).[3]

23. When asked about this, Petitioner stated that, as with the March, 2015 incident, she was merely viewing the file. (Resp't. Ex. G).

24. Davis' report concluded that in April, 2012 and March, 2015, Petitioner deliberately and without authorization accessed her daughter's case file and proceeded to make unauthorized changes to it. (Resp't. Ex. G).[4]

25. Davis filed his report with Respondent on March 24, 2015. (Resp't. Ex. G).[5]

26. On May 6, 2015, A predeprivation meeting was held with Petitioner, after which it was determined that Petitioner had knowingly violated both Respondent's Protected Cases Policy as well as the Privacy and Security Compliance Policy.[6] Petitioner was then terminated the same day. (Resp't. Ex. C).

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[3] It was unclear as to whether Respondent's system in 2012 was designed to lock subsequent caseworkers out.

[4] It should be noted that Respondent at no time denied the fact that Petitioner's daughter was entitled to the benefits; Respondent simply asserts that it was simply not for Petitioner to do so. (Medler Test.).

[5] In her post trial brief, Petitioner states that the date given for her interview with Davis and his subsequent transmittal of the report to Respondent was incorrect and that therefore she should not be held liable. (Pet'r. Brief). However, during his testimony, Davis admitted that he made a mistake as to the date. (Davis Test.). Davis stated that Petitioner was interviewed on April 14, 2015 and the report submitted on April 24, 2015. *Id.* The ALJ finds that this simple error does not affect the outcome of the case.

[6] In Petitioner's termination letter, it refers to a violation of "HIPPA" (Health Insurance Portability and Accountability Act), but since Respondent's Privacy and Security Policy addresses HIPPA, the ALJ finds that Petitioner violated this policy as well. (Resp't. Ex. C).

## IV. Conclusions of Law

1. In order to prevail, Respondent must show that Petitioner was terminated for just cause. I.C. § 4-15-2.2-23.

2. Respondent at all relevant times had a policy in place that covered Protected Cases such as the one Petitioner accessed. (Resp't. Ex. J).

3. The policy clearly states that workers who violate this policy violate the client's right to confidentiality, as well as, Respondent's security agreements and are thus subject to appropriate discipline. *Id.*

4. In addition, Respondent also has a Privacy and Security Compliance policy, which covers all cases Respondent's employees receive. (Resp't. Ex. K).

5. Under Section 1 of this policy, it states that any access to, use of, or disclosure of a client's personal information not authorized is prohibited and constitutes a violation of the policy. (Resp't. Ex. K at 4).

6. Section 12 of this policy states that failure to comply with the policy will be addressed using the SPD Progressive Discipline Policy, and/or any specific agency policy. (Resp't. Ex. K at 8).

7. SPD's Progressive Discipline policy for classified employees, such as Petitioner, states that just cause can consist of doing something an employee ought not to do. *See http://www.in.gov/spd/files/discpol.pdf.*

8. While SPD's policy does state that discipline should be progressive in nature, it also states that Respondent reserves the right to impose discipline commensurate with the offense. *Id.*

9. Petitioner argued that she should have only received a reprimand, or at worst, a suspension for her actions. (Pet'r. Test.).

10. Medler testified that Respondent has a zero-tolerance policy when it came to such offenses. (Medler Testi.).

11. It was common for any employee violating this policy to be terminated. (Medler Test.).

12. Every employee, including Petitioner, was constantly made aware of and reminded about this policy, both through training and also through reminders that would display on their computer screens upon logging in each day. (Medler Test.).

13. There was no evidence that Petitioner's computer functioned any differently than any other one used by employees in her section.

14. Petitioner received and passed every training module related to this policy. (Resp't. Ex. M, N).

15. Therefore, Petitioner knew, or should have known the ramifications of her actions.

16. Once Petitioner accessed her daughter's case file, she deliberately tried to cover up her actions by feigning ignorance to Connolly.

17. Connolly at first believed Petitioner, but once she discovered that the case file in question could not be accessed, she knew that Petitioner had taken action in the case. (Connolly Testimony). This is because simply viewing a series of screens would not cause the case to become locked. *Id.* Respondent's system was designed so that the case file only locked once action was taken on a case. This was to ensure the safety and confidentiality of case files and to allow for further review if necessary. (Medler, Connolly Test.).

18. Petitioner's argument that she did not take any action on the case, but rather simply scrolled through each screen falls flat. The ALJ finds that Petitioner, on more than one occasion, took deliberate action on her daughter's case file, in violation of Respondent's Protected Cases and Privacy and Security Compliance Policies.

19. Given Respondent's zero-tolerance policy for violations such as these, it was within its rights to terminate Petitioner. The ALJ thus finds that Respondent has established just cause.

20. All prior sections are incorporated by reference as necessary. To the extent a conclusion of law stated herein is a finding of fact or the reverse, it shall be deemed and remain effective.

## V. Non-Final Order

Judgment is entered in favor of Respondent. Petitioner's termination is **UPHELD**. The Parties shall bear their own fees and costs.

DATED: April 18, 2016

Hon. Gabriel Paul
Chief Administrative Law Judge
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