Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

FILED
Aug 22 2011, 8:31 am
CLERK
of the supreme court, court of appeals and tax court

APPELLANT PRO SE:

GARRY COLEMAN
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

KATHY BRADLEY
Deputy Attorney General
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

GARRY COLEMAN,	)	
	)	
Appellant-Petitioner,	)	
	)	
vs.	)	No. 49A02-1101-MI-40
	)	
DEPARTMENT OF LOCAL GOVERNMENT FINANCE,	)	
	)	
Appellee-Respondent.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable David Shaheed, Judge
Cause No. 49D01-0912-MI-058367

August 22, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

Garry Coleman seeks review of the State Employees Appeals Commission's dismissal of his wrongful termination complaint. Because Coleman's complaint was untimely filed, we affirm dismissal.

Facts and Procedural History

Coleman was employed by the Department of Local Government Finance. On January 25, 2008, Coleman received a letter from DLGF commissioner Cheryl Musgrave terminating his employment. The letter read as follows:

> Mr. Coleman:
>
> A recent investigation including your email account uncovered several instances of inappropriate use including, but not limited to, distributing inappropriate comments and/or messages through the State's computer network and violating de minimis exception to the IRUA over the course of the last eight weeks (see attachments). The level of activity in which you engaged in this inappropriate conduct puts you in violation of the Department Policy on Personal Use of State Resources, including the State's Information Resources Use Agreement (IRUA).
>
> Below is a sampling of email conversations you actively contributed to:
>
> | | | |
> |---|---|---|
> | 11/30 | 10 responses | 6 hours |
> | 12/7 | 13 responses | 1.5 hours |
> | 12/19 | 10 responses | 1.5 hours |
> | 1/16 | 18 responses | 1.5 hours |
> | 1/17 | 23 responses | 1.5 hours |
>
> As a result of this abuse of State resources and improper conduct, your employment with the Department of Local Government Finance is terminated effective immediately. Additionally, this information may be provided to the Inspector General for further investigation into "ghost employment."
>
> Sincerely,
> /s/Cheryl A. W. Musgrave
> Cheryl A. W. Musgrave, Commissioner

Appellant's App. p. 11.

Coleman submitted a complaint to the State Employees Appeals Commission on October 27, 2009, challenging his termination. On November 6, SEAC's chief administrative law judge issued a Notice of Proposed Dismissal finding that Coleman's complaint was untimely filed and that the SEAC lacked jurisdiction over his claim. The SEAC regretted that Coleman's termination letter did not detail the administrative appeals process, but it noted there was no requirement that such information be included in a termination document.

Coleman submitted an objection to the proposed dismissal, arguing that he never received sufficient notice of his termination.

On November 25, the SEAC entered a Final Order of Dismissal incorporating its previous findings. The order also addressed Coleman's objection:

> [T]he salient point argued in the motion was that the Petitioner never received proper notice of his termination of employment. This argument is made despite the fact that the Petitioner filed with his complaint a letter he received from Cheryl A. Musgrave, DLGF Commissioner, dated January 25, 2008. In this letter Ms. Musgrave detailed the results of a recent investigation and informed the Petitioner that his employment with the DLGF was terminated immediately.

The trial court upheld SEAC's dismissal. Coleman appeals.

Discussion and Decision

The Administrative Orders and Procedures Act governs judicial review of an administrative action and is the exclusive means for judicial review of an agency action. Ind. Code § 4-21.5-5-1. A trial court may provide relief from an administrative decision only if the agency action is: (1) arbitrary, capricious, an abuse of discretion, or otherwise

not in accordance with law; (2) contrary to constitutional right, power, privilege, or immunity; (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; (4) without observance of procedure required by law; or (5) unsupported by substantial evidence. *Id.* § 4-21.5-5-14.

Coleman does not dispute that his claim is governed procedurally by Executive Order 05-14. Executive Order 05-14 entitles certain non-merit state employees to file with the SEAC complaints respecting "dismissal, demotion, or suspension without pay." *See* Exec. Order 05-14, *available at* http://www.in.gov/gov/files/EO_05-14_Complaint_State_Employees.pdf.

Executive Order 05-14 provides that complaints "must be filed in writing with the State Employees Appeals Commission, within thirty (30) calendar days from the date the employee receives notice of the disciplinary action." *Id.*

Coleman received his letter of termination from the DLGF on January 25, 2008. He did not file his complaint with the SEAC until October 27, 2009, roughly twenty-one months later. Accordingly, Coleman filed outside of the applicable thirty-day window, and the SEAC was warranted in dismissing Coleman's complaint as untimely. Coleman maintains that his termination letter constituted insufficient notice of a disciplinary action and omitted any reference to the availability of an administrative appeal. However, the SEAC's final order reflects a finding that Musgrave's letter constituted sufficient notice of a disciplinary action. And as the SEAC noted earlier, Executive Order 05-14 contains no requirement that a termination document set forth information about the administrative appeals process. We cannot say that the SEAC's findings were arbitrary,

capricious, or unsupported by the evidence, nor that its decision was in any way contrary to the law. Coleman further disputes the SEAC's conclusion that it lacked "jurisdiction" over his complaint. The fact of the matter is that Coleman's claim was governed procedurally by Executive Order 05-14. Executive Order 05-14 requires complaints to be filed within thirty days of disciplinary notice. Coleman failed to file his complaint within thirty days of disciplinary notice. As a result, Coleman's complaint did not comply with Executive Order 05-14, and the SEAC properly dismissed Coleman's complaint as untimely. To the extent Coleman raises any other issues or claims on appeal, we find these contentions waived for failure to present cogent arguments in support thereof. *See* Ind. Appellate Rule 46(A)(8) (appellate arguments must be supported by cogent reasoning and citation to authorities).

For the reasons stated we affirm the trial court's order upholding dismissal.

Affirmed.

KIRSCH, J., and MATHIAS, J., concur.