

BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

PAMELIA NORRIS,)
Petitioner,)
)
v.) SEAC No. 07-15-057
)
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 Petitioner Pamela Norris’s (“Petitioner”) Complaint filed July 14, 2015, with the State Employees’ Appeals Commission (“SEAC”) against Respondent the Indiana Family and Social Services Administration (“Respondent”). Petitioner was a classified (just cause) employee working as a State Eligibility Consultant 3 for Respondent. The issue before SEAC is whether Respondent had just cause by a preponderance of the credible evidence to terminate Petitioner.¹

An evidentiary hearing in this matter was held on April 13, 2016, before the undersigned Chief Administrative Law Judge. Petitioner Norris 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. Petitioner was unable to prove by a preponderance of the credible evidence that Petitioner’s termination breached public policy. Judgment for Respondent.

¹ See, Ind. Code § 4-15-2.2-23 (asserting that a classified employee “may be dismissed, demoted, or suspended only for just cause”).

² Both parties were given an opportunity to submit post-hearing briefs or proposals, which each subsequently filed.

II. Legal Standard

This is a classified (just cause) case under the Civil Service System. A state agency may only terminate or take material adverse employment actions against a classified state employee for just cause. I.C. § 4-15-2.2-23. In a disciplinary case involving a classified employee the state agency has the initial and ultimate burden of proving by a preponderance of the credible evidence that there was just cause for imposing the adverse employment action. Ind. Code § 4-15-2.2-42(g); see *Non-Final and Final Orders in Miller v. FSSA*, SEAC No. 05-12-060 (2012); *Non-Final and Final Orders in Cole v. DWD*, SEAC No. 02-12-019 (2013); *Non-Final and Final Orders in Johnson v. DWD*, SEAC No. 05-13-034 (2014). Therefore, if the Respondent does not establish just cause, the challenged adverse employment action is invalid.

To establish just cause, the Respondent may refer to the Petitioner's work performance or service rating. I.C. § 4-15-2.2-36(e). An agency's service ratings and employee performance standards "must be specific, measurable, achievable, relevant to the strategic objective of the employee's state agency or state institution, and time sensitive." *Id.* Therefore, in determining whether just cause was established, SEAC may consider Petitioner's performance as compared to the Respondent's employee performance standards. I.C. § 4-15-2.2-12, 36 and 42.

Additionally, the inquiry focuses on the reasonableness of the employer agency's workplace expectations. Employer expectations must be reasonably well communicated and consistently applied to similarly situated employees. See *Miller*, *Cole* and *Johnson*, *supra*. The reasonable expectations of the Respondent may include its communicated employee performance standards and expected outcomes. *Id.* The just cause standard requires the Respondent to act with reasonableness, not perfection. See *Conklin v. Review Bd. of DWD*, 966 N.E.2d 761, 764 (Ind. Ct. App. 2012); *Ghosh v. Ind. State Ethics Com'n*, 930 N.E.2d 23 (Ind. 2010); *Tacket v. Delco Remy*, 959 F.2d 650 (7th Cir. 1992) (just cause standards in other contexts in Indiana similarly looks to the reasonable expectations of the employer).

At-will employment is the default in Indiana, and most state employees are considered non classified in that regard. I.C. §§ 4-15-2.2-22, 24. However, the General Assembly also recognized some employees as classified given federal regulations and laws, but did not define "just cause" in the Civil Service System. Therefore, the ALJ first looks to Indiana law, but also to the federal standard. The federal employment just cause standard is defined as "[s]uch cause as will promote the efficiency of the service." 5 U.S.C. § 7513(a). See also *Free Enterprise Fund v. PCAOB*, 561 U.S. 477, 477 (2010) (federal system looks at factors such as inefficiency, neglect of duty, and reasons provided by the legislature).

If an agency establishes just cause, "the [C]ommission shall defer to the appointing authority's choice as to the discipline imposed . . ." I.C. § 4-15-2.2-42(g). The ALJ is not

authorized to substitute his own judgment after the agency proves it had just cause to impose the adverse employment action.

III. Findings of Fact

1. Petitioner began her employment with Respondent on September 23, 1991. (Resp't. Ex. Q).

2. At all times relevant to this decision, Petitioner was employed as a classified (just cause) State Eligibility Consultant 3. (Pet'r. Compl.).

3. As a State Eligibility Consultant 3, Petitioner worked from Respondent's Marion County office ("Region 5"). (Pet'r. Test.).

4. As a State Eligibility Consultant 3, Petitioner was the eligibility consultant for public assistance programs such as Supplemental Nutrition Assistance Program ("SNAP"), Medicaid, and Temporary Assistance for Needy Families ("TANF"). (Resp't. Ex. B at 1).

5. When working for Respondent, Petitioner was trained on the State of Indiana's Information Resource Use Agreement ("IRUA") (Resp't. Ex. R), and with the Division of Family Resources ("DFR") Privacy Compliance Policy & Procedures. (Resp't. Ex. S).

6. Petitioner completed the IRUA training on April 4, 2013. (Resp't. Ex. R). The IRUA is an agreement that was used by Respondent and laid out the appropriate usage, prohibited activities, unauthorized disclosure of confidential information, and disciplinary actions taken when using all State hardware, software, data, information, network, personal computing devices, phones, or any other information technology. *Id.*

7. Petitioner completed DFR's training on Privacy Compliance Policy & Procedures ("DFR's Policy") as part of her division training as a case manager on January 3, 2013. (Resp't. Ex. R). DFR's Policy states that an employee could only access, use, and disclose clients' personnel information as authorized and permitted by Respondent. (Resp't. Ex. L at 3). Further, any access to, use of, or disclosure of a client's personal information not authorized by Respondent was strictly prohibited. *Id.* at 4.

8. Additionally, DFR's Policy states that it is a direct violation of their policy for an employee to use any clients' personal information for personal reasons or personal gain. (Resp't.

Ex. L at 7). The employee may be subject to significant civil and criminal penalties under state law if a client's file is accessed for personal reasons. *Id.*

9. While Petitioner was working for Respondent's Marion County office, Timothy Bolton ("Bolton") served as her Regional 5 manager. (Bolton Test.).

10. Bolton explained that when case workers received their daily work tasks, the ICES system would schedule clients to each regional office and then the caseworkers would get the clients by logging into the system. (Bolton Test.). There would never have been a client's file worked on if it was not on the Region 5 office work list for that day. (Bolton Test.; Resp't. Ex. I).

11. Respondent's policy for caseworkers was that when they were working on a case, they were to always take Clear Language Regarding Case ("CLRC") notes indicating their actions in that particular case file because when multiple caseworkers were working on a case at different times, the notes helped to determine what actions were taken in a case file and who completed the work. (Bolton Test.).

12. A case worker in the Region 5 office, Gladys Colin-Clark ("Colin-Clark"), stated that there was never a time when a case worker should have accessed a case file and not left CLRC notes; it was mandatory. (Colin-Clark Test.). She also stated that there would never have been a time when a Hendricks County ("Region 6") client's case file would be in the list of cases to be worked on in the Region's 5 office if it did not appear in that regions work task list for that day. *Id.*

13. On November 5, 2014, Petitioner accessed client T.H.'s case file from Region 6³, seventeen (17) times and changed the client's information in the contact information screen. (Resp't. Ex. O at 4-7). Further, Respondent's telephone record of out bound calls for that day showed that Petitioner had called T.H. for six (6) minutes. (Resp't. Ex. G; Bolton Test.).

14. There were no CLRC notes from Petitioner in T.H.'s case file on November 5, 2016, nor was T.H.'s case file on the list of daily tasks for the Region 5 office to complete on that day. (Davis Test.; Resp't. Ex. O at 8-9; Ex. I).

15. On November 5, 2014, Petitioner's supervisor emailed Bolton regarding Petitioner accessing a client's case file without authorization. (Bolton Test.; Resp't. Ex. C). In the email, Petitioner's supervisor indicated that a Hendricks County client, T.H., had called and

³ Region 6 included Hendricks County which was where T.H. lived. (Bolton Test.; Resp't. Ex. A at 1).

seemed very upset because Petitioner allegedly called her and was being rude and had threatened to call the police on her. (Resp't. Ex. C). T.H. stated that there was bad blood between her and Petitioner and that Petitioner had told her that she was going to look into her case further and cause trouble for her. *Id.* Petitioner's supervisor reached out to Bolton and requested that he look into T.H.'s claim and make a determination as to whether the issue should be sent to Internal Affairs. (Bolton Test.; Resp't. Ex. C).

16. On the day in question, the ICES system scheduled T.H.'s case to be worked on in Region 6, not in Region 5. (Bolton Test.; Resp't. Ex. J).

17. Later that day, Bolton investigated the threats and discovered that Petitioner was not assigned to Region 6. (Bolton Test.; Resp't. Ex. C). Bolton researched this issue further to make a validation as to T.H.'s complaint about Petitioner. (Bolton Test.). He then called a desk audit and sent the complaint to Internal Affairs. *Id.*

18. Once this case got to Internal Affairs, Duane Scott Davis ("Davis"), FSSA's internal investigator, received the case from Bolton to work on. (Davis Test.).

19. On January 13, 2015, Davis interviewed Petitioner. (Resp't. Ex. O at 1). During the interview, Petitioner alleged that she was not familiar with T.H. nor did she remember ever accessing her case file. *Id.* Petitioner further stated that if she had contacted T.H., then it was only to discuss questions concerning her household composition, which were questions in line with Petitioner's duty as a caseworker. *Id.*

20. In the interview, Petitioner claimed that she would not have been in T.H.'s case file unless it was assigned to her, because although she usually worked Region 5, she stated that she sometimes worked Region 6 cases. (Resp't. Ex. O at 2; Ex. A; Pet'r. Test.).

21. On April 28, 2015, Davis prepared a report for Respondent documenting his findings and conclusion in this matter. (Davis Test.; Resp't. Ex. O). In his report, Davis concluded that Petitioner did violate the IOT/DFR/ICES policy and procedures by accessing and working on T.H.'s case file for her own personal use. (Resp't. Ex. O at 3). He also stated that when Petitioner accessed this information, she breached her duty of confidentiality of the information that was contained in the case file. *Id.* Lastly, Davis concluded that Petitioner gave misleading/false information when she denied calling and accessing T.H.'s file, even though there was documentation of these activities done by Petitioner. (Resp't. Ex. O at 3, 7-10).

22. Davis gave his final report to his management for consideration at the predeprivation meeting. (Davis Test.; Resp't. Ex. O).

23. The predeprivation meeting was held on May 11, 2015. (Pet'r. Compl.). Ms. Danai Bracey ("Bracey"), FSSA's HR Senior Generalist, coordinated and facilitated the meeting. (Bracey Test.). Her role was to explain to Petitioner what a predeprivation meeting was, go over the rules, and answer any questions the Petitioner had about the meeting and the charges against her. *Id.*

24. Ultimately, Respondent terminated Petitioner on May 13, 2015, without first imposing progressive discipline because Respondent's policy is that anytime an employee accesses a client's file without an appropriate business reason, they are subject to dismissal without progressive discipline. (Bracey Test.; Resp't. Ex. L at 7).

IV. Conclusions of Law

1. Indiana Code § 4-15-2.2-23(a) states that: "An employee in the state classified service who has successfully completed a working test period may be dismissed, demoted, or suspended only for just cause, including cause under section 49 of this chapter."

2. The state agency has the initial and ultimate burden of proving by a preponderance of the credible evidence that there was just cause for imposing the adverse employment action. Ind. Code § 4-15-2.2-42(g).

3. Petitioner was responsible for knowing and following the State of Indiana's IRUA Policy and DFR's Policy because she completed trainings in these areas while employed with Respondent. (Resp't. Ex. S; Ex. R). Both the IRUA and DFR's Policy describe that Petitioner was to use her State computer for business purposes only, unless authorized by Respondent. (Resp't. Ex. K; Ex. L). Since Petitioner accessed a client's case file for personal reasons without authorization from Respondent, she could be disciplined or terminated for misusing State property and for accessing confidential information for her own personal use. *Id.*

4. The IRUA states that an employee may use the State's Information Resources⁴ primarily for the business of the state government. (Resp't. Ex. K at 1). It further states that an employee shall use care in protecting against the unauthorized access, misuse, or unauthorized modification of these information resources. *Id.* Prohibited activities can include unauthorized disclosure of confidential information and unjustifiable use of resources which could ultimately result in a disciplinary action, up to and including immediate dismissal from employment with Respondent. *Id.* at 1-2.

⁴ Information Resources according to the IRUA includes "all State hardware, software, data, information, network, personal computing devices, phones, and other information technology."

5. DFR's Policy recognizes that employees may only access, use, and disclose client personal information as authorized and permitted by Respondent. (Resp't. Ex. L at 4). Any access to a client's personal file is limited to the minimum information necessary to fulfill the purpose of use as defined and authorized by Respondent. *Id.* at 5. Further, any access to, use of, or disclosure of a client's personal information that is not permitted by Respondent is prohibited and is a violation of the Policy. *Id.* at 4. DFR's Policy also states that if an employee is unsure as to whether they are accessing or disclosing the correct client information, they are to ask their supervisor for guidance or speak to an FSSA Privacy Officer. *Id.* at 6.

6. DFR's Policy Section 12 provides the sanctions for an employee who fails to comply with this Policy. DFR's Policy states "failure by FSSA staff to comply with these Privacy Compliance Policies and Procedures... will be addressed using the State Personnel Department Progressive Discipline Policy." Although Respondent did not provide SPD's Progressive Discipline Policy into evidence, the ALJ finds *sua sponte* that Petitioner violated SPD's Policy Statement on Discipline. *Found at <http://www.in.gov/spd/files/discpol.pdf>*. This policy applies to classified employees subject to discipline for just cause. Specifically, SPD's Policy states that just cause can include a violation of/or failure to comply with policies or procedures, failure to perform assigned duties or negligence in the performance of assigned job duties, dishonesty, and falsification, misrepresentation, or intentional omission of required information.

7. Without pre-approved authorization from Respondent or Petitioner's Regional 5 manager as to Petitioner's accessing a client's case file for her own personal use, Petitioner was subject to "disciplinary action, up to and including immediate dismissal from employment." Petitioner claimed that she received T.H.'s case file to work on from an outside contractor whom she regularly received work from (Pet'r. Test.), but she agreed that if she had been given the case file, then T.H.'s Region 6 case would have appeared on the list of cases to have been worked on in the Region 5 case load on November 4, 2014, which it was not. (Resp't. Ex. I; Pet'r. Test.). Petitioner further agreed that if she had accessed T.H.'s case file on November 4, 2014, she should have taken CLRC notes which she did not do. (Pet'r. Test.).

8. At no time was Petitioner give authorization to work on T.H.'s case file. (Bolton Test.). Petitioner claims that an outside contractor had given her authorization to work on this case file, but Petitioner provided no evidence to show this authorization. (Pet'r. Test.).

9. From the start of Petitioner's employment on September 23, 1991, Petitioner underwent training to learn DFR's Policy and Procedures along with the IRUA Policy. She completed these trainings, indicating that she had read and understood them. (Resp't. Ex. S; Ex. R). Despite this, on November 5, 2014, Petitioner went into client T.H.'s case file from Region

6 and accessed her personal information and made changes for her own personal use. Petitioner's actions violated both the IRUA and DFR's Policy.⁵ The violation of both of these policies established just cause to terminate Petitioner's employment without first issuing progressive discipline.

10. The ALJ finds that Respondent has met their burden in proving just cause for Petitioner's termination.

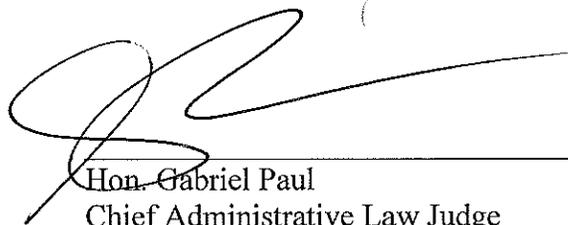
11. All prior sections are incorporated by reference as necessary. To the extent a conclusion of law stated herein is a finding of fact or the reverse, it shall be deemed and remain effective.

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.

⁵ Also, the ALJ finds sua sponte that Petitioner violated the Indiana Ethics Code. Specifically, Petitioner violated 42 IAC 1-5-12- Use of State Resources, which states that an employee may not use state equipment other than for state business, unless their agency has a policy for such use approved by the State Ethics Commission. Aside from her termination, Respondent chose not to bring an action against Petitioner for these violations, but the ALJ raises them here in further support of his findings.

DATED: May 27, 2016



Hon. Gabriel Paul
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