BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

JAMES MILLER	)
Petitioner,	)
	) SEAC No. 05-12-060
vs.	)
	)
FAMILY AND SOCIAL SERVICES	)
ADMINISTRATION OF INDIANA	)
Respondent.	)

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

Petitioner James Miller ("Petitioner" or "Mr. Miller") timely filed a classified Civil Service complaint that reached SEAC on May 29, 2012, against Respondent Family & Social Services Administration ("FSSA") pursuant to Indiana Code 4-15-2.2-1 et. seq., 12, 23, 42 (the Civil Service System's classified provisions).[1] The issue for hearing was whether Respondent had just cause, by a preponderance of the evidence, to support the March 16, 2012 termination of Petitioner's state employment as a FSSA State Eligibility Consultant.

An evidentiary hearing in this matter was held on December 19, 2012 before the undersigned Chief Administrative Law Judge ("ALJ"), by agreement of the parties, at the local FSSA office in Gary, Indiana. Petitioner appeared pro se. Respondent appeared by counsel, Kevin Wild. Having reviewed the opening and closing arguments, the witness testimony and admitted evidence presented and the law applicable to this matter, and being duly advised[2], the ALJ makes the following Findings of Fact, Conclusions of Law and Non-Final Order. Respondent FSSA proved that just cause supported the termination. Respondent FSSA is therefore entitled to judgment as provided herein.

[1] The proceedings have additionally been conducted under the Administrative Orders and Procedures Act (AOPA). I.C. 4-21.5-3.

[2] Both parties also were given the opportunity for post-hearing briefing or proposals. Respondent filed a post-hearing brief and proposals, which were considered. See Respondent's Exhibits A-L, and Petitioner's Exhibits 1 and 4. Pet. Ex. 4 related to a DWD unemployment decision, which was given no weight on this proceeding either direction. For brevity the exhibits are not listed but discussed, as appropriate, within the Findings of Fact. The ALJ also takes official notice of the pleadings upon the docket and the State of Indiana Employee Handbook, public copy available from SPD at http://www.in.gov/spd/2732.htm. See, I.C. 4-21.5-3-26(f).

I. Findings of Fact

1. At the relevant times, Petitioner James Miller was a State Eligibility Consultant ("SEC") within FSSA's Division of Family Resources ("DFR"). In this SEC position, he would review applications from clients, the Indiana public, and make a final determination regarding eligibility for the receipt of public benefits. (See, Respondent Ex. A, and witness testimony.)

2. As further discussed below, in the relevant times after FSSA deployed a new hybrid system[3] in mid 2011 for benefit claim review, there was a new version of a production-timeliness component applicable to the SEC work. After an initial training and roll-out period, all SECs had to be able to fully utilize the hybrid system to meet this production requirement.

3. A predeprivation meeting was held March 15, 2012, after which Mr. Miller's employment was terminated for failure to perform assigned duties. Mr. Miller was given a reasonable opportunity to respond at this predeprivation meeting, and his procedural rights as a classified employee were respected by the state.

4. In mid-2011, the system used to help process cases was changed in the applicable DFR region to a "hybrid" system from a "paper" system. There was a learning curve for all SECs to adjust to the hybrid system. A training period and somewhat relaxed standards were provided. Most state SEC workers adjusted to the hybrid system in due course. Some others, including Petitioner, struggled and were put on work improvement plans ("WIPs'). Petitioner was treated similarly to his co-workers. Most of Petitioner's co-workers in the relevant DFR region showed adequate improvement and performance levels. However, Mr. Miller showed minimal improvements in his performance and improvements were not sustained either in the hybrid training or later WIP period.

5. The WIP for Petitioner specifically arose after he met some expectations of his year 2011 review, but not all of them. (See, Resp. Ex. A (Petitioner's 2011 Annual Review), and Resp. Exs. B-C (Petitioner's WIP)). "Worker has a thorough knowledge of policy however, the worker has failed to meet the required authorization and task standard for 60 days or more." (Resp. Ex. A at p.2, 4-5)(lack of timely and accurate production of eligibility determinations rendered an overall rating of 'needs improvement'). The WIP period lasted about 105 days from December 1, 2011 to about March 12, 2012, which included a 15 day extension over the normal 90 day target. (See, Resp. Exs. B-C.) The WIP reflected that Petitioner struggled to process the minimum number of case files, and that there were unfinished tasks or complaints from internal

[3] The hybrid system involves a mixture of electronic, telephonic and in-person claim processing using software and traditional administrative tools. The idea is to deliver and administer FSSA/DFR benefits more consistently and timely, with more ease, less paper record keeping, and with greater oversight for management. Indiana customers often depend for certain day to day living support on the benefits being properly processed.

or public client sources. (See, Resp. Exs. B-C.) Petitioner was on reasonable, effective notice of the issues to be resolved to pass the WIP.

6. All SECs had a mandated minimum number of case files to process, about 200 per week of full time work after the training (or 'rollout') period.[4] Mr. Miller did not process the minimum number of case files, including during the WIP. The testimony in the record varied a little, but generally shows that (a) Petitioner would usually perform in the 120-160 range for a full week of work as reviewed on a monthly aggregate basis; and (b) Petitioner's performance might have been slowly improving in the WIP period, but was inconsistent and not at target.

7. Petitioner Miller did not successfully complete his WIP as to production, which negatively impacted Indiana customers, his DRF office's measured performance and metrics, and his co-workers (as at various time mandatory overtime was required to generally catch-up the office).

8. While his number of cases processed would sometimes increase in a given week, Petitioner Miller also continued to make repeated quality mistakes in his processing of cases. Diane Pryor, Mr. Miller's supervisor, gave Mr. Miller feedback before and during the WIP about deficiencies in his performance so he could make necessary adjustments. (See, Pryor and Gadling testimony.)

9. Although he claimed to have a high level of knowledge and expertise, and testified other SECs came to him for help with cases, there were several proven examples of cases assigned to Mr. Miller that he did not process completely or properly. (See Resp. Exs. B-C, E, F, G, & H; and also Exs. I-K; and Pryor and Gadling testimony.)[5] As reflected in these exhibits and further in the testimony of his immediate supervisor, Ms. Pryor, and the regional manager, Ms. Gadling, Petitioner Miller failed to send basic required documentation to clients; he failed to call clients back to give or receive necessary information or schedule timely appointments; he failed to accurately or timely update system information; he delayed client interviews to the point that some just left without their meeting; and he made repeated mistakes and processed cases incorrectly. When case files are not completed or done correctly based on accurate information, accurate and timely eligibility determinations cannot be made. As a result, clients did not receive or were delayed in receiving important benefits they were otherwise eligible to receive, including Medicaid, food stamps, and TANF cash assistance. (Id.)

[4] For example, a worker taking 2.5 days of approved vacation or working half time would be expected to do 100 that week. These weekly totals were then averaged over the month. Employees were not disciplined or put on WIPs for being off a single week. Repeat low monthly averages were required. Respondent's witnesses credibly established that the state expected and tolerated some variation in monthly totals (and especially weekly) totals and was looking at the whole picture to determine production performance. Petitioner's metrics never met a sustained 200 standard, on a monthly aggregate basis, when averaged into the pre or post WIP periods.

[5] Petitioner Miller, during various cross-exam, weakened or provided context for a few of the examples, but did not rebut the weight of the state's prima facie case on quality of performance evidence.

10. Ms. Pryor went over a sampling of these problem cases with Petitioner as reflected in Respondent Exhibits E, F, G & H, and he signed off on each of them acknowledging the problems with his processing of the cases. She asked Mr. Miller if there was anything else he needed help with. Mr. Miller did not bring up specific issues to her with which he needed assistance. (See, Resp. Exs. E-H.)

11. Other employees were forced to take on additional work to make up the difference in the cases Mr. Miller should have but did not complete and his cases that had to be corrected after he processed them incorrectly.

12. SECs throughout this DFR region were expected to work overtime hours in order to process the required number of cases and meet the caseload demand. Mr. Miller did not consistently work the required overtime hours. In addition, he often arrived tardy to work[6], putting him behind from the beginning of his daily schedule of client interviews and case processing.

13. All SECs were held to the same standards and expectations. Additional training was offered to those having trouble with the new system who wanted the training. Mr. Miller chose not to participate in any extra training.

14. Occasionally days or weeks might have included more complex cases for a given SEC, but cases were assigned randomly and therefore averaged out over longer periods of several weeks. Case processing requirements were figured using longer period averages. Mr. Miller's caseload was no more or less materially difficult or complex or burdensome than that of any other SEC. His monthly average was always well below the required minimum. There was no single month or time period that was the sole basis for Mr. Miller's termination. He consistently failed to perform adequately or meet FSSA's reasonable business expectations.

15. Petitioner Miller suffered with the long illness and loss of his mother, who passed away in September, 2011. The record shows that Mr. Miller was given some grace by FSSA during this period as to performance. However, his WIP ran from December 15, 2011 through March 12, 2012, beginning approximately 6 months after the hybrid system rollout and 3 months following the passing of his mother. The regional manager established that some similar problems existed in the old system as far back as 2008 with the timeliness, quality, and completeness of Mr. Miller's case processing and with his work attendance. These types of problems were present, albeit less severe, in the old system.

[6] Amount varied, hovering around 10-15 minutes. It was more than a negligible minute or two.

16. In 2011, Petitioner's supervisor, Ms. Pryor, offered him the option of family medical leave (FML) after noticing that he was asking for a lot of time off and knowing his mother had been hospitalized. Petitioner refused the FML and stated there were no issues to address.

17. FSSA/DFR has a vested interest in retaining SECs, since there are many cases to be processed, and hiring and training new SECs to the point of having a good caseworker can take approximately 18 months. Testimony established that FSSA was not anxious to terminate either Petitioner or other SECs. FSSA met its burden, by a preponderance of the evidence, of showing that the termination was based on progressive discipline, and thoughtful business related factors after guidance and a WIP. (See, Employee Handbook; Resp. Exs; and testimony.) Petitioner's discharge was based on just cause. Mr. Miller was terminated for no other reason than that he was not meeting the reasonable expectations of FSSA on timeliness and quality of assigned benefit determinations.

18. FSSA acted properly by terminating Mr. Miller for failure to perform the duties of his job at the minimal required performance level over a period of time including over a 90 day WIP. In addition to making repeated mistakes, never processing the required number of cases, and not providing acceptable customer service, Petitioner also occasionally failed to work mandatory overtime or was tardy to work, which exacerbated his performance problems.

II. Conclusions of Law

1. By a preponderance of the credible evidence, the Respondent FSSA proved just cause for the termination of Petitioner Miller. Petitioner did not satisfy the reasonable performance expectations of Respondent as a State Eligibility Consultant. Petitioner made progress during his Work Improvement Plan (WIP) in some areas, such as working required overtime, but the progress was incomplete. Petitioner did not successfully complete the WIP, supporting discipline or termination. Petitioner, despite reasonable guidance on procedures and the new system, could not match the work production required of those similarly situated in that FSSA regional office. Again, Petitioner was making some slow progress on work production, but never became sufficiently productive within a reasonable period of time. To the degree Petitioner was negatively impacting his own work production, as testified, to laudably help others in the office with miscellaneous tasks, he was not directed to do so and the WIP was clear that Petitioner needed to focus on his own SEC work. The state does not bear legal responsibility for Petitioner's allocation of effort choice.

2. Petitioner's past acceptable performance, with some milder exceptions, for the state is recognized. The record shows Petitioner was more adept with the prior paper system, but had great difficulty meeting the required production or quality standards under the hybrid system. The ALJ cannot substitute his own judgment as to the severity of the discipline imposed.

Perhaps an extended WIP and more counseling or guidance might have fit the bill (Petitioner was slowly making progress), but Respondent FSSA, having proven just cause to impose discipline, is entitled as a matter of law to select the discipline under the classified provisions of the Civil Service System.[7] Here, Respondent FSSA justly selected termination after Petitioner failed the progressive discipline WIP, and had multiple performance issues, and well within its statutory right to do so. I.C. 4-15-2.2-42(g). Respondent furthermore treated other SEC co-workers in a similar fashion, followed progressive discipline by providing a long WIP, and those not passing the hybrid work WIPs were generally terminated.

3. Petitioner, as the hearing progressed, suggested that he was one of the only or few males in the local office at the time. Petitioner's supervisors, Ms. Pryor and Ms. Gadling, were females. Petitioner testified that he would sometimes help female office employees, or on at least one occasion, supervisor Ms. Pryor asked Petitioner to lift a heavier object(s). However, there was no evidence to support that sex/gender played any role in the WIP or termination decision. Both of the state's witnesses were entirely credible, and testified at length to their thought process and the basis of the termination. There was no whiff; much the less, credible proof of any invidious or discriminatory tainted motive. The ALJ is firmly convinced by the weight of the testimony, credibility and demeanor of all the witnesses that sex/gender, nor any other unlawful reason, was not a factor. Any occasional lifting of heavy objects was done out of courtesy by Petitioner, who established by his own testimony that it was he often seeking to help officemates, not the other way around.

4. Petitioner's predeprivation and procedural rights, under the classified provisions of the Civil Service System, were respected in the WIP and termination process.

5. Respondent established its burden of required proof to show just cause for the termination under the classified Civil Service provisions and AOPA. I.C. 4-15-2.2; and I.C. 4-21.5-3.

6. To the extent a conclusion of law stated herein is a finding of fact or the reverse, it shall be so deemed and remain effective.

[7] Moreover, the production and quality of decisions concerning the public benefits at issue impact the well-being of the Indiana public. Respondent's enforcement of production or quality standards is a reasonable, legitimate governmental and employer interest.

III. Non-Final Order

Judgment is entered in favor of Respondent FSSA upon the merits following an evidentiary hearing. The termination is upheld. Petitioner's complaint is DENIED in its entirety. Each party shall bear their own fees and costs.

DATED: February 21, 2013

Hon. Aaron R. Raff
Chief Administrative Law Judge
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A copy of the foregoing was sent to the following:

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NOTICE OF FINAL ORDER
OF THE STATE EMPLOYEES' APPEALS COMMISSION

On February 21, 2013 the ALJ issued notice and a copy of "Findings of Fact and Conclusions of Law with Non-Final Order of Administrative Law Judge" ("ALJ's Order") in the above cause, which is incorporated by reference herein. No objections were received by either party within the time of March 11, 2013 provided. Accordingly, the ALJ's Order, in its entirety, is hereby the Findings of Fact, Conclusions of Law and Final Order of the Commission pursuant to statute and Commission delegation. Ind. Code §§ 4-21.5-3-27 to 29.

The Commission is the ultimate authority, and the action is its Final Order and determination in this matter. A person who wishes to seek judicial review must file a petition with an appropriate court within thirty (30) days and must otherwise comply with I.C. 4-21.5-5.

DATED: April 10, 2013

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