

**BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION**

IN THE MATTER OF:

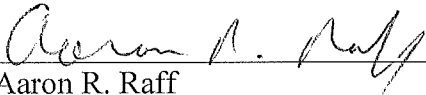
JOSHUA LINEBERRY)	
Petitioner,)	
)	SEAC NO. 06-12-062
vs.)	
)	
PENDLETON JUVENILE)	
CORRECTIONAL FACILITY)	
BY INDIANA DEPARTMENT)	
OF CORRECTION)	
Respondent.)	

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 against the Petitioner because SEAC lacks statutory jurisdiction. The reasons for the initial proposed dismissal are set forth in the ALJ's June 14, 2012, "Notice of Proposed Dismissal For Lack of Jurisdiction Under Ind. Code §4-15-2.2-42(e)" entered previously (the "Notice"). The Notice is incorporated by reference herein. Petitioner did not respond to this Notice, or seek additional time to respond, within the ten days provided.

The Complaint, and this action, is hereby **DISMISSED**. This is a final order of the Commission. 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 IC 4-21.5-5.

DATED: July 11, 2012



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:

Joshua Lineberry
Petitioner
4225 W. 8th Street Rd.

Anderson, IN 46011

Linda Commons, Superintendent
Alan Ferguson, HR
Respondent Pendleton JCF
9310 South State Road 67
P.O. Box 900
Pendleton, Indiana 46064

Mike Barnes, Staff Attorney
Department of Correction
IGCS, Room W341
402 W. Washington Street
Indianapolis, IN 46204

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

**BEFORE THE
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IN THE MATTER OF:

JOSHUA LINEBERRY)
Petitioner,)
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PENDLETON JUVENILE)
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BY INDIANA DEPARTMENT)
OF CORRECTION)
Respondent.)

**NOTICE OF PROPOSED DISMISSAL FOR LACK OF JURISDICTION UNDER
IND. CODE § 4-15-2.2-42(e) OR FOR FAILURE TO STATE A CLAIM UPON
WHICH RELIEF CAN BE GRANTED**

On June 1, 2012, Petitioner Lineberry, pro se, filed with the Commission a complaint for administrative review governed by the State Civil Service System under IC §§ 4-15-2.2-1 et seq., 42 (the “Civil Service System”) and IC §§ 4-21.5-3 et seq. (AOPA). A copy is attached and hereby considered the instant Complaint. Petitioner is a former unclassified (at-will) correctional officer employee who challenges his termination by Respondent.¹ The termination followed Petitioner allegedly testing positive for nicotine/tobacco in late April or early May 2012 while being voluntarily enrolled in the Non-Tobacco Use Agreement (“Agreement”) for the state’s 2012 health plan year.² The Agreement provides a health insurance premium reduction to state employees who agree they will not use tobacco during the enrolled plan period. Petitioner voluntarily signed and enrolled in the Agreement and received a 2012 financial discount that Petitioner estimates at \$500. (Complaint, pp. 4-5.) However, Petitioner contends wrongful termination. Specifically, Petitioner alleges that he and his wife determinedly quit smoking together in fall, 2011 and that the nicotine test was a false positive. The allegations of the Complaint – including that the test was a false positive – shall be assumed as true for purposes of this review. (Compl. pp. 2, 4-7³.)

The Commission has an independent statutory obligation to assess its jurisdiction at the initial stage of the proceeding (and as a case might continue). IC § 4-15-2.2-42(e). Petitioner is an unclassified, at-will employee. This case must be dismissed because

¹ The State Personnel Complaint number below was SPD No. 14971.

² Indiana law specifically authorizes such programs, and allows an employer to discipline employees who allegedly violate such programs as discussed herein in Section II. See, Ind. Code § 22-5-4-1(a) and (b). The Agreement is not attached to the Complaint, but is described by the Complaint.

³ The Complaint also attaches a number of character references contending Petitioner’s honesty towards the premium reduction program. While SEAC does not accept evidence at this stage of a proceeding, it is assumed to be true that Petitioner and his wife completely quit smoking in fall, 2011.

Indiana law expressly permits an at-will state employer to make an adverse employment decision based on believed violation by a state employee of a Non-Tobacco Use Agreement. The Complaint, even if taken as true, either lacks jurisdiction on this point or fails to state a claim upon which relief can be granted. Petitioner additionally presents no other statutory right alleged to be violated, and correspondingly no alleged violation of specific public policy is demonstrated to maintain jurisdiction. A state employer may impose discipline in the unclassified (at-will) context so long as a public policy right is not violated. The following additional findings of fact, conclusions of law, and notice of proposed order of dismissal for lack of jurisdiction are entered.

I. Legal Standards

Dismissal proceedings test the legal sufficiency of the Complaint. All facts plead in the non-moving party's complaint, and reasonable inferences therefrom, are taken as true. However, when a party's complaint is legally insufficient or fails to plead essential elements of the claim(s), the complaint should be dismissed. *Meyers v. Meyers Construction*, 861 N.E.2d 704, 705-706 (Ind. 2007); *Huffman v. Office of Env'tl. Adjudication*, 811 N.E.2d 806, 814 (Ind. 2004); *Gorski v. DRR, Inc.*, 801 N.E.2d 642, 644 (Ind. Ct. App. 2003); and *Steele v. McDonald's Corp. et al.*, 686 N.E.2d 137 (Ind. Ct. App. 1997). See also, Ind. Trial Rule 12(b)(1) and (6).

The general at-will employment law is well settled. "An employee in the unclassified service is an employee at will and serves at the pleasure of the employee's appointing authority." IC § 4-15-2.2-24(a) (Civil Service System, Section 24(a)). "An employee in the unclassified service may be dismissed, demoted, disciplined, or transferred for any reason that does not contravene public policy." IC § 4-15-2.2-24(b). "Indiana generally follows the employment at will doctrine, which permits both the employer and the employee to terminate the employment at any time for a good reason, bad reason, or no reason at all." *Meyers*, 861 N.E.2d at 706 (Ind. 2007)(internal quotes omitted).

Recognized exceptions to the at-will doctrine based on public policy have traditionally only been found where an employee was terminated or disciplined for exercising a statutory right or refusing illegal conduct that would lead to penal consequence. Put another way, the courts ask was the termination or discipline itself illegal in light of applicable statutory law⁴; a merely foolish or arbitrary choice by an employer to terminate or discipline does not invoke an exception. *Baker v. Tremco Inc.*, 917 N.E. 2d 650, 653-655 (Ind. 2009); *Meyers*, 861 N.E.2d at 706-707 (Ind. 2007); *Orr v. Westminster Village North, Inc.*, 689 N.E.2d 712 (Ind. 1997); *Frampton v. Cent. Indiana Gas Co.*, 297 N.E.2d 425 (Ind. 1973); and *Tony v. Elkhart County*, 851 N.E.2d 1032 (Ind. Ct. App. 2006).

⁴ Non-comprehensive examples include illegal discrimination on the basis of race, national origin, sex, age, disability, veteran status, religion, free speech, political affiliation or retaliation for filing a discrimination complaint or exercising statutory rights such as workers' compensation rights.

II. Indiana Code §§ 22-5-4 regulating Off Duty Use of Tobacco by Employee(s)

There is one possible statute that might provide Petitioner a statutory basis for the Complaint, but it is unavailable in this case. Indiana offers employees protection from employment discrimination for off-duty tobacco use.⁵ However, the Indiana Code specifically carves out and permits non-tobacco use agreements and, as held herein, allows at-will discipline of unclassified state employees for perceived violation of those agreements. The voluntary Agreement in question, providing a reduced state health premium for no smoking, qualifies under IC § 22-5-4-1(b) for the carve out. IC § 22-5-4-1 reads:

Condition of employment discrimination

Sec. 1. (a) **Except as provided in subsection (b)**, an employer may not:

- (1) require, as a condition of employment, an employee or prospective employee to refrain from using; or
 - (2) discriminate against an employee with respect to:
 - (A) the employee's compensation and benefits; or
 - (B) terms and conditions of employment;based on the employee's use of; tobacco products outside the course of the employee's or prospective employee's employment.
- (b) **An employer may implement financial incentives:**
- (1) **intended to reduce tobacco use; and**
 - (2) **related to employee health benefits provided by the employer.**

IC § 22-5-4-1(emphasis added) (herein the "Off-Duty Tobacco Statute")

The real question presented by IC § 22-5-4-1 as applied to Petitioner's Complaint is whether a state employer must "prove" the factual accuracy of a suspected violation of a non-tobacco use agreement. If so, Petitioner would have a possibly meritorious claim that survives jurisdictional review. The Administrative Law Judge answers that question in the negative as a matter of first impression for SEAC. First, Petitioner does not claim he is being subjected to discipline for tobacco use. Petitioner instead claims he is being disciplined for tobacco use that did not occur (this is Petitioner's false positive claim). (See, Compl.) This distinction may alone be enough to make IC § 22-5-4-1(a) entirely inapplicable to Petitioner's Complaint. However, the analysis shall not rest there. A broader statutory structure, discussed below, shows why the Off-Duty Tobacco Statute in the light of the Agreement and Civil Service System cannot afford Petitioner potential relief.

⁵ It is presumed in Petitioner's favor that the alleged false positive test would reflect possible off-duty tobacco use potentially protected by IC §§ 22-5-4. Yet, any use of tobacco is impermissible under the Agreement that Petitioner signed.

Once a state employee who is unclassified (at-will) voluntarily enrolls in the state's Non-Tobacco Use Agreement they can be terminated or disciplined for perceived breach of that Agreement as any other at-will employee may be. This means a petitioner's at-will termination can be based on an alleged factual inaccuracy such as a false positive tobacco test. Forcing a state employer to prove an at-will employee violated a given non-tobacco use agreement would essentially convert that unclassified (at-will) state employee into an employee with 'just cause' or classified protection as to any tobacco use after the state employee had expressly agreed not to use tobacco in the first instance during a specified plan period for reduced health insurance premiums. The ALJ does not find the language or intent of the Off-Duty Tobacco Statute (IC § 22-5-4-1, supra) as considered in light of the later-passed Civil Service System (IC §§ 4-15-2.2) to reach that far.

A state employee has a clear, divisible choice under the Off-Duty Tobacco Statute and the Agreement. Either pay the full premium and have the protection that off-duty smoking cannot be retaliated for in employment decision making by Indiana appointing authorities (state agencies) OR accept the reduced premium, promise in writing not to smoke, and then be subject to at-will discipline for perceived violation of that non-smoking promise whether on or off duty. This interpretation is more consistent with the specific exemption language in the first sentence of IC § 22-5-4-1(a), and promotes the effectiveness of IC § 22-5-4-1(b), which expressly allows the development of financial incentives to help employees quit smoking.

Finally, the Civil Service System provides for at-will employment for unclassified employees such as Petitioner, and allows a state employer to terminate them for any reason that does not violate public policy. IC §§ 4-15-2.2-1, 42 (dividing the rights of unclassified (at-will) and classified (just cause) employees in a reticulated fashion). The Off Duty Tobacco Statute and Civil Service System should be read harmoniously, which militates for a holding that an at-will employee cannot have it both ways under the Off-Duty Tobacco Statute. *Siwinski v. Town of Ogden Dunes*, 949 N.E.2d 825, 828-929 (Ind. 2011)(internal citations omitted). The cardinal rule of statutory interpretation is to ascertain the intent of the drafter by "giving effect to the ordinary and plain meaning of the language used." *Id.* Statutes in different parts of the Indiana Code upon the same subject are *in pari materia* and should be construed together to produce a harmonious scheme. *State v. Hensley*, 717 N.E.2d 71 (Ind. Ct. App. 1999). A state employee must choose to reject the reduced premium if they wish to have statutory protection for off-duty smoking under the clear terms of IC § 22-5-4-1.

III. Lack of any other alleged Public Policy ground

Petitioner does not assert any specific public policy ground to support the Complaint. Petitioner, not Respondent, holds the burden of proof to show public policy invalidity/exception to the termination. *Meyers* at 706; IC § 4-15-2.2-42. A state employer can terminate or discipline an unclassified (at-will) employee for a "good reason, bad reason or no reason" unless it violates public policy in doing so. *Id.* Thus, a state employer may act (allegedly) unfairly or inconsistently in unclassified (at-will)

discipline so long as a public policy right is not violated. Petitioner does not link the challenge to the termination's validity to any protected statutory class or other public policy right.

IV. Conclusions of Law and Order

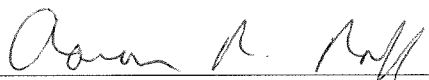
Petitioner does not establish a claim to SEAC subject matter jurisdiction recognized by IC § 4-15-2.2-42(e). Petitioner must complain, and support with factual allegations and a cogent theory, that the termination was in violation of Indiana public policy as expressed by statute. See, IC § 4-15-2.2-42(e) (Civil Service System), and IC §§ 4-21.5-3-24 (AOPA).

The Petitioner has **ten (10) days** from the date of this notice to file a motion requesting a final order of dismissal not be imposed and stating the "legal basis" relied upon for the request. The Petitioner should specifically address each jurisdictional reason(s) stated above by the Administrative Law Judge for the dismissal in such a motion. **Petitioner must legally explain or cure these identified defects.** Should Petitioner file a motion, Respondent may respond thereto within ten (10) days of same. It is the Petitioner's burden of proof to cure the jurisdictional defects if possible, and show that SEAC has subject matter jurisdiction of this matter. IC §4-15-2.2-42(e) and (f).

Motions and pleadings should be filed with the Administrative Law Judge at the address shown below. As an alternative to the U.S. Mail, service may be made upon the Administrative Law Judge by facsimile copy. Parties are cautioned, however, that while service through the U.S. Mail may be perfected upon mailing, service by facsimile copy is perfected only upon actual receipt. The facsimile number is (317) 233-9372. A copy of each motion or pleading must also be served upon all parties of record or their attorneys/representatives. Parties are reminded not to contact the Administrative Law Judge without serving and including the other party(s) on a communication. Currently, the parties are as identified in the caption above.

If no appropriate motion is filed showing jurisdiction exists, the Administrative Law Judge will enter a final order of dismissal pursuant to IC § 4-15-2.2-42(e), and IC §4-21.5-3-24(c).⁶

DATED: June 14, 2012



Hon. Aaron R. Raff
Chief Administrative Law Judge
State Employees' Appeals Commission

⁶ Commission proceedings are additionally governed by the Administrative Orders and Procedures Act (AOPA), IC §§ 4-21.5 et seq. See IC § 4-15-1.5-6(1). Accordingly the Commission has delegated to its Administrative Law Judges pursuant to IC § 4-21.5-3-28 of the AOPA, the authority to issue final orders in this class of proceedings. The final order entered by the Administrative Law Judge for this class of proceeding shall be considered a final order under IC § 4-21.5-3-27, pursuant to this delegation.

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:

Joshua Lineberry
Petitioner
4225 W. 8th Street Rd.
Anderson, IN 46011

Linda Commons, Superintendent
Alan Ferguson, HR
Respondent Pendleton Juvenile Correctional Facility
9310 South State Road 67
P.O. Box 900
Pendleton, Indiana 46064

Mike Barnes, Staff Attorney
Department of Correction
IGCS, Room W341
402 W. Washington Street
Indianapolis, IN 46204

Bruce Baxter & Joy Grow
State Personnel Department
IGCS, Room W161
402 W. Washington Street
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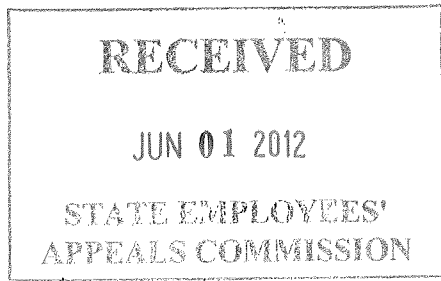
Mitchell E. Daniels, Jr.
Governor

Bruce Lemmon
Commissioner

PENDLETON JUVENILE CORRECTIONAL FACILITY
9310 South State Road 67 • P.O. Box 900 • Pendleton, Indiana 46064
Phone: (765) 778-3778 • Fax: (765) 778-5211

Linda F. Commons
Superintendent

TO: Joshua Lineberry
FROM: Linda Commons, Superintendent
DATE: May 15, 2012
RE: **CIVIL SERVICE EMPLOYEE COMPLAINT RESPONSE**



I received your employee complaint on May 14, 2012 and have reviewed your statement. Your requested remedy regarding being unjustly terminated is not within my power as Superintendent of this facility.

You have been a PNJCF employee since February 2009 with good attendance and no discipline since June 2010.

I encourage you to utilize the State Personnel procedures and take this complaint to the next level for possible remedy of your complaint. If your complaint is remedied at a higher level you may be considered for reemployment.

LC/rl

cc: File



STATE OF INDIANA

Department of Correction • Indiana Government Center – South, Room E334 • 302 W. Washington Street • Indianapolis, Indiana 46204-2738
Phone: (317) 232-5711 • Fax: (317) 232-6798 • Website: www.in.gov/indcorrection/

EOE



CIVIL SERVICE EMPLOYEE COMPLAINT

State Form 54707 (R / 1-12)

Indiana State Personnel Department

RECEIVED
JUN 01 2012

For Office Use Only	
Complaint Number:	STATE EMPLOYEES' APPEALS COMMISSION 0000014971
Please check the appropriate box:	
<input type="checkbox"/>	Complainant is a CLASSIFIED employee on an original working test period.
<input type="checkbox"/>	Complainant is a CLASSIFIED employee who has completed an original working test period.
<input checked="" type="checkbox"/>	Complainant is an UNCLASSIFIED employee.

EMPLOYEE INSTRUCTIONS: Please provide all requested information and retain a copy of this form for your records. PRINT or TYPE LEGIBLY. Information concerning the complaint process is provided on the reverse side of this form. Other procedural questions may be directed to Employee Relations Specialists in the State Personnel Department by calling 317.232.3080.

Full Name of Employee Joshua Lee Roy Lineberry	Agency / Facility PMJCF
Home Address (number and street, city, state, and ZIP code) 4225 W. 8th St RD. Anderson IN. 46011	
Contact Telephone Number 765-393-0934	Contact Email Hlineboy@hotmail.com
Employee Identification Number 261104	Classification / Position C.O.

EMPLOYEE COMPLAINT

Statement of Complaint & Remedy Sought: I have been unjustly terminated because of a smoking test that I feel is not 100%. My wife and I both quit smoking in October of last year almost 8 months ago. I am very proud of this and was excited to mark non-smoker on the insurance form. I am willing to immediately take another test and do what it takes. I have a wife and 3 children depending on me, we are in the middle of buying a house. I have been a loyal employee for 3 1/2 years with minimum disciplinary action against me. This test has cost me my livelihood, my home, everything. I QUIT SMOKING 9 MONTHS AGO. Please retest me or whatever it takes. This is my career and I'm not willing to jeopardize it because of "smoking"

<input type="checkbox"/> Check here if additional pages are attached.	Date submitted to Appointing Authority/designee (month, day, year) 5-14-12
Signature of Employee 	



STATE PERSONNEL DEPARTMENT
402 W. Washington St., Rm. W161
Indianapolis, Indiana 46204-2261
Telephone: (317) 232-0200

Mitchell E. Daniels, Jr.
Governor

Daniel L. Hackler
State Personnel Director

May 23, 2012

Joshua Lineberry
4225 W. 8th Street Road
Anderson, IN 46011

Re: Complaint No. PS 14971

Dear Mr. Lineberry:

In accordance with Section 42 of the State Civil Service System, and on behalf of the State Personnel Director, I have reviewed your complaint.

My review shows that you were dismissed because you tested positive for the presence of nicotine in your system. It has been determined that you violated the Non-Tobacco Use Agreement which you entered into for the 2012 health care plan year. The Agreement was your commitment not to use tobacco products during 2012, in exchange for a reduction in your health insurance premium. IC 4-15-2.2-24(a)-(b) provides that "an employee in the unclassified service is an employee at will and. . . may be dismissed, demoted, disciplined, or transferred for any reason that does not contravene public policy." Here, your complaint does not allege that the reason for your dismissal is one which contravenes public policy, nor is there any evidence that your complaint contravened public policy. Based on the above information, I am denying your complaint.

If you are not satisfied with this decision, you have fifteen (15) calendar days to submit your complaint to the State Employees' Appeals Commission. Submit copies of the decision being challenged, the completed complaint form, as well as the Step 1 and Step 2 responses to: State Employees' Appeals Commission, 100 North Senate Avenue, Room N501, Indianapolis, Indiana 46204.

Sincerely,

Bruce Baxter
Director of Employee Relations

BB/tam

cc: Alan Ferguson , Human Resources, PJCF

May 30th, 2012

To Whom it May Concern:

My name is Joshua L. Lineberry, and for almost three and a half years I have been a dedicated employee of the PNJCF as a Correctional Officer. I have always been a timely, well mannered , honest , trustworthy, and hardworking officer who is respected by not only my peers, but also by most of the youth that I had the opportunity to work with. I believe this says a lot about my character. I have never been an officer who called them names, provoked, or treated them with anything other than respect. I have always worked well with others and have always been promoted at past places of employment for my work ethic, honesty, integrity and dedication. I am very proud of this fact.

I said all that so that I could say this- I was wrongfully fired from my job for nicotine. I had been a smoker since I was 18 and joined the military (Hon Discharge 1999). My wife and I both smoked since then. My wife quit smoking every time she was pregnant and I slowed down but was never able to quit- and quite honestly I didn't want to quit at that time. I enjoyed smoking. We now have three daughters (Emily-13, Abigail- 12, and Allyson- 8) that have begged us to quit for years. I am proud to say that on August 6th, 2012 will be the one year anniversary of our last cigarette! (On my Civil Service Complaint, I put the wrong month that we quit, and I did tell that to the woman we turned the appeal in to on May 15th, 2012.) We have been so proud of this fact, and so have our children and families. This is a feat we have bragged about to everyone. Another reason that I am so proud is because we are surrounded by smokers. Most of mine and my wife's family smoke, as do most of our friends. I have had many opportunities to smoke if I wanted to. I made the choice to quit smoking for my children- not because I could save \$500 on my insurance premium a year -which really isn't all

that much considering we spent \$250 a month on cigarettes before we quit.

I understand that a test was given and it tested positive. I also understand that the state has the right to 'dismiss, demote, discipline, or transfer' me if in fact I have broken that agreement that I signed. But I insist that I did not and do not smoke anymore. I feel I should have the right to take another test to prove this. These tests are not 100%. I have had a false positive on a Hepatitis test before, because of this I can never donate blood again or be an organ donor. Due to a false positive. My wife had a blood test come back and tell her she wasn't pregnant with my 12 year old daughter when she was in fact 8 weeks pregnant with her. Another false result. I could give more examples of incidents that have happened along these lines, I think everyone has had these situations. Mistakes can still be made even with all this technology.

I also respect why this policy is in effect. There are people out there who lie, cheat, and steal to get ahead or save a few hundred bucks on their insurance. But, with all due respect, I am not one of those people. I have always been truthful on our insurance- even before I was hired at PNJCF- that my wife and I smoked and have always paid smokers premiums (14 yrs). I only changed that status because we had been smoke free for several months before I signed the Non-Tobacco Use Agreement. I have lived my life- and am trying to instill into my children- that if you live with integrity, honesty, dignity, commitment, and hard work that you can accomplish anything. I have had a very rough time trying to explain why I lost my job to my children.

This situation has devastated my family. We have invested 3 years and almost \$20,000 into repairs on our home that we are buying on contract. We have been unable to take out a mortgage due to the repairs that needed to be made- new roof, paint, electrical work, some plumbing, etc. I have done all the work on the home myself, have half the new roof on at this moment in time- all put on hold because of this test. We have done all this work, had 2 un-

insured parents pass away a year apart that we alone had to take care of their expenses, we are raising 3 children, I take care of both sides of my family and I work full time for PNJCF. The loss of this job is more than just a loss of a job. It is the loss of our home. I would not do anything to jeopardize this. If I don't get this opportunity to prove myself truthful, I will lose my home. We will be another 2 years away from getting a mortgage. This may not sound like a lot, but the people we are buying this house from are in their 80's. They don't want to wait that long. If we have to wait 2 years- that will be the end of our contract and we have to move while they get to reap the benefits of our time and money. We will have to start all over. We have worked so hard and sacrificed so much for this home.

I respectfully request that my appeal be strongly considered, and that whatever steps I need to take to return to my career be set in motion. I signed that agreement with pride and honesty, and I do not want to be unfairly fired due to the dishonesty of a small minority of people. Mistakes do happen, and I know without a doubt this is a mistake. I also know that there are people who admittedly smoke, and passed this test. It errors both ways. I would like to respectfully point out that there were four punishment options on the agreement; dismissal, demotion, disciplined, or transferred. I am at a loss to understand why the harshest punishment was given to me considering I have been a model employee. This is a tough job. I have had chances to leave it for better paying jobs. I have chosen this as my career. These youths need to have individuals look after them that still cling to the ideals I have of goodness, heart, faith and belief in oneself, standing up for what is right, and doing it all while being respectful of the rules. Aren't these the virtues we want these young men to learn? I follow and respect the rules and laws. I simply request the opportunity to prove that I am innocent. I wanted to take tests at the hospital on May 14th, but I was told that my results would not be legally binding. I find it hard to believe that tests given at the hospital proving myself would not be allowed, but maybe that is because the insurance companies know how

many tests get invalid results.

I quit smoking. It was extremely difficult. One of the hardest things I've ever done, but I did it. I'm proud of it. I should have the right to defend it.

I in no way mean for this letter to be confrontational or disrespectful to anyone. I am just very passionate about my life and what I choose to do with it. I do the right things. I live by the rules. Please, don't let the last 3 years of my life, all of my hard work and sacrifices, be taken from me unjustly.

Thank You for Your Consideration.

Sincerely,

Joshua L. Lineberry

A handwritten signature in cursive script that reads "Joshua Lineberry". The signature is written in black ink and is positioned below the printed name.

To Whom It May Concern:

I have known Joshua Lineberry for all of his life, as I am his mother. It devastated me that Joshua was a smoker. When he quit, I was very proud. I know he quit, because before that he was never without a cigarette. Since August of last year, he has spent time with me for days at a time and has not had a single cigarette. My other three children and my husband smoke. They have offered him many opportunities to have one, which he has declined every single time. As I am a non-smoker, I can smell the odor on people. He does not even smell like cigarettes anymore. He has even accredited stopping smoking to working at the juvenile facility. The 16 hour workdays with no breaks made it so much easier for him to stop.

I am also a nurse of 30 plus years and I can hear the difference in his breathing, the nicotine stains on his fingers and tongue are gone, he seems more calm and he is not coughing anymore. I am also well learned in test results and how errors can and do occur.

The state is losing an honest, hard-working person of great integrity who is dedicated to his job. A job that is difficult at best. He is raising his children to be as honest and hard working as he is. Please consider the integrity of this person. It is worth considering.

Marsha Durbin

A handwritten signature in cursive script that reads "Marsha Durbin". The signature is written in dark ink and is positioned below the typed name.

June 1, 2012

To whom it may concern,

My name is Julie O'Neill, I am writing this letter to attest to the character of Joshua Lineberry.

I have known Josh for nearly 25 years. I first met Josh when he was friends with my younger sister in the eighth grade. Since that time, Josh has become an adopted part of our family- the son my parents never had. He has always helped my family out like we here his own family. I watched Josh grow from a teenager into an upstanding young man, and become the outstanding husband, father and friend he is today. Josh has an outstanding work ethic, is an upstanding member of the community, and is an inspiration to everyone who knows him. In his life, I have watched him overcome adversity with class and determination. Josh has proven to be a trustworthy and loyal friend to myself and my children. When I found myself raising two children alone, Josh was more than willing to step into the roll as mentor for my two children. Josh has always helped out with whatever my family needed. My career in the transportation industry has demanded long hours for me over the years and Josh and his wife were always more than willing to step up to the plate to assist me with my own children. It has truly been my pleasure over the years to assist them whenever possible in helping them with theirs. We spend so much time together and treasure it all.

I am a smoker myself, and have been so very proud of them for quitting, and doing it together. They had a plan and a very big support group to achieve this.

He has raised a wonderful family of his own and is an exceptional husband and father. Josh has served his God, his country, his family and his friends with, honor, integrity, determination and valor. He is a man with a calling to work with youth. As a member of any community Josh Lineberry is a valuable asset.

Sincerely,

Julie A. O'Neill

606 East Elm Street

Rensselaer, IN 47978

219-743-2677

TERESA CLEMENT
322 East Oak Street
Rensselaer, IN 47978
219-863-3130

May 31, 2012

RE: Joshua Lineberry

To Whom it May Concern

I have known Joshua Lineberry for over ten years personally and through church. For years, he and his wife, and my children and I got together weekly for cookouts. He is a wonderful husband, provider, and father. I trust my own children with him. As a single mom, he has always helped me with my car when I needed help. He has been a father figure to my own children. The kids at church idolize him.

In August of last year, Joshua and his wife, Heather, quit smoking. I tried to stop myself, but was not successful. I am very proud of them, because I know how hard it is to quit.

I can attest to the integrity this man holds himself accountable to. He is a man of his word. In the ten years I have known Joshua, his character has always proven honorable.

I have been blessed to know him and his wife all these years.

Respectfully

A handwritten signature in cursive script that reads "Teresa Clement". The signature is written in black ink and is positioned above the printed name.

Teresa Clement

To Whom it May Concern:

My name is Robin Russell. I have been friends with both Heather and Joshua Lineberry for over 20 years. I have known them since before they smoked, and have been so proud of them that they have quit. It disheartening to hear about the situation they are presently in. I know how hard they have worked on the home they are now in and to provide for their children. Keeping this job is important to his family. Loosing this job would force him and his family to move and start over. I understand that there are actions that can be considered for him that are not as harsh as termination. I am hoping that he will get the opportunity to show he is a man of his word. I know how giving and loving he is, and how much he invests himself into what he does. It would be sad to see his life go in a direction that his heart was not fully in. I know that they quit smoking.

Thank you for your time,


Robin Russell

388 S Mineral Springs Rd

Porter, In 46304

219-728-1704

Renee Dyer

1175 N St Rd 49

Chesterton, In 46304

219-384-7949

May 29th, 2012

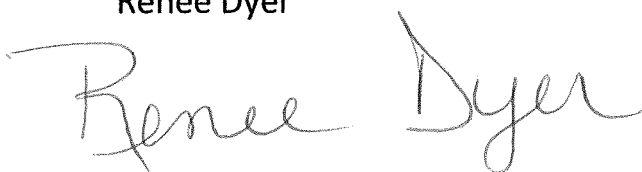
To Whom it may Concern:

My name is Renee Dyer, and I am Godmother to Joshua Lineberry's three children. I have known Josh and Heather for 15 years. I can attest to the fact that they quit smoking. I am not a smoker and had been trying for years to get them to quit. I was so elated when Heather called me and told me they were done smoking. I have been around them enough over these past months enough to say that they did not smoke at any time during their visits with me.

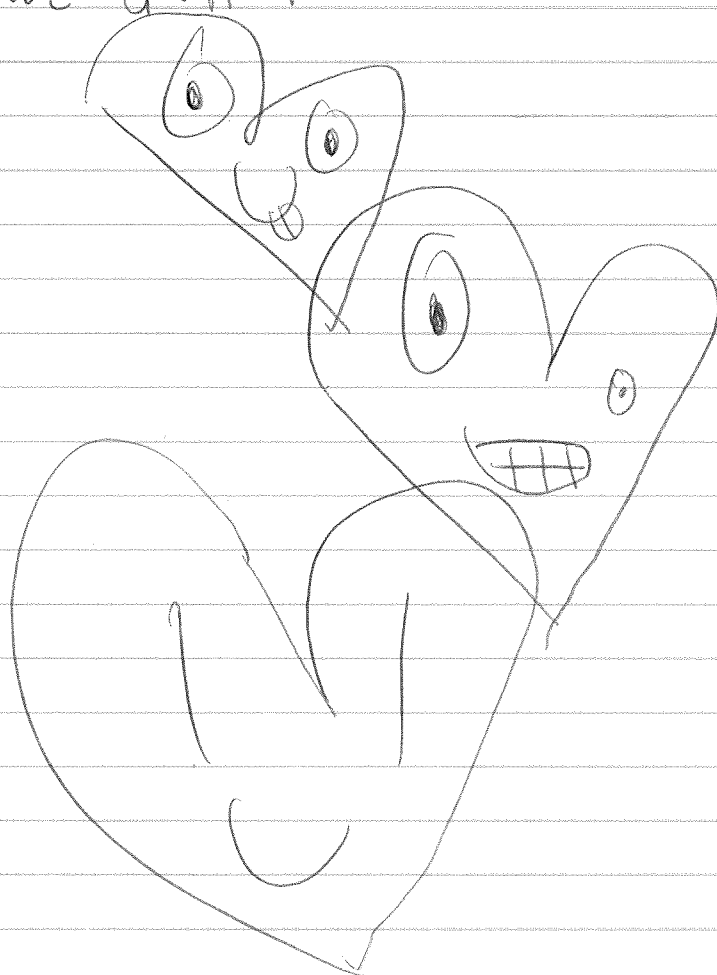
Josh is one of the most loyal, honest, hardworking men I have ever had the privileged to know. He is full of integrity, passion and spirit. I am a divorced mother, and Josh has always been there for my two children as a positive influence. My children are grown and in college now, and they still look up to him. I was disheartened to hear about what has happened to his job. I have seen all the tragedy and heartbreak they have been through over the years. They have made many sacrifices to get where they are now. I have seen the work they have put into their home, and heard the pride in their voices when they speak of it. I know that Josh deserves the opportunity to have his job reinstated. Josh is a great asset to the Juvenile Facility. He has all the qualities in a man that these young men need to witness.

Respectfully,

Renee Dyer

A handwritten signature in cursive script that reads "Renee Dyer". The signature is written in black ink and is positioned below the printed name.

I hope you get your job
back. I love you but I am sorry
that you are sick. But I still
love you Dad. We might be moving.
I hope we don't



May 2012

To Whom It May Concern:

I am submitting a letter on behalf of Joshua Lineberry, my son-in-law of 14 years. Being the husband of my eldest daughter, I know Josh to be a man with genuine integrity and exceptional honesty. In my over 30 years as a Property Manager for the Department of Natural Resources, I have had extensive experience with people in multiple situations and circumstances from good to bad. I am a good judge of character and Josh meets my high standards as an individual and as a son-in-law. He is a devoted husband and a loving father to my three granddaughters.

I will simply state that I would trust my son-in-law in any situation involving a personal matter or a professional situation. Josh is honest, hard working, and always willing to take on any matter and give it 100%. If Josh Lineberry says he quit smoking then he quit smoking.

I have no doubt that if given the opportunity to retest, he would pass. As we all know these tests are not always 100% accurate and mistakes do happen. I know there is protocol that needs to be followed. I also know that there are always alternatives. I would hope the Department of Corrections realizes that it is losing a valuable employee and would make every effort to reinstate Officer Lineberry. As we all know it is often a struggle to find and retain good employees on the salaries state government offers. It would be a shame to lose an employee of this caliber due to what is undoubtedly a false positive test result. I hope a fair and equitable conclusion can be reached for not only the Department of Corrections but for Josh and his family as well.

If you wish to contact me please do so. I can be reached at (317)503-5312. Thank you for giving me the opportunity to comment on Josh's situation.

Sincerely,

A handwritten signature in black ink that reads "D. A. Wickersham". The signature is written in a cursive style with a large, prominent initial "D".

Douglas A. Wickersham

May 30, 2012

To Whom It May Concern:

I am writing this letter as a personal character reference for Joshua Lineberry regarding his request for reinstatement to his position with the Juvenile Detention Center as a Corrections Officer.

I have known Josh, his wife Heather, and their three children for over four years as a friend of the family. I have had numerous opportunities to spend with Josh and his family in casual family gatherings and other situations involving their children's activities.

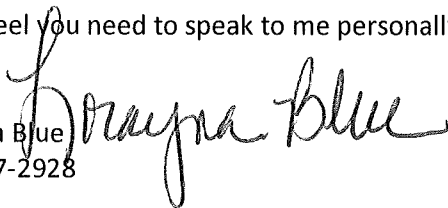
I am prepared to make a statement as to Josh's integrity, honesty, and commitment to his family and to his position as Corrections Officer. As Josh and I both work with the same type of youth in different capacities, Josh and I have a mutual understanding as to the work it takes to do our jobs in this environment. It takes patience, compassion, and a dedication that not many others are able or willing to give to at-risk youth. This compassion and dedication speak to Josh's commitment and integrity both personally and professionally. I feel it would be a great disservice to the Juvenile Justice System if such a man in Josh's position were not reinstated to his position as Corrections Officer.

In addition to his professional integrity and honesty, on a personal level, I know Josh to be a dedicated and loving father and husband who is willing to work hard and provide for his family. He would never put his responsibility in this capacity at risk by falsifying work documents, breaking contractual rules, or lying to his employer in any way that would risk his employment. With that said, I can say I have known Josh and his wife as smokers in the past. I will also personally testify to the fact that since last fall in 2011 Josh and Heather quit smoking together. As a family friend I have since been with them in many casual settings and have not seen either one of them smoke a cigarette since then. It was a triumph of success that they were able to quit smoking and often a topic of congratulations and envy as I am a smoker myself. I have no doubt that the test that resulted in Josh's termination must be in error.

I feel that a dedicated employee, with no other disciplinary issues should be given the benefit of the doubt under these tenuous circumstances. The use of one test that must certainly be a mistake does not justify his termination, nor do I believe it could be accurate. The situation should be reviewed as soon as possible; and with whatever means you need, to prove he has been truthful and nothing but a dedicated employee who has served your youth well in his position.

If you feel you need to speak to me personally regarding my statement, I request that you call me at any time.

Lorayna Blue
317-607-2928



To Whom It May Concern:

I am writing this on behalf of Joshua Lineberry. I have known Josh and his family for three years and have spent a lot of time with them in and out of their home and they are good hard working people who bend over backwards to help anyone and everyone who needs or asks for help. Having been with them so much I can honestly say I know they have quit smoking and I have not seen either of them smoke in almost a year. I have never met such an honest, hard working person than Josh. Thank you for your time to reconsider his case. I can not think of anyone more deserving.

Amanda Fuson

To Whom it may concern,

My dad is a hard worker and a great dad. Me and my sisters were so proud when he quit smoking almost a year ago.

My dad is a hard worker and the juvenile is losing a great and hard working worker. My dad does anything and every thing he can to run the family.

Sincerely

Emily Lineberry.



Sponsor of
the "Giant" the art and science of Vic Cook

05/30/2012

To Whom It May Concern:

I have known Josh Lineberry for over 15 years.

Josh has worked for me both professionally and personally and I am always impressed with his consistent work ethic.

Josh and Heather were proud and pleased to have quit smoking last year and I haven't seen him smoke a cigarette since then. I talk with Heather several times a week and see Josh about once a week.


I have always found Josh to be honest and trustworthy.

Sincerely,

A handwritten signature in cursive script that reads "Sue Blakely".

Sue Blakely

my dad has stoped smoking
for almost a year. He works very hard
for everone. he nows. and helps
people who He nows need help with
he works very hard!

His daughter, Abigail Lineberry 

5-31-12

To Whom This May Concern

I have known Heather & Joshua Lineberg for approx. 4 years. I own the neighborhood convenience store. Neither Heather or Joshua has purchased any kind of tobacco products from my store in almost a year. I was very happy when they told me that they had given up tobacco. From that moment on, they never asked for cigs or any other tobacco products. I also instructed my CSR's not to ask them if they wanted them. They are both very honest hard working people. I personally am a 45 yr smoker. So, I have the upmost respect for anyone who can put them down & stick with it. And they both have done a wonderful job of sticking with their decision to be smoke free.

Thank You
Shutey Muller



Information Maintained by the Office of Code Revision Indiana Legislative Services Agency
IC 22-5-4

Chapter 4. Off Duty Use of Tobacco by Employee

IC 22-5-4-1

Condition of employment; discrimination

Sec. 1. (a) Except as provided in subsection (b), an employer may not:

(1) require, as a condition of employment, an employee or prospective employee to refrain from using; or

(2) discriminate against an employee with respect to:

(A) the employee's compensation and benefits; or

(B) terms and conditions of employment;

based on the employee's use of;

tobacco products outside the course of the employee's or prospective employee's employment.

(b) An employer may implement financial incentives:

(1) intended to reduce tobacco use; and

(2) related to employee health benefits provided by the employer.

As added by P.L.175-1991, SEC.1. Amended by P.L.136-2006, SEC.1.

IC 22-5-4-2

Enforcement; civil actions

Sec. 2. (a) An employee or prospective employee may bring a civil action against an employer to enforce section 1 of this chapter.

(b) If an employer violates section 1 of this chapter, the court may do the following:

(1) Award:

(A) actual damages; and

(B) court costs and reasonable attorney's fees;

to the prevailing employee or prospective employee.

(2) Enjoin further violation of this chapter.

As added by P.L.175-1991, SEC.1.

IC 22-5-4-3

Effect of chapter on other rights or remedies

Sec. 3. This chapter does not limit an employee's or prospective employee's rights or remedies under any other state or federal law.

As added by P.L.175-1991, SEC.1.

IC 22-5-4-4

Application of chapter

Sec. 4. This chapter does not apply to an employer that is:

(1) a church;

(2) a religious organization; or

(3) a school or business conducted by a church or religious organization.

As added by P.L.175-1991, SEC.1.