BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

ANGELA HOOKER Petitioner, vs. PUTNAMVILLE CORRECTIONAL FACILITY BY INDIANA DEPARTMENT OF CORRECTION Respondent.	)))))))))	SEAC No. 04-18-024

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

I. Introduction and Summary

On October 30, 2018, Respondent Indiana Department of Child Services, ("Respondent"), by counsel, filed a Motion for Summary Judgment regarding Petitioner's Complaint ("Motion"). Petitioner Angela Hooker ("Petitioner"), pro se, timely replied to the Motion on December 3, 2018. Thereafter, on December 18, 2018, Respondent filed a response in support of its Motion.

This case considers Petitioner's demotion on February 11, 2018, for failing to properly supervise her staff with regard to offender conduct reports in violation of Section IX(S)(3, 4, 6) of its Policy and Administrative Procedure 04-03-103 entitled "Information and Standards of Conduct for Departmental Staff" ("Conduct Policy"), which refers to neglect of duty, acts of incompetence and unauthorized destruction of property. The controlling pleadings for purposes of this decision is the Complaint originally received on April 19, 2018, Respondent's Motion, Petitioner's reply to Respondent's Motion and Respondent's surreply.

After review of the pertinent pleadings noted above, the ALJ finds Respondent's Motion meritorious and hereby **Grants** it. Petitioner's Complaint, with its factual allegations accepted as true, fails to allege a violation of a law, rule, or public policy exception to Indiana's at-will employment law, and this case must therefore be dismissed under I.C. § 4-15-2.2-42. The following additional findings of fact, conclusions of law, and final order of dismissal for lack of jurisdiction are entered.

II. Summary Judgment Standard

Summary Judgment is appropriate when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Simon Prop. Grp., L.P. v. Acton Enterprises, Inc.*, 827 N.E.2d 1235, 1238 (Ind. Ct. App. 2005). A party seeking summary judgment bears the burden to make a prima facie case showing that there are no genuine issues of material fact and that the party is entitled to judgment as a matter of law. *Id. See also Am. Mgmt., Inc. v. MIF Realty L.P.,* 666 N.E.2d 424, 428 (Ind. Ct. App. 1996). Once the moving party satisfies this burden through evidence designated to the trial court pursuant to T.R. 56, the nonmoving party may not rest on its pleadings, but must designate specific facts demonstrating the existence of a genuine issue for trial. *Simon Prop. Grp., L.P.*, 827 N.E.2d at 1238*; Am. Mgmt., Inc*, 666 N.E.2d at 428.

The court must accept as true those facts alleged by the nonmoving party, construe the evidence in favor of the nonmovant, and resolve all doubts against the moving party. *Simon Prop. Grp., L.P.* at 1238; *Shambaugh & Son, Inc. v. Carlisle,* 763 N.E.2d 459, 461 (Ind. 2002). "A fact is materialif its resolution would affect the outcome of the case, and an issue is genuine if a trier of fact is required to resolve the parties' differing accounts of the truth or if the undisputed material facts support conflicting reasonable inferences." *Celebration Worship Ctr., Inc. v. Tucker*, 35 N.E.3d 251, 253 (Ind. 2015).

III. Findings of Fact

1. At all pertinent times, Petitioner was an unclassified, at-will Hearing Officer (Pet'r Compl.)

2. Within Respondent's facility, reports involving offender conduct[1] are handled by two (2) sets of employees: (1) those deemed "Screening Officers, or "Disciplinary Review Officers" and (2) those deemed "Hearing Officers" (Resp't Motion).

3. Petitioner, as a Hearing Officer, had supervisory responsibility over Screening Officers (Resp't Motion).

4. In January, 2018, Regina Warrren ("Warren"), a Screening Officer, approached Respondent's Internal Affairs Department ("IA") with concerns that one of her fellow Screening Officers, Emily Wright ("Wright") was destroying offender conduct reports (Resp't Motion).

5. After a review, Respondent found the allegations against Wright warranted (Resp't Motion).

6. Thereafter, IA interviewed Wright and Warren, along with Petitioner (Resp't Motion).

7. In her interview, Wright told the IA investigator that Petitioner was aware that conduct reports were being destroyed (Resp't Motion, Ex. D-1).

8. Wright also told the IA investigator that Petitioner, on occasion, directed her to dispose of conduct reports by sending them to "Central Office", which meant the trash (Resp't Motion, Ex. D-1).

9. In her interview with IA, Warren stated that she noticed discrepancies in the case log used to document offender conduct cases in that documentation for fifty (50) cases listed in the log were nowhere to be found (Resp't Motion, Ex. D-1).

10. Warren finally told IA that she also heard Petitioner advise Wright to send the conduct reports to "Central Office." (Resp't Motion, Ex. D-1).

---

[1] When an offender receives a conduct report for an alleged violation of the facility offender disciplinary code, Respondent has instituted an internal appeals process whereby such offenders can seek to have their violation overturned (Resp't Motion). The process for handling such reports is detailed in Respondent's Policy No. 02-04-101 entitled "The Disciplinary Code for Adult Offenders" (Resp't Motion, Ex. B)

11. In Petitioner's interview with IA, she stated that she directed her staff to dismiss some cases if they felt the evidence did not support the allegation. Such dismissal was to occur only after consultation with Petitioner (Resp't Motion, Ex. D-1).

12. Petitioner otherwise denied in the interview that she destroyed the reports (Pet'r Reply).

13. IA, as part of its investigation, then had the case logs at issue printed, which showed a gap of sixty-one (61) cases (Resp't Motion, Ex. D-2).

14. IA then re-interviewed Petitioner (Resp't Motion).

15. During her second interview, Petitioner denied knowing anything about the whereabouts of the sixty-one (61) cases mentioned above, but did acknowledge that at one point, they were likely in the screening office (Resp't Motion, Ex. D-3).

16. IA concluded that Petitioner, as a supervisor, had a duty to accurately monitor her staff and maintain accurate case files, which Petitioner failed to do (Resp't Motion).

17. On February 1, 2018, Petitioner met with Respondent's Deputy Warden to discuss the allegations (Pet'r Reply).

18. Respondent felt the allegations were substantiated such that Petitioner should receive discipline. Petitioner was demoted from her previous position as a Hearing Officer to a Correctional Officer effective February 11, 2018, reducing her pay by 9% as a result (Pet'r Compl; Pet'r Reply).

IV. Conclusions of Law

1. SEAC is a creature of statute, charged with fairly and impartially administering Civil Service System appeals. Ind. Code § 4-15-2.2 *et seq*. SEAC's jurisdiction over such appeals is divided into classified (just cause claims) and unclassified (at-will claims). Ind. Code §§ 4-15-2.2-23, 24. Petitioner was an unclassified employee at all relevant times.

2. 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." Ind. Code § 4-15-2.2-24(a). "An employee in the unclassified service may be dismissed, demoted, disciplined, or transferred for any reason that does not contravene public policy." I.C. § 4-15-2.2.-24(b).

3. 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 personal criminal liability. Put another way, the courts ask whether the termination in question was illegal in light of applicable statutory law. 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 v. Meyers Construction,* 861 N.E.2d 704, 706-707 (Ind. 2007); *Orr v. Westminster Village North, Inc.*, 689 N.E.2d 712 (Ind. 1997); *Frampton v. Cent. Ind. Gas Co.*, 297 N.E.2d 425 (Ind. 1973); and *Tony v. Elkhart County*, 851 N.E.2d 1032 (Ind. Ct. App. 2006).

4. "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) (quoting *Montgomery v. Bd. of Trustees of Purdue Univ.*, 849 N.E.2d 1120, 1128 (Ind. 2006); *Cantrell v. Morris*, 849 N.E.2d 488, 494 (Ind. 2006); *Sample v. Kinser Ins. Agency*, 700 N.E.2d 802, 805 (Ind. Ct. App. 1998), *trans. not sought*. Correspondingly, a claim that a termination was arbitrary or unfair does not state an at-will exception allowing SEAC jurisdiction. Nor does such an assertion state a claim for which relief can be granted in an unclassified—at-will—Civil Service System case. *Meyers,* 861 N.E.2d at 704; I.C. § 4-15-2.2-42. A viable public policy exception must be present for the Complaint to survive.

5. While Petitioner makes no actionable allegation in her Complaint, (she merely denies that she ordered the conduct reports destroyed), in her Reply, Petitioner states that she was the subject of discrimination based upon her sex under Title VII of the Civil Rights Act and also alleges that she was retaliated against by Respondent and was the victim of disparate treatment.

6. Traditionally, complaints can be amended through the process described in Indiana Trial Rule 15. In short, this involves filing a Motion with the Court asking to amend the Complaint before Respondent filed its Motion. *See* Ind. T.R. 15.

7. In the instant case, Petitioner failed to file such a Motion during this time period, so her only avenue of relief is via a provision in Trial Rule 15(A) that states that amendment shall be granted by the Court "when justice so requires". *Id.*

8. Amendments to the pleadings are to be liberally allowed and the trial court (here, the ALJ) has broad discretion in granting or denying amendments to pleadings. *Palacios v. Kline*, 566 N.E.2d 573 (Ind. Ct. App. 2011).

9. Given Petitioner's *pro se* status, the ALJ, will, for purposes of this decision, consider Petitioner's Complaint to include allegations of gender discrimination, retaliation and disparate treatment and will discuss them below.

10. While Petitioner can prove discrimination and retaliation via the burden shifting method laid out in *McDonnell Douglas Corp. v. Green*, 411 U.S. 792 (1973), an easier way now exists to do so.

11. While *McDonnell Douglas* still applies, the 7th Circuit, in *Ortiz v. Werner Enters* laid out a more simplistic approach to proving discrimination. *McDonnell Douglas Corp.*, 411 U.S. 792; *Ortiz v. Werner Enterprises, Inc.,* 834 F.3d 760 (7th Cir. Aug. 19, 2016). In *Ortiz*, the Court held that "[e]vidence must be considered as a whole, rather than asking whether any particular piece of evidence proves the case by itself" whether through the "direct" or "indirect" methods. *Ortiz*, 834 F.3d 760. "Evidence is evidence . . . and are just means to consider whether one fact caused another and therefore are not 'elements' of any claim." *Id.* The legal standard is merely "whether the evidence would permit a reasonable factfinder to conclude that the plaintiff's race, ethnicity, sex, religion, or other proscribed factor caused the discharge or other adverse employment action." *Id.*

12. Petitioner, in advancing her discrimination and retaliation arguments, states that when she began her newly-assigned duties as a Correctional Officer following her demotion, she was assigned to, but was soon thereafter removed from, the Transportation department of Respondent's facility. When Petitioner inquired as to the removal, she was told that she had not been "on shift" long enough and that Petitioner belonged in a dorm (Pet'r Reply). Petitioner was also told she could not work overtime in the Transportation Department.

13. However unfair Petitioner believed her assignments were, this, in and of itself, is not enough to carry the day under even the most liberal standard contemplated by *Ortiz*.

14. Therefore, the ALJ finds that Respondent is entitled to judgment as a matter of law with regards to Petitioner's discrimination and retaliation claims.

15. Petitioner next argues that she was treated differently than two of her coworkers, Officer Jones ("Jones") and Sergeant Sears ("Sears")[2] (Pet'r Reply; Resp't Ex. G)

16. "If an employer takes an action against one employee in a protected class but not another outside that class, one can infer discrimination." *Abrego v. Wilkie*., 907 F.3d 1004 (7th Cir. 2018). "In presenting a similarly-situated employee, the comparator must be similar enough to eliminate confounding variables, such as differing roles, performance histories, or decision-making personnel, so as to isolate the critical independent variable: complaints about discrimination." *Id.*

17. Petitioner failed to show how she was similarly situated against either of the above-named individuals, whether through shared duties, supervisors, or other characteristics which would lead the ALJ to find that either or both were similarly-situated. At most, the only information presented by Petitioner was each employees' rank within Respondent's facility.

---

[2] Sears' first name is not mentioned in any of the documents filed with the ALJ.

18. Even if the ALJ were to find enough similarities, the punishment meted out for both was within Respondent's purview.

19. Jones was demoted for using a racial slur against a Hispanic offender, while Sears was given a two (2) shift suspension for bringing tobacco into Respondent's facility without prior permission (Resp't Motion; Pet'r Reply).

20. Jones was given the same discipline as Petitioner, a demotion. Thus, Petitioner's argument as to disparate treatment fails with regards to him.

21. In Sears' case, the ALJ agrees with Respondent that the offense of bringing tobacco into a facility for one's personal use is far less incriminatory than directing subordinates to place conduct reports in the trash for disposal, thus depriving those offenders of certain rights due to them (Resp't Motion Ex. B).

22. Therefore, the ALJ finds that Sears is not similarly-situated to Petitioner such that Petitioner could argue that she was the victim of disparate treatment.

23. Petitioner finally argues that Respondent did not take any mitigating factors into account when issuing her demotion (Pet'r Reply).

24 Under the Indiana State Personnel discipline policy ("SPD Policy"), "mitigating circumstances" are those facts that indicate that a lesser form of discipline is appropriate (Pet'r Reply, Ex. 2).

25. The SPD Policy also states that discipline is to be progressive in nature, where appropriate (Pet'r Reply Ex. 2).

26. In determining the level of discipline, the Policy states that while an employee's work record can provide the basis for differentiating between one form of discipline over another and that while the state will generally follow the principals of progressive discipline, the state reserves the right to impose discipline commensurate with the offense (Pet'r Reply, Ex. 2).

27. In her Reply, Petitioner argues that Respondent should have considered Petitioner's good performance reviews from 2012 through 2017, as well as various letters of commendation and spot bonus awards Petitioner received for her work during this time period (Pet'r Reply, Ex. 2).

28. However, it is well established that the relevant time to consider is the time the discipline is issued. *Fortier v. Ameritech Mobile Communs.*, 161 F.3d 1106 (7th Cir. 1998), *cert. denied.*

29. "Although, in some circumstances, previous employment history may be relevant and probative in assessing performance at the time of termination, its limited utility must also be recognized." *Id.* at 1113. [E]arlier evaluations cannot, by themselves, demonstrate the adequacy of performance at the crucial time when the employment action is taken". *Id.*

30. In the instant case, Petitioner directed her staff to destroy or otherwise dispose of conduct reports in the weeks leading up to her demotion. Therefore, Petitioner's behavior at the time of her discipline justified Respondent's decision to demote Petitioner.

31. Additionally, despite Petitioner's insistence that she never told staff to dispose of the reports, the ALJ finds that Petitioner's stance on this issue changed throughout the course of the proceedings.

32. While Petitioner admitted knowing about the term "Central Office" during her interviews with IA, she subsequently denied any knowledge concerning either the term, or her actions with regards to it during discovery (Resp't Motion Ex D-1; Pet'r Reply).

33. Further undermining Petitioner's statements to the contrary, both Wright and Warren both testified that Petitioner instructed them to send conduct reports to "Central Office" (Resp't Ex. D-1).

34. Finally, Warren stated in her interview that there should not have been a gap in the case numbers (Resp't Motion).

34. When asked during her follow up interview about this discrepancy, Petitioner stated that once a number has been used, it cannot be used again (Resp't Motion, Ex. D-3).

35. Therefore, Respondent's IA investigator correctly concluded, and the ALJ agrees, that the only reason for such discrepancies would be if Petitioner knew that her actions were wrong but attempted to deny culpability by erasing the corresponding case numbers in the system.

36. The ALJ thus finds that despite Petitioner's otherwise good work record, Respondent felt that her actions were such that any mitigating factors were outweighed by Petitioner's actions in the weeks leading up to her demotion.

37. As a result, the ALJ finds that by authorizing the destruction of offender conduct reports, Petitioner violated Section IX 3, 4 and 6 of Respondent's Conduct Policy such that Respondent's demotion of Petitioner should be upheld.

38. No other public policy exception has been raised by Petitioner, and therefore, the ALJ concludes that SEAC lacks subject matter jurisdiction to further consider Petitioner's Complaint. Thus, Respondent's Motion must be granted.

To the extent a finding of fact is deemed a conclusion of law, or a conclusion of law is deemed a finding of fact, it shall be given such effect.

V. Final Order of Dismissal

Respondent's Motion for Summary Judgment is GRANTED. This action is hereby dismissed with prejudice. All case management deadlines are vacated.

This is the 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 Ind. Code § 4-21.5-5.

DATED: December 28, 2018

Hon. Gabriel Paul
Chief Administrative Law Judge
State Employees' Appeals Commission
Indiana Government Center North, Rm. N103
100 N. Senate Avenue
Indianapolis, IN 46204
(317) 232-3137
Fax: (317) 972-3109
Email: gapaul@seac.in.gov

A copy of the foregoing was sent via email to the following:

Angela Hooker
955 East Knight Street
Knightsville, Indiana 47857
ahooker@idoc.in.gov

Robert Allega
Sarah Haefner
Indiana Department of Correction
Room W341
302 W. Washington Street
Indianapolis, IN 46204
rallega@idoc.in.gov
shaefner@idoc.in.gov

Courtesy Copy to:

David Fleischhacker
State Personnel Department
402 West Washington Street
Room W141
Indianapolis, Indiana 46204
dfleischhacker@spd.in.gov