

**BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION**

IN THE MATTER OF:

CLYDE OUTLAW)
Petitioner,)
) SEAC No. 04-20-028
vs.)
)
INDIANA DEPARTMENT OF)
CHILD SERVICES)
Respondent.)

ISSUED

JAN 14 2022

**STATE EMPLOYEES'
APPEALS COMMISSION**

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND NON-FINAL ORDER

I. Introduction and Summary

On September 29, 2021, an evidentiary hearing was held in this matter under I.C. § 4-15-2.2-42, before the undersigned Chief Administrative Law Judge (“ALJ”).¹ Petitioner, Mr. Clyde Outlaw (“Petitioner”) appeared by counsel, Mr. Nelson Pichardo. Respondent, Indiana Department of Child Services (“Respondent”) appeared by counsel, Ms. Whitney Fritz. Following the hearing, the ALJ gave each party an opportunity to submit Proposed Findings of Fact and Conclusions of Law, which the Parties filed on November 8, 2021.

This case considers Petitioner’s termination for violating Respondent’s Code of Conduct, the State’s Discipline Policy, and the State’s Arrests and Convictions Policy when Petitioner was arrested and charged with domestic battery on June 30, 2019. Petitioner alleges that he was retaliatorily terminated because he was taking military leave intermittently. Petitioner also alleges that his supervisor informed him that his job wouldn’t be at risk while his criminal case was pending.

Respondent argues that Petitioner violated its Code of Conduct when Petitioner was arrested and charged with domestic battery. Respondent further alleges that Petitioner violated the State’s Arrests and Convictions Policy when Petitioner entered into a prosecutor’s agreement.

II. Findings of Fact

1. At all relevant times, Petitioner was employed as a Family Case Manager II (“FCM”), a classified employee, at Respondent’s Lake County Office (Pet’r Compl.).
2. Petitioner was hired in December, 2015.

¹ Subsequent to the hearing, Judge Paul left SEAC and began a new position with the Department of Workforce Development. However, for purposes of this case, Judge Paul retained jurisdiction. Erin McQueen is the current Administrative Law Judge for SEAC and assumes jurisdiction over this matter as of the date of this decision.

3. Petitioner received a rating of “meets expectations” on his annual appraisals for 2016, 2017, and 2018 (Resp’t Exs. C, D).
4. In May, 2018 and March, 2019, Petitioner received written reprimands related to his work performance (Resp’t Exs. E, F).
5. Throughout his employment with Respondent, Petitioner worked on desk duty to allow for more flexibility within his work duties due to his intermittent military leave (Pet’r Test.). While on this form of desk duty, Petitioner was not assigned new cases while out of the office on military leave. While in the office, Petitioner visited and transported children and attended court hearings for the cases he was assigned (Dumas Test.).
6. On June 30, 2019, Petitioner was arrested and charged with domestic battery following an altercation with his wife (Resp’t Ex. G).
7. Petitioner informed his supervisor about his arrest shortly thereafter (Pet’r Test.).
8. After informing his supervisor, Regional Manager Ellis Dumas, about his arrest, Petitioner and Dumas had a conversation about his criminal case and his employment with Respondent. Dumas stated that Petitioner was “innocent until proven guilty” but that Respondent would have to conduct an investigation regarding his employment. (Dumas Test.).
9. On July 1, 3, 8, and 9, 2019, Petitioner was out of the office on pre-approved vacation (Resp’t Ex. H).
10. From July 11-31, 2019, Petitioner was away on military duty (Pet’r Ex. 1).
11. Upon his return to Respondent’s office, Petitioner was placed on a more restrictive form of desk duty than he was on while he was taking intermittent military leave (Dumas Test.). Petitioner was no longer allowed contact with Respondent’s children and family clients (Resp’t Ex. H).
12. Petitioner was out of the office on August 1, 6, and part of 7, 2019 on vacation leave (Resp’t Ex. H).
13. On August 22, 2019, Petitioner provided notice that he would be out of the office on medical leave for two (2) weeks following the date of his medical procedure scheduled for September 4, 2019 (Resp’t Ex. H). However, shortly thereafter Petitioner’s medical procedure was postponed to September 16, 2019. *Id.*

14. On September 12, 2019, Petitioner's final pretrial conference was held with regards to the domestic violence charge, at which time a bench trial was scheduled for October 16, 2019 (Resp't Ex. G).
15. From September 12-30, 2019, Petitioner was out of the office on medical leave (Resp't Ex. H).
16. When Petitioner returned from medical leave on October 1, 2019, he continued his job on desk duty. *Id.*
17. On October 21, 2019, Petitioner was out of the office on military leave. He was expected to return on December 1, 2019 (Pet'r Ex. 1).
18. On November 19, 2019, while Petitioner was away on military duty, he entered into a deferred prosecution agreement, which stated that if Petitioner had no further incidents for six (6) months, the domestic battery charge would be dropped (Pet'r Ex. 4) (Dumas Test.)
19. On November 27, 2019, Petitioner informed Assistant Deputy Director Kara O'Dell that his military leave had ended on November 20, 2019, which was earlier than expected (O'Dell Test.). Petitioner also informed O'Dell that he had been approved for new parent leave, which was to begin on December 3, 2019. *Id.*
20. Petitioner was on new parent leave from December 3-31, 2019 (Resp't Ex. H) (O'Dell Test.).
21. On January 2, 2020, Petitioner returned to the office, at which time a predeprivation hearing was scheduled for January 6, 2020 (Resp't Ex. H).
22. On January 6, 2020, a predeprivation meeting was held, at which time Petitioner was terminated for violating Respondent's Code of Conduct, as well as State Personnel Department's ("SPD") Arrests and Convictions Policy due to the incident that occurred on June 30, 2019 (Resp't Ex. A).
23. On May 20, 2020, Petitioner's domestic battery charge was dismissed, after the Court found that Petitioner had successfully completed the terms of his deferred prosecution agreement (Pet'r Ex. 4).

III. Conclusions of Law

1. SEAC is a creature of statute, charged with fairly and impartially administering Civil Service System appeals. I.C. § 4-15-2.2 *et seq.* SEAC's jurisdiction over such appeals is

divided into classified (just cause claims) and unclassified (at-will claims). I.C. § 4-15-2.2-23, 24. Petitioner was a classified employee at all relevant times.

2. 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. I.C. § 4-15-2.2-42(g); *see also* 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 fails to establish just cause, the challenged adverse employment action is invalid.
3. To establish just cause, Respondent may refer to 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.
4. 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 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).
5. 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.
6. Petitioner contends that there was not just cause for his termination for the following reasons below.
7. Petitioner first argues that he detrimentally relied upon Dumas' statement that Petitioner was "innocent until proven guilty" (Pet'r Test.).

8. In an employment situation, [detrimental reliance] requires proof of the following: (1) an unambiguous promise of employment communicated from the employer to the employee; (2) reasonable reliance on the promise of employment by the employee; (3) the reliance was expected and foreseeable by the employer; and (4) the reliance was to the employee's detriment. *Kalush v. Deluxe Corp.*, 171 F.3d 489, 493 (7th Cir. 1999).
9. Dumas testified that although he did make this statement to Petitioner, he was not talking about innocence or guilt in relation to Petitioner's employment status. Rather, he was attempting to reassure the Petitioner of the standard in the criminal process (Dumas Test.).
10. The criminal standard of "innocent until proven guilty" does not exist in civil cases. *Lemons v. Skidmore*, 985 F.2d 954, 957 (7th Cir. 1993). Thus, the ALJ finds that Petitioner did not detrimentally rely upon Dumas' statement, as it was not in relation to his employment status with Respondent.
11. Petitioner next argues that he did not violate Respondent's Code of Conduct ("Code").
12. Respondent alleges that Petitioner violated the Personal Conduct section of its Code, which states in pertinent part that if an employee engages in unprofessional criminal conduct that ultimately is harmful to Respondent's image, the employee may be subject to disciplinary action, including termination (Resp't Ex. J).
13. Petitioner was involved in a domestic situation which ultimately led to his arrest. Pending his criminal investigation, Respondent made the decision to place him on a restrictive form of desk duty (Dumas Test.).
14. The ALJ finds that Petitioner's actions fell within the scope of the Personal Conduct Section of the Code of Conduct and were subject to the action, in this case desk duty, that Respondent found fit (Resp't Ex. J).
15. Petitioner lastly argues that Respondent lacked just cause to terminate him because the domestic battery charge against him was ultimately dismissed.
16. Respondent contends that Petitioner violated SPD's Arrests and Convictions Policy ("Policy") when he was arrested on June 30, 2019 and when he then entered into a deferred prosecution agreement on November 19, 2019 (Resp't Ex. G).
17. Under the Policy, a "deferred adjudication or sentencing" is considered a conviction. Petitioner argues that the Policy's incorporation of a deferred adjudication in the definition is improper. However, the ALJ's interpretation of the Policy is clear. The ALJ agrees that Petitioner's deferred prosecution agreement is considered a conviction according to the Policy.

18. The ALJ therefore finds that Respondent had just cause to terminate Petitioner based on Petitioner's violation of the Policy when he entered in a deferred prosecution agreement as well as his violations of Respondent's Code.

Prior sections are hereby incorporated by reference, as needed. To the extent a given finding of fact is deemed a conclusion of law, or a conclusion of law is deemed to be a finding of fact it shall be given such effect.

IV. Non-Final Order

Judgment for Respondent. Petitioner's dismissal is hereby UPHELD. The Parties shall bear their own fees and expenses. So ordered.

DATED: January 14 , 2022

/s/ Gabriel Paul
Hon. Gabriel Paul

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

Nelson G. Pichardo
Friedman & Associates, P.C.
705 Lincolnway
LaPorte, Indiana 46350
npichardo@friedmanassociatespc.com

Rachel Russell
Whitney Fritz
Counsel
Indiana Department of Child Services
302 W. Washington Street
Room E306
Indianapolis, Indiana 46204
rachel.russell@dcs.in.gov
whitney.fritz@dcs.in.gov

Courtesy Copy to:

Elizabeth A. Huffman
Indiana State Personnel Department
402 W. Washington Street
Room W161
Indianapolis, Indiana 46204
ehuffman@spd.in.gov

Zahra Ayoubi
Indiana State Personnel Department
402 W. Washington Street
Room W161
Indianapolis, Indiana 46204
zayoubi@spd.in.gov