BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

RHIANNON HOOVER Petitioner,	)	
	)	SEAC No. 06-17-038
vs.	)	
INDIANA DEPARTMENT OF CHILD SERVICES Respondent.	)	

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

On April 16, 2018, Respondent Indiana Department of Child Services ("Respondent"), pro se, filed a Motion for Summary Judgment ("Motion") in this matter with the State Employees' Appeals Commission ("SEAC"), alleging that the actions of Rhiannon Hoover (Petitioner) led to her proper termination. On May 18, 2018[1], Petitioner, by counsel, replied, alleging that her actions, while wrong, should not have led to her termination. On May 18, 2018, Respondent, by counsel, submitted its surreply, stating that Petitioner's actions did not qualify her for a lesser form of discipline. The ALJ, having reviewed the Motion and considered the circumstances surrounding the Motion, now **Grants** it.

I. The Summary Judgment Standard

Summary judgment proceedings before SEAC are governed by Indiana Trial Rule 56. Ind. Code § 4-21.5-3-23(b). "[S]ummary judgment is appropriate 'if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.'" *Williams v. Tharp,* 914 N.E.2d 756, 761 (Ind. 2009) (quoting T.R. 56(C)). "A fact is 'material' if 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." *Williams* at 761 (internal citations omitted).

[1] The ALJ did not receive Petitioner's reply by the May 8, 2018 deadline, so upon receiving Respondent's surreply, he inquired as to this discrepancy. Petitioner's counsel responded that she had sent her reply to Respondent's counsel and had instructed her staff to file it with the ALJ as well. Petitioner's counsel then left on vacation, not realizing that the reply had not been filed. The ALJ will excuse this oversight, but cautions Petitioner's counsel that future late filings may not be accepted.

All inferences from the designated evidence are drawn in favor of the non-moving party. *Hartman v. Keri,* 883 N.E2d 774, 777 (Ind. 2008). "The burden is on the moving party to prove the nonexistence of material fact; if there is any doubt, the motion should be resolved in favor of the party opposing the motion." *Oelling v. Rao*, 593 N.E. 2d 189, 190 (Ind. 1992). More recently, the Indiana Supreme Court has reaffirmed the Indiana summary judgment standard-"In particular, while federal practice permits the moving party to merely show that the party carrying the burden of proof [at trial] lacks evidence on a necessary element, we impose a more onerous burden: to affirmatively 'negate an opponent's claim.'"*Hughley v. State,* 15 N.E.3d 1000, 1003 (Ind. 2014) (quoting *Jarboe v. Landmark Cmty. Newspapers of Ind., Inc.,* 644 N.E.2d 118, 123 (Ind. 1994)). Under I.C. § 4-15-2.2-42(g), Respondent must show that Petitioner was terminated for just cause.

II. Findings of Fact

1. Petitioner was employed at the time of her termination as a classified employee, a Family Case Manager 2. (Pet'r Compl.).

2. Petitioner worked at all relevant times in Respondent's Madison County, Indiana office (Pet'r Compl.).

3. On April 24, 2017, Petitioner was working in Respondent's office as part of her normal work duties. (Pet'r Compl.).

4. During the course of the day, Petitioner took a phone call on her cell phone (Pet'r Compl.).

5. In order to take the call in a more private location, Petitioner started walking towards the bathroom. (Pet'r Compl.).

6. While doing so, Petitioner stopped outside the cubicle of one of her co-workers, Mary Maas ("Maas"), who was not present (Petr. Compl.).

7. Petitioner then noticed that Maas had left her purse behind. (Pet'r Compl.).

8. Petitioner, who was not feeling well at the time, then entered Maas' cubicle and began searching through Maas' purse, in an effort to find some over the counter medication such as Tylenol or ibuprofen to help with her symptoms (Pet'r Compl.).

9. Maass returned to her cubicle at that moment and noticed Petitioner going through her purse. (Pet'r Compl.)

10. Maass then confronted Petitioner about the incident, stating that Petitioner did not have the authority to search her purse. (Pet'r Compl.).

11. Both Petitioner and Maass then went to Courtney Rusk's ("Rusk') office to report the incident. Rusk supervised Maass. (Resp't Motion, Ex. C).

12. Petitioner apologized to Mary in front of Rusk and stated that she shouldn't have gone through Maass' purse. (Resp't Motion, Ex. F).

13. Petitioner then went to see Brandi Murphy ("Murphy"), who was Petitioner's supervisor. (Resp't Motion, Ex. G).

14. Petitioner reported to Murphy that she had searched through Maass' purse without Maass' consent and admitted that it wasn't a smart thing to do. (Resp't Ex. G); (Pet'r Compl.).

15. Petitioner then was called into a pre-deprivation meeting to discuss the purse incident which took place earlier in the day. (Pet'r Compl.).

16. Upon the conclusion of the pre-deprivation meeting, Petitioner was terminated on April 24, 2017 for violation of Respondent's Code of Conduct. (Pet'r Compl.).[2]

[2] Petitioner's actions may have constituted theft under I.C. § 35-43-4-2, which is defined as knowingly or intentionally exerting unauthorized control over property of another person, with intent to deprive the other person of any part of its value or use. Such an offense is, at least, considered a Class A misdemeanor, which is punishable by up to a year in prison and a fine of up to $5,000. *See also* I.C. § 35-50-3-2. While Petitioner was not accused of theft and was not terminated because of it, the ALJ points the above out simply to show how serious Petitioner's actions were.

III. 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 a classified employee at all relevant times.

2. As a classified employee, Respondent must show that it had just cause to terminate Petitioner. I.C. § 4-15-2.2-42(g).

3. At the outset, the ALJ notes that Petitioner, in her Reply, did not submit any evidence in support of her allegations. In such cases, the ALJ follows the principle that he is not obligated to make Petitioner's case for her, and thus will give Petitioner's Reply a less stringent standard of review. *See Hill v. Davis*, 850 N.E.2d 993 (Ind. Ct. App. 2006).

4. Petitioner first argues that while she admits to going through Maass' purse, her actions did not rise to the level of dishonesty or integrity that warranted termination because Petitioner was searching for an over the counter medication to alleviate her symptoms.

5. Respondent's employees are governed in part by a Code of Conduct ("Code"), which relates to the protection of children from abuse, among other things. The Code also sets behavioral expectations for Respondent's staff. (Resp't Ex. I at 3).

6. The Code further states that failure to follow its rules may result in disciplinary action, up to and including dismissal. (Resp't Ex. I at 3).

7. Section Q of the Code states that any employee whose unacceptable behavior violates either a standard, rule, regulation, policy, procedure, directive, written or verbal order, agreement, responsibility or condition of employment of either Respondent or the State may be subject to disciplinary action, up to an including dismissal. (Res't. Ex. I at 9).

8. The Indiana State Employee Handbook ("Handbook") states that disciplinary action may be necessary if problems develop with an employee's behavior, up to and including dismissal. (Resp't Ex. J at 18).

9. Additionally, the Indiana State Personnel Department Discipline Policy ("Policy") states in part that just cause includes the doing of an act which a person ought not to do. (Resp't Ex. K at 1).

10. Nowhere in the above-mentioned policies does a medical exemption exist for Petitioner's behavior on April 24, 2017.

11. Petitioner cites to no case, nor does she point to any section in the above-mentioned policies which states otherwise. Therefore, the ALJ concludes that Petitioner is unable to show that a medical exemption provided her shelter for going through Maass' purse.

12. Petitioner next argues that she did not know about any of the above-cited policies, so she could not be punished for something Petitioner knew nothing about.

13. Respondent ostensibly provided Petitioner with a copy of the above-mentioned documents upon starting her employment with Respondent and therefore expected Petitioner to understand and obey them. Petitioner's ignorance is therefore of no consequence here. *See Bellweather Props., LLC. V. Duke Energy*, 87 N.E.3d 462 (Ind. 2017).

14. Petitioner finally argues that progressive discipline dictated that a lessor form of punishment was warranted in this case.

15. Respondent's Code specifically references the Policy described above when stating that discipline can include termination. (Resp't Ex. I at 9.)

16. Respondent's Policy further states that examples of behavior constituting just cause include, among other things, dishonesty and conduct which adversely affect the employee's job performance or the agency of employment (Resp't Ex. K at 1.).

17. The Handbook also clearly states that the type of discipline imposed depends upon the nature of the offense, work record and any mitigating or aggravating circumstances.

18. Respondent felt, as does the ALJ that going through someone's belongings without permission constitutes a terminable act that supersedes any mitigating factors, such as a good work record. (Pet'r Compl.) While Petitioner admitted her mistake, it does not excuse the fact that she committed a dishonest act that affected both her job performance and the reputation of Respondent.

19. Petitioner could have avoided termination if she had taken any number of other actions instead of the one she did. For example, Petitioner could have asked Maass, or any other coworker if they had any over the counter medicine Petitioner could take.

20. Alternatively, Petitioner could have asked to leave the office for a few minutes to obtain the medication herself.

21. Finally, if Petitioner wasn't feeling well when she woke up on April 24, 2017, she could have taken a sick day (assuming she had one to take). Any of the above actions would have been in line with the Code, Handbook and Policy cited above and would likely have resulted in a different outcome.

22. The ALJ therefore concludes that Petitioner's act of searching Maass' purse without permission constituted just cause such that Respondent was justified in terminating Petitioner.

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.

From a review of the Complaint, The ALJ finds that Respondent's Motion for Summary Judgment is GRANTED. This is the Final Order of the Commission in this matter. 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.

So Ordered.

DATED: June 1, 2018

Hon. Gabriel Paul
Chief Administrative Law Judge
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