BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

WILLIAM ROSS Petitioner,	)	
	)	SEAC No. 07-18-053
vs.	)	
INDIANA DEPARTMENT OF WORKFORCE DEVELOPMENT Respondent.	)	

ORDER DENYING PETITIONER'S MOTION TO CORRECT ERROR

On December 21, 2018, the ALJ issued his Findings of Fact, Conclusions of Law and Order granting Respondent Indiana Department of Workforce Development's ("Respondent") Motion to Dismiss, which is hereby incorporated by reference. On January 21, 2019, Petitioner William Ross, pro se, filed the instant Motion to Correct Error ("Motion") under Indiana Trial Rule 59 ("T.R. 59"). On January 25, 2019, Respondent, by counsel, replied to the Motion. After review, the ALJ finds that Petitioner has not met his burden under Indiana Trial Rule 59 such that his Motion should be granted. The ALJ therefore DENIES Petitioner's Motion to Correct Error. A short discussion ensues below.

At the outset, the ALJ notes that in its Reply, Respondent states that only a Petition for Judicial Review is the appropriate avenue through which Petitioner can seek relief. However, SEAC proceedings are governed by the Indiana Trial Rules, which allow for a Motion to Correct. "Where a statute prescribes special rules of procedure for administrative proceedings or appeals therefrom, the statutory procedure will prevail when it conflicts with the Trial Rules. However, where the statute does not conflict with the Trial Rules, but is merely silent as to a particular procedure, the Trial Rules will supply the missing procedure." *City of Indianapolis v. Maynard*, 107 N.E.3d 1117 (Ind. Ct. App. 2018) (internal citations omitted); *see also Huffman v. Ind. Office of Envtl. Adjudication*, 811 N.E.2d 806 (Ind. 2004). Although the ALJ notes in his original decision that a person who wishes to seek judicial review must comply with I.C. § 4-21.5-5, he does not state that judicial review is the only option for Petitioner, nor does the law require such. Although Petitioner's Motion still fails for the reasons discussed below, Petitioner was within his rights to file the instant Motion as an appeal of the ALJ's decision.

Under T.R. 59(A), Petitioner must show either "[n]ewly discovered material evidence, including alleged jury misconduct, capable of production within thirty (30) days of final judgment which, with reasonable diligence, could not have been discovered and produced at trial; or a claim that a jury verdict is excessive or inadequate. *See Jones v. Jones*, 866 N.E.2d 812 (Ind. Ct. App. 2007). Since the case at issue was not decided by a jury, Petitioner must rely on the former provision stated above. More importantly, however, Petitioner must, under T.R. 59(D) state in "specific rather than general terms" the errors in the ALJ's ruling and accompany them with "a statement of facts and grounds upon which the error is based."

In Petitioner's Motion, he identifies seven (7) instances in which he believes the ALJ erred in his Final Order. The ALJ will briefly discuss each occasion.

First, Petitioner states that he has never been detained, charged, arrested, or brought before any court for a drug offense and such offense was not the cause of his November 21, 2017, probation agreement (Pet'r Ex. N). The ALJ, having reviewed Petitioner's Complaint agrees and finds that Petitioner's probation agreement was signed in response to alcohol and traffic, rather than drug, offences (Hancock County Superior Court, Case No. 30D02-1702-CM-DM44156). However, despite this change, the ALJ finds that this contention does not otherwise show that the ALJ's ruling was deficient such that reversal is warranted.

Next, Petitioner contends the ALJ erred in finding that once Respondent discovered Petitioner was a classified employee, it reinstated Petitioner and awarded him back pay and full benefits. Petitioner cites to an email in which HR Generalist Tina Bowles ("Bowles"), indicates that she determined Petitioner was actually a classified employee and that a predeprivation hearing was required before termination (Pet'r Ex. F). Petitioner states that he was suspended without pay, but provides no evidence showing that he was, in fact, not reinstated with back pay and benefits; only that he was not allowed to return to work until his predeprivation hearing. Therefore, the ALJ does find reversible error with regards to this contention.

Thirdly, Petitioner indicates that the ALJ mistakenly looked beyond the briefings (and more specifically, the prehearing conference in concluding that Respondent reversed Petitioner's termination upon uncovering its initial error. While Petitioner's statement is correct on its face, Petitioner, in his own Reply to Respondent's original Motion, provided evidence clarifying the situation regarding his termination and subsequent rehiring (Pet'r Reply Ex. F), which the ALJ adopted as fact. Therefore, the ALJ finds no reversible error.

Petitioner next takes issue with Respondent's Discipline policy ("Policy"), asserting that he was wrongfully terminated without a predeprivation hearing. However, as discussed in detail in the ALJ's original Order, Respondent reversed its initial decision to terminate Petitioner and subsequently rehired him until it could properly conduct a predeprivation conference under the terms of its Policy. Therefore, Petitioner has no remedy since he was essentially made whole again when Respondent reversed the dismissal.

Next, Petitioner suggests the ALJ erred in finding that Petitioner was released on May 1, 2018, from detention and returned to work on May 3, 2018. Petitioner seems to take issue with this statement, believing he should not have accumulated unauthorized leave ("UL") during this time. However, the ALJ clearly discusses in his Order that Petitioner's UL days were a result of his seven (7) days spent incarcerated and did not include the days which Petitioner was barred from returning to work prior to his predeprivation hearing. Petitioner has provided no new evidence showing that the days he was incarcerated, which ultimately resulted in the UL that aided Respondent's decision to terminate him, should not be considered UL. Therefore, the ALJ finds that no error exists.

Petitioner's penultimate contention states that because he was terminated on April 19, 2018, he was not an employee during the time of his incarceration and thus could not be terminated for accumulating UL. However, once Respondent learned that it mistakenly terminated Petitioner without a predeprivation hearing, Petitioner's original termination effectively became void—as if it had never happened. Therefore, Respondent was within its rights to consider Petitioner's UL between April 20, 2018, and May 1, 2018, in its decision to terminate Petitioner. Further, it stands to reason that had Petitioner not been reinstated and considered an employee during this time, he would not have been the subject of a predeprivation meeting upon his release—as logic indicates that Respondent does not conduct predeprivation meetings with individuals who are not under its employ..

Finally, Petitioner contends that he was disabled under the Americans with Disability Act ("ADA"), Respondent was aware of his disability, and that it was required to proactively accommodate him. Petitioner misguidedly asserts that because Respondent was aware of Petitioner's criminal charges, it was automatically required to treat him as having an ADA disability and offer accommodations. "Courts should look for signs of failure to participate in good faith or failure by one of the parties to help the other party determine what specific accommodations are necessary. A party that obstructs or delays the interactive process is not acting in good faith. A party that fails to communicate, by way of initiation or response, may also be acting in bad faith. In essence, courts should attempt to isolate the cause of the breakdown and then assign responsibility." *Beck v. University of Wis. Bd. of Regents*, 75 F.3d 1130, 1135 (7th Cir. 1996). Petitioner presented no evidence showing that he, in good faith, ever made Respondent aware that he had a disability or requested an accommodations for his alcohol addiction. Further, even if Petitioner had so requested an accommodation, it would not necessarily be Respondent's responsibility to accept as an accommodation Petitioner's absences from work due to being incarcerated. Therefore, the ALJ finds no error with regards to this contention.

Order

Petitioner has not shown under T.R. 59 that the decision rendered by the ALJ on Respondent's Motion for Summary Judgment was in error. Therefore, Petitioner's Motion to Correct Error is hereby DENIED. So Ordered.

DATED: February 4, 2019

Hon. Gabriel Paul
Chief Administrative Law Judge
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