BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

CECELIA SMITH Petitioner,	)	ISSUED
	) SEAC No. 09-19-049	MAR 31 2020
vs.	)	
INDIANA DEPARTMENT OF CHILD SERVICES Respondent.	)	STATE EMPLOYEES' APPEALS COMMISSION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY JUDGMENT

On January 24, 2019, Respondent Indiana Department of Child Services ("Respondent"), by counsel, filed a Motion for Summary Judgment under Indiana Trial Rule 56 ("T.R. 56") ("Motion") seeking to dismiss Petitioner Cecelia Smith's ("Petitioner") Complaint. Petitioner, pro se, responded to the Motion on February 24, 2019. Respondent thereafter filed a surreply on March 10, 2020.

This case considers Petitioner's Written Reprimand for failing to properly staff a case with her supervisor. Under Ind. Code § 4-15-2.2-42(g), the agency (here, Respondent) must show that it had just cause to issue the discipline. The controlling pleadings for purposes of this decision are the Complaint originally received on September 4, 2019, Respondent's Motion, Petitioner's Reply to the Motion and Respondent's surreply. In order to survive a T.R. 56 Motion, material issues of fact must exist such that judgment as a matter of law for the moving party would be inappropriate.

The ALJ finds that no issues of material fact exist with regard to Petitioner's claims such that this matter should continue. Therefore, Respondent's Motion for Summary Judgment is hereby GRANTED. The following additional findings of fact, conclusions of law, and order are entered.

I. 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 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." *Celebration Worship Ctr., Inc. v. Tucker*, 35 N.E.3d 251, 253 (Ind. 2015).

II. Findings of Fact

1. Petitioner was hired by Respondent in 1999 as a Family Case Manager (Pet'r Compl.).

2. In 2012, Petitioner became a Collaborative Care Case Manager ("Manager") (Pet'r Compl.).

3. On February 14, 2019, Petitioner staffed a case involving a troubled youth with her supervisor, Sonia Davis ("Davis"), over the phone (Resp't Motion Ex. K).

4. The staffing was done telephonically due to Petitioner and Davis being located in two (2) different counties (Resp't Motion Ex. K).

5. During the staffing, Petitioner recommend that the case be closed, due to the youth's unwillingness to respond favorably to Respondent's services, but Davis disagreed (Resp't Motion Ex. K).

6. Instead of closure, Davis identified three (3) areas that could still be addressed, such as Job Corps, alternative schooling and obtaining an education report (Resp't Motion Ex. K).

7. On February 20, 2019, Petitioner provided Davis with an email update on the case, stating in relevant part that a court date was scheduled for April 15, 2019, to discuss case closure (Resp't Motion Ex. K).

8. On February 22, 2019, Davis responded to the email with the words "sounds good" (Resp't Motion Ex. K).

9. On March 7, 2019, another of Petitioner's supervisors was notified by one of Respondent's attorneys that Petitioner file stamped court documents without prior authorization from Respondent's attorney[1] (Resp't Motion, Ex. I).

10. On March 25, 2019, Petitioner emailed Kamontee Grayson ("Grayson"), another supervisor in Petitioner's chain of command, about the case (Pet'r Reply).

11. On March 28, 2019, Grayson informed his staff, including Petitioner, that he would be out of the office until April 8, 2019, and further directed his staff to contact Davis with questions during that time (Resp't Motion Ex. N).

12. On March 28, 2019, Grayson acknowledged Petitioner's March 25, 2019 email and wrote Petitioner, informing her that Petitioner's cases could be staffed upon his return (Resp't Motion Ex. O).

13. On April 2, 2019, Petitioner submitted a status report about the case, recommending closure, and signed Grayson's name to it without prior authorization to do so (Pet'r Compl.; Resp't Motion Ex. P).

14. When Grayson returned, he became aware of the unauthorized signature and asked Davis for her notes regarding Petitioner's case (Resp't Motion Ex. L).

15. Smith then emailed the notes on April 10, 2019, and copied Petitioner (Resp't Motion Ex. L).

16. On April 11, 2019, Petitioner wrote Davis and explained that Petitioner misunderstood Davis' February 22, 2019 email to mean that the case should be closed (Resp't Motion, Ex. L).

17. On May 30, 2019, Respondent began a predeprivation meeting with Petitioner, which was completed on June 13, 2019 (Pet'r Compl.)

18. On June 13, 2019, Respondent issued a Written Reprimand to Petitioner for failing to properly staff the case at issue (Pet'r Compl.).

[1] The ALJ is unclear as to whether the court documents pertained to the case at issue.

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). 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. Ind. Code § 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, the Respondent may refer to the 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. At-will employment is the default in Indiana, and most state employees are considered unclassified in that regard. I.C. §§ 4-15-2.2-22, 24. However, the General Assembly also recognized some employees as classified given federal regulations and laws but did not define "just cause" in the Civil Service System. Therefore, the ALJ first looks to Indiana law, but also to the federal standard. The federal employment just cause standard is defined as "[s]uch cause as will promote the efficiency of the service." 5 U.S.C. § 7513(a). *See also Free Enterprise Fund v. PCAOB*, 561 U.S. 477, 477 (2010) (federal system looks at factors such as inefficiency, neglect of duty, and reasons provided by the legislature).

6. 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.

7. Petitioner essentially alleges that she followed the proper steps to close the case, such that her interpretation of Davis' February 22, 2019 email was to be construed as approval to close the file.[2] As shown below, however, Respondent has proven that Petitioner violated both its Policy on closing a CHINS case ("Policy") and its Code of Conduct ("Code").

8. Respondent's Policy states in relevant part that Respondent will move to close a CHINS case when the terms of a court order or other goals have been met, when the child turns eighteen (18) and court action is no longer needed, or either before or on the child's 21st birthday, assuming the case has remained open since the child's 18th birthday. (Pet'r Reply Ex. 1).

9. The Manual then lists the procedure for closing a case, which involves eleven (11) steps. *Id.*

10. Of those, the Parties agree that the only step at issue here is the fourth step, which states that a Family Case Manager must staff the case with his supervisor regarding the appropriateness of case closure. *Id.*

11. While it is undisputed that Petitioner did initially staff the case with Davis on February 14, 2019, the ALJ finds that Petitioner failed to properly get either Davis or Grayson to approve the closure.

12. Petitioner argues that when Davis replied, "sounds good" in response to Petitioner's February 20, 2019 email, such was enough to constitute approval. In support, Petitioner relies upon the dictionary definition of "sounds good".

13. According to the dictionary definition submitted by Petitioner, "sounds good" is a phrase used for telling someone that their idea or suggestion seems like a good one (Pet'r Reply Ex. 18).

14. Nothing in that definition, however, persuades the ALJ that the use of "sounds good" is designed to be construed as something final or otherwise permanent.

15. Indeed, Davis herself stated that her use of the phrase "sounds good" was not meant to imply approval for Petitioner to close the case (Resp't Motion Ex. K).

[2] Petitioner also makes fleeting references to discrimination, retaliation and a hostile work environment, which were not raised in her Complaint. Notwithstanding the fact that such arguments are now void under Ind. T.R. 15, the ALJ declines to analyze such claims, given that they are mere allegations without further support. Petitioner further argues in her Reply that Respondent failed to follow the State's Personnel Records Policy with regard to some of her evidence in that she was not provided signed copies during discovery. However, as Respondent noted in its surreply, Petitioner often did not sign documents with which she did not agree. Therefore, Petitioner cannot now argue that she did not receive documents which she never signed. Given the above, the ALJ declines to further address these arguments.

16. Davis further stated that she did not formally staff the case again with Petitioner after February 14, 2019; thus, the ALJ finds that Petitioner's February 20, 2019 email update was just that—an update (Resp't Motion Ex. K).

17. Petitioner herself later admitted to Davis that she misinterpreted Davis' use of "sounds good" (Resp't Motion Ex. L).

18. Had Petitioner's only misstep been the one described above, Respondent may have declined to issue Petitioner a reprimand. However, Petitioner also committed an arguably more egregious mistake, as described below.

19. Petitioner, on April 2, 2019, signed Grayson's name to the court report involving the case at issue while Grayson was out of the office (Resp't Motion Ex. P).

20. Before he left, Grayson left instructions for his staff to contact their other supervisors with questions (Resp't Motion Ex. N).

21. Petitioner was not a new employee who was unfamiliar with Respondent's procedures.[3]

22. Section C of Respondent's Code states in relevant part that under no circumstances will an employee falsely document his activities, actions, or decisions.

23. Petitioner therefore clearly violated this section when she signed Grayson's name without permission to do so.[4]

24. When determining Petitioner's punishment, the ALJ finds that Respondent followed the State's discipline policy, since it employed the lowest level of formal discipline in the form of a reprimand.[5]

25. Respondent likely determined that, given Petitioner's status as an otherwise good employee (as proven by her years of good work appraisals), coupled with the fact that it believed Petitioner's argument about the entire incident being a misunderstanding, Petitioner's actions did not warrant more serious discipline (Pet'r Reply Exs. 20-26).

26. Petitioner did not raise any other substantive issues that would constitute a material issue of fact. Thus, the ALJ finds that Respondent had just cause to issue Petitioner a Written Reprimand in this case.[6] As a result, summary judgment is appropriate.

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[3] In her Reply, Petitioner argues that since she was never provided with her signed copy acknowledging Respondent's policies, she should not be held accountable. Having addressed this argument in part above, the ALJ finds that as a twenty-year employee, Petitioner knew, or should have known enough, not to sign Grayson's name.

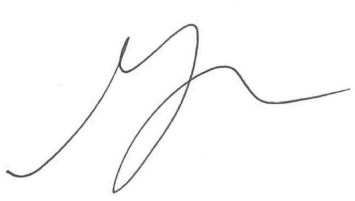
[4] Petitioner also argued at her predeprivation conference, and again in her Reply, that it was common practice to sign supervisors' names to files, so long as they were given final approval (Pet'r Reply). However, Petitioner provided no further evidence to support this fact; thus, the ALJ rejects this theory.

[5] Petitioner previously had a counseling, but counselings are not formal discipline and do not count towards a progressively harsher punishment. https://www.in.gov/spd/files/discrandp.pdf.

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. Additional Conclusions of Law and Order

Respondent's Motion for Summary Judgment is hereby GRANTED. Petitioner's Written Reprimand was issued with just cause and is hereby upheld. The Complaint, and this action, are hereby **DISMISSED** with prejudice. 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: March 31, 2020

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

[6] Petitioner makes fleeting references in her Reply to the fact that Petitioner never received notes from Davis regarding Petitioner's cases, nor did Davis input any notes into Respondent's case management system. Petitioner also highlights the fact that Davis was often in and out of the office and was having trouble managing her staff. Petitioner, however, failed to show how these claims justified the actions she took in this case such that the ALJ should consider them material facts. Thus, the ALJ finds no issue of material fact with regards to these claims.

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

Cecelia Smith
6922 Lotus Blossom Place
Fort Wayne, Indiana 46835
cecelia.smith@dcs.in.gov

Rachel Russell
Whitney Fritz
Counsel
Indiana Department of Child Services
302 West Washington Street
Room E306
Indianapolis, Indiana 46204
(317) 233-6547
(317) 234-5728
rachel.russell@dcs.in.gov
whitney.fritz@dcs.in.gov

Courtesy Copy to:

David Fleischhacker
State Personnel Department
402 West Washington Street
Room W141
Indianapolis, Indiana 46204
dfleischhacker1@spd.in.gov