BEFORE THE
STATE EMPLOYEES' APPEALS COMMISSION

IN THE MATTER OF:

KAILEE GUESS Petitioner,	)	ISSUED
	) SEAC No. 11-19-059	MAR 17 2020
vs.	)	
RICHMOND STATE HOSPITAL BY INDIANA FAMILY AND SOCIAL SERVICES ADMINISTRATION Respondent.	)	STATE EMPLOYEES' APPEALS COMMISSION

ORDER GRANTING RESPONDENT'S MOTION TO DISMISS

I. Introduction and Summary

On November 26, 2019, Respondent Richmond State Hospital, a part of the Indiana Family and Social Services Administration ("Respondent"), by counsel, filed a Motion to Dismiss Petitioner's Complaint under Ind. T.R. 12(B)(6) ("Motion"). Petitioner Kailee Guess ("Petitioner"), pro se, filed an amended Complaint on December 12, 2019, after which Respondent filed a supplement to its Motion on January 17, 2020. Petitioner thereafter filed a Reply to the Motion on January 31, 2020. Respondent then filed its surreply on March 2, 2020. The ALJ has duly considered the parties' filings, arguments and the pleadings, and now finds that this matter is ripe for ruling.[1]

This case considers Petitioner's challenge of her termination on September 23, 2019, for inappropriate conduct and unprofessional behavior when she allegedly smuggled contraband in the form of a personal cell phone and letters to Respondent's patients without permission. Petitioner alleges that she was terminated without a full investigation into the accusations against her. Petitioner also suggests that termination was a drastic and harsh decision and that she wishes to see the proof Respondent used to terminate her.

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 both state a claim upon which relief could be granted and allege a violation of a law, rule, or public policy exception to Indiana's at-will employment law. Thus, this case must be dismissed under Ind. Code § 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.

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[1] Commission proceedings are governed by the Administrative Orders and Procedures Act (AOPA). Ind. Code § 4-21.5 *et seq.* *See* Ind. Code § 4-15-1.5-6(1). Accordingly the Commission has delegated to its Administrative Law Judges pursuant to Ind. Code § 4-21.5-3-28 of AOPA, the authority to issue final orders in this class of proceedings.

I. Motion to Dismiss Standard

Dismissal proceedings test "the legal sufficiency of the complaint." *Right Reason Publications v. Silva*, 691 N.E.2d 1347, 1349 (Ind. Ct. App. 1998) (citation omitted). All facts plead in Petitioner's complaint, and reasonable inferences therefrom, are taken as true. *Bee Windows, Inc. v. Turman*, 716 N.E.2d 498, 500 (Ind. Ct. App. 1999). However, when a party's complaint is legally insufficient or fails to plead essential elements of the claim, the complaint or deficient claim should be dismissed. *Meyers v. Meyers Construction*, 861 N.E.2d 704, 705-706 (Ind. 2007); *Huffman v. Office of Envt'l Adjudication*, 811 N.E.2d 806, 814 (Ind. 2004); *Gorski v. DRR, Inc.,* 801 N.E.2d 642, 644 (Ind. Ct. App. 2003); and *Steele v McDonald's Corp. et al.*, 686 N.E.2d 137 (Ind. Ct. App. 1997). *See also*, Ind. T.R. 12(B)(1) and 12(B)(6).

II. Findings of Fact

The facts relevant to the instant Motion's resolution, as construed in favor of the non-movant Petitioner, are as follows:

1. At all relevant times, Petitioner was Behavioral Health Resource Attendant for Respondent's Richmond State Hospital (Pet'r Compl.).

2. On September 20, 2019, Petitioner reported for her shift and proceeded to the area where Petitioner would receive her daily assignments (Pet'r Compl.).

3. At 7:15 A.M., Petitioner responded to a "code green" on her unit (Pet'r Compl.).

4. Petitioner helped resolve the issue and was subsequently assigned to her regular duties at approximately 8:00 A.M. (Pet'r Compl.).

5. Petitioner was informed shortly thereafter by her supervisor that Petitioner was under investigation for smuggling contraband into Respondent's facility and was told not to leave her unit until further notice (Pet'r Compl).

6. Later that day, Petitioner was called into her supervisor's office and told to go home (Pet'r Compl.).

7. On the morning of September 24, 2019, Petitioner received a call from Respondent asking if Petitioner could meet with her supervisor at Respondent's facility (Pet'r Compl.).

8. Petitioner met with her supervisor at 10:00 A.M. that same day and was told she was being terminated for smuggling contraband—in the form of letters and a cell phone—into Respondent's facility (Pet'r Compl.).

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 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." I.C. § 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. *See, 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. Inasmuch as motions to dismiss are not favored by the law, they are properly granted only "[w]hen the allegations present no possible set of facts upon which the complainant can recover." *City of E. Chi. v. E. Chi. Second Century, Inc.*, 908 N.E.2d 611 (Ind. 2009); *Mart v. Hess*, 703 N.E.2d 190, 193 (Ind. Ct. App. 1998). Put another way, a dismissal under Rule 12(B)(6) will not be affirmed "[u]nless it is apparent that the facts alleged in the challenged pleading are incapable of supporting relief under any set of circumstances." *Id.; Couch v. Hamilton County*, 609 N.E.2d 39, 41 (Ind. Ct. App. 1993).

6. Petitioner, in all of her pleadings, simply rehashes the events described above and states that if given another chance, Petitioner will be a better employee. Petitioner's only retort is that her punishment was unfair and that she wishes to see the evidence against her.

7. Under the employment at will doctrine, an argument of unfairness is not a viable exception. *Groce v. Eli Lilly & Co.*, 193 F.3d 496, 502 (7th Cir. 1999) ("In its most recent explication of the at-will doctrine, the Supreme Court of Indiana recognized three exceptions to that doctrine, three ways to rebut the presumption that the employment is at-will, and thus to require the employer to show good cause for termination: (1) adequate independent consideration; (2) public policy; and (3) promissory estoppel."); *Orr*, 689 N.E.2d at 717 ("[I]n Indiana, the presumption of at-will employment is strong, and a court is disinclined to adopt broad and ill-defined exceptions to the employment-at-will doctrine."). Petitioner has not shown that she meets any of the above exceptions. Therefore, this argument does not sway the ALJ to continue jurisdiction over this case.

8. Petitioner also argues that she wants to see the evidence against her. However, Petitioner is only entitled to see such evidence if the ALJ rules that Petitioner has stated facts upon which she could potentially recover, which in turn would necessarily cause this matter to proceed to the discovery phase. Since the ALJ finds that Petitioner has not shown such facts, she is not entitled to avail herself of the aforementioned process.[2] Thus, dismissal is appropriate.

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. Final Order of Dismissal

Respondent's Motion to Dismiss is GRANTED. This action is hereby dismissed with prejudice. 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 I.C. § 4-21.5-5.

[2] The ALJ notes that by virtue of this decision, he does not necessarily find that Respondent has proven its allegations against Petitioner. He merely finds that under the purview of Ind. T.R. 12(B)(6), Petitioner has not stated a claim upon which relief could be granted.

DATED: March 17, 2020

Hon. Gabriel Paul
Chief Administrative Law Judge
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