

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

SUSAN HALING, in her capacity as)
EXECUTIVE INSPECTOR GENERAL for)
Agencies of the ILLINOIS GOVERNOR,)
) Petitioner,)
))
v.))
))
DARRYL FLENOY,)
) Respondent.)

No. 18-EEC-005

DECISION

This cause is before the Executive Ethics Commission (“Commission”) for purposes of considering the Petitioner’s unopposed motion for summary judgment. This decision will also serve as the Commission’s final administrative decision in this matter.

On January 19, 2018, Petitioner filed a complaint with the Commission which alleged Respondent, Darryl Flenoy, intentionally obstructed or interfered with an investigation in violation of Section 50-5(e) of the State Employees and Officials Ethics Act (“Ethics Act”) (5 ILCS 430/50-5(e)). An affidavit of service indicates Respondent was served a copy of the complaint on January 25, 2018. On March 21, 2017, the Commission entered an order finding the complaint sufficient to proceed.

On May 8, 2018, Petitioner filed an unopposed motion for summary judgment with an attached joint stipulation of undisputed material facts. That same date, Respondent filed a letter to state mitigating circumstances with regard to the Commission’s potential imposition of a fine.

Petitioner is represented by Assistant Attorney General Francis Neil MacDonald. Respondent is represented by Ralanda Webb.

FINDINGS OF FACT

The record of proceedings has been reviewed by the members of the Executive Ethics Commission. Based upon the record, including the parties’ joint stipulation of undisputed material facts, the Commission makes the following findings of fact:

1. Respondent was hired by the Illinois Department of Human Services (“DHS”) as a Social Service Career Trainee effective November 1, 2013, and was promoted to a DHS Caseworker on November 16, 2014. Effective June 22, 2017, Respondent resigned from DHS.

2. As a part of the DHS employment application process, Respondent prepared and submitted a Form CMS100 Examining/Employment Application, used by individuals who are not currently State employees, but who are seeking State employment.

3. In completing a Form CMS100, the State requires that an applicant disclose a variety of background information relevant to the responsibilities of public service, as well as the applicant's full employment history. The Form CMS100 also requires that an applicant disclose whether he or she has ever been fired from a job, and if so, to attach a signed, detailed explanation. In addition, the applicant must sign the Form CMS100, thereby certifying that "the information on this application is true and accurate," as well his or her understanding "that misrepresentation of any material fact may be grounds for ineligibility or termination of employment" (together, the "Certification").

4. Respondent marked the "No" box in his Form CMS 100, thereby indicating that he had never been fired from a job. He also provided a work history dating back to 1998.

5. After being promoted to a DHS Caseworker in January 2014, Respondent prepared and submitted a series of Forms CMS100B Promotional Employment Application in January 2015. Form CMS100B is used by current State employees who are seeking promotions. As with Respondent's original Form CMS100, the Forms CMS100B that Respondent prepared and submitted required that he certify that the information on his application was true and accurate, as well as his understanding that the "misrepresentation of any material fact may be grounds for ineligibility or termination of employment." Each of Respondent's completed Forms CMS100B included job histories back to 1998, and their Certifications were signed by Respondent.

6. Two of Respondent's January 2015 Forms CMS100B—one for a position as a Juvenile Justice Youth and Family Specialist, and the other for a position as a Corrections Parole Agent (together, the "Law Enforcement Applications")—contained employment history discrepancies compared to the other Forms CMS100B and the original Form CMS100. More particularly, the Law Enforcement Applications disclosed that Respondent had worked for the Chicago Police Department ("CPD") from 1998 through 2006, and had taken a management position with the Chicago Housing Authority in 2006 after having earned a master's degree.

7. In the course of investigating these discrepancies, OEIG investigators determined that on May 19, 2005, the Police Board of the City of Chicago had entered an order directing that Respondent be discharged as a Police Officer for misconduct, and that Respondent actually had been discharged from the Chicago Police Department, effective June 14, 2005.

8. During the course of OEIG's interview of Respondent on July 20, 2016, Respondent knowingly made a series of false and materially misleading statements and intentional omissions about the circumstances surrounding his departure from the CPD.

9. Respondent knowingly made false and materially misleading statements and intentional omissions, including but not limited to the following:

- A. Respondent falsely denied that he had ever been fired from a job;
- B. Respondent falsely stated that the employment histories set out in his Forms CMS100B were accurate;
- C. Respondent falsely described the circumstances under which he had left employment with the CPD, as well as the basis for his departure; and
- D. Respondent falsely denied knowledge of his discharge for misconduct by the CPD.

CONCLUSIONS OF LAW

1. Pursuant to 5 ILCS 430/20-5(d), the Commission has jurisdiction over "all officers and employees of State agencies" for purposes of any matter arising under or involving the Ethics Act. Consequently, the Commission's authority extends to officers and employees of DHS.

2. As State employee, Respondent was subject to the provisions of the Ethics Act, and therefore subject to the jurisdiction of the Commission with respect to matters arising under the Ethics Act. *Id.*

3. Section 50-5(e) of Ethics Act provides "An ethics commission may levy an administrative fine of up to \$5,000 against any person who violates this Act, who intentionally obstructs or interferes with an investigation conducted under this Act by an inspector general, or who intentionally makes a false, frivolous, or bad faith allegation. 5 ILCS 430/50-5(e).

4. Respondent violated Section 50-5(e) of the Ethics Act when he intentionally obstructed or interfered with an investigation of the EIG, pursuant to the Ethics Act, by answering falsely several questions during interviews and in written submissions to the EIG thereafter. 5 ILCS 430/50-5(e).

5. Specifically, Respondent violated Section 50-5(e) when he knowingly made false and materially misleading statements and intentional omissions during an interview conducted by OEIG, including but not limited to the following:

- A. Respondent falsely denied that he had ever been fired from a job;

- B. Respondent falsely stated that the employment histories set out in his Forms CMS100B were accurate;
- C. Respondent falsely described the circumstances under which he had left employment with the CPD, as well as the basis for his departure; and
- D. Respondent falsely denied knowledge of his discharge for misconduct by the CPD.

STANDARD OF REVIEW

Granting summary disposition in an administrative proceeding is comparable to granting summary judgment under Section 2-1005 of the Code of Civil Procedure. *Bloom Tp. High School v. Ill. Commerce Comm'n*, 309 Ill. App. 3d 163, 177, 242 Ill. Dec. 892, 903 (1999); *Cano v. Vill. of Dolton*, 250 Ill. App. 3d 130, 138, 189 Ill. Dec. 883, 620 N.E.2d 1200 (1993). Because of the similarities in the two procedures, it is appropriate to apply the standards applicable to granting summary judgment under section 2-1005 when reviewing a summary determination entered by an administrative agency. *See Cano*, 250 Ill. App. 3d at 138.

Summary judgment is appropriate only where “the pleadings, depositions, and admissions on file, together with affidavits, if any, show 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.” 735 ILCS 5/2-1005(c).

In determining whether a genuine issue as to any material fact exists, the Commission must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent. A triable issue precluding summary judgment exists where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts. The use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a matter. However, it is a drastic means of disposing of litigation and, therefore, should be allowed only when the right of the moving party is clear and free from doubt. *Adams v. N. Ill. Gas Co.*, 211 Ill.2d 32, 43, 284 Ill. Dec. 302, 310 (2004).

ANALYSIS

Respondent stipulated to a series of facts from which the Commission concludes he intentionally obstructed and interfered with, an investigation of the Executive Inspector General in violation of the State Officials and Employees Ethics Act (5 ILCS 430/5-15(a)).

Consequently, the Commission may levy an administrative fine of up to \$5,000 against Respondent for each of his violations of the Ethics Act. 5 ILCS 430/50-5(a). Respondent submitted a statement of mitigating factors with attached letters of support.

The Ethics Act does not provide any guidance for the Commission to consider when levying a fine. The Commission has, however, adopted rules, found at 2 ILL. ADMIN, CODE 1620.530(b), that outline fourteen aggravating and mitigating factors the Commission may consider in assessing an appropriate fine. In relevant part, these factors include: the nature of the violation; the extent of the use of resources, money, time to the State; the extent of the Respondent's intent or knowledge of the facts surrounding the violation; and Respondent's cooperation in the matter. 2 ILL. ADMIN. CODE 1620.530(b)(1), (4), (5) and (11).

WHEREFORE, for the foregoing reasons, Petitioner's motion for summary judgment is granted. The Commission levies an administrative fine of \$1000.00 against Respondent, Darryl Flenoy, for violation of 5 ILCS 430/50-5(e). This is a final administrative decision subject to the Administrative Review Law.

ENTERED: May 17, 2018