

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

MARGARET HICKEY, in her capacity as)	
EXECUTIVE INSPECTOR GENERAL for)	
AGENCIES OF THE GOVERNOR, State)	
Of Illinois,)	
Petitioner,)	
)	
v.)	No. 17-EEC-001
)	
DALE SCHWEITZER,)	
Respondent.)	

DECISION

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

On August 12, 2016, Petitioner filed the present Complaint with the Commission. The Complaint alleged that Respondent failed to cooperate with and obstructed an investigation by the Office of Executive Inspector General (OEIG) into Respondent’s alleged misconduct. An affidavit of service indicates that Respondent was served a copy of the Complaint on August 17, 2016. On October 20, 2016, the Commission entered an order finding the Complaint sufficient to proceed.

On December 13, 2016, Petitioner filed an unopposed motion for summary judgment with an attached joint stipulation of undisputed material facts.

Petitioner is represented by Assistant Attorney General Neil MacDonald. Respondent appears pro se.

FINDINGS OF FACT

The record of proceedings has been reviewed by the members of the Executive Ethics Commission. Based upon this record, the Commission makes the following findings of fact:

1. At all times relevant to the allegations set out in Petitioner’s Complaint, Respondent was employed by the Illinois Department of Employment Security (“IDES”) as a Tax Auditor, in which capacity he was responsible for conducting financial investigations on behalf of the agency. Respondent subsequently resigned from his position at IDES, without reinstatement rights, effective September 1, 2015.
2. From at least 2012 until February 20, 2015, Respondent conducted his official business on a State-issued laptop computer, which IDES assigned exclusively to him.

Respondent also had his own cubicle in the IDES office in Rockford, Illinois, where he worked when he was not conducting agency field work. Respondent's assigned work hours during the business week were 9am to 5pm.

3. IDES policy requires that its State-issued resources, including its computers and internet service, be used only for official IDES business. IDES also requires that its employees conduct themselves in an ethical manner, and prohibits them from engaging in conduct that brings disrepute to the agency and its employees.

4. Over the course of his State employment, Respondent participated in annual, computer-based IDES Ethics Act training programs. Each of these annual programs included a section on a State employee's duty to cooperate with an investigation conducted by the Office of Executive Inspector General for the Agencies of the Governor ("OEIG"), as well as the obligation to use State resources only for official State business.

5. On or about February 18, 2015, an IDES contractor working at the Rockford office observed Respondent in his cubicle using his State-issued laptop to watch a pornographic video. Two days later, IDES information technology employees took possession of Respondent's laptop and turned it over to OEIG investigators for a forensic review of the device.

6. Based on their examination of Respondent's State-issued laptop, OEIG discovered the following:

a. over 140 files, images, and videos with sexual, pornographic, or otherwise inappropriate, non-work related content were located on the laptop hard drive under Respondent's computer user profile ("dale.schweitzer");

b. someone using Respondent's laptop had logged in under the computer user profile referenced above and had accessed numerous pornographic, sexual, or other adult websites; and

c. of the above-referenced files, images, videos, and websites discovered on Respondent's State-issued laptop that had discernable creation, modification, or access dates (the majority of which did), none had been created, modified, or accessed during periods while Respondent had taken leaves of absence in 2013 and 2014. Rather, these prohibited materials had been accessed between 9:00 a.m. and 5:00 p.m. during the period between October 2014 and February 2015, *i.e.*, during normal IDES business hours.

7. OEIG investigators interviewed Respondent on April 20, 2015. During the course of that interview, Respondent knowingly made numerous false and materially misleading statements and omissions, including but not limited to the following:

a. Respondent falsely denied that he had ever intentionally viewed the inappropriate or pornographic videos or imagery found under his computer profile on his State-issued laptop computer, falsely denied that he had ever violated the State's internet

usage policy, and falsely suggested that someone else may have viewed or downloaded the inappropriate material while he was out of the office on leave;

b. Respondent falsely stated that he did not access the pornographic or adult websites that had been accessed on his State-issued laptop computer;

c. Respondent falsely stated that he did not intentionally access the inappropriate images found on his laptop, and that the imagery may have simply popped up inadvertently when he clicked an “unsubscribe” link within a personal email; and

d. Respondent suggested that the files might have been downloaded to his State-issued laptop by IDES co-workers using the device when he was out of the office on leaves of absence in 2013 and 2014.

STIPULATED UNDISPUTED CONCLUSIONS
OF LAW AND MIXED QUESTIONS OF LAW AND FACT

8. Pursuant to 5 ILCS 430/20-5(d), the Illinois Executive Ethics Commission (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 IDES.

9. As an IDES 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.*

10. The “ultimate jurisdictional authority” for IDES officers and employees, including Respondent, is the Governor of the State of Illinois. *Id.*, § 1-5 (defining and identifying the ultimate jurisdictional authority for various state officers, employees, and the entities for which they work).

11. Petitioner Margaret A. Hickey is the Executive Inspector General for the Agencies of the Governor, duly appointed by the Governor of the State of Illinois. *Id.*, § 20-10. As the Executive Inspector General, Petitioner is granted broad authority “to investigate allegations of . . . abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, or violations of [the Ethics Act] or violations of other related laws and rules.” *Id.* § 20-10(c).

12. With certain exceptions not relevant here, the Ethics Act provides that OEIG has jurisdiction over “all officers and employees of . . . executive branch State agencies under the jurisdiction of the Executive Ethics Commission,” *id.*, and authorizes OEIG to investigate allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, violations of the Ethics Act, or violations of other related laws and rules. *Id.*; *accord id.*, § 20-20. Consequently, OEIG’s authority extends to IDES and its officers and employees.

13. The Guidebook for IDES employees and the agency's procedures manual state that all IDES automated systems, including an employee's access to the internet, shall be used only for official State purposes.

14. It is the duty of every State employee under OEIG jurisdiction to cooperate in any investigation undertaken pursuant to the Ethics Act. *Id.*, § 20-70. "Failure to cooperate includes, but is not limited to, intentional omissions and knowing false statements." *Id.* In addition, the Commission "may levy an administrative fine of up to \$5,000 against any person . . . who intentionally obstructs or interferes with an investigation conducted under this Act by an inspector general . . ." *Id.*, § 50-5(e); *see also Wright v. Williams*, No. 10-EEC-002 (Dec. 16, 2009), at p.4 ("[R]espondent . . . intentionally obstructed or interfered with an investigation conducted by an Executive Inspector General when she did not answer interview questions truthfully."); *Meza v. Moore*, 09-EEC-012 (Oct. 10, 2010), at p.3 (same).

15. On April 20, 2015, Respondent knowingly and intentionally made numerous material false statements, misstatements, and omissions during the course of his interview with OEIG investigators. Respondent made these statements with the intent to obstruct and interfere with an official State investigation into allegations that Respondent had misused State resources.

16. Respondent's statements, omissions, and denials to OEIG investigators about his use of IDES computer equipment and internet service to view prohibited materials were knowingly false and evasive, contained material omissions, and were materially misleading.

17. In falsely denying that he had used IDES resources to view prohibited materials, Respondent intended to obstruct and interfere with, and did obstruct and interfere with, OEIG's investigation of potential Ethics Act violations in connection with Respondent's misuse of State resources.

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. Illinois Commerce Com'n* (1999), 309 Ill. App. 3d 163, 177; 242 Ill. Dec. 892, 903; *Cano v. Village of Dolton* (1993), 250 Ill.App.3d 130, 138; 189 Ill.Dec. 883, 620 N.E.2d 1200. 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, 189 Ill.Dec. 883, 620 N.E.2d 1200.

Summary judgment is appropriate only where "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." 735 ILCS 5/2-1005(c).

In determining whether a genuine issue as to any material fact exists, a court 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 lawsuit. 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. Northern Illinois Gas Company* (2004), 211 Ill. 2d 32, 43; 284 Ill. Dec. 302, 310.

ANALYSIS

Respondent stipulated to a series of facts from which the Commission concludes that Respondent violated Subsection 50-5(e) of the State Officials and Employees Ethics Act (5 ILCS 430/50-5(e)) by intentionally obstructing and interfering with the OEIG's investigation under the Act. Pursuant to this subsection, the Commission may impose an administrative fine of up to \$5,000.

The Ethics Act does not provide any guidance for the Commission to consider when levying a fine. The Commission, however, has adopted rules, found at 2 Ill. Admin. Code 1620.530(b), that outline 14 aggravating and mitigating factors that the Commission may consider in assessing an appropriate fine. These factors include: 2 Ill. Admin. Code 1620.530(b)(1), (11) and (13).

- a. § 1620.530(b)(1)—**nature of the violations**—Respondent's violation is related to knowingly untrue statements made during a single OEIG interview.

- b. § 1620.530(b)(11) and (13)—**cooperation; prior disciplinary record or Ethics Act violation**— Respondent cooperated in bringing these proceedings to a prompt resolution without the need for a hearing. He has not been previously disciplined for violating the Ethics Act.

In further mitigation, Respondent submitted two letters from health care professionals. These were not part of the joint stipulation, but the Commission accepts them and gives them due consideration. Also, according to the Complaint, Respondent resigned his position at IDES.

WHEREFORE, for the foregoing reasons, Petitioner's unopposed motion for summary judgment is granted. The Commission levies an administrative fine of \$1,000.00 against Respondent Dale Schweitzer for violation of 5 ILCS 430/50-5(e). This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: January 19, 2017