

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-002
	)	
ROGER SPRESSER,	)	
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 23, 2016. On October 20, 2016, the Commission entered an order finding the Complaint sufficient to proceed.

On December 19, 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 is represented by Roger J. Swiney.

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 in this Complaint, Respondent was employed as an IDNR Mine Inspector-At-Large. Respondent subsequently resigned from his position at IDNR, without reinstatement rights, effective October 30, 2015.
2. During the course of his State employment, Respondent took an annual, computer-based IDNR Ethics Act training program. Each of these annual programs included a section on a State employee’s duty to cooperate with an OEIG investigation, as well as an obligation to use State resources only for official State business.

3. In relevant part, Respondent's official State responsibilities included some work that could be completed in the IDNR offices, including administrative matters related to his oversight of a statewide coal mining safety inspection program. He also performed fieldwork for IDNR, which included the inspection of coal mines for compliance with the Coal Mining Act.

4. Respondent had his own cubicle at the IDNR office in Springfield, Illinois, which was located near a cubicle that his subordinates jointly shared. His field work "headquarters," however, was often his home.

5. In connection with his work responsibilities, Respondent was assigned two IDNR computers: a desktop computer (the "State-issued desktop computer"), which was located in Respondent's IDNR office cubicle; and a laptop computer (the "State-issued laptop"), which he used in the field and at home.

6. In connection with an ongoing investigation, OEIG obtained and analyzed Respondent's State email archive. During this search, investigators discovered numerous sexually explicit or otherwise inappropriate non-work related images and emails. Based on this discovery, OEIG investigators analyzed Respondent's State-issued desktop computer in mid-December 2014, but could not take possession of his State-issued laptop until January 2015, after Respondent returned from a vacation.

7. In order to determine whether any non-work related or otherwise inappropriate material was stored on or accessed with either of Respondent's State-issued computers, an OEIG investigator completed a forensic review of both devices. Those forensic review revealed the following:

a. numerous non-work related, sexually explicit, or otherwise inappropriate images were discovered on the hard drive of Respondent's State-issued laptop. All of these materials were found under Respondent's computer profile ("roger.spresser");

b. someone logging in using Respondent's computer profile had accessed pornographic and/or adult websites on his State-issued laptop; and

c. images of nude or partially nude females were discovered on Respondent's State-issued desktop computer.

8. OEIG investigators interviewed Respondent on February 17, 2015. During the course of that interview, Respondent knowingly made false and materially misleading statements and omissions, including but not limited to the following:

a. although Respondent's subordinates had limited access to his State-issued desktop computer to perform ministerial or limited work-related tasks, Respondent falsely stated that the State-issued desktop computer in his cubicle could be accessed by

fellow employees who shared his cubicle with him, and that his State-issued laptop was used by “everybody;”

b. Respondent falsely stated that he did not recognize, and had never searched for or accessed the pictures of nude or partially nude females found on his State-issued desktop computer;

c. Respondent falsely stated that he did not recognize, and had never searched for or accessed the inappropriate images found under his computer profile on his State-issued laptop’s hard drive; and

d. Respondent falsely stated that he did not access the pornographic and/or inappropriate websites that had been accessed on his State-issued laptop, using his computer profile.

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

9. 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 IDNR.

10. As an IDNR 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.*, § 20-5(d).

11. The “ultimate jurisdictional authority” for IDNR 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).

12. Petitioner Margaret Hickey is the Executive Inspector General for the Agencies of the Illinois Governor, duly appointed by the Governor of the State of Illinois. *Id.*, § 20-10.

13. 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.*, § 20-10(c), 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 IDNR and its officers and employees.

14. Section 2-2 of IDNR's Policy and Procedure Manual and its Information Technology Handbook state that all DNR information technology resources, including data processing resources such as computers, shall be used only for the benefit of the State.

15. 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).

16. On February 17, 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.

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

18. In falsely denying that he had used IDNR computer equipment 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, according to the Complaint, Respondent resigned his position at IDNR.

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 Roger Spresser 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