

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

MARGARET A. HICKEY, in her capacity)
as EXECUTIVE INSPECTOR GENERAL)
FOR THE AGENCIES OF THE ILLINOIS)
GOVERNOR,)
Petitioner,)
v.) No. 17-EEC-008
ROBERT WESTOVER,)
Respondent.)

DECISION

This matter is before the Executive Ethics Commission for purposes of considering Petitioner’s Unopposed Motion for Summary Judgment and the parties’ stipulation of facts. This decision will also serve as the Commission’s final administrative decision in this matter.

On June 14, 2017, Petitioner filed the present complaint with the Commission. The complaint alleged that respondent violated the State Officials and Employees Ethics Act when he failed to notify the Office of the Executive Inspector General and obtain a determination of eligibility prior to accepting non-State employment. An affidavit of service indicates that Respondent was served a copy of the complaint on June 20, 2017. On August 23, 2017, the Commission entered an order finding the complaint sufficient to proceed. On October 30, 2017, Petitioner filed the present Unopposed Motion for Summary Judgment and the parties’ stipulations.

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

FINDINGS OF FACT

The Commission, having reviewed the record of this case, makes the following findings of fact:

1. During the period between February 23, 2004, and March 19, 2015, Respondent Robert Westover was employed as the Assistant Deputy Director of the Illinois Department of

Commerce and Economic Opportunity's Bureau of Business Development. In that capacity, Respondent was responsible for developing and formulating bureau policy, development and control over its strategic and long-term planning, and developing its long-term budget.

2. At the time of his hire by DCEO, Respondent received and signed for a copy of a memorandum reflecting the State's new ethics rules under the State Officials and Employees Ethics Act. The memorandum provided a general description of the operation of and obligations imposed by the new Act, including its revolving door proscriptions.

3. Respondent left DCEO on or about March 19, 2015. He was notified at that time by DCEO's Chief Operating Officer that as the Assistant Deputy Director of DCEO's Bureau of Business Development, Respondent had been employed as a so-called "C-list" employee. The notice informed Respondent, in relevant part, that

[b]ecause of this designation, if you are offered non-State employment during your State employment or within a period of one year immediately after termination of State employment, you must, prior to accepting such non-State employment, notify the Inspector General. The Inspector General will then make a determination within 10 calendar days as to whether you are restricted from accepting such position. . . .

. . . You must initiate this process. . . . Please note that failure to follow the revolving door procedure is a violation of the law and could result in the opening of an investigation by the Inspector General and the imposition of monetary or other penalties. . . .

The notice directed Respondent to OEIG's website to obtain the forms and instructions necessary for completing the revolving door notification process.

4. Respondent began employment as a Vice President for a consulting group on or about January 6, 2016.

5. A review of OEIG internal records confirms that Respondent did not provide OEIG with notice of Respondent's offer of non-State employment prior to accepting the offer.

6. Between September 9, 2016, and October 6, 2016, OEIG investigators attempted unsuccessfully to contact Respondent by telephone and email to schedule an interview to discuss his current employment circumstances. Ultimately, OEIG investigators were unable to arrange a revolving door interview with Respondent.

CONCLUSIONS OF LAW

7. Petitioner Margaret A. Hickey is the Executive Inspector General for the Agencies of the Illinois Governor, duly appointed by the Governor of the State of Illinois. 5 ILCS 430/20-10(b).

8. At all times relevant to the allegations in Petitioner's Complaint, Respondent was a DCEO employee or former employee subject to the provisions of the Ethics Act, and therefore subject to the jurisdiction of the Executive Ethics Commission (the "Commission") with respect to matters arising under the Ethics Act. 5 ILCS 430/20-5(d).

9. As an DCEO employee, Respondent was subject to OEIG's jurisdiction with respect to possible violations of the Ethics Act. *Id.* § 20-10(c).

10. DCEO determined that Respondent was a State employee who, based on the nature of his job responsibilities, may have the authority to participate personally and substantially in the award of State contracts or in making regulatory or licensing decisions. 5 ILCS 430/5-45(c); *see also id.* §§ 5-45(a)-(b). Based on this determination, DCEO classified Respondent as a "C-list" employee, in reference to the Ethics Act subsection that provides for the identification of such positions. *Id.* § 5-45(c).

11. At all times relevant to the allegations in this Complaint, Respondent had a duty to comply with the provisions of the Ethics Act, and with the policies and rules adopted pursuant thereto. This duty required Respondent to provide notice to OEIG, prior to accepting an offer of non-State employment, so that OEIG could determine whether or not it was permissible under the Ethics Act to accept the offer extended to him. The Ethics Act requires in this regard that:

[a]ny State employee in a position subject to the policies required by subsection (c) [of the Ethics Act] . . . who is offered non-State employment during State employment or within a period of one year immediately after termination of State employment shall, prior to accepting such non-State employment, notify the appropriate Inspector General[,] . . . [who] shall make a determination as to whether the State employee is restricted from accepting such employment by subsection (a) or (b) [of the Ethics Act]. *Id.*, § 5-45(f).

Consistent therewith, any C-list employee who violates the Ethics Act's notification provisions shall be subject to a fine pursuant to Subsection 50-5(e) of the Ethics Act. *Accord* 2 Ill. Admin. Code § 1620.610(g).

12. The Ethics Act required Respondent to notify OEIG of his offer of non-State employment, so that OEIG could determine whether Respondent was eligible to accept the employment opportunity extended to him by his new employer. 5 ILCS 430/5-45(c), (f). The record before the Commission, however, including the Stipulations, establishes that Respondent never submitted such a request to OEIG prior to accepting the offer of non-State employment extended to him following his departure from DCEO.

13. Because Respondent has violated the Ethics Act's revolving door notice provisions, he is subject to an administrative fine. 5 ILCS 430/50-5(e) (penalties); 2 Ill. Admin. Code § 1620.610(g). Section 1620.530 of the Executive Ethics Commission's hearing rules, a copy of which has been provided to Respondent, sets out in this regard a set of aggravating and mitigating factors that the Commission may consider in imposing an appropriate fine.

14. The Executive Ethics Commission has jurisdiction over this matter.

15. The Ethics Act provides, in relevant part, that the Commission may levy an administrative fine of up to \$5,000 against any person who violates the Act. 5 ILCS 430/50-5(e).

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 5-45(f) of the State Officials and Employees Ethics Act (5 ILCS 430/5-45(f)). Petitioner has agreed to recommend a fine of not more than \$500.00. The Commission is not bound to accept this recommendation, but neither does it desire to prolong litigation unnecessarily.

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)(5), (11) and (13).

- A. § 1620.530(b)(5)—**extent of Respondent’s intent or knowledge of the facts surrounding the violation**—Prior to Respondent’s separation from State service, DCEO’s ethics officer informed Respondent of his duties with respect to the revolving door.
- B. § 1620.530(b)(11)—**cooperation**—Respondent has acknowledged his violation and has not unduly delayed this matter.
- C. § 1620.530(b)(13)—**prior disciplinary record or Ethics Act violation**—There is no evidence that Respondent has been previously disciplined for violations of the Ethics Act.

WHEREFORE, for the foregoing reasons, petitioner’s unopposed motion for summary judgment is granted. The Commission levies an administrative fine of \$500.00 against respondent Robert Westover for violation of 5 ILCS 430/5-45(f). This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: November 16, 2017