

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

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RICARDO MEZA, in his capacity as)
EXECUTIVE INSPECTOR GENERAL for)
AGENCIES OF THE GOVERNOR, State)
Of Illinois,)
Petitioner,)
v.)
KATHY HARTS,)
Respondent.)

EXECUTIVE
ETHICS COMMISSION

No. 11-EEC-004

DECISION

This cause is before the Commission following an evidentiary hearing.

Petitioner filed a verified complaint with the Commission on July 27, 2010. Respondent filed a response on September 10 and on October 18, 2010, the Commission entered an order determining that the verified complaint was sufficient to proceed. An evidentiary hearing was conducted on May 10, 2011. Petitioner filed a post-hearing brief on June 20, 2011. Respondent has filed no post-hearing brief.

Petitioner is represented by Assistant Attorney General Joanna Belle Gunderson.
Respondent is represented by Denise Mercherson.

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. Respondent Kathy Harts was an employee of the Illinois Gaming Board (IGB) in 2007-2008 as an auditor trainee. Her last full day in the office at the IGB was Monday, August 18, 2008, though later she returned briefly to retrieve personal items. (Tr. 43-45; 53-54).
2. On Friday, August 15, 2008, respondent was informed that she likely would not be certified as an auditor and could return to her previous position in State government. (Tr. 81-82, 95-96).

3. On two occasions: January 28 and April 30, 2009, respondent was interviewed by investigators of the Office of Executive Inspector General for Agencies of the Governor (OEIGG) as part of an OEIGG investigation. (Petitioner's Ex. 8-9).
4. The interviews were part of an investigation which sought, in part, whether respondent had forwarded emails from her State email account to a yahoo.com address. During those interviews, respondent denied sending emails from her State email account to a yahoo.com address on August 18, 2008. (Id., Tr. 161-162).
5. Also during those interviews, respondent told investigators that she left the office early, around 3:00 p.m., on August 18, 2008. (Petitioner's Ex. 8-9; Tr. 165-169).
6. The IGB sign-in time sheet for August 18, 2008 contains an entry for "K. Harts" signing in at 7:07 a.m. and signing out at 4:10 p.m. (Petitioner's Ex. 1).
7. Trudy Curtis, respondent's supervisor, testified that she knew that respondent was in the office at 4:00 p.m. on August 18, 2008 when respondent gave Curtis vacation leave slips for August 19-22, 2008. (Tr. 100; Petitioner's Ex. 17).
8. On August 18, 2008, 471 emails were sent from respondent's State email account to a non-State yahoo.com email account. (Petitioner's Ex. 7). The emails began to be sent to the yahoo.com account at 7:17 a.m. and continued until 3:51 p.m. (Id.). No emails were sent to the yahoo.com account between 12:42 p.m. and 2:18 p.m. (Id.).
9. Doug Bybee, Deputy Administrator of the IGB, testified that approximately 30 of the 471 emails contained information that was confidential or proprietary. (Tr. 66-67).
10. Respondent told OEIG investigators that she always went to lunch at the same time, between 1:00 and 2:00 p.m. (Petitioner's Ex. 8).
11. Respondent testified that she filed a complaint with the EEOC within a few days of leaving the IGB. (Tr. 188-190).

CONCLUSIONS OF LAW

1. Respondent Kathy Harts was at all times relevant to this complaint a State employee, as "employee" is defined in the State Officials and Employees Ethics Act ("Act") to include regular employees and appointees. 5 ILCS 430/1-5.
2. The Executive Ethics Commission has jurisdiction over respondent in the matter of her alleged failure to cooperate with the Office of the Executive Inspector General in an investigation undertaken pursuant to the Act. 5 ILCS 430/20-70.

3. The Executive Ethics Commission has jurisdiction over respondent in the matter of her alleged intentional obstruction or interference with an investigation conducted under the Act. 5 ILCS 430/50-5(e).
4. Petitioner has demonstrated by a preponderance of the evidence that Kathy Harts intentionally made false statements about the time she left the office on August 18, 2008.
5. Respondent violated Section 50-5(e) of the State Officials and Employees Ethics Act when, during interviews conducted by OEIG investigators, she intentionally made false statements about the time she left the office on August 18, 2008. 5 ILCS 430/50-5(e).
6. Petitioner has demonstrated by a preponderance of the evidence that Kathy Harts intentionally made false statements denying that she sent emails from her State email account to a yahoo.com account.
7. Respondent violated Section 50-5(e) of the State Officials and Employees Ethics Act when, during interviews conducted by OEIG investigators, she intentionally made false statements denying that she sent emails from her State email account to a yahoo.com account. 5 ILCS 430/50-5(e).
8. The complaint in this matter was timely filed.
9. The Executive Ethics Commission may levy an administrative fine of up to \$5,000 against a person who intentionally obstructs or interferes with an investigation conducted under this Act by an inspector general. 5 ILCS 430/50-5(e).

ANALYSIS

Respondent Kathy Harts violated Section 50-5(e) of the State Officials and Employees Ethics Act (5 ILCS 430/50-5(e)) when she obstructed the investigation by intentionally making specific, false statements to OEIG investigators who were conducting an investigation pursuant to the Act. The false statements were relevant to the investigation, very specific and clearly intended to obstruct or interfere with the investigation.

Respondent continues to insist that she did not send the emails and suggests that her computer may have been subject to a virus. She offered no evidence for the existence of this virus. Furthermore, the times that the emails were sent correspond very closely to the start and end times on the August 18, 2008 time sheet and also with her lunch period.

Respondent also argues that the 4:10 p.m. end time on her time sheet was not made by her and that she did leave the office at 3:00 on August 18, 2008. She agrees, however,

that the time sheets are correct in every other respect. The eyewitness testimony of respondent's supervisor placing respondent in the office at 4:00 p.m. is more credible.

Finally, it appears that respondent had a motive to preserve evidence by forwarding her emails to a private account on her last day in the office. Her emails might have been useful, at least in respondent's mind, when pursuing legal or administrative action following the decision not to certify her as an auditor. As noted above, she filed a complaint with the EEOC within days of leaving her position at the IGB.

In light of these circumstances, the Commission will levy an administrative fine of \$750.00 for intentionally obstructing or interfering with an investigation conducted under this Act by an inspector general. 5 ILCS 430/50-5(e).

WHEREFORE, for the foregoing reasons, the Commission finds by a preponderance of the evidence that respondent Kathy Harts violated Section 50-5(e) of the State Officials and Employees Ethics Act (5 ILCS 430/50-5(e)).

IT IS ORDERED that an administrative fine of \$750.00 is levied against respondent Kathy Harts in accordance with her violation of Section 50-5(e) of the State Officials and Employees Ethics Act (5 ILCS 430/50-5(e)).

IT IS FURTHER ORDERED that petitioner's motion for extension of time to file post hearing brief is granted.

This is a final administrative decision and subject to the Administrative Review Law.

SO ORDERED.

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