

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.))
))
DANNY CLAYTON,)
 Respondent.)

EXECUTIVE
ETHICS COMMISSION

No. 11-EEC-012

DECISION

This cause is before the Executive Ethics Commission (“Commission”) following an evidentiary hearing on April 19 and 20, 2012.

Petitioner filed the present verified complaint with the Commission on May 25, 2011. Respondent’s filed an entry of appearance and a verified answer on June 24, 2011. On August 24, 2011, the Commission entered an order finding the complaint sufficient to proceed.

Following the evidentiary hearing on April 19 and 20, 2012, petitioner filed a post-hearing brief on August 1, 2012, respondent filed a brief on September 21, 2012 and petitioner filed a reply brief on October 11, 2012.

Petitioner is represented by Assistant Attorneys General Deborah Barnes and Laura Bautista. Respondent is represented by Robert C. Wilson.

FINDINGS OF FACT

A copy of 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 Danny Clayton (“Clayton”) was at all times relevant to the complaint employed by the Illinois Department of Transportation (“IDOT”) as Assistant to the Region Five Engineer in IDOT District Nine.
2. In 2009, IDOT organized a summer jobs program, including a program specifically for non-engineering students. Positions for the program were posted on April 6, 2009 and remained open through April 17, 2009. (Tr. 415).

3. IDOT employee Billie Henderson (“Henderson”) received and scored the applications, which consisted of reviewing answers to a series of weighted questions concerning the applicants’ work and college experience, and work ethic. (Tr. 149-50).
4. During the scoring process, respondent approached Michael Bigler (“Bigler”) and asked him how certain candidates were scored. When Bigler told him that these candidates were not scored among the top twenty, respondent asked Bigler and/or Henderson to retrieve those applications for him. (Tr. 153-54).
5. When respondent returned the applications, there was more information on them and they were rescored higher than the original applications, according to Bigler and Henderson. (Tr. 155-158 and 332). The increased scores placed these candidates in the category of successful applicants. (Tr. 158).
6. No later than March of 2010, the the Office of Executive Inspector General for Agencies of the Governor (“OEIGG”) began an investigation into alleged hiring improprieties with respect to the 2009 summer jobs program. (Tr. 275-277).
7. On October 5, 2010, respondent was interviewed by investigators of the Office of Executive Inspector General for Agencies of the Governor (OEIGG) as part of an OEIGG investigation. (Tr. 275). During that interview, respondent denied being involved in any way in the 2009 summer hiring program, denied personally removing applications and denied asking anyone to submit a second application. Respondent also denied altering scores or providing information that resulted in altering scores. (Tr. 286-87).
8. On October 6, 2010, respondent went to Bigler’s office and asked him to go outside. Once outside in the parking lot, respondent asked Bigler if he could trust him “100 per cent.” Then he told Bigler that he told the OEIGG investigators that he (respondent) had nothing to do with the 2009 summer hiring process and that it was handled by personnel. Respondent told Bigler that if the investigators talked to Bigler, that it was in Bigler’s interest to answer their questions the same way. (Tr. 167-68).
9. At 1:14 p.m. on October 6, 2010, Bigler sent an email message to an OEIGG investigator in which he described the conversation he had earlier that day with respondent. (Petitioner’s Exhibit 3).
10. On November 9, 2010, respondent told OEIGG investigators, again, that he was not involved with the hiring for the 2009 summer program, that he had not requested the removal of applications, and that he had not asked anyone to submit a second application. (Tr. 293-94). Respondent also told OEIGG investigators that he had a conversation in the parking lot with Bigler in which he asked Bigler if he could trust him and that he discussed the 2009 hiring program with Bigler. (Tr. 297). Respondent explained to OEIGG investigators that he did not attempt

to interfere with the investigation, but only wanted to make sure that the truth came out. (Tr. 297-98).

11. Respondent testified at hearing that during his October 6, 2010 conversation with Bigler, he told Bigler that the OEIGG investigators accused him of removing applications and taking them back to the applicants. Respondent also told Bigler that he (respondent) told the OEIGG investigators that Bigler raised the idea of a second application process with respondent. (Tr. 90).
12. Although interviewed twice, respondent never told OEIG investigators or his ethics officer that he returned applications to applicants at the direction of Bigler. (Tr. 95).
13. Billie Henderson testified at hearing that respondent asked her to retrieve a couple of the applications to see where the candidates were ranked. (Tr. 327). Henderson gave the applications to respondent and rescored them when respondent returned them to her. (Tr. 328).
14. At hearing, respondent pointed out several examples of unusual scoring of other candidates related to the 2009 summer jobs program. One candidate, who was the brother of an employee, received a perfect score on his application, but a lower score on his second application. (Tr. 347-50, 358). Two other candidates' scores increased with a second application, placing them in the category of successful applicants. (Tr. 372). One of these candidates allegedly had strong ties with the Governor. (Tr. 228).
15. At the conclusion of the OEIGG investigation into this matter, the OEIGG recommended that respondent be terminated and his termination occurred in January of 2011 (Tr. 304).

CONCLUSIONS OF LAW

1. Respondent Danny Clayton 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 his alleged failure to cooperate in an investigation undertaken pursuant to the Act (5 ILCS 430/20-70) and in the matter of his alleged obstruction and interference with an investigation conducted under the Act (5 ILCS 430/50-5(e)).
3. Petitioner has demonstrated by a preponderance of evidence that Danny Clayton violated Section 20-70 of the State Officials and Employees Ethics Act when he failed to cooperate in an investigation undertaken pursuant to the State Officials and Employees Ethics Act by telling OEIG investigators on November 9, 2010

that he did not ask Michael Bigler to make false statements to OEIG investigators. 5 ILCS 430/20-70.

4. Petitioner has demonstrated by a preponderance of evidence that Danny Clayton violated Section 50-5(e) of the State Officials and Employees Ethics Act when he intentionally obstructed or interfered with an investigation conducted under the State Officials and Employees Ethics Act by asking Michael Bigler to tell OEIG investigators that he, Danny Clayton, did not aid 2009 Summer Program candidates, did not improperly remove candidate's applications, and that Clayton had no involvement in the hiring process. 5 ILCS 430/50-5(e).
5. The Executive Ethics Commission may levy an administrative fine of up to \$5,000 for a violation of the State Officials and Employees Ethics Act. 5 ILCS 430/50-5(e).

ANALYSIS

Respondent Danny Clayton violated Sections 20-70 and 50-5(e) of the State Officials and Employees Ethics Act (5 ILCS 430/20-70 and 50-5(e)) when he intentionally and knowingly made a series of false statements to investigators conducting an investigation pursuant to the State Officials and Employees Ethics Act. He also violated these Sections when he asked Michael Bigler to make untrue statements to OEIG investigators.

Danny Clayton tells a story that is very different from the story told by other witnesses, including the OEIG investigator, Michael Bigler, and Billie Henderson. The testimony of these other witnesses is consistent. Clayton was very much involved in the 2009 summer job program hiring process. He inquired about particular candidates and their scoring, retrieved applications, and returned them with additional information.

Clayton met Bigler in the office parking lot on October 6, 2010 and started a conversation about the OEIGG investigation into the 2009 summer hiring program. Clayton and Bigler disagree about the specifics of that conversation. Clayton testified that the purpose of the conversation was simply to encourage Bigler to tell the truth to OEIGG investigators. Bigler, however, testified that Clayton asked him to lie.

Bigler's version of events occurring on October 6, 2010 is more credible. Bigler memorialized the conversation with Clayton and forwarded it to an OEIGG investigator within about an hour.

Clayton's argument that Bigler testified falsely in an attempt to cover up his (Bigler's) wrongdoing with respect to the 2009 summer hiring program likewise lacks credibility. Clayton had ample opportunity to raise this matter with OEIGG investigators, but did not. This argument appears to be an afterthought and is not supported by other witnesses. While there appears to be a handful of inconsistencies and at least one attempt by another person to exert undue influence in the hiring process, there is insufficient evidence to suggest that Bigler's testimony is unreliable.

The Commission must determine an appropriate sanction. Petitioner seeks a "severe" fine and respondent continues to contend that there has been no violation. In mitigation, there is no evidence of prior disciplinary action against respondent.

In aggravation, respondent attempted to involve another State employee in his deception, and has cost the State considerable resources in investigating and prosecuting this offense.

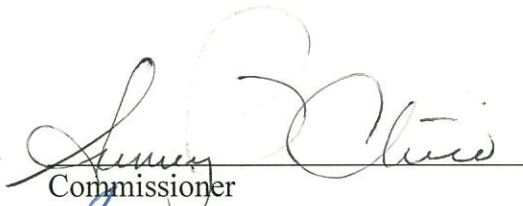
WHEREFORE, for the foregoing reasons, the Commission finds that respondent Danny Clayton violated Sections 20-70 and 50-5(e) of the State Officials and Employees Ethics Act (5 ILCS 430/20-70 and 50-5(e)).

IT IS FURTHER ORDERED that an administrative fine of \$4,000.00 is levied against respondent Danny Clayton in accordance with his violation of Sections 20-70 and 50-5(e) of the State Officials and Employees Ethics Act (5 ILCS 430/20-70 and 50-5(e)).

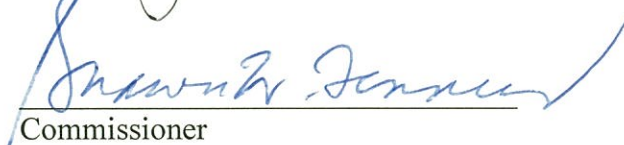
This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: 11-29-2012


Commissioner


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