

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

SUSAN M. HALING, in her capacity as the	)	
ACTING EXECUTIVE INSPECTOR	)	
GENERAL, for the AGENCIES OF THE	)	
ILLINOIS GOVERNOR,	)	
Petitioner,	)	
	)	
v.	)	No. 18-EEC-006
	)	
LATOYA DAVIS,	)	
Respondent.	)	

DECISION

This matter is now before the Commission on Petitioner’s unopposed motion for summary judgment.

Petitioner filed the present complaint on March 13, 2018. An affidavit of service indicates that Respondent was personally served a copy of the complaint on March 19, 2018. Respondent filed no objections to the complaint, which the Commission found sufficient to proceed on May 17, 2018. Petitioner filed the present unopposed motion for summary judgment with the parties’ stipulation of material facts on October 19, 2018. Respondent filed a statement of mitigation on November 8, 2018.

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 the record, including the parties’ joint stipulation of undisputed material facts, the Commission makes the following findings of fact:

1. At all times relevant to the allegations in this Complaint, Respondent was employed by the Chicago Transit Authority (the “CTA”) at its headquarters in Chicago’s West Loop neighborhood. Respondent worked for 8.5 hours per day, though her schedule was flexible: she was allowed to begin as early 7:00 a.m., or as late as 9:00 a.m. and accordingly, to finish work between 3:30 p.m. and 5:30 p.m. To complete her CTA timesheets, Respondent was obliged to

enter the times she worked and to sign her name as verification that the listed dates and times were accurate.

2. Respondent lived with her grandmother, who was a participant in the Community Care Program (“CCP”) offered by the Illinois Department on Aging (“IDoA”). This program provides homecare to residents with disabilities, pursuant to specific Home Care Plans developed between IDoA Care Coordination Units and each Plan participant.

3. In 2012, Respondent became her grandmother’s “preferred caregiver” under the CCP, and thereby became obligated to adhere to a Homecare Plan that was tied, by agreement, to specified services administered on specific days, for a specified number of hours per day. As an IDoA preferred caregiver, Respondent was paid by a Home Care Provider (“Provider”) for each hour of homecare that Respondent certified that she had actually provided, and the Provider would then be reimbursed by IDoA for each such hour of homecare provided.

4. In 2016, OEIG initiated an investigation into the possibility that Respondent may have been falsely reporting that she had provided homecare to her grandmother on days and at times when she was actually at work for the CTA. As part of its investigation, OEIG interviewed Respondent on September 13, 2016. When shown copies of her CTA and Provider time records for the preceding 6-month period, Respondent initially stated that all of her time records were complete and accurate. However, she later admitted that while her CTA timesheets were accurate, she had provided false information in her Provider timesheets regarding the times that she provided her services.

5. During her interview, Respondent also stated that she had filled out Part 1 of her CTA Secondary Work Application and then submitted the partially-completed application to her Provider supervisor for the purpose of having the Provider complete Part 2 of the application. Respondent further stated, however, that the Provider had forwarded the application to a Provider Branch Manager, to be completed by the Provider Branch Manager. Respondent also stated during her OEIG interview that the Provider had returned Respondent’s completed and signed Secondary Work Application that same day, after which Respondent submitted her application to the CTA.

6. Based on the evidence adduced during OEIG’s investigation, however,

A. Respondent’s Provider supervisor had directed Respondent to submit her Secondary Work Application to a Provider Human Resources staff member (not the Provider Branch Manager) who was responsible for preparing such “external” work forms;

B. the Provider Human Resources staff member did not review or prepare Respondent's CTA Secondary Work Application;

C. the Provider Branch Manager did not fill out Part 2 of Respondent's Secondary Work Application;

D. during the course of her OEIG interview, Respondent conceded that some of the information in her CTA Secondary Work Application regarding days actually worked did not accurately reflect her work schedule as a preferred caregiver. However, Respondent falsely stated that she had asked the Provider's Branch Manager to fill out the schedule that way, because Respondent had been considering such a change at the time, but never went forward with the proposed schedule change; and

E. Respondent's representations about who had actually signed Part 2 of her Secondary Work Application were false.

7. Respondent intentionally made these false statements to OEIG investigators in an effort to receive payment for providing homecare services to her grandmother on days or at times that were in conflict with her grandmother's Provider Home Care Plan.

#### CONCLUSIONS OF LAW

1. Petitioner Susan M. Haling is the Acting Executive Inspector General for the Agencies of the Illinois Governor, duly appointed by the Governor for the State of Illinois pursuant to 5 ILCS 430/20-10. Petitioner has broad authority "to investigate allegations of fraud, waste, abuse, mismanagement, misconduct, nonfeasance, misfeasance, malfeasance, or violations of [the Ethics Act] or violations of other related laws and rules." *Id.* § 20-10(c).

2. At all times relevant to the allegations in the Complaint, Respondent was a State employee, and therefore subject to the provisions of the Ethics Act, and to the jurisdiction of the Executive Ethics Commission (the "Commission") with respect to matters arising under the Ethics Act. *Id.* § 20-5(d).

3. As a State employee, Respondent's "ultimate jurisdictional authority" was the Governor, and therefore Respondent was subject to the jurisdiction of the Executive Inspector General for the Governor. *Id.* §§ 1-5, 20-10(a), (c).

4. Pursuant to 5 ILCS 430/20-5(d), 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 IDOT.

5. As a State 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.*

6. Section 50-5(e) of Ethics Act provides “An ethics commission may levy an administrative fine of up to \$5,000 against any person who violates this Act, who intentionally obstructs or interferes with an investigation conducted under this Act by an inspector general, or who intentionally makes a false, frivolous, or bad faith allegation. 5 ILCS 430/50-5(e).

7. At all times relevant to the allegations in Petitioner’s Complaint, Respondent had a duty to comply with the provisions of the Ethics Act, and with all policies adopted and implemented pursuant thereto.

8. Respondent violated Section 50-5(e) of the Ethics Act when she intentionally obstructed or interfered with an investigation of the EIG, as described in Findings of Fact, *supra*.

9. Section 50-5(e) of the Ethics Act provides “An ethics commission may levy an administrative fine of up to \$5,000 against any person who violates this Act, who intentionally obstructs or interferes with an investigation conducted under this Act by an inspector general, or who intentionally makes a false, frivolous, or bad faith allegation. 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. Ill. Commerce Comm’n*, 309 Ill. App. 3d 163, 177, 242 Ill. Dec. 892, 903, 722 N.E.2d 676, 687 (1st Dist. 1999); *Cano v. Vill. of Dolton*, 250 Ill. App. 3d 130, 138, 189 Ill. Dec. 883, 889, 620 N.E.2d 1200, 1206 (1st Dist. 1993). 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 at 889, 620 N.E.2d at 1206.

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

In determining whether a genuine issue as to any material fact exists, the Commission 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 matter. 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. N. Ill. Gas Co.*, 211 Ill.2d 32, 43, 284 Ill. Dec. 302, 310, 809 N.E.2d 1248, 1256 (2004).

#### ANALYSIS

Respondent stipulated to a series of facts from which the Commission concludes she intentionally obstructed or interfered with an investigation conducted under this Act by an inspector general in violation of the State Officials and Employees Ethics Act (5 ILCS 430/50-5(e)). Consequently, the Commission may levy an administrative fine of up to \$5,000 against Respondent for each of his violations of the Ethics Act. 5 ILCS 430/50-5(e).

Respondent submitted a statement of mitigation in which she states that she did work the hours for which the CTA paid her, but she did so during breaks and weekends. She acknowledges that she made false statements about these hours. She also states that she received an unpaid, three-day suspension and resigned her position as her grandmother's home care provider.

The Ethics Act does not provide any guidance for the Commission to consider when levying a fine. The Commission has, however, adopted rules, found at 2 ILL. ADMIN. CODE 1620.530(b), that outline fourteen aggravating and mitigating factors the Commission may consider in assessing an appropriate fine. In relevant part, these factors include: the nature of the violations; the extent of the use of resources, money, time to the State; the extent of the Respondent's intent or knowledge of the facts surrounding the violation; and Respondent's cooperation in the matter. 2 ILL. ADMIN. CODE 1620.530(b)(1), (4), (5) and (11).

WHEREFORE, for the foregoing reasons, the Commission levies an administrative fine of \$1000.00 against Respondent, Latoya Davis, for violation of 5 ILCS 430/50-5(e). This is a final administrative decision subject to the Administrative Review Law.

SO ORDERED.

ENTERED: November 14, 2018