

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

In re: JAMES McDANIEL

)

OEIG Case # 10-0009(a)

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Commission to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes competing interests of increasing transparency and operating with fairness to the accused. In order to balance these interests, the Commission may redact certain information contained in this report. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut its factual allegations or legal conclusions before the Commission.

The Executive Ethics Commission (“Commission”) received a final report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Governor’s Executive Inspector General and to James McDaniel at his last known address.

These recipients were given fifteen days to offer suggestions for redaction or provide a response to be made public with the report. Certain information contained in the proposed public response may have been redacted in accordance with the Commission’s determination that it should not be made public. The Commission, having reviewed all suggestions received, makes this document available pursuant to 5 ILCS 430/20-52.

FINAL REPORT

I. Allegations and Background

The Office of Executive Inspector General (“OEIG”) received a complaint alleging that former Illinois Department of Transportation (“IDOT”) employee James McDaniel promised an IDOT job to [a private citizen], met her at various apartments in Springfield while on State time, and consumed cocaine and alcohol with her during their meetings. During the course of the investigation, the OEIG also found that Mr. McDaniel used his State computer for personal use.

Mr. McDaniel was the IDOT Chief of Business Services until he left State employment in September, 2010. IDOT records show Mr. McDaniel’s salary at the time of the allegations (June to October 2009) was \$7,067 per month or approximately \$84,804 per year.

II. Investigation

A. OEIG Interview of [redacted]

On January 21, 2010 and February 4, 2010, the OEIG interviewed [redacted], a private citizen [hereinafter "citizen"]. [Sentence redacted because it contains identifying information.] According to [citizen], his wife told him that between June and October 2009, she met Mr. McDaniel at apartments she cleaned in downtown Springfield a few times per week for approximately four to five hours during Mr. McDaniel's work hours. [Citizen] noted that his wife met Mr. McDaniel on August 20, October 9, October 22, and October 23, 2009. [Citizen] also indicated that his wife said that she and Mr. McDaniel had consumed cocaine and vodka during these meetings. According to [citizen], his wife checked into a drug rehabilitation program at the end of October 2009.¹

[Citizen] also stated that his wife had told him that Mr. McDaniel had informed her in late May 2009, that Mr. McDaniel could get her a job at IDOT in Public Relations. Apparently, Mr. McDaniel indicated that the job was in the Traffic Safety Division located on North Ninth Street in Springfield. [Citizen] said that his wife submitted an on-line application for IDOT and that on September 14, 2009, Mr. McDaniel's secretary contacted his wife in order to set up an interview with IDOT employee [redacted]. [Citizen] added that on September 14, 2009, his wife called [the employee's] secretary about the job and that this call allegedly upset Mr. McDaniel. As a result of the call, [citizen's] wife and [another person] exchanged Facebook messages the same day.²

B. OEIG Interview of [redacted]

On February 16, 2010, the OEIG interviewed [redacted]. According to [redacted], [citizen's wife] indicated that she had met and consumed alcohol and cocaine with Mr. McDaniel on approximately twelve occasions. [Redacted] reported that, on October 23, 2009, [citizen's wife] telephoned her about picking up her [(citizen's wife's)] children. According to [redacted], [citizen's wife] later was unable to recall calling her because she had been drinking alcohol and using cocaine with Mr. McDaniel in an apartment on First Street in Springfield when the call was made.

[Redacted] said that [citizen's wife] told her that Mr. McDaniel had promised to get her a training job with IDOT. [Redacted] also said that when [citizen's wife] called about the job, she

¹ Because [citizen's wife] was actively involved in drug rehabilitation during the OEIG investigation, and witnesses expressed great concern about her emotional stability and condition, she was not interviewed by the OEIG.

² The OEIG obtained Facebook messages between [another person] and [citizen's wife] on September 14, 2009. In the messages, [another person] informed [citizen's wife] that she should not have called IDOT about a job on her own. [Another person] stated that Mr. McDaniel has "got to deal with it behind the scenes or it all gets messed up and confused and will cause problems for him AND you." [Another person] indicated to [citizen's wife] that calling would hurt her chances at a job and put Mr. McDaniel in a "bad spot." [Citizen's wife] responded on the same day, writing, in relevant part, "I completely understand, and I certainly did not mean to cause problems. I was phoned a while back by James Sec that the interview was set up for 2morrow. She said that I would be getting a call today as far as confirmation and time."

was informed that no one knew anything about the job. [Redacted] stated that Mr. McDaniel [and another person] were reportedly troubled by [citizen's wife's] telephone call.

C. OEIG Review of Time Records

The OEIG obtained and reviewed the time sheets and leave request slips for Mr. McDaniel between June and October 2009. The time sheets were filled out and signed by Mr. McDaniel and contain a location for him to document his arrival time, departure time, lunch break, time away from IDOT premises, and any utilized benefit time for each day's attendance. The leave request slips list the number of hours and type of benefit time utilized for each day on which benefit time is taken and are signed by Mr. McDaniel and his supervisor. The chart below reflects information recorded by Mr. McDaniel on time records for the specific dates when [citizen's wife] and Mr. McDaniel allegedly met during State time.

Date	Time In	Lunch	Time Out	Time Away from Office	Benefit Time Utilized
8/20/09	7:40 a.m.	12:30 – 1:00	4:10 p.m.	1:00 - 4:10 p.m. "Capitol City"	None
10/09/09	10:15 a.m.	None recorded	5:40 p.m.	11:40 a.m. – 12:50 p.m. "Doctor"	2 hrs sick time
10/22/09	8:10 a.m.	None recorded	4:30 p.m.	12:15 – 4:30 p.m. "Stratton"	None
10/23/09	8:23 a.m.	None recorded	1:30 p.m.	None indicated	2.5 hrs sick time

D. OEIG Review of Cell Phone Records and Text Message

The OEIG obtained and reviewed records for [citizen's wife's] cell phone. A review of these cell phone records do not reflect a call made to [the employee] on or around September 14, 2009. The records, however, do indicate that from June through October 2009, during State working hours, Mr. McDaniel sent approximately 441 text messages from his private cell phone to [citizen's wife's] cell phone. Additionally, the records show that over 100 texts were sent on October 9, October 22, and October 23, 2009, the dates previously identified by [citizen] as days when Mr. McDaniel and his wife met.

The OEIG also reviewed an October 30, 2009 text message from [citizen] to Mr. McDaniel, stating, "when [wife] gets out of rehab she is going to need a job bad. are you still going to be able to help [redacted] 9:49AM." Mr. McDaniel responded the same day writing, "I will GUARANTEE u that we will make it happen. We can discuss what makes most sense and results n the least amt of stress. Stay strong! She needs u. 9:58am."

On December 3, 2009, Mr. McDaniel texted [citizen] writing, "As intimated previously, I will do what I can and what [redacted] is comfortable with...there will b no new hiring until afr holidays. 10:59AM."

E. OEIG Forensic Examination of State Computer

On March 10, 2010, the OEIG seized Mr. McDaniel's State computer and conducted a forensic analysis. The analysis revealed evidence of personal use of the computer by Mr. McDaniel. Specifically, the OEIG analysis revealed that photographs not related to State business and numerous images of women modeling undergarments had been viewed on the computer.

F. OEIG Review of Documents Relating to [citizen's wife]

The OEIG requested from IDOT any employment applications, resumes, or documented job interviews of [citizen's wife] and any Public Relations positions filled at IDOT during the time period of May through December 2009. IDOT was unable to locate any employment related documents on file for [citizen's wife]. IDOT also indicated that no Public Relations positions were posted during the time period of May through December 2009.

G. OEIG Interview of [employee]

On June 15, 2010, the OEIG interviewed [an employee]. [The employee] said he never discussed the potential employment of [citizen's wife] with Mr. McDaniel. [The employee] further stated that he never interviewed [citizen's wife]. [The employee] stated that he receives employment applications and resumes from IDOT Personnel when the [employee's division] is hiring for a double exempt or temporary position. [The employee] reviewed this file and did not locate any information on [citizen's wife].

H. OEIG Subject Interview of James McDaniel

On June 16, 2010, the OEIG interviewed James McDaniel. Mr. McDaniel stated during his interview that he was involved with what he described as an "inappropriate relationship not an affair" with [citizen's wife] from June through October 2009. Mr. McDaniel said that during that time frame, he and [citizen's wife] would meet at the apartments she cleaned in the downtown Springfield area, but he could not recall the exact dates. Mr. McDaniel acknowledged that all of his meetings with [citizen's wife] were while he was on State time. He indicated that although he always left work during a work day to meet with her, he always used benefit time to cover his absences. Mr. McDaniel estimated that during June through October 2009, he met with [citizen's wife] on approximately 10 – 15 occasions for about one to three hours, and estimated that he spent a total of 30 – 40 hours with [citizen's wife] while still on State time. The OEIG provided Mr. McDaniel with copies of his time sheets for the period he met with [citizen's wife]. After reviewing the time sheets, Mr. McDaniel was unable to provide any explanation as to why the time sheets did not reflect the total approximate hours of absences he took from work to meet [citizen's wife].

Mr. McDaniel stated that during his meetings with [citizen's wife] in which he was on State time, he and [citizen's wife] would drink vodka and ingest cocaine. Mr. McDaniel denied ever returning to work under the influence of alcohol or drugs, but said he was aware his actions violated the IDOT policy on alcohol and drug use.

Mr. McDaniel also stated that he used his State computer to view photographs not related to State business and viewed numerous website photos of women modeling undergarments. He explained that he viewed the photos because he was shopping for his wife, but denied making any purchases of those items from his State computer.

Mr. McDaniel indicated that around June 2009, [citizen's wife] expressed an interest in obtaining a job at IDOT. Mr. McDaniel stated that his assistance to [citizen's wife] consisted of explaining the application process for State employment, discussing her employment qualifications, instructing her on how to complete the application, reviewing her resume, and accepting a copy of the resume. McDaniel said that he told [citizen's wife] that he would take a look at IDOT to see if there were any open positions for which she would qualify. Mr. McDaniel explained that he planned on recommending [citizen's wife] for a temporary or double exempt position at IDOT but was not going to assist her in obtaining a *Rutan* covered position. Mr. McDaniel stated that he was not aware of [citizen's wife] ever interviewing for a job position at IDOT and stated that he ultimately never referred [citizen's wife] to IDOT Personnel for any position. When asked by the OEIG whether he had promised [citizen's wife] employment at IDOT, Mr. McDaniel stated that he did not recall.

The OEIG provided Mr. McDaniel with copies of the cell phone records from May through October, 2009. After reviewing them, Mr. McDaniel stated the records speak for themselves and said that he did send and receive the texts from [citizen's wife] as indicated in the cell phone records. Mr. McDaniel also reviewed copies of the text messages between him and [citizen] on October 30, 2009 and December 3, 2009, regarding a job for [citizen's wife]. Mr. McDaniel said they accurately reflected the text messages sent between him and [citizen]. However, Mr. McDaniel stated that he had only informed [citizen] that he would do what he could to assist [citizen's wife] in obtaining a job.

I. OEIG Analysis of Timesheets

After Mr. McDaniel's interview, the OEIG further reviewed Mr. McDaniel's time sheets from June to October 2009. According to these time records, there were three occasions between June and October 2009 when Mr. McDaniel recorded leaving work early, using benefit time, and not returning to work later that day: July 20, 2009, August 17, 2009, and October 23, 2009. On those dates, Mr. McDaniel used a total of 8 hours of benefit time.

III. Analysis

A. IDOT Timekeeping Policy

The IDOT Rules for Employee Conduct state that employees are expected to be at their work stations ready to work at the appointed starting time until the appointed quitting time, and that an employee may be asked to pay restitution for the cost of any abuse of State time. IDOT Departmental Order 3-1, Chap. 7-3 (2002).³ The IDOT Orders further state that employees are

³ The IDOT policies cited in this report were the policies in effect at the time of the alleged misconduct. IDOT revised its policies in February 2010.

expected to report accurately and truthfully all information pertaining to employment including, but not limited to, timekeeping records. IDOT Dept. Order 3-1, Chap. 11-3(S) (2002).

Mr. McDaniel admitted that he met [citizen's wife] on State working days during State working hours. He claimed that he always left from work to meet [citizen's wife], but that he always used benefit time to account for his absences from work. According to Mr. McDaniel's time sheets, there were only three occasions between June and October 2009 that Mr. McDaniel recorded leaving from work, using benefit time, and not returning to work later that day. During this time frame, Mr. McDaniel used a total of eight hours of benefit time. However, Mr. McDaniel estimated that he spent a total of 30 – 40 hours with [citizen's wife] during State working hours. If Mr. McDaniel spent a minimum of 30 hours with [citizen's wife] during State working hours between June and October 2009, but only used eight hours of benefit time, he clearly failed to accurately and truthfully report his time, resulting in payment for at least 22 hours of unearned wages, at a cost to the State of approximately \$956.76.

It should be noted that on three of the four dates provided by [citizen] when [citizen's wife] told him she met with Mr. McDaniel, Mr. McDaniel's time sheets reflect that he was out of the office. Mr. McDaniel claimed to be working outside of the IDOT building from 1:00-4:00 p.m. on August 20, 2009, and from 12:15-4:30 p.m. on October 22, 2009. On October 23, 2009, Mr. McDaniel did in fact utilize benefit time in the afternoon. The OEIG was unable to confirm that Mr. McDaniel met with [citizen's wife] on these afternoons when he claimed to be working outside of the IDOT building to support any further abuse of time allegations on these specific dates. Nonetheless, based on the at least 22 hours in unaccounted-for time, the allegation that Mr. McDaniel abused State time is FOUNDED.

B. IDOT Employee Conduct Policy

The IDOT Rules for Employee Conduct prohibit the possession of alcoholic beverages or illegal drugs on State time. IDOT Dept. Order 3-1, Chapter 11-3(A)(1) (2002). IDOT Orders state that employees shall obey all laws of the State and all rules and regulations of IDOT. IDOT Dept. Order 3-1, Chap. 11-3(L) (2002). The Orders also state, "The use of unauthorized banned substances by any employee poses a significant danger to the health and safety of the employee and the public. It undermines public trust, adversely affects productivity, and is, therefore, prohibited." IDOT Dept. Order 3-1, Chap. 13-1 (2002).

Mr. McDaniel admitted that he used cocaine and consumed liquor during his meetings with [citizen's wife]. Cocaine is a controlled substance and possession of cocaine is prohibited by the State of Illinois Controlled Substances Act. 720 ILCS 570/402. Mr. McDaniel violated IDOT Orders by not obeying the laws of the State through his possession of cocaine, a controlled substance. Furthermore, because Mr. McDaniel failed to use benefit time to cover the vast majority of time he estimated he spent with [citizen's wife], Mr. McDaniel used alcohol and a controlled substance on State time. This conduct is prohibited by policy, a point that Mr. McDaniel acknowledges. The allegation that Mr. McDaniel committed employee misconduct is FOUNDED.

C. State Computer Use

The IDOT Information Technology Rules state that IDOT information technology resources are to be used for authorized State business purposes. IDOT Dept. Order 8-2 (2) (2000).⁴ The Rules include examples of inappropriate internet use as use for personal purposes such as vacation planning and shopping. IDOT Dept. Order 8-2 (5)(B)(6) (2000).

Mr. McDaniel stated that he used his State computer to view on the internet numerous photographs for personal purposes and pictures on the Victoria's Secret website to shop for items for his wife. Use of the internet for personal purposes, including shopping, is listed as an inappropriate use of the State computer in the IDOT Orders. Accordingly, Mr. McDaniel violated IDOT policy by using his State computer for unauthorized business purposes.

D. Allegation of Promise of Job at IDOT

IDOT Orders state that the Department will seek employees on the basis of individual job requirements. IDOT Dept. Order 3-1, Chap. 3-8 (2002). The Orders further state that the selection of employees shall be based on a person's qualifications to fulfill job responsibilities and duties with consideration of applicable affirmative action goals. IDOT Dept. Order 3-1, Chap. 3-8(A)(1) (2002). While Mr. McDaniel did not recall promising [citizen's wife] employment at IDOT, he admitted to assisting [citizen's wife] with IDOT employment by explaining the application process, instructing her on how to complete the application, and meeting in his office with her on two occasions to discuss her employment qualifications. He reviewed [citizen's wife's] resume and accepted a copy of the resume from her. Mr. McDaniel admitted that he sent the text messages to [citizen] in response to [citizen] inquiring about Mr. McDaniel obtaining a job for [citizen's wife], in which Mr. McDaniel stated, "I will GUARANTEE u that we will make it happen." Mr. McDaniel claimed that ultimately he never did refer [citizen's wife] to Personnel for any IDOT position.

The evidence supports the conclusion that Mr. McDaniel led [citizen and citizen's wife] to believe that he would obtain a job for [citizen's wife]. However, there is insufficient evidence that Mr. McDaniel violated IDOT policy through his promise to assist [citizen's wife] in obtaining an IDOT job because he never actually took any steps in furtherance of obtaining a job for [citizen's wife]. [The employee] stated that he did not interview [citizen's wife] nor did he discuss [citizen's wife] with Mr. McDaniel. Furthermore, there is no evidence that an open position in Public Relations even existed at that time. Ultimately, [citizen's wife] was never interviewed or hired for any IDOT position. For the foregoing reasons, the allegation of hiring improprieties is UNFOUNDED.

IV. Recommendations

The OEIG issues these findings:

⁴ In February 2010, IDOT adopted the Personnel Policy Manual which incorporates by reference the IDOT Departmental Order 8-2: Information Technology Resources Usage Code that was enacted in 2000. While some of the State computer misuse discussed herein may have occurred after February 2010, the applicable policy is the same regardless of the date of the misuse.

- **FOUNDED** – Mr. McDaniel abused State time by not truthfully and accurately reporting his absences from work at IDOT for personal reasons.
- **FOUNDED** – Mr. McDaniel committed employee misconduct by consuming alcohol and cocaine on State time and by consuming cocaine, a controlled substance in violation of the laws of Illinois.
- **FOUNDED** – Mr. McDaniel misused his State computer by viewing photographs for personal reasons, including personal shopping.
- **UNFOUNDED** – Mr. McDaniel committed hiring improprieties by promising employment to [citizen's wife].

Because James McDaniel is no longer a State employee, the OEIG cannot recommend his discharge for his: (1) time abuse; (2) employee misconduct through the use of alcohol and cocaine; and (3) misuse of his State computer. Therefore, the OEIG recommends that a copy of this report be placed in Mr. McDaniel's personnel file and that he be prohibited from ever obtaining State employment in the future.

No further investigative action is warranted and this case is considered closed.



Illinois Department of Transportation

Office of Quality Compliance & Review
201 West Center Court / Schaumburg, Illinois 60196-1096

February 15, 2011

Mr. Neil Olson
Deputy Director
Office of Executive Inspector General
607 East Adams, 14th Floor
Springfield, Illinois 62701-1634

Dear Mr. Olson:

This letter is in response to your January 28, 2011 letter regarding case number 10-00009 in which you requested that we inform your office of the actions taken to address your recommendations. A copy of the Final Report has been placed in Mr. McDaniel's personnel file. In regards to your recommendation that Mr. McDaniel be prohibited from obtaining State employment we believe that neither IDOT nor the Governor's Office has the authority to ban an individual from seeking state employment in the future, particularly with respect to Rutan-covered jobs which are competitively bid. Therefore, we would respectfully request to be relieved of this requirement or in the alternative, to discuss the appropriate action to follow within the parameters of the law and your guidance. [Redacted]

If you have any questions, or if I can be of further assistance to you or your staff, please do not hesitate to contact me at 847-221-3086.

Respectfully,

Daniel J. Kennelly
Director

cc: Secretary Gary Hannig
Chief Counsel Ellen Schanzle-Haskins
Ethics Officer Robert Anderson
Acting Chief of Operations Ann Schneider