

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: STEVE HILGERS) OEIG Case #15-01408

OEIG FINAL REPORT (REDACTED)

Below is a final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (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 the report’s factual allegations or legal conclusions before the Commission.

In 2016 and 2017, the Commission received this report from the Governor’s Office of Executive Inspector General (“OEIG”) and agency responses. Since that time, the employer and employee have been pursuing administrative remedies and the Commission has been recently informed that those remedies have been exhausted, resulting in a 90-day suspension plus the duration of the suspension pending discharge for Mr. Hilgers. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Executive Inspector General for the Governor, and to Steve Hilgers at his last known address.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

I. ALLEGATIONS

The Office of Executive Inspector General (OEIG) received a complaint alleging that Illinois Department of Healthcare and Family Services (HFS) Internal Security Investigator II (ISI II) Steve Hilgers had been convicted of a crime when he was a police officer with the Kansas City Police Department and that he was fired from that Police Department. The complaint also alleged that Mr. Hilgers failed to report 2007 criminal charges and a related 2009 prison sentence, and that Mr. Hilgers may have falsified information on his employment applications and other forms.

II. BACKGROUND

Mr. Hilgers began employment with the State of Illinois in 1996. He has held positions with the Department of Public Aid (now HFS) and the Illinois Department of Revenue (IDOR), and is currently assigned to HFS as an Internal Security Investigator II in the Office of Inspector

General, Bureau of Internal Affairs. The HFS Bureau of Internal Affairs investigates allegations of employee, contractor, and vendor misconduct, fraud, waste, and abuse.

III. INVESTIGATION

The OEIG investigated whether Mr. Hilgers was convicted of any crimes, as well as whether he failed to make required disclosures of criminal conduct to his employing agencies, or on employment forms. OEIG investigators reviewed the personnel file of Steve Hilgers, including his employment and promotional applications, and performance evaluations. Investigators also reviewed Mr. Hilgers' criminal history. Investigators interviewed Mr. Hilgers and individuals who are knowledgeable about the obligation to disclose criminal conduct to State employers or on State employment forms.

Investigators also sought to determine if any agency that employed Mr. Hilgers conducted appropriate inquiries to determine whether Mr. Hilgers' background revealed any information necessary to making hiring or promotion decisions such as potential criminal conduct.

A. Investigation Of Steve Hilgers' Criminal History And Required Disclosures Of Criminal Conduct

Mr. Hilgers was employed as a Police Officer with the Kansas City, Missouri Police Department from 1983 to 1987. During his employment with the Kansas City Police Department, Mr. Hilgers was charged with two counts of a felony on July 21, 1987. The case ended in a mistrial on January 14, 1988 and there is no record of a conviction.

Mr. Hilgers was initially hired by the State of Illinois in 1996 with the Illinois Department of Public Aid as an Executive I in the Bureau of Quality Control.¹ In November 1998, Mr. Hilgers was appointed as the Chief of Internal Affairs for IDOR.² Mr. Hilgers took a voluntary reduction four months later, in March 1999, to his previous ISI II position at the Department of Public Aid. In 2005, the Department of Public Aid became the Department of Healthcare and Family Services.

Records from the Circuit Court of Camden County, Missouri indicate that on July 4, 2007, Mr. Hilgers was arrested and charged with operating a vessel (i.e., a motorboat, motorized watercraft, or sailboat) while intoxicated, a Class B misdemeanor, and failure to register a vessel, a Class A misdemeanor.³ The operating a vessel while intoxicated charge was later amended to careless and imprudent operation of a watercraft, also a Class B misdemeanor. Mr. Hilgers entered a plea of guilty to both charges on October 11, 2007, and received two years' probation and paid a \$500 fine. One of the conditions of his probation was that he "not operate a motor vehicle or vessel while or after consuming alcoholic beverages." Another condition was that Mr. Hilgers not

¹ Mr. Hilgers did not have any convictions at the time of his application and therefore he was correct in indicating "no" on his initial application for State employment.

² The position is referred to as Manager, Chief, Bureau Chief, and Chief Investigator interchangeably in various documents. The position of Chief of Internal Affairs was the only time Mr. Hilgers was a sworn officer as a State employee.

³ The range of punishment for a Class B misdemeanor is imprisonment for up to six months and/or a fine of up to \$500. The punishment for a Class A misdemeanor is imprisonment for up to one year and/or a fine of up to \$1,000.

violate any federal, state, county, or municipal law or ordinance while on probation. Mr. Hilgers did not notify HFS of his arrest or convictions.

Shortly thereafter, Mr. Hilgers applied for a promotion to ISI II with the HFS Office of Inspector General, Bureau of Internal Affairs, a position that is responsible for investigating allegations of possible improprieties on the part of employees and contractors, such as theft, fraud, and/or misconduct. Mr. Hilgers completed and signed a CMS 100 employment application for that position, dated December 3, 2007. One question on the 2007 CMS 100 asked, "Have you ever pled guilty to or been convicted of any criminal offense other than a minor traffic violation?" In response to that question, Mr. Hilgers checked the box indicating "No."⁴ The paragraph above his signature states, "I certify that the information on this application is true and accurate and understand that misrepresentation of any material fact may be grounds for ineligibility or termination of employment." Mr. Hilgers was promoted to ISI II effective February 1, 2008.

On August 30, 2008, Mr. Hilgers was also arrested by the Camden County Sheriff's Department for driving while intoxicated. Because he was on probation for operating a vessel while intoxicated detailed above, he was sentenced to 14 days in jail for violating his probation.⁵ Mr. Hilgers served this jail time from March 21, 2009 to April 4, 2009. Mr. Hilgers did not notify HFS of this arrest or jail sentence.

1. Interviews Regarding an Obligation to Self-Report Criminal Conduct

On February 18, 2016, investigators interviewed then-CMS [Attorney], who was responsible for advising the CMS Director, General Counsel, and the Deputy Director of Personnel on issues involving employment law, including Personnel Code issues. [Attorney] said that he was not aware of any provision in the State Personnel Code that requires employees to report arrests, convictions, or pleas of guilty. [Attorney] noted that any requirement to do so is handled as a policy matter at State agencies.

Investigators also interviewed [HFS Employee 1], [identifying information redacted]. As [title redacted], [HFS Employee 1's] duties include [identifying information redacted]. [HFS Employee 1] said that HFS does not have a policy that requires employees to report arrests, convictions, or pleas of guilty.

2. Interviews Regarding the Obligation to Disclose Criminal Conduct on the CMS 100 Form

In his OEIG interview, [Attorney] said that he was not aware of any written definition of "minor traffic violation" by CMS, and that interpretation of the term has been left to the individual state agencies. [Attorney] said that, in his opinion, the term would refer to violations such as speeding or improper lane usage. He said that any conviction or plea of guilty relating to a felony or misdemeanor offense, like driving under the influence, would require checking the "Yes" box in response to the question about guilty pleas and criminal convictions on the CMS 100 form.

⁴ Mr. Hilgers' omission of information on his application is tantamount to fraudulent concealment and therefore the allegations are exempt from the OEIG's one year statute of limitations. *See* 5 ILCS 430/20-20 (eff. August 18, 2009).

⁵ Mr. Hilgers served this jail time from March 21, 2009 to April 4, 2009.

[Attorney] reviewed the potential penalties for the Class A and Class B misdemeanors for which Mr. Hilgers was convicted, and said that those would have been required to be reported on the CMS 100 form in 2007.⁶ [Attorney] stated, in his opinion, a conviction or plea of guilty for careless and imprudent operation of watercraft would not be considered a minor traffic offense, but is a criminal offense, and would require the applicant to check the “Yes” box.

[HFS Employee 1] told investigators that she was not aware of an official definition used by HFS for the term “minor traffic violation,” as used on the 2007 CMS 100 form. [HFS Employee 1] stated that, in her opinion, the term refers to violations such as speeding, running a red light, or running a stop sign. [HFS Employee 1] said that any offense that ended in an arrest, such as driving under the influence (DUI), would require the applicant to mark the “Yes” box in response to the question about guilty pleas and criminal convictions, and provide an explanation. [HFS Employee 1] said that she would consider a DUI in a car to be the same as one in a recreational watercraft. [HFS Employee 1] said that Mr. Hilgers’ Class A and Class B misdemeanor convictions, as described by the Camden County Circuit Court, should have been reported on the CMS 100 form. [HFS Employee 1] said that she expects full disclosure from the applicant in order to make a hiring decision.

3. Interview of HFS Internal Security Investigator II Steve Hilgers

OEIG investigators interviewed Mr. Hilgers on January 20, 2016. Mr. Hilgers said that his duties at HFS include the investigation of employee, contractor and vendor misconduct, fraud, waste and abuse. He said that he does sometimes have to drive a State vehicle as part of his duties.

Mr. Hilgers reviewed the CMS 100 Employment Application that he completed on December 3, 2007. He said that he completed the form by himself and without assistance. Mr. Hilgers said that he understood everything on the form and completed it honestly and truthfully.

When investigators asked Mr. Hilgers about his criminal history, he said he has been arrested before, but has not pled guilty to or been found guilty of any offense other than a minor traffic offense. Mr. Hilgers acknowledged that he faced possible jail time on both charges relating to his 2007 arrest, but said that his offenses were just related to recreational watercraft and were not serious in relation to him completing his employment application.

Mr. Hilgers said that his negative response to the question about criminal pleas and convictions on the December 3, 2007 CMS 100 was not false because the form only required disclosure of convictions “...other than a minor traffic violation.” He explained that his convictions were for minor traffic offenses, even though he was ultimately jailed for two weeks, because they related to a recreational watercraft. When investigators asked Mr. Hilgers for examples of more serious traffic offenses that would need to be reported on the form, he said vehicular homicide, running cars into a crowd and injuring someone, massive property damage

⁶ [Attorney] told investigators that the section containing the questions about criminal convictions was removed from the CMS 100 form in 2014 as a result of Administrative Order 2013-01 and the related State of Illinois Job Opportunities for Qualified Applicants Act (JOQAA). *See* 820 ILCS 75/1, *et seq.* (eff. January 1, 2015).

where people are hurt, or an incident that involved endangering a child. Mr. Hilgers said he did not seek any clarification on the term “minor traffic violation.”

Mr. Hilgers confirmed that he was arrested in 2008 for driving while intoxicated. He said that that charge was dismissed, but that the arrest violated the terms of his probation and he was sentenced to 14 days in jail. Mr. Hilgers said that he used vacation time to serve his jail sentence. Mr. Hilgers said that he did not consider driving under the influence to be a serious traffic violation, and said it would not have to be reported to HFS.

Mr. Hilgers said he did not report his arrests or convictions to anyone at HFS. Mr. Hilgers said that he had been told in discussions with [HFS Employee 2] and [HFS Employee 1] that there was no self-reporting requirement.

B. OEIG’s Review Of Agency Background Investigations Of Employees

Mr. Hilgers’ failure to disclose his criminal history on his HFS promotional employment application prompted investigators to examine whether the agencies that employed him conducted any background investigations.

Mr. Hilgers’ employment file shows that he signed forms authorizing the release of his criminal history when he was hired by the Illinois Department of Public Aid (now HFS) in 1996, and again in 1998 when he was hired by IDOR.⁷ Investigators confirmed that at the time HFS hired Mr. Hilgers, it did not have a written policy requiring background investigations. HFS, IDOR, CMS, and the Illinois State Police Background Investigations Unit did not have any record of a background investigation being conducted on Mr. Hilgers during his 17 years with the State.⁸

In her interview, [HFS Employee 1] told investigators that background investigations on new HFS employees were previously done intermittently due to funding issues. She said that HFS implemented new procedures for background checks shortly after the Job Opportunities for Qualified Applicants Act was enacted,⁹ and that currently all new employees at HFS undergo a background investigation conducted by the HFS Inspector General, Bureau of Internal Affairs.

OEIG investigators interviewed [IDOR Employee], who has worked at IDOR since 1995, and is currently in charge of the [identifying information redacted]. [IDOR Employee] stated that at the time Mr. Hilgers was appointed as IDOR’s Chief Investigator for Internal Affairs in late 1998, it was at the discretion of the IDOR Director to decide whether to conduct an extensive

⁷ Unlike the CMS 100 employment application discussed above, the IDOR form Mr. Hilgers signed in 1998 authorizing a background investigation defined the term “minor traffic violation.” That form stated that the term means “a violation that does not have the potential for a sentence other than a fine only,” and instructed that “[i]f an offense for which you were convicted could lead to suspension or revocation of a driver’s license, probation, or a prison sentence you must answer ‘yes’ to the question....” The form goes on to say, “Misdemeanors and felonies committed as an adult for which you were prosecuted and convicted under the criminal laws of any state...must result in ‘yes’ response....”

⁸ Investigators sought records from the Illinois State Police because that agency often conducts background investigations at the request of State agencies who lack the ability or resources to conduct background investigations themselves.

⁹ See 820 ILCS 75/1, *et seq.* (eff. Jan. 1, 2015).

background investigation on such “double exempt” positions, even though Mr. Hilgers’ position was a sworn position.¹⁰ [IDOR Employee] stated that currently, applicants for non-sworn positions generally are required to undergo a standard background check, which includes a criminal history check, and that a more extensive background investigation is generally conducted for sworn positions.

IV. ANALYSIS

A. Mr. Hilgers Failed To Disclose Criminal Conduct On Employment Forms

The CMS 100 and IDOR background investigation forms completed by Mr. Hilgers required applicants to report any criminal convictions other than minor traffic violations. Both forms also required the applicant to acknowledge that any misrepresentation could result in ineligibility for hire, or termination.

When Mr. Hilgers was hired by the Department of Public Aid in 1996, and again when he was hired by IDOR in 1998, he did not have any convictions to report on his employment forms because his 1987 arrest did not result in a conviction. Therefore, Mr. Hilgers was correct in checking the “No” box on those applications.

However, the investigation revealed that Mr. Hilgers made a false statement on his December 3, 2007 CMS 100 form when he applied for the ISI II position at HFS, by checking the box that indicated he had never been convicted of a crime other than a minor traffic violation. Mr. Hilgers signed his CMS 100 form certifying that the information on his application was “true and accurate.” In reality, less than two months before he completed the form, Mr. Hilgers was convicted of failure to register a vessel, a Class A misdemeanor, and careless and imprudent operation of a watercraft, a Class B misdemeanor.

Mr. Hilgers’ assertion that he did not need to report the convictions on the CMS 100 form because they were minor traffic violations lacks any reasonable basis. Although neither HFS policy nor CMS rules defined “minor traffic violation” as used on the form, knowledgeable officials at both agencies agreed that a “minor traffic violation” would refer to offenses like speeding, but not the misdemeanors Mr. Hilgers was convicted of committing.¹¹ Mr. Hilgers faced potential jail sentences on both charges and ultimately received two years’ probation. Mr. Hilgers’ contention that the CMS 100 form required him to disclose only the most egregious types of traffic violations, such as vehicular homicide, is a stretch.

The common sense interpretation of the requirement to disclose guilty pleas and convictions of criminal offenses other than minor traffic violations required Mr. Hilgers to disclose his two misdemeanor convictions on his December 3, 2007 CMS 100 form, given their potential

¹⁰ Double-exempt positions are not subject to the Illinois Personnel Code or prohibitions on basing government employment decisions on political affiliation or support.

¹¹ This common sense interpretation is consistent with how IDOR defined “minor traffic violation” on its background investigation authorization. That document, which Mr. Hilgers completed in 1998, defined the term as “a violation that does not have the potential for a sentence other than a fine only,” and excluded offenses that “could lead to suspension or revocation of a driver’s license, probation, or a prison sentence,” and “[m]isdemeanors and felonies committed as an adult.”

jail sentences. Mr. Hilgers' creation of an inflated definition for the term "minor traffic violation" in order to justify his omission of these criminal convictions is not reasonable or credible. In light of Mr. Hilgers' position and duty to investigate other HFS employees, the importance of disclosure should have been apparent. Based on this evidence, the allegation that Mr. Hilgers misrepresented material facts on his December 3, 2007 CMS 100 employment application is **FOUNDED**.¹²

B. Mr. Hilgers Was Not Required To Self-Report His Criminal Arrests Or Convictions

The HFS Employee Handbook states that an employee may be disciplined for a conviction of a crime other than a minor traffic violation. Although Mr. Hilgers' 2007 and 2008 arrests could have been grounds for suspending him,¹³ and the convictions associated with those arrests could have been grounds for disciplining him, HFS did not require employees to self-report arrests or convictions. Therefore, the allegation that Mr. Hilgers failed to report his arrests and convictions to HFS when they occurred is **UNFOUNDED**.

C. Agency Background Investigations Of Steve Hilgers

The investigation revealed that a background investigation was never conducted for Mr. Hilgers during his 17 years with the State. Investigators confirmed that at the time of Mr. Hilgers' hire at the Department of Public Aid (now HFS), the agency did not have a policy requiring background investigations for new hires, including investigators, and only conducted background investigations periodically. In addition, new hires into Mr. Hilgers' position at IDOR only received a background investigation if one was requested by the director.

The lack of requirements for a background investigation is particularly disconcerting given Mr. Hilgers' sensitive positions as an HFS Internal Security Investigator and IDOR's Chief of Internal Affairs. Mr. Hilgers' duty to investigate agency employees and contractors for improprieties such as theft, fraud, and/or misconduct should have made a background investigation of the utmost importance. However, it appears that HFS has addressed this issue, and now requires background investigations for new employees. In addition, IDOR confirmed that it currently conducts some type of background investigation for new hires into double-exempt positions such as the one Mr. Hilgers previously held. Therefore, because there was no particular policy violated and these agencies have addressed the issue, the allegation is **UNFOUNDED**.

V. FINDINGS AND RECOMMENDATIONS

As a result of its investigation, the OEIG concludes that there is **REASONABLE CAUSE TO ISSUE THE FOLLOWING FINDINGS:**

- **FOUNDED** – Steve Hilgers misrepresented a material fact on his December 3, 2007 CMS 100 employment form when he falsely stated that he had never pled

¹² The OEIG concludes that an allegation is "founded" when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance.

¹³ See 80 Ill. Admin. Code 302.785(a)(3) (eff. June 7, 1995).

guilty to or been convicted of any criminal offense other than a minor traffic violation.

- **UNFOUNDED** – Steve Hilgers did not violate an HFS rule or policy by failing to self-report his 2007 arrest and conviction, 2008 arrest, or his 2009 jail sentence for violating his probation.
- **UNFOUNDED** – HFS and IDOR did not violate any policy for failing to conduct a background investigation of Steve Hilgers.

Based on the findings, the OEIG recommends that HFS take whatever action it deems appropriate in relation to Steve Hilgers. The HFS Employee Handbook states that an employee may be subject to disciplinary action for reasons such as attempting to commit a crime, and commission of or conviction of a crime other than a minor traffic violation. In addition, the Illinois Administrative Code states that the arrest or criminal indictment of any employee may be grounds for suspension if the arrest or indictment and facts in support of either raise reasonable doubt concerning the employee's suitability for continued State employment in the present assignment or position.¹⁴

The OEIG also recommends that HFS implement a policy requiring Bureau of Internal Affairs employees to report to HFS any arrests or convictions that occur while employed with that Bureau.

No further investigative action is needed, and this case is considered closed.

Date: **June 22, 2016**

Office of Executive Inspector General
for the Agencies of the Illinois Governor
69 W. Washington St., Suite 3400
Chicago, IL 60602

Dirk De Lor
Assistant Inspector General #143

Francis Foley
Investigator #156

¹⁴ 80 Ill. Admin. Code 302.785(a)(3) (eff. June 7, 1995).



Office of Executive Inspector General
for the Agencies of the Illinois Governor
www.inspectorgeneral.illinois.gov

**AGENCY OR ULTIMATE JURISDICTIONAL AUTHORITY
RESPONSE FORM**

Case Number: 15-01408

Return 20 Days After Receipt

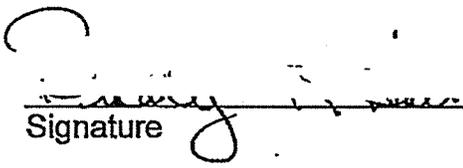
Please check the box that applies. (Please attach additional materials, as necessary.)

We have implemented all of the OEIG recommendations. Please provide details as to actions taken:

We will implement some or all of the OEIG recommendations but will require additional time to do so.

We will report to OEIG within 30 days from the original return date.

We do not wish to implement some or all of the OEIG recommendations. Please provide details as to what actions were taken, if any, in response to OEIG recommendations:


Signature

HFS - Inspector General
Print Agency and Job Title

Bradley K Hart
Print Name

7/25/16
Date



Office of Inspector General
Illinois Department of Healthcare and Family Services

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Bruce Rauner
Governor

Bradley K. Hart
Inspector General

September 9, 2016

Sherry Bult
Office of the Executive Inspector General
for the Agencies of the Illinois Governor
69 W. Washington St., Suite 3400
Chicago, Illinois 60602

Dear Sherry:

Pursuant to your request for information regarding OEIG # 15-1408, the employee was issued a suspension pending discharge on August 9, 2016. The discharge was effective on September 7, 2016. However, the OIG is anticipating the normal grievance procedure by the union. Should you need additional information, do not hesitate to contact me.

Sincerely,

Bradley K. Hart

Bradley K. Hart
Inspector General



Office of Inspector General
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Bruce Rauner
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Bradley K. Hart
Inspector General

July 6, 2017

Sherry Bult
Office of Executive Inspector General
for the Agencies of the Illinois Governor
69 W. Washington St., Suite 3400
Chicago, Illinois 60602

Re: OEIG Case No. 15-01408

Dear Ms. Bult,

In reference to the above case and status request on your part, the Respondent (Mr. Hilgers) filed an appeal to the Civil Service Commission findings, and the Department filed a cross appeal to preserve the issue on behalf of the government.

The matter is not being pushed by either party, and is currently in a pending status. It is expected that there will be some form of agreement to close the matter out. Should you have further questions, please feel free to contact me.

Sincerely,


Bradley K. Hart
Inspector General