

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

In re: CHARLES McCLENDON) OEIG Case # 08-00249

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

ALLEGATIONS

The Office of Executive Inspector General (“OEIG”) received a complaint alleging that Charles McClendon (“McClendon”), Illinois Department of Transportation (“IDOT”) Engineering Technician V, worked secondary employment without IDOT authorization, and submitted fraudulent overtime reports. The OEIG concludes that these allegations are **FOUNDED**. During the course of this investigation, the OEIG determined that [redacted], abdicated his supervisory responsibility by failing to make a decision as required by IDOT policy.

EXECUTIVE SUMMARY REPORT

In its investigation, the OEIG interviewed the following IDOT employees: [redacted], and Charles McClendon. The following non-State employees also were interviewed: [redacted]. Documents examined include, but are not limited to McClendon's IDOT time keeping records and sign-in sheets, his Olive Harvey College Time Keeping Pay Records, and Time Card documentation.

The OEIG based its legal analysis upon various IDOT Departmental Orders, the Policies & Procedures Manual ("Manual") and the Vehicle Operations Manual.

Following due investigation, the OEIG issues these findings:

- **FOUNDED** – McClendon engaged in secondary employment from 2006 until February 2008 without IDOT authorization.
- **FOUNDED** – McClendon submitted fraudulent IDOT overtime reports.
- **FOUNDED** - [redacted] abdicated his supervisory responsibility by failing to make a decision regarding McClendon's secondary employment request.

RECOMMENDATIONS

The OEIG recommends that McClendon be subject to discipline, up to and including discharge, for engaging in secondary employment without IDOT authorization, and for submitting erroneous IDOT timesheets. The OEIG recommends that IDOT do a complete audit of McClendon's time records from 2002 to the present. The audit should determine if there are any additional periods that McClendon's records show an overlap with the hours he worked at Olive Harvey. The OEIG calculated his unearned overtime from January 2002 to June 2008, at \$6,227.22, and recommends that IDOT seek restitution from McClendon for at least that amount. Pursuant to 5 ILCS 430/20-80, the OEIG will also refer this matter to the Office of Attorney General for possible criminal charges for theft by deception.¹

In the course of this investigation, the OEIG discovered evidence to support a finding that [redacted] shirked his supervisory responsibility. Therefore, the OEIG recommends that [redacted] be disciplined.

The OEIG notes that IDOT did not make a decision on McClendon's secondary employment status and recommends that IDOT decide within 20 calendar days of receipt of this report whether to approve or disapprove McClendon's request for secondary employment.

Finally, the OEIG has found that there are significant deficiencies with IDOT's timekeeping practices. The OEIG recommends that IDOT take action to ensure the uniformity of timekeeping methods at its various yards, and institute tangible methods of timekeeping accountability for all its employees.

¹ 720 ILCS 5/16-1(a)(2).

SUMMARY REPORT OF THE OEIG INVESTIGATION

SUMMARY OF INVESTIGATION

The OEIG investigated allegations that McClendon worked a second job as a part-time Commercial Truck Driving (“CDL”) instructor at Olive Harvey College (“Olive Harvey”),² without having obtained IDOT authorization. It was also alleged that McClendon submitted fraudulent IDOT overtime reports, and as a result, was paid wages for hours he was actually working at Olive Harvey.

McClendon works full-time for IDOT as an Engineering Technician V, Team Section Technician at IDOT’s I-57 yard.³ McClendon’s IDOT work hours are 6:30 a.m. - 3:00 p.m. McClendon’s work hours at Olive Harvey are Monday through Friday, 4 p.m. to 10 p.m., 30 hours per week. During this time, there may be ten (10) or more students in his classroom.

Secondary Employment

To determine whether there was validity to the allegation that McClendon engaged in secondary employment without IDOT’s approval, the OEIG examined IDOT’s Outside Employment policies and reviewed McClendon’s IDOT and Olive Harvey time records.

The OEIG determined that McClendon engaged in two separate periods of secondary employment at Olive Harvey. The first period of secondary employment was from January 28, 2002, until June 15, 2003; and the second period started on September 18, 2006, when Olive Harvey reinstated McClendon. The OEIG discovered that IDOT had different Outside Employment policies in place for these two periods.

McClendon worked as a part time CDL instructor at Olive Harvey from January 28, 2002, until June 15, 2003. McClendon stated he informed Olive Harvey that because IDOT is his primary employer and responsibility, he might sometimes arrive late or have to leave early. [redacted], confirmed McClendon’s employment at Olive Harvey from 2002-03 by his records, but she was not employed there at that time and does not know if anyone else at Olive Harvey was aware of his IDOT employment then. [Redacted] had no knowledge of whether McClendon ever arrived late due to his IDOT responsibilities. [Redacted.] She is aware of his IDOT employment, and reported that there were instances during the winter months that McClendon called to let her know he worked late at IDOT and would be late for class, but she was unable to provide any specific dates or times. Neither [redacted] nor [redacted] had any knowledge of whether McClendon ever left class early due to his IDOT responsibilities, as he stated he did.

² Olive Harvey is located at 10001 S. Woodlawn, Chicago, IL.

³ IDOT’s I-57 Yard is located at 16010 Crawford Ave., Markham, IL. McClendon is the I-57 yard supervisor and is responsible for work schedules, entering data and field notes, addressing complaints, and training subordinates on safety practices and standards.

In March 2002, [redacted], met with McClendon and discussed his concerns that McClendon might not be able to perform his IDOT duties while also working at Olive Harvey. On March 15, 2002, McClendon wrote [redacted] a memo reiterating that his "recent acceptance of a position teaching for a Junior College ... will not affect my current and primary position with IDOT." McClendon believed [redacted] verbally approved his secondary employment. [Redacted] stated it was his opinion that McClendon was not requesting approval to work outside employment, but instead was putting [redacted] on notice of his secondary employment. [Redacted] placed the memo in McClendon's file. McClendon's initial employment with Olive Harvey ended June 15, 2003.

Olive Harvey reinstated McClendon as a part-time CDL instructor on September 18, 2006, and he continued to work at Olive Harvey until at least December 2008. In the more than three-year gap between the times McClendon stopped and restarted working at Olive Harvey, IDOT's policy regarding secondary employment changed significantly. The IDOT policy in effect in 2002 did not require approval or the submission of any forms for authorization before an employee could work a second job. Rather, the policy guideline imposed a condition that the employee shall obtain approval if there was a question of a conflict of interest.⁴ The most recent IDOT policy, effective April 24, 2006, contains explicit language on how employees with secondary employment, or those seeking it, are to proceed in obtaining management authorization.⁵

On June 6, 2006, McClendon signed a Notice of Receipt of the Personnel Policies Manual Update that includes, among other things, information on Conflicts of Interest and the revised Outside Employment policy. McClendon was made aware of this new policy for over three months before he resumed his second job in September 2006. McClendon did not submit a request for approval after the new policy was implemented. He told the OEIG that he believed [redacted] had approved his secondary employment in 2002 and that he did not need to keep requesting approval each time he was going to teach at Olive Harvey. However, the new IDOT policy requires yearly submission of the form.

In early 2008, IDOT discovered that McClendon had a second job. There was no Request for Outside Employment form in his file. By this point, the new policy had been in effect for nearly two years. At IDOT's request, McClendon completed the form and gave it to [redacted] on February 28, 2008. [Redacted] signed the form that day, but did not indicate on the form whether the request was approved or disapproved, as required by the new policy. [Redacted] spoke with McClendon about his concerns that the second job would interfere with McClendon's on-call status. After this conversation, McClendon wrote [redacted] a memo on March 12, 2008, stating that Olive Harvey understood that as a condition of his employment his IDOT responsibilities were primary, and that his secondary employment would not affect his on-call status. [Redacted] forwarded McClendon's Request for Outside Employment form and his March 12, 2008, memo to [redacted]. McClendon did not follow up to see if IDOT approved his

⁴ IDOT Dept. Order 3-1, Chapt. 8, Sec. (Q), Conflict of Interest/Additional Employment Outside the Dept. dated 06/96; See also, Chapt. 15-1, Conflict of Interest, dated 03/02, (identical language).

⁵ IDOT Memo to Administrative Managers, dated 05/10/06, "Outside Employment Policy"; See also, IDOT Dept. Order 3-1, Chapt. 19, Outside Employment, dated 07/07.

request or not. It was [redacted] belief that McClendon has never obtained IDOT's approval to work another job.

Fraudulent IDOT Timesheets

I. Timekeeping Methods

IDOT's timekeeping process consists of a Pay Period Time Record (daily sign-in sheet), that employees keep with them to write in their arrival, lunch, departure and overtime work times; and a Time Report, that indicates the hours worked during the bi-monthly pay period, used for payroll. The employee uses his daily sign-in sheet to complete his Time Report, and then turns in both sheets to his supervisor for signatures.

Prior to June 2008, Olive Harvey had a manual timekeeping procedure. An instructor handwrote his timesheet after he worked his schedule using the information on the Certification of Attendance form ("Attendance form"). The Attendance forms are used as a work schedule to ensure classes are covered, and continue to be used as a timekeeping document to complete payroll. However, on June 22, 2008, Olive Harvey began using a time clock along with their Attendance form. According to [redacted], an instructor completes the Attendance form before he actually works his schedule to ensure coverage for each class. The instructor, or an office employee, should document any deviations from the schedule onto that form.

OEIG's review of McClendon's Olive Harvey time records, before June 22, 2008, revealed that his paycheck data reflected the total hours listed on his Attendance form. The time card records used after June 22, 2008 showed discrepancies between the time clock records and the in/out times McClendon indicated on the Attendance form. His Attendance form still listed his scheduled total hours and the Olive Harvey paycheck data reflected that McClendon was paid for the number of hours listed on the Attendance form and not for the time he actually worked as recorded by the time clock.⁶

II. McClendon's Location During Work Hours

The OEIG interviewed several of McClendon's past and current supervisors. A common complaint among McClendon's supervisors was not having a way of verifying McClendon's actual location during work hours. [Redacted] related being concerned about McClendon's whereabouts for a long time. He would call McClendon at both the beginning and the end of a shift and be told that McClendon was not there, that he was on the road. [Redacted] doubted the veracity of these claims believing McClendon's subordinates would cover for him. [Redacted] addressed his concerns with McClendon's supervisor, [redacted],⁷ and asked that she keep an eye on McClendon.

⁶ On 06/27/08, Olive Harvey's Attendance form listed 48 total hours worked; the Time Card totals 41.24 hours worked; and his Paycheck Earning listed 48 total regular hours worked. Because the time clock print would not transfer or copy legibly, [redacted] handwrote the information on the time card to ensure its legibility.

⁷ [redacted] supervised McClendon from 09/06 - present.

[Redacted] admitted having difficulties reaching McClendon, even on his State issued Blackberry. She has had to contact the yards second in command to get things done when she was unable to reach McClendon. [Redacted] spoke with McClendon several times about his accountability and counseled him on his conduct. [Redacted] informed the OEIG that she began the progressive disciplinary process against McClendon due to her continued inability to reach him. [Redacted]⁸ stated that when she supervised McClendon she had no way of knowing if he was actually working unless she physically went to the yard. However, [redacted]⁹ explained that IDOT employees are “on their own by nature and have to be trusted.” [Redacted] stated that when he supervised McClendon he had no reason to believe that he was not working the hours documented on the timekeeping form. [Redacted] added that they have to trust that he is honest.

At Olive Harvey, neither [redacted] nor [redacted] had any knowledge of whether McClendon ever left class early due to his IDOT responsibilities, as he stated he did. However, [redacted] did report that there were instances during the winter months that McClendon called to let her know he worked late at IDOT, but she was unable to provide any specific dates or times.

III. Overtime

Overtime may only be worked when it is authorized.¹⁰ However, [redacted] explained that, “due to the fluid nature of the work at IDOT, this policy has to be flexible.” [Redacted] clarified that McClendon should typically get overtime assignments from dispatch, but not always. He stated that any IDOT employee may have to work overtime in the event of an emergency, such as a water main break, or to complete a job already started, which is why the overtime rule has to be flexible. IDOT employees are to note daily the hours they worked, and if they work overtime, they must include a reason the overtime was necessary.

McClendon stated that overtime is assigned through the IDOT Complaint Center or if planned and preapproved, through the supervisor. As a technical non-union employee, McClendon is entitled to compensation for the overtime he works. [Redacted] stated there should be few incidents that would require a supervisor to work overtime, yet McClendon “always worked a lot of overtime.” McClendon informed the OEIG that his supervisor knows he is working overtime because if it is a “reasonable hour” he will phone her; otherwise, he notifies his supervisor the next day. McClendon added that it is the supervisor’s job to ensure that the employee is working as indicated on his time sheet.

IV. Overlapping Hours

OEIG’s investigation revealed large overlaps between McClendon’s IDOT overtime hours and his Olive Harvey workday. McClendon reviewed his IDOT and Olive Harvey time reports. He denied falsifying his time sheet entries, and denied working IDOT overtime while

⁸ [Redacted] supervised McClendon from 11/05 to 09/06.

⁹ [Redacted] supervised McClendon from 08/02/02 to 01/03/03.

¹⁰ IDOT Dept. Order 3-1, Sect. 7-8 (A) Overtime, dated 03/02; see also, [redacted] Memo to all district employees, 06/03/03.

working at Olive Harvey. McClendon maintained that both sets of time sheets accurately reflected his work hours.

The following chart identifies the overlaps between McClendon's time records at IDOT and Olive Harvey.¹¹

DATE	IDOT OVERTIME HOURS	COLLEGE HOURS	TOTAL OVERLAP IN HOURS**
03/01/2002	7:00p - 10:30p	4:00p - 10:00p*	3
03/04/2002	4:00p - 11:00p	4:00p - 10:00p*	6
06/20/2002	4:00p - 6:00p	4:00p - 10:00p*	2
08/09/2002	4:00p - 5:00p	4:00p - 9:00p	1
08/22/2002	4:00p - 7:30p	4:00p - 10:00p*	3.5
09/18/2002	4:00p - 5:30p	4:00p - 10:00p*	1.5
01/02/2003	4:00p - 9:30p	4:00p - 10:00p*	5.5
01/09/2003	4:00p - 8:00p	4:00p - 10:00p*	4
01/28/2003	4:00p - 8:00p	4:00p - 10:00p*	4
02/07/2003	4:00p - 9:00p	4:00p - 10:00p*	5
02/14/2003	4:00p - 9:00p	4:00p - 9:00p	5
02/15/2003	5:30a - 9:30a	8:00a - 4:30p	1.5
03/08/2003	1:00p - 3:00p	8:30a - 4:00p	2
03/20/2003	4:30p - 6:30p	4:00p - 10:00p*	2
11/30/2006	3:00p - 6:00p	4:00p - 10:00p	2
	8:00p - 11:30p		2
12/01/2006	6:30p - 8:30p	4:00p - 10:00p	2
01/12/2007	3:00p - 12:30a	4:00p - 10:00p	6
01/18/2007	3:00p - 9:00p	4:00p - 10:00p	5
01/29/2007	3:00p - 10:00p	4:00p - 10:00p	6
01/31/2007	8:00p - 11:00p	4:00p - 10:00p	2
02/13/2007	3:00p - 7:30p	4:00p - 10:00p	3.5
02/14/2007	3:00 - 7:00p	4:00p - 10:00p	3
02/20/2007	3:00 - 6:00p	4:00p - 10:00p	2
02/26/2007	3:00p - 7:30p	4:00p - 10:00p	3.5
03/06/2007	3:00p - 10:00p	4:00p - 10:00p	6
06/11/2007	3:00p - 7:30p	4:00p - 10:00p	3.5
06/12/2007	3:00p - 6:30p	4:00p - 10:00p	2.5
07/17/2007	3:00p - 5:30p	4:00p - 10:00p	1.5
10/09/2007	3:00p - 5:00p	4:00p - 10:00p	1
10/12/2007	3:00p - 6:00p	4:00p - 10:00p	2
11/21/2007	9:00p - 12:00a	4:00p - 10:00p	1
12/05/2007	3:00p - 6:30p	4:00p - 10:00p	2.5
12/06/2007	3:00p - 12:00a	4:00p - 10:00p	6
12/07/2007	3:00p - 6:00p	4:00p - 10:00p	2
01/10/2008	8:00p - 12:00a	4:00p - 10:00p	4
01/14/2008	3:00p - 12:00a	4:00p - 10:00p	1
01/17/2008	3:00p - 11:30p	4:00p - 10:00p	6
01/18/2008	3:00p - 10:00p	4:00p - 10:00p	6
01/22/2008	3:00p - 5:00p	4:00p - 10:00p	1
01/23/2008	3:00p - 12:00a	4:00p - 10:00p	1
01/29/2008	3:00p - 11:00p	4:00p - 10:00p	6
01/30/2008	3:00p - 5:00p	4:00p - 10:00p	1

¹¹ The OEIG included McClendon's time records from 2002, because they revealed on-going time overlaps.

01/31/2008	3:00p - 12:00a	4:00p - 10:00p	1
02/01/2008	3:00p - 6:00p	4:00p - 10:00p	2
02/18/2008	8:00p - 12:00a	5:00p - 10:00p	2
02/20/2008	3:00p - 7:00p	5:00p - 10:00p	2
02/25/2008	3:00p - 11:30p	5:00p - 10:00p	5
02/26/2008	3:00p - 6:30p	5:00p - 10:00p	1.5
02/27/2008	3:00p - 6:30p	5:00p - 10:00p	1.5
02/28/2008	3:00p - 12:00a	5:00p - 10:00p	5
03/05/2008	3:00p - 6:30p	4:00p - 10:00p	2.5

* Certificate of Attendance forms in 2002 listed only the total hours and did not list actual time in/out.

** The Overlap Hours column does not include travel time in its calculation.

ANALYSIS

Secondary Employment

I. Employment in 2002

There were two separate periods of secondary employment for McClendon at Olive Harvey along with two separate IDOT policies on Outside Employment. The primary distinction between the IDOT policies is that the policy in effect in 2002, did not require any forms for approval. Instead, the policy stated in relevant part that, “[i]t is the responsibility of all Department employees and members of their immediate families to avoid situations involving conflict of interest and the appearance of conflict of interest.”¹² The policy allowed employees to use their own judgment in determining whether there is a conflict of interest.¹³ As guidance towards determining whether there is a conflict, the policy provided that “...employees shall not: [a]ccept outside employment which will conflict with regular work hours or work, impair efficiency or be considered a conflict of interest in the performance of assigned duties.”¹⁴ The employee was to get approval “if there is any question of a conflict of interest or work relationship in regard to outside work or activity.”¹⁵ Moreover, this policy specifically did not prohibit an employee from participating in an educational organization so long as said participation was consistent with the guideline.¹⁶

McClendon complied with the IDOT policy in effect during his 2002, Olive Harvey employment. He exercised his judgment in accepting a position that he determined would not conflict with his on-call status and expressly conditioned it on the understanding that his IDOT responsibilities take priority. [Redacted] met with McClendon about [redacted] concerns that the other job would interfere with McClendon’s on-call status. McClendon followed up by writing [redacted] a memo dated March 15, 2002, reiterating that his “recent acceptance of a position teaching for a Junior College ... will not affect my current and primary position with IDOT.”

¹² IDOT Dept. Order 3-1, Chapt. 8, Sec. (Q), Conflict of Interest/Add’l Employment Outside the Dept., dated 06/96.

¹³ *Id.*, Sec. (Q)(5), states in part, “The avoidance of misconduct and conflicts of interest on the part of Department employees through informal judgment is indispensable to the maintenance of these standards; see also, Chapt. 15-1(B), 03/02.

¹⁴ *Id.*, Sec. (Q)(5)(b); 15-1(B)(1)(b).

¹⁵ *Id.*, Sec. (Q)(7); 15-1(B)(4).

¹⁶ *Id.*, Sec. (Q)(6); 15-1(B)(3).

McClendon stated he continued working on his belief that [redacted] verbally approved the secondary employment. [Redacted] states that it is his opinion that McClendon was not requesting approval. However, [redacted] tacitly approved the secondary employment by placing the memo in McClendon's employment file and taking no further action.

II. Employment in 2006

On May 10, 2006, IDOT issued a memo changing its policy on secondary employment retroactively to April 24, 2006. IDOT created a form that requires supervisory approval for all outside employment, established a format for higher review as warranted, and put the onus on the employee to complete the form.¹⁷ IDOT codified the policy change into IDOT Departmental Order 3-1, Chapter 19-Outside Employment. The new policy broadly defined outside employment to include, "the performance of any service which results in payment of money ... either public or private, which results in profits."¹⁸ It also instituted a policy that the outside employment not interfere with normal job duties nor be a conflict of interest, as defined in the Ethics Act, and placed specific limitations to outside employment. An IDOT employee must submit the Request for Outside Employment form ("Request") annually for continued approval.¹⁹ McClendon acknowledged in writing his receipt of these specific policies.

IDOT employees are to "maintain unusually high standards of honesty and integrity."²⁰ As a supervisor, McClendon is held to an even higher standard. When McClendon began teaching at Olive Harvey on September 18, 2006, he knew, or should have known, about the policy change for a little over three months. McClendon failed to adhere to this policy and worked a second job for nearly two years after the policy's effective date. McClendon only submitted the requisite Request form in February 2008, after IDOT discovered that he had outside employment. The allegation that McClendon improperly engaged in secondary employment, from 2006 until February 2008 without requisite approval, is FOUNDED.

IDOT's outside employment also requires that the employee's immediate supervisor provide his/her initial approval or disapproval of the employee's request. When McClendon submitted his request to work outside employment, [redacted] was McClendon's supervisor and while he signed McClendon's request, he failed to either approve or disapprove it. Instead, [redacted] forwarded the Request to personnel, where again it was neither approved nor disapproved. [Redacted] had also taken no action on McClendon's 2002 request, as previously discussed. By failing to make a supervisory determination on McClendon's 2008 request, just as he had in 2002, [redacted] abdicated his supervisory responsibilities. The OEIG recommends that [redacted] be subject to discipline for failing to execute his supervisory responsibilities.

Although McClendon was clearly in violation of the new Outside Employment Policy for his failure to submit a Request until February 2008, the policy also states that he can continue working pending a decision, provided it does not conflict with his regular IDOT responsibilities.

¹⁷ IDOT "Outside Employment Policy" memos dated 05/10/06, 05/15/06, and 08/29/07.

¹⁸ IDOT Dept. Order 3-1, Outside Employment, Chapt. 19-1, dated 07/07.

¹⁹ IDOT Memo from [redacted], dated 08/29/07.

²⁰ IDOT Dept. Order 3-1, Chapt. 15-1(B) Conflict of Interest, dated 03/02.

Therefore, IDOT should decide, within 20 calendar days of receipt of this report, whether to approve or disapprove McClendon's request.

Submitting Fraudulent IDOT Timesheets

"All employees are expected to be at their work stations and ready to work at the appointed starting time until the appointed quitting time. Abuse of state time by an employee shall result in disciplinary action, up to and including discharge. An employee may be asked to pay restitution for the cost of abused state time."²¹ IDOT's overtime policy is that overtime is only to be worked when it is authorized.²² McClendon is not otherwise exempted from this rule because he is a supervisor.

IDOT regulations place the responsibility of ensuring the accuracy of time records squarely on the shoulders of the supervisors before they sign off on them. However, IDOT simultaneously fosters an honor system of self-reporting.²³ Both [redacted] and [redacted] reported issues in locating or accounting for McClendon during the day despite his having a State assigned Blackberry. [Redacted] stated she discussed her inability to reach McClendon during the workday with him, yet it continued. [Redacted] reported she counseled him, but since there was no change, she stated she began disciplinary action against him. Similarly, [redacted] reported that unless she physically went to the yard, she would not know McClendon's whereabouts or if he was working overtime.

According to the IDOT Rules for Employee Conduct, "Employees are expected to report accurately and truthfully all information pertaining to employment including, but not limited to, applications, timekeeping records, and any written reports, verbal reports or testimony given during an official investigation."²⁴ When presented with his IDOT time records, McClendon confirmed his signature and claimed that the record accurately reflected the time he actually worked. He also confirmed his signature on the Olive Harvey records and claimed that those records accurately reflected the time he actually worked. McClendon denied submitting false or inaccurate time reports at either place of employment or that he worked overtime at IDOT during hours he worked at Olive Harvey, despite the fact that time records for both jobs overlapped. Both sets of time records cannot be correct.

McClendon told the OEIG that he was not aware he worked overtime at IDOT during times he taught at Olive Harvey, and added that there were times that he left class early to respond to IDOT situations. [Redacted] recalled times that McClendon called to say he worked late at IDOT, but she was not aware of any instances in which McClendon left his class early to report to IDOT.

Yet, the OEIG discovered flagrant time overlaps with the IDOT records. For example, the time entry for December 6, 2007, shows that McClendon worked at Olive Harvey from 4

²¹ Id. Chapt. 17-3, Employee Responsibilities.

²² IDOT Dept. Order 3-1, Sect. 7-8 (A) Overtime, dated 03/02.

²³ IDOT Order 3-1, Sec. 7-4 Supervisor's Responsibilities. "All supervisors will take necessary measures to provide that leave and overtime is properly accounted for on the employee's time and attendance records," dated 03/02.

²⁴ Id. Chapt. 11-3, Rules for Employee Conduct; (S) - Truth In Reporting.

p.m. to 10 p.m. For the same day, his IDOT time report shows that he worked his regular 8-hour shift, and then worked overtime from 3 p.m. to 12:01 a.m., for a 17-hour IDOT workday.²⁵ This is simply impossible.

Although initially it seems difficult to discern which set of timesheets McClendon falsified due to the timekeeping methods at both IDOT and Olive Harvey, a close analysis of the data is quite persuasive. The records are replete with dates when McClendon represented that he was working for IDOT during the entirety of his Olive Harvey class time. The OEIG found it reasonable to infer that had McClendon not shown up for his class that frequently, Olive Harvey would have been notified and would not have paid him for those days. This is persuasive evidence that McClendon was actually there. Conversely, the hours in question would have been overtime hours for McClendon at IDOT- unusual for a supervisor and largely unsupervised. The investigation revealed that IDOT supervisors had many concerns about their inability to reach McClendon or account for his whereabouts. Therefore, the OEIG concludes, that it is more likely than not, that McClendon did not falsify his Olive Harvey time records, but rather falsified his IDOT time sheets. The allegation that McClendon submitted fraudulent IDOT overtime records is FOUNDED.

Based on the above listed overlap in hours, the OEIG determined that IDOT overpaid McClendon \$6227.22 in overtime from March 2002 to March 2008. In reaching this figure, the OEIG first calculated McClendon's hourly rate by multiplying his monthly salary (per year) by twelve, then divided by 2088 (the number of regular work hours per year). Overtime is paid at the rate of time and a half. The OEIG calculated McClendon's overtime rate by multiplying his hourly rate by 1.5, and then multiplying that number by the number of overtime hours claimed on a given day.²⁶ IDOT, and the taxpayers, should not pay McClendon overtime for the same hours he worked at Olive Harvey.

CONCLUSION AND RECOMMENDATIONS

Following due investigation, the OEIG issues these findings:

- **FOUNDED** – McClendon engaged in secondary employment from 2006 until February 2008 without IDOT authorization.
- **FOUNDED** – McClendon submitted fraudulent IDOT overtime reports.
- **FOUNDED** - [Redacted] abdicated his supervisory responsibility by failing to make a decision regarding McClendon's secondary employment request.

The OEIG recommends that McClendon be subject to discipline, up to and including discharge, for engaging in secondary employment without IDOT authorization, and for submitting erroneous IDOT timesheets. The OEIG recommends that IDOT do a complete audit of McClendon's time records from 2002 to the present. The audit should determine if there are any additional periods that McClendon's records show an overlap with the hours he worked at

²⁵ McClendon also worked the following hours: 12/04 - 20.5 IDOT; 12/05 - 12 IDOT, 6 O/H (2.5 overlap); 12/06 - 17 IDOT, 6 O/H (6 overlap); 12/07 - 12.5 IDOT, 6 O/H (2 overlap).

²⁶ For example: 2002 OT rate is $\$4030 \times 12 \div 2088 = 23.1609 \times 1.5 = \34.7413 ; 2008 OT rate is $\$4792 \times 12 \div 2088 = 27.5401 \times 1.5 = \41.3103 .

Olive Harvey. The OEIG calculated his unearned overtime from January 2002 to June 2008, at \$6,227.22, and recommends that IDOT seek restitution from McClendon for at least that amount.

Pursuant to 5 ILCS 430/20-80, the OEIG will also refer this matter to the Office of Attorney General for possible criminal charges for theft by deception.²⁷

In the course of this investigation, the OEIG discovered evidence to support a finding that [redacted] shirked his supervisory responsibility. Therefore, the OEIG recommends that [redacted] be disciplined.

The OEIG notes that IDOT did not make a decision on McClendon's secondary employment status and recommends that IDOT decide within 20 days of receipt of this report whether to approve or disapprove McClendon's request for secondary employment.

Finally, the OEIG has found that there are significant deficiencies with IDOT's timekeeping practices. The OEIG recommends that IDOT take action to ensure the uniformity of timekeeping methods at its various yards, and institute tangible methods of timekeeping accountability for all its employees.

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

²⁷ 720 ILCS 5/16-1(a)(2).



Illinois Department of Transportation

Division of Highways/Region One / District One
201 West Center Court/Schaumburg, Illinois 60196-1096

OVERNIGHT MAIL

September 14, 2010

Mr. Charles McClendon
[redacted]

Dear Mr. McClendon:

As a result of the pre-disciplinary meeting held on August 23, 2010, you are hereby being discharged from the Illinois Department of Transportation effective at the close of business today, Tuesday, September 14, 2010. Attached are the final charges that serve as the basis for this action.

Please be advised that, as a result of this action, you are no longer on an Administrative Leave in paid status and you may only enter Department buildings or properties upon prior approval by the Administrative Services Manager, Charles L. Klemz and will be accompanied by a supervisor for the entirety of the visit. The time and location of your visit should be pre-arranged by your supervisor.

You may contact us at (847) 705-4665 to schedule a time during normal hours to remove any personal effect from the Department's property and resolve any benefit issues you may have with respect to your termination. At that time, you must also return any other State assigned property.

If you have any questions or need additional information, please contact me, at (847) 705-4665.

Very truly yours,

Diane M. O'Keefe, P.E.
Deputy Director of Highways,
Region One Engineer

By:
Giovanni Fulgenzi
Personnel Services Manager

cc: [redacted]