

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: EMILIO HERNANDEZ.

)

OEIG # 08-00994

OEIG FINAL REPORT (REDACTED)

The Executive Ethics Commission (“Commission”) received an OEIG final report and responses from the ultimate jurisdictional authority and agency head in this matter on November 10, 2009. The Commission redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Executive Inspector General and Emilio Hernandez at his last known address on November 30, 2009.

These recipients were given 15 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.

ALLEGATION

The Office of Executive Inspector General (“OEIG”) received a complaint alleging Illinois Department of Employment Security (“IDES”) employee Emilio Hernandez (“Hernandez”) improperly contacted an IDES client outside of normal work hours. The OEIG concludes that this allegation is FOUNDED.

SUMMARY OF INVESTIGATION

Having been terminated from her job, [hereafter “Jane Doe”] applied for unemployment benefits through the Elgin IDES Office in 2008. Her request for benefits denied, Doe appealed and was assigned a caseworker, Hernandez. According to Doe, Hernandez used that position to visit her home and contact her via telephone after normal work hours.

During his interview with OEIG investigators, Hernandez did admit that he went to Jane Doe’s personal residence outside typical work hours. Explaining his actions, Hernandez claimed that less than one week prior to her appeal’s hearing, Doe requested documents contained in her file. In order to present her with such copies, Hernandez needed to obtain her signature. Due to the time constraints Doe’s inability to drive to the IDES office, Hernandez volunteered to personally deliver the documents to her at her home that weekend, September 20, 2008. According to Hernandez, the trip had to occur on the weekend because he had no available time during his workday schedule. That excursion required Hernandez to travel from his residence to Doe’s location approximately 14 miles away. When questioned why he volunteered to go out of his way, Hernandez stated that Doe’s residence was located near [someone] with whom he was doing business, and thus, was not an inconvenience. During this visit, Hernandez stated that he discussed the paperwork and engaged in conversation related solely to Doe’s IDES case.

Subsequent to the hearing and denial of her appeal, Hernandez once again traveled to Jane Doe's home. According to Hernandez, Doe telephoned him and was in a state of "hysteria" after learning her benefits had been rejected. Having reached him on his cellular telephone, Hernandez stated that their conversation was cut off twice. As a result, Hernandez was "kind of panicked," and thus, was prompted to go to Doe's residence. Hernandez said after he spoke to Doe about filing an appeal, the woman directed him to leave. While Hernandez denied any physical contact occurred at that time, Doe stated that she and Hernandez argued and she ultimately shoved him out the door, adding that "the other side of his personality turned into a devil."

Per Jane Doe, Hernandez not only visited her home, he also contacted her numerous times via telephone. A review of Hernandez's cellular telephone call logs showed that to be true. For the period August 26, 2009, through October 1, 2009, Hernandez called Doe on twenty-five different occasions, totaling 119 minutes in conversation. Of those calls, eight were received during the weekday - but after 5:00 p.m. - and fifteen occurred on the weekend. One such call transpired on a Sunday at 10:04 p.m. and lasted thirty-nine minutes.

In contradiction to Hernandez's claims, Doe stated that those visits and telephone calls were more social than business in nature. According to Doe, Hernandez asked her to dinner and commented on her appearance during those times. Jane Doe stated that Hernandez even asked her to join him at his gym, Lifetime Fitness. Although Hernandez denied ever making such an invitation, he did admit that he possessed a membership to that gym. Doe stated that she never accepted Hernandez's date-like invitations.

One of Hernandez's supervisors, admitted that in 2008 another supervisor in the Elgin Office, received a call from a female who alleged that Hernandez had visited her home and delivered documentation. [The supervisor] found that to be strange, adding "we don't go to people's homes." When confronted, [the supervisor] stated that Hernandez admitted that he went to the woman's home in order to distribute to her a copy of an appeal file because the woman did not have transportation and because he was going to be in her neighborhood as he was conducting business with a carpenter in the area. According to [the supervisor], Hernandez stated that the visit was strictly business related. In response, [the supervisor] claimed that [the supervisor] informed Hernandez that IDES employees were not to go to client's homes, but never filed an incident report or administered any discipline in response thereto.

ANALYSIS

The IDES Procedures Manual, section 1019.701, states in pertinent part:

Conducting Non-Department Business

IDES employees are to perform duties on behalf of the Department during working hours. Employees are expressly prohibited from using Department information or functions for personal use, gain, harassment, or personal vendetta

towards other IDES employees and/or members of the public or employers being served by the Department.

Furthermore, section 1019.551, states:

Courtesy: The Public Co-Workers and Supervisors

All IDES employees shall conduct themselves in a courteous and professional manner when dealing with the general public and with co-workers thereby reinforcing the public's confidence in the Department and assisting their co-workers, and shall at all times conduct themselves so as not to bring IDES into disrepute. IDES employees shall ensure that the services they provide to the public are delivered in a courteous, fair, nondiscriminatory, and professional manner.

By contacting a client outside normal working hours and for the purpose of engaging in non-state related business, Hernandez acted in contravention of these policies. Hernandez admitted to going to Jane Doe's home on two occasions, once on a weekend. Although he stated such meetings were related solely to Doe's status as an IDES client, it instead appeared that Hernandez was seeking to gain a social relationship with Doe. This motivation was evidenced by Hernandez's repeated telephone contact of Doe, the vast majority of which occurred outside of normal working hours, and his invitations to dinner and the gym.

Further revealing Hernandez's true intentions were the trips he made to Doe's home. Hernandez claimed that his first visit was merely a courtesy to Doe who had requested documents but who was unable to obtain them in a timely manner. However, because the trip forced him to travel outside of his hometown on a weekend, and because it occurred subsequent to Hernandez and Doe establishing a pattern of speaking on the telephone outside of normal work hours, it appeared his actions were in furtherance of some other scheme. His second trip advanced those suspicions as Hernandez was unable to justify its occurrence. While Hernandez claimed that Doe was upset as a result of having been denied unemployment benefits, a situation further frustrated by two dropped cellular telephone calls, it seems unlikely that a properly trained IDES employee interested solely in the success of a client's case would venture to take such action. This was confirmed by his supervisor, who stated that IDES employees do not go to client's homes. By engaging in such conduct, Hernandez utilized his position at IDES to obtain a personal benefit, securing a social relationship with Doe. Such actions constituted unprofessional behavior and risked bringing IDES into disrepute. Therefore, the allegation that Hernandez improperly contacted a client outside of normal work hours is **FOUNDED**.

In conjunction, the OEIG notes that when confronted with Hernandez's admission that he did indeed visit a client at her home, his then supervisor, failed to take any corrective action beyond explaining to Hernandez that IDES policy prohibits that behavior. As such, the OEIG recommends that [a supervisor] be reminded of the duty to formally address such misdeeds.

RECOMMENDATIONS

Based upon the evidence, the OEIG recommends that Hernandez be subject to discipline, up to and including discharge, for his improper contact of an IDES client.

The OEIG also recommends that [a supervisor], who was made aware of the improper contact, be reminded of the duty to report such misconduct and to discipline employees accordingly.



OFFICE OF EXECUTIVE INSPECTOR GENERAL
for the Agencies of the Illinois Governor

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OEIG RESPONSE FORM

Case Number: 08-00994

Due 20 Days after Receipt of Report

Please check the box that applies.

- We have implemented all of the OEIG recommendations:
(Provide details regarding action taken.)

The predisciplinary hearing for Hernandez was held on October 7, 2009. IDES will proceed to the next step in the process which will be to recommend a 7-day calendar suspension. Should the union not accept the proposed discipline nor work out an agreement, the union can file a grievance. [redacted] was issued counseling for reporting misconduct, monitoring staff and disciplining employees.

- We are implementing the OEIG recommendations however, we seek to deviate as follows:

(Provide details regarding action planned / taken and proposed alternate(s).)

We do not wish to implement any of the OEIG recommendations and seek to deviate as follows:

(Explain why and provide details of alternate plan.)

Letitia Dominici
Signature

Letitia Dominici
Print Name

IDES
Senior Policy Advisor / officer ^{Ethics}
Print Agency and Job Title

10-8-09
Date

Return to Arian Beasely, Office of Executive Inspector General, 32 W. Randolph St.

Chicago, Illinois 60601

Emilio Hernandez Jr.

Executive Ethics Commission
401 S. Spring St.
513 Wm Stratton Bldg
Springfield IL. 62706

RECEIVED
DEC 14 2009
EXECUTIVE
ETHICS COMMISSION

12/14/2009 CASE NUMBER 08-00994

Re: Release of Redacted OEIG report.

Allegation: Improperly contacted an IDES client outside of normal business hours.
The OEIG concludes this allegation is founded.

Summary of Investigation: states clamant was terminated from her job, applied for unemployment benefits through the Elgin IDES Office in 2008. Her request for benefits denied. Doe appealed and was assigned a caseworker, Hernandez. According to Doe, Hernandez used that position to visit her home and contact her home after normal work hours.

True statement: sequence of events as they happened.

Jane Doe filed for unemployment 09/2008; she was scheduled for an interview with Hernandez in the morning. As an adjudicator I we're scheduled for ten cases a day plus any that walk in off the street requesting appeals or who have missed their appointment. There is always a back log of at least 20 cases from the previous week awaiting return call from employers to finalize the decision on the case.

Jane Doe did not respond to her original interview time. There was a message with a phone number left on my desk as an alternate number to reach her. She was called that afternoon to notify her that her message was received and if we could conduct the interview at another time/date because I had scheduled interviews and I would have to fit her into my schedule. Doe explained she was using a pay by minute phone that belongs to her daughter who lives with her Grandmother. Her home phone was not guaranteed to work; it was in the process of being shut off. It was very difficult getting a hold of her. I was working from 7:30 AM to 7:00 PM and in that time period it was difficult reaching her. I believe it took me a few tries to conduct the interview; she had three versions of reasons why she believes she was terminated. I had to wait for information from the employer to make my decision. In our conversations she explained she was not home at times because she was attending AA meetings and that she has some sort of disability and is taking prescribed medication that knocks her out to sleep and she can't hear the phone or she ran out of minutes and has to put another \$20 on the phone.

During this time period we a high call volume in the office and I actually asked people to Email me as a better means of communication. I made the unfortunate mistake of giving her my cell phone. I guess with her I didn't know when she would try to contact me with information I needed because of her sleep time and schedule of time with her meeting and being at her mother's house and daughter, also having a male relative move in because he had nowhere to go.

Sonics was in Lombard and had she heard of it. The appearance questions had to do with her case a totally different conversation that let to nowhere. It had to do with unprofessional practices with fellow female coworkers doing semi sexual acts with a specific Manager of the company I looked into her story to see if it had anything possibly with her reason of separation, but I decided to leave it alone.

My Supervisor, who received the call in 2008, received the call from this same person who made the allegation. It was from that time that I explained everything that happened. I was advised at that time that I should have never done that.

The Motivation and evidence: Telephone contact is the only evidence that show some transaction of communication was made.

How do you determine that I invited her to dinner and the gym? It her word against mine there is no witnesses.

She tried to use more than one reason to make me fall for her being denied benefits.

1. Said I was splitting the payoff with the referee on the decision, I wonder why nothing was mention here.
2. She tried to say something that I knew she had some sort of disability and I guess she didn't have enough information to build a case with it.
3. All she had left was to build a case against me for visiting her house at her request to deliver her a copy of her file.
4. It is quite obvious that she did speak to a lawyer and he told her it would be very hard to prove anything on the referee. That her best chances would be to go after me, although going after me wasn't going to get unemployment benefits back.

I hope you have a clearer picture of what happened to the best of my knowledge; I do believe it is different from what was summarized.

I would like to just give a brief description of myself for what it's worth so maybe I can paint a different picture of myself.

1. Retired Air Force 12/03/1973 11/01/1994 Viet Nam Era Vet and Desert Storm
2. 12 years overseas 2 ½ years in Korea short tours
3. 10 years with IDES 4 as an adjudicator.
4. My goal in IDES is to become a Manager, I was offered a position and turned it down due to salary was not sufficient.
5. I go to Bethel Baptist church in SCHAUMBURG IL. I am a born again Christian
6. I'm happily married 21 years; I have a son 20, a son 17, a son 7, and a daughter 12
7. I'm the Scoutmaster for Troop 497 Prince of Peace Schaumburg IL; I've been in scouting over ten years here and in the Air Force. My oldest son is an Eagle Scout, my second oldest will be an Eagle Scout in 2010.
8. Troop 497 is 28 yr old, first 25 years only 6 eagle scouts, since I took over I have five Eagle Scouts in three years and I have ten life scouts working on making Eagle.
9. I am the Quartermaster for VFW post 2202 Schaumburg IL, I handle an Expense account of \$175,000.00.
10. I was elected VFW District 4 Service officer Aug/2009
11. I have BSA roundtable meetings 2n Monday of every month. Troop committee meeting every third Monday of the month. Troop meetings every Thursday 7 pm – 8:45 pm. We have a troop campout every month on a weekend. A lot of time is needed for paperwork such as permission slips and buying the food. Twice a month we volunteer our time to PADS shelter at Prince of Peace. We clean up after the homeless people have left.

I honestly after reviewing employer's information believed I made a sound decision and allowed her Unemployment Insurance Benefits. She was happy and everything was going fine. She still had doubts as to the employer filing an appeal and what was the possibility of her being denied benefits. I advised her that the employer has 30 days to file and appealed. The employer in this case took the almost 30 days to file an appeal and due to the back log in appeals it took four to six weeks for the hearing with the referee. During this time she was advised by me to try and obtain a copy of her file so she could defend her case at the time of her hearing. At no time were there any allegations toward me for any wrong doing. When it got to the weekend before the hearing she got desperate for her file and I knew better than to send her file without the proper document request form being signed. The only alternative I had was to personally take it to her and have her sign for it. I already had her copy of her file on hand and since I had to drive by her residence on my way to the Merrilat Cabinet dealer I thought nothing of it and actually went to the cabinet shop first because they close at 1PM and then to her residence. I went in sat down on the couch across from her. I gave her the file request form to sign and then I gave her the file. I told her I didn't know what questions they would ask and that I was not at liberty to coach her in any way. That she would be allotted her time to talk and so would the employer and then the referee would make a decision. I was there about 15 minutes I had a call from my wife to hurry home because I had questions from my contractors at home that were remodeling my kitchen.

She had her hearing and the decision I made was reversed and she was denied benefits. As soon as that happens she automatically get hit with an over payment for all the benefits she received that she is not entitled to. She called me, and she was not very happy, giving me information that she was going to make sure everybody will pay for this. She said she was going to sue her employer for discrimination based on her ADA issues and wrongful termination. She complained that the letter she received denying her benefit was dated before she had her hearing and that the referee was paid off by the Employer.

She called me on a Saturday on a three way call with her supposedly high profile lawyer and told me that I was also part of the payoff with the referee, that she had me on tape saying I was going to split the money the employer paid the referee for denying her benefits. I didn't know what to do because every time she called me back or I tried to call her back in desperation to explain to her that there's no way something like that could happen. We kept getting disconnected, so I asked if I could come by and explain and advise her what her next step of the appeal process would entail. I advised her that she had thirty days to file an appeal to the Board of Review and she would have to be explicit because there are no physical interviews. She was very upset and told me to get out; in which case I had already determined it was not my place to be and left. At no time did I lose my temper, I kept the conversation strictly to the subject matter. She insisted she had taped my phone conversation and I would be hearing from her and her lawyer in the future. **From all the calls made there were a majority of calls that had no communication.**

Jane Doe declined filing an appeal to the Board of Review. She let her 30 days expire. The State of IL is the one who submitted an untimely appeal to the Board of Review which doesn't proof justice it just puts the icing on the cake that she is still denied because she filed an untimely appeal. This is more of a slap in the face to her in my eyes.

In Reference to the call being more social than business in nature, I have a female coworker who joined life time fitness in Lombard with her boyfriend; it would be stupid of me to invite someone there. I had a membership in September which I was getting ready to close because in the year I was a member I probably used the place ten times and I was paying \$60 a month to be a member with my kids. I did let her know that I had a pass for two days and if she ever wanted to take her daughter to Lifetime her and her daughter could use it. I had no intentions of ever going back to Lifetime, just had no time. I never asked her to dinner at any time. The only question that came up about food was I asked her if the new

12. I am the office Union Steward, I've resolved all my grievances at the lowest level possible and grievances are not something we do a lot of in our office.
13. Upward Mobility, I have been pursuing my degree in Business Management with a minor in Info Technology. I have four more classes to take before I graduate. My classes are from 5pm to 10 Pm and I'm doing my VFW and Scouting at the same time. Do I have time to socialize?

I don't want any Sympathy from anyone I just want things to be straight for the record that there were No mal intentions on my part. I was just trying to help this single parent mom. For what is worth off the Record my wife works for Anheuser Busch and every year she gets a couple of Honey Hams for Christmas. We are financially ok and what I do every year at work except this year I have given out The Hams to poor people that have big families and can't afford to buy their Christmas meal.

This year on 11/18/09 I went to work and had to leave by Ambulance. I was taken to Sherman Hospital In Elgin and have been diagnosed with Lung Cancer. I believe it's attributable to the 100 yr old building I work in but this is another case that I'm going to work on. At present I'm undergoing radiation Treatment and will start kemo in January. Do what you have to do and Merry Christmas and Happy New Years to all.

Sincerely

Emilio Hernandez