

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

In re: DENISE COBB, ) OEIG Case #12-00039

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.

The 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, 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 Governor’s Executive Inspector General and to Denise Cobb at her last known addresses.

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

**FINAL REPORT**

**I. Introduction**

The Chicago Transit Authority (CTA) Office of Inspector General received a complaint alleging that CTA Bus Operator Denise Cobb (Ms. Cobb) worked secondary employment as an H&R Block Tax Preparer. The Office of Executive Inspector General (OEIG) assumed the investigation from the CTA Office of Inspector General pursuant to Section 75-10(b) of the State Officials and Employees Ethics Act.

The OEIG’s investigation confirmed that Ms. Cobb worked at H&R Block while a CTA employee. During the investigation, the OEIG determined that Ms. Cobb engaged in this secondary employment while on Family and Medical Leave Act (FMLA) leave from the CTA, in violation of CTA policy. In addition, Ms. Cobb violated CTA policy by failing to obtain

permission from the CTA to engage in the secondary employment. The OEIG recommends that Ms. Cobb be disciplined.

## **II. Background**

### **A. The CTA's Family Medical Leave Act Procedure**

The federal FMLA provides up to twelve weeks of unpaid, job-protected leave to eligible employees when a serious health condition renders the employees unable to perform their job duties. Eligible CTA employees who wish to obtain approved leave under the FMLA must complete a request for FMLA leave and submit it, along with medical documentation, to the CTA's third-party administrator for review and processing. *See* CTA Administrative Procedure #1013, Family and Medical Leave of Absence (AP #1013). Employees may be eligible for intermittent FMLA leave for chronic conditions, if approved by the third-party administrator. CTA policy defines "intermittent leave" as "leave taken in separate blocks of time due to a single qualifying reason." AP #1013, 3.14.

### **B. Subject Denise Cobb**

Ms. Cobb began employment with the CTA on May 31, 2001 as a Bus Operator. Since at least 2009, Ms. Cobb has been approved for intermittent FMLA leave. As of April 2010, Ms. Cobb's FMLA medical documents indicate that she has received approval for up to three episodes of her illness per month, with each episode lasting approximately two days.

## **III. Investigation**

### **A. Denise Cobb's Employment with H&R Block**

The OEIG obtained and reviewed documents relating to Ms. Cobb's employment with H&R Block, which reflected the following:

- That in tax year 2010, Ms. Cobb reported earnings of \$3,618.00 from her H&R Block employment.
- As of January 27, 2012, the H&R Block website identified Ms. Cobb as an employee certified as a Senior Tax Advisor 2 with 13 years professional experience, including 12 years of bus operations experience.
- H&R Block timekeeping records indicate that Ms. Cobb worked a total of 474.79 hours from February 1, 2010 to February 28, 2012.

### **B. Comparison of H&R Block and CTA Records**

The OEIG compared Ms. Cobb's H&R Block timekeeping records with CTA attendance and FMLA records. The comparison revealed that on at least ten occasions between February 1,

2010 and February 28, 2012,<sup>1</sup> H&R Block recorded that Ms. Cobb worked as a Tax Preparer on the same day she reported being absent from work at the CTA, using FMLA-related leave.

### **C. Denise Cobb's Secondary Employment Status at the CTA**

The OEIG obtained and reviewed Ms. Cobb's CTA personnel records. These records did not contain any Secondary Employment Applications (Form 7822) submitted by Ms. Cobb to request the CTA's permission to pursue and obtain secondary employment.

### **D. Interview with Denise Cobb**

On April 30, 2012, investigators interviewed Denise Cobb. Investigators showed Ms. Cobb an "Essential Materials Checklist" dated May 31, 2001, her first day of employment at the CTA. Ms. Cobb confirmed that she placed her initials on sections of the checklist indicating that she received both the CTA General Rule Book and the CTA Code of Ethics.

Investigators showed Ms. Cobb a "Secondary Employment Acknowledgement" form bearing her signature, dated May 31, 2001. Among other things, the acknowledgement states:

"I understand that I must seek and gain approval for any secondary employment by submitting CTA Form 7822 to my Manager and obtaining approval. I understand that I may not engage in secondary employment prior to obtaining such approval."

Ms. Cobb confirmed that she signed the Secondary Employment Acknowledgment form and understood that she had to seek and gain approval in order to engage in secondary employment.

Ms. Cobb related that she has worked for H&R Block since 1994 and said she participates in at least 30 hours of training each year from H&R Block so that she can be "certified" with H&R Block and earn a larger hourly wage. She stated that she usually works for H&R Block from January to mid-April on Tuesdays, Wednesdays, Saturdays, and Sundays. Ms. Cobb said that Tuesdays and Wednesdays are her days off at CTA, and that she only works at H&R Block after completing her CTA shifts on Saturdays and Sundays. Ms. Cobb also stated that she previously went to work at H&R Block during her swing breaks,<sup>2</sup> but had not done this since about 2009. Ms. Cobb said she earned about \$3,000 per year by working at H&R Block.

Ms. Cobb confirmed that she never submitted a Secondary Employment Application seeking CTA's permission to work for H&R Block. Ms. Cobb also stated:

- she had been working at H&R Block even before she began her employment with CTA;

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<sup>1</sup> These dates include: January 30, 2011, January 31, 2011, November 9, 2011, November 14, 2011, January 16, 2012, January 28, 2012, February 4, 2012, February 5, 2012, February 6, 2012, and February 19, 2012. In addition, in 2010, Ms. Cobb worked at H&R Block on four days that she used Short-Term Disability leave – April 7, 13, 14, and 16, 2010.

<sup>2</sup> A "swing break" is the period between runs when a Bus Operator has free time. For example, on January 5, 2012, Ms. Cobb had a swing break at CTA from 9:53 a.m. to 2:02 p.m., and worked at H&R Block during that swing break, from 10:00 a.m. to 12:27 p.m.

- she did not believe her part-time job at H&R Block conflicted with her CTA job, because she was not driving a bus for an outside company or performing duties that would affect the safety of her CTA passengers;
- CTA never specifically offered her a Secondary Employment Application to complete and sign; and
- she believed that what she did on her days off from CTA was her personal business.

Ms. Cobb further explained, “I don’t feel anyone can tell me what I can and cannot do on my days off;” and at a later point, stated in reference to working at H&R Block on Saturdays and Sundays after working at CTA, that it was “my time, and still my business, not CTA’s.”

After comparing her CTA attendance and FMLA records with her H&R Block timekeeping documents, Ms. Cobb confirmed that on some occasions she may have gone to work at H&R Block on days when she was absent from CTA, on FMLA leave. Ms. Cobb stated that if she took FMLA leave in the morning and her illness subsided after she performed self-treatment, she may have gone to H&R Block later in the day. Ms. Cobb further explained that she would not have been scheduled to work at H&R Block on those days, but was called to go into H&R Block to sign documents or attend a meeting. Ms. Cobb stated that she could not recall specific dates when this may have occurred; however, she confirmed that she was on FMLA leave and worked at H&R Block on January 16 and 28, 2012.

An OEIG investigator then pointed out that the H&R Block timekeeping records reflected that she was physically at H&R Block offices for extended periods of time. For example, on January 28, 2012, Ms. Cobb worked at H&R Block for over 5 hours. In response, Ms. Cobb acknowledged that she may have advised or communicated with clients and/or coworkers about tax matters while she was at the H&R Block office. Ms. Cobb further explained that she worked at H&R Block sometimes when she was sick, because it only required her to work behind a desk; she could not, on the other hand, drive a bus while she was in that condition.

Ms. Cobb also stated that she prepares taxes for approximately ten CTA employees of the 77<sup>th</sup> Street Garage. She explained that at least one employee gives her tax documents at the CTA garage, which she takes to H&R Block to prepare tax returns. She then brings the documents back to the garage and returns them to the employee.

**E. Interviews of [REDACTED] & [REDACTED]**

During the investigation, investigators interviewed [REDACTED] [REDACTED]<sup>3</sup> ([REDACTED]) and [REDACTED] ([REDACTED]) regarding CTA’s policies related to secondary employment and FMLA absences.<sup>4</sup> In these interviews, [REDACTED] and [REDACTED] both emphasized that CTA employees must receive approval from CTA prior to engaging in secondary employment, per CTA policy. In addition, [REDACTED] and [REDACTED] both stated that employees are not allowed to engage in secondary employment while on FMLA leave. [REDACTED] explained the

<sup>3</sup> [REDACTED]  
<sup>4</sup> [REDACTED] was interviewed on March 1, 2012, and [REDACTED] was interviewed on September 21, 2012.

rationale for restricting employees on FMLA from working secondary employment—if employees are not fit to work at CTA because they are on FMLA leave, then they should not be fit to work their secondary employment. In addition, ██████████ explained that CTA expects employees using FMLA leave to rest in preparation for returning to CTA as soon as possible.

#### IV. Analysis

##### A. Denise Cobb Violated CTA’s FMLA Policy

The CTA policy on FMLA states: “Employees may not engage in secondary employment...if they take a leave for their own illness or injury under FMLA ... or short-term disability.”<sup>5</sup> AP #1013, 4.14. Moreover, even if an employee has secondary employment that has been approved by CTA, this approval is “suspended whenever the employee is on a leave of absence or FMLA leave of absence.” Administrative Procedure #1022, 4.6(D) (AP #1022).

The investigation revealed that Ms. Cobb has been approved for intermittent FMLA leave for several years and has repeatedly engaged in secondary employment at H&R Block during that time. Moreover, on at least ten occasions in 2011 and 2012, Ms. Cobb worked at H&R Block as a Tax Preparer on the same days that she took FMLA leave from CTA. Therefore, the allegation that Ms Cobb engaged in secondary employment while taking FMLA leave, in violation of AP #1013, is **FOUNDED**.

##### B. Denise Cobb Violated CTA’s Secondary Employment Policy

The CTA policy on secondary employment requires employees to complete the Secondary Employment Application (Form 7822) and receive permission from the CTA to engage in secondary employment, prior to engaging in such employment. AP #1022, 4.1 and 4.2. “Secondary Employment” is defined in AP #1022 to include “the service or activity rendered by an active employee of the Authority for which some form of compensation from any other source than the CTA is received.” *Id.* at 3.2. CTA General Rule Book, Rule 9(a),<sup>6</sup> and the CTA Code of Ethics, Section 2.10, also prohibit outside employment without obtaining prior written permission of the CTA. In addition, once employees receive approval for secondary employment, that approval “must be renewed every twelve (12) months after the date of final approval.” AP #1022, 4.9.

In this case, Ms. Cobb has worked for H&R Block since 1994, yet she has never obtained permission from CTA to engage in secondary employment, either at her initial hire at CTA when she signed forms regarding secondary employment, or at any subsequent time. Ms. Cobb was aware that she was required to seek permission from CTA before working secondary employment, but still failed to do so. In her interview, Ms. Cobb acknowledged that she

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<sup>5</sup> AP #1013 mentions that employees may not engage in secondary employment if they take Short-Term Disability leave; however, the corresponding provision in the secondary employment policy, AP #1022, does not specifically address Short-Term Disability leave. Neither does the policy specifically related to Short-Term Disability, AP #1010. Thus, the OEIG will not issue a finding relating to Ms. Cobb’s engagement in secondary employment while on Short-Term Disability leave in 2010.

<sup>6</sup> The *Chicago Transit Authority General Rule Book Governing All Employees* (in effect October 1, 1989).

understood that CTA rules required her to seek and gain approval for secondary employment and that she had signed the “Secondary Employment Acknowledgment” form confirming this knowledge, yet she never submitted the requisite form. Therefore, the allegation that Ms. Cobb failed to obtain permission from the CTA prior to engaging in secondary employment, in violation of multiple CTA policies, is **FOUNDED**.

**V. Recommendations**

After due investigation, the OEIG issues these findings:

- **FOUNDED**—Denise Cobb engaged in secondary employment while taking FMLA leave, in violation of AP #1013.
- **FOUNDED**—Denise Cobb failed to obtain permission from the CTA prior to engaging in secondary employment, in violation of multiple CTA policies.

The OEIG recommends that Ms. Cobb be disciplined for violating several CTA policies over an extended period of time.

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

Date: **November 30, 2012**

Office of Executive Inspector General  
for the Agencies of the Illinois Governor  
32 W. Randolph Street, Ste. 1900  
Chicago, IL 60601

**Fallon Opperman**  
Deputy Chief and  
Assistant Inspector General

**Julie Africk**  
Investigator #126



567 West Lake Street  
Chicago, Illinois 60661-1498  
TEL 312 664-7200  
www.transitchicago.com

January 7, 2013

Mr. Ricardo Meza  
Executive Inspector General  
Office of Executive Inspector General  
32 West Randolph Street  
Suite 1900  
Chicago, IL 60601

**Re: OEIG Case No. 12-0039**

Dear Mr. Meza,

On November 30, 2012, the CTA received a copy of the OEIG's Final Summary Report regarding Case No. 12-0039. The OEIG's investigation concluded that the allegations made against the employee were founded. The OEIG recommended that the employee be disciplined and further directed CTA to report what action the Authority took to address all recommendations made relative to the OEIG's investigation, including any disciplinary action imposed.

The CTA discharged the employee, Ms. Denise Cobb, on July 17, 2012, several months prior to the receipt of the OEIG's report. Given that the discharge occurred prior to the issuance of the OEIG's report, CTA is unable to act on the OEIG's recommendations.

If you have any questions about this matter or otherwise require any additional information, please contact me at (312) 681-

Sincerely,

Stephen L. Wood  
Deputy General Counsel,  
Compliance, Policy & Appeals

cc: Forrest Claypool, President, Chicago Transit Authority  
Terry Peterson, Chairman, Chicago Transit Board

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EXECUTIVE ETHICS COMMISSION

IN THE EXECUTIVE ETHICS COMMISSION  
OF THE STATE OF ILLINOIS

IN RE: Denise Cobb

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#12-00039

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked the Commission will not make your response public if the redacted report is made public.

Below is my public response. Please make this response public if the summary report is also made public; or

Below are my suggestions for redaction. I do not wish for these suggestions to be made public.

\_\_\_\_\_  
Respondent's Signature

10/4/13  
\_\_\_\_\_  
Date

Instructions: Please write or type suggestions for redaction or a public response on the lines below. If you prefer, you may attach separate documents to this form. Return this form and any attachments to:

Illinois Executive Ethics Commission  
401 S. Spring Street, Room 513 Wm. Stratton Building  
Springfield, IL 62706

*I strongly disagree with this, I just looked over the notes I took from this hearing on October 3, 2013. I even checked the dates with my run books. How can I be disciplined for my personal time (OFF DAYS), how can I be disciplined for my non paid time by CTA (swings). That is unjust. There are numerous employees at CTA that work for HR Block. This is harassment.*