



2. Meyer was a caseworker for J.S.<sup>1</sup> on April 26, 2011 when J.S. went to the Oakland FCRC with her two minor children to obtain DHS food assistance for her children. Tr. 7/14/15 at 34:22-36:24.
3. J.S. testified that while she was meeting with Meyer on that day, Meyer asked her to stand up and turn around so that he could look at her body. Tr. 7/14/15 at 36:2-4.
4. J.S. testified that Meyer told her that she was very beautiful and that he liked her body and breasts. Tr. 7/14/15 at 36:2-4.
5. J.S. testified that she was offended by Meyer's comments and told him that he should not make these comments to her. J.S. testified that Meyer's comments made her feel like a prostitute. Tr. 7/14/15 at 38:4-7.
6. Meyer did not process J.S.'s application for benefits that day, claiming that she had missing paperwork. Tr. 7/14/15 at 38:4-7.
7. On May 26, 2011, J.S. filed a complaint with DHS about the statements Meyer made to her on April 26, 2011. J.S. testified that she did not file a complaint on April 26, 2011 because she was scared and wanted to leave the office. Hrg. Ex. 1, Tr. 7/14/15 at 75:22-77:12.
8. On May 26, 2011, J.S. was brought to the desk of DHS Human Services Caseworker Frank Echevarria, where she began crying hysterically. She informed Echevarria that Meyer had told her to turn around, that he wanted to look at her body, and that he had made these statements in front of her child. Tr. 7/14/15 at 91:13-92:3.
9. At the direction of his supervisor, Echevarria gave J.S. a client grievance form, which she completed. Echevarria also noticed that J.S.'s benefits had not been processed and he processed them the same day. Tr. 7/14/15 at 92:11-93:13.
10. On June 1, 2011, J.S. filed a second complaint with DHS. The allegations contained in the second complaint are similar to those of the first complaint. Hrg. Ex. 2, Tr. 7/15/15 at 61:20-62:24.
11. On April 9, 2015, J.S., a resident of the State of Wisconsin, gave an evidence deposition. The record indicates that the Office of the Attorney General sent Meyer notice of the deposition on March 24, 2015 and evidence deposition disclosures on March 25, 2015. Meyer did not attend the deposition.
12. Office of Executive Inspector General ("OEIG") staff interviewed Meyer twice concerning its investigation of the matters that are the subject of the present Complaint. Tr. 7/14/15 at 161:2-162:9.

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<sup>1</sup> As an applicant and recipient of public aid benefits, the identity of J.S. is withheld in accordance with statute and rule. See 305 ILCS 5/11-9 *et seq.* and 89 Ill. Admin. Code 10.230.

13. During the February 24, 2012 interview with OEIG staff, Meyer denied ever asking a DHS client to stand up and turn around so that he could look at her body and stated that he would never say anything inappropriate to any DHS client, but that people could misconstrue what he said. Tr. 7/14/15 at 225:14-226:3.
14. During the April 18, 2013 interview with OEIG staff, Meyer again denied ever asking a DHS client to stand up and turn around so that he could look at her body. Tr. 7/14/15 at 166:18-167:4.
15. Prior to each OEIG interview, Meyer was presented with and signed an administrative rights form that advised Meyer of his duty to cooperate. The administrative rights forms note, among other things, that “[a]ny false, inaccurate, or deliberately incomplete statements by me, or my refusal to answer, could result in disciplinary action up to and including discharge.” Hrg. Exs. 13, 15.
16. During the hearing, J.S. accurately described Meyer’s physical appearance and Meyer did not dispute J.S.’s description of his physical appearance. Tr. 7/14/15 at 46:11-17.
17. At hearing, Meyer refused to be examined on the record, even after being warned that there might be consequences for refusing to answer questions. Tr. 7/14/15 at 251:11-254:24, Tr. 7/15/15 at 7:18-11:18.

**Rule 404(b) Evidence:**

18. In 2007, five DHS clients alleged that Meyer had made inappropriate sexual comments to them. Tr. 7/14/15 at 180:6-181:5.
19. In connection with these allegations, in 2008, the DHS Bureau of Civil Affairs recommended that Meyer receive training regarding sexual harassment and appropriate interaction with customers. Meyer also received a 20-day suspension without pay, which was later reduced to a written reprimand. Hrg. Ex. 17., Tr. 7/14/15 at 181:6-182:2.
20. In October 2010, two additional DHS clients each raised allegations that Meyer made inappropriate sexual solicitations and comments to them. Each client alleged that Meyer made adverse changes to their DHS benefit levels when they failed to respond positively to Respondent’s comments. Tr. 7/14/15 at 183:2-186:10.
21. Meyer acknowledged during his February 24, 2012 interview that his computer terminal ID number had been used to change the clients’ accounts, but he had no explanation why the changes were made. Tr. 7/14/15 at 145:21-146:14.

## **Training:**

22. Meyer received DHS sexual harassment training on January 28, 2008 and February 16, 2011. The training taught, among other things, that making unwanted comments about a person's body constitutes sexual harassment. Tr. 7/14/15 at 127:15-128:24, 129:2-131:8.
23. Between 2008 and 2013, Meyer participated annually in Ethics Act training, which included a section on the duty to cooperate with OEIG investigations. Tr. 7/14/15 at 145:21-146:14.

## CONCLUSIONS OF LAW

1. Respondent Andrew Meyer was at all times relevant to this complaint a State employee, as "employee" is defined in the State Officials and Employees Ethics Act ("Act") to include regular employees and appointees. 5 ILCS 430/1-5.
2. The Executive Ethics Commission has jurisdiction over Andrew Meyer in the matter of his alleged failure to cooperate in an OEIG investigation undertaken pursuant to the Act (5 ILCS 430/20-70). 5 ILCS 430-20-5(d).
3. Illinois Rule of Evidence 404(b) permits the use of "other acts" evidence for a variety of legitimate purposes including absence of mistake or misunderstanding.
4. Findings of Fact 18-21, above, are properly admitted under Illinois Rule of Evidence 404(b) for the purpose of demonstrating that, contrary to Meyer's assertion, J.S. neither mistook nor misunderstood Meyer's statements to her on April 26, 2011.
5. Evidence depositions may be used by any party for any purpose if the court finds that the deponent is out of the county. Ill. Supreme Ct. Rule 212 (b)(2).
6. Because J.S. was a resident of the State of Wisconsin at the time of her evidence deposition, that evidence deposition may be properly admitted as evidence and considered by the Commission in this matter. Id.
7. Andrew Meyer's refusal to subject himself to questioning at the administrative hearing allows the Commission to make a finding adverse to Meyer. In a civil proceeding, if a party refuses to testify, the court can draw negative inferences against the party. *People v. Bell*, 296 Ill. App. 3d 146, 153 (4<sup>th</sup> Dist. 1998).
8. The administrative law judge finds the testimony of J.S. to be credible and the Commission adopts this finding.
9. Respondent Andrew Meyer has had a duty to cooperate with an investigation of the OEIG. 5 ILCS 430/20-70.

10. A State employee who intentionally omits, denies or misrepresents facts that he knows to be true at the time of his denials or misrepresentations, or who knowingly and intentionally makes false, misleading or evasive statements during the course of an official OEIG interview, is subject to the penalties that Section 20-70, 50-5(e) and 50-10(a) of the Ethics Act authorize. *Meza v. Brown*, 14-EC-003 (Jan. 23, 2014).
11. In all proceedings before the Commission, the standard of proof is by a preponderance of the evidence. 5 ILCS 430/20-50(k).
12. Petitioner has demonstrated by a preponderance of evidence that Andrew Meyer violated Section 20-70 of the State Officials and Employees Ethics Act on February 24, 2012 when he knowingly failed to cooperate in an investigation undertaken pursuant to the State Officials and Employees Ethics Act on February by telling OEIG investigators that he never asked a DHS client to stand up and turn around so that he could look at her body.
13. Petitioner has demonstrated by a preponderance of evidence that Andrew Meyer violated Section 20-70 of the State Officials and Employees Ethics Act on April 18, 2013 when he knowingly failed to cooperate in an investigation undertaken pursuant to the State Officials and Employees Ethics Act on February by telling OEIG investigators that he had never asked a DHS employee to stand up and turn around so that he could look at her body.
14. The Executive Ethics Commission may levy an administrative fine of up to \$5,000 for a violation of the State Officials and Employees Ethics Act. 5 ILCS 430/50-5(e).
15. The Executive Ethics Commission may issue appropriate injunctive relief up to and including discharge of a State employee for violation of any Section of the State Officials and Employees Ethics Act. 5 ILCS 430/50-10(a).

### ANALYSIS

Respondent Andrew Meyer violated Sections 20-70 of the State Officials and Employees Ethics Act (5 ILCS 430/20-70) when, during two OEIG interviews, he intentionally and knowingly made false statements to investigators conducting an investigation pursuant to the State Officials and Employees Ethics Act.

The evidence clearly demonstrates that Meyer made statements of a sexual nature toward J.S. on April 26, 2011. J.S.'s description of events remains consistent throughout her two complaints to DHS, her evidence deposition and her testimony at hearing. The administrative law judge found her testimony credible and this finding is adopted by the Commission. Evidence admitted under Rule 404(b) demonstrates that J.S. did not misunderstand the sexual

comments Meyer made to her. Further, since Meyer refused to testify at hearing, J.S.'s testimony about what Meyer said to her on April 26, 2011 goes unrebutted.

The evidence is also clear that Meyer was aware of his duty to provide accurate and truthful information during his two OEIG interviews, but chose to make false statements. He received annual ethics training his duty to cooperate and the administrative rights forms that he signed prior to each interview reminded him of this duty. OEIG investigators testified that Meyer denied making statements of a sexual nature and since Meyer chose not to testify at hearing, their testimony goes unrebutted.

Respondent's arguments to the contrary all ultimately fail. J.S.'s inconsistency about the dates she filed complaints is minor and the correct dates are supported by documentary evidence and the testimony of another witness. She described Meyer's physical appearance accurately. Respondent's argument about double-jeopardy do not apply in the context of a civil proceeding and any discipline imposed by the Commission is not based upon the same offense as the discipline imposed by DHS. While computer records suggest that respondent and J.S. met for only three seconds on April 26, 2011, competent testimony explains that this happens when a case worker fails to press the start button at the beginning of a client interview, and presses the start and stop buttons at the end of the interview. Finally, respondent had the opportunity to call witnesses who might support his version of events that took place on April 26, 2011, but failed to do so. None of the witnesses respondent called observed any interaction between respondent and J.S. on that day. By refusing to testify, even respondent failed to present a version of events that are favorable to him.

The Ethics Act does not provide any guidance for the Commission to consider when levying a fine or issuing injunctive relief. The Commission, however, has adopted rules, found at 2 Ill. Admin. Code 1620.530(b), that outline 14 aggravating and mitigating factors that the Commission may consider. These factors include: 2 Ill. Admin. Code § 1620.530(b)(2), (5), and (11):

- A. § 1620.530(b)(2)—**scope of the violations**—Andrew Meyer made false statements to OEIG investigators during two interviews, 14 months apart.
- B. § 1620.530(b)(5)—**extent of Respondent's intent or knowledge of the facts surrounding the violation**—Andrew Meyer knew that the statements he made to OEIG investigators were false when he made them. Meyer intentionally made these false statements to OEIG investigators to avoid discipline.
- C. § 1620.530(b)(11)—**cooperation**—Andrew Meyer did not cooperate in the investigation into his wrongdoing.

Petitioner has suggested that the Commission impose its most serious penalty by 1) permanently discharging Andrew Meyer from the Department of Human Services, without reinstatement rights to any position within any executive branch State agency; 2) barring Andrew

Meyer from seeking or accepting an offer of re-employment with any executive branch State agency; and 3) directing the Department of Human Services to enter the permanent discharge in Andrew Meyer's personnel file. The Commission has never issued the injunctive relief sought by petitioner in this matter.

While petitioner has demonstrated that Andrew Meyer engaged in outrageous behavior toward a vulnerable constituent, and has a lengthy history of similar conduct, the Commission lacks jurisdiction over this behavior. Instead, the Commission's jurisdiction in this case is limited to matters arising under the State Officials and Employees Ethics Act. See 5 ILCS 430/20-5(d). The authority to impose sanctions for Meyer's underlying behavior rests with Meyer's employer. In the present case, the Commission's jurisdiction is limited to the matter of Andrew Meyer's failure to cooperate.

Meyer failed to cooperate on two separate occasions by falsely denying to OEIG investigators the accusations directed against him. Contrary to a criminal proceeding, in a civil administrative proceeding, the respondent has no right to remain silent and can be required to answer questions truthfully. While Meyer's untruthful statements clearly constitute a violation of Section 20-70, these untrue denials simply served to force the OEIG to demonstrate Meyer's failure to cooperate by evidence other than his own confession. Such a failure to cooperate does not merit the imposition of the injunctive relief sought by petitioner.

WHEREFORE, for the foregoing reasons, the Commission finds that respondent Andrew Meyer violated Section 20-70 of the State Officials and Employees Ethics Act. 5 ILCS 430/20-70.

IT IS ORDERED that Andrew Meyer's motions to dismiss are denied.

IT IS FURTHER ORDERED that petitioner's motion to admit Rule 404(b) evidence is granted.

IT IS FURTHER ORDERED that petitioner's motion in limine for a ruling that the Commission has the authority to order permanent discharge from State employment is granted.

IT IS FURTHER ORDERED that petitioner's motion in limine for a ruling that the Commission's authority to impose discipline under the Ethics Act is not preempted by decisions rendered under the Personnel Code is granted.

IT IS FURTHER ORDERED that petitioner's motion in limine to preclude the testimony of two witnesses is denied.

IT IS FURTHER ORDERED that an administrative fine of \$1,000.00 is levied against respondent Andrew Meyer in accordance with his violation of Section 20-70 of the State Officials and Employees Ethics Act. 5 ILCS 430/20-70.

This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: 10-19-2015