

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: NICKOILYA BURKS,) OEIG Case #15-01647

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 this 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 Nickoilya Burks at her last known address.

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

I. ALLEGATIONS

On August 13, 2015, the Office of Executive Inspector General (OEIG) received a complaint alleging that Department of Human Services (DHS) Caseworker Nickoilya Burks [unfounded allegation redacted].¹ During the investigation, OEIG investigators noticed that several disability leave of absence forms,² which were purportedly signed by a physician and submitted to DHS on Ms. Burks’ behalf, appeared to be copies of each other. Accordingly, in addition to the initial allegations, the OEIG investigation explored this other issue.

II. BACKGROUND

Ms. Burks has been a State employee since November 2005 and a DHS Human Services Caseworker since November 2007. She currently works at the DHS Family Community Resource

¹ [Redacted].

² The relevant forms were CMS-95 forms, which are titled, “Physician’s Statement.”

Center (FCRC) in Kankakee, Illinois. Ms. Burks is also the Vice President of American Federation of State, County, and Municipal Employees (AFSCME) Local 2794, a union that covers certain employees at the Kankakee FCRC.

Per the Illinois Administrative Code, an employee who cannot perform a substantial portion of her regularly assigned duties due to temporary physical disability shall, upon request, be granted a leave for the duration of such disability.³ During a disability leave, the disabled employee shall provide written verification by a licensed physician, which shows the diagnosis, prognosis, and expected duration of the disability.⁴ This verification shall be made no less often than every 30 days during a period of disability, unless the nature of the disability precludes the need for such frequency of verification.⁵

According to the Department of Central Management Services (CMS) Transactions Manual, a copy of the physician's verification is to be maintained with the DHS Personnel Office.⁶ A CMS-95 form is the preferred document that an employee should submit when requesting disability leave and it has fields for various types of information including diagnosis, dates of treatment, limitation, and extent of disability, among others.⁷ The last field on the form is for the signature of the attending physician.

III. INVESTIGATION

OEIG investigators obtained and reviewed various documents and interviewed multiple individuals regarding the allegations earlier discussed; a summary of the investigation follows.

A. [Redacted]

[This section, consisting of approximately one page, relates to allegations that have been determined to be unfounded. The Commission is exercising its authority pursuant to 5 ILCS 430/20-52 to redact this section.]⁸ ⁹

B. Investigation Of Ms. Burks Submitting Fraudulent Forms To DHS

Regarding this allegation, OEIG investigators obtained and reviewed CMS-95 forms, records of Ms. Burks' contact with a hospital, and her personnel file, among other documents. OEIG investigators also interviewed hospital staff and Ms. Burks.

³ 80 Ill. Admin. Code § 303.145(a).

⁴ 80 Ill. Admin. Code § 303.145(b)(4).

⁵ *Id.*

⁶ CMS Transactions Manual, Section 7, p. 6.

⁷ CMS Transactions Manual, Section 7, p. 17-18.

⁸ [Redacted].

⁹ [Redacted].

1. Records of Disability Leave and Supporting CMS-95 Forms

A review of Ms. Burks' records of disability leave indicates that she was initially approved for non-service connected disability leave from June 8, 2015 through September 1, 2015.¹⁰ Her disability leave was then extended three times, with a final return date set for January 4, 2016.¹¹

Four CMS-95 forms were sent to the DHS Bureau of Employee Services¹² in support of Ms. Burks' initial disability leave of absence and three subsequent extensions. The first CMS-95 form had a signature in the name of [Doctor 1]; however, the remaining three CMS-95 forms were purportedly signed by [Doctor 2] and were dated September 1, October 12, and November 3, 2015. The CMS-95 forms purportedly bearing [Doctor 2's] signature appeared substantially similar to one another. For instance, the handwritten remarks on each form were the same and the signature did not appear to change; however, dates on the October and November 2015 CMS-95 forms appeared altered with the aid of correction fluid. Moreover, the October and November 2015 CMS-95 forms were sent to DHS from a fax number connected to the SDC Employees Credit Union, which is located approximately one mile away from Ms. Burks' home residence in Kankakee.

2. Interview of [Doctor 2] and [Medical Assistant]

On March 31, 2016, OEIG investigators interviewed [Doctor 2]¹³ and [Medical Assistant] about the CMS-95 forms that were submitted in support of Ms. Burks' disability leave extensions. [Doctor 2] reviewed the three CMS-95 forms that purportedly bore his signature and informed OEIG investigators that he did not sign any of the CMS-95 forms. [Doctor 2] did say that on September 1, 2015, he authorized [Medical Assistant] to fill out the first one and to sign it on his behalf. [Doctor 2] said that he *did not* authorize the remaining CMS-95 forms, dated October 12 and November 3, 2015, to be completed or signed on his behalf.

[Doctor 2] said that [Medical Assistant] is the only employee who is authorized to sign on his behalf. According to [Doctor 2], the protocol for processing these types of forms is to leave them in [Medical Assistant's] inbox. [Doctor 2] remarked, "This all funnels through [Medical Assistant]." [Doctor 2] said that he did not recall having a conversation with Ms. Burks about renewing her disability leave, but did note that she underwent surgery that was delayed due to issues with her insurance.¹⁴

[Medical Assistant] also reviewed the three CMS-95 forms that purportedly bore the signature of [Doctor 2]. [Medical Assistant] told OEIG investigators that she filled out the first CMS-95 form and signed for [Doctor 2]; however, [Medical Assistant] denied signing for [Doctor 2] or altering any of the dates on the remaining CMS-95 forms. [Medical Assistant] stated that if

¹⁰ Then-CMS [Attorney] informed OEIG investigators that non-service connected disability leave is leave for a disability resulting from causes that are not work-related.

¹¹ While she was on disability leave, Ms. Burks was compensated through the State Employee Retirement System (SERS). As of January 2016, Ms. Burks had been paid \$14,392 by SERS.

¹² The DHS Bureau of Employee Services provides personnel and classification services to DHS employees.

¹³ [Doctor 2] works for the Northwestern Medical Group and treats patients out of his Chicago office.

¹⁴ Hospital records show that her surgery was scheduled for September 23, 2015 but instead occurred in October 2015.

she corrects a document she initials the correction.¹⁵ Nevertheless, [Medical Assistant] noted that she usually requests that the patient bring in a new form, rather than copying and making corrections to a pre-existing one.

3. Interview of Nickoilya Burks

On June 8, 2016, OEIG investigators interviewed Ms. Burks and examined with her each CMS-95 form that she submitted in support of extending her disability leave.¹⁶ With regard to the September CMS-95 form that [Medical Assistant] indicated she signed on [Doctor 2's] behalf, Ms. Burks stated that she and [Doctor 2] went over the form in his office and that she filled out certain parts. For instance, Ms. Burks noted that she wrote in the date in the "Treatment" section, filled in part of the "Symptoms" section, and wrote out the address of Northwestern Memorial Hospital in the "Progress" section. Ms. Burks said that she witnessed [Doctor 2] sign the form. According to Ms. Burks, she thought that this CMS-95 was faxed to DHS personnel by the doctor's office, but she was not sure because she sometimes faxes these forms herself. Ms. Burks confirmed that this CMS-95 extended her disability leave through October 24, 2015.

After reviewing the October CMS-95 form, Ms. Burks remarked that she did not submit a new CMS-95 form to the doctor's office for authorization, but submitted the previous September CMS-95 form so that it could be updated with new information. Ms. Burks said that it appeared that the doctor updated sections of the form including the dates, but she did not recall altering the information herself. Ms. Burks acknowledged that she could have submitted a new CMS-95 form for the doctor's office to fill out, but she submitted the previous form because it just needed to be updated. According to Ms. Burks, she requested the updated form back from the doctor's office and personally faxed it to DHS Employee Services from SDC Employees Credit Union in Kankakee. Ms. Burks said that [Doctor 2] did not say anything to her about the October CMS-95 form being a copy of the September CMS-95 form. Ms. Burks confirmed that the October CMS-95 form extended her disability leave through November 23, 2015.

Ms. Burks reviewed the November CMS-95 form and stated that she submitted the previous October CMS-95 form to the doctor's office so that it could be updated in support of her request for another disability leave extension. Ms. Burks said that she did not recall seeing anyone at the doctor's office alter information on the form, such as dates, but she did not alter the information herself. Ms. Burks did not know if the doctor needed to sign a new CMS-95 form every time she sought to extend her disability leave, but assumed that the doctor approved her request because she received the form back from the doctor's office with relevant information altered. Ms. Burks said that, like the previously submitted October CMS-95 form, she personally faxed the November CMS-95 form to DHS Employee Services from a credit union in Kankakee. Ms. Burks said she returned to work on January 8, 2016.

¹⁵ No initials appeared next to any altered date on any of the CMS-95 forms.

¹⁶ OEIG investigators also reviewed with Ms. Burks the initial CMS-95 form that was submitted in support of her going on disability leave in June 2015 through September 2015; however, this form was not duplicated and the physician who purportedly signed this form, [Doctor 1], was different than the one whose name appeared on the subsequent forms, that of [Doctor 2]. Ms. Burks said she gave that form to [Doctor 1's] front desk receptionist.

IV. ANALYSIS

A. [Redacted]

[This section, consisting of approximately one page, relates to allegations that have been determined to be unfounded. The Commission is exercising its authority pursuant to 5 ILCS 430/20-52 to redact this section.]

B. Ms. Burks Violated DHS Policy When She Submitted Two Fraudulent CMS-95 Forms To DHS

Per the DHS Employee Handbook, “[a]n employee shall not participate in or condone fraud, dishonesty, or misrepresentation in the performance of duties.”¹⁷ The OEIG investigation revealed that Ms. Burks violated this policy through her submission of two fraudulent CMS-95 forms to the DHS Bureau of Employee Services.

Ms. Burks admittedly faxed two CMS-95 forms, dated October 12, 2015, and November 3, 2015, to the DHS Bureau of Employee Services for the purpose of extending her disability leave. When Ms. Burks sent these two forms to DHS, she knowingly misrepresented to the agency that [Doctor 2] had signed and approved them when in fact he had not. According to [Doctor 2], although he authorized the September CMS-95 form, he did not authorize the October or November CMS-95 forms and [Medical Assistant], who processes these forms on [Doctor 2’s] behalf, said that she did not sign these forms on behalf of [Doctor 2] or alter any of the information contained on them.¹⁸

In light of the statements made by [Doctor 2] and [Medical Assistant], Ms. Burks’ explanation that someone in the doctor’s office returned to her the October and November CMS-95 forms with alterations, is not credible. [Medical Assistant] explained that she places her initials next to a correction, if one is needed, or she requests the submission of a new form. Here, [Medical Assistant’s] initials do not appear next to the alterations made on the October or November CMS-95 forms and a new CMS-95 was not requested. Ms. Burks’ credibility on the matter is further called into question because she claimed to have witnessed [Doctor 2] sign the September CMS-95 form; yet, [Doctor 2] informed OEIG investigators that although he authorized the September CMS-95 form, he did not sign it, [Medical Assistant] signed it on his behalf. [Medical Assistant] confirmed [Doctor 2’s] statement.

¹⁷ DHS Employee Handbook, Section V, “Employee Personal Conduct” (April 1, 2009).

¹⁸ The OEIG did not find evidence that the information contained on these forms, such as medical information and the dates of service, was false; rather, the OEIG investigation focused on whether these forms were authorized by a licensed physician pursuant to 80 Ill. Admin. Code § 303.145(b)(4). Even if one assumes that the information contained on the CMS-95 forms was accurate, Ms. Burks’ failure to have the information verified by a licensed physician places a drain on State resources because it triggers the operation of the State’s investigatory machinery.

Because Ms. Burks submitted two CMS-95 forms to DHS without obtaining authorization from a licensed physician, the allegation that Ms. Burks violated DHS policy by participating in or condoning fraud, dishonesty, or misrepresentation in the performance of duties is **FOUNDED**.¹⁹

V. FINDINGS AND RECOMMENDATIONS

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

- **UNFOUNDED** – [Redacted].
- **FOUNDED** – Nickoilya Burks participated in or condoned fraud, dishonesty, or misrepresentation in the performance of duties when she submitted to DHS two fraudulent CMS-95 forms.

Based on the findings, the OEIG recommends that DHS discipline Ms. Burks as it deems appropriate up to, and including, discharge. No further investigative action is needed, and this case is considered closed.

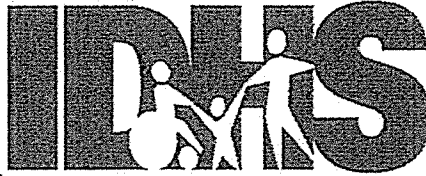
Date: August 22, 2016

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

By: **David Sanchez**
Assistant Inspector General

Edward Doyle
Investigator

¹⁹ 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.



Illinois Department of Human Services

Bruce Rauner, Governor

James T. Dimas, Secretary

100 South Grand Avenue, East • Springfield, Illinois 62762
401 South Clinton Street • Chicago, Illinois 60607

September 12, 2016

*Via e-mail to Fallon Opperman, Deputy Inspector General and Chief of Chicago Division,
on behalf of:*

Maggie Hickey

Executive Inspector General

Office of the Executive Inspector General for the Agencies of the Illinois Governor

69 West Washington Street, Suite 3400

Chicago, Illinois 60602

RE: Response to the Final Report for Complaint 15-01647


Dear Executive Inspector General Hickey:

This letter responds to the Final Report for Complaint Number 15-01647, attached. The Report detailed submission of fraudulent forms by a Department of Human Services (DHS) employee. The Report recommended discipline for the employee. The recommendation is being followed.

Specifically, DHS is taking steps to discipline her. As you know, procedures regarding discipline exist. The procedures allow for a pre-disciplinary meeting, a rebuttal period, and more. The process could take some time for completion. Your office will be updated as the process moves along.

If you have any questions, please feel free to contact Robert J. Grindle, DHS' Ethics Officer.

Regards,


James T. Dimas
Secretary



Bruce Rauner, Governor

James T. Dimas, Secretary

100 South Grand Avenue, East • Springfield, Illinois 62762
401 South Clinton Street • Chicago, Illinois 60607

July 13, 2017

*Via e-mail to Fallon Opperman, Deputy Inspector General and Chief of Chicago Division,
on behalf of:*

Maggie Hickey

Executive Inspector General

Office of the Executive Inspector General for the Agencies of the Illinois Governor

69 West Washington Street, Suite 3400

Chicago, Illinois 60602

RE: Response to the Final Report for Complaint 15-01647

Dear Executive Inspector General Hickey:

This letter provides your office with an update regarding the previous response to the Final Report for Complaint Number 15-01647. As was previously indicated, the Department of Human Services (DHS) pursued disciplinary action against Ms. Burks. Those activities have concluded. Ms. Burks resigned on May 28, 2017.

As such, DHS considers this matter closed. If you have any questions, please feel free to contact Robert J. Grindle, DHS' Ethics Officer.

Regards,

James T. Dimas
Secretary

6/13/17 J.T. Dimas