

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

MARGARET A. HICKEY, in her capacity)	
as EXECUTIVE INSPECTOR GENERAL)	
FOR THE AGENCIES OF THE ILLINOIS)	
GOVERNOR,)	
)	
Petitioner,)	
)	No. 17-EEC-007
v.)	
)	
)	
SCOTT HARPER,)	
)	
Respondent.)	

DECISION

This matter is before the Executive Ethics Commission for purposes of considering Petitioner’s Unopposed Motion for Summary Judgment and the parties’ stipulation of facts. This decision will also serve as the Commission’s final administrative decision in this matter.

On June 14, 2017, Petitioner filed the present complaint with the Commission. The complaint alleged that respondent violated the State Officials and Employees Ethics Act when he failed to notify the Office of the Executive Inspector General and obtain a determination of eligibility prior to accepting non-State employment. An affidavit of service indicates that Respondent was served a copy of the complaint on July 11, 2017. On August 23, 2017, the Commission entered an order finding the complaint sufficient to proceed. On October 24, 2017, Petitioner filed the present Unopposed Motion for Summary Judgment and the parties’ stipulations.

Petitioner is represented by Assistant Attorney General Neil MacDonald and Respondent appears pro se.

FINDINGS OF FACT

The Commission, having reviewed the record of this case, makes the following findings of fact:

1. During the period between January 22, 2013, and January 15, 2015, Respondent was employed by the Illinois Department of Natural Resources (“IDNR”) as the agency’s Chief Fiscal Officer (“CFO”). In that capacity, Respondent was responsible for preparing IDNR’s

budget, conducting financial forecasting, approving contracts, and overseeing procurements. He also supervised IDNR employees whose responsibilities included preparing contracts. Neither he nor his staff, however, exercised licensing or regulatory authority on behalf of IDNR.

2. During the period between February 25, 2014, and March 12, 2014, Respondent received communications (“Notice”) from IDNR’s General Counsel and Ethics Officer, informing Respondent that he was a C-list employee. IDNR’s Notice further advised Respondent that

if I am offered non-State employment during State employment or within one year immediately after ending State employment, I shall, prior to accepting any such non-State employment offer, notify the Executive Inspector General for the Agencies of the Illinois Governor (“EIG”). I understand that if I do not notify the Executive Inspector General, I shall be subject to a fine.

Respondent read and signed the Notice on March 12, 2014.

3. On January 15, 2015, IDNR’s Ethics Officer sent a memorandum to all of the agency’s C-list employees, including Respondent, detailing the requirements and the procedures for obtaining an OEIG revolving door determination.

4. Respondent left employment with IDNR on January 30, 2015. On December 15, 2015, he began working as the CFO of a start-up corporation, and within months had become the organization’s CEO.

5. A review of OEIG internal records confirms that Respondent did not provide OEIG with notice of his non-State employer’s job offer prior to accepting the offer. 5 ILCS 430/5-45(f).

6. During an interview with OEIG investigators on October 13, 2016, Respondent confirmed that he had received, read, and signed the IDNR Notice referenced above. He also conceded that he understood at the time that he was subject to the Ethics Act’s revolving door restrictions, and that he did not notify OEIG of his job offer before accepting the non-State employment opportunity.

CONCLUSIONS OF LAW

7. Petitioner Margaret A. Hickey is the Executive Inspector General for the Agencies of the Illinois Governor, duly appointed by the Governor of the State of Illinois. 5 ILCS 430/20-10(b).

8. At all times relevant to the allegations in Petitioner’s Complaint, Respondent was an IDNR employee or former employee subject to the provisions of the Ethics Act, and therefore

subject to the jurisdiction of the Executive Ethics Commission (the “Commission”) with respect to matters arising under the Ethics Act. 5 ILCS 430/20-5(d).

9. As an IDNR employee, Respondent was subject to OEIG’s jurisdiction with respect to possible violations of the Ethics Act. *Id.* § 20-10(c).

10. IDNR determined that Respondent was a State employee who, based on the nature of his job responsibilities, may have the authority to participate personally and substantially in the award of State contracts or in making regulatory or licensing decisions. 5 ILCS 430/5-45(c); *see also id.* §§ 5-45(a)-(b). Based on this determination, IDNR classified Respondent as a “C-list” employee, in reference to the Ethics Act subsection that provides for the identification of such positions. *Id.* § 5-45(c).

11. At all times relevant to the allegations in this Complaint, Respondent had a duty to comply with the provisions of the Ethics Act, and with the policies and rules adopted pursuant thereto. This duty required Respondent to provide notice to OEIG, prior to accepting an offer of non-State employment, so that OEIG could determine whether or not it was permissible under the Ethics Act to accept the offer extended to him. The Ethics Act requires in this regard that:

[a]ny State employee in a position subject to the policies required by subsection (c) [of the Ethics Act] . . . who is offered non-State employment during State employment or within a period of one year immediately after termination of State employment shall, prior to accepting such non-State employment, notify the appropriate Inspector General[,] . . . [who] shall make a determination as to whether the State employee is restricted from accepting such employment by subsection (a) or (b) [of the Ethics Act].

Id., § 5-45(f). Consistent therewith, any C-list employee who violates the Ethics Act’s notification provisions shall be subject to a fine pursuant to Subsection 50-5(e) of the Ethics Act. *Accord* 2 Ill. Admin. Code § 1620.610(g).

12. The Ethics Act required Respondent to notify OEIG of his offer of non-State employment, so that OEIG could determine whether Respondent was eligible to accept the employment opportunity extended to him by his new employer. 5 ILCS 430/5-45(c), (f). The record before the Commission, however, including the Stipulations, establishes that Respondent never submitted such a request to OEIG prior to accepting the offer of non-State employment extended to him following his departure from IDNR.

13. Because Respondent has violated the Ethics Act’s revolving door notice provisions, he is subject to an administrative fine. 5 ILCS 430/50-5(e) (penalties); 2 Ill. Admin. Code § 1620.610(g). Section 1620.530 of the Executive Ethics Commission’s hearing rules, a copy of

which has been provided to Respondent, sets out in this regard a set of aggravating and mitigating factors that the Commission may consider in imposing an appropriate fine.

14. The Executive Ethics Commission has jurisdiction over this matter.

15. The Ethics Act provides, in relevant part, that the Commission may levy an administrative fine of up to \$5,000 against any person who violates the Act. 5 ILCS 430/50-5(e).

STANDARD OF REVIEW

Granting summary disposition in an administrative proceeding is comparable to granting summary judgment under section 2-1005 of the Code of Civil Procedure. *Bloom Tp. High School v. Illinois Commerce Com'n* (1999), 309 Ill. App. 3d 163, 177; 242 Ill. Dec. 892, 903; *Cano v. Village of Dolton* (1993), 250 Ill.App.3d 130, 138; 189 Ill. Dec. 883, 620 N.E.2d 1200. Because of the similarities in the two procedures, it is appropriate to apply the standards applicable to granting summary judgment under section 2-1005 when reviewing a summary determination entered by an administrative agency. See *Cano*, 250 Ill.App.3d at 138, 189 Ill. Dec. 883, 620 N.E.2d 1200.

Summary judgment is appropriate only where “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” 735 ILCS 5/2-1005(c)

In determining whether a genuine issue as to any material fact exists, a court must construe the pleadings, depositions, admissions, and affidavits strictly against the movant and liberally in favor of the opponent. A triable issue precluding summary judgment exists where the material facts are disputed, or where, the material facts being undisputed, reasonable persons might draw different inferences from the undisputed facts. The use of the summary judgment procedure is to be encouraged as an aid in the expeditious disposition of a lawsuit. However, it is a drastic means of disposing of litigation and, therefore, should be allowed only when the right of the moving party is clear and free from doubt. *Adams v. Northern Illinois Gas Company* (2004), 211 Ill. 2d 32, 43; 284 Ill. Dec. 302, 310.

ANALYSIS

Respondent stipulated to a series of facts from which the Commission concludes that respondent violated subsection 5-45(f) of the State Officials and Employees Ethics Act (5 ILCS 430/5-45(f)). Petitioner has agreed to recommend a fine of not more than \$500.00. The Commission is not bound to accept this recommendation, but neither does it desire to prolong litigation unnecessarily.

The Ethics Act does not provide any guidance for the Commission to consider when levying a fine. 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 in assessing an appropriate fine. These factors include: 2 Ill. Admin. Code § 1620.530(b)(5), (11) and (13).

- A. § 1620.530(b)(5)—**extent of Respondent’s intent or knowledge of the facts surrounding the violation**—Prior to Respondent’s separation from State service, IDNR’s ethics officer informed Respondent of his duties with respect to the revolving door.
- B. § 1620.530(b)(11)—**cooperation**—Respondent has acknowledged his violation and has not unduly delayed this matter.
- C. § 1620.530(b)(13)—**prior disciplinary record or Ethics Act violation**—There is no evidence that Respondent has been previously disciplined for violations of the Ethics Act.

WHEREFORE, for the foregoing reasons, petitioner’s unopposed motion for summary judgment is granted. The Commission levies an administrative fine of \$500.00 against respondent Scott Harper for violation of 5 ILCS 430/5-45(f). This is a final administrative decision and subject to the Administrative Review Law.

ENTERED: November 16, 2017