



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA STATE BOARD OF ANIMAL HEALTH (BOAH)

TITLE: BOAH EMPLOYEE'S OUTSIDE EMPLOYMENT; CONFLICTS OF INTERESTS, DECISIONS AND VOTES; USE OF STATE PROPERTY; AND POST-EMPLOYMENT

CASE ID: 2018-07-0183

DATE: February 18, 2019

Inspector General Staff Attorney Kelly Elliott and Inspector General Chief Legal Counsel Tiffany Mulligan, after an investigation by Inspector General Special Agent Chuck Coffin, reports as follows:

The Indiana General Assembly charged the Office of the Indiana Inspector General (OIG) with addressing fraud, waste, abuse and wrongdoing in executive branch agencies of state government. IC 4-2-7-2(b). The OIG also investigates allegations of criminal activity and Code of Ethics (Code) violations within state government. IC 4-2-7-3.

On July 3, 2018, the OIG received a complaint alleging that Adam Jones (Jones), then an employee with the Indiana State Board of Animal Health (BOAH), engaged in part-time outside employment with Day Transport Incorporated (DTI), in violation of the outside employment rule. The complaint provided that DTI is a trucking firm that transports milk, and BOAH licenses milk transport vehicles. The complaint further alleged that Jones used a state vehicle to commute to and from his outside employment with DTI, in violation of the use of state property rule. Jones resigned from state employment in June 2018.

The OIG opened an investigation. During the investigation, Special Agent Coffin interviewed Jones and reviewed personnel files, emails, inspection reports and other documents.

I. BACKGROUND

A. BOAH's Dairy Division

BOAH's Dairy Division oversees the licensing of all dairy operations in Indiana. BOAH's Dairy Division issues permits to bulk haulers, who are individuals who collect official raw milk samples from farms and may transport raw milk from a farm to or from a milk plant, receiving station¹ or transfer station². Individuals seeking a bulk hauler permit must pass an online examination and successfully complete an on-site inspection by BOAH personnel of hauling/sampling procedures. Bulk hauler permits expire every two years in conjunction with the previous inspection date. BOAH's Dairy Division also inspects and issues permits to the trucks/tankers that transport the milk.

B. Jones's Position at BOAH

Jones was a full-time employee at BOAH. Jones served as a Dairy Farm Specialist in BOAH's Dairy Division from March 23, 2015 to June 12, 2018. According to his job description, Jones worked with dairy farm personnel and bulk haulers to ensure that raw milk was free of visible abnormalities and was produced, handled and transported in a sanitary manner. The position enforced compliance with laws and regulations through programs of surveillance, consultation and enforcement.

Jones' responsibilities included determining compliance or noncompliance with laws and regulations and recommending possible corrective action for future compliance. Jones' duties included preparing technical reports of inspection, documenting findings and making recommendations for action, including some certifications. Jones was responsible for inspecting

¹ A receiving station is where raw milk is received, collected, handled, stored, cooled and prepared for further transporting. *See* <https://www.in.gov/boah/2377.htm>.

² A transfer station is any establishment where bulk raw milk is transferred directly from one truck to another. *See* <https://www.in.gov/boah/2377.htm>.

approximately one hundred fifty dairy farms, sixty-nine bulk haulers and thirty-five tankers/trucks that transported milk.

As a state employee, Jones was subject to the Code. Commission training records indicate that Jones completed the required state ethics training, which addresses the above-referenced Code rules, on the following dates: October 19, 2015 and October 11, 2017.

C. Jones's Work for DTI

Jones transported milk for DTI, a milk transporting firm, nine times while he served as a BOAH employee. He transported milk for DTI at least twelve times within one year after leaving state employment. It is unclear whether Jones served as an employee of DTI or as an independent contractor; however, he received approximately \$1000 in compensation from DTI for the hauls he made prior to leaving state employment and \$1500 to \$2000 in compensation from DTI after leaving state employment.

II. VIOLATIONS

A. Outside Employment Violation

The investigation revealed that Jones violated Ind. Code § 4-2-6-5.5, the outside employment rule, by knowingly accepting employment with DTI while employed at BOAH. Ind. Code § 4-2-6-5.5 reads in relevant part:

- (a) A current state . . . employee . . . may not knowingly . . .
 - (1) Accept other employment involving compensation of substantial value if the responsibilities of that employment are inherently incompatible with the responsibilities of public office or require the individual's recusal from matters so central or critical to the performance of the individual's official duties that the individual's ability to perform those duties would be materially impaired.

DTI is a milk transporting firm owned by a licensed bulk hauler (Owner). Jones' former supervisor at BOAH provided that Jones was "one of three . . . regular inspectors [for the Owner]." On June 26, 2017, Jones, in his capacity as a state employee, completed a bulk hauler inspection of the Owner. Jones listed DTI as the "name of owner" on the Owner's inspection report.

Jones also completed inspections of three other licensed bulk haulers who transported milk for DTI. Jones performed the inspections on November 2, 2017, December 27, 2017, and April 19, 2018.

On or about January 12, 2018, Jones inquired with BOAH about obtaining outside employment with DTI. The Director of BOAH's Dairy Division (Director) received Jones' request and forwarded it on to BOAH's General Counsel and Ethics Officer (General Counsel). The Director informed the General Counsel that BOAH's Dairy Division licensed DTI.

On January 12, 2018, the General Counsel emailed the Director and informed him that Jones' proposed outside employment with DTI would be in violation of the Code's outside employment rule. The General Counsel wrote, "Therefore, he should not take this position." The Director forwarded the General Counsel's response to Jones. Jones responded to the Director, stating, "That would include weekends correct?" The Director replied, "That would include weekends." Jones emailed the Director and thanked him for looking into the matter.

Less than two months after receiving advice from the General Counsel not to engage in outside employment with DTI, Jones began work for DTI. From March 5 to May 24, 2018, Jones transported milk for DTI nine times. In Jones' interview with Special Agent Coffin, Jones admitted that he transported milk for DTI/the Owner and that the Owner paid him in cash for each milk transport trip he made. Jones noted he could recall at least two trips in which he was not paid. He stated he believes the Owner paid him approximately \$1000 in total for transporting milk while employed with BOAH. He explained he has known the Owner for years and was trying to help a friend out.

B. Conflicts of Interests; Decisions and Votes Violation

The investigation revealed that Jones violated Ind. Code § 4-2-6-9, a rule on conflicts of interests. Ind. Code § 4-2-6-9 reads in relevant part:

(a) A state . . . employee . . . may not participate in any decision or vote, or matter relating to that decision or vote, if the state . . . employee . . . has knowledge that any of the following has a financial interest in the outcome of the matter:

(1) The state . . . employee.

. . .

(3) A business organization in which the state . . . employee . . . is serving as . . . an employee.

(4) Any person or organization with whom the state . . . employee . . . is negotiating or has an arrangement concerning prospective employment.

(b) A state . . . employee . . . who identifies a potential conflict of interest shall notify the person's appointing authority and ethics officer in writing and do either of the following:

(1) Seek an advisory opinion from the commission by filing a written description detailing the nature and circumstances of the particular matter and making full disclosure of any related financial interest in the matter. . .

(2) File a written disclosure statement with the commission that:

(A) details the conflict of interest;

(B) describes and affirms the implementation of a screen established by the ethics officer;

(C) is signed by both:

(i) the state . . . employee . . . who identifies the potential conflict of interest; and

(ii) the agency ethics officer;

(D) includes a copy of the disclosure provided to the appointing authority; and

(E) is filed not later than seven (7) days after the conduct that gives rise to the conflict.

From March 5 through May 24, 2018, Jones transported milk for DTI nine times, including on April 18, 2018. On April 19, 2018, Jones conducted an inspection of a licensed bulk hauler (Hauler). Jones listed DTI as “name of owner” on the Hauler’s inspection report. The Hauler passed Jones’ inspection, enabling him to obtain a new bulk hauler permit and transport milk for DTI. The Hauler stated to Special Agent Coffin that the Hauler serves as a full-time employee for DTI. After Jones’ inspection of the Hauler, Jones transported milk for DTI four more times in May 2018³ prior to resigning from state employment on June 12, 2018.

³ Jones transported milk for DTI on May 14, 2018; May 18, 2018; May 19, 2018; and May 24, 2018.

C. Use of State Property Violation

The investigation revealed that Jones violated Ind. Code § 4-2-6-17, the use of state property rule. Ind. Code § 4-2-6-17 reads in relevant part:

(a) Subject to IC 4-2-7-5, a state . . . employee . . . may not use state materials, funds, property, personnel, facilities, or equipment for purposes other than official state business unless the use is expressly permitted by a general written agency, departmental, or institutional policy or regulation that has been approved by the commission. . . .

BOAH has a Policy on Limited Personal Use of State Property/Resources, which the Commission approved on June 24, 2015. It allows for limited, personal use of state property/resources; however, such use must not be for purposes of conducting business related to an outside commercial activity. It further provides that a state employee shall not make private use of any state property that has been removed from state facilities or other official duty stations, even if there is no cost to the State, unless otherwise approved.

BOAH assigned Jones a state vehicle for purposes of conducting state business. Jones' state vehicle was equipped with a GPS tracking unit. The GPS tracking unit indicated that Jones parked his state vehicle for nine or more hours at a location in Richmond, Indiana on the following dates: March 5, 2018; March 12, 2018; March 19, 2018; May 14, 2018; May 18, 2018. The Owner provided that Jones transported milk for DTI on these same dates, traveling to either Minerva, Ohio or New Wilmington, Pennsylvania. The Director of BOAH's Dairy Division provided that Smith Foods rents warehouse space at the location where Jones' state vehicle was parked. He stated that in the past, Smith Foods has allowed the Owner to stage milk tankers at that location. The Director stated he believes Jones used the location to park his state vehicle and get directly into one of "[the Owner's] trucks."

On June 5, 2018, Jones met with the Director and his supervisor regarding the use of his state vehicle. The Director stated that Jones admitted that on May 18, 2018, he drove his state vehicle to his "side-job" with DTI and then back home, without completing any work for the State

during the trip. Jones also admitted to driving his state vehicle to his family farm during the busy season when farm work tied up his personal truck. The Director provided that Jones stated he used his state vehicle out of convenience.

In Special Agent Coffin's interview with Jones, Jones stated that his personal use of his state vehicle was more of a "slip-up" and was not intentional. He stated that his personal use of his state vehicle was never during BOAH work hours.

D. Post-Employment Violation

The investigation revealed that Jones violated Ind. Code § 4-2-6-11(b)(3), the one-year cooling off provision of the post-employment rule. Ind. Code § 4-2-6-11(b) reads in relevant part:

(b) A former state . . . employee . . . may not accept employment or receive compensation:

. . .
(3) from an employer⁴ if the former state . . . employee . . . made a regulatory or licensing decision that directly applied to the employer or to a parent or subsidiary of the employer;

before the elapse of at least three hundred sixty-five (365) days after the date on which the former state . . . employee . . . ceases to be a state . . . employee

1. Jones Violated the Cooling Off Provision in Ind. Code § 4-2-6-11(b)(3)

a. Jones Made a Regulatory or Licensing Decision that Directly Applied to DTI or to a Parent or Subsidiary of DTI

In Special Agent Coffin's interview with Jones, Jones stated he had inspection authority for BOAH and approved dairy farmers and bulk haulers so they could receive their BOAH permits. He explained a bulk hauler would receive a permit if he or she passed both a physical and a written test.

⁴ "Employer" means any person from whom a state . . . employee . . . received compensation." See Ind. Code § 4-2-6-1(a)(10).

The General Counsel stated that Jones decided if businesses passed or failed inspections, and therefore if their licenses/permits were in jeopardy. Jones' former supervisor at BOAH, provided that Jones was responsible for permitting bulk haulers, tankers and farms. He stated Jones inspected DTI's tankers and bulk haulers and permitted them as needed.

On June 26, 2017, Jones performed a bulk hauler inspection of the Owner. Jones listed DTI as the "name of owner" on the Owner's inspection report. The Owner passed Jones' inspection, enabling him to maintain his bulk hauler permit in good standing.

Jones also conducted inspections of three licensed bulk haulers who transported milk for DTI. On November 2, 2017, Jones performed a bulk hauler inspection for BOAH of a bulk hauler (Hauler 1) who did not have a bulk hauler permit prior to Jones' inspection. Jones listed DTI as the "name of owner" on the inspection report. Hauler 1 passed Jones' inspection, enabling her to obtain a bulk hauler permit. Hauler 1 stated to Special Agent Coffin that she drove for the Owner/DTI one time and was paid \$150.00 in cash. She stated she received a 1099 tax form from DTI for the income she received for her services.

On December 27, 2017, Jones performed a bulk hauler inspection of another Hauler (Hauler 2) for BOAH. Hauler 2 did not hold a bulk hauler permit prior to Jones' inspection. Jones listed DTI as the "name of owner" on Hauler 2's inspection report. Hauler 2 passed Jones' inspection, enabling him to obtain a bulk hauler permit. Hauler 2 stated to Special Agent Coffin that he served as an employee for DTI for approximately three months and received payment for his services by check. Hauler 2 stated he does not recall receiving a 1099 or W-2 from DTI.

On April 19, 2018, Jones performed a bulk hauler inspection of another Hauler (Hauler 3) for BOAH. Hauler 3 did not hold a bulk hauler permit prior to Jones' inspection. Jones listed DTI as the "name of owner" on Hauler 3's inspection report. Hauler 3 passed Jones' inspection, enabling him to obtain a bulk hauler permit. Hauler 3 stated to Special Agent Coffin that he serves

as a full-time employee for DTI. He stated he received a W-2 from DTI for the income he received for his services.

In summary, Jones inspected three bulk haulers who transported milk for DTI. Two of the three bulk haulers served as DTI employees. All three haulers received new bulk hauler permits as a result of Jones' inspection, providing DTI a greater number of haulers to transport its milk.

b. Jones Accepted Employment with DTI Less than 365 Days after Leaving State Employment

On June 12, 2018, Jones resigned from state employment. In an email dated July 23, 2018, the Owner represented to Special Agent Coffin that Jones transported milk loads for DTI on June 14, June 17, and June 23, 2018.

On July 30, 2018, Special Agent Coffin interviewed Jones. Jones stated that after leaving state employment, he has driven milk transport loads for the Owner at DTI approximately twelve times. He believes the Owner has paid him approximately \$1500 to \$2000 in total for the milk transport trips made since leaving state employment. He noted he could recall at least two trips in which he was not paid.

III. CONCLUSION

The Commission found probable cause for the OIG to file an ethics complaint against Jones on December 13, 2018. On December 17, 2018, the OIG filed a complaint alleging that (1) Jones violated Ind. Code § 4-2-6-5.5 by knowingly accepting employment with DTI, which involved compensation of substantial value and responsibilities that were inherently incompatible with the responsibilities of public office or would have required his recusal from matters central or critical to the performance of his official duties at BOAH such that the ability to perform those duties was materially impaired; (2) he violated Ind. Code § 4-2-6-9 by participating in a decision or vote, or matter related to a decision or vote, having knowledge that he and/or DTI, a business organization in which he served as an employee, or with whom he had an arrangement concerning prospective

employment, had a financial interest in the outcome of the matter; (3) he violated Ind. Code § 4-2-6-11(b)(3) by accepting employment or receiving compensation from DTI less than 365 days after leaving state employment after making a regulatory or licensing decision that directly applied to DTI, or to a parent or a subsidiary of DTI (the Owner), during his employment with BOAH; and (4) he violated Ind. Code § 4-2-6-17 by using state property for purposes other than official state business, and BOAH's Policy on Limited Personal Use of State Property/Resources did not allow such use.

Jones entered into an agreed settlement with the OIG in which he admitted to all four violations of the Code as alleged in the ethics complaint and agreed to pay a fine of \$2,500. The OIG filed an Agreed Settlement with the Commission on January 28, 2019, and the Commission approved it on February 14, 2019. Payment of the fine is due by April 12, 2019. Accordingly, this investigation is closed, pending receipt of the fine.

Dated: February 18, 2019

APPROVED BY:

A handwritten signature in black ink that reads "Lori Torres". The signature is written in a cursive, flowing style.

Lori Torres, Inspector General