



INVESTIGATIVE REPORT

Lori Torres, Inspector General

OFFICE: INDIANA STATE EXCISE POLICE (ISEP)
TITLE: ISEP GHOST EMPLOYMENT AND ADDITIONAL COMPENSATION
CASE ID: 2019-05-0136
DATE: October 20, 2020

Inspector General Staff Attorney Kelly Elliott, after an investigation by former Director of Investigations Darrell Boehmer and current Director of Investigations Mark Mitchell, reports as follows:

The Indiana General Assembly charged the Office of Inspector General (OIG) with addressing fraud, waste, abuse and wrongdoing in the executive branch of state government. Ind. Code §4-2-7-2(b). The OIG investigates allegations of criminal activity and Code of Ethics (Code) violations by state workers. Ind. Code §4-2-7-3(3). The OIG may recommend policies and carry out other activities designed to deter, detect and eradicate fraud, waste, abuse, mismanagement and misconduct in state government. Ind. Code §4-2-7-3(2).

I. Complaint

In May 2019, the OIG received an anonymous complaint alleging that a state employee (Employee) serving as a law enforcement officer with the Indiana State Excise Police (ISEP) engaged in ghost employment.¹ Specifically, the complaint alleged that Employee was an instructor at a physical fitness studio (Studio), and both ISEP and the Studio were paying Employee to instruct a physical fitness training class. The OIG opened an investigation into this matter.

¹ See 42 IAC 1-5-13 and Ind. Code §35-44.1-1-3.

The OIG's former Director of Investigations Darrell Boehmer and the OIG's current Director of Investigations Mark Mitchell conducted the investigation. Through the course of their investigation, they interviewed Employee and other ISEP employees. They also reviewed documentation received from ISEP, including agency policies and Employee's personnel file and attendance records. Moreover, they reviewed Employee's employment records with the Studio.

II. Investigation

A. Employee's Employment

Director Boehmer reviewed Employee's ISEP attendance records. For the period reviewed for this investigation, Employee typically worked a daytime shift for ISEP. ISEP requires law enforcement officers to document their hourly attendance in the agency's Cody Officer Log.

ISEP maintains a Standard Operating Procedure (SOP) that permits ISEP's law enforcement officers to utilize up to three hours of on-duty time per week for approved physical fitness training (PT). The SOP requires officers to document their PT hours in ISEP's Cody Officer Log, including the type of PT the officer engaged in and the date and hours in which the officer participated in the PT. The SOP prohibits contact sports, or the practice thereof, as an approved form of PT; however, ISEP provided Employee an exception to this restriction. Director Boehmer learned that ISEP verbally permitted Employee to engage in a type of physical fitness training class that could be categorized as a contact sport as a form of approved PT. The OIG's investigation did not find any written documentation outlining ISEP's decision to allow Employee to engage in these classes as a form of approved PT.

Director Boehmer learned that Employee maintained a part-time job as an instructor at the Studio and was also a member/student at the Studio. Director Boehmer subpoenaed and received records from the Studio regarding Employee's employment. He learned that Employee instructed

physical fitness training classes for the Studio. The Studio provided Director Boehmer a list of dates on which Employee taught these classes.

ISEP maintains an SOP that requires officers to obtain approval to engage in secondary employment. In 2019, Employee signed and submitted a Secondary Employment Work Agreement form with ISEP for his outside employment with the Studio.² Employee backdated the form to cover more than a decade of previous outside employment. Employee's supervising lieutenant approved Employee's outside employment. The OIG's investigation did not find any other previous Secondary Employment Work Agreement forms in Employee's ISEP personnel file.

Director Boehmer compared Employee's work schedule with the Studio to Employee's ISEP attendance and PT records in the agency's Cody Officer Log. He found that the schedules overlapped by one-hour on nine days. Of the nine hours that overlapped, Employee claimed four hours as regular ISEP working hours and the other five hours as PT hours.

B. Interviews

Director Boehmer interviewed Employee. Employee confirmed that he instructed physical fitness training classes at the Studio. Director Boehmer reviewed with Employee the nine times in which his Studio work schedule overlapped with his ISEP work schedule. Employee acknowledged the overlap but stated he thought it was permissible under the Code to teach classes at the Studio while logging PT time for ISEP because the Studio was not paying him money to teach these overlapping classes. Employee explained that the Studio instead provided him credit towards his studio membership for teaching the overlapping classes. Employee acknowledged that receiving a credit towards his membership to the Studio in exchange for teaching the class was a benefit he received.

² In 2019, ISEP required all law enforcement officers with outside employment to submit an updated Secondary Employment Work Agreement form.

Director Mitchell interviewed other ISEP employees within the agency's executive staff. The employees explained that they believed Employee's local district supervisors gave him verbal permission to *instruct* the physical fitness training classes as a form of approved PT; however, ISEP had no written documentation permitting Employee to claim his instruction of the class as PT hours. Thus, it is unclear if there was ever a discussion about Employee being *compensated* for these instructional hours.

Director Mitchell interviewed Employee's local district supervisors. The supervisors stated that they were aware that Employee instructed physical fitness training classes at the Studio, but none of the supervisors recalled providing Employee verbal or written permission to instruct the classes as a form of approved PT.³ None of them discussed Employee's outside employment with him because they each assumed a previous supervisor had already addressed the matter.

Director Mitchell learned that prior to the OIG's investigation, Employee discussed his outside employment with the Studio with one of his local district supervisors (Supervisor). Supervisor told Director Mitchell that Employee spoke with him about instructing classes at the Studio during times that overlapped with his ISEP schedule. Supervisor stated that he told Employee he could not work these hours for the Studio because of the overlap with his ISEP schedule. He stated Employee responded by telling him that he used PT time for the overlapping hours. Supervisor relayed this information to Employee's other local district supervisors, who in turn reported their concerns regarding Employee's outside employment to the appropriate next supervisory level within ISEP ; however, Director Mitchell did not find evidence in Employee's ISEP personnel file to indicate that ISEP discussed these concerns with Employee prior to the OIG's investigation.

³ The OIG recognizes that other ISEP officers not interviewed in this investigation have supervised Employee and could have provided him verbal permission to engage in this form of approved PT.

III. Conclusion

The OIG discussed the results of this investigation with the appropriate elected prosecutor who declined to prosecute for ghost employment⁴ because there was insufficient evidence to move forward on criminal charges against Employee.

The OIG found evidence to support allegations that Employee violated the Code's ghost employment rule. The OIG identified nine hours when Employee instructed a physical fitness training class at the Studio during his ISEP working hours. Employee claimed four of the nine hours as regular working hours and the other five hours as PT hours. ISEP permitted Employee to instruct physical fitness training classes as a form of approved PT; however, ISEP did not permit Employee to instruct the classes during his *regular* working hours. Accordingly, Employee likely engaged in ghost employment when he instructed four hours of physical fitness training classes for the Studio during his regular ISEP working hours.

The OIG also found evidence to support allegations that Employee violated the Code's additional compensation rule.⁵ Employee's paid PT was a part of his official state duties with ISEP. Although Employee did not accept money from the Studio for instructing classes during the times he claimed PT, the credit he received towards his studio membership is still considered "compensation" under the Code.⁶ Accordingly, Employee likely accepted additional compensation from the Studio when he accepted a credit toward his studio membership for the five hours he instructed physical fitness training classes while claiming PT.

⁴ See Ind. Code §35-44.1-1-3.

⁵ See 42 IAC 1-5-8.

⁶ Ind. Code 4-2-6-1(a)(7) defines "compensation" as "any money, thing of value, or financial benefit conferred on, or received by, any person in return for services rendered, or for services to be rendered, whether by that person or another."

Although the OIG found evidence to support a violation of the Code's ghost employment and additional compensation rules, the OIG is declining to file a complaint with the State Ethics Commission against Employee. The OIG finds that Employee's likely violation of the Code was in part influenced by the actions or inactions of ISEP. ISEP did not adhere to its own SOPs for secondary employment or PT and did not adequately document its decisions related to those SOPs for Employee. Employee's former supervisors communicated ISEP's approval of Employee's outside employment and instruction of physical fitness training classes as a form of PT verbally rather than in writing, and his more recent supervisors assumed he had received the proper approval. As a result, Employee carried out his outside employment activities with little oversight and with an understanding that his outside employment with the Studio and overlapping work schedule were permissible.

Secondly, the OIG found that the number of hours in which Employee engaged in ghost employment was minimal, and the amount of additional compensation he accepted from the Studio was negligible. Additionally, although the additional compensation rule does not require any knowledge or intent by a state employee for a violation to occur, it does not appear that Employee sought to intentionally violate this rule. Based upon Employee's misunderstanding of what is considered "compensation", he believed that his payment schedule with the Studio was in compliance with the Code.

The OIG recognizes the efforts ISEP made to address concerns with Employee's outside employment by requiring all officers to submit an updated Secondary Employment form in 2019. It appears, however, that the only direct counseling Employee received regarding his outside employment was when Supervisor initially told him that his Studio work schedule could not overlap with his ISEP schedule.

For these reasons, the OIG finds that reporting on this matter and recommending policy changes to ISEP would have a greater impact than filing a complaint with the State Ethics Commission against Employee. As a result, the OIG is closing this case for insufficient cause and makes the following recommendation to ISEP.

V. Recommendation

The OIG recommends that ISEP review its current SOP for secondary employment and PT to determine if the policies could be amended to provide further guidance and oversight of employees. For example, ISEP should consider revising the SOP for secondary employment to require employees to submit an updated Secondary Employment Work Agreement form annually and/or when there is a change in an employee's ISEP or secondary employment status or schedule.

Additionally, the current Secondary Employment Work Agreement form itself requires the employee to indicate "Hours Worked", but the form provides limited space for the employee to provide this information. To make it more practical, ISEP could update the form to provide a blank schedule in which the employee is to indicate what hours and days of the week that he/she anticipates working for his/her outside employer. A supervisor could then review the schedule to ensure there is no overlap with an employee's scheduled ISEP hours. Thereafter, ISEP's Human Resources Director or Human Resources Generalist could review the schedule and identify any additional concerns.

Moreover, the OIG recommends that the SOP for PT require that employees obtain the Superintendent's written approval for any deviation or exception to the policy and that ISEP maintain a copy of the Superintendent's written approval in the employee's personnel file. If an employee requests a deviation or exception to the policy, ISEP should consider if an employee's

engagement in the proposed form of PT raises any appearances of impropriety for the employee and the agency.

Finally, in each SOP, ISEP could include a reference to the possible violations of the Code and criminal code if an employee engages in outside employment during his/her ISEP working hours or accepts additional compensation for engaging in his/her official work duties. This addition would help serve as a reminder to employees on the Code's limitations regarding outside employment.

Dated: October 20, 2020

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