

**BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE**

GRIEVANT,)	
)	
Employee/Grievant,)	
)	DOCKET No. 20-07-775
v.)	
)	DECISION AND ORDER
DELAWARE DEPARTMENT OF INSURANCE,)	
)	[PUBLIC, REDACTED]
Employer/Respondent.)	
)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the “Board”) at 9:05 a.m. on March 4, 2021, in the Public Service Commission Hearing Room, 861 Silver Lake Boulevard, Dover, DE 19904. The hearing was closed to the public pursuant to 29 *Del. C.* §10004(b)(8).

BEFORE W. Michael Tupman, Chair; Paul R. Houck, Jacqueline D. Jenkins, Ed.D, Victoria D. Cairns, and Sheldon N. Sandler, Members; a quorum of the Board under 29 *Del. C.* §5908(a).

APPEARANCES

Carla A.K. Jarosz (*by teleconference*)
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Employee/Grievant, *pro se*

Allison McCowan
Deputy Attorney General
on behalf of the Department of
Insurance

BRIEF SUMMARY OF THE EVIDENCE

The Employee/Grievant offered thirty-seven (37) documents into evidence pre-marked as Exhibits 1 - 37. After the pre-hearing conference, the Board admitted Grievant Exhibits 1 - 7, 11, 12, 15 - 19, 21, 28, 32 and 37.

The Department of Insurance (“DOI” or “Agency”) offered thirty-one (31) documents into evidence pre-marked as Exhibits A - EE.¹ After the pre-hearing conference, the Board admitted Agency Exhibits B - D, F-H, J - R, T, W - EE.

Stuart Snyder, DOI Chief of Staff testified for the Agency. The Grievant and Alice Cabana, former DOI Fiscal Administrative Officer, testified on behalf of the Grievant.

FINDINGS OF FACT

The Grievant was employed as the DOI Controller since November 2010.² The Controller position is the highest ranking classification in the State’s Fiscal Services Occupational grouping. The Controller “provides total fiscal management/control of a department’s financial resources,” and is “[r]esponsible for all accounting and auditing functions, financial reporting, consolidation of budgets, fiscal record keeping, and the development, modification and implementation of financial controls.” *Agency Exhibit D*. In addition to a knowledge of government fiscal and budgetary processes and applicable fiscal procedures and guidelines, a Controller is expected to have:

- Ability to plan and direct a program of accounting and fiscal services and controls.
- Knowledge of the principles and practices of management.

¹ The Agency initially offered thirty documents into the evidence, but inadvertently included Chapter 6.2 of the Budget and Accounting Manual (“BAM”) at the end of Exhibit J. As this document is more properly an independent exhibit, the parties agreed to remove Chapter 6.2 from Exhibit J and identify it as Exhibit EE.

² For some portion of this time the Grievant also served as the Agency’s Human Resources Manager.

- Knowledge of the principles, practices, and theories of accounting, auditing, budgeting and financial management.
- Knowledge of procurement procedures.
- Skill in directing a large accounting function.
- Ability to manage a professional accounting and administrative support staff.
- Ability to provide counsel and direction to unit managers and financial administrators concerning policies, procedures and interpretations of fiscal affairs. *Agency Exhibit D, p. 6.*

The Grievant supervised a staff of seven in the DOI Fiscal Section.

In May 2019, a Fiscal Section employee reported a concern to the DOI Chief of Staff that Grievant might be sharing her First State Financial (“FSF”)³ credentials and passwords with a subordinate. *Exhibit F.* The State’s Budget and Accounting Manual (“BAM”) states at Section 2.1.1

Access to the State’s finance and accounting system, First State Financials (FSF), is structured so that Organizations may segregate authorized duties. Users are not permitted to share logon IDs or passwords under any circumstances. Sharing this information is a direct violation of the State’s security policy (See Section 2.7 below). Violation of security measures weakens the overall internal control structure of an Organization. Security personnel will promptly disable a user’s access if the sharing of IDs and/or passwords is discovered. *Agency Exhibit J, p. 6.*

The BAM further states at §2.7, Security (General and Information Technology):

All State employees are required to abide by the State’s policies for the safeguarding of proprietary and personal information, and the Department of Technology and Information’s computer usage security policies. Employees are expected to safeguard and secure, and are prohibited from sharing, information, such as employee identification numbers, social security numbers, computer and software passwords, State credit card account and PIN numbers (e.g., fleet services card, Procurement Card), building access badges, and other identifiers and access instruments distributed as State issued security measures. *Agency Exhibit J, p. 10.*

The Chief of Staff queried the FSF login activity for the Grievant’s access code and

³ First State Financials is the State of Delaware’s integrated and automated accounting system.

determined that a subordinate had used the Grievant's FSF password on approximately thirty (30) different dates between December 2016 and October 2018. *Agency Exhibit F.*

As part of the DOI investigation, the Chief of Staff met with the Grievant on multiple occasions. The Grievant admitted to sharing her password with the former Fiscal Administrative Officer but claimed she only did so sporadically. She characterized those situations as "emergencies" when it was necessary to relieve a backlog caused by the large volume of paperwork that needed to be processed for a particular vendor. In a later email to the Division of Accounting, the Grievant again admitted and attempted to explain why she shared her FSF password and authority:

... I take my responsibilities as the Controller for the Department of Insurance for the last nine years very seriously and I do not want to ever do something that risks compromising the trust of the citizens of Delaware. My actions of sharing a password was [*sic*] done on a very limited/emergency basis with a trusted DDOI employee. This has been a common practice within the financial work group at the Department of Insurance... *Agency Exhibit H.*

There was no evidence that any of the transactions made by the subordinate resulted in theft or fraud. The Grievant testified she believed sharing her password so that her subordinate could provide Controller level authorizations for payments to vendors was an appropriate means to alleviate the backlog of vouchers which needed to be processed. The Grievant did not notify the Chief of Staff before sharing her password, did not bring the issue of the backlog to his attention, and did not seek alternative solutions, e.g., completing a proxy re-assignment of her authority in the FSF system for a limited period of time.

Because of the severity of the admitted infraction, DOI extended its investigation to include a review of the operations of the Fiscal Section, during which additional issues of concern were uncovered. *Agency Exhibit B.*

The Grievant requested and was reimbursed for the purchase of two hand-held children's games. *Agency Exhibit Q.* It is unclear whether the games were for the Agency's use during a

“brown bag” lunch or for the Grievant’s personal use. While denying any recollection of the purchase, the Grievant offered to repay the Agency.

The Grievant directed that nearly \$300,000 in deposits made to the Agency in June 2018, be held to be deposited after July 1, 2018, in order to increase available funds at the beginning of the 2019 Fiscal Year. *Exhibit AA*. The Grievant admitted she directed the checks be held and acknowledged that withholding the deposits was in violation BAM Chapter 9, Receipt of Funds.

Agency Exhibit L. BAM Section 9.2 states:

All monies that belong to the State must be deposited on the day of receipt, except funds received after the close of normal banking hours or daily receipts totaling less than \$100. *Agency Exhibit L, p. 3*.

The Grievant testified that withholding deposits was a past practice started by the previous Controller in order to avoid the reallocation of Agency funds at the end of the fiscal year by the State Office of Management and Budget (“OMB”).

The Grievant also processed refunds directly out of Agency funds without the certification and approval required by 18 *Del. C.* § 711(b). Again, the Grievant admitted to the practice, but testified that there are two types of refunds: refunds from the Agency’s funds and refunds from the State’s General Fund. She testified it was the previous Agency administration’s procedure to pay the refund from the fund where the deposit was made and that no changes were made to the procedure by the current administration. The statute requires:

(b) If the amount of taxes, charges or fees found due are less than the amount paid, either by examination of the return by the Commissioner or by allowance of a claim for overpayment filed by the payer with the Commissioner, the State Treasurer shall refund the excess out of the General Fund of this State upon certification by the Commissioner and approval by the Director of the Office of Management and Budget. 18 *Del. C.* § 711(b)

The Agency’s Fiscal Section, under the Grievant’s direction, admittedly failed to request reimbursement of State funds expended for travel expenses from the National Association of Insurance Commissioners. *Grievant Exhibit 9*. The failure resulted in a loss of more than

\$10,000 to the State. In addition, there were \$12,000 in reimbursable travel expenses from March and April of 2019 which were not submitted. The Grievant explained that the responsible subordinate simply missed the deadlines because she was trying to do multiple tasks at the same time and was covering for significant employee turnover in the Agency.

The Grievant also admitted to using her state E-mail address for both work and personal purposes, as she did not have a personal email account. A one-week sampling between November 23, 2019 through November 30, 2019 revealed the Grievant received in excess of five hundred (500) personal emails. *Agency Exhibit B.*

Finally, the Grievant signed the Division of Accounting annual certifications that the Agency was in compliance with State laws and general accounting principles and policies, despite her admitted knowledge of the irregularities described above. The Grievant testified that the annual certifications only required that she certify the Agency's accounts had been reconciled. The forms require the Controller to certify, in relevant part,:

- There were no deficiencies that arose which could adversely affect this Organizations ability to record, process, summarize and report financial data;
- We have identified no material weakness in internal controls in our monthly certification process;
- The transactions have been properly reviewed and authorized prior to processing to ensure the proper delivery and receipt of goods/services;
- Appropriations reflect accurate charges and all discrepancies identified have been corrected... *Agency Exhibit X.*

As a result of the DOI investigation, the Grievant was placed on paid administrative leave on August 13 2019. *Grievant Exhibit 1.* The Chief of Staff then requested the Office of Auditor of Accounts ("Auditor") to conduct an independent investigation. The State Auditor conducted an investigation and issued a report on May 7, 2020. *Exhibit C.* The Auditor substantiated the DOI allegations finding:

[A]n overall lack of [financial] controls in the Department of Insurance. The

Controller violated a number of provisions of the State of Delaware Budget and Accounting Manual which significantly increased the Department's risk of misuse and misappropriation. *Id.*

The Delaware Department of Accounting permanently suspended the Grievant's FSF credentials and prohibited her from using a State credit card. FSF access and credentials are required for the Controller to approve DOI disbursements, which constitutes approximately half of the Controller's workload.

On July 15, 2020, the Insurance Commissioner terminated the Grievant's employment with the Agency. Prior to her termination, a pre-decision meeting was held at the Grievant's request on June 12, 2020. The Commissioner concluded, based on "eleven different areas of state laws or policies or deficiencies in performance as Controller":

Your ongoing lack of regard for the structures put in place by the State to maintain the fiscal integrity of its financial systems, combined with the lack of knowledge of your basic job responsibilities, makes clear that termination is appropriate here. In addition,... access to the FSF/ERP system is essential for the person serving in the position of Controller. *Grievant Exhibit 3.*

CONCLUSIONS OF LAW

Merit Rule 12.1 provides:

Employees shall be held accountable for their conduct. Disciplinary measures up to and including dismissal shall be taken only for just cause. "Just cause" means that management has sufficient reasons for imposing accountability. Just cause requires: showing that the employee has committed the charged offense; offering specified due process rights specified in this chapter; and imposing a penalty appropriate to the circumstances.

The Board concludes that the Agency had just cause to terminate the Grievant. The Grievant admitted to committing several of the charged offenses, including sharing her FSF password with a subordinate; holding deposits made at the end of a fiscal year to deposit them in the next fiscal year; processing refunds without statutorily required certification and approval;

failing to adequately oversee the reimbursement of expenses by NAIC; and using her state email as her personal email address. The Grievant did not dispute that she was offered due process rights. The Grievant, however, asserts that the penalty of termination was excessive and not appropriate to the circumstances.

The Board finds that Grievant's termination was appropriate to the circumstances. The Grievant was responsible for management, control and oversight of the Agency's fiscal operations and to provide counsel and directions on policies, procedures and interpretations to the Agency. She ignored established accounting principles, state law and rules for use of the FSF system. As the Controller, it was her job to maintain and work within those systems. She ignored the controls she was tasked to implement.

Further, access to the FSF system is a necessary pre-condition for the Controller to perform her job duties. When the Division of Accounting revoked the Grievant's privileges to access FSF, the Grievant was unable to perform a significant portion of the essential duties of her position. The Board concludes that the Agency had just cause to terminate the Grievant because her access to FSF was an essential job function. *See Cahill v. Criminal Justice Council/Statistical Analysis Center* (MERB Docket No. 13-04-588).

ORDER

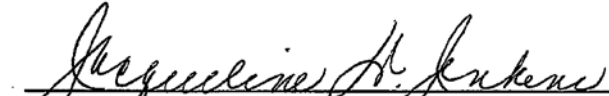
It is this **14th** day of **May, 2021**, by a unanimous vote, the Decision and Order of the Board to deny the Grievant's appeal.



W. MICHAEL TUPMAN, MERB CHAIR



PAUL R. HOUCK, MERB Member


JACQUELINE D. JENKINS, EDD, MERB Member


VICTORIA D. CAIRNS, MERB Member


SHELDON N. SANDLER, ESQ., MEMBER