

THIRD DIVISION  
May 27, 2015

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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KATHY HARTS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 11CH3089
	)	
ILLINOIS EXECUTIVE ETHICS	)	
COMMISSION, <i>et al.</i> ,	)	The Honorable
	)	Mary L. Mikva,
Defendant-Appellee.	)	Judge Presiding.

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PRESIDING JUSTICE Pucinski delivered the judgment of the court.  
Justices Lavin and Hyman concurred in the judgment.

**ORDER**

¶ 1 *Held:* Circuit court order upholding an administrative decision to fine the plaintiff, an Illinois State employee, for making false statements during an investigation undertaken by the Office of the Executive Inspector General in violation of the mandates of the Illinois State Officials and Employees Ethics Act affirmed where the agency's credibility determinations and factual findings were not against the manifest weight of the evidence and where its ultimate conclusion that Harts's conduct constituted a violation of the aforementioned Act and warranted a fine was not clearly erroneous.

¶ 2 *Pro se* plaintiff Kathy Harts, an Illinois State employee, appeals an order of the circuit court affirming the decision of the Illinois Executive Ethics Commission (Ethics Commission or

Commission) to levy a \$750 fine against her as punishment for making false statements to investigators from the Office of the Executive Inspector General (OEIG) in contravention of the express mandates of the Illinois State Officials and Employees Ethics Act (Ethics Act) (5 ILCS 430/1-1 *et seq.* (West 2008)). On appeal, Harts seeks reversal of the circuit court's order affirming the Ethics Commission's decision, arguing that the Commission's decision is against the manifest weight of the evidence. She also argues reversal is warranted because she was the victim of legal and ethical violations committed by the circuit court, the OEIG and the Attorney General's office. For the reasons explained herein, we affirm the judgment of the circuit court.

¶ 3

### BACKGROUND

¶ 4

Harts commenced employment with the State of Illinois in 1988. She worked at various agencies during her tenure with the State including the Illinois Department of Healthcare & Family Services, Public Aid, and the Illinois Department of Employment Security. From October 16, 2007, to August 28, 2008, Harts worked as an auditor trainee<sup>1</sup> at the Illinois Gaming Board.<sup>2</sup> On August 18, 2008, after being informed that she would not be certified as an auditor, 472 e-mails were forwarded from Harts's State email account to a private yahoo.com email account: [live4morelove2@yahoo.com](mailto:live4morelove2@yahoo.com). A number of those emails contained confidential Gaming Board information. Once the Gaming Board became aware of the email transmissions, it notified the OEIG, which in turn, opened an investigation to determine whether Harts misused her State email account to distribute confidential Gaming Board documents.

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<sup>1</sup> Harts began working at the Gaming Board by virtue of the State's upward mobility program. That program is a "career mobility program designed to give state employees an opportunity to advance to more challenging, higher paying positions." See <http://www.illinois.gov/cms/Employees/Education/ump/pages/default.aspx>. Pursuant to that program, Harts had the opportunity to become a certified auditor or to return to her previous position at the Illinois Department of Healthcare and Family Services if she was unable to achieve the requisite certification.

<sup>2</sup> The Gaming Board is the agency authorized to supervise, regulate and enforce all Illinois gaming operations specified in the Riverboat Gambling Act (230 ILCS 10/5(a)(1) (West 2012)) and the Video Gaming Act (230 ILCS 40/78 (West 2012)).

¶ 5 Harts was subsequently interviewed by OEIG investigators on two occasions: January 29, 2009, and April 30, 2009. The investigators also interviewed Harts's supervisors and co-workers at the Gaming Board. Thereafter, on July 27, 2010, following the OEIG's lengthy investigation, the Executive Inspector General filed a complaint with the Illinois Ethics Commission, alleging that Harts obstructed its investigation in violation of the mandates of the Illinois Ethics Act. In pertinent part, the complaint alleged:

"[1] [Harts] was interviewed by OEIG investigators as part of an OEIG investigation on two occasions: January 29, 2009, and April 30, 2009.

[2] These interviews were part of an investigation which sought to determine whether [Harts] had used her State computer and State email account to forward confidential [Gaming] Board documents to an unauthorized private e-mail address and whether she improperly disposed of confidential [Gaming] Board documents in her home trashcan.

[3] During the course of these two interviews: [Harts] intentionally obstructed or interfered with the Inspector General's investigation and failed to cooperate by making numerous false statements to investigators, including:

a. Falsely denying that she forwarded State documents from her State email account to a personal or non-State email account.

b. Falsely claiming that she left work at 3:00 p.m. on August 18, 2008, when in reality she was at work until at least 3:50 p.m. that day.

[4] [Harts] violated Section 20-70 and Section 50-5(e) of the Ethics Act by intentionally obstructing or interfering with an investigation of the Executive Inspector General and failing to cooperate with investigators.

[5] As a result of [Harts]'s violations of the Act, pursuant to Section 50-5(e), she is subject to an administrative find of up to \$5,000 per violation of the Act.

WHEREFORE [the Executive Inspector General] requests the Commission enter a decision finding [Harts] in violation of the Act, levy a fine against [Harts] of up to \$5,000 per violation, recommend that [Harts] be subject to discipline up to and including discharge and for any such further and other relief as the Commission deems just and proper."

¶ 6 On September 10, 2010, Harts filed a response to the Executive Inspector General's complaint. In her response, Harts admitted meeting with OEIG investigators on two occasions but denied making false statements and intentionally obstructing or interfering with their investigation. After the filings, the cause was set for an administrative hearing before the Ethics Commission.

¶ 7 At the hearing, Harts testified that when she became an auditor trainee with the Gaming Board in 2007, her work hours were consistent. She explained that she worked from 7 or 8 a.m. to 4 p.m. and that her allotted time for lunch was from 1 p.m. to 2 p.m. Harts also confirmed that she was required to sign herself in and out at the front desk every day and that she was required to inform Trudy Curtis, her immediate supervisor, of any deviations from that schedule. As an auditor trainee, Harts was assigned a specific computer, which was password protected. Harts testified that she never provided anyone else the password she used to access her Gaming Board computer. In addition to a computer, Harts was also provided with a State email address, which was only accessible to her on her work computer. She confirmed that Gaming Board employees were prohibited from using their State email account for personal, non-work reasons. Harts denied that she ever had a personal computer or a personal email address during her time at the

Gaming Board, but acknowledged that she did have a personal email account before she became an auditor trainee. Harts explained that she had used a personal email account when she was a Union member because the Union to which she belonged communicated with its members via email. Harts, however, did not recall the personal email address that she had used when she was a Union member, but indicated that she believed it had been a yahoo.com account.

¶ 8 Harts acknowledged that as an auditor trainee, she was aware that the documents she saw and reviewed at the Gaming Board were confidential. To that end, Harts did not have remote access to her work computer and was required to obtain the approval of her supervisor if she wanted to take any work home. She acknowledged getting several evaluations during her tenure at the Gaming Board and classified them as "pretty decent." Notwithstanding her decent reviews, Harts testified that Curtis began treating her differently and that, as a result, Harts wrote a letter complaining of Curtis's treatment of her. When Doug Bybee, a Deputy Administrator at the Gaming Board, received a copy of Harts's letter, he called her into his office and instructed her to "just let it go."

¶ 9 Although Harts's agreed to let the matter go, she testified that soon after her meeting with Bybee, Harts was informed that she would not be certified as an auditor. Specifically, she was told that she "didn't live up to Trudy's [high] standards" and that she "didn't fit." Harts interpreted those statements to mean that she "wasn't the right color" to be an auditor at the Gaming Board. Following the August 15, 2008, meeting, Harts requested copies of her personal evaluations, but she did not receive them. Harts's last day at the Gaming Board was August 18, 2008, which was only a few days after she was told that she failed to meet the criteria to be a certified auditor and that she would be returning to her employ at the Department of Healthcare & Family Services. She confirmed that the timesheet on that date reflected that she arrived at

work at 7:07 a.m. and that she left at 4:10 p.m., but indicated that she was "not for sure" if the sheet was accurate. Harts, however, did recall that prior to leaving work that day, she submitted two requests to utilize vacation time the next two work days, but testified that when she handed her requests to Curtis, she was told "not to come back." Harts acknowledged that on the last day that she worked at the Gaming Board, she used her State email account to send multiple emails to Sam Rossi, her Union Representative, to Curtis, her supervisor at the Gaming Board, and to a co-worker at the Gaming Board, but she denied using her State email account to forward Gaming Board documents to a yahoo.com email account. After leaving the Gaming Board's employ, Harts confirmed that she filed an employment discrimination complaint against Doug Bybee.

¶ 10 Harts acknowledged meeting with investigators from the OEIG on two occasions after she left the Gaming Board. She recalled that she was asked if she sent hundreds of emails from her State email account to a personal yahoo.com email account on August 18, 2008, and that she denied doing so. Harts also recalled being asked about the hours she worked on that date, but indicated that she did not remember telling the OEIG investigators that she left work that afternoon at 3 p.m. Harts later clarified, however, that "[the investigator] asked me around that time I left and I told him I wasn't for sure, and he kept inquiring and kind of pushing the issue as to what time I left. I said I'm really not sure. He said two, three? I said I guess." She denied that she was shown any email records or time records during either of her interviews.

¶ 11 Harts did testify that approximately three weeks to a month before she left the Gaming Board, she had been having problems with her work computer. She explained that the computer would "just be running" on its own and that it "looked like it had a bunch of wording and it looked like it was just constantly running and it was all across the computer and then sometimes [it would] just get all of these lines[,] little jiggly lines." She further testified that she was unable

to access her State email account when the computer was "just running" itself. Harts indicated that she reported the problems she was having with her computer and was told that she would be provided with a new one; however, she did not receive one before she left her employ at the Gaming Board.

¶ 12 Douglas Bybee, Deputy Administrator of Audit and Financial Analysis at the Illinois Gaming Board, testified that he oversaw Trudy Curtis, Harts's immediate supervisor, when Harts was an auditor trainee. He explained that the Gaming Board was responsible for regulating riverboat gambling and video gaming and that he oversaw the Gaming Board's internal control division, which was specifically responsible for conducting financial analysis and audits of all casino and video gaming operations. Bybee further testified that the Gaming Board's internal control division was also responsible for overseeing and regulating the minimum control standards adopted and implemented by individual casinos. He explained that minimum control standards are unique to each casino and that those standards contained "proprietary information" pertaining to security, surveillance and table gaming procedures. Given the sensitive nature of the information contained in minimum control standards, Bybee explained that the Gaming Board considered documents pertaining to those standards to be "confidential." He confirmed that the unauthorized disclosure of those documents posed majority security problems.

¶ 13 Bybee recalled that some time after Harts was informed that she would not be certified as auditor, he learned that she filed an employment discrimination suit against him. Bybee also learned that on August 18, 2008, the last day that Harts reported for work at the Gaming Board, approximately 400 emails from Harts's State email account were forwarded to an unfamiliar yahoo.com email account that had not been authorized by the Gaming Board to receive sensitive information or documentation. When he reviewed the content of those emails, Bybee discovered

that approximately 30 of those emails contained information pertaining to different casinos' confidential minimum internal control standards. He testified that Harts did not have authorization to perform work outside of the office or to email internal control standards from her State email account to a yahoo.com email account. Bybee confirmed that he had no personal knowledge as to whether Harts had a personal email account or a personal computer and that he did not actually observe Harts forward confidential information from her State email address to a yahoo.com email address. Bybee, however, indicated that State email accounts, including the account that Harts had been provided, are password protected, and that neither he nor any other supervisor at the Gaming Board had access to the passwords to any of their subordinates' computers or State email accounts.

¶ 14 Trudy Curtis, the Internal Control Unit Manager at the Gaming Board, testified that she was Harts's direct supervisor when Harts was an auditor trainee. Curtis explained that Harts's duties as an auditor trainee "were to review internal control changes from the licensees as well as to communicate [with] the licensees [about] any questions that may have arisen out of her review." She explained that Harts and all other auditor trainees were informed that the internal control standards for all licensees contained "proprietary" information. Accordingly, Harts and other trainees were provided with specific instructions regarding the appropriate methods to be used to review internal control standard documents to ensure that the information contained therein remained confidential. Curtis also confirmed that new Gaming Board employees generally had fixed schedules and that she had to approve any alterations to those schedules. Moreover, all Gaming Board employees were required to sign in and out each day. Curtis testified that the Gaming Board's timesheet for August 18, 2008, reflected that Harts signed in at 7:07 a.m. and signed out at 4:10 p.m.



¶ 15 Curtis also testified that when Harts became an auditor trainee at the Gaming Board, she was provided with a State computer, a State email address and passwords. Curtis explained that the Gaming Board had computer security measures in place to ensure the confidentiality of email accounts. Specifically, the information technology (IT) department required every employee to change their passwords every 30 days. In addition, after a 10 minute period of inactivity, an employee's computer became locked and "the only person [who] could unlock it would be the person whose computer that is who has the password." Curtis confirmed that she did not have access to the email or computer passwords of other Gaming Board employees. Moreover, Curtis had no knowledge as to whether a supervisor at the Gaming Board could submit a request to obtain the computer or email password of a subordinate and indicated that she had never done so.

¶ 16 During the time that she supervised Harts, Curtis testified that she met with her three times to give her performance appraisals. The third appraisal was given on Friday, August 15, 2008. During that meeting, Curtis and Bybee informed Harts that "she probably would not be certified." She confirmed that Harts returned to work on Monday, August 18, 2008, and worked a full day, but that she did not return to the Gaming Board thereafter. Curtis recalled that Harts left work on August 18, 2008, at approximately 4 p.m. because Harts came by Curtis's office "right before she left to \*\*\* drop off two requests for leave slips for vacation days for August 19th and the 20th."

¶ 17 Curtis testified that she did not exchange personal emails with Harts and did not have any knowledge as to whether Harts had a personal email address or a personal computer. In addition, Curtis had no personal knowledge of Harts using her State email address to send Gaming Board documents to a personal email account, but confirmed that she never authorized Harts to use her State email account to email Gaming Board documents to a non-State email account. She

emphasized that private yahoo.com email accounts were not authorized to receive confidential Gaming Board information.

¶ 18 Sam Theivagt, an Information Systems Analyst II at the Illinois Gaming Board, testified that he oversaw various technologies utilized by the Gaming Board including computer networks, servers, printers, and email accounts. Because the Gaming Board deals with proprietary information, Theivagt testified that there are various protocols that are followed when an employee leaves the Gaming Board. He explained that once he receives notice that an employee is leaving the Gaming Board's employ, he disables the employee's network ID, removes the employee from email distribution lists and archives their email. Theivagt confirmed that he receive notice sometime in August 2008 that Harts was leaving her employ at the Gaming Board and that he began disabling her network ID and archiving her email. As he began doing so, however, Theivagt discovered that on August 18, 2008, "numerous messages \*\*\* had been forwarded to an email address outside of [the] Gaming Board." Specifically, he discovered that over 400 emails were sent "throughout the day" from Harts's Gaming Board email address to an unfamiliar external yahoo.com email account: [live4morelove2@yahoo.com](mailto:live4morelove2@yahoo.com). Theivagt explained that the emails were "cause for concern" because the Gaming Board was entrusted with a lot of confidential information, including "people's personal information and financial information for casinos." As Theivagt continued to archive Harts's State email account, he did not find any other instances in which Harts had used her work account to send emails to external email addresses. After making this discovery, Theivagt contacted Trudy Curtis, Harts's supervisor, and informed her that "all these emails had been forwarded to [an] outside address," an address that was "probably Mrs. Harts's personal email address." Thereafter, Theivagt notified the OEIG and

provided OEIG investigators with an archived copy of Harts's State email account and the emails that were sent from that account to the yahoo.com account on August 18, 2008.

¶ 19           Theivagt confirmed that Gaming Board email accounts were susceptible to computer virus and explained that the Department of Central Management Services for the State of Illinois utilizes a security feature called Iron Mail, which scans emails sent and received from State email accounts for the presence of viruses or spam. He acknowledged that he had no personal knowledge as to whether Harts had a personal computer or a private personal email account when she employed at the Gaming Board. Notwithstanding the computer records he discovered, Theivagt also admitted that he did not personally observe Harts send any of those emails on August 18, 2008, but testified that there was nothing to indicate that anyone other than Harts had sent those emails. He noted that computer records from August 18, 2008, showed that Harts used her Gaming Board email account to send emails to other valid State email accounts in addition to the aforementioned [live4morelove2@yahoo.com](mailto:live4morelove2@yahoo.com) account. The records further showed that those Harts utilized her Gaming Board email account throughout the August 18, 2008, workday and sent emails from 7:17 a.m. and to 3:51 p.m.

¶ 20           Caprice Williams, an Internal Auditor I at the Illinois Gaming Board, testified that she knew Harts when she was an auditor trainee at the Gaming Board and described their relationship as a "brief" and "indirect." Williams acknowledged that she had a personal email account in addition to a State email account and speculated it was possible that she and Harts corresponded using their personal email accounts; however, she did not recall any specific exchanges. Williams confirmed that if there had been any personal emails sent between the two of them, they would not have used their Gaming Board email accounts because they "were told not to send personal emails through [their] work email."

¶ 21 Williams recalled that she was interviewed by investigators from OEIG after Harts left her employ at the Gaming Board. During the May 4, 2009, interview, she acknowledged she was asked if Harts's personal email address was [live4morelove2@yahoo.com](mailto:live4morelove2@yahoo.com) and she answered affirmatively. She also admitted during that interview that she had sent scripture verses to Harts at that account. Williams, however, explained that she responded in that way because she assumed it had to be Harts's personal email address because the basis for the interview and the OEIG's investigation was Harts's conduct and "there was no reason for [her] to say that [she] doubted that" it was Harts's account. Williams acknowledged that she did not indicate that her responses to the OEIG investigator's questions were based on an assumption, but confirmed that she could not testify with any certainty that [live4morelove2@yahoo.com](mailto:live4morelove2@yahoo.com) was Harts's personal email account.

¶ 22 Michelo Munanasangu, a trained OEIG investigator, testified that was assigned to investigate allegations of computer misuse and general misconduct that had been made against Harts. As part of his investigation, Munanasangu interviewed Harts on two occasions and asked her whether she had forwarded over 400 emails from her State of Illinois Gaming Board email account to a non-State email account. During both interviews, Harts denied having a personal email account and denied sending emails to a non-State email account while she was employed at the Gaming Board. Investigator Munanasangu also recalled specifically asking Harts about the hours that she worked at the Gaming Board on August 18, 2008, the date that the emails at issue were sent. In response to his inquiry, Munanasangu testified that Harts informed him that she arrived early in the morning, took her lunch break at 1 p.m. and that she left work "around 3 o'clock," which was earlier than normal. When asked why the timesheet for that date indicated that Harts had left work at 4:10 p.m., she stated that she had not signed out that day and stated

that the "4" on the timesheet did not look like her writing. When Munanasangu confronted her with other timesheets, he testified that Harts acknowledged that the August 18, 2008, timesheet was the only one that contained any inaccuracies. Investigator Munanasangu confirmed that he had served subpoenas on Yahoo!, but indicated that he still did not definitively know to whom the email address [live4morelove2@yahoo.com](mailto:live4morelove2@yahoo.com) belonged.

¶ 23 After hearing the aforementioned testimony, the Ethics Commission took the matter under advisement before issuing its findings in a written decision. In that decision, the Commission stated, in pertinent part:

"Respondent Kathy Harts violated Section 50-5(e) of the State Officials and Employees Ethics Act (5 ILCS 430/50-5(e)) when she obstructed the investigation by intentionally making specific, false statements to OEIG investigators who were conducting an investigation pursuant to the Act. The false statements were relevant to the investigation, very specific and clearly intended to obstruct or interfere with the investigation.

Respondent continues to insist that she did not send the emails and suggests that her computer may have been subject to a virus. She offered no evidence for the existence of this virus. Furthermore, the times that the emails were sent correspond very closely to the start and end times on the August 18, 2008 time sheet and also with her lunch period.

Respondent also argues that the 4:10 p.m. end time on her time sheet was not made by her and that she did leave the office at 3:00 on August 18, 2008. She agrees, however, that the time sheets are correct in every other respect. The eyewitness testimony of respondent's supervisor placing respondent in the office at 4:00 p.m. is more credible.

Finally, it appears that respondent had a motive to preserve evidence by forwarding emails to a private account on her last day in the office. Her emails might have been useful, at least in respondent's mind, when pursuing legal or administrative action following the decision not to certify her as an auditor. As noted above, she filed a complaint with the EEOC within days of leaving her position at the [Gaming Board].

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WHEREFORE, for the foregoing reasons, the Commission finds by a preponderance of the evidence that respondent Kathy Harts has violated Section 50-5(e) of the State Officials and Employees Ethics Act (5 ILCS 430/50-5(e)).

IT IS ORDERED that an administrative fine of \$750.00 is levied against respondent Kathy Harts in accordance with her violation of Section 50-5(e) of the State Officials and Employees Ethics Act (5 ILCS 430/50-5(e))."

¶ 24 Harts responded by filing a complaint in the circuit court seeking administrative review of the Commission's decision, arguing that it was "not in accordance with the law." After hearing arguments from both parties, the circuit court upheld the Commission's decision. In open court, the court indicated that it "felt bad" for Harts, and empathized that "it [was] unfortunate that things ended the way they did and took the route that they took," but stated that "it's the presence of [the manifest weight of the evidence] standard that makes this a case that I can't disagree with because I'm not the trier of fact here." Accordingly, the court affirmed the Commission's decision, stating that based upon its review of the record, it "certainly c[ould not] find that this was against the manifest weight of the evidence or anywhere close to that."

¶ 25 This appeal followed.

¶ 26 ANALYSIS

¶ 27 On appeal, Harts seeks to "expunge[e] the charges and fine levied against [her]." She argues that the Commission's conclusions that she lied to OEIG investigators about misusing her State email account to send confidential Gaming Board documents to a private email account and about the time that she left work on the date those emails were sent are "against the manifested [sic] weight of the evidence." She also argues that she has been the victim of legal and ethical violations committed by the circuit court, the OEIG, and the Attorney General's Office.

¶ 28 The Ethics Commission, in turn, responds that the facts contained record support its findings that Harts made false statements to OEIG investigators and that she did so in an effort to obstruct or impede the OEIG's investigation into the misuse of her State email account, thereby violating the Ethics Act. Accordingly, the Commission asserts that the circuit court did not err in upholding its decision.

¶ 29 Appeals from administrative hearings are governed by administrative review law. 735 ILCS 5/3-101 (West 2012); *Provena Covenant Medical Center v. Department of Revenue*, 236 Ill. 2d 368, 385 (2010). On appeal from a circuit court's judgment on administrative review, a reviewing court reviews the decision of the agency, not the circuit court. *Provena Covenant Medical Center*, 236 Ill. 2d at 386; *Ramirez v. Andrade*, 372 Ill. App. 3d 68, 73 (2007). In reviewing an administrative agency's decision, the applicable standard of review depends upon the type of question raised on appeal. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill. 2d 200, 210 (2008); *City of Belvedere v. Illinois State Labor Relations Board*, 181 Ill. 2d 191, 205 (1998). An administrative agency's factual findings and credibility determinations are deemed *prima facie* true and correct and a reviewing court is limited to ascertaining whether those findings are against the manifest weight of the evidence. *Cinkus*, 228 Ill. 2d at 210; *City of Belvedere*, 181 Ill. 2d at 205. A finding is against the manifest weight of

the evidence only if “ ‘the opposite conclusion is clearly evident’ ” or if the finding is “ ‘unreasonable arbitrary, and not based upon any of the evidence.’ ” *Lyon v. Department of Child and Family Services*, 209 Ill. 2d 264, 271 (2004), quoting *Snelson v. Kamm*, 204 Ill 2d 1, 35 (2003). The mere fact that the agency could have ruled differently is not reason to reverse the administrative agency’s findings; rather, as long as there is evidence in the record that supports the agency’s decision, it should be upheld on appeal. *Robbins v. Pension Board of Trustees of Carbondale Police Pension Fund of the City of Carbondale*, 177 Ill. 2d 533, 538 (1997). An administrative agency’s conclusions regarding questions of law, in contrast, are not subject to deference; rather, the court’s review is independent and not deferential. *Cinkus*, 228 Ill. 2d at 211; *City of Belvidere*, 181 Ill. 2d at 205. Finally, an administrative agency's determinations regarding mixed questions of fact and law, that is, questions involving the examination of the legal effect of a given set of facts are subject to an intermediate clearly erroneous standard of review. *City of Belvidere*, 181 Ill. 2d at 205. An administrative agency's decision on an issue involving a mixed question of fact and law will only be deemed clearly erroneous where the reviewing court, after reviewing the record, is " ' left with the definite and firm conviction that a mistake has been committed.' " *AFM Messenger Service, Inc. v. Department of Employment Security*, 198 Ill. 3d 380, 395 (2001), quoting *United States v. United States Gypsum Co.*, 333 U.S. 364, 395 (1948).

¶ 30 In her opening brief, Harts relies exclusively on the manifest weight of the evidence standard. We note, however, that she although she challenges the Commission's factual findings and credibility determinations, she also challenges its ultimate determination that her conduct amounted to a violation of the Illinois Ethics Act, warranting a \$750 fine. Although the Commission's credibility determinations and factual findings are indeed subject to the manifest



weight of the evidence standard of review (see *Cinkus*, 228 Ill. 2d at 210), the Commission's conclusion that Harts's conduct constituted a violation of the Ethics Act presents a mixed question of fact and law, and as such, is subject to review under the clearly erroneous standard. See, e.g., *Petrovic v. Illinois Dept. of Employment Security*, 2014 IL App (1st) 131813, ¶¶ 26-33 (whether an employee's actions constituted "misconduct," as defined by the Illinois Unemployment Insurance Act was an issue of mixed fact and law that would not be reversed unless it was clearly erroneous). Keeping these standards in mind, we address the substantive merit of Harts's appeal.

¶ 31 There is no dispute that when Harts worked as an auditor trainee at the Gaming Board, she was subject to the mandates of the Illinois Ethics Act. Accordingly, she was required to cooperate with any investigation undertaken by the Executive Inspector General or face a penalty, including a fine. See 5 ILCS 430/50-5(e) (West 2008) ("An ethics commission may levy an administrative fine of up to \$5,000 against any person who violates this Act, who intentionally obstructs or interferes with an investigation conducted under this Act by an inspector general, or who intentionally makes a false, frivolous, or bad faith allegation").

¶ 32 Here, the OEIG alleged, and the Commission found, that Harts made two false statements to OEIG investigators. Specifically, Commission found that Harts's statement that she left work on August 18, 2008, at around 3 p.m. was false as was her denial that she used her Gaming Board email account to forward confidential documents to a private yahoo.com email account. Regarding the first statement, we note that Harts's assertion that she left work early on August 18, 2008, is contradicted by the timesheet itself, which reflects that she signed out at 4:10 p.m. as well as by the testimony of Trudy Curtis, who testified that Harts remained at work that day until at least 4 p.m. Curtis specifically recalled the date and time because August 18, 2008, was the

last day that Harts ever came to work at the Gaming Board and because she dropped off vacation request sheets at the end of the work day. Although Harts testified at the hearing that she could not recall the precise time that she told Investigator Munanasangu that she left work that evening, she was insistent that she left work earlier than the 4:10 p.m. time reflected on the timesheet for that date and that the August 18, 2008, was the only timesheet that contained a discrepancy. In its written decision, the Commission specifically found Curtis's testimony to be "more credible." Based on our review of record, we conclude that neither the Commission's credibility determination nor its conclusion that Harts provided a false statement concerning the time she left work at the Gaming Board on the date in question is against the manifest weight of the evidence.

¶ 33 Turning to the second statement, Harts's statement denying forwarding over 400 emails from her State email account to a yahoo.com email account, we are similarly unable to conclude that the Commission's finding is against the manifest weight of the evidence. At the hearing, Information Systems Analyst Sam Theivagt testified that emails were sent throughout the day from Harts's Gaming Board email account from 7:17 a.m. to 3:51 p.m. As the Commission correctly observed, "the times that the emails were sent correspond[ed] very closely to the start and end times on the August 18, 2008 time[.]sheet and also with her lunch period." Moreover, although Harts suggests that there was something wrong with her computer, there is nothing to indicate that anybody other than Harts used her Gaming Board computer or email account on that date. Indeed, the records reflect the forwarded emails that Harts disputes sending were not the only emails sent from her Gaming Board email account on August 18, 2008. Those records show that Harts also used her email account on that date to contact her Union representative as well as Trudy Curtis, her supervisor. After reviewing the testimonial evidence and documentary

evidence presented at the hearing, we are unable to agree with Harts that the Commission's conclusion that she lied about sending the disputed emails is unreasonable, arbitrary and not based on the evidence.

¶ 34 We are also unable to find that the Commission's ultimate conclusion that Harts made the two aforementioned false statements in an effort to obstruct the OEIG's investigation in violation of section 50-5(e) of the Ethics Act (5 ILCS 430/50-5(e) (West 2008)) is clearly erroneous. In its written decision, the Commission expressly found that Harts had a motive to forward Gaming Board documents to her personal email account on her last day at the Gaming Board as well as a motive to lie to OEIG investigators about doing so. We emphasize that the clearly erroneous standard is one that is "largely deferential to the agency decision." *Chicago Messenger Service v. Jordan*, 356 Ill. App. 3d 101-106-07 (2005). Although one could potentially come to a different conclusion, this does not make the Commission's decision clearly erroneous. Because this court has not been left with a firm and definite conviction that a mistake has been made, we affirm the circuit court order upholding the Commission's decision. In doing so, we acknowledge that Harts advances various claims of impropriety on the part of the Executive Inspector General, Attorney General and circuit court; however, these allegations are not supported by any facts contained in the record or any relevant controlling legal authority. As such, these baseless allegations provide this court with no basis to overturn the Commission's administrative decision.

¶ 35 CONCLUSION

¶ 36 Accordingly, the judgment of the circuit court is affirmed.

¶ 37 Affirmed.