

IN THE MATTER OF)	
)	
An Arbitration Between:)	Case No. Tax -2023-03578-02
)	
Ohio Department of Taxation,)	
)	
Employer,)	
)	OPINION AND AWARD
and)	Arbitrator Sarah R. Cole
)	
Matthew Shell,)	
)	
Grievant.)	

Appearances

For the Union

Jeffrey Gray, Union Attorney
 Matthew Shell, Grievant
 Kim Rutowski, Union Attorney
 Steven Laird, Union Representative

For the Employer

Eric Eilerman, Office of Collective Bargaining
 Thomas Christian, Labor Relations Administration
 Maria Saliaris, Deputy Tax Commissioner

ARBITRATOR’S OPINION AND AWARD

This grievance is properly before the Arbitrator pursuant to the collective bargaining agreement between the parties, Unit 2 (Union), representing Grievant, Matthew Shell, and the Ohio Department of Taxation. The parties’ agreement was effective from September 22, 2021, to June 30, 2024. (Jt. Ex. 1).

The Ohio Department of Taxation, removed Matthew Shell on December 15, 2023. (Jt. Ex. 5). The Department of Taxation based the discipline on Grievant’s violation of Departmental Work rule #62-A—“failure of good behavior or efficient service prohibited by O.R.C.§124.34 including without limitation . . . dishonesty, . . . , immoral conduct . . . neglect of duty, violation of any policy or work rule of the officer’s or employee’s appointing authority . . . or any other failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office”

For the reasons below, I **uphold** the removal and **deny** the grievance.

I. ISSUE

The issue before the Arbitrator is whether the Employer had just cause to terminate the Grievant from his position as a Tax Criminal Investigations Agent, and if not, what shall the remedy be.

II. STATEMENT OF FACTS

The Grievant, Matthew Shell, a Tax Criminal Investigations Agent (CID Agent or Agent), has worked for the Ohio Department of Taxation for 12 years and has no prior discipline on his record. In late August 2023, Grievant received a tip about a business owner, Mr. O, who owned a Chillicothe company, Jerkypro. That tip came from Grievant's wife, who relayed to Grievant a comment from a law enforcement colleague, Drew Cheadle, with whom Grievant worked several years earlier. Cheadle posted on Facebook that Mr. O was having an affair with Cheadle's wife and suggested that he also engaged in shady business practices. In response to this tip, Grievant initiated an investigation of Mr. O. Using his authority as a CID Agent, he conducted an initial search on the STARS database, a database law enforcement agents use to determine which taxpayers are delinquent on their tax payments, and which contains Confidential Taxpayer Information (CPI). The Grievant confirmed that Jerkypro missed one payment, though the amount Jerkypro owed could not be determined through a STARS search. Typically, a business must miss payment periods four times before an agent becomes involved. When a taxpayer misses only one payment, the Department's practice is to notify the taxpayer of the delinquency and give them an opportunity to rectify the delinquency.

Almost immediately, Grievant realized he was "too close to the case" and attempted to manage the conflict by transferring the case to fellow agents. On August 31, 2023, Grievant approached Agent Zachary Tolzda, telling him that this new case was a "good DQ" (delinquent taxpayer) and asking him if he would write the citation for Grievant. Grievant informed Tolzda that he received the tip from a friend in law enforcement whose wife was having an affair with the business owner/delinquent taxpayer. In addition, Grievant asked Tolzda, who was the DQ Coordinator and had access to Tableau, a database which includes businesses that have four or more DQ periods. Grievant did not have access to Tableau. Tolzda believed that Grievant wanted him to research the DQ list on Tableau to determine whether Mr. O appeared on it. Tolzda thought that Grievant's request was unusual because Grievant had already informed him that it was a "good DQ", suggesting he had already conducted the research. Grievant also suggested that if Tolzda took the case, he should plan to write another citation in the area so it wouldn't appear that they were targeting Mr. O's business. Tolzda declined the opportunity and reported it to two other agents.

Having failed to entice Tolzda into writing the citation, the Grievant approached his partner, Mandowl Nixon. Grievant informed Nixon that the DQ involved a "shady" business and conveyed that he, Grievant, was too close to the case to handle it directly. Nixon accepted the case, and Grievant accompanied him to Mr. O's business when Nixon issued the citation. Grievant did not enter the business with Nixon but remained right outside and stayed on the phone with Nixon the entire time. Shortly after Nixon cited Jerkypro, Grievant used the Ohio Law Enforcement Gateway (OLEG) database (another law enforcement database to which Grievant has access and which contains CTP) to find other taxpayers in the area to whom Nixon or Grievant could issue a citation.

Grievant did not notify his supervisor, Myron Hartman, who was on vacation at the time, about this investigation. Grievant later asserted that he was unaware of any specific rule requiring him to do so.

Department of Taxation policies and codes require that each CID Agent review and acknowledge the Department of Taxation's policies, including policies governing the use of confidential personal information, conflicts of interest, and standards of conduct. As part of his employment, Shell reviewed and acknowledged various policies and procedures including the following:

Conflict of Interest (Jt. Ex. 3, p. 150). This policy includes language defining a conflict of interest as one that occurs when an employee's "private interest, usually of a personal . . . nature, conflicts or raises a reasonable question of conflict with public duties."

Invalid Access to CPI (Jt. Ex. 3, p. 162): The policy provides examples of inappropriate access including accessing information for "personal gain, looking up information regarding one's . . . acquaintances, . . . or others for which there is no authorized business purpose."

Misuse of OLEG (Jt. Ex. 3, p. 95): This policy defines "misuse" of the database as "any utilization of OLEG that is not directly related to the administration of criminal justice . . . [t]his includes, but is not limited to, uses motivated by the personal interest of the user."

Having learned about the incident from Agent Tolzda and others, the Department of Taxation investigated. That investigation largely confirmed the facts discussed above. From those facts, the investigation concluded that Grievant violated numerous Taxation and State policies, TCID General Orders, and standard operating procedures "in pursuit of a personal agenda in citing a business owner for purported late tax filing (DQ) and that he solicited the assistance of a co-worker for that non-business-related pursuit."

On August 7, 2023, Grievant recorded that he took his lunch period from 2:00 p.m. until 2:30 p.m. On September 25, 2023, the Chief of the Tax Criminal Investigations Division, Michael Kozanecki, raised concerns about the overage. The subsequent investigation of the incident revealed that Grievant filed his intent to run for Harlem Township Trustee at 2:36 p.m. Grievant used a state vehicle to visit the filing location, the Delaware Board of Elections. Employees can fix their time cards with a comment, but Grievant failed to do so. Thus, part of this Grievance focuses on the extent to which his removal turns on his six-minute theft of time and misuse of a state vehicle.

On December 15, 2023, the Department removed Grievant from employment for violation of Departmental Work rule #62-A—"failure of good behavior or efficient service prohibited by O.R.C. §124.34 including without limitation . . . dishonesty, . . . immoral conduct . . . neglect of duty, violation of any policy or work rule of the officer's or employee's appointing authority . . . or any other failure of good behavior, or any other acts of misfeasance, malfeasance, or nonfeasance in office"

III. OPINION AND ANALYSIS

The arbitrator must determine whether the Employer had just cause to remove the Grievant for violating the Department's policies and codes of conduct when:

- A) Grievant investigated a business owner for a delinquent tax filing; after
- B) Learning about the business owner's possible misconduct from Grievant's wife; who
- C) Learned about the possible misconduct from a Facebook post written by Drew Cheadle, Grievant's former colleague.

In determining just cause, the arbitrator must consider whether Grievant's actions after learning about this tip violate Department policy. These actions include searching the STARS database, expressing to more than one colleague that he wanted to investigate the business owner because he was having an affair with Cheadle's wife, accompanying his partner to the business after acknowledging the conflict, using OLEG to find another taxpayer to cite after his partner cited Mr. O's business, and failing to inform a supervisor of the possible conflict of interest. For the reasons outlined below, I find that the Employer had just cause to terminate the Grievant, primarily because of the gravity of the Grievant's actions and because his actions constitute a fundamental breach of his employment duties.

As noted above, the Employer maintains multiple policies designed to assure the public that bias and personal interest play no role in taxpayer investigations. Thus, the Department prioritizes workforce integrity in order to assure the public that investigations are entirely above board. Department policies are also designed to ensure that the Department's resources are allocated to the highest departmental priorities – the most delinquent taxpayers. The record establishes that Grievant was aware of these policies.

Here, there is little question that Grievant violated the written policy against invalid access to CPI. Grievant initiated the STARS search based on a personal tip about a business owner. (Jt Ex. 3, p. 162). Grievant chose to investigate the business owner after receiving information from a personal source—his wife, who reported to him that a former law enforcement colleague, Drew Cheadle, was upset because a local business owner was having an affair with Cheadle's wife and that the person's business was shady.

True, at the hearing, Grievant testified that his motivation was not so much the alleged affair, but rather that the business owner had also purportedly engaged in shady business practices. But both Agent Tolzda's and Agent Nixon's testimony contradict Grievant's account. Tolzda testified that Grievant told him about a good DQ and requested that Tolzda write up the citation. Grievant admitted to Tolzda that he learned about the case from a friend in law enforcement whose wife was having an affair with the business owner. Tolzda did not testify that Grievant told him about the taxpayer's shady business practices. Grievant also conceded that he had researched the case, raising for Tolzda the concern that Grievant accessed the STARS system in violation of department policy. When Tolzda refused to write the citation, Grievant moved on to his partner, Nixon. While Nixon did not corroborate the affair story, he testified that Grievant asked him if he wanted a good DQ and admitted that he (Grievant) didn't want to issue the citation because he was "too close to the case."

Grievant's decision to utilize the Department's computer system to investigate a taxpayer, when his motivation was at least, in part, personal, violates policy. The Employer's standard precludes inappropriate access, including seeking information about an acquaintance for other than a legitimate business purpose. Here, Grievant claimed a legitimate business purpose – investigating Mr. O's alleged shady business practices. But Grievant's actions belie his claim – he did not have a legitimate business purpose as he admitted that he was “too close to the case” and ultimately handed it off to his partner. Accessing confidential information regarding acquaintances or others, when the agent is aware that he is conflicted, is “invalid access.”

Relatedly, Grievant's actions violate the written rules on Conflict of Interest. The Department's Conflict of Interest policy states that a conflict of interest is one that “occurs when an employee's “private interest, usually of a personal...nature, conflicts or raises a reasonable question of conflict with public duties.” (Ex. 3, p. 150) Grievant testified that he knew he was “too close to the case” and admitted to Agent Tolzda that his investigation was motivated by a personal interest—that his former colleague's wife was having an affair with the business owner at issue. Agent Tolzda's testimony, suggesting Grievant's motive was retribution for the taxpayer “doing this to law enforcement,” further reinforces the finding that the use was motivated by “personal interest,” a violation of the conflict-of-interest policy (Ex. 3, p. 95).

Grievant contends that he was entitled to conduct his investigation as he saw fit, as the Department provides him with discretion to do his job. The Department gives its agents discretion to execute their job duties. But that discretion is limited. Indeed, the Department has promulgated a written policy regarding an agent's role and authority. General Order 1.2 Law Enforcement Role and Authority Limits of Authority. That policy includes a definition of discretion. *Id.* at 1.2.7. Under that definition, discretion is “the power of free decision, or latitude of choice within certain legal bounds.” These limits exist to protect departmental integrity. The Department is deeply concerned about taxpayers learning about improperly used discretion—as taxpayers “often view the agent's discretionary use of power as favoritism, bias, corruption, or incompetence. . . .” Thus, “[w]hen exercising discretion, a CI agent must always utilize common sense and good judgment. . . . The members of this agency will have complete individual discretion except when their decision is unlawful, or conflicts with their oath, the Code of Ethics, or written directives of this agency.” (Jt. Ex. 3, p. 63).

By its plain text, the policy defining discretion dictates that an agent's discretion ceases when it conflicts with written directives or the Code of Ethics (Ex. 3, p. 63). Yet here, Grievant claimed virtually unfettered discretion despite acknowledging that he had a conflict of interest. A simple solution would have been to halt all action, consult a supervisor, and ask to have the case reassigned. Instead, Grievant proceeded with his STARS research. Grievant's exercise of discretion in this situation, where he had an acknowledged conflict of interest, violates his ethical duty as an agent. His subsequent efforts to transfer the case do not erase the original ethical breach of accessing CPI despite a conflict and frankly, confirm that Grievant knew he should not proceed.

Grievant's decision to (indirectly) move forward with this investigation using fellow employees, and to facilitate citing a business owner with only one delinquent period when Grievant acknowledged his conflict of interest, is misconduct. And it is all the worse because Grievant easily could have informed a supervisor of the conflict, who then could have reassigned the case. While Grievant has discretion to conduct self-initiated cases, that discretion does not

extend to ignoring multiple department policies. His misconduct—the intentional use of agency authority and confidential databases and information for a purpose tainted by personal interest—breached his fiduciary duty as an agent. This breach of trust is sufficient to justify termination.

The Grievant’s best arguments to the contrary—his clean record, the limited scope of the information retrieved (no dollar amount), and his attempt to self-recuse—are insufficient to overcome the gravity of the primary ethical misconduct. The penalty must fit the offense. Undermining the integrity of the Department’s investigation function, especially through misusing power and improperly accessing confidential data, destroys the trust relationship essential to this employment. No suspension can restore that trust.

The Grievant also contends that the Department’s investigation was insufficient to establish just cause for termination. The Grievant contends that the Department’s investigation relied solely on the statements of Agent Tolzda, failed to interview Mr. Cheadle, and did not investigate whether the Grievant violated the Department’s policies pertaining to OHLEG access independent of Agent Tolzda’s statements. Considering the specificity and gravity of the information regarding the Grievant’s conduct that Agent Tolzda relayed, the Department had just cause to discipline the Grievant. While the Department’s investigation may have contained some factual inaccuracies, particularly pertaining to whether the Grievant actually or constructively accessed OHLEG, these inaccuracies do not undermine the adequacy of the investigation nor a finding that there was just cause to terminate the Grievant.

The Arbitrator finds that the Employer has just cause to remove Grievant because of this incident. Thus, she need not reach the “theft of time” issue that was also raised as part of this Grievance

IV. CONCLUSION AND AWARD

The Arbitrator finds that the Employer has established just cause to terminate the Grievant. The Grievant’s actions constituted a violation of the Department of Taxation Standards of Conduct Policy regarding conflicts of interest, the use of CPI, and the limits of agent discretion. The grievance is DENIED.

Date: January 26, 2026



Arbitrator Sarah R. Cole