

IN THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY, MARYLAND

STACEY CHISHOLM :
Petitioner :
 :
vs. : CASE NO.: CAL22-19909
 :
THE WASHINGTON SUBURBAN :
SANITARY COMMISSION :
Respondent :

MEMORANDUM AND OPINION

THIS MATTER CAME before the Court on a Petition for Judicial Review filed by Petitioner, Stacey Chisholm. The request for review surrounds the Washington Suburban Sanitary Commission Board of Ethics' Decision and Order, dated June 16, 2022, which determined that Petitioner violated the WSSC Code of Ethics and recommended a fifteen (15) day suspension. The Court heard oral arguments on May 30, 2023. Janice Williams-Jones, Esq. appeared on behalf of the Petitioner. Russell L. Beers appeared on behalf of the Respondent, Washington Suburban Sanitary Commission.

FACTUAL AND PROCEDURAL HISTORY

From July 1, 2016, through September 30, 2017, Respondent conducted an internal audit regarding concerns surrounding the IT Departments' compliance with the Basic Ordering Agreement ("BOA") hiring practices. In January of 2019, the Respondent's Office of the Inspector General released the audit report, which detailed inconsistencies in the BOA hiring practices amongst the IT Department as well as a demonstrated failure of the IT Department in properly documenting the hiring processes. The audit revealed that forty out of the forty-one recent hires, was hired without an "on the books" interview, demonstrating that bias and/or favoritism was present in the hiring process.

As such, the Respondent implemented new hiring procedures in an effort to better gauge the qualifications of candidates as well as to reduce the possibility of any bias and/or favoritism or appearance thereof. The procedures included the use of a three-member interview panel to conduct candidate interviews; the use of standard interview questions for each candidate; the use of an objective scoring system; the submission of an interview summary from each panel member; the submission of a consensus memo signed by each panel member identifying the selected candidate; and the submission of a signed conflict-of-interest form executed by each panel member, when appropriate.

According to Respondent, Rosa Wilson worked as the IT Contractor Administrator at the time the audit was conducted. During the audit period, Ms. Wilson began working with the then CIO, Vennard Wright, to implement a management response to address the uncovered inadequate hiring practices. Ms. Wilson authored an email that was distributed by Mr. Wright on

August 30, 2017, reminding all BOA hiring managers that all communications were to go through Ms. Wilson, the Contract Administrator. Ms. Wilson also sent a September 27, 2017, email outlining the hiring processes that had been instituted. This email provided a list of all required documents that were to be completed and submitted with each task order award recommendation. Those documents included the conflict-of-interest form and IT's Consultant Evaluation and Interview Guidelines.

Beyond these initial emails, Respondent indicates that Ms. Wilson periodically sent reminders to current managers and routinely forwarded such information to newly hired managers. In this case, Petitioner was hired by Respondent as an IT Governance Officer on January 29, 2019. Ms. Wilson sent an email to Petitioner sometime around March 14, 2019, informing her of the BOA hiring policies while also attaching the BOA hiring procedures to the email.

On or about July 8, 2020, WSSC's Board of Ethics received a complaint against the Petitioner, which was filed by the then General Manager/CEO of WSSC, Carla Reid. The complaint alleged that the Petitioner violated various provisions of the WSSC Code of Ethics. Among other things, it was alleged that the Petitioner instructed vendors under a Basic Ordering Agreement to submit the resumes of friends and acquaintances of the Petitioner for consideration as contractors on a project that Petitioner was overseeing. Specifically, the complaint alleged that the Petitioner violated Sections 1.70.020(a) which states:

The Commissioners and employees of the WSSC are responsible, to all of the ratepayers of the Sanitary District and not to any favored segment or group. The business of the WSSC must be conducted in such an impartial manner that all persons understand that a WSSC Commissioner or employee cannot be improperly influenced. WSSC Commissioners and employees must avoid all situations where bias or the opportunity for personal gain could influence their decisions. Commissioners and employees must also avoid circumstances which suggest that favoritism or personal gain is a motivating factor in the performance of their official duties.

In addition, violation of section 1.70.200(a) of the Code of Ethics, was also alleged. That section states as follows:

An employee must not use the prestige of office for private gain or the gain of another, or create the appearance that the employee is utilizing the prestige of office for private gain or the gain of another. Performing usual and customary ratepayer or customer services, without additional compensation, is not prohibited by this subsection.

Ultimately, it was alleged that Ms. Chisholm violated these provisions by inappropriately influencing the selection of six individuals. The circumstances of their hiring is as follows:

A. Toni Smith

Ms. Smith's background included a Bachelor of Science Degree in Clothing and Textiles, a Masters degree in Management for Organizational Effectiveness and twenty years of experience as the Executive Director for a non-profit organization. At the time Ms. Smith underwent the hiring process, Petitioner referred her to vendor, Mr. Vernon who then reviewed her resume. Mr. Vernon stated that he "thought" he conducted a phone screening with Ms. Smith but was unable to recall any additional details beyond that. Thereafter, Mr. Ash Kapur emailed Ms. Smith's resume to Petitioner on March 8, 2019, at 1:30 p.m. On that same day, at 1:59 p.m., Ms. Wilson emailed Mr. Kapur asking him to initiate a background investigation, which typically occurred only after a hiring decision had been made. Ms. Smith was ultimately hired as a replacement for a contractor who served as a Senior Management Consultant. In this instance, Petitioner was involved with a WSSC contractor regarding the hiring of a consultant without knowledge of the Contractor Administrator and without all elements of the suggested hiring process being followed.

B. Pauline Johnson

Ms. Johnson's education was not provided and therefore, unknown at the time of her hiring. However, Ms. Johnson's prior experience included approximately ten years of service at Fannie Mae where she worked in the Procurement division and had previously briefly worked with Petitioner. Ms. Johnson also had three years of experience as President of the Hollis B. Johnson Scholarship Foundation. Ms. Johnson's hiring process began on May 23, 2019. Pursuant to an email exchange between Mr. Kapur and the Petitioner, a background check was completed for Ms. Johnson prior to her resume ever being submitted to Ms. Wilson for review. During this time, Petitioner and Mr. Kapur engaged in several email exchanges concerning Ms. Johnson clearing the background check as well as proposing a start date of June 10. Ms. Wilson, however, was never made a part of the conversations and Ms. Johnson's resume and qualifications were not provided to her until May 24, 2019.

Ultimately, Ms. Johnson was hired as a Project Manager and Senior Business Improvement Consultant. On or about July 11, 2019, Ms. Wilson learned of Ms. Johnson's actual hiring, following Mr. Kapur's request for a purchase order number to initiate payment for Ms. Johnson. This raised concerns regarding Ms. Johnson's \$141/hr. rate of pay. Petitioner then reached out to Mr. Kapur about the rate, expressed that it was excessive and indicated that her department would not be able to provide approval. As a result, the rate was lowered to \$119/hr. Again, in this instance, Petitioner was involved with a WSSC contractor regarding the hiring of a consultant without knowledge of the Contract Administrator and without all elements of the suggested hiring process being followed. In addition, the prior relationship between Petitioner and Ms. Johnson was never disclosed.

C. Cheryl Galloway-Fenner

Petitioner and Ms. Galloway Fenner were both previously employed at Fannie Mae. During her time there, Ms. Galloway-Fenner served in Operations Management Services, as a Senior Business Analyst, a Senior Business Consultant, a Senior Specialist and an Application

Development Manager. Outside of her experience at Fannie Mae, Ms. Galloway-Fenner worked in other management, consulting, and directing positions.

In this instance, Mr. Kapur informed Petitioner of their intent to hire Ms. Galloway-Fenner as a Project Manager seven minutes prior to submitting her resume to Ms. Wilson. Having heard nothing for the next three (3) days, Mr. Kapur asked Petitioner to “ping [Ms. Wilson] for the process”. On April 15, 2019, Mr. Kapur subsequently sent an additional email to Petitioner, copying Mr. Vernon and Ms. Wilson, indicating that Ms. Galloway-Fenner had cleared the background investigation process and proposing a start date of April 15, 2019. It was this email exchange, that alerted Ms. Wilson that a hiring decision had been made to bring on Ms. Galloway-Fenner as a Project Manager and Senior Business Improvement Consultant.

During the Board of Ethics proceedings, Petitioner stated that Ms. Galloway-Fenner was interviewed by both Mr. Kapur and Mr. Vernon. However, Mr. Vernon indicated he was only involved in Ms. Galloway-Fenner’s onboarding process and played no part in her selection. Further, Mr. Vernon indicated that he had no knowledge of any interview of Ms. Galloway-Fenner. Again, in this instance, Petitioner was involved with a WSSC contractor regarding the hiring of a consultant and all elements of the suggested hiring process was not followed. In addition, the prior relationship between Petitioner and Ms. Galloway-Fenner was never disclosed.

D. Alexia Barber

The hiring of Ms. Barber was particularly egregious. Petitioner’s daughter and Ms. Barber were close friends who attended Hampton University together. Petitioner and Ms. Barber were also sorority sisters. Petitioner’s daughter alerted Petitioner that Ms. Barber’s father and uncle had been recently murdered and that Ms. Barber was looking to relocate. Petitioner thereafter engaged in actions which resulted in employment of Ms. Barber. As for education, Ms. Barber had a Bachelor of Arts degree in political science. As for experience, Ms. Barber, had no background or work experience in IT or project management, having previously worked as a paralegal/legal data specialist and as a MAC Cosmetics Customer Service Representative.

Ms. Barber sent her resume to Petitioner on July 29, 2019. Petitioner then shared it with a colleague in the IT department who then passed it along to Delmock Technology Incorporated. It was indicated that Petitioner’s Governance Team, wished to hire Ms. Barber as a Project Coordinator. Petitioner reached out to Delmock inquiring about the status of Ms. Barber’s application while also asking about a start date. On September 12, 2019, Ms. Barber’s start date was confirmed to be September 23, 2019, all without knowledge by Ms. Wilson until after she had been hired. In this case, Petitioner once again contacted a WSSC contractor regarding the hiring of a consultant. Further, all elements of the suggested hiring process was not followed. In addition, the prior relationship between Petitioner and Ms. Barber was never disclosed.

E. Prabu Kurakula and Gerald Searles

The hiring of Mr. Kurakula and Mr. Searles stems from a March 7, 2019, meeting orchestrated by Petitioner. During this meeting Petitioner told Advance Software Systems that

she wanted them to propose Kurakula and Searles as consultants. Both candidates emailed their resumes to Advance on March 8th, a Friday. On the following Monday Advance forwarded the resumes to Ms. Wilson at 12:41 p.m. By 4:30 p.m. that same day Mr. Vernon indicated that both candidates had been selected for the Senior Business Improvement Consultant positions. Mr. Prabu applied for the Senior Business Process Consultant position and Mr. Searles applied for the Business Process Improvement Consultant position. While Mr. Vernon indicated that interviews had been conducted, he later admitted that he had used standard verbiage and that he did not actually know if they had been interviewed or not. In this case, Mr. Prabu was a former work associate that had twenty-one (21) years of experience in IT and a BS in engineering and Mr. Searles had four (4) years of experience and a Masters Degree in Business Management and Leadership. The job description, however required eight (8) years of relevant experience. Ultimately, Advance admitted that Searles was not qualified for the position but justified the recommendation because his salary had been reduced as a result.

Following an investigation into these matters, the Board of Ethics thereafter heard testimony and arguments on February 9th & 12th and April 25th and 27th, 2022. Following the hearing, The Board of Ethics issued its Final Decision and Order on June 14, 2022, concluding that:

“ . . . the evidence supported a determination that the Respondent had violated both Sections 1.70.020(a) and 1.70.200(a) of the Code by recommending to various BOA vendors that the Subject Contractors be submitted to WSSC in response to certain task orders. The Board further found that those actions could very well undermine the level of public confidence in the integrity of the Commission if widely known. The Board further held that not only did those actions benefit the Subject Contractors, they benefitted the various BOA vendors, who received compensation for these placements without having to do the work that they were hired to do - find and provide WSSC with qualified contractors.

QUESTION PRESENTED

- I. Was the Board’s decision finding that the Petitioner violated Sections 1.70.020(a) and 1.70.200(a) of the Code of Ethics based upon substantial evidence in the record.
- II. Was the Board’s sanction of a fifteen-day suspension without pay arbitrary and capricious?

STANDARD OF REVIEW

The Court is governed by the standard of review applicable to the review of administrative decisions. In reviewing such decisions, the Court is confined by a narrow scope. It determines only the legality of the decision and whether there was substantial evidence from the record, as a whole to support the decision. The Court may not make independent findings of fact, and questions of law are reviewed de novo.¹ Ultimately, The Maryland Administrative Procedures Act, Md. Code Ann., State Gov’t. § 10-101 et seq. (1984, 1995 Repl. Vol.), sets forth the options of a circuit or appellate court reviewing the final decision or order of an

¹ *Dep’t of Labor v. Woodie*, 738 A.2d 334 (Md. 1999); *Board of Education v. Paynter*, 491 A.2d 1186 (Md. 1985).

administrative agency. Section 10-222(h) specifies that: In a proceeding under this section, the court may: (1) remand the case for further proceedings; (2) affirm the final decision; or (3) reverse or modify the decision if any substantial right of the petitioner may have been prejudiced because a finding, conclusion, or decision: (i) is unconstitutional; (ii) exceeds the statutory authority or jurisdiction of the final decision maker; (iii) results from an unlawful procedure; (iv) is affected by any other error of law; (v) is unsupported by competent, material, and substantial evidence in light of the entire record as submitted; or (vi) is arbitrary and capricious. Md. Code Ann., State Gov't § 10-222(h).

DISCUSSION

Before the issues surrounding the alleged breach of ethics can be addressed, this Court must first determine whether the matter at hand is moot. A case is considered moot when either a controversy does not exist or if there is no longer an effective remedy that may be granted. *Suter v. Stuckey*, 402 Md. 211, 219 (2007); *Dept. of Human Resources v. Roth*, 398 Md. 137, 143 (2007). The key question is whether, “at the time [the case] is before the court, ... there is [still] an existing controversy between the parties ...,” *Anne Arundel School Bus*, 286 Md. at 327, and whether the parties continue to assert adverse legal positions in which they maintain a concrete interest. Md. Code Ann., Cts. & Jud. Proc., §3-409(a)(3). Further, ...[when] a party may suffer collateral consequences..., the case is not moot.” *In re Kaela C.*, 349 Md. 432, 453 (2006). In those instances, the Court of Appeals has ...made “clear that not all collateral legal consequences need be concrete, non-speculative, or statutory to have a preclusive effect on mootness. Indeed, only the possibility of collateral legal consequences is required.” *Adkins v. State*, 324 Md. 641, 654 (1991) (emphasis supplied) (citations omitted).

In this case, it was alleged and following a hearing, found that Petitioner violated both code sections 1.70.020(a) and 1.70.200(a) by recommending to various BOA vendors that the subject contractors be referred to WSSC in response to certain task orders. In response, Petitioner vehemently denies any such violation, arguing that she was unaware of the existence of the policy; that she was only doing what she was told to do; that the policy was actually not a policy since no one was really following it; that she had done nothing wrong; that her actions resulted in no personal gain, nor were they unfair or unethical; that any action against her is grounded in retaliation for a complaint she made against her boss; that the origin of that retaliatory action is anonymous; and that the actions against her occurred during a time wherein she was subject to a cancer diagnosis and related treatment

Following the hearing, the Board ultimately found that the evidence supported a determination that Petitioner’s actions inequitably benefited those Subject Contractors who were wrongfully employed and also benefitted the various BOA vendors, who received compensation for those placements without having to actually engage in the recruitment and submission of actually qualified contractors. It was also determined that such violations could very well undermine the level of public confidence in the integrity of the Commission, if widely known. As a result, the Board reached the conclusion that Petitioner had, indeed violated both sections of the code and recommended a sanction of fifteen (15) days without pay. The decision was posted on the Respondent’s public website, and the actions maintained as part of the Petitioner’s permanent professional WSSC record.

Considering the Board's decision, suggested sanction, inclusion of the outcome on the Respondent's public website and maintenance of the action in Petitioner's permanent record, it is this Court's belief that the outcome of this matter could result in far and wide negative consequences on the Petitioner's professional reputation, career, and future employability. With that and given Petitioner's continued stance on the issue, it is clear that a controversy continues to exist and further, that there is an effective remedy that could be granted. As a result, this Court is compelled to find that the matter is not moot.

Turning directly to the issue of the alleged violations, Petitioner, relies upon the arguments identified above, and couches them all firmly in an overarching theme of unfairness. As will be explained, this Court finds these arguments unpersuasive and grounded in deflection. First, Petitioner argues it unfair to hold her responsible for violating the subject policy because she had no knowledge of it. On this point, Petitioner claims to have never received any type of communication about the policy, written or otherwise. This Court does not find this argument persuasive or credible. Given a thorough review of the testimony and evidence presented to the Board, there is more than ample competent, material and substantial evidence to support the fact that a hiring policy was very much in place, that the policy was WSSC-wide and that the IT department had been deficient in its adherence to it. More importantly, the evidence is sufficient to establish that Petitioner received the policy and knew of it by way of at least one e-mail from Ms. Rosa Wilson.

There is also evidence to suggest that Petitioner was aware of the policy through conversations with the former CIO of WSSC, Mr. Wright, despite his conflicting positions on the issue. Regarding Mr. Wright, the record reveals, first, that he was the author of management's response to the audit of hiring practices under BOA's and represented that IT would follow WSSC's hiring practices, including the implementation of three-member panel interviews, uniform interview questions and signed consensus memos by panel members on any hire, in addition to the submission of any necessary signed conflict-of-interest form executed by each panel member. This provides initial support regarding his knowledge of the policy. In addition, there is the December 18, 2019, letter written at Petitioner's request and on her behalf, wherein Mr. Wright confirms that "Stacey informed me that she knew a number of resources that she could refer and inquired if that was okay, to which I explained it was fine to hire people that she knew, as long as they were *qualified* and *went through the same competitive process as everyone else*. Id. (emphasis added)." Finally, there is Mr. Wright's testimony, wherein he stated that there was no process followed, and that he "implied" to the Petitioner that she did not have to follow the agreed upon audit response processes.

Petitioner also relies upon a conversation between herself and Mr. Wright to support her position that whatever she may have done, she did so only at the request, direction, encouragement, support and blessing of Mr. Wright. More specifically, Petitioner echoes Mr. Wright's position regarding a conversation between them in her Request for Judicial Appeal. There, she states as follows: "I and my boss, Mr. Vennard Wright, the then Chief Information Officer (CIO), identified the rapid onboarding of *qualified* personnel as critical to building the IT governance structure and the timely and successful implementation of Project Cornerstone. To that end, upon my suggestion, Mr. Wright agreed. He authorized me to search among my

industry contacts for *qualified* candidates who may be available immediately for the critical strategic objectives. I was given the hiring authority under BOA 1111 and BOA 1124 (emphasis added)”.

On this issue, while Mr. Wright provides three different versions on the matter and admits that he lied to the auditors when he indicated that he would implement the identified hiring practices, both Mr. Wright and Petitioner are consistent in the substance of at least one communication between them, as noted above. Thus, despite the overall inconsistency of Mr. Wright’s versions on the issue, given the consistency of a particular communication, as provided by both Petitioner and Mr. Wright, this Court accepts the substance of it as credible. Thus, the Court finds, given the totality of the circumstances, that there was not only competent, material and substantial evidence regarding regular distribution of the policy, email communications from Ms. Wilson regarding the existence and use of the policy, there was also at least one communication between Petitioner and Mr. Wright on the issue, to support a finding that Petitioner had knowledge of the policy.

Relying on petitioner’s position that she acted in accordance with Mr. Wright’s directions, Petitioner goes on to argue against the fairness of the proceedings given that whatever she did, not only did she do so at Mr. Wright’s direction, she also did it efficiently and effectively. The problem with Petitioner’s position is found in the statement they both provide. In that statement Mr. Wright, did not authorize the Petitioner to engage in any practice, which would result in the hiring of *unqualified* candidates. In fact, reflected consistently in both their statements, Mr. Wright, specifically authorized her to find “*qualified*” candidates, who would go “*through the same competitive process as everyone else.*” In this case, that was not done.

This Court then turns to Mr. Wright’s additional allegation that at some point, he implied to Petitioner, that she did not have to follow the policy. Again, the Court notes the inconsistencies in Mr. Wright’s statements, however, does not find them to be problematic to this opinion. The Court also finds no relief for Petitioner in the allegation. Assuming, that Mr. Wright is not truthful in this statement and did not imply that Petitioner could ignore the policy, then Petitioner remained obligated to follow it. Assuming that Mr. Wright did tell Petitioner that she could ignore the policy, he lacked authority to relieve her of that duty and Petitioner remained obligated to follow it. Assuming that there was no conversation between them, this court, having previously found competent, material and substantial evidence to support Petitioner’s knowledge of the policy, also finds that she remained obligated to follow it. Even assuming, that Petitioner didn’t know of the policy as she claims, as will be shown below, her actions were generally unethical on the basis of common principles of right and wrong, and thus she still remained obligated to its basic principles. In the end, there is just no excuse from any angle to Petitioner’s actions. Whatever her reasons for her actions, however successful she may have believed she was in the interim, and/or whatever remedial actions she may have taken, there is no provision in the code, or elsewhere which permits the Chief of Governance to sacrifice the foundation of its ethics code for speed or at the incorrect direction of another.

The Court cannot help but further find, based upon Petitioner’s unrelated actions, testimony and assertions, that the Petitioner is not one, who fears speaking out when she believes something to be amiss. This is shown by the filing a complaint against her former boss, not only

on behalf of herself, but also as the voice of her staff and fellow workers. Such an act is taken by a woman who has a mind of her own, and who has the strength to take a stand for what she believes to be ethically and morally correct and never to simply do what she is told to do. Thus, this court does not find it credible, that Petitioner, acting as a puppet, was only doing what she was told to do.

Petitioner proceeds to argue it unfair to hold her responsible for violating the subject policy because, in her words, the policy, since it was not allegedly widely followed, was not actually a policy. As a result, her argument is that she could not have acted in contravention to it. This argument is also not persuasive to this court. While there is the statement by Mr. Wright that he implied to Petitioner that she did not have to follow the policy, seemingly indicating that some employees may not have been following the policy, this Court has no testimony or evidence to support that *no one* followed the policy. In fact, in direct contrast, there is evidence that there were attempts by Ms. Rosa Wilson to follow the policy and to remind others of the responsibility to follow the policy, but that she was viewed, particularly by the Petitioner as "a bottleneck" to be deliberately avoided. That aside, even if it was Petitioner's belief that the policy was not being widely followed, or not being followed by even one employee, any other non-compliance is not found to be an excuse.

Petitioner then returns to her claim that Mr. Wright authorized her to "onboard qualified personnel and to search among her industry contacts for *qualified candidates who may be available immediately...*". Given his directive and the everyday practice of general referrals, Petitioner argues that she did nothing wrong. In this case, however, despite a clear policy directive, the evidence shows that the Petitioner, with some hires, engaged in several forms of non-compliance and inappropriate behavior. More specifically, the evidence showed that the Petitioner engaged in the referral of unqualified candidates to a vendor. The vendor would thereafter submit that person for consideration, who was thereafter hired, sometimes within days, without engagement in the proper vetting process. There is substantial evidence to support Petitioner's actions in referring persons of whom she had varying direct personal connections and/or relationships; in failing to disclose those personal connections and/or relationships; in directly or indirectly directing vendors to submit those selected persons for hire; in deliberately engaging in actions to circumvent and/or completely avoid other WSSC personnel and required procedures; in not engaging in actions to prevent the circumvention of other WSSC personnel and required procedures; in engaging in rocket-speed like hiring, at the expense of remaining true to the entire process; in relieving those referred persons from the additional rigors of the required hiring process; in preventing other potentially qualified persons from ever applying or being considered for the open positions, leading to unfairness and/or the appearance of unfairness in the process; in engaging in the post-hiring practice of at least one salary reduction in an effort to compensate for the candidate's lack of qualification and apparent over compensation; and in generally turning a blind eye to known and existing ethical policies and procedures. As a result, the evidence presented before the Board established that despite the clear direction of the policy, there was no use of a three (3)-member interview panel to conduct interviews; no use of consistent interview questions; no employment of an objective scoring system; no interview summary; no submission of a consensus memo signed by each panel member identifying the selected candidate, and no disclosure of any conflict, when appropriate. All while she acted as Chief of Governance. These practices resulted in no ultimate vetting of

her referred candidates and of an overall failure to ensure a process or the appearance of a process that is fair to all persons.

While the Court agrees with the Petitioner that the general and isolated action of making referrals is not unethical, referrals of *unqualified* persons, resulting in the locking out of other qualified candidates is unfair, unethical, and wrong. Further, the undisclosed referral of unqualified persons with a personal connection or relationship to the Chief of Governance is unfair, unethical, and wrong. Moreover, the practice of ensuring the hiring of unqualified persons, some of whom were not only unqualified for a job, but overpaid for that job is unfair, unethical, and wrong. Finally, causing undoubted and direct financial losses for a company is also unfair, unethical, and wrong.

Turning to Petitioner's defense of effectiveness, it is irrelevant and of no consequence, assuming that it's true, that any of those hired persons may have ultimately performed the job to a satisfactory degree, or that Petitioner engaged in any remedial action to reduce the salary of an overpaid employee. In fact, to this Court, Petitioner's argument regarding her efforts to adjust any salary, does not help her position, but in fact hurts it. It is her awareness of the need to take such remedial measures that highlights the apparent knowledge, by the Respondent that her actions were ultimately inappropriate. The very concern of the Respondent. Further and looking to Petitioner's education, background and history in Human Resources, this Court simply does not find it credible that the Petitioner, while failing to disclose close personal relationships in the hiring process and referring unqualified candidates for senior level IT jobs, and engaging in post hiring salary reduction acts, believes she did nothing wrong and/or unethical in nature. For all these reasons, this Court finds it more than reasonable for the Board to have concluded, based on the totality of the evidence, that the Petitioner, with full knowledge of the existing policy, had her thumb on the scale, when it came to the hiring of the persons who were the subject of the investigation. In sum, given Petitioner's actions, the Court is not persuaded by Petitioner's arguments in general and agrees with Respondent who argues that while there was an identified need, Petitioner simply went about addressing that need the wrong way. By circumventing identified processes, Petitioner created the exact set of circumstances predicted by the audit. More specifically, the concern that if IT managers did not implement the procedures, the process of hiring IT consultants [could] be susceptible to bias and favoritism. The Court further finds that the Board based their conclusions upon competent, material and substantial evidence and not conjecture, as claimed by the Petitioner.

Petitioner further alleges that she did not violate any code section, given that there is "no evidence to support the allegation that she used her position as Chief of Governance for the gain of another", nor that she incurred any private gain, pursuant to WSSC Code of Regulation §1.70.200(a) of the Code of Ethics which states:

(a) An employee must not use the prestige of office for private gain or the gain of another, or create the appearance that the employee is utilizing the prestige of office for private gain or the gain of another. Performing usual and customary ratepayer or customer services, without additional compensation, is not prohibited by this subsection.

While Petitioner focuses on a lack of private gain, there is substantial evidence to support that Petitioner *used the prestige of office for the gain of another, and/or created the appearance that she was utilizing the prestige of office for the gain of another*. More specifically, Mr. Zebdi, a vendor was responsible and received compensation for referring candidates for hire. In this case, the Subject Candidates were not referred by the vendors, but by and through the Petitioner. Despite the lack of service, the vendor still received payment per the contract. As for those hired, it is undisputed that they were either able to avoid the proper hiring procedure, were not qualified for the positions, and/or were over-paid. As such, and with the vendor having been alleviated from his responsibility to refer those for hire and with the back door hiring of unqualified personnel, it is clear, that there were gains to others, both the vendor and the subject candidates.

Further, the Court must also consider WSSC Code of Regulations §1.70.020(a) which states:

The Commissioners and employees of the WSSC are responsible to all of the ratepayers of the Sanitary District and not to any favored segment or group. The business of the WSSC must be conducted in such an impartial manner that all persons understand that a WSSC Commissioner or employee cannot be improperly influenced. WSSC Commissioners and employees must avoid all situations where bias or the opportunity for personal gain could influence their decisions. Commissioners and employees must also avoid circumstances which suggest that favoritism or personal gain is a motivating factor in the performance of their official duties.

In this case, in addition to the apparent gains of others, it is also undisputed that Petitioner's actions resulted in the hand picking and hiring of some persons, of which she had connections and/or close relationships, without disclosure. As such, this court rejects Petitioner's arguments and finds that there is substantial evidence that Petitioner also created circumstances which *suggested favoritism as a motivating factor in the performance of their official duties*.

Finally, Petitioner argues that the proceedings against her are not fair because the complaint against her grew from the seeds of retaliation. More specifically, Petitioner claims that the action against her occurred because of the prior discrimination complaint made against her boss. Whether or not that's true, that doesn't negate Petitioner's actions or her role in engaging in inequitable hiring practices in direct opposition with the goals of WSSC's policy and Code of Regulations §1.70.200(a) and §1.70.020(a). As a result, this Court finds that perceived claim to be independent of this action and one for another day.

Petitioner finally argues that the actions taken against her were not fair because she remains unaware of the source of the initial complaint. However, the anonymous nature of the violation's origin is immaterial as to whether the actions complained of did, in fact occur. More specifically, any lack of recollection regarding the origin of the information that is the basis of the complaint, against the Petitioner, does not hinder this court in determining whether there was

a violation on the part of the Petitioner. Particularly, given that the ultimate investigation resulted in the validity of WSSC's concerns.

Ultimately and in an unrelated case, the court in *Carroll County v. Lennon*, 119 Md. App. 49, 71 (Md. Ct. Spec. App. 1998), believed that the Legislature's intent in enacting the Maryland Public Ethics Law, from which the Carroll County Ethics Ordinance was derived, was to ensure that ". . . the people maintain the highest trust in their government officials and employees," and to assure the "impartiality and independent judgment of those officials and employees." Md. Code Ann., State Gov't, § 15-101(a). Further, the Legislature intended that the ethical provisions be "liberally construed to accomplish this purpose." *Id.* at § 15-101(c). This Court, while recognizing that Petitioner is not a public official, believes that the spirit and intent behind the creation and enactment of WSSC's Code of Regulations as it relates to their employees, is the same as the Carroll County Ethics Ordinance and construes them liberally to accomplish the goals of WSSC.

CONCLUSION

In sum, the Board found that the evidence supported a determination that the Respondent violated both Sections 1.70.020(a) and 1.70.200(a) of the Code. The Board held that not only did these actions benefit the Subject Contractors, but that they benefitted the various BOA vendors, who received compensation for these placements without having to do the work that they were hired to do, find and provide WSSC with qualified contractors. Finally, the Board further found that these actions could very well undermine the level of public confidence in the integrity of the Commission if widely known.

Petitioner argues that the Board is not entitled to deference because it came up with conjecture or facts against the record and didn't consider exculpatory evidence. The Petitioner, however, provides no evidence to support her position that the Board did not consider and properly weigh the entire record, or that the proceeding was not fair and/or biased. In fact, Petitioner points to no policy or rule, but simply argues on the general premise of fairness. Ironically enough, good old fashioned common sense and the general knowledge of right from wrong tells us all that one cannot be hired and paid for a high-level job that one is not unqualified for. In this case it is clear that the qualifications of some of the Subject Contractors were insufficient; that all of them were ultimately hired without having to engage in proper procedure and/or that there were undisclosed connections and/or relationships between the Subject Contractors and the Petitioner. It is also clear that the Petitioner engaged in remedial actions to cover for at least one of those hires. As such it is patently clear that WSSC's policy was not followed, that it was willfully not followed and that Petitioner's actions resulted in, at a minimum, a gain to others and the appearance of favoritism. As such, the decision by the Board was not arbitrary and capricious, but fully supported by competent, material and substantial evidence, which was more than sufficient to support this Courts' finding that reasonable minds could have reached the conclusion reached by the Board.

As for fairness, this Court finds that Petitioner should have considered the same basic ideas of fairness she now demands and acted accordingly while engaging in her hiring practices.

Unfortunately, she did not. To this Court, there must be fairness, not just for some, not just during some times and not only under certain circumstances. Fairness must exist for all...and at all times. As for Petitioner's health challenges, this Court certainly wishes her well, but does not find any link between her health and her ethical duties.

In conclusion and following a careful and thorough review of the petition and all related memoranda, in addition to the testimony and evidence presented, this Court finds in the light most favorable to the Agency that the Board's decision finding that the Petitioner violated Sections I.70.020(a) and I.70.200(a) of the Code of Ethics is reasonably based upon relevant facts, applicable laws and competent, material and substantial evidence and that the proposed fifteen (15) day sanction without pay is not found to be arbitrary and capricious. As such, the decision of the Board is **AFFIRMED**, and the Petition for Judicial Review is **DISMISSED**.

ShaRon Marie Grayson Kelsey



Judge ShaRon M. Grayson Kelsey

12/21/2023 12:01:18 PM

Date

