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STATE ETHICS COMMISSION

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COMMONWEALTH OF MASSACHUSETTS  
STATE ETHICS COMMISSION

SUFFOLK, ss.

COMMISSION ADJUDICATORY  
DOCKET NO. 22-0006

IN THE MATTER

OF

BROOKE MERKIN

**ORDER TO SHOW CAUSE**

1. The State Ethics Commission ("Commission") is authorized by G.L. c. 268B to enforce G.L. c. 268A, the state conflict of interest law, and in that regard, to initiate and conduct adjudicatory proceedings.
2. On January 19, 2022, the Commission found reasonable cause to believe that Brooke Merkin ("Merkin") violated G.L. c. 268A, §§ 7 and 23(b)(2)(ii) and 23(b)(4) and authorized the initiation of adjudicatory proceedings.

**FACTS**

3. On January 25, 2021, Merkin began employment with the Center for Health Information and Analysis ("CHIA") as a full-time Deskside Support Engineer. She was scheduled to work at CHIA Monday through Friday from 8:45 a.m. to 5:00 p.m.
4. On February 16, 2021, Merkin began employment with the Executive Office of Technology Services and Security ("EOTSS") as a part-time Service Desk Analyst. She was scheduled to work at EOTSS on Saturdays, Sundays, and Mondays from 7:00 a.m. to 3:00 p.m.
5. CHIA and EOTSS are both agencies of the Commonwealth of Massachusetts.

6. Merkin primarily worked remotely in both positions.
7. Merkin held the paid positions at CHIA and EOTSS simultaneously without either agency's approval or awareness.
8. Between February 19, 2021, and March 1, 2021, Merkin sought payment from the Commonwealth for working both the CHIA position and the EOTSS position during the same hours, for a total of 31 overlapping hours.
9. After CHIA and EOTSS discovered Merkin had submitted timesheets in both positions for the same hours, the agencies withheld payment for 14.5 of those hours and deducted the amount already paid to Merkin for 16.5 of the hours from her final paycheck.
10. The 31 overlapping hours Merkin claimed would have resulted in an unearned and undue payment to her of over \$1,200 had the double billing not been identified.
11. Merkin knew she submitted to CHIA and EOTSS timesheets for 31 hours that overlapped and knowingly gave false excuses to CHIA for her unavailability during hours when she was working for EOTSS. On February 19, 2021, she told her manager at CHIA that she could not work a full day due to an internet outage at her home. She was approved to work the remainder of the day using her cell phone. Later that day, she claimed mice had chewed through her internet cables. She submitted timesheets to both CHIA and EOTSS falsely reporting 6 hours worked for each agency, between 9:00 a.m. and 3:00 p.m., on February 19, 2021.
12. Merkin attempted to resign her positions at CHIA and EOTSS in the

beginning of March 2021. Neither agency accepted her resignation and both terminated her employment.

## **LAW**

13. Both as an employee of CHIA and as an employee of EOTSS, Merkin was, at all relevant times, a state employee as that term is defined in G.L. c. 268A, § 1(q).

### ***Section 7 Violation***

14. Section 7 of G.L. c. 268A prohibits a state employee from, knowingly or with reason to know, having a financial interest, directly or indirectly, in a contract made by a state agency in which the Commonwealth or a state agency is a party or has a direct and substantial interest. A state employee who has an additional, compensated position with a state agency has a financial interest in such a contract.

15. Once Merkin, a state employee at CHIA, accepted the paid part-time Service Desk Analyst position at EOTSS, she became a state employee who had a financial interest in a contract made by a state agency in which the agency was a party and had a direct and substantial interest.

16. Merkin knew she had a financial interest in her EOTSS employment contract given that her employment with that agency was compensated.

17. Therefore, by, while a state employee of CHIA, entering into paid part-time employment with EOTSS, Merkin knowingly had a financial interest in a contract made by a state agency in which the agency was a party and had a direct and substantial interest. By so doing, Merkin violated G.L. c. 268A, § 7.

***Section 23(b)(2)(ii) Violation***

18. Section 23(b)(2)(ii) of G.L. c. 268A prohibits a state employee from knowingly, or with reason to know, using or attempting to use her official position to secure for herself unwarranted privileges or exemptions which are of substantial value and are not properly available to similarly situated individuals. Pursuant to G.L. c. 268A, § 23(f), Commission regulation 930 C.M.R. 5.05 defines substantial value as \$50 or more.

19. Merkin knowingly used her official positions as a CHIA and an EOTSS employee, to submit timesheets to CHIA and EOTSS for overlapping work hours in an attempt to obtain pay from each agency for the same hours.

20. The ability of a state employee to receive pay, totaling \$50 or more, from each of two state agencies for work hours during which the employee is separately employed by each agency to work exclusively for that agency is an unwarranted privilege not properly available to similarly situated individuals.

21. The unwarranted privilege was of substantial value to Merkin because payment for the overlapping work hours would have resulted in her being paid more than \$1,200 for time she did not work.

22. Therefore, by, as a CHIA and an EOTSS employee, submitting timesheets respectively to CHIA and EOTSS for overlapping work hours in an attempt to obtain pay from each agency for the same hours, which would have resulted in her being paid more than \$1,200 for time she did not work, Merkin knowingly used her official positions to secure for herself a substantially valuable unwarranted privilege which was not properly

available to similarly situated individuals. By so doing, Merkin violated G. L. c. 268A, § 23(b)(2)(ii).

***Section 23(b)(4) Violation***

23. Section 23(b)(4) prohibits a public employee from knowingly, or with reason to know, presenting a false or fraudulent claim to her employer for any payment or benefit of substantial value.

24. Both as a CHIA and an EOTSS employee, Merkin was employed by the Commonwealth of Massachusetts.

25. Merkin knowingly presented false or fraudulent claims for payment to her employer, the Commonwealth of Massachusetts, when she submitted separate timesheets to CHIA and EOTSS reporting to each agency that she had worked the same 31 hours.

26. The false or fraudulent claims for payment for hours not worked were of substantial value because the claims for payment were for more than \$1,200.

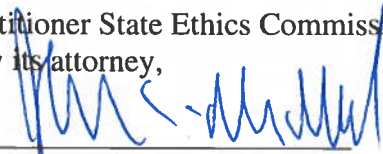
27. Therefore, by, as a CHIA and an EOTSS employee, submitting separate timesheets to CHIA and EOTSS reporting to each agency that she had worked the same 31 hours, Merkin knowingly presented false or fraudulent claims for payment to her employer, for payments of substantial value. By so doing, Merkin violated G.L. c. 268A, § 23(b)(4).

WHEREFORE, Petitioner asks that the Commission:

1. find that Merkin violated G.L. c. 268A, §§ 7 and 23(b)(2)(ii) and 23(b)(4); and
2. impose a civil penalty and grant such other relief as may be appropriate.

Respectfully submitted,

Petitioner State Ethics Commission  
By its attorney,



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