

IN THE MISSOURI COURT OF APPEALS
EASTERN DISTRICT

Roger Engelhardt

Claimant

V.

CAUSE NO. ED111792

The Labor and Industrial Relations Commission

City of St Louis

Thomas Wahl

Lt Col Michael Sack

FILED
SEP 21 2023

LAURA ROY
CLERK, MISSOURI COURT OF APPEALS
EASTERN DISTRICT

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	Page 3
JURISDICTIONAL STATEMENT.....	Page 4
STATEMENT OF FACT AND BACKGROUND.....	Page 5-9
POINTS RELIED UPON.....	Page 10
ARGUMENT.....	Page 11-27
CONCLUSION.....	Page 28
EXHIBITS.....	Page 29
AUDIO VIDEO EXHIBITS.....	Page 30

TABLE OF AUTHORITIES

RULES

1. Rules of Department of Labor and Industrial Relations Chapter 4 Section 2
 - a. Page 11
2. Rules of Department of Labor and Industrial Relations Chapter 4 Section 4
 - a. Page 12
3. Rules of Department of Labor and Industrial Relations Chapter 4 Section 4
 - a. Paragraph A-7
 - a. Page 12
4. Rules of Department of Labor and Industrial Relations Chapter 4 Section 5
 - a. Paragraph A
 - a. Page 15
5. Rules of Department of Labor and Industrial Relations Chapter 4 Section 5
 - a. Paragraph B
 - a. Page 15
6. Rules of Department of Labor and Industrial Relations; 8 CSR 10-5.030
 - a. Telephone Hearings Before a Hearing Officer Chapter 5 Section 1A
 - a. Page 13

Missouri Code

1. 288.210 of the Missouri Code
 - a. Page 4

JURISDICTIONAL STATEMENT

Title XVIII LABOR AND INDUSTRIAL RELATIONS

Chapter 288

288.210 of the Missouri Code:

The court, on appeal, may modify, reverse, remand for rehearing, or set aside the decision of the commission on the following grounds and no other:

- (1) That the commission acted without or in excess of its powers;
- (2) That the decision was procured by fraud;
- (3) That the facts found by the commission do not support the award; or
- (4) That there was no sufficient competent evidence in the record to warrant the making of the award. An appeal shall not act as a supersedeas or stay unless the commission shall so order.

STATEMENT OF FACT AND BACKGROUND

Shortly before the shooting of Michael Brown by the Ferguson Police Department, Chief Sam Dotson tasked then Sergeant Roger Engelhardt, (the claimant) with updating and creating new policy into the methods, procedure, Special Orders, and the formation of a separate police unit to investigate officer involved shootings. This was done under then Police Chief Dodson of the St Louis Metropolitan Police Department.

Sergeant Engelhardt traveled the country attending numerous training seminars and completed this task. Shortly after the death of Michael Brown in September of 2014, the unit known as the Force Investigative Unit or FIU was activated.

FIU went on to investigate multiple officer involved shootings, in custody deaths and serious assaults (shootings) of police officers.

June 29, 2015, Sgt Engelhardt was promoted to Lieutenant and remained commander of FIU.

On December 28, 2018, Chief John Hayden was appointed Chief of Police of the St Louis Metropolitan Police Department. On January 1, 2018, he transferred Major Michael Sack to be the Commander of the Bureau of Professional Standards. The Internal Affairs Division and FIU were under his command.

On February 5, 2018, Lt Engelhardt is transferred from FIU to District 4.

On March 7, 2018, Major Sack files an Employee Misconduct Report (EMR) or complaint against Lt Roger Engelhardt per IAD Investigative number 18-199. The complaint was for Failure to Properly Exercise duties Associated with Rank and Detectives Steven Burle and Jamie Simpher per IAD investigative number 18-200 for Neglect of Duty. (**March 2018 IAD Report, March 2018 IAD Report 18-199 & 18-200**) These detectives were both members of the Force Investigation Unit. He assigns the investigation to himself. None of the officers were notified in violation of the protocols of IAD.

On March 26, 2018, Major Sack organizes a team consisting of Sergeant Tonya Porter, Sergeant Mickey Owens, and Lt JD McCluskey. The team is now described as an "Audit Team."

During the month of April, Lt Engelhardt made several contacts with Major Sack. Lt Engelhardt specifically asked Major Sack if he was being investigated and for what reason. Major Sack's consistent response was, "I can't say."

On July 3, 2018, Lt Engelhardt contacted Lt McCloskey and specifically asked why he was being investigated. Lt McCloskey at first denied that his team was investigating Lt Engelhardt, but then stated that he was ordered not to talk about it.

On July 4, 2018, Major Sack called Lt Engelhardt and warning him not to threaten his investigators. Referring to Lt Engelhardt's inquiry the previous day.

Sometime in the fall of 2018 Lt Engelhardt received information that the Federal Bureau of Investigation was attempting to interview former members of the Force investigative Unit.

Lt Engelhardt contacted Attorney Scott Rosenblum who arranged a meeting with the United States Attorney's Office. The meeting took place in January of 2019. The meeting was also attended by James Towey who was also Lt Engelhardt attorney. (Plea Arrangement)

In that meeting through his attorneys Lt Engelhardt was offered a plea arrangement in which he would admit to stealing approximately 1653.5 hours of time or over 206 days. It was explained to Lt Engelhardt that if he plead guilty, he would be sentenced to 12 to 18 months in prison. Lt Engelhardt declined the offer.

On June 7, 2019, Lt Engelhardt was placed on Administrative Duty with no explanation. When specifically asked, Lt William Brown then commander of IAD specifically denied that there was any Employee Misconduct Report filed against Lt Engelhardt. He does this by email where he writes:

"Currently there is no Employee Misconduct Report (EMR) regarding Lieutenant Engelhardt being placed on administrative duty. I am unable to provide any other information at this time." **(Lt Brown email)**

Administrative Duty is essentially restricted duty. An officer on administrative duty is not allowed to wear a police uniform or patrol or police in any fashion.

Lt Engelhardt was then assigned to Prisoner Processing for approximately one year. On May 18, 2020, he was transferred, still on Administrative Duty to Planning and Research. Upon arriving at his new assignment, he asked his commander Major Eric Larson why he is on Administrative Duty and informs him that he has never received an EMR concerning why he is being investigated and why he is on Administrative Duty.

On May 19, 2020, Lt Engelhardt receives EMR 18-200 (not 18-199) dated March 7, 2018, which he is accused of “double dipping” by having secondary employment hours that overlapped with his duty hours. The complainant and preparer of the form is Lt Col Michael Sack. The form bears his signature. **(EMR 18-200)**

In October of 2019 Major Sack is promoted to Lt Colonel. **(Sack Promotion 2019)**

On October 13, 2020, Lt Engelhardt is interviewed by Sgt. Porter and Sgt. Owens. In that interview he is questioned concerning approximately 84 days in which Lt Engelhardt was accused of double dipping or getting paid for hours not worked.

IAD then interviewed Det Skaggs and Det. Swinton October 21, 2020, Sgt Jerome Jackson, and Det. Burle on October 22, 2020. Payroll Specialists Harris and White were interviewed on March 16, 2021.

Several other interviews were conducted but not included in the summary of the investigation known as an Administrative Reports Transmittal Sheet or ARTS. **(18-200 ARTS)** Those interviews include. Det Archie Shaw interviewed on March 19, 2021, and Lt John Green on October 22, 2020.

On November 25, 2020, Assistant Chief of Police Lt Col Lawrence O’Toole was interviewed by Lt Col Sack and Lt William Brown.

On December 8, 2020, Lt Col Sack interviews retired Police Chief Sam Dotson.

On April 7, 2021, the ARTS report is signed by Lt William Brown and Lt Col Sack.

On April 22, 2021, over 3 years from the date of the complaint Lt Engelhardt is terminated. In Notice of Recommended Termination and Pre-Termination Review form a total of 14 days of double dipping and days where the claimant was accused

of failure to perform work. **(Notice of Recommended Termination and Pre-Termination Review)**

Lt Engelhardt applied for unemployment. A deputy determined under Missouri Employment Security Law that the claimant was not disqualified for benefits, finding that the claimant was discharged on April 22, 2021, but not for misconduct connected with the claimant's work. The employer filed an appeal from that determination.

The Appeals Tribunal heard the appeal by telephone on September 20, 2021. The City of St Louis was represented by Mr. Thomas Wahl. The Claimant was pro se. Due to apparent time restraints the matter was continued shortly after one witness testified for the City of St Louis and very limited cross examination by the claimant. **(Transcription 09-20-2021)**

The matter was continued two more times without testimony of any kind and finally the Appeals Tribunal heard the appeal on December 28, 2021. The same witness Lt. Col. Sack testified for the City of St Louis. The Appeals Tribunal affirmed the Deputies original finding the claimant was discharged but not for misconduct connected with the claimant's work. **(Transcription 12-28-2021, Jan 7, 2022 Appeals Tribunal Decision)**

The Commission two stated reasons for the remand order were:

1. None of the exhibits that the employer submitted to the appeals tribunal before September 20, 2021, hearing was entered into the record prior to the hearing (This was included in the employer's appeal application)
2. The referee on December 28, 2021, hearing was unaware of the prior September 20, 2021, hearing of this appeal. (This was not included in the employer's appeal application)

The Employers Appeal Application Two Claims:

1. None of the exhibits that the employer submitted to the appeals tribunal before September 20, 2021, hearing waere entered into the record prior to the hearing (This was included in the employer's appeal application).

2. That the decision of the Appeals Tribunal was in error because it ruled that the City of St Louis sole witness Lt Col Michael Sack testimony was hearsay and/or that the hearsay was not timely objected to.

On February 4, 2022, the City of St. Louis, through Mr. Wahl, applied for an appeal to the Commission of Labor and Industrial Relations. The appeal stated as fact things that Mr. Wahl knew or should have known were untrue. Most notably Mr. Wahl wrote that Lt Col Sack did not participate in the investigation and specifically that he did not interview witnesses. The claimant was not notified of this application. On April 28, 2022, the commission erroneously set aside and remanded the matter back to the Appeals Tribunal. **(City Application for Appeal 2-4-22, Commission Decision of 05-22-23)**

The hearing was scheduled over the course of several days August 8, 2022, September 27, 2022, December 9, 2022, and January 9, 2023. **(Transcription 080-08-22, 09-27-22, 12-09-22, and 01-09-23)**

On February 15, 2023, Hearing Referee M.D. Neal ruled that the Claimant was not entitled to benefits. **(Feb. 15, 2023 Appeals Tribunal Decision)**

On March 14, 2023, the claimant filed an appeal to the Labor and Industrial Relations.

On May 19, 2023, the Labor and Industrial Relations Commission denied claimants appeal and affirmed the decision of the 2nd Appeals Tribunal of February 15, 2023. **(Commission Decision of 05-19-23)**

The claimant is appealing against that decision to this court. According to research the appeals court has jurisdiction according to section 288.210 of the Missouri Code:

POINTS RELIED UPON

1. The Commission erred in its ruling of April 28, 2022, when they nullified the Appeals Tribunal Ruling of January 7, 2022 and remanded it for a second hearing. In that ruling the Commission acted without or in excess of its powers by not following the rules set forth for the appeal process.
2. The Commission erred in its ruling of April 28, 2022, when they nullified the Appeals Tribunal Ruling of January 7, 2022 and remanded it for a second hearing. In that ruling the Commission acted without sufficient competent evidence in the record to warrant the making of the award. In that they ignored the testimony and arguments of the appellant.
3. The Appeals Tribunal Ruling of August 8, 2023 erred in that she sustained an objection by City of St Louis Attorney and prevented claimant from cross examining witnesses concerning certain dates ruling they were not relevant. She later used those same dates in her determination that the claimant was terminated with cause. The Commission failure to recognize the err in that ruling was also in err.
4. The Commission's ruling of April 28, 2022 and the appeals Tribunal ruling of August 8, 2023 were in err because they were based on fraud committed by acts of perjury and forged and falsified documents by the witnesses for the City of St Louis. The City of St Louis Attorney either intentionally or without due diligence made claims that are untrue to the commission in his appeal of February 4, 2022.

Argument

1. The Commission erred in its ruling of April 28, 2022, when they nullified the Appeals Tribunal Ruling of January 7, 2022 and remanded it for a second hearing. In that ruling the Commission acted without or in excess of its powers by not following the rules set forth for the appeal process.

The Commission powers are granted to them by the rules defined in **Rules of Department of Labor and Industrial Relations Chapter 4 and 5** any violation of those rules is an act without or in excess of the Commissions powers.

A. On February 4, 2022, the City of St louis filed their application for appeal to the commission in violation of the rules:

The Claimant was not notified of the appeal application:

- a. "Upon receipt of the application, an acknowledgment of receipt and a copy of the application will be sent to the last known address of each interested party to the decision."

Rules of Department of Labor and Industrial Relations Chapter 2

This was not done. Immediately upon receiving notice of the Commission's decision to remand the case for another hearing the Claimant filed a letter of protest. Among other things, the fact that the claimant was never notified. The claimant complained to the Commission several times by phone and asked what steps could or would be taken to correct this violation of the rules and the claimant's due process rights. The claimant was consistently told, although the commission did not notify him nor was he given notice of the City of St Louis Application for Appeal, he had no recourse because it was "remanded." At that time the claimant filed an appeal with the Eastern District Court of Appeals on May 25, 2022, which was denied due to lack of jurisdiction.

The City of St Louis filed a brief in the application in violation of the rules:

- a. "Briefs and Oral Argument. The party filing an application for review (or "petitioner") may request, in the application, to file a brief. The commission may, in its discretion, allow or deny briefing in the case. If briefing is allowed, the commission secretary will provide, via written correspondence to all parties, a briefing schedule. Unless a modified briefing schedule is ordered by the commission, the petitioner's brief will be due fifteen (15) days from the date of the commission secretary's correspondence establishing the briefing schedule. Respondent briefs or memoranda of law will be due within ten (10) days after the date of the commission secretary's correspondence acknowledging the commission's receipt of the petitioner's brief or memorandum of law. Because of the federal regulations requiring prompt decision making by the commission, requests to extend the briefing schedule in employment security matters are generally disfavored and will only be granted in extraordinary circumstances."

Rules of Department of Labor and Industrial Relations

Chapter 4 Section 4

This clearly did not occur because no such request was made on the application and the brief was included in the fax that Mr. Wahl sent. Also, because the claimant was never notified, he was unable to respond. This is a violation of the claimant's due process rights.

- a. "All briefs are subject to the following." "Contain a certificate of service verifying that a copy has been sent to the opposing party."

Rules of Department of Labor and Industrial Relations

Chapter 4 Section 4 Paragraph A-7

This was not done.

The Determination of April 28, 2022, by the Commission for the Remand was in violation of Rule 4

Commissions Order and Stated Reasons for the Order

The Commission two stated reasons for the remand order were:

3. None of the exhibits that the employer submitted to the appeals tribunal before September 20, 2021, hearing was entered into the record prior to the hearing (This was included in the employer's appeal application)
4. The referee on December 28, 2021, hearing was unaware of the prior September 20, 2021, hearing of this appeal. (This was not included in the employer's appeal application)

The Employers Appeal Application Two Claims:

3. None of the exhibits that the employer submitted to the appeals tribunal before September 20, 2021, hearing was entered into the record prior to the hearing (This was included in the employer's appeal application)
4. That the decision of the Appeals Tribunal was in error because it ruled that the City of St Louis sole witness Lt Col Michael Sack testimony was hearsay and/or that the hearsay was not timely objected to.

Regarding issue one of both the employer and the commission concerning the exhibits or evidence that were not included in the record.

The exhibits were not placed in evidence according to the rules because they were not properly submitted to the Appeals Tribunal:

“Copies of the contents of the appeal file upon which the determination is based which may be used as exhibits shall be mailed to the parties to telephone hearings and split hearings prior to the hearing date.”

Rules of Department of Labor and Industrial Relations; 8 CSR 10-5.030

Telephone Hearings Before a Hearing Officer Chapter 5 Section 1A.

1. Mr. Wahl of the City of St Louis was clearly aware that the exhibits were not part of the record on September 20, 2021, when the matter was continued. The matter was reset three more times October 12, 2021, October 28, 2021, and was

finally heard on 12-28-2021. That provided Mr. Wahl with ample opportunity to correct the issue no matter who was to blame. He apparently took no action.

2. Mr. Wahl agreed several times on the record and off the record to proceed without the exhibits.

a. 09-20-2021 ---- Off record communication between the Hearing Officer and Mr. Wahl where he is told and acknowledges that the exhibits were not entered into evidence. The Hearing Officer specifically asked: "How do you want to proceed?" Mr. Wahl answers and agrees to proceed anyway stating "We can get it in thru testimony."

b. Per the transcript of the December 28, 2021, hearing

1. Page 10 Lines 3 thru 17

Hearing Officer Q: Was there documents,... admitted into evidence at the hearing in September?"

Mr. Wahl A: we chose....to proceed without the exhibits."

Mr. Wahl A: ...we believe we got must of that...through testimony anyway"

2. Continuing Page 11 Lines 1 thru 18 and Page 12 Lines 1 and 2

The claimant Roger Engelhardt objected to the evidence being part of the record stating that the City of St Louis did not follow the rules. (The rules clearly state that evidence must be delivered to the other party and to the referee prior to the hearing)

3. Continuing Page 12 Lines 8 thru 14

Unobjected to statement by the Hearing Officer: "...Mr. Wahl, it's his documents as willing..... is going forward without them."

The City of St Louis is attempting to bring in the evidence or documents as "additional evidence" through the appeals process.

This is in violation of the rules. For additional evidence to be considered rules must be followed:

“The commission will not consider additional evidence unless the evidence is newly discovered, or the need for the evidence could not have been reasonably anticipated before the hearing, **or the evidence could not with reasonable diligence have been produced at the hearing before the appeals tribunal.**”

Rules of Department of Labor and Industrial Relations Chapter 4 Section 5 Paragraph A

The City of St Louis could have with reasonable diligence produced their exhibits before the hearing on 12-28-2021.

“Before accepting additional evidence into the record, the commission will send written notice to all interested parties advising them of the request and allowing an opportunity to submit to the commission, within fifteen (15) days, written objection to the request to submit additional evidence. If a timely objection is received, the commission may issue an order allowing or denying the request to submit additional evidence or may order that the appeals tribunal hold a hearing to permit all interested parties an opportunity for cross-examination and/or the presentation of rebuttal evidence. If no objections are received within fifteen (15) days of the commission’s notice of the request to submit additional evidence, the commission may accept the additional evidence into the record without further notice to the parties. The commission is opposed, as a matter of policy, to the introduction of additional evidence except when it considers this action necessary for the furtherance of justice. Therefore, all available evidence should be introduced at the hearing before the appeals tribunal.”

Rules of Department of Labor and Industrial Relations Chapter 4 Section 5 Paragraph B

The claimant was given no notice of the request for additional evidence and therefore could not reply. A violation of claimant’s due process rights.

2. The Commission erred in its ruling of April 28, 2022, when they nullified the Appeals Tribunal Ruling of January 7, 2022 and remanded it for a second hearing. In that ruling the Commission acted without sufficient competent evidence in the record to warrant the making of the award. In that they ignored the testimony and arguments of the appellant.

Regarding the Commission's ruling that the Hearing Officer on December 28, 2021, was not aware of the September 20, 2021, hearing.

1. This in no way prejudiced the City of St Louis case Lt Col Sack was the only person to testify and only testified under direct examination with extremely limited cross examination on September 20, 2021. The hearing officer stated she would review the recording of his testimony before rendering her decision.
2. The City of St Louis as represented by Mr. Wahl agreed to proceed with the clear understanding that she was unaware of the previous hearing and that she would review the transcript/recording of the September 20, 2021, hearing prior to her decision.
 - i. Per the December 28, 2021, transcript Page 5-line 13 thru Page 9 Line 8
 - a. Mr. Wahl: "That – that would work with us"
Page 8 lines 15-16

Regarding the Hearsay Issue

In Mr. Wahls application for appeal, he himself describes Lt Col Sack's testimony as hearsay.

On Page 4 Lines 7-9

"While Sack did not personally conduct witness interviews and gather the evidentiary documents himself, he did review the findings and evidence from investigators pertaining to the claimant's misconduct investigation."

This makes Lt Col Sack a very convenient witness for the City of St Louis. He can claim specific knowledge of any defamatory information against the claimant at the same time avoiding any responsibility that the information is incorrect. It also gives Lt Col Sack the ability to feign ignorance of any information that would be exculpatory or tend to discredit the investigation.

Mr. Wahl also claimed that the hearsay was not timely objected to because no objection was made during the September 20, 2021, hearing.

This is completely without merit. In the September 20, 2021, hearing under direct testimony when testifying concerning the “double dipping” investigation Lt Col Sack uses the first-person pronoun “we.” Page 27 Line 10 and 13 “.... we checked...” **(Transcription 09-20-2021)**

It was not until the December 28, 2021, hearing under cross examination did Lt Col Sack begin to distance himself from the investigation. Not the least of which was his claim that his decision to terminate the claimant was only based on the recommendation of a subordinate Lt. Will Brown. It was on that date the claimant identified Lt Col Sack’s testimony as hearsay and pointed to the lack of direct evidence in closing arguments. **(Transcription 09-20-2021)**

Most importantly, the hearing officer can form her own opinion that Lt Col Sack’s testimony was hearsay independent of any objection. She can certainly consider the credibility of any testimony on her own without objection.

What is most troubling about Lt. Col. Sack’s testimony is that it is difficult to determine when his testimony is hearsay, and when it is perjury. There is strong evidence that Lt Col Sack organized and closely supervised the investigation. There is undeniable evidence that Lt Col Sack participated in the investigation of the claimant. Lt Col Sack is now running away from that truth because the accusations made by the employer are false, and he is aware that the accusations are false. Whatever category Lt Col Sack’s testimony would be considered, the City of St Louis should not benefit from hearsay and/or perjured testimony.

On page 2 paragraph 7 of the Commission's May 19, 2023 decision denying the claimants appeal it states, "The prevention of double dipping would be one reason for the **stringent** rules on this practice, in addition to the reputation of the police agency in allowing officers to perform at only authorized outside employment, as well as its control over staffing and scheduling matters." (**Commission Decision of 05-19-23**)

There is no factual basis to believe that the rules of secondary employment were "stringently" enforced. There was no testimony to support this.

The evidence is the opposite.

The witnesses for the City of St Louis cited the rules but know full well that they are not enforced. Their testimony was that the claimant had violated the rules of working un-approved secondary and not reporting his secondary hours from 2014 until 2018. It was widely known throughout the police department that claimant worked secondary employment during that period. The claimant commanders were aware, Lt Col Sack, Lt William Brown, Lt JD McCloskey, and Sgt Tonya Porter were specifically aware, in fact the entire Internal Affairs Division was aware. Many, including Lt Will Brown, worked secondary employment with or for the claimant during this period. The claimant is even listed as a contact point to coordinate officer working secondary with on duty officers during the Mardi Gras event every year during this period. That detail is reviewed by every commander and the Chief.

The city of St Louis own witnesses testified they became aware of these violations in March of 2018, yet they took no action to enforce this rule for years. A fact that cannot be disputed is that the claimant worked secondary employment until June 7, 2019.

Also, in the previously mentioned Nicole Gallaway Audit of the City of St Louis Department of Public Safety, she identifies that the rules regarding secondary employment are not enforced and provided examples of officers of widespread violations of the Secondary Employment policy to include all the violations the claimant is accused of.

On page 2 paragraph 8 the commission uses the phrase “recurrent negligent reporting actions” of the claimant regarding secondary employment.

The City of St Louis cited a total of five days during an investigation that examined all of claimant’s secondary employment from the year 2013 until 2021, a span of 9 years. That accusation hardly fits the definition of “recurrent.”

The City of St Louis produced no documents from any secondary employer concerning hours worked or pay to the claimant.

They produced no records of proxy card use by the claimant, maintenance of the proxy card system. The witnesses for the city could not recall who, if anyone, interviewed the custodian of the proxy card system.

The city produced no records of computer log on information of the claimant. No witness from the city could testify who if anyone interviewed the custodian of the computer records and no statement is attributed to them in the ARTS.

The Appeals Tribunal and the Commission relied only on the Administrative Reports Transmittal Sheet (ARTS) and testimony of witnesses. Those sources lack any reasonable credibility.

All the City of St Louis’s witnesses either perjured themselves, denied participating in the investigation or could not recall most of the details of the investigation.

As to the ARTS, not one witness claimed responsibility for the information contained in the report. Lt Col Sack and Lt JD McCloskey both denied participating in the investigation, although that testimony is untrue. Taken on face value their testimony is irrelevant. Sgt Tonya Porter was the investigating officer in this case. However, she denied being responsible for the information contained in the ARTS but stated that Lt William Brown is responsible for the information in the ARTS, although that testimony is untrue. Taken on face value there is no foundation for the ARTS to be considered as evidence nor as reliable documentation of the investigation.

As already stated, the ARTS contains several undisputable false statements.

Lt Brown is a current employee of the St Louis Police Department and could have testified if the city chose to call him.

Because the claimant's termination was based on this document and this investigation it is **"...there was no sufficient competent evidence in the record to warrant the making of the award."**

On page 3 paragraph 3 the commission states "that finding credible evidence supporting the allegation that the claimant failed to exercise the proper duties and functions associated with his rank and position. The claimant allowed certain officers to approve their own reports, which included numerous errors. The claimant allowed certain subordinate officers to approve their own duty hours, and the duty-hours of other officers."

The testimony that there were mistakes in reports undetected by the claimant is demonstrably untrue. The 146 errors in report number 15-022494 were identified and corrected by the claimant. The allegation that the claimant approved report 17-008536 is demonstrably untrue. The investigative report in which that information is documented was not approved by the claimant. **(Incident Report 15-022494, Incident Report 15-022494)**

This determination was based on facts not in evidence. There was no testimony that delegating the approval of duty hours is in violation of any rule. The witnesses that testified and the claimant are aware that delegating the approval of duty hours is common practice in the St Louis Metropolitan Police Department.

This is also very confusing because the ARTS repeatedly describes the claimant as approving his own hours and was terminated for "Falsification of time records or other official City records." The Commission obviously determined that the claimant did not falsify time records.

It is equally obvious that the IAD investigators and Lt Col Sack do not believe the records were falsified because no action was taken against the subordinates that the claimant delegated to approving the PeopleSoft hours of all members of FIU.

The argument is illogical the city and the Commission cannot take both positions. They cannot determine that the claimant should be terminated for Falsification of Time Records and then determine that the claimant should be terminated for delegating the entry of time records.

3. The Appeals Tribunal Ruling of August 8, 2023 erred in that she sustained an objection by City of St Louis Attorney and prevented claimant from cross examining witnesses concerning certain dates ruling they were not relevant. She later used those same dates in her determination that the claimant was terminated with cause. The Commission failure to recognize the error in that ruling was also in error.

1. On August 8, 2022, Referee M.D. Neal sustained an objection by Mr. Wahl that the Claimant could not ask any questions concerning any dates there were not listed in the City of St Louis Exhibit Titled "**Notice of Recommended Termination and Pre-Terminations Review**" ruling they were not relevant to the issue. That document only listed June 18, 2014, July 9, 2014, June 26, 2016, September 23, 2016, and February 10, 2018, as reasons the claimant was terminated.

August 8, 2022, Page 95

11 Q. All right. August 12th, it says Lieutenant

12 Engelhardt approved his own duty hours; correct?

13 MR. WALL: Objection. That was not what

14 (inaudible) fired for, so we're just going to go

15 through this whole report. It's in evidence.

16 ROGER ENGELHARDT: What do you mean -- you

17 said I falsified time records.

18 REFEREE NEAL: Mr. Engelhardt, I don't have

19 that (inaudible) that chief earlier testified to. I

20 have the June 8th, 2014, July 9th, 2014.

21 ROGER ENGELHARDT: Okay. We're not -- I'm

22 talking about what's in the ARTS.

23 MR. WALL: Yeah. There's (inaudible)

24 listed in the ARTS, but not all of that is relevant to

25 the reason why he was terminated.

August 8, 2022, Page 96

11 REFEREE NEAL: All right. Mr. Engelhardt,

12 again, the -- the date that the employer is -- has put

13 for that's being the date of violation was June 18th,

14 2014, July 9th, 2014, June 24th of 2016, September 23,

15 2016, and February 10th of 2018, is my understanding.

16 So those would be the -- the dates that --

(Transcription 09-20-2021)

Other dates were listed in a separate exhibit titled "Administrative Reports Transmittal Sheet" or ARTS for short, which the City of St Louis claimed was a summary of the investigation. The claimant was not allowed to ask any questions concerning those dates.

On page 3 of M.D. Neal February 15th, 2023, decision, she references August 12, 2014, June 26, 2015, January 7, 2016, June 24, 2016, and September 23, 2016, as the basis of her ruling to deny the claimants unemployment benefits. **(Feb. 15, 2023 Appeals Tribunal Decision)**

Clearly M.D. Neal's decision violated her own ruling and clearly violated the claimant's due process rights.

4. The Commission's ruling of April 28, 2022, and the appeals Tribunal ruling of August 8, 2023 were in error because they were based on fraud committed by acts of perjury and forged and falsified documents by the witnesses for the City of St Louis. The City of St Louis Attorney either intentionally or

without due diligence made claims that are untrue to the commission in his appeal of February 4, 2022.

There are so many acts of perjury, fraudulent or forged documents that it would be difficult to list them all. Therefore, the claimant will focus on the most obvious and indisputable ones.

1. Mr. Thomas Wahl in his representation of the St Louis Police Department on official letter head filed the appeal to the Commission the appeal was based on fraud.

In that appeal application and brief he stated:

*“While Lt. Col. Sack **did not personally conduct witness interviews and gathering of evidentiary documents himself, he did review the findings and evidence from investigators pertaining to the claimant’s misconduct investigation. Upon reviewing the findings and evidence gathered by investigators, he determined that the findings and evidence were credible and that the claimant committed misconduct violations per workplace policies. Then, Lt Col. Sack made the recommendation of discharge to the Police Commissioner for a combination of several misconduct violations committed by claimant. It cannot be disputed that Lt Col Sack had direct personal knowledge of the circumstances of the claimant’s discharge, when he was the commanding officer/supervisor who made the recommendation to the Police Commissioner.**”*

(City Application for Appeal 2-4-22)

There are audio and video recordings of Lt Col Sack interviewing witnesses concerning these allegations. Specifically, Deputy Chief of Police Rochelle Jones, Assistant Chief of Police Lawrence O’Toole, and former Chief of Police Sam Dotson. It is impossible to believe that Lt Col Sack forgot that he interviewed those individuals. Lt Col. Sack lied under oath. **(LTC Jones, LTC O’Toole and Chief Doyle Dotson)**

It is hard to understand how Mr. Wahl is not aware of Lt Col Sack’s perjury. Even if he was unaware of Lt col Sack’s perjury at the time of the hearing, he surely

must be aware of it now. Mr. Wahl is bound by the Missouri Rules of Professional Conduct Rule 4-3.3 to report Lt Col Sack's perjury. To the Commission which he did not and to this court now.

Lt Col Sack's testimony was that he could not recall anything specific about the investigation. That he relied only on what his investigators told him. He could not recall or specifically deny, reviewing almost every evidentiary document. This is a direct contradiction of what Mr. Wahl wrote in his appeal application and Lt Col Sack's testimony during direct examination.

The investigation conducted by Lt Col Sack and his team was done in a dishonest manner. At least two documents prepared are forgeries and the investigation contains information that the investigators and Lt Col Sack know are not true.

The first document is the Employee Misconduct Report or EMR.

The date of the allegation noted on the form is March 7, 2018, and it has a file number of 18-200 (18 signifying the year the number was drawn).

The complainant is identified as Police Lieutenant Colonel Michael Sack. Lieutenant Colonel Michael Sack is also identified as the person preparing the form and is signed by Lieutenant Colonel Michael Sack.

This is an obvious forgery. On March 7, 2018, Michael Sack held the rank of Major. He was not promoted to Lieutenant Colonel until October 17, 2019. The document is a backdated forgery. **(EMR 18-200)**

The investigative number 18-200 was assigned to an investigation of 2 other officers and not Lt Roger Engelhardt. The Internal Affairs Division (IAD) produces a monthly report of IAD investigations. In that report investigation 18-200 is assigned to a complaint against Detectives Burle and Hull. The complaint was filed on March 7, 2018. Lt Col Sack is aware of that because he was the Commander of the Bureau of Professional Standards then and now. In addition, he is listed as the assigned investigator of that complaint. **(March 2018 IAD Report, March 2018 IAD Report 18-199& 18-200)**

Another forged document in this investigation **Internal Affairs Division -Request for Investigation Extension Form**. This form is required when an investigation lasts more than 60 days. The date of the request simply states April no date and year. The form is signed by Lt William Brown, Commander of Internal Affairs. It is dated April 23, 2018. The investigation number is 21-0006 not 18-200. It is impossible to have an investigative file number 21-0006 on a form prepared in April of 2018. It does, however state that the investigation was assigned on March 7, 2018. This document is a forgery.

The Nature of the Complaint is listed as Alleged Conduct Unbecoming an Officer. Nothing to do with the allegation listed on EMR 18-200.

The Reason for the Request is listed as "Criminal Investigation Initiated by Federal Agency." Which contradicts Lt. Col Sacks testimony that this investigation was referred to the Justice Department in August of 2018. He also informed state auditors that the Justice Department referral was made in August of 2018 as documented by State Auditor Nicole Galloway in her report titled **City of St Louis Department of Public Safety Audit** dated September 2020. (Report number 2020-079). This is another backdated forgery to make this investigation appear to be legitimate. **(Extension)**

On June 20, 2019, Lt William Brown sent an email to an Attorney representing the claimant, James Towey. In that email he informs Mr. Towey that there is no Employee Misconduct Report (EMR) regarding the claimant. More evidence that the EMR prepared by Lt Col Sack and the extension prepared by Lt William Brown are both forgeries.

The report that summarizes the investigation of the Internal Affairs Investigation is known as an Administrative Reports Transmittal Sheet or ARTS. **(IA 18-0200 ARTS)**

On page one of the report signed by and submitted by Lt William Brown and later signed off on by Lt Col Sack states that this investigation was initiated by a court order (1722-CR03697-01 State vs DeVonte Morgan) dated March 20, 2018. It is implied that this is the reason listed in the next paragraph for Lt Col Sack to initiate and audit of the Force Investigative Unit Commanded by the claimant. In that audit

according to that paragraph they discovered the violations. This then led to Lt Col Sack initiating an allegation against the claimant which he then referred to the Justice Department for prosecution and later terminated the claimant employment for this allegation.

The next paragraph states that the EMR has the incorrect date of March 7, 2018, as the date the complaint was received. However, it does not list what the correct date is. This is done because of the false timeline that they are trying to establish. March 7, 2018, does not sync with the formation of the "Audit" team which was not formed until March 26, 2018.

This is a false statement because March 7, 2018, is listed as the correct date in the IAD monthly report, Lt William Brown Extension and it is written on the EMR itself. Any testimony that March 7, 2018, is not the correct date is perjury.

On page 20 of 27 the second to last paragraph it states Officer Skaggs entered a narrative for a different investigation into 15-022494. That is not true.

Later, on page 24 of 27, it states that the report was approved, and it contained 146 errors. They are aware of the errors because the claimant had Detective Skaggs write a report acknowledging and then correcting them. These were grammatical and spacing errors. This report has been reviewed many times in criminal and civil litigation and has never been an issue.

On page 24-27 concerning report 17-008536 prepared by Det Jamie Simpher that Lt Engelhardt approved that report to level 2 and three without the deceased offender listed in the report. A simple examination of the report shows that the report was approved by Doug Eatherton not Lt Engelhardt. That was later pointed out to Sgt Tonya Porter during her interview with Lt Engelhardt on October 13, 2020.

Page 24-27 states that the claimant improperly assigned Det. Steve Burle to author a report of an Officer Involved Shooting in which his son Det Matt Burle was involved in. This is not true. Lt Col Sack understands clearly what it means to be an "involved officer" in an Officer Involved Shooting. Lt Col Sack knows that statement is untrue.

In addition, Lt Col Sack personally ordered Det Steve Burle to be detached back to his command and complete the report several times after Det Burle was transferred from FIU.

On page 25 of 27 second paragraph. States that the 22nd Judicial circuit Court issued an order mandating the claimant to complete police report 17-043306. The court order is publicly available and never mentions the claimant's name. **(2018-03-01 Order re Hearing on Mar 20 2018 in Div 16 - No Report to Date - St v Morgan 1722-CR03697-01, 2018-03-20 Court Order re Mtn Reconsider + Discovery - State v Morgan 1722-CR03697-01, 2018-03-20 Court Order re Report Completion by Police - State v Morgan 1722-CR03697-01)**

Also, in that same paragraph it states that the claimant directed Det Steve Burle not to prepare report 17-043306 until the person shot could be interviewed.

Lt. Col. Sack has direct knowledge that that statement is false because he was notified by the claimant by email on January 24, 2028 that he had directed Det Steve Burle to finalize the report even though that person had not been interviewed.

Conclusion:

The commission violated the rules by accepting and then ruling on the City of St Louis appeal of the Appeals Tribunal Ruling of January 7, 2022.

The Appeals Tribunal Ruling of January 7, 2022, was based on fraud. The testimony of the witnesses for the city contains multiple acts of perjury. The investigation of the claimant was conducted in a fraudulent manner.

There was no foundation for any of the documents the city introduced and for the Appeals Tribunals Ruling of February 15, 2023, or the Commission rejection of the claimant's appeal.

The court should overrule the commission and reinstate the decision of the Appeals Tribunal of January 7, 2022.

Exhibits:

1. City of St Louis Department of Public Safety Audit
2. 2018-03-01 Order re Hearing on Mar 20 2018 in Div 16 - No Report to Date - St v Morgan 1722-CR03697-01

3. 2018-03-20 Court Order re Mtn Reconsider + Discovery - State v Morgan 1722-CR03697-01
4. 2018-03-20 Court Order re Report Completion by Police - State v Morgan 1722-CR03697-01
5. Appeal Labor Commission to Eastern District
6. Rules of the Department of Labor Chapter 5.pdf
7. Rules of the Department of Labor Chapter 5.pdf
8. Commission Decision of 05-19-23
9. Commission Ruling 04-29-22
- 10.EMR 18-200
- 11.Extension
- 12.Feb. 15, 2023 Appeals Tribunal Decision
- 13.IA 18-0200 ARTS
- 14.Incident Report 15-022494
- 15.Incident Report 17-008536
- 16.Jan 7, 2022 Appeals Tribunal Decision
- 17.Jan 7, 2022 Appeals Tribunal Decision
- 18.Sac Promotion 2019
- 19.Transcription 09-20-21
- 20.Transcription 12-28-21
- 21.Transcription 09-27-22
- 22.Transcription 12-09-22
- 23.Transcription 01-09-23
- 24.Plea Arrangement
- 25.Notice of Recommended Termination and Pre-Termination Review
- 26.March 2018 IAD Report
- 27.March 2018 IAD Report EMR 18-199 & 18-200 (Page 31-32)
- 28.City Application for Appeal 2-4-22

Audio Video Exhibits

1. Chief Doyle Dotson
2. LTC Jones
3. LTC O'Toole