

Appeal of IHO Decision - 6-20-2018

As provided by Grievance Procedures, I, Frank Schwarz am filing an appeal of the IHO's decision dated June 8th, 2018. I am submitting my appeal with the City Clerk for review by the Common Council and also providing copies to City Attorney, Director of Human Resources, Mayor and Council President.

Reason For Appeal of IHO decision

I'm appealing the IHO decision of June 8th that upheld my termination because in his denial of my grievance, the IHO, Mark S. Kapocius, in his writings references terminology such as "poor" and "unsatisfactory" that was used ONLY in the Disciplinary Determination letter and the Denial of Grievance letter which were written after I was not working there and those characterizations of my work were not passed along or mentioned to me or implied in any way while I was an employee Those very disparaging and defaming words to describe my performance only appeared for the first time in those post employment letters, I was never notified at any time that my performance was regarded as such while an employee at the city.

Thus, for the IHO to say the city came up with a preponderance of evidence backing their reasons for termination is wrong and misguided as he states this post employment terminology to show evidence they did inform me . The preponderance of evidence is supposed to be based on what city supplied to tell me these performance problems while I was working with the city, of which there is no documentation to that effect whatsoever and for which they showed nothing at the IHO hearing, thus there was no evidence backing their claims I was poor performer. This entire lack of city documentation at the hearing to back up their post employment claims of performance issues was mentioned by me several times in the IHO hearing. Yet, IHO ignores that complete lack of documentation of any sort.

So, first off, the IHO uses these entirely unsubstantiated and unfounded negative characterizations written about me post employment to, in part, support his sustaining the city's denial of my grievance letter on performance issues, specifically saying they did indeed let me know of performance issues because of these made up terms that were entirely undocumented before they were used in final and post employment letters there.

There were other big facts brought up in the hearing that the IHO entirely ignores In his statement.

The IHO sites that the bi-weekly meetings I had were set up due to my "substandard" 2017 performance review and also the fact that the additional 6-month extension probationary period itself also were indications I was notified of performance concerns. It was definitely mentioned in the hearing that nowhere in the Employee's handbook does it state that the extension of an initial probationary period means an employee in anyway is a poor or unsatisfactory performer nor should he be characterized as one if his probation is extended.

Nor, obviously, without clear indication to that effect, should an employee feel or assume that he is considered a poor or unsatisfactory employee if his probation is extended, just like he wouldn't think that during his first round of probation either. It's just an evaluation period, that's all, doesn't connote poor or unsatisfactory performance. This was very clearly explained in the hearing. The IHO chooses to ignore these facts and follows Interpretation of city in it's denial of grievance letter that my extension was indication of performance issues.

Continuing with glaringly wrong Interpretations and assessment of facts and timelines, the IHO states in his decision that the bi-weekly meetings were set up due to my 'substandard' 2017 performance evaluation, when in fact the bi-weekly meetings were set up 2 months PRIOR to my 2017 performance evaluation and came out of the extension of probationary period in April meeting last year and also, I believed at the time, because Mike Heeb had just become my new direct supervisor, so therefore he could better manage and see my work I was doing to get a close view of my work to make a final decision before my 6 month extension was up. He even mentioned it would be kept at 6 months "to get it over with" which meant to me I would be let go or kept, before my probationary period was up, as I was told that was main difference, being at will or not. The IHO therefore bases his decision in part, on incorrectly thinking that the bi-weekly meetings were instituted from my 2017 performance evaluation and thus were like part of a performance improvement plan, which they were not. The meetings in fact were instituted 2 months prior to my 2017 Performance Evaluation, and were drawn up directly from my 6 month probation extension along with tasks to attend to in the next 6 months.

Another big omission that IHO doesn't mention in his decision is that I showed in the hearing that my 2017 performance evaluation was changed from meeting all 6 factors and thus meeting standards, to being downgraded in one factor, Leadership and Initiative at the behest of Mike Heeb 3 days later at end June 2017. I provided email proof with the changes that downgraded (which at time I did not know would come to be used against me later as such) my eval from meeting standards in all factors, to not meeting standards in one because of this change done with no reason given, just that it had to be changed. The city or my department didn't unearth any of these facts or care to support me in finding this fact out, I had to find and stick up for myself.

Then very adversely because of this change in my performance evaluation, it came out in the hearing that it was then not communicated to me by my direct supervisor, Mike Heeb, that this change in my 2017 performance evaluation would cause me to not receive a step increase for 2017. The Employee Policy or January 1st, 2017 (yellow cover), Section 8, letter j, stipulates an employee must be given a reason if they are not to receive a step increase, and notified by their direct supervisor of that reason. Mike Heeb said at the hearing, he knew the change he made it would result me in receiving no step increase, but he did not communicate that reason to me. This whole point of this violation of policy of my rights of not being properly notified by my direct supervisor was vehemently objected to by city attorney and who wanted it stricken.

The IHO conveniently leaves this information out of his decision as well.

Furthermore it states in the same section 8, letter j, of Employee Policies book, that a performance improvement plan will be initiated because if employee does not receive step increase if that is so. Never was I told or given a "performance improvement plan" at anytime nor is it in any email, documentation communicated to me or in my employee record maintained by HR, anywhere or produced as evidence by city at hearing. Mike in the meeting quickly backtracks after this is introduced and then for first time ever, refers to the bi-weekly meetings and the goal sheet stemming from my extension of probationary period as a 'performance improvement plan', trying to make it look like that's what they were, repurposing them from where they originally stemmed from, which was the extension of probation meeting, 2 months before my 2017 performance evaluation (which was changed remember after first one). Once again, this is overlooked and not mentioned by the IHO.

Also pointed out in the hearing, that all 3 years worth of performance evaluations had very good things to say of me and my worth and that my Productivity factor always was meets standards. BUT contradicting this in my dismissal and denial of grievance notes said setting up bi-weekly meetings was meant to improve my productivity, which shows that the reasoning for my dismissal were fabricated and arbitrarily derived at and not consistent with the only known facts, that of my performance evaluations themselves wherein I always met standards in Productivity. This is the truth and this IS on the record, not the mistruth and misrepresentation to the contrary that my productivity in Disciplinary Determination and Denial of Grievance Letters needed improvement. I have to ask, where was HR in reviewing the consistency of any of these statements in final determination and denial of grievance letters, to not allow false accusations and undocumented statements from being used so detrimentally and wrongly against me?

To this point, It is mentioned in the IHO decision that HR department was short staffed and others handled this whole case and process. Because of that, I think, others oversaw it and had an opportunity to control the end they wanted which is so clear now in retrospect. This critical employment decision of terminating was not being overseen by the most critical department in this type decision, HR, to uphold the employees rights and make sure fairness in all of the matters at hand. However they had plenty of chance to step in and say something was not right when the reasons for termination didn't align with the documented facts and my record itself. The process of my hearings was all mishandled as well and wasn't fair at all to me.

It also was never mentioned or pointed out by anyone in this whole process, IHO included, that I successfully completed BOTH probationary periods, 2.5 years, the initial 2 year probationary period and the additional 6 month extension and thus became a category of employee referred to as a "for cause" employee, which by the Employee Handbook pages, 1-1, 1-2, means that I was an employee of merit that successfully completed my probationary periods. This was 2 months before I was put on leave and then said I had performance issues!. Think about that.

This is also the very reason that has hurt me so severely in dealing with this because firing me for performance reasons for any reason after just becoming this type of employee clearly DOES NOT MAKE ANY SENSE from the evidence and my recently attained status as a for cause employee. This has been very hurtful to me and I feel strongly to make sure I followed through if I had to show the unethical nature of all this, the over the top mistreatment of me.

Other points I just want to make mention of from IHO ruling which further paint an incorrect picture of me and the handling of the incident that precipitated all this,

- **In page 3 of IHO decision, paragraph 2, 3, THE IHO states that IT was contacted via email of request by ██████████s which makes it sound as if this was general email from a city employee that I arbitrarily handled outside my duties without the authority granted to me by my 2 supervisors. He does not seem to have heard clearly in the hearing that I was assigned to be the recipient of these special emails by my supervisors, Mike Heeb and Jacky Greschner, that these emails are generated straight from Sharepoint when a user requests access to files on Sharepoint that they do not have access too. He did ask this about these emails and the purpose of Sharepoint as a file sharing portal, and it was confirmed that it was, but he still doesn't acknowledge that in his decision. He further states in paragraph 3 of page 3 that I gave access to the V-drive, once again, it was stated by me very clearly in the hearing and in the police report that I gave access to just folder, the crime scene photos folder within the Police departments Sharepoint site as means of providing minimal access to manager of Street Dept. so I could see what he wanted access to as expeditiously as I knew how at the time with absolutely no compromise of personal or confidential information. He also fails to acknowledge that I was given this authority by my supervisors to carry out these requests to the best of my ability without any sort of the training and I had done so many times in the past as well.**
- **None of the evidence that the city presented showed any more access than the one folder I gave, and all that was shown in the police report, it shows only one file was opened by ██████████, another one file had access denied, also the presentation of these Aristotle user reports as evidence was of very very poor and illegible quality and surely should have been called into question on that basis alone. Also my keystrokes of email I typed to ██████████ were misinterpreted as well and I never sent any but the last email I was typing and that email did go out and is part of the record. The keystrokes I did type before that were taken out of context and used against me without any other interpretation other than damning ones given by my own department. ██████████ did not know I gave him limited access but I could type anything I wanted to him to see what he wanted, as is shown time and time again in the police report, that he had very limited access to just the one non personal and non-confidential folder I did give access to.**
- **Also it is in the report and stated several times in the hearing that "someone" in the Police Records department initially directed ██████████ to go to Sharepoint at which time he tried to and from there he proceeded to contact me as I'm recipient of these special emails from Sharepoint as assigned by my supervisors. Mike Heeb had the capability to turn off these access to requests that he knew I got if he wanted to, but that is not the**

security he setup, hence, I got these emails that I were sent to me by authorization from my supervisor Mike Heeb.

- I was given authority to handle these Sharepoint requests by my supervisors without training and carried these out a few times in the past. I did not due anything arbitrarily in this and did it with extreme care, not giving away anything confidential and I had no ill intention either nor disobeyed any protocols as my own department got behind. I handled many such emails the same way in the past. To the best of my ability and never giving away anything confidential or of personal nature away. This case was NO exception to that. The IHO also states I didn't used situational reasoning, but that is EXACTLY what I did use. So the city's and IHO's statements make no sense that I didn't assess the situation and request and context of it carefully and to the best of my abilities. Certainly nothing I should have been fired on given my handling of these with authorization by my own supervisors to do so. I did not have to ask them how to carry these out unlike what IHO thinks I should have. I never did in previous instances either.
- It was stated in the meeting that instructions on how to handle these Sharepoint requests were not written down nor verbally ever given. It was not clear how I was supposed to know except as I have said, by going off the way I handled these request previously as my best guide, and to up to this point I had done with no involvement or advice to do so differently by my supervisors or with their aid or help. I also limited access of anyones request like these to areas with no personal or confidential information. This case was no exception. My own department incorrectly said I gave out more access to more folders and that it was not possible to do less like I did, but everybody knows Sharepoint and folder permission access know that is NOT TRUE. My dept let these truths go, and the false information to stand.
- My supervisors did know and permitted me to handle these requests but never gave me any sort of training or advice on doing them any different than the way I had done so..
- Even considering all the above approval and authorization by my supervisors, my supervisor's, it's hard to believe, stated in the meeting they don't know how I got on this list to receive these access request emails, yet, my supervisors are the only ones with the permissions, as site collection administrators, to make me the recipient of these email requests. When asked at meeting if they had gotten this particular email, since they claimed they had gotten these in the past, they did not think of checking their own emails or anybody else's to see if they got this particular access request email as well. But apparently I was only one who got this one and all in the recent past. They also conveniently forgot other meetings and conversations we had or feigned ignorance.
- It needs to be pointed out for this record that the Mayor's important email of employee death came at 11:45 am that morning , 45 minutes before ██████████ Sharepoint File access request, a supervisor, and all this played a part in my thinking to allow very limited access. Along with this request coming in middle of lunch and Police Records initiating ██████ to go to their site to begin with. I followed very carefully this request from start to finish, all along maintaining confidentiality and limiting access to one general folder, Crime Scene photos and his time limited to about 15 minutes in this lone crime scene folder.

- City has put forth now several times that you can't give access to just one Sharepoint folder, like I did, and this is CLEARLY FALSE, how could basic fact be allowed to stand as fact by anybody in IT and how can this not be questioned why they would want to misrepresent basics like that and why haven't they been corrected on stating false information?

It's been overwhelming to think about this again and to file this before this deadline of 15 days following the IHO issuance, which is Dated 8th day of June, 2018.

I think it's impossible, now, for anyone in the City to have the resolve to do much about the improprieties and falsification of facts that have been used against me in this case and that are evident in all the decisions along the way.

The false undocumented performances issues leveled at me in post employment letters for the first time, totally false and undocumented claims, that totally fly in direct contradiction to my successfully completing 2 probationary periods though is the most clear place to start if anybody wishes to simply see the improprieties and unfairness which then should lead to questions as to what really happened and maybe then do something about it, if not for me, maybe so no harm comes to anybody else in the future.

Sincerely,
Frank Schwarz.

