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BEFORE THE CITY OF SEATTLE CIVIL SERVICE COMMISSION

MICHAEL SPINDLER,)	
)	
Appellant)	CSC No. 15-01-001
)	
vs)	FINDINGS, CONCLUSIONS
)	AND DECISION
SEATTLE CITY LIGHT,)	
)	
Respondent)	

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BACKGROUND AND INTRODUCTION

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This is an Appeal by Michael Spindler of a final disciplinary decision for a one day suspension without pay, loss of internal and city-wide promotional or out-of-class opportunities, and limited training and educational opportunities for one year. The hearing was held on May 4, 2015. Mr. Spindler represented himself at the hearing and Seattle City Light was represented by its Employee Relations Manager, Chris Thomas. Pre-hearing Briefs were submitted by the Parties.

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FINDINGS

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Based on the evidence presented at the hearing, I make the following Findings of Fact:

1. The Human Relations Business Unit of Seattle City Light (“HR”) received a complaint from Management that Michael Spindler was using his Seattle City Light (“SCL”) work computer excessively for personal matters.
2. In April, 2014, SCL Employee Relations Advisor, Kate McMahan issued an investigation report that could not substantiate that Mr. Spindler had used his computer excessively for personal reasons, but did conclude that Mr. Spindler’s computer use violated several rules and policies. The report determined that his online activity on “OKCupid.com” and internet searches about skinheads did violate: the City Code of Ethics, DoIT’s City-owned Technology Resource

1 Acceptable Use Policy 4.06 and Seattle City Light (SCL) Workplace
2 Expectations.

3 3. Mr. Spindler admitted that he browsed OKCupid.com occasionally during his
4 breaks and lunch hour.

5 4. Mr. Spindler also admitted that he may have completed internet searches for
6 information related to skinheads during his breaks.

7 5. Mr. Spindler admitted that he downloaded CCleaner onto the City of Seattle
8 computer that was assigned to him. CCleaner is a software program that erases
9 online browsing history and can destroy metadata relating the computer's use.

10 6. The City determined that Mr. Spindler installed versions of CCleaner in 2008
11 and 2013, which was not found to be a violation of City Policy; but, was found
12 to have been used by Mr. Spindler to destroy metadata in violation of SCL
13 Policy.

14 7. In May, 2014, Customer Service and Energy Delivery Officer, Phil West,
15 notified Mr. Spindler that, based on the improper use of his work computer, he
16 would recommend to SCL General Manager and CEO, Jorge Carrasco, that Mr.
17 Spindler be suspended for one work day without pay, based on a determination
18 that he had violated the following rules, codes and policies:

- 19 • **Personnel Rule 1.3.3 (A)(6):** "Use of City time, equipment or facilities for
20 private gain or any other non-City Purpose"
- 21 • **Seattle Municipal Code 4.16.070 (2) (b):** "Use or attempt to use, or permit
22 the use of any City funds, property, or personnel, for a purpose which is nor
23 to a reasonable person would appear to be, for other than a City Purpose."
- 24 • **The Seattle Department of Information Technology ("DoIT") City-**
25 **owned Technology Resource Acceptable Use Policy 4.06:** "Accessing site
26 which promote exclusivity, hatred, or positions which are contrary to the
27 City's policy of embracing cultural diversity...Accessing inappropriate sites
28 including adult content, online gambling, and dating services...Accessing
29 sites that promote illegal activity, copyright activity, or activity that violates
30 the City's ethical standards."

- 1 • **City Light Workplace Expectations – Integrity:** “Do not use City tools,
2 equipment, supplies, funds, or other resources for personal use” and
3 “[p]rovide a full day of good effort for a full day of pay.”
- 4 • **City Light Workplace Expectations, including Financial Responsibility:**
5 “Use equipment, supplies, and property safely, properly and wisely. Avoid
6 misuse, damage, or destruction of equipment and property of the department
7 and your coworkers.”
- 8 8. Mr. Spindler responded to the alleged violations by stating that he used his work
9 computer to: (1) access a news article about skinheads in order to research the
10 topic; (2) access OKCupid.com (which he states is neither overtly sexual or
11 illegal); and to, (3) install and configure CCleaner for the limited purpose of
12 cleaning the excess registry and temporary junk files that slowed his computer.
- 13 9. On May 20, 2014, Asset Manager and Large Project Division Director Darnell
14 Cola recommended that Mr. Spindler be suspended for one day because of his
15 violations of the Ethics Code, City Owned Technology Resource Acceptable
16 Use Policy and SCL Workplace Expectations because he *accessed sites* that
17 promoted hatred and online dating; *visited several other websites* for personal
18 purposes; and, because the installation of CCleaner was a misuse of City
19 equipment.
- 20 10. On May 23, 2014, Mr. Spindler responded to the recommended disciplinary
21 action in writing, to Mr. Carrasco, by stating that the proposed discipline was
22 overly harsh and out of proportion to the alleged violations.
- 23 11. Mr. Spindler did not deny the factual allegations, but explained that: (a) he was
24 looking for news items and articles on topics identified in the report and did not
25 access the prohibited sites themselves; (b) the appropriate use policy does not
26 wholly prohibit uses of City property for non-City purposes as long as it is brief,
27 does not cause a conflict of interest, result in financial gain, incur a financial
28 cost to the City or interfere with an honest day’s work; (c) his computer use did
29 not create a conflict of interest, support a side business or political purpose, or
30 interfere with his work; (d) the use of CCleaner was not prohibited software,
31 does not remove metadata, and was not use on any public records or files

- 1 covered under public records retention or disclosure requirements; (5) the
2 expectation that you cannot use any licensed applications without explicit
3 permission, after you are given the computer rights to install them to be used for
4 work related purposes is contradictory; and that (6) City Light IT “frowned
5 upon” the use of CCleaner, but did not explicitly prohibit it.
- 6 12. On September 3, 2014, Mr. Carrasco notified Mr. Spindler of his “Final
7 Decision” regarding the recommendation that he suspend his employment with
8 SCL for one day without pay. Mr. Carrasco’s based his decision on the findings
9 of the investigation, the recommendations of Mr. Spindler’s management and
10 Mr. Spindler’s memorandum.
- 11 13. Mr. Carrasco’s Final Decision was that: “Your actions of installing programs
12 that erase public information on your work computer and using your work
13 computer to search for and access websites with content that promotes hatred on
14 multiple occasions were clear violations of the City Code of Ethics, City-owned
15 Technology Resource Acceptable Use Policy and SCL Workplace expectations
16 of Integrity and Financial Responsibility. Use of City time and for non-City
17 purposes is considered a major disciplinary offense that requires a suspension
18 for corrective action, per Personnel Rule 1.3.3(A) (6).
- 19 14. Mr. Spindler was suspended for one day without pay for violations of the City’s
20 Ethics, City Owned Technology Resource Acceptable Use Policy 4.06, and SCL
21 Workplace Expectations Policy.
- 22 15. On September 17, 2014, Mr. Spindler filed a Step 3 Grievance in which he
23 cited: (1) Personnel Rule 1.3.5, and alleged that Darnell Cola never mentioned
24 the Loudermill hearing rights, but only what was in the Personnel Rules; (2)
25 Personnel Rule 1.3.6, and alleged that the investigation was not timely. Mr.
26 Spindler also alleged in his Step 3 Grievance that: (3) the disciplinary
27 recommendation and the subsequent determinations strongly indicated a lack of
28 attention to facts, failure to properly investigate his responses, reliance on
29 general over specific policy intent without consideration of mitigating
30 circumstances and a lack of sufficient and specific evidence to justify a
31 violation of policy and the severe discipline recommended.

- 1 16. Mr. Spindler denied that he intentionally erased metadata related to any public
2 record and claims that he asked IT about CCleaner prior to installing it and was
3 told that it was not specifically prohibited.
- 4 17. Mr. Spindler explained that he used the software to clean out junk files and
5 remove trial software. He also explained that he did not have the IT forensics
6 report prior to when his May 23rd response was due; and that, when he received
7 it, he found no evidence of made searches for or visited websites with content
8 that promotes hatred.
- 9 18. Mr. Spindler asked that the proposed disciplinary action be “overruled” because
10 the recommended discipline was not supported by a legitimate rationale and
11 factual evidence; was based, in part, on deliberate misrepresentation of
12 statements to the investigator; and, because he only performed computer
13 searches during his work breaks.
- 14 19. On September 18, 2014, Labor Relations Director David Bracilano forwarded
15 Mr. Spindler’s Step 3 Grievance materials to Policy Analyst Sarah Butler for
16 processing.
- 17 20. On October 17, 2014, a Step 3 Meeting was held with Mr. Spindler, Sarah
18 Butler, Glenda Steiner, then Asset Management PMO Manager and VaLiesha
19 Brown, HR Business Unit Advisor. During the meeting Mr. Spindler: confirmed
20 his belief that the disciplinary action violated Personnel Rule 1.3.5 and 1.3.6;
21 clarified his opinion that the computer forensic reports do not contain
22 information that supports the allegations that he was searching for or accessed
23 sites with inappropriate content; and, admitted that he was aware of the City-
24 owned Technology Resource Acceptable Use Policy at the time he installed
25 CCleaner.
- 26 21. During the Step 3 Meeting, Mr. Spindler also explained that the installed
27 CCleaner program had “survived two audits” by City Light IT and that he was
28 never notified that installing the CCleaner program was inappropriate.
- 29 22. The parties agreed to an extension of time to November 7, 2014 for SDHR staff
30 to verify Mr. Spindler’s statement about the forensics reports on his Internet
31 searches not substantiating the investigative findings.

- 1 23. On October 27 and on November 4, 2014, Ms. Butler met with E.J Bittner, Lead
2 Cyber Security Analyst at City Light. At the October 27th meeting, Mr. Bittner
3 showed Ms. Butler that the forensics report identified a user logged in as
4 “SpindlerM” (Mr. Spindler’s username) and visited OKCupid.com on multiple
5 occasions. At the November 4th meeting, Mr. Bittner showed Ms. Butler that
6 the Internet searches had been completed using Google at Mr. Spindler’s
7 workstation, from his hard drive which, as of the April 7, 2014 investigative
8 report, included searches for “skinhead military”, “skinhead sleepers”, and
9 “skinhead low profile”.
- 10 24. On October 30, 2014, Mr. Butler spoke to Mr. Bryant Bradbury, the City’s
11 Chief Information Security Officer, at DoIT. Mr. Bradbury explained that the
12 purpose of prohibiting employees from accessing dating sites, such as
13 OKCupid.com, was that they often contain malware that can pose a security
14 threat to City equipment and IT infrastructure.
- 15 25. Mr. Bradbury interpreted the phrase “accessing inappropriate sites” as used in
16 City-Owned Technology Resource Acceptable Use Policy 4.06 is deliberately
17 visiting a prohibited URL or attempting to obtain inappropriate material or
18 information from the Internet that is outside of legitimate news agencies.
- 19 26. Mr. Bradbury also believes that CCleaner is a tool to obfuscate internal IT
20 controls, and generally, it does not have a legitimate business purpose at the
21 City. He also clarified that there was no single list of prohibited software
22 maintained by the City, but that an employee should seek approval to download
23 software such as CCleaner, per the Acceptable Use Policy.
- 24 27. According to the City’s records, Mr. Spindler completed a training course titled
25 “Seattle City Light Cyber Security” on April 29, 2009 and on February 16,
26 2010.
- 27 28. SCL concluded that Mr. Spindler’s conduct was a Major Disciplinary Offense
28 under Personnel Rule 1.3.3.A. specifically: Subsection 6: “Use of City time,
29 equipment or facilities for private gain or other non-City purpose”; and,
30 Subsection 7: “Falsifying or destroying the business records of the employer at
31 any time or place, without authorization”.

- 1 29. Based on its findings and conclusions, SCL proposed a one day suspension,
2 without pay, as the appropriate disciplinary action.
- 3 30. Mr. Spindler objected to the City's proposed disciplinary action and asserted
4 that, in addition to the one day suspension without pay, he lost internal and city-
5 wide promotional or out of class opportunities, training and educational
6 opportunities for one year.
- 7 31. Mr. Spindler's appeal of the SCL disciplinary action, filed with the Seattle Civil
8 Service Commission on March 16, 2015, alleges: denial of grievance, sanctions,
9 overbroad interpretations and mischaracterizations, numerous unsubstantiated
10 claims and assumptions; as well as a history of inaccurate and misleading
11 negative annual performance reviews in 2013 and 2014.
- 12 32. Through this appeal, Mr. Spindler seeks to repeal of the Suspension, recover
13 lost pay and educational opportunities; be reinstated to his position; and, that all
14 associated records be removed from his and the City's files.
- 15 33. The public hearing was held on May 4, 2015 to determine whether the: one day
16 disciplinary suspension without pay should be upheld, the educational and
17 promotional employment opportunities be restored and, whether all records
18 related to this matter should be removed from the files.
- 19 34. Mr. Spindler has been employed as a Management Systems Analyst at SCL
20 since June, 2005. In 2009, he was transferred from the Work Management
21 Group to the newly created Asset Management PMO group, and continues to
22 work there.
- 23 35. As part of the responsibility of the positions he has held, Mr. Spindler analyzed
24 and recommended modifications to computer software, data quality and
25 information management best practices.
- 26 36. In association with his responsibilities, Mr. Spindler obtained Local
27 Administrator rights from SCL, which included system permissions to
28 download commercial or open source licensed software applications to use and
29 test for business suitability and work productivity on his workstation.
- 30 37. Mr. Spindler admits that he installed CCleaner on his City of Seattle computer.
31 Mr. E.J. Bittner, the lead cyber security expert with SCL's IT Department

1 testified that a forensic search of Mr. Spindler's computer was done. He also
2 testified that CCleaner destroys metadata on the computer and that Mr. Spindler
3 had installed the program on his computer more than once.

4 38. Several SCL witnesses testified that due to the use of CCleaner by Mr. Spindler,
5 much of the data that would be needed for a full forensic investigation was not
6 available, including whether Mr. Spindler engaged in excessive personal usage
7 of his computer in violation of the Code of Ethics.

8 39. Bryant Bradbury, the Chief Information Security Officer with the City's
9 Department of Information and Technology ("DoIT") testified that CCleaner is
10 considered an anti-forensic tool.

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CONCLUSIONS

13 SCL has met the burden of proving, by a preponderance of the evidence, that it had
14 justifiable cause to suspend Mr. Spindler for one day without pay; and, without
15 educational and promotional opportunities for one year. The City of Seattle's City
16 owned Technology Resources Acceptable Use Policy, Section 4.06 ("Acceptable
17 Use Policy") prohibits accessing inappropriate sites, including adult content, online
18 gambling and dating services. Mr. Spindler admitted that he accessed OKCupid, an
19 online dating website, from his City of Seattle Computer, which is a violation of the
20 Acceptable Use Policy.

21 The Acceptable Use Policy also specifically prohibits accessing sites which
22 promote exclusivity, hatred, or positions which are contrary to the City's policy of
23 embracing cultural diversity.

24 Mr. Spindler admitted that he "researched topics" related to skin heads from his
25 City of Seattle Computer; but, that he did not actually "access" a prohibited site,
26 which would be a violation of the Acceptable Use Policy.

27 The Acceptable Use Policy prohibits the installation of any software that has not
28 been approved by the City of Seattle. The Acceptable Use Policy also prohibits
29 "using security exploit tools (hacking tools) to attempt to elevate user privileges or
30 obtain unauthorized resources" and "accessing sites that distribute computer
31 security exploits".

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1. Section 3.07 of the Acceptable Use Policy defines “Hacking/Hacking Tools” as behavior and tools designed to circumvent security measures, or to otherwise effect unauthorized changes to computer hardware or software”.
2. Mr. Spindler admitted that he installed and used CCleaner on his City of Seattle Computer and that he occasionally ran the defragmentation application built into Windows.
3. There is conflicting evidence about whether the SCL approved or disapproved Mr. Spindler’s installation of CCleaner on his City of Seattle Computer; and, whether he intended to use CCleaner in a manner that violates the Acceptable Use Policy.
4. Personnel Rule 1.3.3.A defines “Major Disciplinary Offenses.” The definition includes a non-exclusive list of offenses where a verbal warning or written reprimand will not be appropriate in the absence of mitigating circumstances.
5. Personnel Rule 1.3.3.B states that: “In determining the level of discipline to impose, the appointing authority or designated management representative shall consider factors that he or she deems relevant to the employee and his or her offense, including but not necessarily limited to: (1) the employee’s employment history, including any previously imposed disciplinary actions; (2) the extent of injury, damage or disruption caused by the employee’s offense; (3) the employee’s intent; and (4) whether the offense constituted a breach of fiduciary responsibility or of the public trust.
6. Falsifying or destroying the business records of the employer at any time or place, without authorization.
7. City of Seattle Code of Ethics: The COE prohibits the use of City property for a purpose which, to a reasonable person, would appear to be for other than a City purpose. SMC 4.16.070(2) (b), unless, the City resource is available on equal terms to the public.

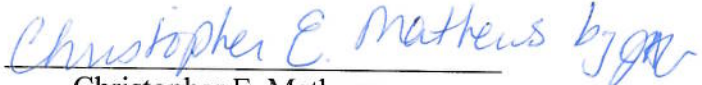
- 1 8. The applicable Rules, Policies or Procedures that Mr. Spindler violated are
2 clearly and reasonably related to SCL’s safe and efficient operations.
- 3 9. SCL Workplace Expectations for its employees’ states: “In working toward
4 the Department’s mission and in fulfilling its roles, all employees are
5 expected to conduct the Department’s business and represent the City of
6 Seattle to the citizens of Seattle in a manner that embodies integrity and
7 cultivates the public’s trust in City government.
- 8 10. SCL Workplace Expectations also encourage effective and productive
9 performance of duties, including, without limitation: (a) being “proactive”
10 instead of “reactive”, addressing work issues or concerns before they
11 escalate into problems; (b) making decisions within the scope of your
12 responsibilities, following through as required and reporting appropriate
13 information to other coworkers involved and higher supervisory personnel;
14 and, (c) requesting the resources and guidance you need to do your job
15 effectively and correctly”.
- 16 11. SCL Workplace Expectations require all employees to “Conduct yourself
17 with Integrity, Honesty & Professionalism’, including compliance with
18 SCL, city, state and federal laws and regulations. Meeting workplace
19 expectations includes: (a) “demonstrating the highest standards of ethical
20 behavior and honesty” in all work done on behalf of the City; (b) complying
21 with the City’s Code of Ethics: and, (c) being willing to set standards, model
22 integrity and professional conduct; your decisions. The disciplinary action
23 imposed depends upon the seriousness of the employee’s offense and such
24 other considerations as the appointing authority or designated management
25 representative deems relevant. In the absence of mitigating circumstances, a
26 verbal warning or a written reprimand shall not be given for a major
27 disciplinary offense The evidence strongly supports a conclusion that Mr.
28 Spindler knew or reasonably should have known and understood the
29 possible consequences of his conduct and that a one day suspension, without
30 pay, was appropriate. Any “Finding” herein that is deemed to be a
31 “Conclusion” is adopted as such.

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DECISION

For the reasons set forth above, the undersigned Hearing Officer finds and concludes that Justifiable Cause does exist to support the one day suspension of Michael Spindler, without pay.

Dated: June 29, 2015



Christopher E. Mathews,
Hearing Officer
Civil Service Commission

Findings of Fact, Conclusion of Law and Orders
Within ten (10) days following the date of the Hearing officer's Findings of Fact, Conclusions of Law, and Order, any party may file with the Commission a Petition for Review of all or any part of the examiner's findings of fact, conclusions of law, and order, or of any other part of the record or proceedings, including rulings upon all motions or objections. Party must clearly state the reason for review.