

December 5, 2007

Sonia Kay Morphey Pitt, the former Director of Homeland Security and Emergency Management for the Minnesota Department of Transportation (“Mn/DOT”), has appealed her termination from Mn/DOT because the disciplinary action taken against her was based upon false and disputed allegations outlined in three investigative reports. The reports, dated September 11, 2007, November 5, 2007, and November 28, 2007, are premised on incorrect findings, derived from misconstrued state policies and wholly ignored exculpatory evidence. Ms. Pitt’s employment was wrongfully terminated on November 9, 2007. We believe that the decision to terminate Ms. Pitt will not be able to withstand the scrutiny of a hearing.

Activities Following the I-35W Bridge Collapse

Perhaps the investigations’ most inflammatory and erroneous finding is that Ms. Pitt was “on vacation” during the time of and for ten (10) days following the I-35W bridge collapse on August 1, 2007. This finding is patently false. Ms. Pitt was in Boston, MA on August 1, 2007, attending a National Preparedness Leadership Initiative conference at Harvard University, which had been approved since February 2007. As soon as she received word that the bridge had collapsed, she immediately obtained a separate workspace at the Kennedy Library and began working on coordinating state and federal aid and emergency responses. When the conference was over on August 3, 2007, Ms. Pitt flew to Washington D.C., where she officed out of the Federal Highway Administration’s building, and acted as a liaison between federal and state agencies in implementing emergency response efforts. The investigative reports do not acknowledge the fact that every interviewed witness testified that Ms. Pitt’s job duties did not require her to be in Minnesota following the bridge collapse. Many of them testified that her job duties required her to act as a liaison between state and federal agencies during a state of emergency, and that she was performing her duties throughout the days following the bridge collapse.

The reports also allege that Ms. Pitt documented that she worked full days following the bridge collapse, but claim that her email and cellular telephone records indicate that she did not. This allegation is also false. Ms. Pitt used not only her cell phone, but also a landline telephone to conduct bridge-related work at the Federal Highway Administration’s office. During her time in Washington D.C., Ms. Pitt worked well beyond 8 hours per day. The truth of the matter is that Ms. Pitt was an extremely hard-working, dedicated public servant. Throughout her nearly sixteen years of employment with the state, she received numerous awards and honors for her many contributions, and received only the highest or second-highest scores on every element of her performance reviews from each of her supervisors. She was nationally renowned for establishing Minnesota as the leading state for emergency preparedness, training, and organizational efforts.

By most accounts, the emergency response to the I-35W bridge collapse was commendable. Although Ms. Pitt did not have any command or control responsibilities related to emergency response efforts, she was responsible for creating emergency response plans, orchestrating preparedness efforts, and ensuring that Mn/DOT officials and staff were appropriately and adequately trained on how to respond in the case of emergencies. Given the response to the bridge collapse, it is clear that Ms. Pitt had performed her job duties well.

Ms. Pitt was also responsible for acting as a liaison to state and federal government entities and national organizations. She excelled in this capacity. As one witness told investigators, “Pitt was very successful in bringing in federal grants to support the work of the HSEM Office. . . . [T]he HSEM office’s actual budget is approximately \$5-6 million, and only \$500,000 - \$600,000 is state operating funds while the rest is funded by grants.” Further, Ms. Pitt’s federal contacts at the Federal Highway Administration expressed gratitude for her presence in Washington D.C. following the bridge collapse. One of the witnesses told investigators that Ms. Pitt was at the Federal Highway Administration working during the days after the bridge collapse, and that the FHWA was “very much involved with the events following the collapse.”

Expense Reimbursements

The investigative reports wrongly assert that Ms. Pitt engaged in improprieties regarding her state-subsidized business travel expenses. For example, the Legislative Auditor’s report claims that Ms. Pitt made “unauthorized flight upgrades and changes for personal reasons, resulting in additional costs to the state.” However, the report omits a number of pertinent facts and policies, such as:

- Mn/DOT’s policy allows for payment of the cost of coach airfare. Ms. Pitt always flew coach or personally paid for any upgrades to first class.
- Mn/DOT’s procedures require employees to obtain approval for specified dates of business-related travel before the Aeronautics Department books the flights. Aeronautics sometimes scheduled Ms. Pitt’s flights for dates different than those listed on her Authorization for Out of State Travel form because of cost considerations or availability factors. The airlines themselves also sometimes changed the times or dates of the scheduled flights. When Ms. Pitt’s actual travel dates deviated from those listed on her Authorization form due to circumstances outside of her control, the investigators wrongfully deemed the travel “unauthorized,” and inappropriately determined that Ms. Pitt should be responsible for reimbursing the state for her business travel expenses, flights, and claimed work time.
- Ms. Pitt attended the AASHTO conference for the Midwest in October 2006 as a representative from Minnesota. She was an active and knowledgeable participant in the

discussion and expressed an interest in working with the group in any way that would help her develop plans and ideas for programs that could be implemented in Minnesota. In this regard, she was invited by the Federal Transportation Security Administration to attend the conference for the Northeastern states in December 2006 to share lessons learned from the Midwest conference. Ms. Pitt's travel and participation in the December conference were approved by Mn/DOT. Nevertheless, the investigators deemed this travel "unauthorized," and claim that Ms. Pitt should reimburse the state for her travel expenses, flights, and claimed work time.

- Ms. Pitt never altered her Authorization for Out of State Travel forms without prior authorization from her Supervisors. For example, Ms. Pitt's Supervisor, Mr. Steven Lund, instructed her to add travel dates to account for time needed to complete a group project surrounding a conference in July and August, 2007. Although Ms. Pitt added these dates to her Authorization for Out of State Travel form in accordance with her Supervisor's instructions, the investigators are now considering this "unauthorized" travel time, and assert that Ms. Pitt should reimburse the state for her travel expenses and claimed work time during these dates.

Additionally, the investigative reports incorrectly allege that Ms. Pitt improperly claimed reimbursement for unauthorized expenses, or for expenses without any supporting documentation or receipts. The investigative reports come to this conclusion because they ignore the following relevant facts and policies:

- Certain purchases, such as meals, baggage, and taxi fares do not require supporting receipts or affidavits. Nevertheless, Ms. Pitt went above and beyond the policy's requirements by frequently providing supporting documentation for many of these expenses.
- Pursuant to Mn/DOT policies, Ms. Pitt was authorized to approve her own cardholder purchasing logs if the expenditures were not over a specified amount.
- Ms. Pitt frequently claimed less than Mn/DOT's policies allow for meal reimbursements when she was traveling for business. She never claimed in excess of the state's meal reimbursement limits.
- Mn/DOT policies allow employees to claim reimbursements for meals, even when meals are already provided as a part of a meeting, conference, or seminar, if the employee has special dietary needs. Ms. Pitt has special dietary needs, and is unable to eat certain common foods. She claimed reimbursements for meals that were either not provided during her meetings, conferences, or seminars, or for meals she needed to purchase due to her special dietary needs.
- Mn/DOT policy provides limits on the amount employees may claim for lodging during business travel. However, the policy authorizes employees to stay at a hotel which hosts the employee's scheduled conference, meeting, or seminar, regardless of whether the costs exceeds the lodging expense limits. Ms. Pitt never exceeded Mn/DOT's authorized

lodging expense limit, unless she was lodging at the host-location for a conference, meeting, or seminar she attended.

Many of the improper expenses Ms. Pitt is alleged to have made or claimed are deemed improper due to the investigators' incorrect conclusion that Ms. Pitt was not on authorized travel time when the expenditures were made. For example, the Legislative Auditor's report states that Ms. Pitt improperly claimed reimbursement for a training session in May 2007 in Saint Cloud, MN because the training never occurred due to cancellation. The report then includes Ms. Pitt's mileage, travel and training time, hotel costs, and meals in the total amount Ms. Pitt allegedly owes to the state of Minnesota. However, the training session in Saint Cloud was not cancelled on the date in question.

Electronic Communications

The reports also wrongly claim that Ms. Pitt made an enormous number of personal calls on her Mn/DOT cellular telephone, and that she used her state email account for excessive personal communications. However, the investigators neglect to acknowledge that they are unable to identify a single personal email Ms. Pitt sent from her Mn/DOT email account. The reports also do not explain that the investigators calculated the alleged percentages of Ms. Pitt's personal cell phone calls by inaccurately deeming every phone call made to the Federal Highway Administration "personal," rather than business-related. Moreover, the alleged percentages of personal calls reflect the fact that the investigators did not take into account Mn/DOT's policy of allowing employees to make an average of \$3.00 per day worth of personal calls from their state cellular phones during business travel.

Vacation v. Work Time

All three investigative reports grossly misconstrue Ms. Pitt's documentation and calculations of her working hours, insinuating that Ms. Pitt caused the state financial losses as a result of her time sheet documentation methods. Ms. Pitt was a salaried managerial employee of the state of Minnesota. As such, Mn/DOT policies allowed her to modify her work schedule on an as-needed basis. Ms. Pitt was compensated at a flat salaried rate based on the expectation that she would typically work eighty (80) hours in a two-week pay period. Her schedule was flexible in order to enable her to perform the responsibilities of her assignments.

Because Ms. Pitt's position required her to frequently travel for conferences and training sessions, networking purposes, and governmental coordination of emergency response efforts, her typical workweek did not usually coincide with normal business hours. The reality is that Ms. Pitt worked far more than 80 hours per pay period throughout her employment as the Director of Homeland Security and Emergency Management. Despite the fact that all three investigators had access to Ms. Pitt's cellular telephone records and her Mn/DOT email account, not one of them acknowledges the fact that these records demonstrate that she frequently worked from the early morning hours until late in the evening, and usually both weekend days. Members

of her staff and her Supervisors told investigators that they could always reach her regardless of where she was located, and that she always answered or promptly returned calls and responded to emails.

The reports do not acknowledge the fact that it was common practice for Ms. Pitt to simply document eight hours of work time Monday through Friday, even when she worked far more than eight hours, five days per week. Ms. Pitt was never asked to record the actual hours she worked until analysts wanted to evaluate the emergency response efforts following the I-35W bridge collapse. The reports also do not acknowledge Ms. Pitt's common practice of coding actual vacation time as "vacation" time, rather than as work time. Nor do the reports admit that Ms. Pitt's cellular phone records and email account records confirm that she was, in fact, working on the days she documented work time. Instead, the investigators incorrectly conclude that Ms. Pitt was not working, but was "on vacation" simply because she was not in the Mn/DOT office, but was out of state for prior-authorized business-related purposes.

Alleged Ethics Violations

Finally, Ms. Pitt has been accused of "conduct unbecoming" to a Mn/DOT employee, because she was allegedly having an "inappropriate" relationship with Mr. Daniel Ferezan. Mr. Ferezan is a Program Manager at the Federal Highway Administration, and has worked with Ms. Pitt on a number of professional projects. He has also served as a federal contact for the state of Minnesota regarding emergency preparedness and response efforts. The investigative findings do not acknowledge the fact that every witness interviewed testified that they had never seen any inappropriate interactions between Mr. Ferezan and Ms. Pitt. Although Ms. Pitt and Mr. Ferezan worked together on a number of professional projects, the investigators incorrectly deemed every email and telephone communication between the two as "personal," rather than business-related. Moreover, the investigators' findings deem many of Ms. Pitt's business-related trips to the Washington D.C. area as "vacation" time, merely because Mr. Ferezan lives there. As a result of this incorrect conclusion, the investigators call for Ms. Pitt to reimburse the state for her business-related flights to and from Washington D.C., hotel costs, baggage and taxi costs, and meal expenses incurred during trips to Washington D.C. However, it is clear from witness testimony, cell phone records, and email records, that Ms. Pitt was not with Mr. Ferezan during typical business hours, but was working or attending conferences during these trips.

Ms. Pitt will be seeking reinstatement and other available remedies as part of her appeal. Neither Ms. Pitt nor her attorneys intend to make any further comment on the investigative reports or the circumstances surrounding her termination until after the conclusion of her appeal.