



OFFICE OF THE INSPECTOR GENERAL
Illinois State Toll Highway Authority

NOTICE OF POSTING
OIG Case # IG-19-001
Respondent: Gary Michalowski

Pursuant to 605 ILCS 10/8.5 (e)(3), the attached redacted summary report is being posted to the Illinois Toll Highway Authority's public website. As required by law, the Office of the Inspector General for the Illinois Toll Highway Authority (OIG) sent a copy of this report to the Respondent and gave him time to provide suggested redactions or a written response. Initially, Respondent requested that this report not be posted during the pendency of the arbitration matter, and we honored that request. We received notice that an arbitration award, dated December 18, 2019, denied his grievance. We again sent Respondent a copy of this report and gave him until February 10, 2020 to provide suggested redactions or a written response. No response has been received.

The OIG completed an investigation that established reasonable cause to find that, on January 22, 2019, Driver Messenger Gary Michalowski committed time/attendance fraud, misused Tollway resources, and damaged Tollway property in violation of numerous Tollway policies. These findings supported significant discipline standing alone. However, our additional investigation revealed that on more than 80% of the days he worked in December and January, Michalowski drove his assigned vehicle to his house, left the vehicle idling, and took breaks of as much as 2.5 hours without approval and in violation of Tollway policies. These findings established reasonable cause to find that Michalowski regularly committed time/attendance fraud and misuse of Tollway resources. Based on these findings, the OIG recommended that the Tollway discharge Michalowski and require him to pay for the damages to the Tollway vehicle.

The Tollway responded that it concurred with the OIG findings and recommendations, and discharged Michalowski after reviewing his response to charges arising from the OIG investigation. Tollway records reflect that Michalowski grieved his discharge and sought arbitration. As noted above following a hearing and briefing, Arbitrator Richard D. Fincher issued a written award denying the grievance after finding that there was just cause to discharge Michalowski.



**OFFICE OF THE INSPECTOR GENERAL
SUMMARY REPORT OF INVESTIGATION
OIG Case # IG-19-001
February 15, 2019**

This report provides a summary of evidence set out in the attached investigative materials, and the Office of the Inspector General's (OIG's) analysis of that evidence. An index of these investigative materials is attached.

I. INTRODUCTION

OIG received an allegation that, on January 22, 2019, Driver Messenger Gary Michalowski caused an accident with his assigned Tollway vehicle at his home, and that Automatic Vehicle Locator¹ (AVL) data showed that Michalowski had been at his home for over 2 hours during his work shift with the vehicle idling. Interviews confirmed that Michalowski did not have permission to take his assigned vehicle home and did not have permission to take an extended break. Our investigation established reasonable cause to find that Michalowski committed time/attendance fraud, misused Tollway resources, and damaged Tollway property in violation of numerous Tollway policies. These findings support significant discipline standing alone. However, our additional investigation revealed that on more than 80% of the days he worked in December and January, Michalowski drove his assigned vehicle to his house, left the vehicle idling, and took breaks of as much as 2.5 hours without approval and in violation of Tollway policies.

Michalowski's repeated time/attendance fraud and misuse of Tollway property during his short tenure with the Procurement Department reflects not only blatant disregard for basic policies but utter disdain for fundamental employee responsibilities. Given the serious and persistent nature of these violations, we recommend that Michalowski be discharged from the Tollway and that he reimburse the Tollway for the damage he caused to his assigned vehicle. In addition, we recommend that the Tollway review post-accident drug/alcohol testing procedures and provide additional training to managers to ensure compliance with Tollway policy. We also recommend that the Tollway take steps to ensure accountability of field employees by more fully utilizing the AVL tracking system and adding the time of delivery to the Driver Log.

II. APPLICABLE RULES

A. Illinois Tollway Policies and Procedures Manual (September 2016)

1. Chapter 1. General Policies and Responsibilities:
Section A. Fundamental Principles, provides in relevant part:

* * *

- 3) The Tollway requires public trust and confidence in its employees. Integrity is essential.

¹ Tollway vehicles including CW-13 are equipped with global positioning equipment and AVL provides location and other information for these vehicles.

2. Chapter 5. Hours of Work

Section B. Break Periods, provides in relevant part:

Unless otherwise provided in a collective bargaining agreement, employees working an eight (8) hour shift are provided with two (2) work break periods of fifteen (15) minutes in length that cannot be split into smaller increments. However, with the approval of the Supervisor, the break periods and meal times can be combined. Since this time is counted and paid as time worked, employees must not be absent from their workstations beyond the allotted break period time, which includes cigarette breaks.

Unless otherwise provided in a collective bargaining agreement, all full-time employees are provided with one meal period of thirty (30) minutes in length each workday. Supervisors will schedule meal periods to accommodate operating requirements. Employees will be relieved of all active work responsibilities and restrictions during meal periods.

Section C. Timekeeping, provides in relevant part:

Every employee is responsible for accurately recording time worked, via the electronic time clock. Employees must not record their time via the electronic time clock prior to when they actually begin work or finish work each day. When employees leave the job either for personal, split shift or other purposes, they are responsible for recording their time via the electronic time clock accordingly. Time worked is the time actually spent on the job performing assigned duties

3. Chapter 6. Use of Tollway Property/Employee Responsibilities

Section A. Tollway Issued Property, provides in relevant part:

Employees are responsible for all property issued to them by the Tollway. These items may include, but are not limited to, the following:

- Vehicles

Section E. Vehicle Operation, provides in relevant part:

Many Tollway staff positions require permanent or occasional use of a Tollway vehicle to fulfill aspects of their job duties. Many of these employees use a pool car or department assigned vehicle. A copy of the Vehicle Policy Manual can be found on Crossroads Engineering page, Fleet section. Failure to follow the provisions of this manual or the vehicles manual may result in discipline up to and including discharge.

4. Chapter 7. Employee Conduct and Discipline

Section A. Employee Conduct, provides in relevant part:

To ensure orderly operations and provide the best possible work environment, the Tollway expects to follow rules of conduct that will protect the interests and safety of both the employees

and the organization. Violations of the rules of conduct may result in disciplinary action, up to and including discharge. The rules of conduct include, but are not limited to, the following:

- Failure to follow Tollway or Departmental policies or procedures, including safety rules
- Falsification of timekeeping, attendance or employment records
- Improper use of Tollway vehicle
- Neglect of duties
- Negligent or intentional conduct leading to damage of Tollway or customer property
- Unauthorized personal use of Tollway equipment
- Unsafe or improper use of equipment or vehicles

5. Chapter 8. Drug and Alcohol Policy
Section F. Post Accident Testing, provides in relevant part:

All employees must immediately report any type of vehicle accident that results in any type of damage to their supervisor.

All employees will be required to submit to post-accident drug/alcohol testing consistent with USDOT guidelines found in Section 382.303 (a), (b) or (d) or as revised. A test for alcohol must be administered within 8 hours and a test for drugs must be administered within 32 hours of an accident.

B. Illinois Tollway Vehicle Policy Manual (Rev. April 2012)

1. General Policy (pp 1-2) provides in relevant part:

Department Chiefs or their designees are responsible for periodically reviewing the vehicle use of their employees to ensure employees are using Tollway vehicles in accordance with Policies and Procedures.

Failure to follow the Policies and Procedures established for Tollway vehicle operation may result in disciplinary action up to and including termination.

2. Operation, Vehicle Use (p. 3), provides in relevant part:

Tollway vehicles are to be used for Tollway business purposes only and in compliance with the Tollway's vehicle use policies established herein, the Tollway Policy and Procedure Manual and all applicable laws and regulations related to vehicle operation.

- A) The use or assignment of a Tollway vehicle does not automatically include approval to drive the vehicle home.

3. Unauthorized Use of a Tollway Vehicle (pp. 3-4), provides in relevant part:

Unauthorized use of a Tollway vehicle may result in immediate disciplinary action up to and including termination. Unauthorized use may also result in suspension of all privileges to operate a Tollway vehicle and may result in an employee paying for damages to a vehicle or vehicle operating costs. Below is a list of infractions that may result in suspension of privileges and disciplinary action up to an including termination (but are not limited to the following):

- A) Use of a Tollway vehicle for personal reasons other than those approved in this policy.

* * *

- E) Inaccurate, misleading or false statements made on Tollway required documents related to the vehicle usage (e.g., vehicle logs, accident report forms).

4. Driver Responsibilities (pp. 5-7), provides in relevant part:

Tollway vehicle operators are responsible for proper vehicle use and care. Any Tollway employee while in possession of a Tollway vehicle shall:

- F) Immediately report any involvement in accidents.

* * *

- N) Immediately report damage to a Tollway vehicle to the Driver's Supervisor and complete all accident/damage reporting requirements outlined herein.

Tollway vehicle operators, whose actions have damaged a Tollway vehicle or equipment as a result of abuse, neglect or inappropriate usage, may be held responsible for all repair expenses incurred by the Tollway.

5. Accident Procedures (pp. 8-9): provides in relevant part:

Tollway vehicle operators must report any and all vehicle accidents regardless of the severity. Drivers must complete the appropriate Tollway accident form and any local Agency or State Vehicle Accident form given to the driver by the Police Officer as soon as possible.

- A) In the event of an accident involving a Tollway vehicle, the following procedures are to be followed:

4. Call Tollway dispatch for State Police or contact the local law enforcement to file a Crash report regardless of extent of damage.

6. Automatic Vehicle Location (AVL) System (p. 12), provides in relevant part:

Tollway vehicles are equipped with an Automatic Vehicle Locating (AVL) device. This device transmits the vehicle location, speed and other information to a remote location and may be viewed by Tollway management.

Records obtained from the AVL system may be utilized to support disciplinary action up to and including discharge.

7. Fuel Conservation (pp. 39-40): provides in relevant part:

The Tollway has implemented fuel conservation practices to reduce the consumption of vehicle fuels. The fuel conservation programs are intended to reduce environmental impact of Tollway operations and reduce the cost of operating Tollway vehicles.

Tollway vehicle users are expected to practice the following fuel conservation measures:

- Vehicles and equipment shall not idle unless performing emergency duties or where idling is necessary, such as, operating attachments (aerial lifts, cranes, etc.) Vehicles shall not idle to warm up after starting during cold weather months for more than 5 minutes if vehicle is cold. Vehicles are not to be idled while the employee is eating lunch.

III. BACKGROUND

A. Allegations

On January 24, 2019 OIG received a report from [REDACTED], [REDACTED] indicating that Gary Michalowski, Driver Messenger, was involved in an auto accident involving a Tollway vehicle he was driving on January 22. [REDACTED] provided a copy of an accident report, two copies of AVL reports indicating the vehicle was parked at Michalowski's home for approximately 2 hours, and photographs of the damage to the vehicle.

[REDACTED] contacted OIG later to report that Michalowski had been sent for testing on January 23 and [REDACTED] said that [REDACTED] learned from [REDACTED] in Administration that Michalowski tested negative for alcohol, but the drug results might take up to 5 days. [REDACTED] said that [REDACTED], [REDACTED] told [REDACTED] that Michalowski was not sent for an alcohol/drug test on the day of the incident because the accident involved a tree and no one was hurt. [REDACTED] said that [REDACTED] was not in the office on that day, and the chart provided by the Tollway EAP vendor that is intended to assist managers in determining whether a drug/alcohol test is warranted, was confusing.

B. Subjects/Parties Involved

1. Gary Michalowski, Driver Messenger

Tollway records reflect that Michalowski has worked for the Tollway for approximately 18 years and transferred to the Procurement Department as a Driver Messenger approximately one year ago after working as a Mechanic for 17 years in the Engineering Department. He is currently assigned to the Central Warehouse. On January 29, 2019, the [REDACTED] placed Michalowski on suspension pending investigation.

IV. SUMMARY OF INVESTIGATION

A. Documents

1. Accident Report

OIG obtained a copy of the January 22, 2019 accident report submitted by Michalowski. In the report Michalowski indicated that he had an accident while driving CW-13, and claimed he had gone to his house to retrieve medical records and had stayed for a half hour.

2. Photographs of Tollway Vehicle # CW-13

OIG obtained 3 photographs taken by [REDACTED] of Michalowski's vehicle which depict damage caused by the January 22 accident. The photos show a dent in the front hood and additional front-end damage.

3. Drug Alcohol test results

On January 25, 2019 OIG received an email chain indicating that Michalowski's drug and alcohol tests came back negative.

4. Driver Log January 22, 2019

OIG obtained a copy of Michalowski's Driver Log from January 22, 2019. The Log lists eight deliveries performed by Michalowski, and none were to [REDACTED], Illinois [REDACTED], Michalowski's home address.

5. Kronos Records - December 2018 – January 2019

OIG accessed Kronos timekeeping records for Michalowski. The records reflect that Michalowski worked 27 days between December 3, 2018 and January 22, 2019.

B. Charts

1. Spreadsheet of AVL records

The OIG reviewed Automatic Vehicle Location (AVL) data on Michalowski's Tollway vehicle CW-13 from December 3, 2018 through January 22, 2019. These records reflect that this vehicle was used on 27 days during this period. On January 22, 2019 the records reflect that CW-13 was at Michalowski's residence from 11:50 a.m. to 14:17 (2:17) p.m. for a total of 2 hours and 27 minutes.

The records place this vehicle at some point during the workday at Michalowski's home on 22 of these 27 days. The duration of the visits ranges from 5 minutes to 2 hours and 27 minutes, for an average of 1 hour 22 minutes per day. On 13 of these occasions, the vehicle remained at his home for over an hour, and on five of these occasions, the vehicle remained at his home for over 2 hours. On two of the four days the vehicle is not at Michalowski's house, records place the vehicle at a Ford Dealership for 1 hour 51 minutes and a Jersey Mike's restaurant for 1 hour 20 minutes.

C. Interviews

1. [REDACTED]

On January 29, 2019, OIG Investigators met with and interviewed [REDACTED] providing [REDACTED] with administrative advisements for non-union employees which [REDACTED] read and acknowledged understanding. [REDACTED] was asked for [REDACTED] consent to audio record the interview. [REDACTED] consented to having the interview audio recorded. In summary, [REDACTED] made the following statements:

[REDACTED] is the [REDACTED] at the Warehouse and has been in that position for approximately 1.5 years. [REDACTED] is responsible for the inventory at the Warehouse and the distribution of all the items at the Warehouse [REDACTED] also backs up the [REDACTED] when necessary.

When something is ordered, the Warehouse staff picks the item for delivery and it is loaded on a truck at the end of the day for the following day's delivery. The delivery truck drivers will sometimes assist with loading of the trucks.

With regard to assignment of trucks, [REDACTED] said since [REDACTED] has been at the Warehouse, the drivers typically drive the same vehicles. "Their truck is their truck." [REDACTED] said the drivers drive the same trucks every day, and they keep their personal items in their respective vehicle. There are currently 5 drivers at the Warehouse: [REDACTED], [REDACTED], [REDACTED], [REDACTED], and Michalowski. Every Friday assignments are written on a whiteboard, and their routes change once a week.

Most of the deliveries are of auto parts. Drivers have a driver log that they have signed to indicate receipt of an item delivered. The log has either the driver's name or truck number on it. Drivers can stop at Tollway locations to have lunch, or they can go off the Tollway to pick up lunch at a restaurant. Drivers do not have permission to go home in the Tollway's truck. If they

need to go home, they would be required to return to the Warehouse and pick up their own personal vehicle first. ■ said this has never occurred. ■ is familiar with the Tollway's policies and the vehicle policies.

Michalowski drives vehicle number CW-13 and has been driving it ever since ■ has worked at the Warehouse. ■ said that Michalowski has never asked to go home during his shift, and if he had, ■ would tell him to return to the Warehouse and take his personal vehicle.

On January 22, 2019, Michalowski called ■ at approximately 3:00 to report that he had an accident at his home and was on his way back to the Warehouse. ■ told Michalowski to return to the Warehouse, and ■ would take pictures of the damage and ■ would have to complete an accident report and send it to ■, Fleet Manager.

■ contacted ■ to let ■ know about the accident. Michalowski indicated in his written accident report that the accident occurred at his home. ■ advised ■ of this. ■ said ■ checked the AVL and noted that Michalowski had been at his home for approximately 2 hours with the vehicle idling the entire time. Michalowski and ■ never discussed the fact that Michalowski had taken the truck to his home for over 2 hours and left it idling the entire time. Michalowski did not get a police report, and ■ did not tell him to get one when he called in the accident. ■ asked him when he turned in the accident report form if he had gotten a police report, and Michalowski said he didn't because it happened on his private property. ■ took pictures of the damage to Michalowski's truck.

A driver could open the truck door and put a warehouse item in the truck, but the drivers do not have access to where the Warehouse items are located. The drivers do not pick items. There are no cameras in the Warehouse.

Drivers are not required to reflect their lunch on any time records. There is no reason for a driver to be at an independent auto dealer during his shift. The drivers are not required to log where they stop, but they do have the driver's log that shows where items are to be delivered.

2. Gary Michalowski, Messenger Driver

On January 29, 2019, OIG Investigators met with and interviewed Gary Michalowski (Michalowski), Driver Messenger, providing him with administrative advisements for union employees, which he read and acknowledged understanding. Michalowski was present with his union representative ■. Michalowski was asked for consent to audio record the interview. Michalowski consented to having the interview audio recorded. In summary, Michalowski made the following statements:

He has worked at the Tollway for 18 years. He was a master mechanic for 17 of the 18 years. He began at M-02, and worked on squad cars at central shop. Michalowski transferred to Procurement as a Driver Messenger about a year ago and is assigned to the Warehouse.

Michalowski reviewed a copy of an acknowledgment and receipt, obtained from his personnel file, indicating that he had received and signed for a copy of the Tollway's Policy and Procedures

Manual, which he acknowledged signing in 2016. Michalowski said he didn't read the document. Michalowski reviewed an acknowledgment and receipt, obtained from his personnel file, indicating that he had received and signed for a copy of the Tollway's Vehicle Policy Manual, which he acknowledged signing in 2003.

When asked to describe his duties as a Driver Messenger at the Warehouse, Michalowski said he drives to the maintenance sites and toll plazas delivering supplies and parts to all of them. He also goes off the road to deliver maps in eastern Illinois and in Rockford. He receives his assignments, which rotate, on a board at the Warehouse. Sometimes he does double assignments depending on staffing availability. His supervisor is [REDACTED], and [REDACTED] is [REDACTED] supervisor. Sometimes [REDACTED] gives assignments if [REDACTED] is not there.

Everyone who is available helps load the trucks at night including the Driver Messengers. Warehouse staff members pick the items to be loaded into the trucks. He gets a route sheet/log with his items to deliver. He gets signatures for paychecks that he delivers. He has people sign for mail as well. He has been assigned vehicle CW-13 ever since he began working at the Warehouse. He parks the vehicle in the Warehouse, especially during the wintertime, so it starts and for security reasons since it is loaded.

He recently had an accident with Tollway vehicle CW-13 on Wednesday, January 23, 2019². Michalowski explained that he had gone home for lunch after he finished his route. When he arrived home, he backed into the driveway put down salt around the truck and went inside to get eat lunch and get some medical forms that he was going to show his boss since in the last few months his [REDACTED]. After lunch, he got back into the truck to leave and, where the driveway changes from concrete to asphalt and slightly curves, the vehicle slid on ice and hit an oak tree. After he hit the tree, he got salt and put it around the tires on the ground, and he was able to back the vehicle right out. On his way to the Warehouse, he called [REDACTED] to tell [REDACTED] he had an accident at home. [REDACTED] told him to bring the vehicle to the Warehouse, and he returned to the Warehouse. When asked, he said he did not obtain a police report and said he didn't even think about it because it was on private property and he hit his tree.

Michalowski said [REDACTED] advised [REDACTED], who looked up the vehicle on the Automatic Vehicle Locating System (AVL). [REDACTED] said he had to be drug and alcohol tested the following day as a result of the accident. He was given a random test and had to go back to do an after-accident test.

Michalowski did not tell anyone including his supervisor that he took the Tollway vehicle home. He said he was there for 45 minutes to 1 hour. When asked if it was possible that he was there longer than an hour, he said he could have been, and may have lost track of time. He said he may have lost track of time while he was at home having lunch and obtaining his medical records. He said he would have normally gone back to the Warehouse and waited in the parking lot until 3:00 p.m., when it was time to load the trucks. Michalowski said he doesn't always take the Tollway vehicle home, but he does go home for lunch, and he uses the Tollway vehicle for that. It's on his way back to work most of the time. Sometimes he'll stop at McDonalds or Wendy's to eat lunch.

² Michalowski stated that the accident occurred on the 23rd of January but it actually occurred on the 22nd of January.

Michalowski said he didn't know whether the Procurement Department had a concrete policy about using a Tollway vehicle to go home. He is usually up front with his supervisor, [REDACTED]. In other instances when he has gone home during his shift, he said there is no reason he would be there longer than an hour unless he was waiting at home instead of waiting in the parking lot at the Warehouse. Sometimes he is finished with his deliveries before lunchtime.

Other than home or a restaurant, he would not go anywhere else with the Tollway vehicle other than to make deliveries or pick something up. He stopped at a Ford Dealership to have lunch one other time. He is aware that the Tollway vehicle has GPS on it.

Michalowski was advised that the GPS shows that he often goes home and stays there for more than 2 hours at a time. He said he does not tell anyone when he does this or when he makes other stops. He estimates that 50% of the time he is working he makes stops at places other than work, like home, restaurants, the Ford Dealership, and a Welding Supply business. Sometimes he goes home and then goes to a restaurant; he does this to check on things at home and check on [REDACTED]. He says he does this sometimes to "waste some time" or to "get [his] eyes off the road."

When asked if he knew he was not supposed to do what he is doing with the Tollway vehicle, he said he knew he wasn't supposed to, but he wasn't sure because he thought rules were more lax in the Procurement Department than in the Engineering Department. He is not aware of anyone else doing the same thing. But he has heard things in the past like, "don't get caught." He has heard of things like people running home before, but did not identify anyone specifically.

Michalowski reviewed a printout from December through January of vehicle locations for Tollway vehicle CW-13. The printout shows when he arrives home and when he leaves and many instances that show him there for longer than an hour. Michalowski admitted that "it looked horrible," and he didn't realize how long he had been at home on those days. When shown similar instances when he went home for more than an hour and then went to a restaurant afterwards, he said that's probably because he didn't have anything to eat at home.

He started making trips home when they got slowed down doing SAP about a year ago. He's not sure if he has been doing it for longer than a year. His home is only five minutes from work, and he didn't think it was an issue. When asked if he leaves the truck idling, he said sometimes he does. Specifically, on the day of his accident he did because there was ice out, and he didn't want it freezing up. Sometimes he washes the truck at his home during his shift. Michalowski said he didn't know he was not supposed to leave the truck idling. He leaves it idling for air conditioning or heat or because conditions call for it.

He admitted that there was a policy against leaving the vehicle idling for extended periods of time, but claimed that "no one follows it." Michalowski explained that on snow plows the risk of frozen hydraulic pumps necessitated idling in cold weather.

He never uses another vehicle other than CW-13 unless he's assigned it. He does not complete a vehicle usage log when he uses a Tollway vehicle because the mileage is tracked when he refuels. He does not think rules must be strictly adhered to in the Procurement Department like

they are in the Engineering Department. No one else uses his vehicle CW-13. When asked what should happen as a result of his vehicle usage he said he thinks he should get a slap on the wrist.

V. ANALYSIS

OIG's investigation included confirming the events of January 22, 2019 and an examination of Michalowski's recent historical time/attendance and vehicle use. Based on this investigation, we have identified sustained violations as more fully described below.

January 22, 2019

The evidence shows, and he acknowledges, that on January 22, 2019, Gary Michalowski took his assigned vehicle home and stayed there approximately 2.5 hours. His supervisor, [REDACTED], said that [REDACTED] did not know that Michalowski was going home and did not approve it. [REDACTED] further stated that Messenger Drivers are not permitted to go home during the day without approval and, on the rare occasion that approval is granted, they would have to use their own vehicle. Michalowski claims he went home to gather medical records, but he admits he did not tell his supervisor that he was going home and never received approval to do so using his assigned Tollway vehicle. In addition, Michalowski more than doubled the 1 hour of break and mealtime permitted by Tollway policy.

In addition, Michalowski let his Tollway vehicle idle for the entire time he was at home, wasting fuel and violating Tollway policy. To make matters worse, Michalowski crashed his vehicle and caused damage to the hood and front end that required repair. Michalowski failed to report the accident to ISP Dispatch or local law enforcement or obtain a police accident report, as required by the Tollway Vehicle Manual. And in his post-accident report, completed at [REDACTED] request, Michalowski claimed he was at home for thirty minutes before he crashed into a tree while backing out of his driveway. As noted above, AVL records show that Michalowski was actually at his house for almost 2.5 hours – a five-fold increase. This dramatic difference strongly suggests that he intentionally minimized the time he was at home, and, in so doing, submitted a false report.

This OIG investigation has established reasonable cause to find that Michalowski violated numerous Tollway vehicle and employee conduct policies on January 22, 2019 when, without supervisor approval, he drove his assigned Tollway vehicle to his home, remained at his home for nearly 2.5 hours with the vehicle idling, and then caused damage to this vehicle by driving into a tree and failing to follow post-accident procedures. His conduct constituted time/attendance fraud, misuse of Tollway property, waste of Tollway resources, and damage to Tollway property.

Despite the fact that the accident caused damage to Tollway property, Procurement advised OIG that Michalowski was not sent for drug/alcohol testing until the next day, January 23, 2019. [REDACTED] acknowledged that Michalowski should have been sent for testing on the day of the accident. He attributed this failure to the unique circumstances of this accident (at employee residence; no injuries, etc.) and general confusion or misunderstanding of Tollway testing requirements that was exacerbated by an unclear chart provided by the Tollway EAP provider.

Pattern of Time/Attendance Fraud and Misuse of Tollway Property

Tollway records for the months of December and January show that Michalowski's trip home on January 22 was not an anomaly, but a well-developed routine. Specifically, Michalowski drove his assigned Tollway vehicle home on 22 of the 27 days he worked during this period - more than 80% of the time. In addition, on 18 of those days he remained at his home for more than 1 hour and sometimes stayed there nearly 2.5 hours at a time. When shown print outs reflecting his trips home and the time spent there, Michalowski admitted that "it looked horrible," and said he didn't realize how long he had been at home on those days.

Michalowski admitted that he did not tell his supervisor or get approval to drive his assigned vehicle to his home during the work day. In fact, [REDACTED] expressly stated that Messenger Drivers are expected to eat lunch in the field if they are making deliveries, but are *not* permitted to go home for lunch. Michalowski told the OIG that he goes home to have lunch so he can eat something healthy or to check on [REDACTED], and he estimated that in the last year he has taken the Tollway vehicle home while on the clock on half of his workdays. He claimed that because his home is only five minutes from work he didn't think it was an issue. He further explained that sometimes he went to restaurants after going home (sometimes for more than an hour) probably because he didn't have anything to eat at home.

Michalowski initially claimed that he didn't know until the OIG interview that it was a violation of policy to take the Tollway vehicle home, and indicated that he somehow thought, without citing any support, that Procurement policies were less strict than Engineering policies. However, even assuming his claim is credible (which is dubious given his long tenure with the Tollway), Michalowski later claimed that others (unidentified) were doing this and that his understanding of taking the Tollway vehicle home is, "just don't get caught."

Michalowski also explained that he sometimes finishes his deliveries before lunchtime, and might be at home for more than an hour because he was waiting at home instead of waiting in the parking lot at the Warehouse. He also said he would go home sometimes "to waste some time and get [his] eyes off the road." Finally, Michalowski admitted to going to non-Tollway locations, like a Ford Dealership (allegedly for lunch) or a Welding Supply store, during his work shift.

Michalowski conceded that he sometimes left the vehicle idling while he was at home in order to keep the van warm or air-conditioned (depending on the weather), and initially said he did not know that was prohibited. However, he later admitted that there was a policy against leaving the vehicle idling for extended periods of time, but claimed that "no one follows it."

OIG's further investigation established reasonable cause to find that Michalowski regularly committed time and attendance fraud and misuse of Tollway property by taking his assigned Tollway vehicle to his home and remaining at home, with the vehicle idling, often in excess of any allowable break period, without supervisor approval.

Michalowski's explanations and rationalizations for his actions do not provide any credible defense or plausible justification; in fact his statements reflect an employee more concerned about maximizing his own personal agenda than accomplishing the work he is paid to perform during the work day. He claimed he was unsure if going home with his Tollway vehicle was wrong, but knew he shouldn't get caught doing it. He justified his long stays at home by claiming he sometimes completed his deliveries before lunch and would just be sitting in his vehicle at the Warehouse. He knew he was not supposed to keep the vehicle idling for long periods, but said he did it to keep the van warm or air conditioned, despite the fact that he does not transport perishable goods.

VI. RECOMMENDATIONS

A. Gary Michalowski

Michalowski's numerous Tollway policy violations on January 22, 2019 support the imposition of significant discipline on its own. In addition, he should be required to reimburse the Tollway for costs for damages he caused hitting a tree while backing out of his driveway. However, our investigation demonstrated that this incident was only different because of the accident. In fact, records expose Michalowski's consistent routine of driving his Tollway vehicle home and, on most of those days, staying there for more than an allotted break period with the vehicle idling. In doing so, he repeatedly deprived the public of his services, and misused Tollway resources. As described above, Michalowski's explanations provide no defense and actually reveal an underlying disdain for basic employee responsibilities. This is a clear violation of public trust. For this reason, we recommend that Michalowski be terminated, and be required to reimburse the Tollway for the vehicle repairs.

B. Tollway Drug and Alcohol Testing

This case highlights a concern with the Tollway drug and alcohol testing procedures and the lack of training provided to employees and managers. Tollway policy requires drug/alcohol testing following accidents involving Tollway vehicles within certain specific timelines. However, Michalowski was not sent for testing until the next day, apparently because of a misunderstanding. To avoid such misunderstandings, the Tollway should provide more training and frequent reminders for employees and managers about the drug/alcohol testing process. The Tollway should also consider creating a Frequently Asked Questions document to provide answers to common questions about this process and post it on Crossroads and at all Tollway worksites.

C. Vehicle Use

We recommend that a copy of the current Tollway Vehicle Policy Manual be placed in all Tollway vehicles, along with a checklist of things to do in the event of an accident.

In addition, to improve monitoring vehicle use, the Tollway should more fully utilize the AVL system and require managers to conduct spot checks of employees who drive Tollway vehicles for work. The Tollway should also consider creating boundaries (or geo-fences) around the

residences of employees with assigned vehicles to provide notification to managers if an assigned vehicle enters that area.

D. Monitoring Employees

Michalowski claimed that he sometimes finished deliveries early but went home or otherwise "wasted time" instead of going back to the warehouse. Given that Michalowski was able to regularly spend sometimes more than 2 hours on non-Tollway work and still apparently complete his work, it appears that he may have been underutilized. In order to better track Messenger Driver's work, we recommend that the Driver's Logs include an entry for time of delivery to be filled in by the person signing for the package.

VII. RULE VIOLATIONS

This investigation has established that Gary Michalowski violated the following:

A. Illinois Tollway Policies and Procedures Manual

1. Chapter 1. General Policies and Responsibilities;
Section A. Fundamental Principles;

Failure to exhibit integrity expected of public employee.

2. Chapter 5. Hours of Work
Section B: Break Periods;

Repeatedly exceeding allowable break periods.

Section C Timekeeping:

Repeated failure to ensure that time keeping accurately reflected personal leave.

3. Chapter 6. Use of Tollway Property/Employee Responsibilities
Section A. Tollway Issued Property;

Misuse of Tollway vehicle. Waste of Tollway resources.

Section E. Vehicle Operation:

Repeated violation of Vehicle Policy Manual (as detailed more fully below)

4. Chapter 7. Employee Conduct and Discipline
Section A. Employee Conduct;

Repeated violations of the Tollway Code of Conduct, including, but are not limited to, the following:

- Failure to follow Tollway or Departmental policies or procedures, including safety rules
- Falsification of timekeeping, attendance or employment records
- Improper use of Tollway vehicle
- Neglect of duties
- Negligent or intentional conduct leading to damage of Tollway or customer property
- Unauthorized personal use of Tollway equipment
- Unsafe or improper use of equipment or vehicles

B. Illinois Tollway Vehicle Policy Manual

1. General Policy (pp 1-2):

Failure to follow the Policies and Procedures established for Tollway vehicle operation may result in disciplinary action up to and including termination.

2. Operation, Vehicle Use (p. 3):

Misuse of assigned Tollway vehicle; taking Tollway vehicle home without approval.

3. Unauthorized Use of a Tollway Vehicle (pp. 3-4):

A) Use of a Tollway vehicle for personal reasons other than those approved in this policy.

* * *

E) Inaccurate, misleading or false statements made on Tollway required documents related to the vehicle usage (e.g., vehicle logs, accident report forms).

4. Driver Responsibilities (pp. 5-7):

Failure to obtain police report for accident involving Tollway vehicle.

* * *

Tollway vehicle operators, whose actions have damaged a Tollway vehicle or equipment as a result of abuse, neglect or inappropriate usage, may be held responsible for all repair expenses incurred by the Tollway.

5. Accident Procedures (pp. 8-9):

Failure to follow post-accident procedures.

6. Fuel Conservation (pp. 39-40):

Failure to follow Tollway fuel conservation practices.