



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report
Department of Labor and Industries

Published July 13, 2017

Report No. 1019511





**Office of the Washington State Auditor
Pat McCarthy**

July 13, 2017

Joel Sacks, Director
Department of Labor and Industries

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 17-004 at the Department of Labor and Industries.

The State Auditor's Office received an assertion of improper governmental activity at the Department. This assertion was submitted to us under the provisions of Chapter 42.40 of the Revised Code of Washington, the Whistleblower Act. We have investigated the assertion independently and objectively through interviews and by reviewing relevant documents. This report contains the result of our investigation.

If you are a member of the media and have questions about this report, please contact Assistant Director for Communications Kathleen Cooper at (360) 902-0470. Otherwise, please contact Whistleblower Manager Jim Brownell at (360) 725-5352.

Sincerely,

Pat McCarthy
State Auditor
Olympia, WA

cc: Governor Jay Inslee
Todd Bishopp, Audit Coordinator
Kate Reynolds, Executive Director, Executive Ethics Board
Jacque Hawkins-Jones, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertions and results

During an accountability audit our Office conducted, we found that a Department of Labor and Industries (Department) employee, a vocational services specialist, and an interpretive service provider shared the same address. Further inquiry revealed the employee (subject) is a registered agent of the provider, an interpreter service. The auditor requested a copy of a conflict of interest form, and the Department did not have one on file. Subsequently, our Office self-initiated a whistleblower investigation into whether the subject's position would allow her to direct business to the interpreter service.

Although we found the subject's position would allow her opportunities to direct business to the service, we found no evidence that this occurred. Therefore, we found no reasonable cause to believe an improper governmental action occurred.

Background

The Department's early-return-to-work program (Program) helps injured workers (claimants) return to work as soon as medically possible. The subject acts as a coordinator between medical professionals and the employer to create medically appropriate return-to-work options.

We spoke with a Department regional manager, who explained that the Department contracts with CTS Language Link (CTS). CTS provides interpreters, by telephone, to assist Department employees when communicating with claimants who do not speak English. When a claimant needs interpreter services, the claim is flagged and the preferred language is indicated in the Department's claim management system. Each claimant who enters the Program is assigned a specialist. When the specialist needs to communicate with the claimant, it is standard procedure for the specialist to call CTS, which then initiates a conference call with the claimant and the specialist. Most interactions between the specialist and the claimant occur over the phone.

If the claimant needs interpreting services for medical appointments related to their claim, they can select an interpreter from providers other than CTS. CTS is used only when Department employees initiate contact.

About the Investigation

We reviewed all claims assigned to the subject from August 1, 2015, through August 31, 2016. Of the 215 claims, we found seven claims assigned to the subject for which her spouse's business had provided a service. We examined the seven claims using the Department's billing and claim management system and found:

- Four claims were reassigned before the subject began working with the claimants.

- One claim had services provided after the subject's involvement with the claim ended.
- Two claims had services provided during her involvement with the claimant.

In one of these last two claims, the service was provided more than three months after the subject began working with the claimant. The subject's supervisor said she did her best to avoid assigning the subject to claims that her spouse's business had provided a service. She said when she inadvertently assigned claims involving the business, the subject notified her and she reassigned the claims.

In the last claim, we found the spouse's business had provided a service before the subject's assignment of the claim. The subject's supervisor said that was an error on her part and she would be more meticulous about making assignments in the future.

During an interview, the subject said she follows Department procedure for initiating interpreter services, which is calling CTS. She said on occasions when they need an in-person interpreter, the claimant brings their own. The subject said it is the responsibility of the claim manager, not the specialists, to direct claimants to interpreter services.

When asked why there was no conflict of interest form in the subject's personnel file, her supervisor said she consulted with a Department human resources employee who said the subject did not need a form on file.

Although we found the subject was in a position to refer claimants to her spouse's business, we found no evidence that it occurred. We found the Department failed to put adequate procedures in place to ensure the subject was not in the position to make referrals.

State Auditor's Office Concluding Remarks

We thank Department officials and personnel for their assistance and cooperation during the investigation.

WHISTLEBLOWER INVESTIGATION CRITERIA

We came to our determination in this investigation by evaluating the facts against the criteria below:

RCW 42.52.020 - Activities incompatible with public duties.

No state officer or state employee may have an interest, financial or otherwise, direct or indirect, or engage in a business or transaction or professional activity, or incur an obligation of any nature, that is in conflict with the proper discharge of the state officer's or state employee's official duties.

RCW 42.52.030 - Financial interests in transactions.

(1) No state officer or state employee, except as provided in subsection (2) of this section, may be beneficially interested, directly or indirectly, in a contract, sale, lease, purchase, or grant that may be made by, through, or is under the supervision of the officer or employee, in whole or in part, or accept, directly or indirectly, any compensation, gratuity, or reward from any other person beneficially interested in the contract, sale, lease, purchase, or grant.

RCW 42.52.040 - Assisting in transactions.

(1) Except in the course of official duties or incident to official duties, no state officer or state employee may assist another person, directly or indirectly, whether or not for compensation, in a transaction involving the state:

(a) In which the state officer or state employee has at any time participated; or

(b) If the transaction involving the state is or has been under the official responsibility of the state officer or state employee within a period of two years preceding such assistance.

(3) A business entity of which a state officer or state employee is a partner, managing officer, or employee shall not assist another person in a transaction involving the state if the state officer or state employee is prohibited from doing so by subsection (1) of this section.