



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report

Health Care Authority

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June 28, 2018

Sue Birch, Director
Health Care Authority

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 18-001 at the Health Care Authority.

The State Auditor's Office received an assertion of improper governmental activity at the Authority. 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
Lynda Karseboom, Audit & Accountability Manager
Kate Reynolds, Executive Director, Executive Ethics Board
Cristopher de la Peña, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertions and Results

Our Office received a whistleblower complaint asserting a Health Care Authority (Department) employee (subject) used state resources for personal purposes and failed to submit leave for absences from work.

We found reasonable cause to believe improper governmental actions occurred.

Background

In November 2013, the subject completed a form requesting a schedule change from five eight-hour days to four 10-hour days. Although the subject's supervisor signed the form approving the change, it was not entered into the Department's timekeeping system until June 13, 2017. From November 18, 2013, through June 12, 2017, the subject was unable to enter leave for a full day's absence because the leave system would not accept 10 hours of leave for an eight-hour workday. On June 5, 2017, the subject's new supervisor became aware of this discrepancy, and the Department opened an investigation into the subject's use of leave.

When our Office notified the Department of our investigation, we learned there was an ongoing internal investigation regarding the subject's leave. To avoid duplicating efforts, our Office agreed to review the results of the Department's investigation relative to the leave issues. Our Office investigated the subject's personal use of state resources.

Additionally, during our Office's investigative period, July 14, 2016, through July 13, 2017, the subject worked as a broker for a real estate company, unrelated to her official state duties.

About the Investigation

In addition to reviewing the Department's investigation, we reviewed the subject's emails from July 14, 2016, through July 13, 2017.

We also obtained the subject's hard drive and created a forensic report based on the data retrieved. Because data stored on hard drives is overwritten according to a computer's normal processes, the volume and usefulness of available data varies. In this case, our Office was able to retrieve reliable data only for November 22, 2016, through July 13, 2017.

Personal use

We found 27 emails related to real estate, of which eight were to and from a real estate client. Additionally, we found 12 emails that included videos or photos of homes for sale, which the subject said she had taken using her state-issued cellphone.

Our review of the hard drive found that between February 15, 2017, and May 27, 2017, the subject spent 465 minutes browsing websites unrelated to her work, of which 235 related to her real estate business. Of the 235 minutes, 136 minutes were over a two-day period. The remaining 230 minutes she spent on email and chat websites, travel, shopping, banking and other miscellaneous sites.

Additionally, we found nine files containing real estate contracts and contract addendums; the subject was listed as the real estate broker on seven of the real estate contracts.

During an interview with our Office, the subject acknowledged that she had used her state laptop and cellphone for non-work-related purposes, including her real estate business. She said that at one time her current supervisor told her she could use her state laptop for personal use as long as it was outside her business hours. She said she now knows that is not allowable.

We spoke with the subject's supervisor, who acknowledged that he did have a conversation with the subject regarding her use of the state laptop, but could not recall if it was specific to using the laptop for her real estate business or general personal purposes. He said that since then he has learned that this is not acceptable.

A state ethics rule (WAC 292-110-010(3)(a)) permits the de minimis personal use of state resources as long as certain criteria are met, including that the use is not for the purpose of conducting an outside business, in furtherance of private employment or to realize a private financial gain.

We found reasonable cause to believe an improper governmental action occurred.

Leave

The Department's investigator reviewed the subject's swipe card entry logs, emails, Outlook calendar, travel reimbursements and leave to determine whether the subject had worked the required number of hours each week or submitted leave for her absences.

The Department's investigator created a chart to calculate the hours the subject worked and her leave usage from September 12, 2016, through September 9, 2017. To stay within our investigative period, we limited our review of the Department's investigation to September 12, 2016, through July 13, 2017. We reviewed the evidence collected by the Department's investigator and calculated that the subject failed to submit about 36 hours of leave.

During an interview with our Office, the subject said that when she first encountered difficulties with submitting leave, she contacted someone in human resources. She could not recall whom she spoke with, but after several unsuccessful attempts to correct the problem, she and her previous supervisor agreed she could make up the hours she was unable to submit as leave. The subject said that neither she nor her previous supervisor tracked the hours she needed to make up. She acknowledged the lack of tracking might have resulted in her failure to submit leave for all hours not worked.

We found reasonable cause to believe an improper governmental action occurred.

Department's Plan of Resolution

The Washington State Health Care Authority (HCA) thanks the Auditor's Office for its work on this matter. HCA's Human Resources Office conducted an investigation into the subject's use of state resources and leave after being made aware of the schedule conflict. As confirmed by the State Auditor's Office, the investigation found the subject misused their work laptop and email, and did not submit leave for time not worked.

The agency took disciplinary action against the subject. The supervisor is no longer over that work unit and the manager has separated from the agency.

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 42.52.160(1) - Use of persons, money, or property for private gain.

(1) No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

WAC 292-110-010(1) and (3) - Use of state resources.

(1) Statement of principles. All state employees and officers are responsible for the proper use of state resources, including funds, facilities, tools, property, and their time. This section does not restrict the use of state resources as described in subsections (2) and (3) of this section.

(3) Permitted personal use of state resources. This subsection applies to any use of state resources not included in subsection (2) of this section.

(a) A state officer or employee's use of state resources is de minimis only if each of the following conditions are met:

- (i) There is little or no cost to the state;
- (ii) Any use is brief;
- (iii) Any use occurs infrequently;
- (iv) The use does not interfere with the performance of any state officer's or employee's official duties;
- (v) The use does not compromise the security or integrity of state property, information systems, or software;
- (vi) The use is not for the purpose of conducting an outside business, in furtherance of private employment, or to realize a private financial gain; and
- (vii) The use is not for supporting, promoting the interests of, or soliciting for an outside organization or group.