



Office of the Washington State Auditor
Pat McCarthy

Whistleblower Investigation Report
Department of Health

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October 18, 2018

John Wiesman, Secretary
Department of Health

Report on Whistleblower Investigation

Attached is the official report on Whistleblower Case No. 18-020 at the Department of Health.

The State Auditor's Office received an assertion of improper governmental activity at the Agency. 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 Director of 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
Lydia Hoffman, Internal Auditor
Kate Reynolds, Executive Director, Executive Ethics Board
Jennifer Wirawan, Investigator

WHISTLEBLOWER INVESTIGATION REPORT

Assertion and results

Our Office received a whistleblower complaint asserting a Department of Health (Department) employee (subject) failed to submit leave for all of his absences from work. The complaint also asserted the subject used state resources for non-work-related purposes.

We found reasonable cause to believe an improper governmental action occurred when the subject used his state email account to send and receive personal emails. We were unable to determine whether the subject failed to submit leave for all of his absences from work.

About the Investigation

Time

It is the practice of our Office to obtain a copy of the subject's hard drive when investigating allegations of personal use violations. We typically review a year of user data such as internet browsing and event logs, which show when a person logs on and off their computer. Before being notified of this investigation, the Department had updated the subject's computer. Because of the update, all of the data stored on his hard drive was deleted. Therefore, our review of the subject's data was limited to 10 weeks from January 15, 2018 through March 23, 2018.

In addition to the hard-drive data, we reviewed the subject's door-entry logs and leave reports, and a year of his emails.

The subject's schedule was from 8 AM to 5:30 PM, with a 90-minute lunch. We found he regularly arrived at work just before 9 AM, appeared to take lunches exceeding 90 minutes, and did not stay past 5:30. As a result, the subject worked or used leave for 359.8 hours or an average of 36 hours each week.

The subject disagreed with our data related to his lunch break. He said he typically does not take a 90-minute lunch, only doing so when he goes to the gym, which is not a regular occurrence. In some instances, after reviewing his calendar, he was able to provide evidence to support that he was working during some of the questioned lunches. For half the days, he said he might have taken an hour lunch break to make up for missed time. However, he was unable to provide evidence to support his response, and it is inconsistent with his typical behavior of noting shorter lunches on his calendar.

When asked if he had any issues with our determinations regarding his late arrivals to work, he said he had not compared our arrival times with his calendar. He said that when he arrived after 8 AM, or extended his 90-minute lunch break, he finished his workday at home. Because the subject's hard drive did not show any use by the subject past 5:30, we asked if he used a home computer. The subject said he does not use a computer at home for work, he would print documents

and take them home to read or edit by hand. He said that he works from home in the evening two or three times a week to have dinner with his family and for a change of scenery. The subject identified a few occasions when he ended his day early, but failed to submit leave. The subject said he and his supervisor had an understanding about when and where he worked and that he does not keep her apprised of his work hours or location. He said he can flex his time from day-to-day, but either works or uses leave for 40 hours each week. The subject said that during the investigative period, he did not have a teleworking agreement in place.

We spoke with the subject's supervisor, who said she did not know what the subject's schedule was during the review period. She said that her expectation is that the subject get his work done and meet deadlines, and as long as he does that, she is not concerned with when and where he works. When asked about how the subject finished his workday at home, she said he does not have a Department laptop and she believes the subject prints out documents he needs to read. His job requires a lot of reading, and she assumes that if he edits the documents at home he enters the edits into the computer when he returns to the office. They did not have a specific agreement in place regarding teleworking.

Because the subject did not use a state computer to telework, and his supervisor did not have expectations regarding his schedule or what work was conducted at home, we were unable to determine whether an improper governmental action occurred.

Emails

During our review of the subject's emails, we found he had sent or received 211 personal emails between March 2017 and March 2018. The majority of the emails were between the subject and his wife, discussing their child's college education.

A state ethics rule (WAC 292-110-010(3)(a)) requires all state employees to be responsible for the proper use of state resources. The rule permits the de minimis personal use of state resources as long as the use meets certain criteria, including that the use is brief and infrequent. The subject's use of his state email account to send and receive personal emails was not infrequent. Therefore, we found reasonable cause to believe an improper governmental action occurred.

Department's Plan of Resolution

Thank you for the opportunity to review and respond to the State Auditor's Office (SAO) report on Whistleblower Case Number 18-020. The Department of Health takes the assertions seriously and appreciates the assistance of the SAO in developing important facts in its investigation.

In accordance with applicable collective bargaining agreements and agency policy, the department will afford the employee an opportunity to respond to the Auditor's report. Based on the outcome of that process, the department will take appropriate action, which may include formal disciplinary action up to and including dismissal.

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) - 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.