

OFFICE OF INSPECTOR GENERAL



REPORT OF INVESTIGATION

FILE ID NUMBER: 2004074

AGENCY: Department of Administrative Services,
Equal Opportunity Division

BASIS FOR INVESTIGATION: Written Complaint

ALLEGATIONS: Mismanagement

DATE RECEIVED: March 24, 2004

INVESTIGATED BY: Thomas P. Charles
Inspector General

Joseph R. Montgomery
Deputy Inspector General

DATE OF REPORT: June 28, 2004

I. BASIS FOR INVESTIGATION

On March 24, 2004, the Office of the Inspector General received a letter from a complainant who requested confidentiality and alleged that the Department of Administrative Services (DAS) Equal Opportunity Division (EOD) assistant deputy director improperly received payment of over \$11,000 for denied vacation time.

II. ACTION TAKEN IN FURTHERANCE OF INVESTIGATION

In the process of investigating this matter, we interviewed DAS employees and reviewed state laws, DAS policies, and payroll records.

III. DISCUSSION

The accrual of vacation time for state employees is determined by years of service. Employees with less than five years of service earn 80 hours of vacation per year, while employees with 25 years of service earn 240 hours per year. State employees are not permitted to accrue more than three years of vacation. Any hours in excess of three years' worth of accrued vacation accrual are subtracted from an employee's balance.

An exception to this law is provided for in section 124.134¹ of the Ohio Revised Code. This law entitles exempt employees (those not covered by a collective bargaining agreement) to be paid for denied vacation when they have accrued the maximum three years of vacation.

¹ "If an employee's vacation leave credit is at, or will reach in the immediately following pay period, the maximum of the accrual for three years and the employee has been denied the use of vacation leave during the immediately preceding twelve months, the employee, at the employee's request, shall be paid in a pay period for the vacation leave the employee was denied, up to the maximum amount the employee would be entitled to be paid for in a pay period."

Allegation: *EOD Assistant Deputy Director Wesley Lee stole \$11,957.60 by being paid for denied vacation leave during 2002 and 2003.*

We reviewed Lee's payroll records and found that he was paid for 80 hours of denied vacation leave on four occasions: the pay periods ending April 20, 2002, February 22, 2003, July 12, 2003, and December 27, 2003.

Lee was at, or near, the maximum vacation accrual rate each time that he was paid for vacation. Had he not sought payment² for the vacation leave that he requested, he would have lost the vacation hours as he would have accrued hours in excess of the maximum allowed by law.

The complainant alleged that Lee's supervisor, EOD Deputy Director Wiley Clodfelder, purposely denied Lee's vacation leave requests so Lee could get paid for the hours, rather than lose them. We found that Lee used 82 hours of vacation in 2002 and 162 hours in 2003. The vacation usage was for one or several days, rather than weeks at a time. When interviewed regarding Lee's denied vacation requests, Deputy Director Clodfelder cited "operational concerns" as the basis for disallowing requests for two-week vacations. Ohio law permits payment for denied vacation leave. We see no reason to second-guess his judgment in an area of management discretion.

Accordingly, we do not find reasonable cause to believe a wrongful act or omission occurred in this instance.

² However, while Lee was entitled to payment for his vacation leave, we take issue with the informal process employed to request payment. State employees are required to submit DAS leave request forms when requesting time off. The employee's supervisor is required to then approve or deny the written request and return a copy to the employee. However, we found that Lee failed to submit leave request forms to his supervisor. Instead, he obtained only a verbal denial of his 80-hour leave requests and obtained payment by personally sending an email to the DAS payroll office.

IV. MANAGEMENT ISSUES

During this investigation, we found that DAS Payroll Letter 638, dated July 21, 1993, stated, “exempt employees may be paid for up to 80 hours of vacation leave in a calendar year” upon reaching their maximum vacation balance and having vacation leave denied within the previous twelve months. We learned Payroll Letter 638 was more restrictive than state law. DAS officials revised this payroll letter after we informed them of the improper limitation.

V. OTHER ISSUES

On March 24, 2004, we received this complaint with the name and address of a DAS EOD employee who requested confidentiality. Subsequently, we sent a letter to this person’s home address confirming receipt of the complaint, and providing notice that an investigation would be initiated. This employee then reported to our office and notified us that she had not filed the complaint – that another person had used her name on the complaint letter.

On May 24, 2004, we received a letter from DAS EOD Administrative Assistant 2 Kim Murray in which she admitted that she submitted the complaint, but used a co-worker’s name on the letter. She also stated that doing so was “a mistake on my part” and that she had asked the employee if she could use her address prior to filing the complaint. We interviewed the co-worker whose name was used on the complaint letter, and she reported that Murray did not ask her permission to use her name or address. The co-worker also told us that Murray apologized to her for involving her in the complaint.

While this office accepts anonymous complaints and grants confidentiality to witnesses to protect their safety, Kim Murray’s actions were an abuse of this process.

Accordingly, we find reasonable cause to believe a wrongful act or omission occurred in this instance.

VI. CONCLUSION

Although the underlying allegations were found to be without merit, this report underscores the need for all state agencies to continually review directives, policies, and rules to ensure they are consistent with statutory law.