



State of Ohio
Office of the Inspector General

THOMAS P. CHARLES, Inspector General

REPORT OF INVESTIGATION

FILE ID NUMBER: 2008096

AGENCY: Ohio Department of Health

BASIS FOR INVESTIGATION: Anonymous Written Complaint

ALLEGATIONS: Operating a Private Business on State Time,
Abuse of Time, Misuse of State Equipment
Misuse of Information

INITIATED: April 30, 2008

DATE OF REPORT: November 10, 2008

EXECUTIVE SUMMARY

File ID Number 2008096

The Office of the Inspector General (OIG) received an anonymous complaint referred by the Auditor of State's Office. The complaint alleged that Scheriee Bowles, an employee of the Ohio Department of Health, Employee Assistance Program ("EAP"), was misusing state time, property, and information. The complaint also stated that she was performing work for a private business during state time and that she had abused leave while working for the private business. Bowles is employed by Liberty Tax Service as an office supervisor.

The OIG conducted an investigation into these allegations and found numerous documents and emails related to Liberty Tax Service on Bowles' state computer. Additionally, we found many instances in which Bowles used her state telephone and her personal cell phone during the workday to conduct business for Liberty Tax Service.

The complaint also alleged that Bowles was misusing EAP resources to file fraudulent tax claims. The OIG substantiated the fact that Bowles had access to personal identifying information from EAP records; however, we found no evidence that she had misused this information.

During the course of the investigation, we also found other matters of concern regarding the work environment, morale, leadership and overall management of EAP. Both EAP employees and supervisors described a "hostile and dysfunctional" work environment, where employees repeatedly have filed complaints against each other. These complaints were filed with the union as grievances, with the Health Department's Office of Equal Opportunity, and with outside agencies over the course of many years.

The OIG identified a lack of oversight by the EAP supervisors and an unfriendly and sometimes dysfunctional work environment. Accordingly, we found reasonable cause to believe that wrongful acts or omissions occurred in these instances.

Bowles resigned her position with the Ohio Department of Health on September 15, 2008, a few days after her interview with this office.

Based upon the results of this investigation, we made four recommendations and requested the Ohio Department of Health respond to this office within the next sixty days with a plan of action as to how these recommendations will be implemented. A copy of this report has been provided to the Columbus City Attorney's Office for any action deemed appropriate.

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I. BASIS FOR INVESTIGATION

On April 7, 2008, the Office of the Inspector General (“OIG”) received an anonymous complaint, referred by the Auditor of State’s Office, alleging that Scheriee Bowles, an office assistant in the Ohio Department of Health, Employee Assistance Program (“EAP”), was misusing state time, property, and information. The complaint stated that Bowles was performing work for a private employer, Liberty Tax Service, during state time, for personal gain. The complaint also alleged that Bowles was on leave due to an injury in December 2007 and January 2008; yet she continued to report to work at Liberty Tax Service during that same time period.

II. ACTION TAKEN IN FURTHERANCE OF INVESTIGATION

The OIG opened an investigation into these allegations and forensically imaged Bowles’ two state desktop computers. We reviewed attendance and payroll documents, leave requests, telephone records, personnel records, performance evaluations, and other documents. The OIG also interviewed EAP employees and supervisors.

III. DISCUSSION

ALLEGATION 1: *That Scheriee Bowles, Ohio Department of Health office assistant, was performing work for a private employer, Liberty Tax Service, using her state computer and other resources during state time, for personal gain.*

Background

Liberty Tax Service is a private company that provides tax preparation services for individuals and small businesses. Scheriee Bowles has worked part-time for Liberty Tax Service for two years. She became an office supervisor for the company in January 2008, and usually worked weekday evenings after leaving her state job at the Health Department.

A. Misuse of the State Computer

During our investigation, we found numerous documents on Scheriee Bowles' state computer related to her job at Liberty Tax Service. These included individual expense reports, asset price lists, refunds, company store check requests, travel expense reports, termination forms, a marketing letter, and several tax problem scenarios used for training employees. One termination form included an employee's name and Social Security number, and some refund forms contained tax clients' names and home addresses. These documents not only clearly contain personal identifying information, which should be protected from disclosure, but none of these documents should have been on her state computer. Furthermore, this personal information should not have been stored in a place where others might be able to access the personal information. See Exhibit A.

Bowles sent many of these documents to Liberty Tax Service using her state email account. When asked about her work for Liberty Tax Service during state time, Bowles said, "I did a lot of emails and back and forth with Liberty...their corporate office is in Virginia." By her own account, Bowles said she spent "probably an hour" a day (out of her six-hour day) doing work for Liberty Tax Service while she was paid by the Ohio Department of Health.

In addition, Bowles frequently used her state email to send and receive personal greetings and photos from friends and associates. Many emails contained language and photos that are inappropriate for a government computer and could be considered offensive. She also sent communications using her personal email account with America Online ("AOL"), a private Internet service provider. None of these emails were related to her state job. See Exhibit B.

Bowles' computer usage and email communications violated the Department of Health's IT Directive 7A, Use and Security of Agency IT Resources, dated November 30, 2007, paragraph 10, which states in part:

Uses that interfere with normal ODH business activities, involve solicitation, are associated with any for profit activities, or which could potentially embarrass ODH or the state are strictly forbidden...ODH staff shall not use the Internet or the agency IT resources for operating a business for personal gain, non-work audio programs such as radio stations, sending chain letters,

gambling or wagering, accessing personal services (e.g. dating services), or soliciting money for religious and political causes.

See Exhibit C.

The current directive is dated November 30, 2007; however, the Health Department had similar IT directives in place for many years. In fact, the department required its employees to sign an Information Technology Code of Responsibility, which documented that the employee had read, understood, and agreed to abide by all provisions of the Code of Responsibility and the directive. Bowles signed the Code of Responsibility on December 11, 2001; it was witnessed by her supervisor, Mary Dohn, and placed in her personnel file. See Exhibit D.

We asked Bowles if there was any reason she would believe that she'd be permitted to perform Liberty Tax work while being paid by the Health Department. She replied, "No." Bowles acknowledged that she did research for Liberty Tax Service and read tax information during state time. Clearly, Bowles' use of her state computer to do work for her outside employer, Liberty Tax Service, during state time violated the department's IT policy and the Code of Responsibility.

B. Misuse of Other State Resources

State Telephone

Telephone records indicate that Scheriee Bowles also misused her state telephone by placing many calls to Liberty Tax Service during the workday. We found that during the tax filing season from January through April 2007, Bowles spent 6.74 hours on calls she placed to Liberty Tax Service during state time. During the next tax season, from December 2007 through March 2008, Bowles spent 29.32 hours on outgoing calls from her state phone to Liberty Tax Service. Altogether, Bowles spent more than 36 hours of work time on outgoing calls from her state phone conducting business for Liberty Tax Service during these months. This does not include incoming calls related to her work at Liberty Tax Service, which we were unable to document.

In addition, during her interview, Bowles admitted that she received calls on her state telephone from coworkers at Liberty Tax Service. These calls were related to staff shortages and other issues, she said. As such, we find that Bowles misused her state telephone for the purpose of conducting a private business on state time.

We also reviewed Bowles' outgoing telephone calls from her state phone for personal business to her bank, to AT&T to check her voicemail, to family members and others. These personal calls, which we found to be non-job-related, totaled at least 33 hours over the course of fifteen months, from January 1, 2007 through March 31, 2008. Again, this number does not include incoming calls, and the calls were placed throughout the day and not during lunch or breaks. At first glance this may not seem excessive. However, when one considers the fact that Bowles admitted in an interview with our office to spending "about two hours" of her six-hour workday on the phone for personal business, we find that her overall pattern of usage on her state phone for both personal business and her private employer violated the department's telephone policy. See Exhibit E.

ODH Directive 401, Use of Cellular and Wired Telephones, dated 1 October 2002, establishes the policy and guidelines for the use of state owned and issued cellular phones and wired telephones for ODH employees. Paragraph 401.4, Personal Calls, states in part,

For wired telephones, the Director of Health recognizes that it may be necessary to make or accept a limited number of local personal telephone calls while at work. However, the frequency and duration of such calls must be kept to a minimum and, whenever possible, made during lunch or authorized breaks...Personal business, which involves an activity undertaken for profit or gain of any kind, shall not be conducted from a state telephone.

See Exhibit F.

Mailing Envelope

On the day the OIG seized Ms. Bowles' state computers, we discovered a large mailing envelope pre-printed with the Ohio Department of Health's return address. The envelope was in plain view on Bowles' desk, and it was addressed to Liberty Tax Service. When asked about this envelope, Bowles admitted that it was her handwriting. She stated that she had picked up a check from a Liberty Tax Service office that morning, and she used the

envelope because she “didn’t want to lose the check.” Bowles denied mailing the check in this envelope, and we could not substantiate whether or not she sent the envelope via U.S. mail. Nevertheless, her use of this envelope was not related to state business, and was improper. See Exhibit G.

C. Excessive Use of Personal Cell Phone

Bowles also spent an excessive amount of state time on her personal cell phone conducting business for Liberty Tax Service. We reviewed her personal cell phone records and found that from December 17, 2007 through June 2, 2008, Bowles placed 412 calls to three Liberty Tax Service offices; many of these calls were made during her normal state duty hours. The total amount of time for these calls is 17.94 hours. See Exhibit H.

EAP employees reported that Bowles used her cell phone so often that it interfered with her normal duties. Some EAP employees stated that when Bowles was on a personal cell phone call, she often would ask that person to hold, answer the state phone, put that caller on hold, and then resume her cell phone call. According to some coworkers, Bowles spent so much of her workday on the phone that she did not appear to have enough work assigned to her. In her interview, Bowles stated that she spent “about two hours” a day on personal business on her cell phone or state phone. Therefore, as a part-time employee who works just six hours a day, Bowles, by her own admission, spent about one-third of her workday on personal business on the phone.

Records show that Bowles placed, received and routed literally hundreds of calls from her personal cell phone. The phone service provider was unable to provide complete call history records; however, a partial record of Bowles’ cell phone calls from November 4, 2007 through June 4, 2008, amounted to 456 pages of data. Our review of this data, which lists time and duration of calls, confirms that Bowles spent an excessive amount of time on her cell phone during state time. Clearly, excessive personal calls are not permitted during state time, and calls to Liberty Tax Service to conduct work for profit or gain are strictly prohibited.

Accordingly, based upon our investigation, we find reasonable cause to believe that Scheriee Bowles committed a wrongful act or omission in these instances.

ALLEGATION 2: *That Scheriee Bowles improperly accessed, used, and/or distributed individuals' personal data and filed fraudulent tax returns.*

We interviewed Bowles, her two supervisors, and the deputy director for Employee Services about this allegation and also reviewed her computer records. We found that Bowles had access to personal identifying information on many state employees through the EAP database, both electronically, and in hard copy form. However, we did not substantiate that she misused or distributed individuals' personal data to commit fraud, by filing false tax returns or otherwise.

One of Bowles' responsibilities was to prepare records from the EAP file room for disposal, based upon the agency's records retention schedule. The file room is located near the executive director's office, and both of Bowles' supervisors stated that they had not witnessed or received any reports of any EAP records or data being compromised.

Based upon our investigation, we do not find reasonable cause to believe that Bowles committed a wrongful act or omission with regard to this allegation.

ALLEGATION 3: *That Scheriee Bowles was on leave from her state job due to an injury in December 2007 and January 2008, yet she continued to report to her job at Liberty Tax Service.*

We reviewed Bowles' attendance and leave records for this time period. Bowles used paid vacation and personal leave intermittently in December 2007 and January 2008, and just six hours of sick leave. She did not receive disability pay, which would have restricted her outside work. We confirmed that she worked for Liberty Tax Service in December 2007 and January 2008. However, based upon our review of her attendance and leave from the Health Department during this time period, we could not substantiate abuse of leave.

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

IV. OTHER MATTERS

A. Failure to Exercise Adequate Oversight of Agency/Departmental Functions and Activities

During our investigation, we found that Scheriee Bowles had a long history of personal telephone calls during her work hours. On nine occasions, dating as far back as 1996, Bowles was told by her supervisors to reduce the number and duration of her personal calls at work. On two occasions, when Bowles received written comments in her annual performance evaluations about her personal telephone calls, she wrote rebuttals, stating that this rule should be addressed with the entire office, and not just her.

Bowles' excessive use of her state phone and/or cell phone during business hours was a problem documented nine times over the course of her employment through annual employee performance reviews, memos, supervisory notes, a performance improvement plan and performance summaries. Other performance issues were addressed as well, including rudeness on the telephone with clients, disruptive behavior in the workplace, tardiness, and unauthorized use of flex time.

The following table shows the comments from Bowles' two supervisors related to her excessive telephone use during the workday.

EAP Supervisors' Documentation of Bowles' Telephone Use for Personal Business During Work Hours		
Date	Documentation	Summarized Comments
March 1996	Memo	Continues to receive personal calls and maintain long discussions on the phone even as business calls come in.
August 2000	Memo	Limit the number and duration of personal calls at work.
August 2001	Supervisory Notes	Personal telephone calls must be kept to a minimum, both personal cell phone and office phone. Your personal phone calls and visitors have had a negative impact on the work environment at the Ohio EAP.
October 2002	Performance Summary	At times it is necessary to remind Ms. Bowles of established policies, procedures, rules & regulations of the agency, such as limiting the number & duration of personal phone calls.
October 2003	Performance Summary	I am aware of some of the issues addressed in her last evaluation (number and duration of personal calls).
March 2005	Supervisor's Notes	Cautioned her about excessive phone calls.
May 2005	Employee Performance Review	Personal phone calls and the length of personal phone calls need to be limited. This includes use of her cell phone during working hours.
June 2005	Performance Improvement Plan	The issue of personal phone calls has been addressed several times in the past, but continues to be an ongoing issue. This issue needs immediate attention and I am asking you again to limit your personal calls in frequency and duration while working.*
July 2006	Employee Performance Review	A performance improvement plan is being included for the next evaluation period that addresses personal phone calls.

*Although Bowles' supervisor completed a performance improvement plan, we found no documents to indicate that any follow-up occurred. In fact, her personal calls were still a problem for three more years.

Clearly, management at the Health Department was aware of Bowles' excessive use of her state and personal cell phones during the workday. Some employees reported that she spent a lot of time engaged in conversations of a personal nature. In August 2001, a supervisor noted that her personal phone calls and visitors "have had a negative impact on the work environment at the Ohio EAP." As shown in the table, starting in March 1996, her supervisors thoroughly documented this behavior, but they did not provide adequate oversight or follow-up and did not follow progressive discipline in accordance with the labor union contract.

Bowles was a bargaining unit employee subject to the provisions of the AFSCME (American Federation of State County and Municipal Employees) labor contract for fourteen years. Although oral and written reprimands are important steps, clearly these methods had little or no impact on Bowles' behavior regarding the use of her state and personal cell phones for non-work related business. According to her supervisor, Ken Kirksey, after she was counseled, Bowles would reduce her personal calls for a short time, "...but then over a period of time the behavior comes back."

Some employees stated that they felt that Bowles' supervisors showed favoritism toward her, and that is why she got away with her behavior for so many years. During her interview, the executive director stated that she had always been aware of Bowles' personal situation, and as a result, she did think she had shown favoritism toward her.

Outside Employment

Both supervisors were aware that Bowles was employed by Liberty Tax Service. They also knew that she was employed by another tax service for several years prior to taking a job with Liberty. However, neither of them was aware that she was using her state computer, state telephone, or her cell phone to conduct business for Liberty Tax Service. Her immediate supervisor, Ken Kirksey, stated that he had seen books and other material related to Liberty Tax Service at Bowles' desk. He had seen her reading or studying this material during her workday, but he did not take any action.

When asked about the propriety of Bowles reading this material on state time when he knew it was for a private business for which she was getting paid, Kirksey replied, “You know as long as the phone is getting answered, the work is getting done, the copies are getting made, the files are getting filed, I have no problem with, you know, her sitting there at her desk and reading through her tax books.”

Bowles stated that her supervisor allowed her to read Liberty Tax information at work. She said that her supervisor once asked her if she was doing tax preparation while at work, and she told him she was not. However, he did not ask her about doing other work for Liberty Tax Service during her state job, such as using her cell phone, state phone, or computer.

In addition, the executive director stated that she had witnessed people come into Bowles’ office to consult with her about taxes during state time. She counseled Bowles about this, but nothing was put in writing. Bowles’ work station is located right outside the door of the executive director’s office, so she was in a position to monitor Bowles’ work activities for the past six years.

Other Personnel Issues

During this investigation, we interviewed several EAP employees. We found a lack of proper supervision and general mismanagement of various personnel issues. Some employees do not speak to each other; a supervisor filed an EEO complaint against one of his subordinates; and the table of organization has been changed solely to address ongoing personnel conflicts that could not otherwise be resolved. Some employees stated that they filed complaints with outside agencies or sections such as the State Employee Relations Board, Ohio Civil Rights Commission and the Counselor, Social Worker and Marriage and Family Therapist Board because they knew they would get no action from their supervisors. Several EAP employees filed complaints with the Health Department’s Equal Employment Opportunity (“EEO”) office as well. Although most of these complaints were not substantiated, the tension and conflicts in the office have continued. Even the EAP executive director stated that she had heard EAP employees describe their work environment as “hostile and dysfunctional,” and she agreed with their statements.

As far back as 2003, the EEO office made several recommendations for EAP management to make improvements in dealing with EAP staff relationships and work practices. In fact, one such recommendation, which appeared in a memorandum dated March 25, 2003, was “EAP management [should] document and address situations involving disruptive behavior, neglect of duty, failure to follow established procedures, time/attendance issues and take corrective action in accordance with agency work rules. This should be done without regard to tenure, position, bargaining unit, etc.”

The following is a list of suggestions made by the EEO office in January 2008, as a result of the administrative investigations of complaints filed by EAP employees:

Suggestions for Addressing Challenges within the EAP Program

- Mandatory management training on interpersonal communication, documentation, counseling, team building and consistent enforcement of office policies and procedures.
- The development and distribution of EAP office standards of conduct.
- Managers acknowledge and observe professional/personal boundaries in their conversations with staffers.
- Staff members exercise more discretion with information that is shared with them.
- All EAP staffers receive performance action plans which address areas that require improvement as well as a timeline for same. Specific examples should be documented and noted in the evaluations.
- EAP staffers participate in a focus group that is led by an external EAP professional/mental health professional or counselor with a goal of creating an action plan for progress. It should include specific goals and deadlines for completion.

We find that the EEO office’s suggestions are right on target. EAP managers were aware of many longstanding and well-documented areas of dysfunction in the office. However, they failed to enforce rules or policies, failed to address unprofessional behavior or conduct, and failed to exercise adequate oversight of the program’s functions and activities. While we recognize that the department is attempting to resolve these problems through the Ohio Commission on Dispute Resolution and Conflict Management, this action is long overdue.

Accordingly, based upon our investigation, we find reasonable cause to believe that the EAP management committed a wrongful act or omission in these instances.

V. CONCLUSION

Overall, we found a long-standing lack of leadership, supervision and accountability in several areas of the EAP. The program has been in place for nearly 25 years, and it has been inundated with personnel and management disputes for many years. Scheriee Bowles' abuse of time and resources as a state employee is just one symptom of the dysfunctional and stressful environment within the EAP. We find it troubling that Bowles was written up numerous times for various performance issues, including excessive use of the state phone for personal calls, rudeness on the telephone with clients, disruptive behavior in the workplace, tardiness, and unauthorized use of flex time; yet her supervisors did not take any action to correct Bowles' conduct beyond written reprimands and notations in her performance reviews.

We recognize that the EAP provides a valuable service to state employees and that the EAP staff provides professional and confidential services when needed. Although we did not examine the performance of the EAP itself on a professional level, we have no reason to believe that the EAP personnel are not providing the services they are entrusted to provide.

On a management level, however, we identified serious deficiencies that need immediate attention. Both of Bowles' supervisors should have taken additional action to address her constant misuse of state resources for personal business, rather than simply documenting her conduct in writing and placing it in a file. Clearly, this lack of oversight is not appropriate conduct in state government.

The lack of supervision by both supervisors in the EAP was certainly improper, yet this does not negate Bowles' responsibility as a public servant. She was a 14-year employee who knew that it was improper to use her state computer and telephone for running a business.

She signed a statement in 2001, acknowledging her awareness of the department's computer use policy. During her interview, she admitted that she spent a lot of state time conducting work for Liberty Tax Service.

VI. RECOMMENDATIONS

Based upon the results of this investigation, we make the following recommendations and request the Ohio Department of Health to respond to this office within the next sixty days with a plan as to how these recommendations will be implemented:

1. The department should review the performance of the management team in the Employee Assistance Program and take appropriate action based on the previous recommendations from EEO.
2. EAP supervisors should conduct refresher training on the department's IT and Telephone Use policies for all EAP employees, and each EAP employee should have a signed copy of the current Information Technology Code of Responsibility placed in their personnel file.
3. ODH should develop a policy whereby all ODH employees will report their outside employment to ensure there are no conflicts of interest. Employees should be advised in writing that outside employment may not interfere with their work hours or duties, and work for outside employment may not be conducted on state time or using state resources, in accordance with DAS policies.
4. EAP supervisors should review all EAP telephone records and create a system whereby employees are required to review their state telephone phone calls monthly and sign a statement that their calls were for state business. Limited personal calls still would be allowed.

VII. REFERRAL

A copy of this report has been provided to the Columbus City Attorney's Office for any action deemed appropriate.