

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF
INVESTIGATION



AGENCY: OHIO BUREAU OF WORKERS' COMPENSATION
FILE ID NO.: 2017-CA00026
DATE OF REPORT: MAY 15, 2018

The Office of the Ohio Inspector General ... The State Watchdog

“Safeguarding integrity in state government”

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Randall J. Meyer
Ohio Inspector General



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL
RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF INVESTIGATION

FILE ID NUMBER: 2017-CA00026

SUBJECT NAME: Maria Rupert
Industrial Safety Hygienist 4

Glenn McGinley
Director, Public Employment Risk Reduction
Program

AGENCY: Ohio Bureau of Workers' Compensation

BASIS FOR INVESTIGATION: Complaint

ALLEGATIONS: Lack of Rules, Policies, or Procedures within the
Agency or Department

INITIATED: July 20, 2017

DATE OF REPORT: May 15, 2018

INITIAL ALLEGATION AND COMPLAINT SUMMARY

On June 27, 2017, the Ohio Bureau of Workers' Compensation (OBWC) reported to the Office of the Ohio Inspector General that OBWC Public Employment Risk Reduction Program (PERRP) Director Glenn McGinley¹ had issued a written reprimand to OBWC Industrial Safety Hygienist 4 Maria Rupert for exercising "poor judgement – secured evidence herself from a fatality scene." OBWC explained that Rupert had allegedly improperly collected a safety vest as evidence from a fatality scene and later discarded it. The investigation involved an incident which occurred on May 11, 2015, in which a Suffield Township worker was struck and killed while sealing cracks in the roadway. The public worker had been wearing a safety vest, and Rupert was assigned to investigate the incident.

On July 20, 2017, the Office of the Ohio Inspector General opened an investigation to review the policies and procedures followed by PERRP personnel throughout the case, including the collection and securing of evidence and the documentation of these actions in the case file and investigative report.

BACKGROUND

The Ohio Bureau of Workers' Compensation is responsible for providing workers' compensation insurance to all public and private employees except those who qualify for self-insurance. It is the largest exclusive workers' compensation system in the United States. An administrator/chief executive officer of OBWC is appointed by the governor. OBWC is also overseen by an 11-member board with members experienced in financial accounting, investments and securities, and actuarial management. OBWC is funded through assessments paid by employers.

The Ohio General Assembly enacted Ohio Revised Code (ORC) §121.52, effective September 10, 2007, which created the deputy inspector general for the Ohio Bureau of Workers' Compensation and the Industrial Commission of Ohio (ICO). This statute requires a deputy inspector general be designated who "... shall investigate wrongful acts or omissions that have been committed or are being committed by officers or employees ..." of both OBWC and the

¹ McGinley transferred from the Public Employer Risk Reduction program director to a Workers' Compensation External Audit supervisor/Employer Services supervisor in early 2018.

ICO, and provides the deputy inspector general the same powers and duties as specified in Ohio Revised Code §121.42, §121.43, and §121.45 for matters involving the OBWC and ICO.

Public Employment Risk Reduction Program (PERRP)

The Public Employment Risk Reduction Act, referred to as House Bill (HB) 308, was enacted in 1992 and established the role of PERRP by ensuring public employees in Ohio have safe and healthy working conditions. The act established a public employee's right to file a complaint about unsafe working conditions and allows PERRP to investigate fatalities and multiple hospitalization incidents. The act further provides discrimination protection for whistleblowers. In July 2005, the Public Employment Risk Reduction Program was transferred from the Ohio Department of Commerce to the OBWC Division of Safety & Hygiene.

According to the OBWC website, the role and mission of PERRP is "... to ensure public employees in Ohio have safe and healthy working conditions." As part of this program, "... public employers must furnish to each public employee a workplace free from recognized hazards that are causing or are likely to cause death or serious physical harm."

HB 308 incorporated the federal Occupational Safety and Health Administration (OSHA) standards into the Ohio Public Employment Risk Reduction Program standards. These standards, adopted by the Ohio legislature, are found in ORC Chapter 4167. ORC §4167.10 contains provisions addressing the inspection and investigation of workplaces by PERRP representatives.

PERRP representatives conduct the following three types of visits:

Enforcement Visits: Enforcement visits are covered under ORC Chapter 4167 which gives PERRP authority to enter and perform an inspection. Inspection criteria are specified in ORC §4167.10.

Refusal to Work: Refusal to work stipulates there is a condition posing an eminent danger to an employee in the workplace and the employee has exercised his or her statutory rights to refuse a work assignment.

Complaint Visits: Complaint visits occur when an employee alleges he or she was exposed to a hazardous condition. The condition is not necessarily an imminent danger and therefore mandates the employer receive notice whereby the employer has 30 days to "... investigate, correct and respond," based upon the allegation(s) in the complaint. Complaint visits occur only when an employer refuses to comply or fails to respond within the 30 days, or the letter the employer sends does not address all of the elements in the complaint.

Relevant Policies and Procedures

Investigators reviewed the following relevant policies and procedures provided to the Office of the Ohio Inspector General by OBWC with regard to the documentation requirements, photography, and collection of evidence:

OSHA's Field Operations Manual (FOM)

The OSHA Field Operations Manual Chapter 11 Section II *Fatality and Catastrophe Investigations* lists guidelines for case file documentation when utilizing videotapes and audiotapes. The manual specifically states:

... other methods of documentation, such as handwritten notes, audiotaping, and photographs, continue to be acceptable and are encouraged to be used whenever they add to the quality of the evidence and whenever videotaping equipment is not available. ... Inspections following fatalities or catastrophes should include videotaping as a method of documentation and gathering evidence when appropriate. The use of photography is also encouraged in documenting and evidence gathering ... Photographs and/or videotapes, whether digital or otherwise, shall be taken whenever Compliance Safety and Health Officers (CSHO) determine there is a need. Photographs that support violations shall be properly labeled, and may be attached to the appropriate OSHA-1B. CSHO shall ensure that any photographs relating to confidential or trade secret information are identified as such and are kept separate from other evidence. All film and photographs or videotape shall be retained in the case file. If lack of storage space does not permit retaining the film, photographs or videotapes with the file, they may be stored elsewhere with a reference to the corresponding inspection. Videotapes shall be properly labeled.

PERRP's Training Materials

PERRP investigators are trained using various materials, including PowerPoint presentations, which cover federal OSHA investigative guidelines. The federal investigative guidelines examine requirements with physical evidence collection, the importance of maintaining chain of custody for physical evidence, and establishing protocols for maintaining the condition of physical evidence. Among the guidelines are requirements to keep physical evidence in PERRP custody, maintain a written log of who has access to the physical evidence, and keep accurate and detailed logs of photographs or video.

PERRP Compliance Investigation Cheat Sheet

The PERRP Compliance Investigation Cheat Sheet references three areas of thorough evidence gathering: “Have I gathered enough ‘general’ evidence?”, “Have I gathered enough documentary evidence?”, and “Have I gathered enough evidence to prove a violation?”.

INVESTIGATIVE SUMMARY

On June 27, 2017, OBWC reported to the Office of the Ohio Inspector General that OBWC Public Employment Risk Reduction Program (PERRP) Director Glen McGinley had issued a written reprimand to OBWC Industrial Safety Hygienist 4 Maria Rupert for exercising “poor judgement – secured evidence herself from a fatality scene.” OBWC explained that Rupert had allegedly improperly collected a safety vest as evidence from a fatality scene and later discarded it. The investigation involved an incident which occurred on May 11, 2015, in which a Suffield Township worker was struck and killed while sealing cracks in the roadway. The public worker had been wearing a safety vest, and Rupert was assigned to investigate the incident. OBWC Chief of Human Resources Megan Kish stated that she reviewed McGinley’s written reprimand to Rupert and concluded Rupert’s actions were indeed improper.

On July 7, 2017, PERRP Program Administrator Renee Peck provided the Office of the Ohio Inspector General with a copy of Rupert’s investigative report from the Suffield Township incident, the digital pictures of the deceased worker’s vest, the violation notice sent to Suffield Township, and the following safety violation citations issued to Suffield Township:

- Ohio Administrative Code §4167-3-05(B)

Use of traffic control devices by a public employer did not comply with the Ohio manual of uniform traffic control devices promulgated by the Ohio department of transportation pursuant to §4511.09 of the Revised Code.

- Ohio Administrative Code §4167-6-01(A)
Employer did not maintain records of occupational injuries and illnesses and make a report to the superintendent.
- Ohio Administrative Code §4167-6-10(B)
The employer did not orally report the death of an employee from a work-related incident to the superintendent at the phone number indicated on the poster required under §4167-4-01 of the Administrative Code.
- 29 Code of Federal Regulations 1910.132(d)(1)
The workplace was not assessed to determine if hazards were present, or were likely to be present, which necessitated the use of personal protective equipment:
- 29 Code of Federal Regulations 1926.21(b)(2)
Each employee was not instructed in the recognition and avoidance of unsafe conditions and the regulations applicable to his/her environment to control or eliminate any hazards or other exposure to illness or injury.

On July 13, 2017, the Office of the Ohio Inspector General reviewed Rupert's investigative case file. The investigative case file and subsequent report did not contain documentation specifying Rupert had made a request to Suffield Township Fiscal Officer Lori Calcei to obtain the vest, or documentation prepared by Rupert reporting that she had obtained and secured the vest. The investigative case was closed by PERRP on April 28, 2016. Further review by the Office of the Ohio Inspector General of the investigative case file showed that Peck had requested and received from the Ohio State Highway Patrol (OSHP) their crash scene photos. The photos the OSHP provided included a picture of the deceased worker's safety vest.

The Office of the Ohio Inspector General further noted that although the investigative report completed by Rupert included a picture of the inside label of the victim's safety vest, Rupert did not identify the date when the photo of the vest label was taken. Through further review of the investigative report and other folders maintained in the PERRP investigative file, investigators noted there were no references to:

- The subsequent visit(s) or contacts made to Suffield Township;
- The request to the fiscal officer to obtain the deceased worker's safety vest;
- Receipt of the deceased worker's safety vest; or
- A record indicating Rupert's destruction of the deceased worker's safety vest.

Collection of Evidence – Safety Vest

On October 2, 2017, the Office of the Ohio Inspector General interviewed Maria Rupert. Rupert described her job title as “a compliance, safety, and health officer for PERRP” who “... provides safety and health oversight to public employers in the State of Ohio.” Rupert stated that she had been in the position for approximately four years. Rupert explained that when she started with the section four years ago, the training she received consisted of accompanying other PERRP personnel to site visits as an observer. Rupert described this as “on the job” training. Rupert noted that prior to the Suffield Township incident, she had only visited one other site involving a fatality. Rupert also told investigators that her training for the industrial safety hygienist 4 position also included attending staff meetings, viewing the PERRP PowerPoint presentation, reviewing the OSHA Field Operations Manual, and receiving verbal instruction from PERRP Director Glenn McGinley.

Investigators asked Rupert if she collected evidence as part of her job duties. Rupert stated, “That is not ... I don't do that. I mean I did it but I shouldn't have done it.” Rupert clarified that she was speaking about the incident involving the vest at Suffield Township. Rupert continued, saying, “I should not do that.” Rupert was asked if there was any agency directive that prohibited her from collecting evidence. Rupert said she was not aware of a written directive prohibiting the collection of evidence. Rupert then contradicted her statement and stated she did not know where the directive was written but she was “... sure that it is but I just don't know where.” Rupert said she believed there was an unwritten agency directive prohibiting the

collection of evidence. Rupert was asked how she had been made aware of the unwritten directive. Rupert stated,

We have staff meetings regularly. We try and have them every couple times a year and they're during the staff meetings, it's more ... of an education for us and we do review a lot of investigation techniques and you know evidence was part of it but I don't recall uh securing evidence to be part of that.

Rupert later clarified that staff meetings occur probably three times a year.

Rupert was asked how she obtained the vest and the circumstances involving her disposal of the evidence. Rupert explained that the collection of the vest occurred during the first week of the investigation. Rupert stated that during the course of her investigation, she was "curious whether or not the vest met the ANSI [American National Standards Institute] requirements" so she requested to examine the vest. Rupert noted that upon inspection, she determined the vest did meet ANSI requirements. Rupert explained the vest was not initially available for examination; however, Suffield Township Fiscal Officer Lori Calcei eventually secured the vest. Rupert claimed Calcei gave the vest to her in a grocery bag. Rupert said she did not sign any document that would establish her as part of the chain of evidence. Rupert stated, "I don't know what I was thinking. I took it with me." Rupert could not remember exactly where she collected the vest; however, she believed it may have occurred at the township hall. In a telephone interview conducted by the Office of the Ohio Inspector General on September 11, 2017, Calcei disputed Rupert's recollection and stated a family member of the deceased worker gave the vest to Rupert. Calcei stated she spoke to the family member who said she delivered the vest to the fire department and Rupert picked it up there. Investigators conducted a telephone interview with Suffield Township Fire Chief Robert Rasnick on September 14, 2017, in which he disputed Calcei's claim and stated the fire department was never in possession of the vest.

During her interview conducted on October 2, 2017, investigators showed Rupert a copy of her investigative report for the Suffield Township incident, dated April 28, 2016, and asked if the report was an accurate description of the events that occurred. Rupert stated that the report was correct. Investigators then questioned Rupert about why the report did not indicate the actual dates the photos were taken or when the vest was collected. Rupert stated, "I didn't consider

that. And I was wrong. Believe me I know it was wrong. I didn't consider that a key piece of evidence.”

Investigators showed Rupert a copy of the PERRP Compliance Investigation Cheat Sheet. Rupert acknowledged she was familiar with the document and she believed she had obtained it during a staff meeting. Investigators directed Rupert's attention to the three sections of the document that asked, “Have I gathered enough general evidence?”, “Have I gathered enough documentary evidence?”, and “Have I gathered enough evidence to prove a violation?”. Investigators asked Rupert for her understanding of how evidence should be collected. Rupert replied that she interpreted the three sections to mean, “It isn't collecting, physically collecting things. It's looking at written programs, it's interviewing people, it's observing the worksite, taking statements.”

Rupert was asked if she had received any training from her department regarding the collection of physical evidence. Rupert stated, “I don't know that I would classify it as training.” Rupert recalled McGinley discussing a previous investigative incident involving a steamroller and added that he may have covered the topic of evidence collection. However, if McGinley had explained evidence collection, Rupert noted she did not remember hearing the topic being discussed. Rupert stated they covered a significant amount of information and she could have missed something that had been discussed.

Investigators showed Rupert a printout of a PowerPoint presentation that PERRP provided as training material. One of the slides covered PERRP rules governing chain of evidence and included a requirement to keep physical evidence in PERRP custody, as well as keeping a written log of that custody. Rupert said she did not recall the slide. Rupert was shown another slide outlining how to preserve evidence. The slide suggested keeping evidence in the condition it was received unless there was to be destructive testing. Investigators asked Rupert if she recalled any of this content from her training. Rupert stated, “I'm not denying it was there. ... I don't recall.”

Investigators questioned Rupert about a training slide that referenced the importance of keeping an accurate and detailed log of photos and videos. Rupert stated she downloaded the photo files, but did not keep a log. Investigators asked Rupert if there were any discussions in her training pertaining to what was meant by a log of photos or videos. Rupert stated she did not know about a log.

Investigators showed Rupert a slide that required keeping a log of all documents requested to ensure that investigators receive all the documents requested. Investigators then asked Rupert if she maintained a log to track whether she received all documents she requested, to which she replied, "I don't keep a log." Rupert stated she usually used email to track receipt of documents. Investigators asked her if she included the emails in her case files, to which she replied, "(I) can't tell you I always do."

Investigators asked Rupert if there were any written PERRP policies directing staff about what documents must be included in their case files. Rupert said, "I'm sure there is," but explained that she could not locate them. Investigators questioned Rupert about why she did not document the multiple trips made to the township hall to meet with individuals or to pick up documents. Rupert stated, "I can't tell you why not. I can't tell you why. I can tell you this was my first fatality. I'd only been with the agency less than a year and a half and I can tell you that there were mistakes made."

Rupert stated that after the safety violation citations were issued to Suffield Township, she stored the safety vest in her desk drawer in her home office. Investigators asked Rupert what prompted her to dispose of the vest. Rupert stated,

I was aware that the case was closed and as far from a PERRP perspective, they [Suffield Township] had complied with and and and I should have known that there's a two year statute you know of other things that could but I I was in a cleaning frenzy and I I just got rid of it. I said well it's closed why you know it's not a key piece of evidence. Oh do I regret doing that.

On June 27, 2017, OBWC Chief of Human Resources Megan Kish told the Office of the Ohio Inspector General that it was her understanding that Rupert had been contacted by the Suffield Township clerk asking for the return of the safety vest. OBWC provided a June 7, 2017, email sent by Lori Calcei to Rupert stating:

I am trying to locate the vest that (redacted) was wearing at the time of his death.

This was an accident that occurred on May 11, 2015. I remember you asking me to try to get the vest, which I think I did. Do you have an (sic) documentation of what happened to his vest.

Rupert stated she did not respond to Calcei and instead forwarded the request to McGinley and Peck and said, “Oh I did a bad thing.”

On June 8, 2017, Rupert emailed Glenn McGinley and Renee Peck stating:

Glenn and Renee – I had possession of this vest, but, foolishly, after keeping it for about a year, I discarded it, thinking that there was no more need to retain it. I do have several pictures of it, which are attached. How do you want me to respond to this request? I imagine there is a lawsuit pending.

Rupert stated that she was advised by McGinley that he would handle the matter.

Rupert stated that once a report is completed, it is submitted to McGinley or Peck for review and feedback. Rupert said she did not know whether McGinley or Peck had looked at the evidence in the case file.

Investigators asked Rupert whether, since the time of the incident involving the vest, OBWC had provided any additional PERRP training or issued any new policies, either written or verbal, regarding the collection of evidence. Rupert said, “No new policies as far as I’m concerned. As far as I’ve recall.” Rupert commented she believed McGinley did a great job in communicating and training. Investigators asked Rupert if she had received any specific training on the handling of fatalities in accordance to the guidelines specified in the federal Occupational Safety and Health Administration (OSHA) manual. Rupert confirmed the investigators were given training,

but she could not remember whether the training involved using a manual or when the training occurred.

Rupert was asked if she received a written reprimand from McGinley. Rupert acknowledged receiving a reprimand from McGinley and said it was her understanding the reprimand was for the collection and disposal of the vest. Investigators asked Rupert if she received any recommendations issued with the reprimand. Rupert stated, “Yes ... That I am not to take um evidence. I don’t take evidence.” Rupert clarified that it was McGinley who provided the recommendation to her.

To gather further information regarding PERRP policies and procedures, the Office of the Ohio Inspector General contacted Glenn McGinley by email with additional questions on July 13, 2017, and McGinley responded on July 26, 2017. The following table summarizes the questions asked and the responses received from McGinley:

Questions Emailed to McGinley on July 13, 2017	McGinley’s Responses Submitted to Office of Ohio Inspector General on July 26, 2017
Can you confirm whether there are OBWC-specific policies and procedures (in addition to the OSHA manual previously provided) which were disseminated to Maria Rupert and her peers when conducting these types of investigations?	There were no specific policies for “taking, securing, and disposing of evidence or materials” beyond the PERRP-1 records retention schedule. This schedule covers PERRP Enforcement Investigation Files. We are currently working on a PERRP Field Operations Manual (FOM) that will replace the OSHA Field Operations Manual. The new FOM will include a chapter on evidence handling and records retention.
What training has been provided to Rupert and her peers on conducting fatality investigations?	Maria and her coworkers received both formal and informal training on conducting enforcement inspections/investigations. They received formal classroom training on June 12, 2014, and again on December 7, 2016. Procedural reviews (60-90 min.) for enforcement visits were also on quarterly staff meeting agendas that were held on: March 05, 2014, December 09, 2014, March 31, 2015, and September 23, 2015.
What policies existed in 2015 regarding the taking, securing, and disposing of evidence or materials obtained from the employer? Currently?	There are no additional policies or procedures for conducting PERRP enforcement inspections and investigations.

October 25, 2017, the Office of the Ohio Inspector General interviewed Glenn McGinley. McGinley stated his duties included supervision of the field staff, preparation of enforcement

citations to employers after an enforcement visit, and to review compliance assistance and inspection reports. McGinley further explained he reviews every enforcement visit report. McGinley said that at the time of the Suffield Township investigation, the PERRP office was using a “paper system” whereby access and storage of documents was not handled electronically.

McGinley stated that investigator training consisted of a program he developed using materials he had received from federal OSHA. McGinley said he created a PowerPoint presentation based on the federal OSHA materials, and utilized a cheat sheet developed by the federal OSHA that he modified to account for the differences between the federal OSHA and the Ohio programs. McGinley explained that the cheat sheet was a three-page summary of the key items that must be addressed by PERRP staff during an enforcement visit. McGinley noted that PERRP enforcement visits are covered under ORC Chapter 4167, which gives PERRP personnel the authority to enter sites and perform an inspection. McGinley said the inspection criteria for PERRP is specified in ORC §4167.10.

McGinley told investigators that he developed the PowerPoint training program for new investigator hires approximately five years ago, in 2013. McGinley said Rupert was his first new hire at PERRP and prior to the hiring of Rupert, there was a lapse in conducting new hire training. McGinley explained that before he became a supervisor, federal OSHA conducted the new hire trainings. However, due to changes in OSHA policy, McGinley said he requested that federal OSHA provide their training materials to McGinley so he could implement OSHA standards and practices into PERRP’s own training program. McGinley said training consisted of job shadowing with coworkers and ensured “... new hires are not turned loose for at least three months (90 days).” McGinley noted that he reviews the investigative materials prepared by new hires for a period of time prior to permitting them to work on their own.

McGinley was asked if personnel should be documenting every phone call or email they make or receive. McGinley explained that prior to new software currently utilized, the personnel would use a form he created which had a space where they would document if and when materials were received. McGinley stated, “You know ... I ... part of ... part of what I try not to do is micromanage the investigation ...” McGinley further stated that if the information or materials

were not needed and could not be used as evidence, then the materials were not required to be documented. If the materials were related to an investigative report or citations were issued, the materials should be documented.

Regarding the collection of the vest, McGinley stated the vest did not play a part in their case and therefore should not have been collected. McGinley acknowledged that since photographs of the vest were included in the investigative report, there should have been documentation recounting the photographing of the vest.

Investigators asked McGinley what guidance had been given to PERRP investigators regarding the collection of photos and videos. McGinley stated investigators are directed to be as detailed as possible documenting the collection of materials in their case files. Around the same time as the Suffield Township case occurred, McGinley said he had issued smart phones to the investigators. McGinley explained this was in response to problems that had occurred when investigators failed to properly set the date and time stamp on the cameras they used in cases. McGinley stated that maintaining a log of photos taken can be tedious for the investigator, and therefore the use of smart phones as cameras provided additional means to track where photos were taken by use of geo information and other indicators. McGinley noted the time stamp was relevant only if time was an important factor in the investigation.

McGinley was asked what process was required of PERRP investigators to track physical evidence. McGinley stated the need for collecting physical evidence at a site was rare. McGinley stated during their training, investigators are told they are not supposed to collect physical evidence without first contacting McGinley. McGinley added that if physical evidence has to be collected, investigators are directed to ask local law enforcement to secure the item for them. If local law enforcement refuses, then investigators are advised to contact the Ohio State Highway Patrol for assistance. McGinley stated that during the time he was an investigator, he could only recall three incidents when evidence was collected. McGinley added that the investigators do not carry any evidence collection materials such as evidence bags, tape, and chain of custody forms. McGinley also clarified that this directive is verbally given to the investigators and is not written in their training materials. McGinley stated physical evidence

collection training is not over-emphasized because, in fact, investigators are not often required to collect physical evidence.

Investigators also asked McGinley if Rupert ever contacted PERRP management regarding the collection of the vest. McGinley stated that during the Suffield Township case, he was on medical leave and the call would have been placed to PERRP Program Administrator Renee Peck. McGinley stated he checked and had not received an email from Rupert regarding the collection of the vest. McGinley further stated he checked with both Rupert and Peck and no phone call was placed or received. On October 6, 2017, Peck told investigators she did not recall whether she received a call from Rupert, and on October 7, 2017, Rupert said she never placed a call or sent an email regarding the collection of the vest.

Supervisory Review of Investigative Reports

The Office of the Ohio Inspector General asked McGinley about the process in place for PERRP investigators to submit their reports. McGinley stated once a report was turned in for review, he noted any corrections, changes, or additions that needed to be made and returned the report back to the investigator. The Office of the Ohio Inspector General asked McGinley if he in fact reviewed the reports, noting that they had noticed discrepancies within PERRP's Suffield Township investigative report; specifically, that the date of the photo taken of the vest did not match the narrative, and a lack of documentation on the date of the photo. Additionally, investigators questioned McGinley about why this information remained in the report, if upon viewing the vest photographs, they were deemed unnecessary. McGinley stated, "The only reason I left it in is ... if they would have mounted some sort of employee misconduct defense ... we would have had some documentation that there was this mystery vest."

The Office of the Ohio Inspector General also questioned McGinley about conflicting or omitted information in the PERRP investigative report concerning which day the photographs were taken. McGinley was asked how accurate this information needed to be. McGinley stated the information regarding the photographs did not need to be entirely accurate, unless time was an important factor in the case. He admitted there could be mistakes made in documenting the day

or time a photograph was taken when referenced in a report. McGinley stated if date and time were a factor, he would examine the metadata of the photographs during his review of the report. Investigators then asked McGinley about the cheat sheet he created to assist the investigators and the fact that it listed in three separate columns questions regarding the collection of evidence. McGinley said that the PowerPoint handout he created was there to support his verbal instructions, and that he hoped a new investigator would not depend solely on the PowerPoint for guidance.

Changes in Policies and Procedures

McGinley told investigators that new technology and practices had been implemented by PERRP since the Suffield Township investigation. McGinley noted that PERRP introduced a new investigative software system beginning in April 2016 which utilizes electronic files, thereby replacing the old system that involved the use of mostly paper files. McGinley said that newly hired investigators receive training using the software system and added that most of PERRP's policies and procedures have been incorporated into the software system. McGinley noted the new software system provides a "running diary" for tracking progress in cases. McGinley said the diary section required personnel to submit comments indicating they had received an email or had contacted someone. Copies of emails can be uploaded into this section which tracks when documents are being requested or received. McGinley stated the software system also incorporates forms in an electronic format and utilizes asterisks to indicate fields that are required to be completed by investigators.

CONCLUSION

On June 27, 2017, the Ohio Bureau of Workers' Compensation (OBWC) reported to the Office of the Ohio Inspector General that OBWC Public Employment Risk Reduction Program (PERRP) Director Glenn McGinley had issued a written reprimand to OBWC Industrial Safety Hygienist 4 Maria Rupert for exercising "poor judgement – secured evidence herself from a fatality scene." OBWC explained that Rupert had allegedly improperly collected a safety vest as evidence from a fatality scene and later discarded it. The investigation involved an incident which occurred on May 11, 2015, in which a Suffield Township worker was struck and killed while sealing cracks in the roadway. The public worker had been wearing a safety vest, and

Rupert was assigned to investigate the incident. Megan Kish, chief of Human Resources stated that she reviewed McGinley's written reprimand to Rupert and concluded Rupert's actions were indeed improper.

Also on June 27, 2017, OBWC provided to investigators a June 8, 2017, email Rupert forwarded to McGinley and Program Administrator Renee Peck from a Suffield Township fiscal officer. The fiscal officer was inquiring about the whereabouts of a safety vest obtained from a fatality scene that occurred in Suffield Township. Rupert stated in the forwarded email to McGinley and Peck that, "I had possession of this vest, but, foolishly, after keeping it for about a year, I discarded it, thinking that there was no more need to retain it. I do have several pictures of it, which are attached."

Industrial Safety Hygienist 4 Maria Rupert

When investigators asked McGinley in an email to explain the written policies and procedures for the collection of evidence, he replied on July 26, 2017, that "there were no specific policies for '... taking, securing, and disposing of evidence or materials.'" McGinley stated that Rupert and her coworkers received both formal and informal training on conducting enforcement inspections and investigations. McGinley explained during an October 25, 2017, interview that PERRP investigators were verbally informed during training that they were not permitted to collect physical evidence without first notifying him, and added that the investigators were not issued any evidence collection materials. McGinley further stated he checked with both Rupert and Peck and no phone call had been placed or received regarding the collection of the vest.

The Office of the Ohio Inspector General interviewed Rupert on October 2, 2017. During the interview, Rupert stated that she generally did not collect evidence as part of her job duties, but admitted she had done so while investigating the Suffield Township injured worker fatality. Rupert explained that she was evaluating whether the safety vest met American National Standards Institute requirements. Rupert recalled that the safety vest was not initially available for her review and that she obtained the deceased worker's vest from the Suffield Township fiscal officer. Rupert acknowledged that when she acquired the vest, she did not sign anything documenting she was part of the chain of evidence and later, during a "cleaning frenzy,"

disposed of the vest. Rupert stated that she believed the case was “closed” and commented “it’s not a key piece of evidence.”

Rupert stated that she was unaware of any written agency directives prohibiting the collection of evidence but believed there was a verbal directive. Rupert recalled there were regular staff meetings which included an educational segment and reviews on investigative techniques, and that the topic of evidence was part of those discussions, but she could not recall any discussions about the securing of evidence. Subsequently, Rupert told investigators on October 7, 2017, that she never placed a call or sent an email regarding the collection of the vest.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

On June 12, 2017, McGinley issued a written reprimand to Rupert for “failure of good behavior, poor judgement” for “... improperly secured evidence and improperly transported the evidence to your home office residence. ... after an undetermined amount of time, (you) improperly disposed of the evidence with your local trash service.” The reprimand further stated, “As a PERRP Senior Compliance Safety and Health Officer, you are not responsible for the collection and storage of accident scene evidence.”

Public Employment Risk Reduction Program Director Glen McGinley

During a review of the investigative case file, the Office of the Ohio Inspector General noted that Rupert had included a picture taken on May 25, 2015, of the deceased worker’s safety vest obtained from the Suffield Township fiscal officer. Further review of the investigative report revealed that the subsequent visits and contacts by Rupert with the fiscal officer; the receipt of the safety vest; the date the picture of the safety vest was taken; and the subsequent destruction of the vest were not documented in the investigative report.

McGinley confirmed that, in his position, he completes the review of the investigative reports and all the safety compliance citations that are issued by his department. When questioned whether Rupert should have documented her contacts with the township, McGinley stated the

vest was not relevant in the PERRP case and therefore should never have been collected. McGinley further stated that documentation of the vest would not have been required since it was immaterial to the case. However, McGinley acknowledged that since photographs of the vest were included in the report, there should have been documentation recounting the photographing of the vest.

Further review of the PERRP investigative case report noted additional inconsistencies in the dates the photos were taken when comparing the pictures' metadata to the dates Rupert documented in the report narrative of when she took the photos. Investigators asked McGinley how accurate this information should be. McGinley stated information provided by investigators that documents when a photograph was taken does not need to be particularly accurate unless time is a relevant factor in the case.

The Office of the Ohio Inspector General determined that McGinley's insufficient supervisory review failed to identify the inaccuracies in the investigative report. McGinley's failure to identify inaccuracies in the investigative report and lack of supervision of investigative activities could have had a negative impact on the integrity of the investigation.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe a wrongful act or omission occurred in this instance.

During this investigation, McGinley stated the only training materials available to PERRP personnel for reference was the federal OSHA manual, the PowerPoint training presentation he developed to train investigators, and the PERRP Compliance Investigation Cheat Sheet. However, all three of these reference materials provided guidance as an overview. As such, it was difficult for the PERRP investigative staff to verify that they were complying with OBWC investigative policies and procedures. McGinley further confirmed that there were no other specific written policies and procedures concerning enforcement inspections and investigations available for reference within the PERRP unit. However, OBWC informed investigators they are currently developing a PERRP Field Operations Manual, which will include a chapter on evidence handling and records retention.

The Office of the Ohio Inspector General has issued recommendations for OBWC to consider while developing the PERRP Field Operations Manual to ensure that investigators have a clear understanding of investigative procedures, documentation requirements, how to collect, secure, and dispose of evidence, and the process to be used by supervisors when reviewing the investigative report and case file.

RECOMMENDATION(S)

The Office of the Ohio Inspector General makes the following recommendations and asks the administrator of the Ohio Bureau of Workers' Compensation to respond within 60 days with a plan detailing how these recommendations will be implemented.

1. Review the actions of the PERRP employees to determine if administrative action or additional training is needed.
2. Consider implementing written policies and procedures which define what evidence is and the process to be used to seize, secure, store, and dispose of physical evidence collected by PERRP personnel.
3. Consider the benefit of implementing written policies and procedures to be followed when completing the supervisory review of the investigative report and developing a cross training program to ensure there is more than one individual capable of performing these reviews should the PERRP director be absent for an extended period of time.
4. While updating and modifying the PERRP field office manual, policies, and procedures, it is recommended OBWC management determine whether sufficient guidance has been provided to investigators when documenting investigative activities; identifying the types of records to be maintained in the case file; and outlining the process to be used when returning employer records or requesting local law enforcement to secure and dispose of evidence on behalf of PERRP.
5. After the written procedures and field operations manual have been developed, consider the benefits of providing training to employees on the revised field operations manual and

requiring employees to acknowledge that they have read and understood the written policies and procedures.

REFERRAL(S)

The Office of the Ohio Inspector General has determined that no referrals are warranted for this report of investigation.



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Ohio Bureau of Workers' Compensation

FILE ID #: 2017-CA00026

KEEPER OF RECORDS CERTIFICATION

This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.

Jill Jones
KEEPER OF RECORDS

CERTIFIED
May 15, 2018

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