



INVESTIGATIVE REPORT

Lori Torres, Inspector General

TITLE: DCS CASEWORKER USE OF STATE PROPERTY; GHOST EMPLOYMENT; POST-EMPLOYMENT VIOLATION

CASE ID: 2019-10-0261

DATE: October 1, 2020

Indiana Office of Inspector General Staff Attorney Lyubov Gore, after an investigation by Inspector General Special Agent Charles Coffin, reports as follows:

The Indiana General Assembly charged the Office of the Indiana Inspector General (OIG) with addressing fraud, waste, abuse and wrongdoing in the executive branch agencies of state government. Ind. Code §4-2-7-2(b). The OIG also investigates allegations of criminal activity and Code of Ethics (Code) violations within state government. Ind. Code §4-2-7-3. The OIG may recommend policies and carry out other activities designed to deter, detect and eradicate fraud, waste, abuse, mismanagement and misconduct in state government. Ind. Code §4-2-7-3(2).

I. Complaint and Background

On October 23, 2019, the OIG received a complaint alleging that a former DCS Family Case Manager Supervisor (Employee) engaged in moonlighting, ghost employment and misuse of state property by using her state-issued cellphone for her personal use and to conduct her outside business selling products for a private company (Company) during working hours. According to the complaint, DCS conducted an independent investigation and terminated the Employee for violating the Information Resources Use Agreement, DCS's Code of Conduct and DCS's Policies on Ethics, Limited Personal Use of State Property/Resources and Cellular Devices. The complaint further alleged that the Employee left DCS and now works for a DCS service provider (Provider),

working with families and children with which she had previously worked while she was employed with DCS.

The OIG opened an investigation into potential violations of the Code's rules on the use of state property, ghost employment, post-employment and confidentiality and into potential criminal violations of theft, official misconduct and ghost employment.

II. OIG Investigation

OIG Special Agent Chuck Coffin investigated the matter. During the course of the investigation, Special Agent Coffin reviewed DCS's Code of Conduct; DCS's policies; the Employee's DCS employment history, attendance records and termination records; the Employee's emails, text messages and state-issued cellphone records; and the Employee's case lists. Special Agent Coffin also interviewed several witnesses, including the Employee's former DCS supervisors, the Employee's current employer and the Employee.

A. Allegations of Violations of the Code's Post-Employment Rule and Confidentiality Rule

Special Agent Coffin investigated whether the Employee violated the Code's post-employment¹ and confidentiality rules². Special Agent Coffin reviewed the Employee's DCS employment history and learned that the Employee was employed with DCS for eight and a half years. According to the documentation, the Employee was a DCS Family Case Manager Supervisor at the time DCS terminated her. Special Agent Coffin learned that, approximately a month after her termination, the Employee began employment as an Assistant Clinical Manager for the Provider.

¹ See Ind. Code §4-2-6-11.

² See 42 IAC 1-5-10, 42 IAC 1-5-11 and Ind. Code §4-2-6-6.

Special Agent Coffin interviewed the Employee's current supervisor (Employer), who hired the Employee into her current position with the Provider. The Employer explained to Special Agent Coffin that the Employee had completed forms regarding the non-disclosure of confidential information and the non-solicitation of clients as part of her onboarding process. According to the Employer, although the Provider does not have a formal screening procedure in place in the Employee's new position to prevent the Employee from assisting clients with whom she had involvement through assessments, team meetings or subordinate supervision when she was employed with DCS, the Employee is aware of the potential issues presented in working with these clients in her new position. Special Agent Coffin confirmed that the Employee was not responsible for handling the clinical aspects of cases but rather responsible for overseeing clinical staff. Special Agent Coffin obtained and reviewed the Provider's non-disclosure of confidential information policy and confirmed the use of a general conflicts of interest policy.

Special Agent Coffin interviewed the Employee regarding her new position. The Employee explained to Special Agent Coffin that, in the new supervisory position, she did not often see clients for "intake" and had seen only one previous client from DCS during her current employment. The Employee only saw the client for "intake" because the client was immediately hospitalized, and the client was subsequently provided services through a different employee. According to the Employee, she avoided providing services to any past DCS clients in this new position. The Employee stated that, as a Clinical Manager, she generally performed management duties and only provided therapy services to a limited number of clients.

Subsequently, Special Agent Coffin subpoenaed records from the Provider to determine if the Employee was working on the same particular matters that she worked on while she was employed with DCS. Special Agent Coffin compared the Provider's client lists with the

Employee's DCS case list and determined that the Employee had ten direct or indirect contacts with seven clients with whom she had contact while employed with DCS. This documentation did not specify the type, manner or degree of involvement that the Employee had with each of the clients in either of her positions.

The records and witness interviews did not sufficiently demonstrate that the Employee had represented or assisted the Provider or the Provider's clients with any particular matters in which the Employee had personally and substantially participated as a supervisor while employed with DCS. Further, the Employer provided confirmation regarding the existence of policies regarding the non-disclosure of confidential information and conflicts of interest, and the Employee stated that he/she avoided providing services to any past DCS clients in this new position. Special Agent Coffin found insufficient evidence that the Employee violated the Code's post-employment rule or the confidentiality rules.

B. Allegations of Criminal Code Violations

Special Agent Coffin also investigated whether the Employee engaged in any criminal conduct. Special Agent Coffin obtained and reviewed the Employee's attendance records, termination records, emails, text messages and state-issued cellphone records. Special Agent Coffin obtained the Employee's state-issued cellphone, state-issued laptop and various documents related to her outside work for the Company that were found in the Employee's office. Special Agent Coffin also subpoenaed the Employee's employment records from the Company. Based on this documentation, Special Agent Coffin determined that the Company employed Employee as an Independent Consultant from March 2019 and that the Employee had been selling Company products since approximately 2014.

The records Special Agent Coffin reviewed showed that the Employee used her state-issued cellphone to conduct Company business during DCS business hours without receiving approval and that the Employee used approximately 30GB of data per month on the state-issued cellphone compared to the average DCS employee's usage of 5-6GB of data. These records further showed that the Employee sent and received emails and messages pertaining to her Company business approximately a dozen times during her state working hours over the course of several years. Special Agent Coffin learned that DCS had no reported issues with the Employee's work product or with her ability to maintain her supervisory caseload. The Employee's DCS employment records further reflected that, at her pre-deprivation hearing, the Employee admitted to having broken her personal cellphone five years earlier and to never obtaining a new one because she used the state-issued cellphone for personal use instead.

Special Agent Coffin interviewed the Employee's former DCS supervisors (Supervisors). The Supervisors confirmed that DCS had terminated the Employee because she did not have supervisory approval for her outside employment with the Company or for her use of state property to conduct her personal business during state working hours. Special Agent Coffin confirmed that the Employee's use of her state-issued equipment to send emails and messages pertaining to her Company business did not result in any additional expenses or overage charges to the State.

When Special Agent Coffin interviewed the Employee, he asked her questions regarding her personal use of the state-issued cellphone during state working hours. The Employee stated that she never used the state-issued cellphone for Company business during state working hours. The Employee was uncertain as to how many times she would have used the state-issued cellphone outside of state working hours for Company business and stated that she did not keep a log of phone calls that did not involve official DCS business. The Employee admitted that she did not

receive authorization from DCS to use the state-issued cellphone for personal use but claimed that a supervisor she had in the past was aware of the use. The Employee also admitted that the Company documents found in her office belonged to her.

The OIG submitted the results of this investigation to the Prosecutor's Office for the county in which the Employee worked. On August 12, 2020, the Prosecutor's Office notified the OIG that there was insufficient evidence of an identifiable monetary loss to the State that would justify moving forward on any criminal charges against the Employee, including charges of ghost employment, theft or official misconduct.

C. Allegations of Violations of the Code's Use of State Property Rule and Ghost Employment Rule

Special Agent Coffin also investigated the allegations that the Employee engaged in misuse of state property³ and ghost employment⁴. Special Agent Coffin reviewed the same documents that he reviewed to determine whether the Employee committed any criminal violations. According to these documents, the Employee signed the Information Resources Use Agreement and the DCS Cellular Telephone Authorization and Usage Agreement, which attested that she would only use the state-issued cellphone for official DCS business and infrequent personal use.

Special Agent Coffin confirmed that the Employee had used the state-issued cellphone as her sole personal cellphone for approximately five years. Furthermore, the Employee kept her personal photographs, personal messages and personal applications on the state-issued cellphone, including Fitbit, Amazon, Facebook, FB Messenger, Picture App, Pinterest, Instagram, SNAP chat, Couch to 5K, Bible, YMCA, Weight Watchers, Hello Fresh and the Company. According to the documents Special Agent Coffin reviewed, the Employee's personal use of her cell phone was

³ See Ind. Code §4-2-6-17.

⁴ See 42 IAC 1-5-13.

significant and would not qualify as de minimis use under DCS's policies or the Information Resources Use Agreement.

When Special Agent Coffin interviewed the Supervisors, they confirmed that the Employee's personal use of the state-issued cellphone was in violation of DCS's policies. Neither Supervisor knew of the Employee's personal use of the state-issued cellphone. The Supervisors informed Special Agent Coffin that they did not authorize the Employee's personal use of the state-issued cellphone at any time and refuted the proposition that this was a common practice at the local DCS office.

Special Agent Coffin also interviewed the Employee regarding her personal use of the state-issued cellphone. According to the Employee, she had been transparent regarding the personal use, the personal use had never been a problem in the past and an earlier direct supervisor was aware of the personal use. The Employee admitted that the photographs, messages, emails and applications on the state-issued cellphone belonged to her and that they were not related to official DCS business. The Employee stated that she engaged in very minimal personal use of the state-issued laptop and DCS email address. The Employee did not admit the extent of her personal use of the state-issued cellphone to make personal calls.

Special Agent Coffin reviewed additional phone records and cellphone usage policies to determine whether there was any identifiable monetary loss to the State from the Employee's personal use of the state-issued cellphone. Special Agent Coffin confirmed that the Employee's personal use did not result in any additional expenses or overage charges to the State. Special Agent Coffin also sought to calculate the monetary benefit to the Employee from the personal use over the course of the five-year time period of personal use; however, it was not possible to

quantify the extent of the personal use because the Employee routinely used the state-issued cellphone for official DCS business.

Special Agent Coffin's investigation found insufficient evidence that the Employee violated the Code's ghost employment rule. The only evidence that the Employee had engaged in activities other than official state business during working hours were approximately a dozen emails sent to the Employee and received by the Employee pertaining to her Company business during her state working hours over the course of several years. There was no evidence found to show that the Employee did not make up the time spent composing and reviewing these messages and emails at other times, and the Employee denied engaging in any further activities during state working hours. The Employee's employment records also showed that she was a good employee and timely completed her work assignments.

During the course of his investigation, Special Agent Coffin found evidence that the Employee used her state-issued cellphone for personal use. The Employee's actions implicated Ind. Code § 4-2-6-17, the Code's use of state property rule. This rule prohibits a state employee from using state property for anything other than official state business, unless the use is permitted by a general written agency, departmental or institutional policy or regulation that the State Ethics Commission (SEC) has approved.

The OIG believes that the Employee violated Ind. Code § 4-2-6-17 because the Employee used state property for personal use over the course of five years and that use was not permitted by DCS or any policy or regulation. Furthermore, the Employee did not request permission for her personal use of the state-issued cellphone from her supervisors.

Although the OIG believes that the Employee violated Ind. Code § 4-2-6-17, the OIG declines to file a complaint with the SEC for a variety of reasons. First, DCS promptly disciplined

and terminated the Employee from her position with DCS upon discovering her conduct. DCS has strict policies in place regarding the proper use of state-issued equipment and routinely enforces these policies. Second, the Employee was forthright about the personal use of the state-issued cellphone, maintained that the use of the state-issued cellphone for her personal business was minimal and acknowledged making a mistake. Third, the Employee's personal use of the state-issued cellphone did not result in any additional expenses or overage charges to the State. Fourth, it was not possible to quantify the extent of the benefit of the personal use to the Employee because the Employee routinely used the state-issued cellphone for official DCS business as well. Finally, the OIG believes that in light of the foregoing reasons, even if the SEC found that the Employee violated the Code, the SEC would also likely determine that the agency's response of terminating the long-term employee was appropriate and impose no further sanctions. For these reasons, the OIG is closing this case.

III. Conclusion

Although the OIG is declining to file a complaint with the SEC in this case, the OIG recognizes and reminds state employees of the importance of limiting their use of state-issued equipment to official state business only unless other uses are permitted by a general written agency, departmental or institutional policy or regulation that the SEC has approved. State employees should not use their state-issued cell phone as their sole personal phone unless the agency has approved such use in a way that complies with the Code's misuse of state property rule and protects taxpayer dollars. Using state property for uses other than official state business may result in an agency terminating an employee and the SEC finding a violation of the Code, which may result in a monetary fine of up to three times the benefit received and/or disbarment from

future state employment⁵. Furthermore, the OIG encourages agencies to ensure that state employees understand and are complying with state law and agency policies regarding the proper use of state-issued equipment to ensure that these situations do not arise in the future. Accordingly, this investigation is closed.

Dated: October 1, 2020

APPROVED BY:

A handwritten signature in black ink that reads "Lori Torres". The signature is written in a cursive style with a long horizontal stroke at the end.

Lori Torres, Inspector General

⁵ See Ind. Code §4-2-6-12.