

David N. McClintock – Inspector General

Office of Inspector General
640 City Hall

Synopsis of OIG Final Report #101381-103 (DPW)

Hon. President and Members of the City Council
400 City Hall

11/09/2010

Attached please find a synopsis of the Office of the Inspector General's (OIG) Final Report concerning an employee of the Department of Public Works (hereinafter "DPW") who was incarcerated for a period in February and March of 2010 and was carried in various leave statuses including unauthorized LWOP during that time.

The Office of Inspector General's (hereinafter "OIG") review considered current policy, how that policy was followed, and also whether policy changes should be considered to prevent future occurrences. This investigation involved many similar issues as were seen in a previous report concerning Mr. McLaughlin albeit covering a much shorter duration. The OIG is aware that Mr. Cheek's employment was terminated for reasons unrelated to this inquiry; however, we feel that DPW's handling of this matter still presents valuable insight into staff practices and management protocol.

The OIG appreciates the assistance provided during the investigation. We remain committed to providing independent investigations and audits that provide for transparency of government, a solid foundation for meaningful policy review, and a platform for staff accountability.

Attachment

DNM/

cc: OIG Admin/Case file

E:/mcclintock/public synopsis/IG 101381-103 mem-council

PLEASE VISIT OUR WEBSITE@www.baltimorecity.gov

- This report is available to the public in print or electronic format.
- To obtain a printed copy, please call or write:

Office of Inspector General
100 Holliday Street
Suite 640, City Hall
Baltimore, MD 21202

- Baltimore City employees, citizens, and vendors or contractors doing business with the City should report fraud, waste, and abuse to the fraud hotline. Call 1-800-417-0430 24 hours a day, 7 days a week.
- Follow-Us on Twitter: **BALTIMORE_OIG**



OFFICE OF THE INSPECTOR GENERAL BALTIMORE CITY

100 N. Holliday Street, Room 640
BALTIMORE, MD 21202



Synopsis of the Officer of Inspector General's Report #IG 101381-103

Incarcerated Department of Public Works Employee Leave Use and Compensation

An allegation was received that a Department of Public Works (hereinafter "DPW") employee was receiving pay while he was incarcerated. The employee was later identified as Darius Cheek who is a DPW/Bureau of Water and Wastewater Maintenance Division Laborer assigned to the facility located at 240 Calverton Road. Preliminary investigation determined that Mr. Cheek had been arrested on a violation of probation warrant on 02/15/2010 after completing his work day. He was then placed in the Work Release Program with Maryland Environmental Services (hereinafter "MES") from 03/15/2010 through 03/27/2010 when he was fully released.

After determining that he was incarcerated and that DPW management had not been fully apprised of his situation, the Office of Inspector General (hereinafter "OIG") initiated an investigation to ensure that Mr. Cheek was not improperly compensated during his incarceration and to determine if City policy as it pertains to supervision and leave use was adhered to during the period in question.

Timeline

- 02/15/2010 Mr. Cheek was arrested in the early morning for probation violations.
- 03/08/2010 The employee's supervisor (hereinafter "First Line Supervisor") was informed by staff from the Work Release Program that the employee was incarcerated
- 03/10/2010 The First Line Supervisor met with staff from the Work Release program regarding Mr. Cheek.
- 03/12/2010 A DPW Payroll Clerk, notified DPW - Human Resources that Mr. Cheek had been out on emergency vacation leave for an unusual period of time.
- 03/15/2010 Mr. Cheek is placed on Work Release with the MES.
- 03/27/2010 Mr. Cheek is released from incarceration.
- 03/29/2010 Mr. Cheek returned to work.

Pay Status

A review of Mr. Cheek's pay status revealed that while incarcerated from 2/15/2010 through 03/27/2010, a period encapsulating 29 work days, he was permitted to use six vacation days and was then placed in an unexcused, LWOP status for an additional 23 days.

This matter is most effectively addressed by considering the process in a chronological order. It is also important to set out the basic process used for leave requests and the recordation of time at DPW. In cases where there is not a pre-approved leave status, an employee will "call in" to a dispatcher and request the type of leave they wish to be placed on. The call taker will then note the following information on what is referred to as the "Call-In Sheet" - the employee's name, the time of the call, the leave type requested, the supervisor's name, and the name of the dispatcher who received the call. This Call-In Sheet serves as the initial record and a basis for supervisors to complete the "Attendance Record" form. The Attendance Record is then used by payroll to complete the actual electronic Time Card that results in a payroll check being issued.

On Monday, 02/15/2010, which was Presidents' Day and an official City of Baltimore holiday, Mr. Cheek is arrested at about 9:30 am at his home for violation of probation. Mr. Cheek's Attendance Record and Time Card reflect the day was marked as a "Holiday," which equates to a paid day off.

On Tuesday, 02/16/2010, Mr. Cheek's Attendance Record reflects he was working; however, his Time Card indicates the day was actually recorded as LWOP, and no compensation was made. This LWOP status was also carried through for Wednesday, 02/17/2010, and Thursday, 02/18/2010.

On Friday, 02/19/2010, the Call-In Sheet reflects that Mr. Cheek called in and requested two days of Emergency Vacation Leave. This was followed by a request for three days of Compensation Leave shown on a Call-In Sheet dated 02/23/2010 that would have completed the week. However, the 02/24/2010 Call-In Sheet reflects a request for Emergency Vacation Leave, as does the Call-In Sheet of 02/25/2010 that reflects a request for Emergency Vacation leave for the rest of the week. Despite the discrepancy, Mr. Cheek's Attendance Record and Time Card reflect this time was recorded as Vacation Leave for the period between 02/19/2010 and 02/26/2010.

On 02/19/2010 a DPW Payroll Clerk noticed that Mr. Cheek had been using leave and recognized this as unusual and mentioned the issue to two supervisors who advised that Mr. Cheek should be marked down as he was listed on the Call-In Sheets.

Monday, 03/01/2010, marks the beginning of 20 straight days recorded as LWOP that carry Mr. Cheek through his return to work on 03/29/2010. However, during this period significant information comes to the attention of Mr. Cheek's First Line Supervisor and to others with DPW Payroll and Human Resources.

Mr. Cheek's First Line Supervisor was aware as early as 03/08/2010 that Mr. Cheek was

incarcerated and failed to notify his superiors. On 03/10/2010 the First Line Supervisor, representing the City of Baltimore, met with members of the Work Release Program concerning various conditions and requirements of the program. There is no evidence that indicates that the First Line Supervisor shared this information with superiors. During this meeting certain certifications and documentation concerning Worker's Compensation was requested by the Work Release Program.

On Friday, 03/12/2010, the Principle Human Resources Officer for DPW, was notified by the DPW Payroll Clerk regarding how and why Mr. Cheek was calling in for Emergency Vacation Leave without additional supporting documents. Staff from DPW Human Resources then contacted the First Line Supervisor to ascertain more information about Mr. Cheek's situation, thinking that perhaps there was a need to initiate a Family Medical Leave request.

In response to the inquiry the First Line Supervisor indicated that he had no contact with Mr. Cheek and had no knowledge of why he was calling out. This is in contradiction to the evidence that indicates he actually met with Work Release staff two days prior. DPW Human Resources then requested that the First Line Supervisor attempt to reach Mr. Cheek, via phone or even conduct a visit to his home, to seek additional information about the circumstances.

During this conversation DPW Human Resources was also informed that a relative of the employee usually picked up her husband's paycheck and in turn requested that the First Line Supervisor ask that the individual call Human Resources if she came in. When the individual did respond to the yard to pick-up the check they indicated that Mr. Cheek was in jail and was asked to contact Human Resources. During that ensuing exchange DPW Human Resources was also informed that Mr. Cheek was in jail. Based on this information DPW Human Resources staff informed the Principle Human Resources Officer and the Director of DPW - Human Resources.

Prior to the events of 03/12/2010 there is no evidence that indicates that anyone at DPW above the First Line Supervisor was aware of Mr. Cheek's incarcerated status. From this point forward DPW - Human Resources monitored the situation until Mr. Cheek returned to work on 03/29/2010.

FINDINGS AND VIOLATIONS

Findings: Darius Cheek

1. Mr. Cheek was incarcerated within the Maryland Department of Corrections from 02/15/2010 to 03/27/2010, after he was arrested as a result of a Probation Violation offense rooted in a DWI charge.
2. Mr. Cheek was arrested on President's Day, a City of Baltimore holiday; therefore, Mr. Cheek would not have missed any time from work.
3. Mr. Cheek was placed on a LWOP status from Tuesday, 02/16/2010, through

Thursday, 02/18/2010.

4. Mr. Cheek was placed on Vacation Leave from Friday, 02/19/2010 through Friday, 02/26/2010.
5. Mr. Cheek was placed on twenty straight days of LWOP from Monday, 03/01/2010, through Friday, 03/29/2010.
6. Documents show that Mr. Cheek was paid \$742.00 for the period covering he was incarcerated which included one day of Holiday pay and six days of Vacation Leave.

Violations: Darius Cheek

Mr. Cheek violated the Rules of the Baltimore City Department of Personnel and the Baltimore City Civil Service Commission. More specifically, Rule 40 “Standards of Conduct and Performance” and Rule 56 “Cause for Discharge, Demotion, and Suspension” as follows:

1. Rule 40, Part C: *“Employees shall report to work on time as scheduled, and shall follow all established rules and policies for leave.”*
-

Mr. Cheek violated this rule through his failure to engage in any verifiable and/or truthful effort to follow the procedures set forth in the Administrative Manual for the use of Vacation Time, Personal Leave, Compensatory Time, Sick Leave, or Leave Without Pay during his period of incarceration from 02/16/2010 to 03/27/2010.

2. Rule 40, Part L: *“Employees shall conduct themselves at all times in a manner becoming a City employee and shall not bring scandal, expense, or annoyance upon the City through crime, conflict of interest, failure to pay, or other improper or notorious behavior.”*
-

Mr. Cheek violated this rule through his failure to report at any time prior to his release on 03/27/2010 that he was incarcerated within the Maryland Department of Correction from 02/16/2010 to 03/27/2010 for the offense of Violation of Probation. The aforementioned actions caused scandal, and/or expense, and/or annoyance upon the City through crime and/or improper or notorious behavior.

3. Rule 56, Section (2), Subsection (d): *“That the employee has been absent from duty without leave from a superior officer for three consecutive days without good cause and without notifying the said superior officer of his or her absence and intention to return.”*
-

Mr. Cheek violated this rule when he used 6 days in a Vacation Leave and 23 days of LWOP between 02/16/2010 and 03/27/2010 which constituted numerous

absences from duty for three or more days without good cause being shown as required.

4. Rule 56, Section (2), Subsection (h): *“That the employee has committed acts while on or off duty which amount to conduct unbecoming to an employee of the City.”*
-

Mr. Cheek violated this rule through his failure to report at any time prior to 03/23/2010 that he was incarcerated within the Maryland Department of Correction from 02/15/2010 to 03/27/2010, for the offense of Violation of Probation.

FINDINGS: POLICY AND POLICY OBSERVANCE BY DPW

The OIG is aware that there may be Department and Agency-based operational protocols for handling various issues, including leave requests and status. Notwithstanding the degree of independence Departments and agencies permissibly exercise, all internal policy must still comply with the established policy and procedure as set forth in the Administrative Manual, Personnel Manual, and the Rules of the Civil Service Commission, among other sources of authority.

As such, the OIG’s assessment of policy compliance focuses not on the mechanical or specific process applied; rather, on whether the outcome of the agency’s actions rose to the level required by established City policy and procedure. What follows is an assessment of the various policies identified as bearing on the facts as determined through investigation.

Vacation Leave (six days credited) – The Administrative Manual policy titled Vacation Leave and designated AM-204.2 outlines the process for use of such leave. The policy’s “Leave Request” section reads that *“An employee who wishes to use accumulated vacation leave must obtain prior approval from his/her immediate supervisor. Vacation leave requests for one week or longer must be made one week in advance in most situations. A request to use vacation leave for less than one week must be made one workday in advance. However, the employee’s supervisor may waive these time requirements.”*

- Eligibility: Ability to use vacation leave requires only that it be requested in compliance with the policy. The policy places no use restrictions on this earned leave that would prohibit its use while an employee is incarcerated. Therefore, with a proper request, Mr. Cheek would have been eligible to use his accumulated vacation leave.
- DPW Staff: Although there were occasional “call in” requests made, there were no formal leave requests ever submitted by, or on behalf of, Mr. Cheek. AM-204.2 requires prior supervisory approval before use. There is no evidence that the First Line Supervisor made any affirmative effort to enforce the requirement for a

proper request and approval.¹

Leave Without Pay (Unexcused 23 days) - The Administrative Manual policy titled Leave Without Pay and designated as AM-208.1, Part I, outlines the process to use in applying for such leave in blocks of less than 30 days. Under the “Scope” section of the policy, it sets forth that *“A leave of absence without pay for a period not to exceed 30 calendar days or less may be granted by the employee’s appointing officer.”*

- **Eligibility:** The LWOP policy does not articulate guidelines for when LWOP should or should not be granted. As such, there is no prohibition in current policy that would prohibit its use by an incarcerated employee.
- **DPW Approval Process:** There is no evidence that indicates the LWOP policy was followed as it pertains to approvals under Part I (less than 30 days) which should have required his appointing authority’s approval prior to be granted.
- **DPW Staff Action:** The evidence in this matter indicates a significant change in what was known by DPW HR and Payroll staff on or about 03/12/2010 when a DPW Payroll Clerk’s inquiry resulted in alerting staff of the DPW HR concerning Mr. Cheek’s unapproved status. As such, it is helpful to consider actions taken both prior to, as well as post, 03/12/2010.
 - **Prior to 03/12/2010:** Evidence indicates that prior to this time the First Line Supervisor had not taken any action to advise superiors or DPW HR/Payroll regarding the unauthorized use of LWOP or otherwise ensure compliance with AM-208.1.
 - **Post 03/12/2010:** After the DPW Payroll Clerk notified DPW HR staff a series of inquiries were made that resulted in discovering the true nature of events and notification to both the Principal Human Resources Officer for DPW and the Director of DPW - Human Resources. Although there were affirmative investigative inquiries into the situation, evidence indicates that Mr. Cheek was still marked in an unauthorized LWOP in violation of AM-208.1.

Incompetent, Inefficient, or Negligent in the Performance of Duty - Rule 56 *“Cause for Discharge, Demotion, and Suspension,”* Part (2), of the Baltimore City Department of Personnel and the Baltimore City Civil Service Commission sets forth various situations that are recognized as constituting *“just and sufficient cause for suspension, demotion, or discharge.”* Sub-part (b) sets forth one of the recognized areas as: *“The employee is incompetent, inefficient, or negligent in the performance of duty.”*

- **DPW Staff Action:** During the course of Mr. Cheek’s period of incarceration, a variety of opportunities were presented to DPW staff to address Mr. Cheek’s status pursuant to existing policy.

¹ The OIG recognizes that DPW was under the perception that Mr. Cheek needed Emergency Vacation. However, that does not preclude supervisors establishing contact with employees by phone, filling out proper slips for them, and generally ensuring that policy is followed.

- As early as 02/19/2010, a DPW Payroll Clerk had alerted supervisors of unusual leave by Mr. Cheek and was advised to mark him down as he was listed on the Call-In Sheets. Further inquiry would have likely led to more effective management.
- Between 02/19/2010 and 03/12/2010: Evidence indicates that during this period the First Line Supervisor had not taken any action to advise superiors or DPW HR/Payroll regarding the unauthorized use of LWOP or otherwise ensure compliance with AM-208.1, the knowledge of Mr. Cheek's incarceration, or the contact with staff from the Work Release Program.
- Post 03/12/2010: After the DPW Payroll Clerk notified DPW HR staff a series of inquiries were made that resulted in discovering the true nature of events and notification to the Principal Human Resources Officer for DPW and Director of DPW - Human Resources. Although there were affirmative investigative inquiries into the situation, there is no evidence that indicates that any action was taken to address the ongoing application of unauthorized LWOP or otherwise ensure compliance with AM-208.1.

Absent From Duty Without Leave - Rule 56 "*Cause for Discharge, Demotion, and Suspension,*" Part (2), of the Baltimore City Department of Personnel and the Baltimore City Civil Service Commission sets forth various situations that are recognized as constituting "*just and sufficient cause for suspension, demotion, or discharge.*" Sub-part (d) sets forth one of the recognized areas as "*the employee has been absent from duty without leave from a superior for three consecutive days without good cause and without notifying the said superior officer of his or her absence and intention to return.*"

- DPW Staff Action: During the course of Mr. Cheek's period of incarceration, a variety of opportunities were presented to DPW staff to address Mr. Cheek's status pursuant to existing policy.
 - Between 02/19/2010 and 03/12/2010: Evidence indicates that during this period the First Line Supervisor had not taken any action to advise superiors or DPW HR/Payroll regarding the unauthorized use of LWOP or to have Mr. Cheek's time appropriately recorded as an "X" day.
 - Post 03/12/2010: After the DPW Payroll Clerk notified DPW HR staff, a series of inquiries were made that resulted in discovering the true nature of events and notification to the Principal Human Resources Officer for DPW and Director of DPW - Human Resources. Although there were affirmative investigative inquiries into the situation, there is no evidence that indicates that any action was taken to address the ongoing application of unauthorized use of LWOP or to have Mr. Cheek's time appropriately recorded as an "X" day.

Criminal Conduct/Supervisory Action – The OIG determined that at the time this incident occurred City policy only specifically addressed mandatory disclosure of arrests and convictions as they pertained to alcohol and drug offenses for certain sensitive classes of employees via the Substance Abuse and Control Policy. Although Mr. Cheek's position is deemed as a sensitive class, his arrest was not for alcohol or drug violations

and would not have triggered disclosure.² On 05/06/2010, Mayor Stephanie Rawlings-Blake issued an Executive Order that the OIG believes effectively addresses the arrest and disclosure issue; therefore, no policy change recommendations will be made in this area. However, the OIG will set forth the policies that were in effect at the time of the incident as they remain relevant to assessing the actions of the supervisors.

Baltimore City Department of Personnel and Baltimore City Civil Service Commission rules also bear on this issue.

1. Rule 40, Part (L): *“Employees shall conduct themselves at all times in a manner becoming a City employee and shall not bring scandal, expense, or annoyance upon the City through crime, conflict of interest, failure to pay, or other improper or notorious behavior.”*
2. Rule 56, Part (2) which sets forth various situations that are recognized as constituting “just and sufficient cause for suspension, demotion, or discharge.”
 - One situation specifically set forth is sub-part (h) that reads: *“That the employee has committed acts while on or off duty which amount to conduct unbecoming to an employee of the City.”*
 - Another situation specifically set forth is sub-part (k) that reads: *“That the employee has been convicted of a criminal offense or misdemeanor involving moral turpitude.”*

A supervisor presented with information indicating that any of his or her subordinates may be in violation of the aforementioned policies would have been justified, and is arguably required to take action to inquire further or seek assistance in doing so in order to establish the facts and ensure that leave was only taken in compliance with policy.

Investigation revealed that the First Line Supervisor of Mr. Cheek’s knew of his status as early as 03/08/2010 when he was contacted by Work Release staff. Further, the First Line Supervisor did not take any action to advise his superiors or DPW - Human Resources of the situation in order to seek assistance in determining the proper course of action under existing policy. Rather, the First Line Supervisor seems to have determined that this was a personnel issue and not a supervisor’s issue.

RECOMMENDATIONS

The OIG understands that the recommendations noted below are in large part similar to those made in a separate report issued under 101376-103 on 05/06/2010. In response to that report DPW acknowledged OIG recommendations similar to those listed below and committed to adopt new policies. However, since this present matter occurred prior to DPW’s remedial actions, the OIG feels obligated to again set forth specific

² It should be noted that the probation Mr. Cheek was serving was for an alcohol offense. It is not believed that the intent of the disclosure policies in place at the time of this incident was not intended to capture probation violations.

recommendations, while understanding that some adjustments may have already been made.

1. The OIG recommends that DPW implement a protocol for leave use and pay status that requires more formalized leave use requests and approvals, as well as mandatory checks and balances, upon certain occurrences to ensure compliance with the Administrative and Personnel Manuals.
-

The OIG recommends DPW implement a policy that requires written employee requests for leave and that written supervisory approvals of those requests are submitted in all cases. Recognizing that there is a need for a “Call-In” Sheet, or similar mechanism, to address unforeseen situations, the OIG does caution that it should not become a replacement for the proper leave approval process. Additionally, in those instances where absences become protracted beyond the “routine,” supervisors should have a clear procedure for briefing and working with DPW - Human Resources to manage the variety of unique circumstances that may arise.

Core elements of any policy addressing protracted absences should include coordination with Payroll to authorize leave and pay status, periodic actual contact with the employee, consideration of whether verification of the situation or condition is needed, and definitive steps to ensure policies are followed regarding application of leave to successfully bring the employee back to work when possible. The OIG also recommends supervisor training regarding any new policies to ensure future accountability.

2. The OIG recommends that the Department of Human Resources considers policy that specifically strengthens the procedure to be followed when an employee is absent from duty without leave from a superior for three consecutive days without good cause.
-

The OIG determined that the employee was permitted by DPW to be carried in an unauthorized LWOP status for 23 days. The days in question should have been assessed as absent from duty without leave from a superior and without good cause, commonly referred to as an “X” day. Allowing employees to be carried in an unexcused absence status for anything beyond a few days simply thwarts the City LWOP policy that is specifically designed to address the very issue of employee absences that fall outside of other leave use policies.

Employees who are absent from duty without leave from a superior for three consecutive days without good cause are covered by Rule 56 of the Baltimore City Department of Personnel and the Baltimore City Civil Service Commission. The policy states that an “employee may be suspended by a superior officer pending an investigation by the appointing officer to determine whether the employee should be removed.” As such, the current policy simply permits a suspension and contains no mechanism that requires a suspension or other action.

The OIG recommends policy change that would require specific actions be taken upon the occurrence of certain benchmarks. Further, that policy should be adopted on a city-

wide basis rather than department by department. The OIG believes that having no effective mandatory mechanism preventing unlimited, unexcused absences is counter to the City's interest in managing workflow, the hiring processes, disciplinary issues, etc.