



OFFICE OF INSPECTOR GENERAL
City of Albuquerque

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Investigative Informative Case Synopsis

FILE NO: 24-0186-C

SUBJECT MATTER: Alleged time and attendance fraud and abuse of position.

STATUS: Final

INVESTIGATOR: M. Santistevan

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Melissa R. Santistevan

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Signed by:

Victor Griego

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VICTOR GRIEGO
ACCOUNTABILITY IN GOVERNMENT
OVERSIGHT COMMITTEE CHAIRPERSON

August 7, 2024

Date of Completion

August 28, 2024

Date of Approval

DISTRIBUTION:

Honorable Mayor
President City Council
Chief Administrative Officer
City Councilors
Director Council Services
City Attorney
Department Director
Members, Accountability and Government Oversight Committee
File

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EXECUTIVE SUMMARY

The Office of Inspector General (OIG) operates in accordance with the Association of Inspectors (AIG) standards, as outlined in City Ordinance 2-17-2. The overarching goals include conducting investigations impartially, preventing fraud and abuse, ensuring independence, and enhancing the city's accountability.

As defined in the Inspector General Ordinance §2-17-3, fraud is the knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Waste is the thoughtless or careless expenditure, mismanagement, or abuse of resources to the detriment of the City. Abuse is the use of resources or exercise of authority contrary to rule or policy, or knowingly inconsistent with any established mission or objectives for the resource, or the position held by the person exercising the authority. Abuse does not necessarily involve fraud or illegal acts.

On August 2, 2024, the Office of Inspector General (OIG) received a complaint alleging time and attendance fraud and abuse due to a City employee claiming to be teleworking from their home in Albuquerque on August 2, 2024, and August 5, 2024, and out on vacation leave on August 6, 2024, but was seen at the airport boarding a flight on August 1, 2024. The OIG determined that it was appropriate for the OIG to conduct a fact-finding investigation for elements of fraud, waste, or abuse.

The purpose of the investigation was to substantiate or not substantiate, through the collection of sufficient evidence, the allegations stated above.

The OIG's investigation produced clear and convincing evidence to substantiate the allegation of time and attendance theft.

The following is a summary of the OIG's findings and recommendations aimed at rectifying the identified issues, enhancing accountability, and preventing future occurrences of fraud, waste, or abuse within the City's operations.

Findings:

- Violations of the City's Code of Conduct
- Violations of Regular Work Hours
- Violation of teleworking agreements
- Violations of Inspector General Ordinance

Recommendations:

- Adjust leave accruals for teleworking from a different location without prior approval.
- Assess disciplinary action for involved personnel.
- Ensure consistent application of personnel policies.
- Provide additional training on the policy application.

ABBREVIATIONS

City: City of Albuquerque
D1: Division Manager
E1: City Employee
E2: City Employee
E3: City Employee
OIG: Office of Inspector General

INTRODUCTION

The mission of the Office of Inspector General (OIG) is to promote a culture of integrity, accountability, and transparency throughout the City of Albuquerque (City) to safeguard and preserve public trust. Investigations, inspections, evaluations, and reviews are conducted following AIG Standards.

Complaint:

Alleged time and attendance fraud and abuse of position.

Background:

In 2021, the City established Administrative Instruction 7-66 entitled Telecommuting/Work from Home. The Administrative Instruction was to guide City Department Directors on establishing a departmental remote work policy for certain departmental employees or divisions. This included guidance to ensure a safe and productive remote work environment. Under the Administrative Instruction, Directors are responsible for making the ultimate decision as to whether any position's functions are compatible with a remote work schedule under this Administrative Instruction. This decision must be made with careful consideration of the missions of the department and the City.

In late 2023, the Department Director required all employees to take additional training on the teleworking policies and each employee was required to complete and sign a new teleworking agreement that outlined the criteria and the Department's expectations for telework.

SCOPE AND METHODOLOGY

Scope:

Events and records related to the time and attendance of the subject between 8/2/24 and 8/6/24.

Methodology:

The methodology consisted of:

Assessing the complaint allegations

Obtain and review evidence related to the allegation

Review the City Ordinances and Policies

Conduct inquiries/interviews

Check for pending litigation

This report was developed based on information from interviews, inspections, observations, and the OIG's review of selected documentation and records available during the investigation.

INVESTIGATION

Allegations:

Alleged time and attendance theft due to a City employee claiming to be teleworking from their home in Albuquerque on August 2, 2024, and August 5, 2024, and out on vacation leave on August 6, 2024, but was seen at the airport boarding a flight on August 1, 2024.

Authority:

Article 17 Chapter 2 Inspector General Ordinance

301 Code of Conduct

Administrative Instruction 7-66 Teleworking

Evidence:

Video

Flight Information

Kronos timesheet

Office In and Out Planner

Inquiry/Interview of Subject

Telework Agreement

Policies and Analysis of Evidence:

In conducting our investigation, the OIG considered the following facts as a basis for analysis of the facts.

§2-17-3 Definitions states "Fraud is the knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment.

Waste is the thoughtless or careless expenditure, mismanagement, or abuse of resources to the detriment of the City.

Abuse is the use of resources or exercise of authority contrary to rule or policy, or knowingly inconsistent with any established mission or objectives for the resource, or the position held by the person exercising the authority. Abuse does not necessarily involve fraud or illegal acts.”

Policies:

Code of Conduct:

§301.3 Standards of Conduct states “Employees shall in all instances maintain their conduct at the highest personal and professional standards in order to promote public confidence and trust in the City and public institutions and in a manner that merits the respect and cooperation of co-workers and the community.

Employees shall not use insulting, abusive, or offensive language or actions toward the public or co-workers. Ethnic or sexist jokes, slurs, and other comments or actions that might embarrass or offend others are prohibited.

Employees shall not harass others by making sexual advances by creating an intimidating or offensive working environment or by making false accusations regarding such conduct. Display of visual materials that may be sexually or racially offensive is also prohibited.

Employees shall not have in their possession during assigned work hours, including lunch periods, in any facility, vehicle, or work site, illegal drugs, alcohol, drug paraphernalia, weapons, or explosives, unless directly related to their city responsibilities. Additionally, employees may not use any product for other than its intended manufactured use.

Employees are responsible for notifying their immediate supervisor in writing of a conviction, entry of a “no contest” plea, or imposition of a sentence if the infraction relates to the position held by the employee. Misdemeanor convictions will be considered based on job-relatedness.”

§301.9 False Statements/Fraud states “No employee shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification, appointment or investigation, or in any manner commit any fraud, conceal any wrongdoing or knowingly withhold information about wrongdoing in connection with employment with the City or in connection with the work-related conduct of any City employee.”

§301.13 City Records and Accounting states “All City records, including reports, vouchers, requisitions, payroll, and personnel records must be prepared factually and accurately. It is the personal obligation of the employee completing such records as well as the supervisor to ensure that such records are accurate and comply with federal, state, and City record-keeping and accounting requirements.”

Telecommuting/Work from Home Policy states “Telecommuting reflects a work agreement between an employee and their Department Director which allows an employee to perform assigned duties at an alternate work site during some of their scheduled work hours. Telecommuting may be appropriate for some employees and some jobs. It is not an entitlement, it is not a City-wide benefit, and it in no way changes the terms and conditions of employment with the City of Albuquerque. It is a managerial option and must conform to all City ordinances, state laws, and department regulations regarding employment.

This Administrative Instruction or any other telecommuting/work from home policy does not supersede or affect any language or benefits provided under any applicable collective bargaining agreements ("CBA").

A request for a reasonable accommodation under the ADA does not fall within the scope of this Administrative Instruction. Upon receiving such a request, the employee's direct supervisor should refer the employee to the Human Resources Department."

The Telework Agreement outlines the criteria and the Department's expectations for employees who utilize the privilege of telework. The telework agreement specifies in *item 5* that "Your immediate supervisor must be notified, via e-mail if your planned work location changes. Prior approval will be required by the department Director via email. *Item 21* of the signed teleworking agreement states "Any changes to the teleworking agreement must be documented by both you and your supervisor and provided to the Human Resources Department."

Evidence and Analysis:

The OIG reviewed video footage of D1 at an airport gate and then passing through an airport jetway to get on a flight out of state at approximately 4:44 pm on August 1, 2024.

On Friday, August 2, 2024, the investigator visited the Division offices and spoke to E1 who advised the investigator that the D1 was out of the office. E1 then spoke to E2 who advised the investigator that the D1 was teleworking and provided the investigator with a contact number for D1.

The OIG observed the in and out planner on the wall indicating that D1 was teleworking on August 2, 2024, and August 5, 2024, out on PTO on August 6, 2024, and would return to the office on August 7, 2024.

Immediately upon the investigator's arrival at their office, D1 called the investigator and stated that D1 was advised that the investigator was looking for D1. The investigator stated they had questions for D1 and then asked if D1 was teleworking today to which D1 replied yes. The investigator then asked "From home?" to which D1 replied "Yes". The investigator asked D1 "In Albuquerque?" to which D1 replied "Yes". The investigator then asked D1 if they had taken a flight out of state on August 1, 2024, to which D1 replied with a sigh "Yes". The investigator asked D1 if they were teleworking from out of state to which D1 replied "Yes". The investigator stated that the office schedule reflected that D1 was teleworking on Friday, August 2, 2024, Monday, August 5, 2024, had PTO on Tuesday, August 6, 2024, and that D1 would return to the office on Wednesday, August 7, 2024. The investigator asked if D1 was teleworking from Texas on Monday also to which D1 replied: "I'll put in for vacation time". The investigator stated to D1 that this was an active investigation and that D1 would be called in to interview upon return to the office. D1 stated that D1 could come into the office sooner if required.

The OIG's review of the telework agreement signed by D1 indicates that D1 is "currently not Teleworking - Will telework as needed."

During the OIG interview, D1 stated they had authorization to telework on Mondays, however, there was no evidence to reflect that D1 notified the Director of a change in telework location or

that changes to D1's telework agreement were documented by both D1 and the Director and submitted to the Human Resources Department. D1 advised the OIG that no one knew of D1's location during this period.

During the OIG interview with D1, D1 did not deny the allegations that D1 was out of state but did make clear that D1 was teleworking on Friday, August 2, 2024, and Monday, August 5, 2024. The OIG reviewed the VPN logs and emails which reflected that D1 was logged into the City's network and was sending emails, although the extent of work conducted on these days could not be identified. D1 also provided a signed, written statement and verbally acknowledged a lapse in judgment resulting in the violation of City Policies.

The OIG's review of the evidence along with the Code of Conduct identified violations of sections 301.3 by not maintaining their conduct at the highest personal and professional standards in order to promote public confidence and trust in the City, §301.9 by initially providing false information and statements, and §301.13 by not factually and accurately preparing all City records, including reports, vouchers, requisitions, payroll, and personnel records.

The OIG's investigation revealed that D1 did not follow the telework policy and the signed telework agreement, despite receiving training on the topic on November 28, 2023.

During the interview, D1 provided testimony and a written statement indicating a lapse in judgment resulting in unacceptable behavior. According to the Code of Conduct, all employees, including D1 should conduct themselves with the highest ethical standards to mitigate any perceptions of mistrust or wrongdoing.

Any abuse of position has the potential to create an environment of mistrust amongst City employees and the perception that higher-level employees are not subject to the same rules and regulations as lower-level employees causing mistrust, a decrease in employee morale, and time and attendance fraud which could result in theft of time.

D1's statement of admission and the evidence which was clear and convincing led to the OIG substantiating the allegation.

FINDING AND RECOMMENDATIONS

Allegation 1:

Alleged time and attendance fraud and abuse due to a City employee claiming to be teleworking from their home in Albuquerque on August 2, 2024, and August 5, 2024, and out on vacation leave on August 6, 2024, but was seen at the airport boarding a flight on August 1, 2024.

Finding:

Condition: D1 did not follow City policies with regard to teleworking and initially provided false statements in time records and to the OIG in contradiction to the City's Code of Conduct and D1's signed teleworking agreement.

Criteria: The City's Code of Conduct, Inspector General Ordinance, and telework agreement describe the expectations for its employees. Excerpts of the full text are provided below.

§301.3 Standards of Conduct states “Employees shall in all instances maintain their conduct at the highest personal and professional standards in order to promote public confidence and trust in the City and public institutions and in a manner that merits the respect and cooperation of co-workers and the community.”

§301.9 False Statements/Fraud states “No employee shall willfully make any false statement, certificate, mark, rating or report in regard to any test, certification, appointment or investigation, or in any manner commit any fraud, conceal any wrongdoing or knowingly withhold information about wrongdoing in connection with employment with the City or in connection with the work-related conduct of any City employee.”

§301.13 City Records and Accounting states “All City records, including reports, vouchers, requisitions, payroll, and personnel records must be prepared factually and accurately. It is the personal obligation of the employee completing such records as well as the supervisor to ensure that such records are accurate and comply with federal, state, and City record-keeping and accounting requirements.”

D1’s signed telework agreement specifies in item 5 that “Your immediate supervisor must be notified, via e-mail if your planned work location changes. Prior approval will be required by the department Director via email. Item 21 of the signed teleworking agreement states “Any changes to the teleworking agreement must be documented by both you and your supervisor and provided to the Human Resources Department.”

Cause: D1 decided not to request leave or an exception to the teleworking policy from the Department Director and instead chose to conceal that D1 was not following the teleworking agreement.

Effect: D1 did not follow City policies and provided false statements. Any abuse of position has the potential to create an environment of mistrust amongst City employees and the perception that higher-level employees are not subject to the same rules and regulations as lower-level employees causing mistrust, a decrease in employee morale, and time and attendance fraud which could result in theft of time.

Conclusion: The OIG’s investigation produced clear and convincing evidence to substantiate the allegation of time and attendance fraud and abuse of position.

Recommendations:

The City should adhere to the department teleworking policy and require D1 to take leave for two (2) days teleworking from a different location since D1 did not receive prior approval to do so.

The City should determine if disciplinary action is warranted for D1 and if so take appropriate action.

D1 should undergo additional training on the Code of Conduct and the teleworking policy to include regular work hours. Training should be documented and a sign-in sheet should be maintained as evidence of employees taking the training.

Management's Response:

D1 has two homes, one in Albuquerque and one in Houston, Texas. D1 was working on August 2 and 5, 2024. D1 will no longer telework. The Director of the Department provided training in November 2023, D1 was present at the training. The training will be repeated annually and telework agreements will be renewed each calendar year.