



STATE OF NEW YORK
OFFICE OF THE STATE INSPECTOR GENERAL
Final Report
March 30, 2011

SUMMARY OF FINDINGS/RECOMMENDATIONS

The New York State Inspector General found that Errol Webley, New York State Department of Environmental Conservation (DEC) employee, misused his state-issued computer to further his personal, for-profit business during work hours. As a result of this misconduct, DEC suspended Webley for 30 days without pay.

ALLEGATION

On January 8, 2009, DEC advised the Inspector General that DEC employee Errol Webley was allegedly using his state-issued computer for personal use.

SUMMARY OF INVESTIGATION

Background

DEC's policy regarding outside employment is governed by its Conflict of Interest Policy (CP-7), which states, in pertinent part:

C. General Conflict of Interest Provisions

1. Employees shall not engage in outside activities which interfere with the proper performance of their duties as a DEC employee. For example, the activity requires the employee's presence or action during normal working hours or is so time consuming as to detract substantially from the ability of the employee to undertake Departmental duties.
2. Outside activities shall not be carried out on the Department's premises or with Department equipment, property or facilities or through other Department personnel.

Supplementing subsection 2 of the Conflict of Interest Policy, DEC's Internet Acceptable Use Policy provides that the Internet be accessed by DEC employees at work for "Agency related purposes only." DEC's Information Security Policy similarly limits

the use of state-issued computers to “appropriate Department purposes.” Under this policy, inappropriate uses include:

- Using the Department’s systems or equipment to access or retrieve e-mail (personal or otherwise) held in any e-mail system or account other than the Department’s e-mail system unless properly authorized to do so.
- Using the Department’s systems or equipment to browse the Internet for any reasons unrelated to official Department business.
- Using the Department’s systems or equipment for private purposes such as marketing or advertising of products or services or to conduct any private business transactions.

Accordingly, DEC’s Computer Log In Notice, which appears each time a user logs on to his or her state-issued computer states, in part:

This system, all data on it, and the network it is connected to are the property of the New York State Department of Environmental Conservation (DEC). Use is limited to conducting official DEC business except for incidental and necessary personal purposes provided that such use is in a limited amount and duration and does not conflict with the proper exercise of the duties of the employee Unauthorized or improper use of this system, network, or data may result in administrative action and/or civil and/or criminal action, where appropriate. By continuing, it will mean that you have read and acknowledged the above.

Webley’s Misuse of His State-Issued Computer

Errol Webley has been employed by DEC since 1987 as a Pesticide Control Specialist 2. The majority of Webley’s work day is spent in the field conducting inspections to ensure compliance with state environmental laws and regulations. When in the office, Webley’s duties include writing reports related to his field work and answering telephone inquiries and complaints.¹

¹ Of note, in 2001, Webley was disciplined for using his state-issued cellular telephone for personal use, and received a two-week suspension without pay, a \$200 fine, and payment of all costs.

Since 1991, Webley and his wife, Sonetha Webley, have owned and operated Webley Enterprises, a Quixtar/Amway-supported company that sells, among other items, lifestyle, health, and beauty products. In 2006, a Web site for the business, www.webleyenterprises.com, was developed and launched. DEC's Conflict of Interest Policy requires employees who engage in outside employment to determine whether actual, apparent, or potential conflicts of interest exist and, if so, to consult DEC for an advisory opinion as to whether the outside employment may continue. Under this parameter, Webley's operation of Webley Enterprises did not create an actual, apparent, or potential conflict of interest, and he has not requested an advisory opinion from DEC. However, Webley's efforts to further the business during work hours using his state-issued computer violated CP-7 C(1) and (2) and DEC's Internet Acceptable Use Policy, enumerated above.

Upon receiving an allegation that a DEC employee witnessed Webley excessively using his state-issued telephone and openly discussing running his business during work hours, on January 29, 2009, the Inspector General acquired a duplicate copy of Webley's state-issued computer hard drive for forensic analysis.² Additionally, DEC uses WebSense, a software technology that allows it to monitor Internet usage of its employees. DEC generated a WebSense report of Webley's Internet usage, which was provided to the Inspector General. From the WebSense report, the Inspector General culled a list of keywords related to Webley Enterprises to facilitate search of the hard drive. The Inspector General's forensic examination of Webley's state-issued computer revealed the following:

- Orders for Quixtar/Amway products addressed to Errol and Sonetha Webley with an e-mail address associated with Errol Webley's name;
- E-mail communications from Webley's personal e-mail account between Webley and other members using an @bww.com email extension (BWW is affiliated with Amway);
- A receipt for activation of an account with Parus Interactive, a company that manages business communications, which contains an e-mail address associated with Webley's name;
- E-mail communications from Webley's personal e-mail account related to Quixtar/Amway business and product orders placed and confirmed;
- Images of Quixtar/Amway products;
- Internet searches that were conducted for Quixtar/Amway-related literature and products;
- E-mail content from Webley's personal e-mail account containing a communication from amwayglobal@amwayglobal.com entitled "Imagine True Success in 2009";

² A duplicate image of the hard drive was acquired without altering the hard drive or changing the date-stamps on the files.

The Inspector General provided information obtained in this investigation to DEC. Pursuant to a collective bargaining agreement between the state and Webley's union, the Public Employees Federation, Webley's misconduct was adjudicated pursuant to arbitration. An investigator from the Inspector General's office attested to the above findings at the hearing. In a written decision dated November 1, 2010, Webley was found to have violated the above DEC policies, resulting in Webley's 30-day suspension without pay.

FINDINGS AND RECOMMENDATIONS

The New York State Inspector General found that DEC employee Errol Webley misused his state-issued computer to facilitate the operations of his personal business during work hours. Following arbitration, DEC suspended Webley for 30 days without pay.

The unauthorized use of agency computer equipment for outside pursuits constitutes misuse of time and resources. The Inspector General recommends that DEC reiterate to employees the agency policy regarding approved and unapproved computer use.

Response of the Department of Environmental Conservation

In response to the recommendation of the Inspector General, DEC advised that, to deter Internet misuse, the agency's Office of Employee Relations on January 14, 2011, distributed an e-mail alerting all staff that use of the e-mail system and Internet access is restricted to official business, and citing the pertinent sections of agency policy.