



STATE OF NEW YORK  
OFFICE OF THE STATE INSPECTOR GENERAL  
**Final Report**  
**March 31, 2011**

## SUMMARY OF FINDINGS/RECOMMENDATIONS

The Inspector General determined that former Department of Health (DOH) employee Susan Shearer submitted two false timesheets and three suspect doctors' notes in order to improperly use 10 days of sick leave between June 28 and July 14, 2010, to visit her family and conduct activities for her private employer. The Inspector General further determined that DOH supervisor Steven Bates failed to take appropriate action when alerted to Shearer's potential misconduct.

Because Shearer is no longer employed by DOH, she cannot be subject to discipline. However, the Inspector General recommends that DOH take appropriate disciplinary action against Bates, and DOH has advised the Inspector General that it is doing so. The Inspector General has forwarded this report to the Rensselaer County District Attorney's Office for review and consideration of potential criminal charges and to the New York State Commission on Public Integrity.

## ALLEGATION

The Inspector General received a complaint from the Department of Health that former DOH employee Susan Shearer had submitted falsified time records to DOH claiming she was sick, when, in fact, she was working for another employer. The complaint stated that Shearer had submitted her resignation from state service in June 2010 with her last date on the state payroll to be August 4, 2010. Shearer provided her employer with a request for outside employment seeking permission from DOH to perform activities for her soon-to-be employer commencing on July 14, 2010, but her request was denied by the agency. In order to circumvent this denial, Shearer claimed that she was taking care of an ill relative during the week of July 14, 2010, and submitted a physician's note to that effect.

# SUMMARY OF INVESTIGATION

## Background

State employees accrue vacation leave, personal leave and sick leave. While vacation and personal leave generally may be used for any purpose not in conflict with the obligations and duties of an employee's state employment, under state law, sick leave may only be used in the event of illness or injury of the employee; for appointments with health care practitioners; or, to care for ill or injured family members, including children, spouses, and parents.<sup>1</sup> Agencies may require employees to provide documentation to support a request for personal or family sick leave. Employees leaving state service are permitted to use vacation leave prior to their separation from state service or, up to a maximum amount, receive a dollar equivalent for the accrued vacation; however, unless the employee is retiring directly from state service, sick leave accruals have no cash value.

Under the Public Officers Law and the policies of various state agencies, in order to prevent even the appearance of a conflict of interest or abuse of state resources, stringent procedures exist regarding employees who seek to engage in secondary, outside employment with a private employer. Specifically, under DOH policy, an employee seeking to engage in outside employment must submit an application for outside employment and receive approval prior to commencing the second job. Outside employment is specifically barred during the employee's normally scheduled DOH working hours unless the employee has prior authorized leave. DOH's e-mail policy also explicitly bars employees from using its e-mail for outside employment purposes.

Susan Welt Shearer, a licensed professional engineer, is currently employed by Enviro Group Limited in Latham, New York. Prior to leaving state service in August 2010, Shearer was employed as a Public Health Engineer 2 in DOH's Bureau of Environmental Exposure Investigation, located in Troy, New York. After approximately four years of state employment, Shearer tendered her resignation on May 26, 2010, advising that she had accepted a position with a private engineering firm and that her last day on the state's payroll would be August 4, 2010. However, using her accrued vacation and personal leave, Shearer calculated her last day physically in the office would be June 23, 2010.

On June 4, 2010, Shearer requested permission from DOH to engage in outside employment in order to attend "some conferences and participate in some marketing endeavors" for which she would be compensated by her new employer during the period between her resignation date and the last day of her employment with the state. DOH denied her request and, when Shearer was so advised, she responded by e-mail claiming that: "This is not a problem as I actually will be with my mother now instead (she had surgery yesterday and therefore will not be doing any outside work until after she is better." [sic]

As of the payroll period ending June 23, 2010, Shearer began to claim inordinate amounts of sick time. For the payroll period ending June 23, 2010, Shearer claimed 55.5

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<sup>1</sup> 4 NYCRR 21.3

hours of sick leave. For the payroll period ending July 7, 2010, Shearer claimed 64.25 hours of sick leave, the Fourth of July holiday, and 3.25 hours of personal leave. For the payroll period ending July 21, 2010, Shearer claimed 37.5 hours of family sick leave encompassing the entire week of July 12-16, 2010. After reviewing Shearer's June 23, 2010 timesheet, DOH referred this matter to the Inspector General.

### **The Inspector General's Investigation**

The Inspector General reviewed time and attendance records, e-mail correspondence and medical documentation to assess Shearer's previously submitted sick leave requests and supporting medical documentation. The Inspector General also interviewed Shearer, her supervisors, and other relevant DOH employees.

The Inspector General's review of Shearer's e-mails revealed that prior to leaving DOH employ, Shearer had communicated with her new employer utilizing DOH's e-mail system. According to her e-mail correspondence, the Inspector General determined that Shearer intended to attend a conference for her incipient private employer held at the Hyatt Regency in Cambridge, Massachusetts, from July 12-14, 2010. The Inspector General contacted the Hyatt Regency in Cambridge and confirmed that Shearer stayed at the hotel from July 11-14, 2010. The Inspector General also obtained a list of conference attendees and interviewed other attendees who confirmed that Shearer had attended the conference.

Despite the fact that she had checked into the hotel in Massachusetts on July 11, 2010, and attended a conference for her outside employer, in her electronically submitted time sheets which she certified for accuracy, Shearer claimed sick leave for June 24, 25, 28 – 30, July 1, 2, 6, 7 and family sick leave for July 12 – 16, 2010. Due to this excessive use, Shearer's supervisor, Mark VanValkenburg, demanded that she submit medical documentation in support of her sick leave usage after June 23, 2010. Shearer accordingly provided medical documentation in support of her use of sick leave and family sick leave to VanValkenburg for the pay periods ending July 7, and July 21, 2010.<sup>2</sup> After receiving the documentation, VanValkenburg approved Shearer's sick leave.

The Inspector General reviewed Shearer's proffered medical documentation and noted that for the periods June 28-July 2, 2010, and July 5-7, 2010, Shearer submitted two notes from Howard Welt, M.D., of Spring Lake, New Jersey.<sup>3</sup> Welt, a retired physician, is Shearer's father. The first note stated that Shearer was prohibited from working for five days due to an asthma attack which required the use of a nebulizer, oral steroids and antihistamines, and the second note excused her from work for three days due to bug bites. Shearer also produced a doctor's note from Robert A. Wacks, M.D., of West Palm Beach, Florida, regarding her alleged care of her mother from July 12, 2010, through the "immediate recuperative period" covering the period during which the Inspector General determined that Shearer was actually attending a conference for a

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<sup>2</sup> Shearer provided no medical documentation for the payroll period ending June 23, 2010; regardless, VanValkenburg approved that time sheet.

<sup>3</sup> Shearer also provided medical documentation for partial day absences on June 25, 2010, and July 23, 2010, from Albany area medical practitioners. Those two days are not in dispute.

private employer in Massachusetts.<sup>4</sup> Based on documentation received by the Inspector General, Shearer's parents reside in Savannah, Georgia, and New Jersey, not Florida.

The Inspector General interviewed Mark VanValkenburg, Shearer's direct supervisor of Region 1 of the Bureau of Environmental Exposure Investigation who related that Gary Litwin, former director of the Bureau, had specifically advised Shearer that she was not to engage in outside employment while still on the DOH payroll.<sup>5</sup> VanValkenburg further stated that he had become suspicious upon realizing that the New Jersey physician shared Shearer's maiden name and that his suspicions were further heightened due to the types of medical complaints listed which purportedly caused Shearer to be unable to work. VanValkenburg reported that he questioned the propriety of Shearer's medical documentation with his supervisor, Steven Bates. According to VanValkenburg, Bates advised him that he had been provided documentation and that was all that was necessary. Bates reportedly told him, "We're not investigators," and instructed VanValkenburg to approve the time card. VanValkenburg stated that he did not take the matter further because of fear of repercussion: "You don't go around your supervisor or you get in trouble."

The Inspector General advised VanValkenburg of Shearer's trip to Cambridge, Massachusetts, and her corresponding doctor's note claiming that she was caring for her mother. He professed no knowledge of her attendance at the conference and stated that he relied upon Shearer's medical excuse. The Inspector General also interviewed Bates, VanValkenburg's supervisor, who provided secondary approval of Shearer's time sheets. Bates advised the Inspector General that according to DOH policy, an absence of three days or more requires documentation. He stated that DOH requested such documentation from Shearer and received the aforementioned paperwork. Bates admitted that VanValkenburg had shown him the doctor's notes signed by Welt, expressed concern that the doctor may be a family member, and questioned the validity of the notes. Bates conceded that he told VanValkenburg, "I'm not going to question a physician. If it was me, I would just sign it and approve the time card for time records." Bates further admitted that he reviewed the doctor's address, but did not bother to read the note to assess its reasonableness. Bates further admitted that he had assumed that Shearer was trying to exhaust her sick leave, which would be of no monetary value once she left state employ, rather than vacation leave for which she would obtain a payout. Bates failed to take any action based on the information he was given by VanValkenburg.

The Inspector General interviewed Susan Shearer under oath. Shearer identified all of the medical documentation provided to DOH and admitted that either she submitted the documentation or it had been sent to DOH at her request. Shearer confirmed that the physician who authored two of the notes was her father, whom she was visiting at the time but, although repeatedly claiming that both the asthma attack and bug bites were

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<sup>4</sup> The Inspector General attempted to interview both Drs. Welt and Wacks. Shearer's father's attorney notified the Inspector General that Welt declined to be interviewed. Wacks, to date, has not responded.

<sup>5</sup> DOH employee Gail Amento, a Health Program Administrator 4, stated that she met with Shearer before her last active day of work with the state, and informed Shearer at least three times that she could not engage in outside employment while receiving compensation from the state. Amento averred that she believed that Shearer understood this instruction. Amento claimed that Shearer sent her an e-mail, advising Amento that Shearer's mother was ill and thus she would not be engaging in any outside work.

debilitating, conceded that she was able to use medications already in her possession to combat both ailments.

Regarding the July 12-16, 2010, period, Shearer admitted that she submitted a request for outside employment to attend an upcoming conference on behalf of her new employer, Enviro Group, which was denied. Shearer claimed that she was not upset by the denial and further confirmed that she wrote Gail Amento an e-mail stating, "But that's o.k., my mother is sick and so I didn't go anyway, so don't worry about it."

The Inspector General confronted Shearer with the doctor's note from Wacks, her mother's primary doctor, from Florida, which claimed that Shearer was tending to her ailing mother. Shearer responded that although the doctor's office is located in Florida, her mother had a medical procedure performed in New York City. Initially Shearer maintained to the Inspector General that she and her father had cared for her mother in New Jersey after the procedure, claiming: "That's when I originally put in for that conference, but I couldn't because of her." Upon further questioning, Shearer altered her story, claiming that she only went to "part of" the four-day conference. Shearer finally admitted that she had attended the entire conference in Cambridge, Massachusetts, but claimed that she had tended to her mother in New Jersey on the Thursday and Friday after the conference concluded. Shearer further confessed that her claim that she was caring for her mother during the conference was untrue and that she knowingly submitted a timesheet to DOH falsely reflecting that she had cared for her mother for the entire period.

Shearer blamed her falsely submitted timesheets on VanValkenburg and asserted that he had informed her she could use her sick leave accruals for absences. Shearer conceded, however, that she never informed VanValkenburg that she actually had attended the conference. Indeed, as noted earlier, it was VanValkenburg who had demanded that Shearer provide medical documentation to support her use of sick leave after Shearer's last day of work, and it was VanValkenburg who questioned the validity of the documents submitted by Shearer.

In light of Shearer's admittedly fraudulent timesheets and attendance at the conference for her private employer absent approval from the state, the validity of the medical excuses authored by her father while she was admittedly visiting her family in New Jersey are also rendered suspect and appear to be designed to enable Shearer to maximize her post-employment payout of vacation leave accruals by fraudulently using her sick leave in the weeks prior to the conference. Furthermore, Shearer purposely misled two DOH supervisors regarding the putative care she gave her mother, and offered two contradictory accounts to the Inspector General about tending to her mother before finally conceding that she attended the full conference. The value of the illegitimately used sick leave to Shearer is \$2,851.50 which she would have forfeited to the state upon the conclusion of her state service.

## FINDINGS AND RECOMMENDATIONS

The Inspector General determined that Susan Shearer submitted false time sheets and suspect doctors' excuses for the periods June 28-July 2, 2010, July 5-7, 2010, and

July 12-14, 2010 while she was visiting her family in New Jersey and attending a conference in Massachusetts.

The Inspector General determined that Steven Bates failed to take appropriate action regarding the obviously questionable medical documentation provided by Shearer and proffered to him by Mark VanValkenburg. VanValkenburg's actions, on the other hand, were appropriate under the circumstances.

The Inspector General recommends that the Department of Health take appropriate disciplinary action against Bates. As Shearer no longer works for the state, disciplinary action against her is foreclosed. However, the Inspector General is referring this matter to the Rensselaer County District Attorney's Office for possible criminal prosecution of Shearer and the state Commission on Public Integrity, which retains jurisdiction to lodge charges of violations of the state's ethical guidelines for a year after a state employee's termination from public employment, for consideration of sanctions under the Public Officers Law.

### **Response of the Department of Health**

The Department of Health advised the Inspector General that it will take disciplinary action against Bates for exhibiting poor judgment in failing to take appropriate action regarding the questionable medical documentation provided by Shearer.