

Office of the
INSPECTOR GENERAL



REPORT OF INVESTIGATION

File Number: 08-080

Agency: Georgia Department of Human Resources

Basis for Investigation: Anonymous Complaint

Allegations: Inappropriate Hiring Practices and Fraudulent Time and Attendance

Date Opened: August 4, 2008

Investigated By: Deborah Copeland, Deputy Inspector General
Kisa Pangburn, Deputy Inspector General

Date of Report: January 28, 2009

Elizabeth P. Archer, Inspector General

OFFICE OF THE INSPECTOR GENERAL



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EXECUTIVE SUMMARY

In August 2008, the Office of the State Inspector General (OIG) received an anonymous complaint alleging that Department of Human Resources (DHR) Commissioner B.J. Walker hired a personal friend from Chicago, Illinois, Dr. Cynthia Tate, to work at DHR's Division of Family and Children's Services based on favoritism and not on qualifications. The complainant also alleged that Dr. Tate billed the state for hours not worked to compensate for her travel expenses to and from Chicago every week.

OIG reviewed official files and correspondence, time and attendance records, work products and standard operating practices and policies. Those interviewed included former and current DHR employees, officials from several private sector organizations who do business with DHR, as well as officials from the State of Illinois and City of Chicago.

Although our investigation revealed that Commissioner Walker and Dr. Tate had a previous working relationship, we found that her hire was based on qualifications and pursuant to established policy. However, we did find that Dr. Tate billed a substantial amount of hours during her three years at DHR. Because of the lack of "real time" documentation, such as billing entries typical of many professionals, we were unable to conclusively determine Dr. Tate's exact hours. Had DHR required Dr. Tate to record her hours on a real time basis and report her time entries to the state, there would have been a more accurate record from which we could have verified her hours worked. In addition, we found that DHR lacked internal controls in reviewing and verifying Dr. Tate's hours.

OIG offers the following recommendations to the Georgia Department of Human Resources. OIG requests that DHR provide a written response regarding implementation of these recommendations within 30 days of the issuance of this report.

1. DHR should consider establishing a policy or written operating procedures to strengthen internal controls for hourly employees. Management should periodically evaluate hours worked and worked performed by all hourly employees, exempt and

non-exempt. Hours should be approved by management officials who are familiar with the employee's actual time worked. In cases where hourly employees routinely work hours in excess of forty (40) hours per week, a written work plan demonstrating an approval of work hours should be executed by the employee and the employee's manager.

2. DHR should ensure the agency clearly articulates any understanding in regards to an employee's special assignments particularly in cases when there is an alternative work arrangement. Agreements such as these should be memorialized in the form of a Memorandum of Understanding or similar official document. The agency should ensure widest dissemination among supervisors, project managers, division directors, personnel, and the finance offices. The agreement should include justification for use of the hourly employee or consultant, estimated costs, and estimated time for completion.
3. DHR should consider conducting periodic reviews of hourly employee situations and immediately address any identifiable weaknesses in order to determine whether the hourly employment situation is the most beneficial, effective, and economical means of use of the employee for the agency.



Report of Investigation

File No. 08-080

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Summary of Actions
Georgia Department of Human Resources
File Number 08-080

I. BASIS FOR INVESTIGATION

In August 2008, the Office of the State Inspector General (OIG) received an anonymous complaint alleging that Department of Human Resources (DHR) Commissioner B.J. Walker hired a personal friend from Chicago, Illinois, Dr. Cynthia Tate, to work at DHR's Division of Family and Children's Services based on favoritism and not on qualifications. The complainant also alleged that Dr. Tate billed the state for hours not worked to compensate for her travel expenses to and from Chicago every week.

II. ACTION TAKEN IN FURTHERANCE OF INVESTIGATION

OIG reviewed official files and correspondence, time and attendance records, work products and standard operating practices and policies. Those interviewed included former and current DHR employees, officials from several private sector organizations who do business with DHR, as well as officials from the State of Illinois and City of Chicago.

III. NARRATIVE

A. BACKGROUND

DHR is the largest agency in state government with over 20,000 employees and an annual budget of over \$3.8 billion. The department is a comprehensive health and social services agency, serving Georgia citizens through the delivery of 100 human services programs in 1,000 locations, throughout Georgia. DHR is comprised of four divisions including the Division of Families and Children's Services (DFCS) and the Division of Mental Health, Developmental Disabilities and Addictive Diseases (MHDDAD).

B.J. Walker is the current commissioner of DHR and has held this position since being appointed by Governor Perdue in May 2004. Prior to serving with DHR, Commissioner Walker served as Chief of Human Infrastructure for the City of Chicago under Chicago Mayor Richard M. Daley. The subject of this investigation, Dr. Cynthia Tate, also worked in Chicago as a contract consultant for several city and state government organizations.

B. INVESTIGATION

Allegation: Commissioner Walker hired her personal friend from Illinois, Dr. Cynthia Tate, to work at DFCS based on favoritism and not on qualifications.

Cynthia Tate, Ph.D. was first hired by DHR as a consultant in October 2004, at the request of Commissioner Walker. Documents reflect that Dr. Tate performed special project work for DFCS from October through December 2004.

As part of our investigation, we interviewed Commissioner Walker about Dr. Tate's employment with DHR. Commissioner Walker stated that upon her arrival in 2004, "things were on fire in the agency." As a result, she brought in a panel to help her identify specific actions that needed to be taken throughout the agency. Among the action items needed was a risk assessment for abused and neglected children. Commissioner Walker identified Dr. Tate as a possible resource based on their previous working relationship¹ and her background as "a clinical psychologist who knows children's issues."² Because of her skill set and expertise, Commissioner Walker initially planned to use Dr. Tate to accomplish specific departmental needs. However, as Dr. Tate began to work with the issues, her work "had a domino effect" which led the Commissioner to use Dr. Tate in other DHR divisions, specifically Mental Health under the direction of Division Director Gwen Skinner. The Commissioner stated that Tate "understood the issues and migrated as necessary to address them, and was swept into the current of the heavy workload of two major DHR divisions." Throughout her interview, the Commissioner referred to Dr. Tate as "an honest, forthright producer and the core and heart of DHR business."

OIG interviewed Dr. Tate regarding her employment at DHR. She recalled that in the fall of 2004, she received a call from Commissioner Walker asking if she would be interested in consulting for DHR on a "short-term" basis. Dr. Tate recalled that the Commissioner wanted her to look at the training curriculum in the Education and Training Division at DFCS and assist with the planning of the DFCS leadership academy.

We asked Dr. Tate how she knew Commissioner Walker. Tate stated that she has known the Commissioner professionally for over ten years. She stated that when she was a consultant for the Governor's Task Force on Human Services Reform in Chicago, she was required to interact with the Commissioner, who was the head of the Task Force, on a routine basis.

In January of 2005, Commissioner Walker hired Dr. Tate as an hourly employee without benefits. She reported directly to the Commissioner on an "as needed basis." Interviews conducted showed that the Commissioner delegated the authority to oversee

¹ Commissioner Walker has known Dr. Tate since 1996. She was familiar with Dr. Tate's work because she supervised her when Tate worked as a consultant for the Department of Human Services in Chicago.

² OIG confirmed that Tate was awarded a bachelors of Arts degree in Psychology in May of 1975 from Fisk University and a Doctorate of Philosophy degree in may of 1983 from State University of new York at Albany.

Dr. Tate's hiring process to Rosa Waymon, Human Resources Director in DHR's Office of Human Resource Management and Development (OHRMD). Records indicate that Dr. Tate submitted the required employment packet, and completed the appropriate personnel and payroll forms, in compliance with DHR policy. OHRMD assigned Dr. Tate to an unclassified position as a Support Services Worker, a generic title used for hourly paid positions.

In order to determine whether Dr. Tate's hourly hire adhered to DHR Policy, OIG reviewed DHR Policy #401, "Recruitment" and Personnel Policy #105, "Delegation of Authority." The recruitment policy states that because Tate's position was an hourly position directly under the commissioner's authority there was no requirement to advertise the position.³ According to DHR's Delegation of Authority policy,⁴ as the chief administrative officer and appointing authority for DHR, Commissioner Walker is afforded the discretion to appoint employees and hire consultants, as needed, to perform work at DHR.⁵

Allegation: Dr. Tate was paid an hourly amount and allowed to charge for hours she did not work.

At the time of her hiring as an hourly employee, Dr. Tate's permanent residence was in Chicago. It was agreed from the onset that Tate would work Mondays and Tuesdays in Chicago and Wednesdays through Fridays in Georgia.⁶ She was also authorized to work additional days "as needed."⁷ Although this was the "set schedule," OIG could find no official document outlining this arrangement in Dr. Tate's personnel file. This appears to be in violation of DHR Policy # 1001, Section B (2), "Fair Labor Standards Act" which states that, "a work period must be established in writing for every employee (both exempt and non-exempt) and must be on file in an accessible location."

As an hourly employee, Tate was paid a flat rate of \$50 per hour, with no additional reimbursement for travel expenditures. When asked if Dr. Tate was offered a fulltime position, we were informed by OHRMD officials that Tate was offered a fulltime position with benefits, but chose to work as an hourly employee with a weekly commute because of family obligations.⁸ OHRMD officials accommodated her request because her performance history was known to the Commissioner. This agreement suited DHR

³ See DHR Recruitment Policy #401, Section (A) (5).

⁴ DHR Human Resource/Personnel Policy #105, Delegation of Authority, provides that the DHR Commissioner is the "appointing authority" for the Department of Human Resources. "Appointing authority" is defined under State Personnel Rules as the person authorized by law or delegated authority to make appointments to fill positions in the state agency.

⁵ Based on the needs of the Department, the Commissioner has the authority to assign, take from, add to, eliminate entirely, or otherwise change the duties and responsibilities of employees, and implicit in the authority to assign duties and responsibilities is the authority to arrange the work schedules of employees as necessary to meet the needs of the Department, *Georgia Department of Human Resources Personnel Policy # 106, July 1, 1999.*

⁶ Tate would typically fly home on Fridays.

⁷ Because of her hourly employment status and inability to accrue annual leave, Tate was not eligible to telework from Chicago.

⁸ Tate worked as an hourly employee from January 2005 –January 2008.

because Tate's hourly employment was not based on a specific "one-time" or "time-limited project" as is often the case when dealing with a consultant. In addition, OHRMD stated that Tate's position as an hourly employee was less costly to the state overall because the agency did not have to add an estimated 41 percent to cover a benefits package.

Based on the complainant's allegation that Dr. Tate was charging DHR for hours not worked in order to compensate for her travel expenses, we requested her time sheets and payment history documents. We were informed by OHRMD officials that because Dr. Tate was considered a "professional" she was "exempt" under the Fair Labor Standards Act (FLSA) and, therefore, was not required to maintain records of the hours she worked.⁹ The question of whether professional exempt employees can, in fact, be classified as hourly employees without a set salary is a question requiring legal analysis of specific FLSA exceptions. As it is not within the purview of OIG to determine the legality of this matter, we did not address the issue. For purposes of this report, OIG is relying on the statements made by OHRMD officials that they consider Dr. Tate an FLSA exempt hourly employee.

In order to determine whether this was standard practice for all hourly employees, we conducted a random sampling of all hourly employees assigned to DHR's central office.¹⁰ We requested and received the time and pay records for 25 employees. All 25 employees were considered exempt, like Tate, under FLSA because their positions were considered administrative, professional, or executive in nature. Their rates of pay ranged from \$28 to \$55 per hour, depending on their credentials and the services they provided.

Records also revealed that, depending on the supervisor, some form of time record was submitted on the employees' behalf to OHRMD's Operations and Benefits section to ensure that they were compensated for hours worked. However, OIG found that there were inconsistencies in the methods used by different supervisors in tracking their employees' time. Some supervisors required their employees to complete time records with an hourly breakdown on a daily basis. Other supervisors submitted DHR hourly payroll forms reflecting the total number of hours the employee worked during the pay period. Tate, the only hourly employee supervised by the Commissioner, did not submit her hours using either of the above methods. Instead, she submitted her hours worked each pay period by email.¹¹

⁹ The FLSA is a federal law which governs working conditions and hours, establishes the minimum wage, as well as standard work hours. Under the FLSA professionally exempt work is defined as "work which is predominately intellectual, requires specialized education, and involves the exercise of discretion and judgment." See also DHR Policy #1001, Fair Labor Standards Act dated February 1, 2001.

¹⁰ We requested their job titles, assignments, dates of hourly employment, supervisors' names, scope of work, rate of pay, and time recording requirements.

¹¹ Tate initially submitted her hours to the Commissioner's office. Due to processing complications, she was later directed to report her hours to HR Director Waymon. However, because Tate was not being paid in a timely manner, she was ultimately directed to submit her hours to Mary Walker, in Operations and Benefits.

Because Tate’s emailed time submissions only included total hours worked, with no daily breakdown, we asked Tate how she kept track of the hours she worked. “I’m really bad about that,” she responded. Tate informed us that she determined her hours worked by checking her email records, calendars, phone use, PDA, and notes. “It was just up to me to sort of keep up with my hours and I did,” she stated. When asked if anyone ever questioned her hours, she stated, “No. I work a lot and everybody kind of knows that.”

Upon reviewing Dr. Tate’s three-year hourly employment history with DHR, we found that she routinely submitted a high number of hours each pay period. In fact, there were occasions when Dr. Tate’s reported hours averaged well over 60 hours per week.

Dr. Tate’s Hourly Wages for Each Month in Year 2005			
Month	Payment	Hours	*
January	\$5,600	112	
February	\$3,600	72	
March	\$7,300	146	
April	\$1,975	39.5	
May	\$5,675	113.5	*
June	\$9,150	183	
July	\$3,000	60	
August	\$13,550	271	*
September	\$10,050	201	
October	\$11,300	226	
November	\$11,200	224	
December	\$6,050	121	
Totals	\$88,450.00	1769	

Dr. Tate’s Hourly Wages for Each Month in Year 2006			
Month	Payment	Hours	*
January	\$10,650	213	
February	\$11,150	223	
March	\$13,450	269	
April	\$11,800	236	
May	\$7,450	149	
June	\$12,250	245	
July	\$11,450	229	
August	\$11,950	239	
September	\$11,550	231	
October	\$11,000.00	220	
November	\$9,450.00	189	
December	\$4,350.00	87	
Totals	\$126,500.00	2530	

Dr. Tate's Hourly Wages for Each Month in Years 2007 and 2008				
Month	Year	Payment	Hours	*
January	2007	\$13,250	265	*
February	2007	\$10,800	216	
March	2007	\$6,300	126	
April	2007	\$16,050	321	*
May	2007	\$10,450	209	
June	2007	\$10,450	209	
July	2007	\$7,450	149	
August	2007	\$9,700	194	
September	2007	\$10,250	205	
October	2007	\$12,450	249	
November	2007	\$5,800	116	
December	2007	\$9,300	186	
Totals		\$122,250.00	2445	
January	2008	\$7,800	156	

**Records indicated that Tate was not paid at the end of the previous month and thus payment for the hours worked was received during the following month, and hours were carried over into the next month.*

Given that she traveled to and from Chicago on a weekly basis, OIG questioned Tate as to how she was able to work so many hours. According to Tate, her general work day would begin around 8:00 a.m. and end around 7:00 p.m., including evenings and weekends. She also spent a great deal of time in various locations throughout Georgia conducting training, attending meetings, giving presentations, and conducting site visits. She considered time spent working at the airport on the phone, laptop, or on the plane itself reviewing documents as billable hours.¹² However, hours for time spent traveling were not billed as work hours. Ultimately, according to Dr. Tate, the amount of hours worked depended on her workload.

OIG confirmed that Tate worked with at least three DHR divisions during the time period in question, to include DFCS, OHRMD, and MHDDAD. She also routinely worked with area provider agencies who partnered with DHR. Tate informed us that she was directly involved in navigating the consolidation of the behavioral health services of MHDDAD while at the same time, implementing required changes at DFCS.¹³ OIG was able to confirm this fact through various interviews.

¹² OIG confirmed that Tate's phone and laptop were not state issued, and she did not bill the state for her personal communication expenses.

¹³ This was required in order to comply with the federal mandate ordering the un-bundling of Medicaid through the Center for Medicare and Medicaid Services (CMS). Georgia is the second state in the nation to comply with the federal mandate.

Throughout our interviews, we were informed by directors and high level executives who worked with Tate that 50 and 60 hour work weeks were not out of the ordinary. However, unlike Tate, these officials all resided in Georgia. Those interviewed stated that Tate was readily available during regular work hours as well as on evenings and weekends. OIG reviewed Tate's email correspondence which confirmed that Tate regularly corresponded with over 20 employees. Tate also provided OIG with a timeline which accounted for the work performed at the request of Commissioner Walker. Documents reviewed supported the officials' account of how Tate interacted with them.

When asked who was responsible for monitoring and overseeing Tate's work, Commissioner Walker stated that since Tate worked directly for her, it was her responsibility. The Commissioner acknowledged that she and the agency "could have probably done a better job with formal controls monitoring Dr. Tate's hours." When it was pointed out to the Commissioner that the taxpayers of Georgia could view paying Dr. Tate \$115,000.00 a year for three years as wasteful spending, Commissioner Walker stated, "\$115,000.00 a year for a Ph.D. Psychologist is nothing in comparison to what [I have] to pay other doctors in DHR, many of whom make more than [I] do as the agency's Commissioner." The Commissioner went on to state that the "justification for any hours worked by Tate was what was delivered."

OIG reviewed state policies regarding hourly employees and found that there is no maximum time limit for hours worked by FLSA exempt hourly employees. In fact, there are no Federal or state guidelines which limit the number of hours that may be worked by FLSA exempt hourly employees. Hourly employees are required to be "paid for actual hours worked."

We found that DHR non-exempt hourly employees are required to follow established guidelines and to provide forms for time submittal. However, these guidelines do not apply to exempt hourly employees. It has not been DHR's practice to require individual time records for executive, professional and managerial employees who are FLSA exempt, like Tate. During our investigation, OHRMD began requiring that **all** hourly employees complete time records regardless of the nature and level of functions performed.¹⁴

IV. ADDITIONAL MATTERS

During the course of the investigation, OIG learned that Dr. Tate's hourly employment status ended on January 16, 2008. However, because she maintained an office in DHR's central office, we contacted OHRMD to inquire about her current status. We were informed that DHR entered into a contractual relationship with the University of Georgia's Carl Vinson Institute (CVI) which designated Dr. Tate as DHR's consultant for two MHDDAD grants. The contract term was December 1, 2007, through November 30, 2008. Commissioner Walker described CVI as "the state's research arm; experts on training and policy briefs." She believed that "Dr. Tate's work for DHR would readily

¹⁴ See DHR's hourly employee guidelines.

lend itself to CVI's mission" and that Tate's work at the institute could "create national recognition for the State of Georgia."

V. CONCLUSION

Given the facts outlined in this report, it is understandable how Commissioner Walker's hiring of Dr. Tate could be perceived as favoritism. Dr. Tate's former working relationship with the Commissioner, her hourly employment, and her weekly commute to Georgia from Chicago might all contribute to a favoritism perception. However, our investigation revealed that the Commissioner had the authority, pursuant to policy, to hire Dr. Tate, first as a consultant then as an hourly employee.

While "red tape" should not inhibit the state from hiring individuals who live out-of-state, a minimum of checks and balances are necessary when making such a hire. At the very least, the Commissioner should have written a memorandum to the file outlining the need for Dr. Tate's services, and her knowledge of Tate's special skills. Such a memorandum may have shielded this relationship from questions regarding objectivity and favoritism.

Moreover, our investigation revealed that Dr. Tate billed a substantial amount of hours during her three years at DHR. In 2006, she billed 2,530 hours while commuting back and forth to Chicago. When asked for records memorializing her time, OIG was told that Dr. Tate was not required by FLSA to record her hours. The fact that FLSA did not require Dr. Tate to keep track of her time, however, is not relevant to this investigation. OIG's concern was confirming whether Dr. Tate actually worked the hours for which the state paid her.

During the course of our investigation, we reviewed work products and emails, and interviewed several senior staff, all who attested to Dr. Tate's credibility and integrity. We do not dispute the fact that Dr. Tate is a talented individual who has made numerous contributions to both DHR and the State of Georgia. However, because of the lack of "real time" documentation, such as billing entries typical of many professionals, we are unable to conclusively determine Dr. Tate's exact hours. Had DHR required Dr. Tate to record her hours on a real time basis and report her time entries to the state, there would have been a more accurate record from which we could have verified her hours worked.

We find it unacceptable that no process existed to review or verify Dr. Tate's hours. In fact, Dr. Tate stated that no individual from DHR ever reviewed or questioned her hours during the three years she worked as an hourly employee. At the very minimum, DHR should have reviewed her hours on a periodic basis to determine whether her hours were within a reasonable amount. The state is entitled to no less.

VI. RECOMMENDATIONS

OIG offers the following recommendations to the Georgia Department of Human Resources. OIG requests that DHR provide a written response regarding implementation of these recommendations within 30 days of the issuance of this report.

1. DHR should consider establishing a policy or written operating procedures to strengthen internal controls for hourly employees. Management should periodically evaluate hours worked and worked performed by all hourly employees, exempt and non-exempt. Hours should be approved by management officials who are familiar with the employee's actual time worked. In cases where hourly employees routinely work hours in excess of forty (40) hours per week, a written work plan demonstrating an approval of work hours should be executed by the employee and the employee's manager.
2. DHR should ensure the agency clearly articulates any understanding in regards to an employee's special assignments particularly in cases when there is an alternative work arrangement. Agreements such as these should be memorialized in the form of a Memorandum of Understanding or similar official document. The agency should ensure widest dissemination among supervisors, project managers, division directors, personnel, and the finance offices. The agreement should include justification for use of the hourly employee or consultant, estimated costs, and estimated time for completion.
3. DHR should consider conducting periodic reviews of hourly employee situations and immediately address any identifiable weaknesses in order to determine whether the hourly employment situation is the most beneficial, effective, and economical means of use of the employee for the agency.