

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF
INVESTIGATION



AGENCY: OHIO BUREAU OF WORKERS' COMPENSATION
FILE ID NO.: 2013-CA00017
DATE OF REPORT: FEBRUARY 11, 2016

The Office of the Ohio Inspector General ... The State Watchdog

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Randall J. Meyer
Ohio Inspector General



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REPORT OF INVESTIGATION

FILE ID NUMBER: 2013-CA00017

SUBJECT NAME: Cheryl Gatto, Claims Service Specialist
Sheakley Unicomp Inc., Vendor

AGENCY: Ohio Bureau of Workers' Compensation

BASIS FOR INVESTIGATION: Referral

ALLEGATIONS: Failure to Comply with State Law and/or
Regulations;
Failure to Comply with State or Department Rules,
Procedures, or Policies;

INITIATED: March 6, 2013

DATE OF REPORT: February 11, 2016

INITIAL ALLEGATION AND COMPLAINT SUMMARY

On March 6, 2013, the Ohio Bureau of Workers' Compensation (OBWC) contacted the Office of the Ohio Inspector General alleging Cincinnati-Governor's Hill Service Office (CGHSO) employee, Cheryl Gatto, accessed an injured worker's confidential personal information (CPI) and improperly provided CPI to a managed care organization (MCO) employee, who was also employed by a Cincinnati-area law firm. The complaint alleged that once an attorney-client relationship was established between the injured worker and the law firm, Gatto improperly accessed the injured worker's claim to ensure that the claimant's applications for benefits were being processed and payments to the law firm or injured worker were made.

BACKGROUND

The Ohio Bureau of Workers' Compensation is responsible for providing workers' compensation insurance to all public and private employees except those that qualify for self-insurance. It is the largest exclusive workers' compensation system in the United States. An administrator/chief executive officer of OBWC is appointed by the governor. OBWC is also overseen by an 11-member board with members experienced in financial accounting, investments and securities, and actuarial management. OBWC is funded through assessments paid by employers.¹

The Ohio General Assembly enacted Ohio Revised Code §121.52, effective September 10, 2007, which created the deputy inspector general for the Ohio Bureau of Workers' Compensation and the Industrial Commission of Ohio (ICO). This statute requires a deputy inspector general be designated who "... shall investigate wrongful acts or omissions that have been committed by or are being committed by officers or employees ..." of both OBWC and the ICO, and provides the deputy inspector general the same powers and duties as specified in Ohio Revised Code §121.42, §121.43, and §121.45 for matters involving OBWC and ICO.

Confidential Personal Information

In response to a report of investigation issued by the Office of the Ohio Inspector General, the Ohio General Assembly passed House Bill 648, establishing section 1347.15 of the Ohio Revised Code. This section defines "confidential personal information" and identifies what

¹ Source: OBWC annual report.

personal information is not to be considered as a public record. Common examples of confidential personal information protected by this section include an individual's Social Security number, driver's license number, medical records, and records whose release is prohibited by state or federal law. Possible ramifications for an employee violating this code section by improperly accessing or releasing CPI range from administrative action to criminal charges and being permanently prohibited from state employment.

This section also mandates that all state agencies, excluding the judiciary and state assisted institutions of higher-learning, develop and adopt agency rules regarding the access of CPI that is maintained by the agency. The law specifies several requirements that agencies must incorporate into their rules concerning the handling of CPI, including but not limited to: a defined criteria used to determine an employee's level of access to CPI and a list of the valid reasons as to when employees are permitted to access CPI; a procedure for logging and recording employee access to CPI and the requirement that a password or other authentication must be used to access CPI stored electronically; that agencies designate an employee to serve as the data privacy point-of-contact who ensures that CPI is properly protected; the requirement that agencies must provide on demand to an individual, a detailed listing of all CPI maintained by that agency concerning that individual, unless the CPI relates to an investigation; and a policy that requires agencies to notify individuals whose CPI has been accessed for an invalid reason.

Ohio Revised Code §1347.15 requires all applicable state agencies to establish a training program for all employees who access, or who supervise employees who access, or who authorize employees to access, confidential personal information, so that all employees are made aware of all statutes, rules, and policies governing access to such information.

In response to this requirement, OBWC implemented Memo 4.42 *Confidential Personal Information (CPI) Access and Logging*, revised and reissued in July 2013,² which defines CPI, identifies the computer systems that automatically log the employee accessing CPI, and identifies when an OBWC employee is required to manually log their access to CPI. ([Exhibit 1](#))

² OBWC initially issued this policy on June 1, 2011.

The Office of Ohio Inspector General also reviewed OBWC Memo 1.01 *Chapter 4123-15 Ethics Rules* ([Exhibit 2](#)).

Ohio Revised Code §4123.88 and OBWC policies state that injured worker claim information is confidential and only available to parties of the claim or individuals authorized to access the information. Ohio's injured workers have a right to expect their claim information will not be disclosed in an unauthorized manner. Both the Ohio Bureau of Workers' Compensation and Office of the Ohio Inspector General have taken measures to protect all injured worker information obtained in furtherance of this investigation.

Cheryl Gatto

Cheryl Gatto is an OBWC claims service specialist (CSS) in the Cincinnati-Governor's Hill Service Office (CGHSO). Gatto's job description states that her job duties include, but are not limited to: managing claims, performing initial and subsequent claim investigations, and assisting injured workers with their claims.

OBWC provided a training transcript showing Gatto completed computer and or classroom courses for confidential personal information on June 16, 2011; OBWC ethics topics on September 21, 2010, December 8, 2011, and November 2, 2012; and for email and instant messenger communications on June 27, 2012.

On December 10, 2014, Gatto acknowledged receiving the OBWC policy memos 1.01 and 4.42.

INVESTIGATIVE SUMMARY

On March 19, 2013, representatives from the Office of the Ohio Inspector General, the Ohio Ethics Commission, the Ohio State Highway Patrol, and the Ohio Bureau of Workers' Compensation met to discuss and review documents supporting allegations made in the OBWC complaint. During this meeting, OBWC representatives identified the parties involved in the allegations as Cincinnati-Governor's Hill Service Office Claim Service Specialist Cheryl Gatto; managed care organization (MCO) Sheakley Unicom Inc. (Sheakley); the law firm of Eric C.

Deters & Associates³ (Deters); and Doug Hunter, who was employed by both Sheakley and Deters.

OBWC representatives provided an initial review of Gatto's CPI access log, injured worker claim assignment history, and related injured worker claim information, which identified 20 claims that Gatto accessed without a valid business reason, nor reported the reason for the improper claim file accesses, as required by OBWC Memo 4.42. OBWC representatives also alleged that Gatto improperly accessed claim files where Hunter was involved as a representative of either the employer or injured worker; changed the injured worker legal representative designation to Deters for two claims assigned to the OBWC Special Claims division located in Columbus, and for one claim assigned to another CGHSO claims service specialist, in possible violation of OBWC Memo 1.01.

Unauthorized Access

OBWC provided Gatto's CPI access log for the period of October 1, 2011, to July 25, 2014. An analysis was conducted of Gatto's access to 75 injured worker claim files⁴ stored in the OBWC internal claims management system, V3. CGHSO management reviewed multiple accesses to those claims and found no evidence of a valid business reason for Gatto's access in 131 instances occurring between March 21, 2012, and July 24, 2013.

In each of the 131 instances, CGHSO management determined the CSS assigned to manage the claim was not Gatto, not on Gatto's team, nor served as Gatto's backup CSS. In addition, Gatto failed to enter a note into the injured worker claim file supporting the business reason for her access as required by OBWC procedures. Although Gatto's job duties did not involve the managing or processing of documents for claims assigned to other OBWC service offices or for self-insured injured worker claims, Gatto still accessed injured worker claims assigned to the

³ During this investigation, the name of the law firm changed from Eric C. Deters & Associates to The Deters Firm, effective October 1, 2014.

⁴ The 75 claims include the initial 46 injured worker claim files identified by OBWC on March 19, 2013, and an additional 28 injured worker claim files identified during this investigation

Cambridge, Columbus, Central Claims,⁵ and Hamilton⁶ Service Offices in 47 instances and self-insured injured worker claims in nine instances.

OBWC Memo 4.42 require employees to have a valid business reason before accessing CPI, or to make a note at the time of the access in a separate CPI Access log as to why the access was made. In the 131 identified cases, Gatto failed to follow the requirements of Memo 4.42, and improperly accessed confidential injured worker information without a valid business reason, or failed to properly document a reason for her access in either the claim or CPI Access log.

Potential Conflict of Interest

In 61 of the 131 instances of unauthorized CPI access, the Office of the Ohio Inspector General determined Gatto accessed injured worker claim files in which Hunter was involved as a representative of either the injured worker (through their attorney) or the injured worker's employer (through the MCO.) Further, Gatto accessed an injured worker's claim file multiple times as the assigned CSS after the injured worker designated Deters as their legal representative, and failed to report the conflict to her supervisors in a timely manner.

OBWC Memo 1.01 incorporates Ohio Administrative Code Chapter §4123-15, and serves as a code of ethics for OBWC employees. Ohio Administrative Code §4123-15-03 (B)(1)(j) prohibits the use or disclosure of confidential information protected by law and (G) which provides that:

... The overall intent of this code of ethics is that employees avoid any action, whether or not prohibited by the preceding provisions, which result in, or create the appearance of:

(1) Using public office for private gain, or (2) *Giving preferential treatment to any person, entity, or group* [emphasis added].

Sheakley records show Hunter was employed by Sheakley from September 26, 2011, to April 20, 2012, and from June 18, 2012, to April 26, 2013. An April 25, 2013, letter from Sheakley confirming Hunter's resignation was sent to Hunter at Gatto's residential address in Cincinnati,

⁵ This service office includes the Medical Claims and Special Claims divisions and is located in Columbus, Ohio.

⁶ OBWC closed this service office effective March 31, 2013.

Ohio. Further, a website for Deters law firm contained a personal biography for Hunter and made reference to Hunter's "girlfriend Cheri." ([Exhibit 3](#))

The Office of the Ohio Inspector General reviewed available phone records⁷ from October 4, 2011, through August 12, 2013, and Gatto's OBWC email messages from October 1, 2011, through May 7, 2014. During her work day, Gatto made or received 1,521 calls using her personal cell phone or OBWC desk phone to Hunter's cell phone or a desk phone assigned to Hunter at Sheakley. In addition, Gatto sent 290 replies to 447 text messages received from Hunter's cell phone and sent 119 emails to Hunter using her OBWC email address during her work day. Text messages sent between Gatto and Hunter were unavailable for review; however, a review of the 119 emails Gatto sent from her state account shows the emails were mostly personal in nature.

The Office of the Ohio Inspector General reviewed a group of OBWC claim files where the injured worker had completed a form (an R2 card) appointing Deters as the injured worker's legal representative. The R2 card is a record OBWC employees consult in the event there is a need to contact the injured worker's legal representative. In the instances where Deters was designated as the legal representative, the R2 card listed the contact telephone number as Hunter's cell phone number, and/or the contact email address as Hunter's email address.

In one instance, Gatto accessed an injured worker's claim file on June 7, 2012, and entered a note referencing the Deters law firm power of attorney. Gatto also issued an OBWC order for payment in accordance with the \$39,354.67 settlement amount. Gatto then notified Hunter using her OBWC email that the order had been issued. On June 12, 2012, Hunter, as the injured worker's legal representative's contact person, emailed Gatto the signed Waiver of Appeal form for the injured worker's claim and attempted to call Gatto. Gatto returned Hunter's missed phone call and immediately emailed the signed Waiver of Appeal form to OBWC Scheduled Loss Coordinator CSS Shelly Wells for processing. Gatto then faxed the Waiver of Appeal form

⁷ This determination was made using available desk and cellular phone records obtained from OBWC and through subpoenas from cellular phone carriers and Sheakley.

to be indexed into the injured worker's claim file. On June 13, 2012, Wells finalized the \$39,354.67 payment. On June 14, 2012, OBWC issued Deters a warrant for \$39,354.67.

During a December 10, 2014, interview, Wells explained that it was not "normal practice" to receive an email from a CSS with the signed Waiver of Appeal form. Wells stated she does not process payments until the Waiver of Appeal is imaged in the injured worker's claim file and is viewable by all parties. Wells stated that she typically tries to issue the payment the same day the order is received and that she typically notifies the CSS the payment is issued in case the CSS wants to notify the injured worker or their attorney.

Wells was shown a June 21, 2012, email Gatto sent to her at 7:26 a.m. which stated, "Doug went online and saw that you paid this -- he is very appreciative!!!!" Wells acknowledged that this is not something she typically received from a CSS. Wells stated that Gatto should not have been involved with this payment based on Gatto's relationship with Hunter. Wells admitted that this should have been a concern.

Gatto also accessed four injured worker claims on the same day or shortly after a document filing or refiling for an unknown reason. In each instance, CGHSO management determined that neither Gatto, nor her team, nor her backup were assigned to the injured worker claims and that Gatto had failed to enter notes supporting a business reason for her access. After processing the filings, OBWC issued the Deters law firm six payments totaling \$169,897.22 on behalf of four injured workers from May 23, 2012, through May 28, 2014.

Gatto also updated the R2 cards in nine claim files to the Deters firm as the assigned legal representative for the injured workers, granting Hunter immediate access to the injured worker claims and eliminating Hunter's need to wait until the cards were processed in the normal course of business by the properly assigned CSS workers.

In 26 instances, Gatto had accessed a particular injured worker's claim files while on the telephone with Hunter. A review of Sheakley claim records indicated that Hunter had entered

notes in Sheakley's internal computer system on or around the time Gatto accessed the claim files in 17 of the 26 instances.

On December 4, 2014, injury management supervisors Timothy Clark and Julie Keeling were interviewed. Both acknowledged that they were aware Hunter had, at a certain point in time, been employed by Sheakley and Deters, and that he had a personal relationship with Gatto. Clark explained that Gatto would not have had a business reason to talk with Hunter. Based on his understanding of OBWC policies, Clark stated that, "... if she's identified the power of attorney and knows that her significant other is employed by that power of attorney, her involvement should cease at that point." Keeling stated that when Gatto became aware of Hunter's employer as a party to the claim, that Gatto should have notified her supervisor at that time, in order to have the claim reassigned.

In an email sent March 18, 2013, Gatto told Keeling, "I think this claim should be reassigned. Eric Deters is the rep and Doug works for him." Keeling responded to Gatto's email, stating that the injured worker's claim file had been reassigned. After replying to Keeling's email, Gatto immediately accessed the identified injured worker's claim file. Six minutes after her access, Hunter used his Sheakley desk phone to call Gatto's OBWC desk phone.

Gatto again accessed this reassigned claim on April 11, 2013, at 4:24 p.m. Keeling told investigators that Gatto should not have accessed the claim file after it was reassigned at her request.

An analysis of Gatto's injured worker claim accesses revealed Gatto used six Social Security numbers to search and access 26 injured workers claim files a total of 37 times when she was not the assigned CSS. In one particular instance, Gatto called Hunter's cell phone using her personal cell phone on November 20, 2012. After ending the call, Gatto accessed an injured worker's claim file which identified Hunter as the point of contact for the Deters law firm. Gatto

proceeded to enter the injured worker's Social Security number into V3⁸ and accessed each of the injured worker's 16 claim files. On November 26, 2012, OBWC received two separate faxes containing the injured worker's signed R2 cards appointing Deters as the legal representative for two of the injured worker's claim files Gatto had previously accessed.

On November 29, 2012, OBWC's CPI access log showed Hunter unsuccessfully attempted to access one of the injured worker's claim files. On November 30, 2012, Hunter called Gatto who then accessed the injured worker's claim file, and updated the attorney information in the injured worker's claim file which granted Hunter access to the injured worker's claim file. On December 3, 2012, Deters submitted settlement applications for the two identified injured worker claims.

CGHSO CSS Kym Steiner was the assigned CSS for the injured worker claim file Gatto accessed to obtain the Social Security number. On January 15, 2015, during an interview with the Office of the Ohio Inspector General, Steiner explained that Gatto was not her assigned backup and that she (Steiner) was not on Gatto's team. Steiner stated that she neither discussed this claim with Gatto nor provided the injured worker's claim number to Gatto. Steiner also stated she could not think of a valid business reason for Gatto to search each of the injured worker's claims; to access the injured worker's self-insured claims; or to update the R2 card for the injured worker's claim, since Gatto was not the assigned CSS.

Gatto used injured worker Social Security numbers to search V3 for claims neither she, her backup, nor her team were assigned to handle. Gatto accessed these claim files, some of which did not have designated legal representation, while on the phone with Hunter, giving the appearance that Gatto was searching V3 for injured worker claims without current legal representation and providing their information to Hunter.

On December 10, 2014, Office of the Ohio Inspector General and Ohio Ethics Commission interviewed Gatto who stated that her job duties include interactions with the injured workers

⁸ V3 creates an injured worker legal representative section in the injured worker's electronic case file. When OBWC receives an R2 card, the CSS accesses the injured worker legal representative section and updates the legal representation from either no representation or an existing attorney to the legal representative identified on the R2.

and their attorneys. Gatto explained that it is understood that CSSs were supposed to enter a note for each interaction, and stated that, "... if we don't put a note in, it didn't happen." Gatto acknowledged that she received phone calls for the CSS she was backing up or for her team members. Gatto stated that it was "... very, very rare" that she would receive calls about claims assigned to other teams. However, Gatto explained that if she received such a call, she would try to assist the injured worker with their question.

Gatto stated that OBWC policies are available on the Intranet for review and acknowledged policies were sent to her for review. Gatto then explained her understanding of the OBWC Phone and Personal Computer policy and the Internet/Electronic Mail/Web Mail/Instant Messaging policy. After admitting to using her OBWC work phone and her OBWC email for personal use, Gatto ended the interview. On January 7, 2015, the Office of the Ohio Inspector General contacted Gatto by email to determine whether she wanted to continue the interview; Gatto did not respond to this request.

On June 8, 2015, the Office of the Ohio Inspector General sent an email to Hunter requesting an interview. On June 17, 2015, Hunter declined to be interviewed.

Gatto's actions with Hunter created the appearance of preferential treatment of claims involving Hunter, and were in violation of OBWC's Memo 1.01.

Additional Issues

During the course of the investigation an additional issue emerged regarding the duties of Sheakley Unicom Inc. (Sheakley) as an MCO vendor doing business with the state of Ohio. Sheakley contracts with OBWC to provide managed care services to employers covered under OBWC policies. Due to an employee for Sheakley acting as a representative for both employers as well as injured workers, there was concern that this constituted a conflict of interest and created a breach of contract.

Background

House Bill 107, enacted in 1993, established a managed care system called the Health Partnership Program (HPP), for state-funded and self-insured employers and their employees. The managed care system is a "... health care model focusing on the proactive oversight and coordination of all medical services rendered to a patient."⁹ OBWC entered into managed care contracts with Sheakley for the periods January 1, 2011, through December 31, 2012; and January 1, 2013, through December 31, 2013. The contract includes provisions addressing confidentiality and conflict of interest. ([Exhibits 4 and 5](#))

Conflict of Interest

During a meeting on March 19, 2013, OBWC representatives stated that Sheakley may have violated Section 20 of the contracts between OBWC and Sheakley dated December 8, 2010, and December 21, 2012. Section 20(E) of the contract provides that, "... No individual who is an officer or employee of the MCO shall represent a claimant or employer in any matter before the Bureau, the Industrial Commission, or a court of competent jurisdiction."

A review of CPI access logs through February 8, 2013, and injured worker claim information maintained in V3, showed instances where the Deters law firm represented an injured worker whose employer had contracted with Sheakley for managed care services. OBWC alleged that a contractual violation may have occurred because some of these accesses occurred concurrently during Hunter's period of employment with Deters representing injured workers and with Sheakley representing employers.

At the meeting, OBWC stated Hunter was assigned two user IDs¹⁰ while employed by Sheakley and a third user ID¹¹ while employed by Deters as a workers' compensation paralegal. These user IDs provided Hunter access to certain injured worker claim information as a party to the claim using OBWC's Internet website.

⁹ Source: <https://www.bwc.ohio.gov/basics/guidedtour/generalinfo/ProvGlossHPP.asp>.

¹⁰ Hunter's first Sheakley user ID was active from September 30, 2011, through April 20, 2012. Hunter's second Sheakley user ID was active from June 20, 2012, through April 24, 2013. This is based on a membership search of OBWC case information Internet access activity performed by OBWC.

¹¹ Hunter's user ID from the Deters law firm showed activity from April 24, 2012, through at least February 9, 2015. This is based on a membership search of OBWC case information Internet access activity performed by OBWC.

Forty injured worker claim files were reviewed to determine whether Hunter had accessed the claim files using Sheakley's internal computer system. Of those 40 injured worker claim files, Hunter attempted to or accessed 18 injured worker claim files a total of 509 times using his Deters user ID between June 18, 2012, and April 26, 2013. Hunter also used his Sheakley user ID to access the employer's policy¹² associated with the injured worker's claim file to enter a note, or was able to access the employer policy as the assigned Client Relations Manager (CRM) for a total of 364 times. Lastly, it was determined that Hunter accessed the same three injured worker claim files using his Sheakley user ID in 13 accesses, and his Deters user ID in 196 accesses.

On October 28, 2014, Sheakley's Director of Client Operations Andrea Kiener stated during an interview that Hunter resigned from Sheakley, effective April 20, 2012, to accept an employment offer from Deters. Kiener explained that Hunter had approached Sheakley in June of 2012 about being rehired since, "... he wasn't working that much for Eric [Deters]."

Kiener recalled that there were discussions with her supervisor about Hunter's concurrent employment with Sheakley and Deters. Kiener stated that it was "... known that he [Hunter] could not work on any claims where Eric Deters' law firm was assigned to them or any employers that had any claims for the --- for that law firm."

Kiener stated that Hunter told her that he had contacted OBWC about his concurrent employment with Sheakley and Deters and that OBWC MCO Business Unit Supervisor Irene Barnett "... said it was fine; there was not conflict." Kiener explained that she did not follow-up with OBWC to confirm Hunter's assertion because, "... I didn't feel like I needed to, I guess. We rely on the employees to give us the information."

When Sheakley rehired Hunter, Kiener explained that she reviewed employers' locations and tried to assign Hunter "... employers that were not in, in the Deters law firm's geographical

¹² For each employer Sheakley contracts with to provide MCO services, Sheakley maintains an electronic employer policy file. This electronic file is used by Sheakley employees to document interactions regarding the employers' injured worker claims.

setting ... to minimize the potential” for Hunter to have a conflict. Kiener then stated if she had missed any of these employers, that Hunter should have immediately reported those employers or claims as conflicts to her. Kiener recalled telling Hunter that it would be an issue if a claim was found that involved both Sheakley and Deters.

On October 22, 2014, the Office of the Ohio Inspector General interviewed Barnett, who stated that Hunter’s access of the same injured worker’s claim file using both his Sheakley and Deters user IDs would be a conflict of interest and that, “... if Sheakley had known this they should have notified us [OBWC] immediately.”

Barnett did not recall any conversation about, or talking with Hunter specifically about his concurrent employment, or whether it was acceptable as long as Hunter did not access injured worker claim files at Sheakley when Deters was the injured worker’s attorney. Barnett explained such a request would have to have been submitted in writing and that she would have responded in writing. Barnett further stated unless OBWC waived the issue of Hunter’s concurrent employment, that the relationship would be prohibited under the contract.

Barnett reviewed her emails for communications with Hunter or conversations about his concurrent employment with a workers’ compensation attorney and an MCO. On October 27, 2014, Barnett notified the Office of the Ohio Inspector General that she did not find any correspondence specifically with Hunter, but that she had found the following email:

From: John Doe [<mailto:doejohn166>]
Sent: Tuesday, June 19, 2012 11:59 AM
To: Barnett, Irene
Subject: mco conflict of interest

I have read the MCO guide lines and I can not find anywhere there would be a conflict with an MCO employee working outside the MCO work

hours doing Paralegal work for a workers comp. attorney. Can you advise if there is any law, rule, or policy that would prohibit this?

Barnett's response to this email was:

From: Barnett, Irene
Sent: Tuesday, June 19, 2012 12:04 PM
To: 'John Doe'
Subject: RE: mco conflict of interest

Hello – You need to discuss this with your MCO's ethics officer and decide what is your MCOs conflict of interest policy with your outside employment and how that might come up with work with an WC attorney.

In emails to the Office of the Ohio Inspector General, dated June 24, 2015, and July 9, 2015, Hunter claimed that he had written the “John Doe” email, and that he had written it “... because of the possibility of an appearance of conflict working at an MCO and a Law Firm.”

Hunter was also listed as the point of contact for legal representation by Deters for Ward Construction, Roofing, & Painting LLC (Ward Construction) as of May 25, 2012. Sheakley records reflected that Ward Construction contracted with Sheakley for MCO services beginning June 29, 2012. Sheakley telephone records showed that Hunter attempted, made, or received 294 calls to or from Ward Construction for 30½ hours using his Sheakley desk phone. In addition, Hunter entered six notes regarding these conversations between July 16, 2012, and January 11, 2013, in Ward Construction's employer policy¹³ maintained in Sheakley's internal computer system.

Barnett stated that Hunter's simultaneous employment by Sheakley as a CRM and also as the Deters law firm's point of contact for an employer who was also a Sheakley client, Ward Construction, would be considered a conflict of interest. However, Barnett explained Sheakley could have taken steps to mitigate the issue. When informed of this relationship on October 28, 2014, Kiener indicated that she was not aware of Hunter's professional relationship with Ward Construction. In fact, Kiener stated that this relationship should have been brought to a supervisor's attention for further review.

¹³ For each employer Sheakley contracts with to provide MCO services, Sheakley maintains an electronic employer policy file. This electronic file is used by Sheakley employees to document interactions regarding the employers' injured worker claims.

The Office of the Ohio Inspector General determined that Hunter served in the following capacities simultaneously: (1) a client relations manager for Sheakley; (2) as the injured worker's legal representative point of contact for Deters, and/or (3) as the employer's legal representative point of contact for Deters for Ward Construction, who had also contracted with Sheakley for managed care services, which is contrary to Section 20(E) of the contract between OBWC and Sheakley.

MCO Reporting of Contractual Non-Compliance

Section 1(L)(9) of the contract dated December 8, 2010, and Section 1(L)(7) dated December 12, 2012, between OBWC and Sheakley provides,

... The MCO shall be required to provide certifications of compliance with various provisions of this Agreement, on forms provided by the Bureau, every six (6) months during the term of this Agreement. If the MCO discovers that it has become non-compliant with regard to any provision of this agreement, the MCO shall disclose such non-compliance to the Bureau within one (1) Business Day of the MCO's discovery of the non-compliance.

On June 23, 2014, OBWC Director of the MCO Financial Reporting Unit Teresa Arms explained that the MCOs were required to notify OBWC if there was a breach of the confidential information provisions. Arms also stated that OBWC relied upon the MCO biennial recertification process to verify the MCO was in compliance with the contractual provisions.

On December 3, 2014, OBWC Compliance and Performance Monitoring Director Nancy Barber produced a spreadsheet summarizing completed biennial MCO certifications since 2010. This spreadsheet reflected the MCOs were not required to submit certifications for Section 15 Confidentiality or Section 20 Conflicts of Interest of the contract between the MCO and OBWC. It was also determined through interviews that there are no formalized policies or procedures provided to the MCOs of who should be notified of potential breaches of confidentiality or conflicts of interest, the information to be included, and the required notification method.

CONCLUSION

On March 19, 2013, Ohio Bureau of Workers' Compensation representatives alleged that Cincinnati-Governor's Hill Service Office Claims Service Specialist Cheryl Gatto had accessed injured workers' claims without a valid business reason and had not reported improper access of CPI as provided for in OBWC Memo 4.42 *Confidential Personal Information Access and Logging Policy*.

Gatto inappropriately accessed injured worker claim files in 131 instances. At the time of each access, neither Gatto, her backup, nor her team were assigned to the injured worker's claim file. Additionally, Gatto also accessed an injured worker's claim file twice after requesting the claim be reassigned from her to another CSS. No valid business reason existed for these accesses.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe wrongful acts or omissions occurred in these instances.

On March 19, 2013, OBWC alleged in a memo that Gatto was assisting Doug Hunter in securing clients for the Deters law firm and was accessing the injured worker's claim file "... to ensure applications for benefits are being processed and to ensure payments are being made." Gatto and Hunter were in a personal relationship during the period under investigation.

Gatto accessed injured worker claim files in 61 of the 131 instances in which Hunter was involved on behalf of Deters (the injured worker's attorney) or Sheakley (the injured worker's employer's MCO).

Further, Gatto accessed injured worker claim files in 26 instances at the same time as her desk or personal cell phone was connected to a phone assigned to Hunter. Hunter entered notes in Sheakley's internal computer system on or around the time Gatto accessed the claim file in 17 of the 26 instances.

Lastly, Gatto updated the authorized injured worker legal representative noted in an injured worker claim file to Deters in nine instances. This action granted Hunter immediate access to

each of the nine injured worker claim files and eliminated Hunter's wait for the assigned OBWC employee to update the information.

Gatto's actions created an appearance that certain injured worker claims received preferential treatment, if the injured worker was represented by Hunter's employer, and Gatto was not the assigned CSS. These actions are contrary to the provisions of OBWC's Memo 1.01.

Accordingly, the Office of the Ohio Inspector General finds reasonable cause to believe wrongful acts or omissions occurred in these instances.

On March 19, 2013, OBWC representatives also alleged that Sheakley may have violated its contract with OBWC because Hunter was simultaneously employed by Deters and Sheakley and acting in multiple capacities before OBWC and the Industrial Commission of Ohio. Section 20(E) of the contracts between OBWC and Sheakley, dated December 8, 2010, and December 21, 2012, provides that, "No individual who is an officer or employee of the MCO shall represent a claimant or employer in any matter before the Bureau, the Industrial Commission, or a court of competent jurisdiction."

Hunter was employed concurrently by both Sheakley and the Deters law firm for the period of June 18, 2012, through April 26, 2013. Hunter was the Deters law firm's OBWC point of contact as the injured worker legal representative; the Deters law firm's OBWC point of contact as Ward Construction's legal representative; and provided client relations manager services to employers on Sheakley's behalf. Hunter accessed injured worker claim files using his Deters user ID in 509 instances in which the employer had contracted with Sheakley for managed care services. Hunter also accessed the employer's policy associated with the injured worker's claim file in Sheakley's internal computer system in 364 instances and entered notes of his activities or was assigned to provide client relations manager services to the employer.

The Office of the Ohio Inspector General determined that Hunter accessed both injured worker claims and the employer policies while serving in the following capacities concurrently: (1) a client relations manager for Sheakley; (2) the injured worker's legal representative point of

contact for Deters, and (3) the employer's legal representative point of contact for Deters for an employer who contracted with Sheakley to provide managed care services. It was further found that there were no formalized policies or procedures provided to the MCOs of who should be notified of potential breaches of confidentiality or conflicts of interest, the information to be included, and the required notification method.

RECOMMENDATION(S)

The Office of the Ohio Inspector General makes the following recommendations and asks the administrator of the Ohio Bureau of Workers' Compensation to respond within 60 days with a plan detailing how the recommendation(s) will be implemented. The Ohio Bureau of Workers' Compensation should:

1. Review the conduct of employees identified in this report and determine whether administrative action is warranted.
2. Consider the merits of updating the CPI policy and/or COEMP policies to address relationships between current or former OBWC and Industrial Commission of Ohio employees with parties to the injured worker's claim; such as the managed care organization, the third-party administrator, and the legal representative of the injured worker or employer.
3. Consider modifying user profiles during the implementation of the new internal claims management system to prevent employees, their backup, or any member of their work team not assigned to the claim from viewing the claim information.
4. When conducting MCO on-site reviews, consider comparing MCO employee names to assigned OBWC online user IDs to determine whether the employees have additional user IDs, and if so, how the MCO has mitigated the appearance of a conflict of interest.
5. In an effort to ensure the MCOs are appropriately reporting conflicts of interest to OBWC, consider reviewing MCO-identified conflicts of interest since the last site visit, how the MCO resolved the conflict, and determine whether the conflict should have been reported to OBWC.

6. Consider implementing a formalized written reporting process for MCO notification to OBWC of contract violations as required.

REFERRAL(S)

During the course of this investigation, the Office of the Ohio Inspector General consulted with the Ohio Ethics Commission. The Office of the Ohio Inspector General will forward this report of investigation to the Hamilton County Prosecuting Attorney for consideration.



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Ohio Bureau of Workers' Compensation

FILE ID #: 2013-CA00017

KEEPER OF RECORDS CERTIFICATION

This is a true and correct copy of the report which is required to be prepared by the Office of the Ohio Inspector General pursuant to Section 121.42 of the Ohio Revised Code.

**Jill Jones
KEEPER OF RECORDS**

**CERTIFIED
February 11, 2016**

MAILING ADDRESS

OFFICE OF THE INSPECTOR GENERAL
JAMES A. RHODES STATE OFFICE TOWER
30 EAST BROAD STREET – SUITE 2940
COLUMBUS, OH 43215-3414

TELEPHONE

(614) 644-9110

IN STATE TOLL- FREE

(800) 686-1525

FAX

(614) 644-9504

EMAIL

OIG_WATCHDOG@OIG.OHIO.GOV

INTERNET

WATCHDOG.OHIO.GOV