

STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

**REPORT OF
INVESTIGATION**



**AGENCY: INDUSTRIAL COMMISSION OF OHIO
FILE ID NO.: 2013-CA00076
DATE OF REPORT: JUNE 5, 2014**

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

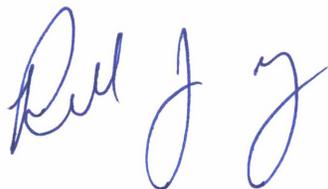
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Statutory authority for conducting such investigations is defined in *Ohio Revised Code §121.41* through *121.50*. A *Report of Investigation* is issued based on the findings of the Office, and copies are delivered to the Governor of Ohio and the director of the agency subject to the investigation. At the discretion of the Inspector General, copies of the report may also be forwarded to law enforcement agencies or other state agencies responsible for investigating, auditing, reviewing, or evaluating the management and operation of state agencies. The *Report of Investigation* by the Ohio Inspector General is a public record under *Ohio Revised Code §149.43* and related sections of *Chapter 149*. It is available to the public for a fee that does not exceed the cost of reproducing and delivering the report.

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The Inspector General’s Office remains dedicated to the principle that no public servant, regardless of rank or position, is above the law, and the strength of our government is built on the solid character of the individuals who hold the public trust.



Randall J. Meyer
Ohio Inspector General



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

REPORT OF INVESTIGATION

FILE ID NUMBER: 2013-CA00076

SUBJECT NAME: Rebecca Kincaid

POSITION: Claims Examiner 3

AGENCY: Industrial Commission of Ohio

BASIS FOR INVESTIGATION: Agency Referral

ALLEGATIONS: Misuse or Abuse of State Property or Equipment;
Misuse of Position or Office, Other than to Harass
or Threaten;
Failure to Comply with State Law and/or
Regulations.

INITIATED: October 9, 2013

DATE OF REPORT: June 5, 2014

INITIAL ALLEGATION AND COMPLAINT SUMMARY

On October 1, 2013, the Industrial Commission of Ohio (ICO) contacted the Office of the Ohio Inspector General alleging ICO Claims Examiner 3 Rebecca Kincaid accessed her personal Ohio Bureau of Workers' Compensation (OBWC) claim file using three different ICO computer programs. Each of these programs contains confidential information that is not available to the injured worker until the hearing officer order is formally published by the ICO. The ICO provided evidence documenting that Kincaid had accessed her OBWC claim file 22 times using ICO internal computer programs. The 22 instances were identified while gathering records in response to a public records request made by Kincaid.

BACKGROUND

The Industrial Commission of Ohio hears worker and employer appeals of workers' compensation claim determinations by the Ohio Bureau of Workers' Compensation (OBWC). Disputed claims typically involve conflicts over the extent of medical services provided or lost-time (otherwise known as indemnity) benefits. The commission is led by a panel of three commissioners, all of whom are appointed by the governor. Each commissioner must have at least six years of experience in workers' compensation, and at least one member must be licensed to practice law in Ohio. One member must represent employees, one must represent employers, and one must represent the public.¹

ICO is responsible for providing a forum for fair and impartial claims resolution, conducting hearings on disputed claims, adjudicating claims involving an employer's violation of specific safety requirements, and determining eligibility for permanent total disability benefits. Hearings on disputed claims are conducted at three levels within the ICO: the district level, the staff level, and the commission level.²

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 (OBWC) and the Industrial Commission of Ohio (ICO). This statute designated this deputy inspector general "shall investigate wrongful acts or omissions that have been committed by or

¹ Source: <http://www.lsc.state.oh.us>

² Source: <http://www.ic.ohio.gov>

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.

The ICO claims examiner 3 job description states duties include, but are not limited to, examining complex permanent total disability documents/images according to OBWC and ICO rules; determining whether supporting medical evidence is sufficient and referring the claim for dismissal when evidence is lacking; drafting the statement of facts; scheduling appropriate medical examinations; generating claims correspondence; creating hearing and medical examination worksheets; and operating an ICO computer to use the following ICO computer systems:

- Commission Adjudication System (CAS) – An internal system used by ICO staff to review claim information, record orders issued, and generate hearing notices.
- ICON – An ICO Internet application which permits authorized users to review claim activity, images of documents maintained in the claim file, and to file documents with the ICO.
- ECM – An internal ICO document management computer system containing all medical documents received by the ICO and those imaged by OBWC.
- WorkFlow – An internal ICO computer system used to distribute work to employees responsible for completing an assigned task. This system also stores information provided to ICO hearing officers and commission members for consideration when adjudicating claims.
- Version 3 (V3) – An internal OBWC claims management computer system. ICO employees access OBWC claims files using their assigned OBWC login ID and password.
- OhioBWC.com (Dolphin) – An OBWC Internet application which permits authorized users to review OBWC claims files and documents imaged within the file.

Ohio Revised Code (ORC) §1347.15 (B) requires each state agency to adopt rules in accordance with Chapter 119 of the ORC which regulates “access to the confidential personal information

the agency keeps, whether electronically or on paper.” This section requires the agency to maintain a confidential personal information (CPI) access log for instances unrelated to official agency purposes or at the individual’s request. This section also requires the agency to establish a training program to make the employees aware of “all applicable statutes, rules, and policies governing their access to personal information.” To comply with this requirement, the ICO implemented:

Policy No ADM007 - Confidential Personal Information (CPI) Policy, effective April 14, 2011, and revised on April 22, 2013, which defines CPI, identifies the procedures for logging access to CPI, and identifies the instances for which an employee may access CPI. ([Exhibit 1](#))

ADM007 Article III Section (C) states the “policy also applies to the CPI contained within the personal information systems of other state agencies and departments to which Commission employees have access in the normal course of their employment duties.” ([Exhibit 1](#))

Additional rules, regulations and polices reviewed during this investigation include:

- ICO Policy HR062 *Computer Use* which provides that the use of ICO “computer-related resources shall not be used in a manner which is inconsistent” with ICO policies or “interfere with the work or mission” of the ICO. ([Exhibit 2](#))
- ICO Policy IT002 *Internet Use* which provides “... employees should only visit sites associated with official activities; in pursuit of information for official business; or those sites associated with other governmental agencies.” The policy permits employees to occasionally access the Internet while at work for personal use, but to keep it to a minimum and during the employee’s lunch hour or authorized breaks. ([Exhibit 3](#))
- Ohio Administrative Code §4121-15-03 defines standards of conduct to be followed by ICO employees, including what is considered prohibited conduct, conflict of interest, and guidance on use of state resources, diligence and impartiality at work, and confidential information.

Kincaid acknowledged receipt of the ICO Code of Ethics on January 26, 2011; Policy No ADM007 *Confidential Personal Information Policy* on April 15, 2011; Policy No HR062 *Computer Use* on June 16, 2011; and Policy No IT002 *Internet Use* on January 12, 2012. Kincaid also completed an ICO CPI training video on October 15, 2012.

INVESTIGATIVE SUMMARY

On October 24, 2013, the Office of the Ohio Inspector General interviewed ICO Management and Planning Director Scott Greene who confirmed he had received a public records request from Claims Examiner 3 Rebecca Kincaid. Greene explained that Kincaid had come to his office to inquire what records were given in response to a public records request made by ICO Cincinnati Regional Manager Carma Callender, who was Kincaid's landlord at the time. Kincaid had expressed concerns that Callender had received documents that she should not be "privy to." After consulting with the ICO chief legal counsel, Greene stated that he had only provided the change of address date requested in response to Callender's public records request.

Kincaid then inquired about individuals having access to her workers' compensation claim information. Greene replied that he knew the ICO was required to keep confidential personal information logs and that he would have some ability to access that information. When asked whether she wanted to make a formal request for the relevant access information, Kincaid replied that she wanted to do so and provided specific details of what information she wanted.

On September 25, 2013, Greene entered Kincaid's verbal records request for "... copies of IC logs listing the name of any IC employee that accessed her workers' compensation claim files ... on any IC network system between May 15, 2012, and September 25, 2013." Greene stated he obtained the CPI logs for Kincaid's two OBWC claims for the requested period from the ICO Information Technology Department (IT). Once he received the records from IT, Greene reviewed the records to verify they were responsive to Kincaid's request and noted the records reflected Kincaid had accessed her own OBWC claim file using an ICO computer system. Greene stated that he forwarded this information to ICO Executive Director Tom Connor and ICO Human Resources Director David Todd.

On October 3, 2013, the Office of the Ohio Inspector General met with IT Director Nilima Sinha and Mr. Todd to discuss these allegations. Sinha provided a listing of the dates, times, and programs Kincaid used to access her claim file 22 times using ICO internal computer programs. Sinha explained when Kincaid accessed the Computer Adjudication System's (CAS) Order Search program, she (Kincaid) would have been initially provided a listing of claim files for other injured workers and would have to enter in her claim number to access her claim file.

Sinha stated for the dates in question, that it was possible that Kincaid may have obtained confidential information prior to her hearing or to the publishing and notification of her hearing results. However, Sinha stated that the ICO records did not identify the specific screens Kincaid opened after her initial access. Sinha clarified in a January 22, 2014, email that the hearing officer's grant or deny decision is entered into CAS prior to the order being typed and would be viewable by an internal user.

ORC§1347.15 (B) requires each state agency to adopt rules in accordance with Chapter 119 of the OAC which regulates "access to the confidential personal information the agency keeps, whether electronically or on paper." On October 10, 2013, the Office of the Ohio Inspector General requested from OBWC a CPI access log for Kincaid's two claims identifying who accessed her claim files and what system was used to gain access.

In addition to the CPI log provided by the ICO, OBWC provided in response to an Office of the Ohio Inspector General request, additional CPI log information on October 17, 2013, showing Kincaid accessed her OBWC claim files 132 times during work days from November 7, 2011, through October 2, 2013, using a login ID she created. On December 10, 2013, Claims Examiner Supervisor Arlisa Belcher identified Kincaid's scheduled breaks and lunch times. A comparison to Kincaid's timesheets revealed Kincaid accessed her claim files using OhioBWC.com four times during her scheduled break and 16 times during her scheduled lunch. Additionally, the OBWC CPI access log revealed that Kincaid improperly used her ICO OhioBWC.com user ID five times between May 6, 2011, and February 14, 2012, to access her claim files. However, the ICO OhioBWC.com user ID is only to be used to access claims for ICO business and not for Kincaid to access her personal claim.

The Office of the Ohio Inspector General interviewed ICO Director of Medical Services Wanda Mullins and Claims Examiner Supervisor Arlisa Belcher on December 10, 2013. Both stated they were aware Kincaid had an OBWC claim which required Kincaid to adjust her schedule to attend exams and hearings. Mullins explained that Kincaid should not be using an ICO computer to access her claim file and that Kincaid should have used ICON³ from either her home computer or a public use computer located on the first floor of the William Green Building to access her OBWC claim files.

Investigators asked Belcher whether, based on her understanding of ICO policies and procedures, Kincaid should use the ICO computer systems to access her OBWC claim files. Belcher replied “No,” and stated that it was her understanding that Kincaid should not access her OBWC claim file at all while at work, even if she was on lunch or break. Belcher did not recall whether Kincaid asked her to leave the 10th floor to use the public computers located on the first floor at the William Green Building to access her claim files.

The Office of the Ohio Inspector General compared Kincaid’s use of ICO computer programs and the OBWC website to access her claim files, to the dates ICO hearing notices and orders were published, and identified the following dates where Kincaid accessed her OBWC claim during work hours:

ICO Hearing Date	Date ICO Order Completed	Date ICO Order Published	Kincaid’s OBWC Internet Access During Workday*	Kincaid’s ICO System Access During Workday*
6/15/2012	6/18/2012	6/20/2012	6/17/12; 6/21/12 (2)	6/18/12 (5); 6/19/12 (5)
1/25/2013	1/25/2013	1/31/2013	1/28/13; 1/29/13; 1/30/13 (2)	1/29/2013 (2)
2/12/2013	2/12/2013	2/20/2013	2/15/13; 2/19/13 (2)	2/13/13 (4); 2/15/13 (3)
		2/27/13 – Injured Worker Appeal Notice posted	2/25/13 (2); 2/26/13; 2/28/13	2/25/2013
4/22/2013	4/23/2013	4/27/2013	4/24/13; 4/29/13	4/25/13; 4/26/13

*Note: () is number of access instances on that date. If instances are not identified, only one access occurred.

On January 23, 2014, the Office of the Ohio Inspector General interviewed Kincaid. During the interview, Kincaid said she was not permitted to use the ICO computers for personal use

³ The ICO Internet application used by parties to the claim, but who are not employed by the ICO.

including surfing the Internet, checking personal emails, downloading attachments or plugging a USB drive into an ICO computer. However, Kincaid admitted to accessing the credit union website to check on a few links, but stated this was done during lunch. Kincaid also explained that she is not permitted to access private information “about other people, unless it’s concerning your job and if it’s somebody you know and you realize that you know it, then you’re supposed to send it on to your supervisor.” Kincaid acknowledged that the ICO notified her of policy revisions that required her to select the button acknowledging she had read the policy. Kincaid admitted that she generally read each revised policy, but she noted that it depended upon the number of revisions.

Kincaid admitted that she had accessed her OBWC claim file using her own sign-in. When asked why, Kincaid explained when she was establishing her own user ID for her OBWC claim, she would enter her Social Security number as required and the system automatically logged her in using her ICO user id. Kincaid stated it took several phone calls with Customer Service and finally speaking with the OBWC customer service manager to establish her own user ID for her OBWC claim. Kincaid stated this is why OBWC’s CPI access log shows her accessing her OBWC claim file using her ICO user ID. On January 24, 2014, OBWC responded in an email that OBWC does not collect employee Social Security numbers and instead, uses the assigned state employee ID to establish the employee’s agency ID.

Kincaid then admitted to accessing her OBWC claim file using OhioBWC.com using her ICO computer during lunch time when her claim was new. Shortly after that access, Kincaid stated she began using her cell phone or tablet to access her claim file. Kincaid also recalled printing out one of the ICO orders for her claim, which is why she had accessed her OBWC claim file. Kincaid stated that she only accessed her OBWC claim file during break and lunch times.

When questioned why the OBWC CPI access log shows her accessing her OBWC claim file during the workday, not while on break or lunch, Kincaid denied using her ICO computer to access her claim file and initially could not explain these accesses. Kincaid then offered the explanation that “... unless it’s signing into the Wi-Fi’s the only thing I can think of, but it’s on my phone. I don’t get onto my computer for that. No. I know better than that ... I have more

[sic] than know better than that. (Pause) I mean ‘cause I’ve got it saved --- my password and everything saved on my phone. That’s what I get on.”

The Office of the Ohio Inspector General contacted OBWC IT to determine whether it was possible the OhioBWC.com accesses were the result of Kincaid’s cellphone re-connecting to the Internet. Emails exchanged on January 24, 2014, and January 27, 2014, with the OBWC Web Systems Development Team indicated that the injured worker remains logged into OhioBWC.com until the injured worker logs out of the system or unless there is a 30-minute continuous period of inactivity. If the injured worker was using the Internet browser Google Chrome on their smart phone, OBWC stated the injured worker’s connection is retained until there is 30 minutes of inactivity, even using a new Internet browser window.

Kincaid was told the Office of the Ohio Inspector General also reviewed accesses of her OBWC claim file in the ICO CAS system. Kincaid admitted that when her 2007 OBWC claim file was first opened she thought she had accessed it two or three times, but had not accessed it since. When shown a list of the 22 instances in 2012 and 2013 she had accessed a program within CAS, Kincaid responded “I have not been in there in 2013.” When asked, Kincaid stated she had not knowingly shared her ICO User ID or password with anyone else.

Each of the CAS computer program modules and accesses were reviewed with Kincaid. Kincaid admitted to accessing her claim file to determine whether the hearing officer’s decision had been completed and or published. Kincaid denied using CAS to identify the hearing officer’s decision, the identity of the hearing officer, and denied contacting the hearing officer prior to or after her hearing. On December 2, 2013, and December 5, 2013, the assigned three district hearing officers and three staff hearing officers interviewed by the Office of the Ohio Inspector General did not recall Kincaid or her attorney attempting to speak with them.

When reviewing the access times, Kincaid explained some of these times where she accessed her OBWC claim file using CAS or OhioBWC.com may have been during her breaks. Kincaid stated her breaks have changed during the period in question. Kincaid was asked on January 23, 2014, to provide additional scheduled break and lunch times. Kincaid provided documentation

on January 30, 2014, reflecting a change to her lunch and workday end time. In a response to a January 31, 2014, email request, Supervisor Belcher provided email correspondence to the Office of the Ohio Inspector General showing a change in Kincaid's scheduled lunch break and deviations from her approved morning break. The information provided did not support any of the remaining 112 instances occurred while Kincaid was on break or at lunch.

Kincaid was unable to explain why she would access her OBWC claim file through OhioBWC.com and then access her claim file through ICO CAS other than she was trying to determine whether the hearing officer order was completed and when it would be published. However, Kincaid agreed that the information contained in CAS that has not been published is not public information.

CONCLUSION

ICO requires its employees to acknowledge receipt of new policies and those with significant revisions. ICO Claims Examiner 3 Rebecca Kincaid acknowledged receipt of the ICO Code of Ethics on January 26, 2011; Policy No ADM007 *Confidential Personal Information Policy* on April 15, 2011; Policy No HR062 *Computer Use* on June 16, 2011; and Policy No IT002 *Internet Use* on January 12, 2012. Kincaid also completed an ICO CPI training video on October 15, 2012.

On October 1, 2013, the Ohio Industrial Commission provided to the Office of the Ohio Inspector General a CPI access log identifying 22 instances that ICO Claims Examiner 3 Rebecca Kincaid accessed her OBWC claim file using an ICO internal computer program. These programs reflected the status of, and the hearing officer decisions, prior to the hearing officer order being published. On October 17, 2013, OBWC provided a CPI access log identifying the instances Kincaid accessed her OBWC claim file. Kincaid accessed her claim file 132 times using her personal user ID to log into OBWC's OhioBWC.com website during the workdays from November 7, 2011, through October 2, 2013, including four times during breaks and 16 times during lunch. Additionally, Kincaid used her ICO OhioBWC.com user ID to access her claim file five times from May 6, 2011, through February 14, 2012. Of these five accesses, two occurred during her lunch break.

Kincaid's job duties did not require her to access her OBWC claim file using internal ICO computer systems or OBWC's OhioBWC.com website. However, Kincaid admitted in a January 23, 2014, interview with the Office of the Ohio Inspector General, to:

- Using the ICO internal computer system programs and an ICO computer during the workday, including her lunch and breaks, to access her OBWC claim file to determine whether the ICO hearing officer's decision had been completed and/or released. The hearing officer's decision is not public information until formally published by the ICO. This access was not listed as one of the reasons in *ADM007 Confidential Personal Information Policy* Section VII to access confidential personal information using an ICO computer system.
- Using the ICO internal computer systems and her assigned ICO computer to access her claim file using OBWC's OhioBWC.com website during the workday to create a user ID for her OBWC claim file on OhioBWC.com. This access is contrary to Section C of the ICO Policy HR 062 *Computer use*, IT002 *Internet Use*, and OAC§4121-15-03 (E).
- Using the ICO internal computer systems and the ICO-assigned computer and printer during the workday to access an ICO Hearing Order for her OBWC claim file and printing the Hearing Order, prior to the order being made public. This printing of her claim file document is contrary to Section C of the ICO Policy HR 062 *Computer use* and OAC §4121-15-03 (E).

When asked why she accessed her OBWC claim file using the ICO Commission Adjudication System (CAS), Kincaid replied it was, "For my own knowledge. I mean I never told nobody nothing[sic]. I guess that's all --- just --- I guess for my own thing, just to know whether or not they completed it."

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

RECOMMENDATIONS

The Office of the Ohio Inspector General makes the following recommendations and asks the chairperson of the Industrial Commission of Ohio to respond within 60 days with a plan detailing how these recommendations will be implemented. The Industrial Commission of Ohio should:

1. Review the conduct of the employee named in this report of investigation, and consider whether administrative action is warranted.
2. Determine if additional or remedial training for proper handling and accessing of CPI information and permitted uses of ICO computers and computer programs for ICO staff is warranted. This training should incorporate reminders of the requirements set forth in ICO policies including ADM007; HR062; IT002, and OAC §4121-15-03 (E).
3. Consider establishing a new policy addressing the access of and use of ICO computer programs to access ICO and OBWC employees', relatives', and or a close friend's claim files. This policy should document when such access is permissible, when a conflict would arise, and steps to be followed for notifying ICO management when such a conflict could occur. For those conflicts identified, the ICO should implement the appropriate computer controls to restrict access within the ICO computer programs to ensure the employee is unable to access the claim file for which there is a conflict.

REFERRAL

This report of investigation will be provided to the City of Columbus Prosecuting Attorney for consideration.

[\(Click here for Exhibits 1 – 3 combined\)](#)



STATE OF OHIO
OFFICE OF THE INSPECTOR GENERAL

RANDALL J. MEYER, INSPECTOR GENERAL

NAME OF REPORT: Industrial Commission of Ohio

FILE ID #: 2013-CA00076

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
June 5, 2014

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