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Report of Investigation

FILE NO: 23-0104-C

SUBJECT MATTER: Nonfeasance by Supervisor

STATUS: Final

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EXECUTIVE SUMMARY

The City of Albuquerque Office of Inspector General conducts investigations, inspections, evaluations, and reviews following the Association of Inspectors General (AIG) standards.

According to City Ordinance 2-17-2, the Inspector General's goals are to (1) Conduct investigations in an efficient, impartial, equitable, and objective manner; (2) Prevent and detect fraud, waste, and abuse in city activities including all city contracts and partnerships; (3) Deter criminal activity through independence in fact and appearance, investigation and interdiction; and (4) Propose ways to increase the city's legal, fiscal and ethical accountability to insure that tax payers' dollars are spent in a manner consistent with the highest standards of local governments.

The Office of Inspector General (OIG) received a complaint alleging a City employee (E1) continuously comes in late to work and E1's supervisors are aware and are allowing it to happen without consequences. The complainant also stated that by not being disciplined, the City employee was able to get a promotion and that the supervisor may be falsifying timesheets and favoring E1 for overtime. The allegation also stated that E1 was promoted as a result of nepotism and that a Department of Municipal (DMD) trainer helped elevate E1 and another employee to their current position skipping several steps in between.

The OIG determined that the allegations contained elements of potential fraud, waste, or abuse and that it was appropriate for the OIG to conduct a fact-finding investigation.

As defined in the Inspector General Ordinance §2-17-3, fraud is the knowing misrepresentation of the truth or concealment of a material fact to induce another to act to his or her detriment. Waste is the thoughtless or careless expenditure, mismanagement, or abuse of resources to the detriment of the City. Abuse is the use of resources or exercise of authority that is contrary to rule or policy, or knowingly inconsistent with any established mission or objectives for the resource, or the position held by the person exercising the authority. Abuse does not necessarily involve fraud or illegal acts.

Finding:

The evidence obtained by the OIG substantiates that E1 and E2 had excessive tardiness, that was not considered during the promotion, and before any verbal or disciplinary action was taken.

The OIG could not substantiate that S1 was showing favoritism towards E1 and could not substantiate that S1 was fraudulently adjusting time in Kronos.

The OIG could not substantiate that E1's promotion was a result of nepotism.

Recommendation:

1. **Policy Implementation:** The OIG recommends that DMD create a policy or Standard Operating Procedure on tardiness and how and when to address the situation during the different levels starting from the Verbal Warning, Letter of Instruction, and Pre-Determination Hearing.
2. **Enhanced Compliance Training:** Supervisors should obtain refresher training to ensure compliance with 301.17: Supervision of Employees.

3. **Supervisory Oversight:** Supervisors should ensure the employees who report to them are observing their regular scheduled work hours as required and take appropriate action in a timely manner when tardiness occurs.

Subsequent Matter:

During the course of the investigation, the OIG identified that Performance Evaluations were not being done by supervisors yearly as required.

Finding

The OIG was able to substantiate that performance evaluations were not being done by supervisors on an annual basis as required.

From the data reviewed, it appears that the majority of City departments are not in compliance in conducting performance evaluations timely.

Recommendation:

1. **Policy Implementation:** The OIG recommends that annual performance evaluations be completed by supervisors as required by § 3-1-9 Performance Evaluations.
2. **Process Review:** The City should evaluate the current performance evaluation process and work towards ensuring that City departments are in compliance.

ABBREVIATIONS

CITY:	City of Albuquerque
OIG:	Office of Inspector General
DMD:	Department of Municipal Development
D1:	DMD Division Manager
S1:	DMD Supervisor
S2:	DMD Supervisor
E1:	DMD Employee
E2:	DMD Employee

INTRODUCTION

The mission of the Office of Inspector General (OIG) is to promote a culture of integrity, accountability, and transparency throughout the City of Albuquerque (City) to safeguard and preserve public trust. Investigations, inspections, evaluations, and reviews are conducted in accordance with AIG Standards.

Complaint

DMD Employee (E1) was a B24 and was promoted to a B34 position. E1 continues to come in late almost every day since E1's hire date, abusing the vacation/sick leave while all levels of management have turned a blind eye. By not being punished or terminated, E1 was promoted to the B34 position from the B24 position skipping several steps in between. This has resulted in the possible intentional falsification of timesheets in the timekeeping system (Kronos) being coded for vacation or sick leave instead of being coded as tardy. E1's actions would have prevented E1 from being promoted per the union contract rules. E1's promotion is the result of nepotism since E1's father was a trainer for the city as well and is retired. S1 shows favoritism to E1 by offering E1 overtime and not offering it to other employees, which is required by the blue collar union contract. By ignoring corrective action and seniority rules, this has also allowed E1 to be promoted. Employees have asked DMD Supervisor (S1) and DMD Supervisor (S2) why E1 is always late and never punished, but they laugh it off and ignore any questions why E1 is always late and never punished. The now retired DMD Training Specialist helped elevate E1 and another employee, which resulted in them being promoted to the B34 position, skipping several position steps. DMD management has blocked any possible advancement to the B28 or B34 positions, helping ensure that E1 and another employee would be promoted immediately. The Division Manager, while ignoring contract rules, has been well aware of the verbal and written warnings that have been given to E1 for E1's tardiness; however, E1 continues to abuse the rules.

SCOPE AND METHODOLOGY

Scope: Time reporting information for subjects and review of pertinent City documents.

The methodology consisted of:

- Review employee Human Resources personnel records
- Review Kronos timesheet records
- Review HRMPROD data
- Review City policies and procedures
- Conduct inquiries and interviews

This report was developed based on information from interviews, inspections, observations, and the OIG's review of selected documentation and records.

INVESTIGATION

Allegation: A Department of Municipal Development (DMD) employee (E1) continuously comes in late to work and their supervisors are aware and are allowing it to happen without consequences. The complainant also stated that by not being disciplined, E1 was able to get a promotion and that the supervisor may be falsifying timesheets and favoring E1 for overtime. The allegation also stated that E1 was promoted as a result of nepotism and that a DMD trainer helped elevate E1 and another employee to their current position skipping several steps in between.

Authority:

301.2 Professional Excellence: Employees are encouraged to strive for personal and professional excellence as a means of keeping current on relevant issues and administering the public's business with professional competence, efficiency and effectiveness.

301.17 Supervision of Employees: Employees with supervisory duties or responsibilities shall, in all instances, ensure that all supervisory actions comply with the provisions of the Merit System Ordinance, Labor-Management Relations Ordinance, Personnel Rules and Regulations, Administrative Instructions, City Operator's Permit, Substance Abuse Policy, applicable legislation, and relevant judicial/administrative decisions.

302. Regular Work Hours: Employees will perform their work in a responsible manner, observing scheduled work hours and complying with City policy governing paid and unpaid leave of absence. Employees are further responsible for complying with City policy concerning sick and vacation leave usage.

§ 3-3-9 Nepotism Prohibited: No relative of a city employee, by blood or marriage, may be employed in any position with the city in which the employee may be able directly to supervise, control or influence the work or employment status of the relative or the affairs of the organizational unit in which the relative is employed.

Evidence:

Kronos Timesheets
Interview
Department Communication
Information received from Central HR and DMD Division

Analysis:

The OIG reviewed Kronos timesheets for E1 and the seven (7) other employees S1 supervised for 2023. The review showed that S1 would adjust the time for each of the eight (8) employees when they were tardy. The times were adjusted by using their vacation leave.

Of the eight (8) employees whose times were adjusted, six (6) did not appear to have excessive tardiness, however, two (2) did, E1 and DMD Employee (E2). The OIG reviewed the timesheets over several years for E1 and E2.

(For the purpose of our analysis, the OIG defined excessive as more than twelve (12) tardies in a calendar year.)

The following shows the approximate days E1's timesheet was adjusted for being tardy to work by years.

- 2020: Eighty-one (81)
- 2021: Ninety-nine (99)
- 2022: One hundred thirty-seven (137)
- 2023: One hundred seventeen (117)

(Tardy is considered eight (8) minutes or more after the scheduled start time.)

The OIG contacted DMD and Central HR and was able to get the following information regarding E1:

- March 2021: Letter of Instruction
- May 2023: Letter of Instruction
- August 2023: Pre-Determination Hearing
 - September 2023: Notice of Final Action (Three (3) Day Suspension (1 Paid and 2 Unpaid))
- November 2023: Pre-Determination Hearing
 - December 2023: Notice of Final Action (Six (6) Day Suspension (3 Paid & 3 Unpaid))

(NOTE: The information provided from DMD and Central HR also identified that verbal warnings were also given to E1 before the Letters of Instruction)

In reviewing Kronos timesheets, beginning on July 17, 2023, "Absent without Leave" was being coded into Kronos by S1 when E1 was late to work. The OIG verified that E1 did not get paid for those hours through E1's paycheck summary.

The following shows the approximate days E2's timesheet was adjusted for being tardy to work by years.

- 2022: Eighty (80)
- 2023: One hundred five (105)

(Tardy is considered eight (8) minutes or more after the scheduled start time.)

At the time of the investigation, no Letter of Instruction or Pre-Determination Hearing had been issued to E2. According to S1 and S2, E2 has only received verbal warnings. One (1) in August 2023 and the other a few weeks later. S2 stated that the verbal warnings sufficed to correct E2's behavior.

The OIG also reviewed the timesheets in Kronos for all eight (8) employees for 2023 to look for days worked over the employee's scheduled eight (8) hour work day. The OIG noted that E1 had overtime in the amount of approximately 11.42 hours and no one else had overtime during the 2023 time period.

The OIG reviewed documents provided by DMD and Central HR showing that E1 and E2 met the requirements, by taking the DMD training and certification program, to be promoted to the B34 position. The promotions were also approved by the Division Trainer, Division Manager, and DMD Director.

Interviews and Questioning:

The OIG interviewed S1 who stated they have been a supervisor since December 2019 and currently supervises eight (8) employees. S1 stated that when an employee is tardy to work, S1 will go into Kronos and enter vacation leave for that time. S1 stated S1 was told to do this process by their previous supervisor. Regarding excessive tardiness, S1 stated that S1 will first give a verbal warning to an employee if they are frequently coming in late. If it continues to happen S1 will report it to S1's supervisor who will then give a Letter of Instruction letting the employee know the expectations and their scheduled work hours. If it continues, S1's supervisor will handle it. S1 was asked if there were a certain number of days an employee is late before action is taken. S1 stated that S1 would take it up with S1's supervisor and their supervisor took control after that.

When asked if S1 had employees continuously coming in late to work, S1 stated yes, E1 and E2. S1 stated that under the previous supervisor who retired, E1 had received a verbal warning and then a Letter of Instruction. When S2 became S1's supervisor, S1 brought it to S2's attention that E1 was continuously coming in late to work. Since S2 was the new supervisor, S2 wanted to start the process from the beginning to make sure S2 was doing everything properly. S2 wanted to speak with E1 so a meeting was held with E1 and S1 and E1 was given a verbal warning which was later followed with a Letter of Instruction. Eventually S2 told S1 to start putting E1 in as Absence without Leave (AWOL)/Leave without Pay in Kronos. S2 then began the process with DMD Human Resources to begin the Pre-Determination hearing process. E1 was suspended and when E1 returned from suspension continued to come in late. A few months later E1 had another Pre-Determination hearing and was suspended again.

S1 stated that E2 has also been late to work numerous times. E2 was given a verbal warning and as a result, began coming to work on time. However, E2 eventually began coming to work late again. E2 was then given another verbal warning.

S2 was asked if there was a policy or procedure on the number of times an employee can be tardy to work before they are given a verbal warning, Letter of Instruction, or disciplinary action. S2 replied that the Division adheres to the City Policy found in Personnel Rules and Regulations Section 302 “Regular Work Hours”. This policy does not specify a number of times for any verbal warning, Letter of Instruction, or disciplinary action.

In 2023 E2 was tardy to work approximately 105 times. The OIG asked when E2 was given their first verbal warning and when E2 was issued a Letter of Instruction. S2 responded that the first verbal warning was issued around August 2023. Another was given a few weeks later. E2 has not received a Letter of Instruction for tardiness because the verbal warnings sufficed to correct their behavior. The City uses a Kronos time system which provides a seven-minute grace period to arrive on time to work due to the high volume of employees clocking in at the same time. Many of these instances may be within the range set forth by the grace period. (The OIG only reported instances that were eight (8) minutes or more for tardiness.)

The OIG asked S2 if the immediate supervisor is supposed to act on the tardiness or does the supervisor need to report the concern to S2 to initiate. S2 replied that the immediate supervisor is expected to address concerns regarding tardiness. If the behavior persists and becomes habitual, the concern may be brought to the next level of management for possible additional correctional or disciplinary steps.

S2 was told that the OIG reviewed Kronos from 2020 to the present, and E1 had been excessively tardy to work. In 2022 E1 was late to work approximately one hundred thirty-four (134) times with no action taken. In March 2021, E1 received their first letter of instruction and it wasn't until May 2023 that E1 received their second Letter of Instruction from S2. These were followed up by Pre-determination hearings where it was decided that E1 would be put on leave without pay. The OIG asked why it took so long for E1 to receive their second Letter of Instruction. S2 replied that in 2021, S1's previous supervisor issued the first Letter of Instruction and retired shortly thereafter that same year. S2 was hired as the new supervisor in January 2022 and decided to restart the process. In 2022, E1's chronic tardiness was verbally addressed at least twice before receiving their official Letter of Instruction in May 2023. The time lag is likely due to the correction of E1's behavior for some spans, intermittently saturated with continued spans of tardiness.

The OIG told DMD Division Manager (D1) that E1 and E2 were promoted to the B34 position on December 8, 2022. D1 was asked if position steps were skipped from the B24 to the B34 position. D1 provided two (2) documents showing that E1 and E2 completed all the requirements to be promoted from their B23/24 positions to the B34 positions. D1 replied that per the documents, they completed all the requirements necessary for the promotion. E1 and E2 both skipped being promoted to the B27/28 position. If an employee completes all the training requirements to be promoted to a B28, and there is an open B34, then they progress directly to the B34 grade. This is because the B34 and B28 positions have the same training requirements. D1 noted that the Leadership Training was not checked off on either of the employees' checklists, but attached the supervisor training certification from the class they attended which fulfills that requirement.

D1 stated that if an employee has completed all the requirements for a position, including time with the division and all required certifications, they may be promoted directly to whatever position they are eligible for, without having to be promoted to an intermediate position first. At the time the B34 positions were open, E1 and E2 were the only two employees who were qualified to be promoted to those positions. D1 stated there was a third employee around the same time who was eligible to be promoted to a B27 grade, but had not completed all the requirements to be a B34, and did not have seniority over E1 and E2. D1 explained that the seniority order starts with time with the Division, then time with DMD, then time with the City, and then time with the bargaining unit. E1 and E2 both had more time in the Division, DMD, and bargaining unit than any other blue-collar employees eligible for promotion. Because they had completed all the requirements and had seniority, they were promoted to the B34 grade.

Regarding the training that E1 and E2 took, D1 replied that E1's father was the trainer for another Division within DMD. At no time did E1's father have any responsibility for the Division training program that E1 and E2 took and did not oversee E1's training in any way.

Finding-Allegation:

The evidence obtained by the OIG substantiates that E1 and E2 had excessive tardiness, that was not considered during the promotion, and before any verbal or disciplinary action was taken.

The OIG could not substantiate that S1 was showing favoritism towards E1 and could not substantiate that S1 was fraudulently adjusting time in Kronos.

The OIG could not substantiate that E1's promotion was a result of nepotism.

Recommendation:

The OIG recommends that DMD create a policy or Standard Operating Procedure on tardiness and how and when to address the situation during the different levels starting from the Verbal Warning, Letter of Instruction, and Pre-Determination Hearing.

Supervisors should obtain refresher training to ensure compliance with 301.17: Supervision of Employees.

Supervisors should ensure the employees who report to them are observing their regular scheduled work hours as required and take appropriate action in a timely manner when tardiness occurs.

Management Response:

DMD agrees that E1 and E2 were tardy in violation of City Code of Conduct Section 302. DMD agrees that tardiness was not considered during any promotions, because promotions are based solely on training and seniority. DMD is prohibited from considering tardiness in promotions. The supervisor exercised discretion in deciding whether to initiate discipline.

DMD agrees that no favoritism, timecard fraud or nepotism were shown.

DMD rejects the OIG's recommendation that DMD create a policy or Standard Operating Procedure on tardiness. The union agreement and Section 302 adequately address tardiness. In addition, supervisors need discretion in determining whether to initiate disciplinary action.

DMD agrees with OIG's recommendation that supervisors should obtain refresher training to ensure compliance with 301.17 and is working to schedule training.

DMD agrees that supervisors should ensure the employees who report to them are observing their regular scheduled work hours as required and take appropriate action in a timely manner when tardiness occurs.

SUBSEQUENT MATTER AND RECOMMENDATION

Subsequent Matter:

During the course of the investigation, the OIG identified that Performance Evaluations were not being done by supervisors yearly as required.

Authority:

§ 3-1-9 PERFORMANCE EVALUATIONS.

(A) The Chief Administrative Officer shall establish a system to evaluate the work performance of city employees in the classified service. Performance evaluations or ratings shall not be the subject of a grievance.

(B) The performance evaluation system will provide for:

(1) Performance standards that will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria related to the job in question for each employee or position in the classified system;

(2) Communication with each employee as to the performance standards and critical elements of the employee's position;

(3) An opportunity during a specified period of time for the employee to demonstrate an improvement in performance; and

(4) Appropriate disciplinary action to be taken if performance is inadequate including dismissal or demotion for an employee who continues to have unacceptable performance after an opportunity to demonstrate acceptable performance.

(C) The work performance of an employee shall be officially evaluated by his or her immediate supervisor(s) at least once a year.

Evidence:

Central HR Records

Interview

Department Communication

Analysis:

The OIG requested Performance Evaluations from Central HR done for S1, E1, and E2. From information received S1 and E1 had their last Performance Evaluation in 2017 and E2 had their last Performance Evaluation in 2019.

The OIG requested information from Central HR to find out if yearly notifications for Performance Evaluations are sent out to City supervisors, specifically in S1 and S2's Division. Central HR replied that if an employee is listed as a "Reports To" in PeopleSoft, they will receive a notification. Those employees will receive an auto-generated notification regarding the Performance Evaluation coming due for the employees they supervise. The OIG reviewed that data which revealed that S2 and S1 were listed as a "Reports To". The data also listed the employees S1 and S2 supervise.

Note: From the data reviewed, the majority of departments that are "On-Time" with their Performance Evaluations were not in compliance.

Interview and Questioning:

During the interview with S1, the OIG read § 3-1-9 Performance Evaluation to S1. S1 was asked when S1 had last done Performance Evaluations for the employees S1 supervises. S1 stated that he did not remember the last time S1 had done Performance Evaluations and that S1 had not been instructed to. S1 stated that S1 had done Performance Evaluations for new employees coming off of probation. S1 stated that S1 did take supervisor training where there was a short, vague section on how to evaluate employees. S1 stated that S1 did not remember the last time S1 had a Performance Evaluation by their supervisor.

S1 was asked if a Performance Evaluation would have been done on E1 showing that E1 was continuously late, would that have prevented E1 from getting into the training program and promotion? S1 stated that the training program is not mandatory, but it gives employees who want to join the training program a chance to advance without having to apply. An employee will take the training program and test and then they can advance to different levels. No criteria and voluntary. An employee taking the training program must meet the trainer's requirements and pass the test. S1 stated there is no punishment if they are late to work.

S2 was asked why Performance Evaluations were not being conducted by supervisors for employees they supervise as required by Article 1: 3-1-9 of the Merit System Ordinance. S2 replied that in most cases, the City does not use Performance Evaluations for promotion, demotion etc. There has been no administrative instruction from the Administration indicating that these evaluations are mandatory, other than the aforementioned Article.

S2 was asked how S2 was made aware that Performance Evaluations must be done. S2 replied that an automatic email is sent to City Employees from Central HR maybe once or twice a year.

S2 was asked if E1's tardiness would have impacted whether or not E1 should have been considered for the training program and promoted to their current position which took effect on October 8, 2022. S2 replied that the training program for promotion and the disciplinary process are separate processes.

Finding

The OIG was able to substantiate that performance evaluations were not being done by supervisors on an annual basis as required.

From the data reviewed, it appears that the majority of City departments are not in compliance in conducting performance evaluations timely.

Recommendation:

The OIG recommends that annual performance evaluations be completed by supervisors as required by § 3-1-9 Performance Evaluations.

The City should evaluate the current performance evaluation process and work towards ensuring that City departments are in compliance.

Management Response:

DMD agrees that performance evaluations were not done by the supervisor on an annual basis in this situation. However, performance evaluations would not have impacted the promotions in this case because they are based solely on training and seniority. DMD cannot speak to what other Departments are doing related to performance evaluations.

We agree that the City should evaluate the current performance evaluation process and DMD will follow the direction provided by the Administration.