



INSPECTOR GENERAL REPORT

2011-04-0141

March 5, 2013

SPD BENEFITS INVESTIGATIONS – INELIGIBLE DEPENDENTS

Inspector General Staff Attorney Jennifer Cooper, after an investigation by Special Agent Alan McElroy, reports as follows:

On April 6, 2011, the Office of the Inspector General (“OIG”) received information from the State Personnel Department (“SPD”) stating that a former state employee (“Respondent”) with the Indiana Department of Transportation (“INDOT”) possibly carried an ineligible dependent on his state provided health insurance. SPD requested the OIG’s assistance in determining the dependent’s eligibility.

SPD conducted a Dependent Eligibility Verification Audit (“Audit”) using third party administrator Aon Consulting (“Aon”). On June 29, 2010, Aon sent Respondent a letter requesting that he complete and return an enclosed Affidavit Signature Form and provide documentation for his dependents to verify their eligibility. On September 14, 2010 Aon received Respondent’s signed affidavit along with a marriage license dated September 10, 2010. The marriage license proved the eligibility of Respondent’s spouse (“Spouse”) as of September 10,

2010, but no documentation was provided to verify her eligibility from February 26, 2006 when she was added to his coverage, through September 10, 2010.

According to SPD records, a total of One Thousand Seven Hundred Sixty-Six Dollars and 18/100 (\$1766.18) in medical, prescription, dental and vision claims were submitted on Spouse's behalf during this period of ineligibility.

A pre-deprivation meeting was held on December 10, 2010 to consider the accusations of fraud against Respondent for enrolling ineligible dependents under his state-provided insurance coverage. INDOT officials and Respondent attended the meeting at which Respondent was immediately terminated for fraud regarding his enrollment of Spouse, before a legal marriage was established under Indiana law, in his insurance benefits.

On March 14, 2011 SPD sent a collection letter to Respondent requesting the payment of \$1766.18 for claims incurred and paid for Spouse by the State. Respondent did not respond; on March 30, 2011 SPD sent a letter to the Office of the Indiana Attorney General (AG) requesting assistance in the collection.

In a letter dated June 7, 2011, Respondent's attorney informed the AG that Respondent was denying the allegation that he enrolled an ineligible dependent under his state insurance plans and therefore was not going to make the payment requested. The attorney asserted that Respondent had entered into a common law marriage with Spouse when they both lived in South Carolina. The attorney further asserted that Respondent had presented an Affidavit of Common Law Marriage upon his hire and was assured by state personnel that such a marriage

would be recognized for purposes of his State insurance plans. Respondent's attorney also advised that Respondent had appealed INDOT's determination of fraud. On appeal, the Administrative Law Judge determined South Carolina would consider Respondent and Spouse to be married, thereby concluding that Respondent's representation of the marriage to the State was not intentional fraud.

Indiana does not recognize common law marriages entered into after January 1, 1958¹. South Carolina, however, still recognizes common law marriage².

Special Agent McElroy contacted Respondent who explained that he and Spouse had a common law marriage in South Carolina and that he had presented documentation to SPD verifying the marriage upon being hired. Respondent suggested that INDOT was aware of the common law marriage, as was SPD, and he was never questioned about it prior to the Audit. Respondent referred SA McElroy to his attorney to obtain further information.

SA McElroy obtained a copy of the Affidavit of Common Law Marriage which indicated that the common law marriage between Respondent and Spouse was established on July 28, 2000. The affidavit was executed in South Carolina on August 24, 2004. SA McElroy also obtained copies of Respondent's and Spouse's tax records for the years 2005 through 2011. Respondent and Spouse

¹ See IC 31-11-8-5 Common law marriages entered into after January 1, 1958

Sec. 5. A marriage is void if the marriage is a common law marriage that was entered into after January 1, 1958.

As added by P.L.1-1997, SEC.3.

² See *State v. Ward*, 28 S.E.2d 785, 786 (S.C. 1944) (holding that statutes such as § 20-1-210, requiring a license to marry, are merely directory and do not void marriages entered into without a license).

filed individual tax returns for all of the years examined. Spouse used Respondent's last name when filing. In addition, Special Agent McElroy obtained a copy of Respondent's personnel file in which several documents list Spouse as his wife. The file did not contain an Affidavit of Common Law Marriage nor did it contain any documentation indicating that such a document or any information on the matter was presented to SPD.

Special Agent McElroy interviewed two INDOT clerical employees who had assisted Respondent with new-hire paperwork and his benefits enrollment in 2006, when Respondent began employment with INDOT. Both employees denied that they were presented with an Affidavit of Common Law Marriage by Respondent.

This case was presented to the Marion County Prosecutor's Office and prosecution was declined. The OIG agrees with this disposition due to the differing state laws. Accordingly, this investigation is closed.

APPROVED BY:

/s/ David O. Thomas, Inspector General