



Office of the Inspector General Commonwealth of Massachusetts

Results of Pension Fraud Investigations, February 2012

The Inspector General's Office (OIG) has committed substantial resources to uncover and eliminate pension fraud within the Commonwealth, working with other law enforcement agencies including the United States Attorney's Office, the Federal Bureau of Investigation and the Boston Police Department. The results of these combined investigative and prosecutorial efforts are both noteworthy and significant.

For example, the pension fraud investigation of Charles Bradshaw Lincoln (Lincoln) became a catalyst for pension reform in the Commonwealth. Lincoln was a former Lieutenant for the City of Brockton Police Department. During Lincoln's last three years of employment at the Brockton Police Department he also served as the Director of Security for the Plymouth County House of Correction. In 2005 the OIG launched an investigation concerning the conduct of Lincoln after a complaint was received from a concerned citizen. Questions were raised in the complaint concerning whether Lincoln's decision to combine his city and county salaries in order to increase his pension was appropriate. By combining the two salaries, Lincoln's pension amounted to almost \$140,000 annually and \$11,648.99 per month for the rest of his life.¹ This pension proved to be the highest pension in Plymouth County history.

At the conclusion of the investigation, the OIG issued a public report with its findings. The report found that the manner in which Lincoln earned his pension constituted one of the most significant abuses in the expenditure of public funds and abuse of employment benefits in the history of the Commonwealth.

During Lincoln's last three years of employment, he inflated his pension by abusing his sick leave in order to hold two full-time public safety positions. Lincoln was employed by Plymouth County for only three years and his contribution to its retirement system was minimal. Notwithstanding his marginal participation, he receives approximately \$63,000 annually from that system for the rest of his life. By contrast, Lincoln was required to work almost thirty two years in the Brockton retirement system to qualify for an annual pension of approximately \$76,000. Lincoln's pension assessment from Plymouth County is approximately 83% of the Brockton assessment, despite his minimal involvement in the County system. During Lincoln's last three years of employment, he used 222 days of sick leave at the Brockton Police Department. On 148 of those days, while claiming to be sick for his police shift, he put in a full day at the Plymouth County Sheriff's Department.

The OIG report recommended to the Public Employment Retirement Administration Commission (PERAC) that they examine existing Massachusetts pension laws and draft appropriate amendments to preclude the future possibility of a situation similar to the Lincoln pension result from happening again. Subsequently, in June 2009, the Massachusetts Legislature amended M.G.L. c.32, §5 (Retirement Systems And Pensions - Superannuation Retirement), by

adding a new subsection [i.e. §5(e)]. This new subsection of the law was designed by the Legislature to prevent pension abuse similar to that found in the Lincoln case from occurring in the future. The text of §5(e) is set forth in the endnote below.²

After the OIG issued its report, the United States Attorney's Office and the Federal Bureau of Investigation joined the Lincoln pension fraud investigation. Lincoln was subsequently indicted by a Federal Grand Jury for mail fraud in connection with the manner in which he secured his pension. He was later tried and acquitted in the United States District Court Boston, MA. During the trial the jury heard evidence that Brockton Police Officers were regularly permitted by their supervisors to use their sick leave during their last three years of employment for reasons unrelated to being ill.

After Lincoln was acquitted in federal court, the matter of his conduct was brought to the attention of the Massachusetts State Ethics Commission (Ethics Commission). The OIG has learned from a State Ethics official that the Ethics Commission was unable to bring any sanctions against Lincoln for his abuse of sick leave because there was no law that covered the matter. The State Ethics Official advised that in order to deal with this kind of situation in the future, in September 2009, the Massachusetts Legislature created a new law to cover the problem. This law is found at M.G.L. c.268A, §23(b)(4). Subsection (b)(4) reads as follows:

No current officer or employee of a state, county or municipal agency shall knowingly, or with reason to know: present a false or fraudulent claim to his employer for any payment or benefit of substantial value. This section can be used in the future by the Ethics Commission or an appropriate prosecutorial authority to address situations similar to those found in the Lincoln matter involving false sick leave claims to a governmental employer.

In January 2008 the Boston Globe reported widespread pension abuse at the Boston Fire Department. The story reported that 102 Boston firefighters had claimed permanent and disabling job-related injuries while temporarily filling in for a superior at a higher pay grade, thereby increasing their pensions by an average of \$10,300 a year for the rest of their life. This practice was also referred to as the "king for a day" pension rule. Subsequent to the Globe's report, the United States Attorney's Office opened an investigation regarding this matter and contacted the OIG for assistance. As the case developed the Federal Bureau of Investigation and the Boston Police Department joined the investigation.

The investigation resulted in the indictment of two former Boston firefighters by a Federal Grand Jury in October 2009. The firefighters were charged with mail fraud involving their applications for accidental disability pensions. In addition, a clerk in the Boston Fire Department was indicted at the same time and charged with perjury and obstructing the federal grand jury investigation. The clerk subsequently entered a guilty plea to those charges and was sentenced to two years probation and 200 hours of community service.

One firefighter, a District Fire Chief, was accused of filing a false accidental disability application claiming that he suffered a career ending injury while moving a box of files. At the time of the alleged accident, the District Fire Chief was working for one day in an acting capacity for his superior officer. The indictment charged that while claiming to be totally and permanently disabled by his box moving injury, he sought to obtain benefits at a higher grade salary, including tax-free leave pay and a higher accidental disability retirement pension.

After trial, before a United States District Judge in October 2011, the firefighter was acquitted of the charges set forth in the indictment. Upon finding the defendant not guilty, the Federal Judge commented from the bench that "the disability issue in the Boston Fire Department lies not with this defendant, but with a system... the fire department's universal standards applicable to all ages and ranks, renders almost every elderly fireman eligible for a disability retirement." The Judge continued by saying that "This system is patently flawed and abuses the taxpayers of the City of Boston. It should not be allowed to continue in its present form. The United States Government deserves great credit for exposing this travesty of a disability system to public scrutiny."

During the investigation of the Boston Fire Department accidental disability pension matter, the Massachusetts Legislature amended M.G.L. c.32, §7 and inserted new language which abolished the so called "king for a day" rule.³ Presently, it is unlawful for a subordinate to take his superior's place temporarily, sustain injury, and seek a disability based on his superior's higher salary.

The second firefighter, a Fire Inspector at the Boston Fire Department, was indicted for mail fraud in connection with his claim that he fell in March 2008 while walking down the stairs at a fire station in Jamaica Plain. The Fire Inspector claimed that this fall left him totally and permanently disabled. At the time of the alleged injury, the Fire Inspector was assigned to Fire Prevention, a job which did not require fighting fires. This assignment required him to inspect buildings and to complete various paperwork related to those inspections.

The Fire Inspector submitted an application in April 2008 for accidental disability retirement. In the application, he claimed that he was permanently and totally disabled as a result of his March 2008 fall. The Fire Inspector failed to disclose his repeated visits to gyms where he trained for a May 2008 bodybuilding competition. This scheme was aimed at obtaining tax-free benefits and an inflated accidental disability retirement pension.

After trial in the United States District Court, the jury returned a not guilty verdict. The Boston Globe later reported that jurors revealed, in explaining the not guilty verdict, that the panel of jurors believed that the Fire Inspector was guilty of fraud. However, one of the jurors told the Globe "We didn't feel that the prosecution made the case that it was reasonable and foreseeable that the mail would be used to further his scheme."

The Commonwealth of Massachusetts does not have a general fraud statute similar to the federal mail fraud statute. In order to provide state and local prosecutors with the ability to investigate and prosecute fraud cases similar to this one, the OIG has filed a bill to make fraud against the Commonwealth a punishable crime. See House bill 9 - 2011 Legislation, "An Act Relative to Fraud." Moreover, after the not guilty verdict in the Fire Inspector case, the Inspector General sent letters to the Governor and the Legislature and recommended that they take the appropriate steps to enact the proposed general fraud legislation previously filed by the Inspector General. The proposed bill does not require the use of the mail to determine guilt. A statute of this type would go a long way towards curbing fraud against public entities.

Endnotes

1. The average annual state pension for a retiree is approximately \$26,000.
2. §5(e) A person who has been a member of 2 or more systems and who, on or after January 1, 2010 has received regular compensation from 2 or more governmental units concurrently shall, upon retirement, receive a superannuation retirement allowance to become effective on the date of retirement that is equal to the sum of the benefits calculated pursuant to this section as though the member were retiring solely from each system; provided, however, that notwithstanding paragraph (c) of subdivision (8) of section 3, each system shall pay the superannuation retirement allowance attributable to membership in that system to the member; and provided further, that this section shall not apply to any member who has vested in 2 or more systems as of January 1, 2010.
3. §7 of said c. 32, as so appearing, is hereby amended by striking out, in lines 69 to 73, inclusive, the words "or equal to seventy-two per cent of the average annual rate of his regular compensation for the twelve-month period for which he last received regular compensation immediately preceding the date his retirement allowance becomes effective, whichever is greater; provided, however" and inserting in place thereof the following words: - ; provided, however, that if an individual was in a temporary or acting position on the date such injury was sustained or hazard undergone the amount to be provided under this subdivision shall be based on the average annual rate of the individual's regular compensation during the previous 12-month period for which he last received regular compensation immediately preceding the date such injury was sustained or such hazard was undergone; provided, further,.

For more information see:

Lincoln Pension Letter to PERAC 

Boston Fire Department Employee Sentenced for Perjury & Obstruction of Justice, April 2010

House 9 of 2010