

INVESTIGATION SUMMARY

Employee:

Louis Bucari, First Assistant Commissioner

Employment History:

DOH: 11/28/95 Tax Attorney 1
12/4/98 Tax Attorney 2
9/21/01 Tax Attorney 3
8/8/02 Tax Litigation Director
5/9/08 First Assistant Commissioner of Revenue Services

Performance History:

All satisfactory or better

Disciplinary History:

None

Summary of event(s) leading to investigation:

On October 2, 2015, Ms. Marilee Clark, Tax Legal Director reported to Human Resources that she believed she had been constructively demoted and working in a hostile working environment as a result of her superior engaging in an inappropriate relationship with a subordinate in their chain of command. Ms. Clark reported that one of her subordinates disclosed to her approximately one year ago that Mr. Bucari had express his interest in exploring a personal relationship with the subordinate.

Interviews:**Interview of Marilee Clark**

The undersigned had obtained information from Ms. Clark during discussions on October 2, 2015, October 6, 2015, October 9, 2015 and October 13, 2015.

Ms. Clark reported that her role as Tax Legal Director has been systematically marginalized by Mr. Bucari resulting in what she considers a constructive demotion; that he has kept her from performing the full functions and responsibilities of her position.

Ms. Clark reported Mr. Bucari has been undermining her, especially in her supervision of her subordinate, Erica McKenzie. Ms. Clark stated that their inappropriate relationship was resulting in a hostile working environment.

Ms. Clark said she is being excluded from meetings and/or discussions on matters which she should be directly involved in as the Tax Legal Director, yet her subordinate is involved.

When asked what information led her to conclude that an inappropriate relationship existed between the First Assistant Commissioner and the subordinate, Ms. Clark reported that the subordinate disclosed to her some time ago that the Mr. Bucari inquired as to the possibility of a personal relationship.

Ms. Clark provided the following examples which she believes support her claims:

- She had no input or review into the recent posting of the Tax Attorney 2. She believes no consideration was given to the input she provided on what she needed from the position when approval was given for the position.
- Ms. Clark held a staff meeting on 9/25/15 in which she shared some questions she had received through an employee engagement presentation and which were discussed at the Department's Vision meeting the week of the staff meeting. After the meeting she went to Mr. Bucari's office and found Mr. Bucari, Ms. McKenzie and the paralegal, Stacey Williams, reviewing the questions and laughing. She confronted Mr. Bucari and indicated she did not think it appropriate for him to engage in such conduct. Mr. Bucari stated to her they were laughing at the length of the meeting because it was so short and not about the presentation of the questions to the staff.
- In the Fall of 2014 Ms. Clark presented a draft performance assessment (PARS) for Ms. McKenzie to Mr. Bucari for the 2013-2014 rating period in which Ms. Clark had rated Ms. McKenzie as "exceeding expectations" overall with two categories as "meets expectations." Mr. Bucari required Ms. Clark to change one rating to "exceeds expectations" despite their discussion as to why the rating was appropriate and indicated that maybe next year he should be the one to assess Ms. McKenzie.
- Ms. Clark discovered via email (dated 9/29/15) that despite her request to Ms. McKenzie to provide her 2015-2016 PARS goals, Ms. McKenzie had provided the document directly to Mr. Bucari in August. Ms. Clark had not had a conversation with Ms. McKenzie about Mr. Bucari assessing her. When Ms. Clark inquired with Mr. Bucari why this occurred, he stated he was not sure and that Ms. Clark may not have been in that day.
- Mr. Bucari denied Ms. Clark attending the pre-trial on the Utopia case that she had expressed interest in attending because she believed it was important for her to attend. Mr. Bucari advised her that he would be attending the pre-trial with Erica and he viewed all litigation matters to be Erica's responsibility.
- Mr. Bucari slowly stopped including Ms. Clark in the Home Depot and Allen cases despite the fact that Ms. Clark had been working on those matters.
- Ms. McKenzie spends hours in Mr. Bucari's Office and on the phone and that she is aware they text each other regularly, both during and outside of working hours. In overhearing some of the conversations, not all discussions were work related.
- Ms. Clark reported Mr. Bucari had requested a salary increase for Ms. McKenzie by requesting a change in the pay scale for the Tax Attorney 1 classification. Ms. Clark stated that Mr. Bucari had not told her of his request or its approval. She found out independently. When she inquired with Mr. Bucari he said it was to make the Department's classifications comparable to similar positions at the Attorney General's. Of note, Mr. Bucari did not request that the Department make the Tax Attorney 3 or the Tax Legal Director positions comparable.

- Mr. Bucari removed Ms. McKenzie from performing penalty waivers duty. Ms. Clark expressed concern with this decision as she believed the other attorneys would feel it was not fair that Ms. McKenzie would not be assigned the duty. Mr. Bucari indicated he would rather he be assigned penalty waivers than to have them assigned to Ms. McKenzie.
- Despite the fact that Litigation staff (Ms. McKenzie and Mr. Matt Dayton and Jack Basher) report to Ms. Clark, Mr. Bucari has maintained approval authority in Core the entire time. Most recently, Mr. Bucari approved 8/21/15 as time Regular time worked for Ms. McKenzie. Ms. Clark advised Mr. Bucari that Ms. McKenzie had taken this day as a vacation day. Mr. Bucari indicated he would approve as regular and would have Ms. McKenzie correct her time upon her return to work (Ms. McKenzie was not at work the day Mr. Bucari approved the time card). Ms. Clark was not aware as to whether the correction ever occurred.

Ms. Clark was asked to elaborate on her report that Ms. McKenzie advised her that Mr. Bucari expressed his romantic interest to Ms. McKenzie and why it was not reported (to Human Resources, Office of Equity and Diversity, and/or her chain of command). Ms. Clark stated she was worried about coming forward for fear of retaliation and that Ms. McKenzie had asked her not to do so as she could handle it. Ms. Clark reported she had a discussion with Mr. Bucari in which she stated to him that "there seemed to be something going on [between him and Ms. McKenzie], is anything coming from you" and he stated there was nothing.

Ms. Clark stated she offered to Ms. McKenzie to have everything go through her as her direct supervisor and let Ms. Clark interact with Mr. Bucari. Initially, Ms. McKenzie did, but then she began going directly to him again.

Ms. Clark reported Mr. Bucari has never asked her to establish a personal relationship.

Interview of Ms. Erica McKenzie, Tax Attorney 1

Ms. McKenzie was interviewed on October 6, 2015

Ms. McKenzie denied an intimate personal relationship existed between her and Mr. Bucari. She reported that in the Fall of 2014, Mr. Bucari asked her if she was interested in establishing a relationship. Initially she was angry and their interactions became tense and awkward. She disclosed the discussion between her and Mr. Bucari to Ms. Clark and asked her to address the matter. However, the fact that nothing change indicated to her that Ms. Clark had not done so. Ms. McKenzie stated that she has a passion for the work she performs at DRS and a strong desire to build her career here, so she decided she would handle the matter herself and spoke to Mr. Bucari. Ms. McKenzie told him she had no desired to establish an intimate personal relationship. They came to an understanding that they would put the matter behind them and continue to work together. Mr. Bucari has not initiated any such discussion, nor pursued her in any way and has remained professional. She reported she thought the matter was appropriately handled between them and simply wanted to move on. Ms. McKenzie expressed that she had no desire to purse this matter.

Interview of Mr. Louis Bucari

Mr. Bucari was interviewed on October 7, 2015, October 9, 2015 and October 13, 2015. Additionally, on October 8, 2015, Mr. Bucari requested to meet with the undersigned to clarify information he provided on October 7th.

Mr. Bucari acknowledged a conversation occurred with Ms. McKenzie in which he expressed having feelings and asked her if she was felt the same. He reported she initially said yes, but shortly thereafter came to him and said she was not interested in establishing a relationship.

Mr. Bucari responded as follows to the information provided by Ms. Clark:

- Mr. Bucari acknowledged he did not review the Tax Attorney posting with Ms. Clark. That he did ask Ms. McKenzie for her input on the language for the justification as he was struggling with the language and he relies and values her input.
- Mr. Bucari indicated the discussion with Ms. McKenzie and Ms. Williams regarding the 9/25/15 staff meeting was about how short the staff meeting was and not the questions distributed by Ms. Clark. He stated he came into the staff meeting after it had started and had not received Ms. Clark's handout, so Ms. McKenzie and Ms. Williams were simply sharing it with him.
- Mr. Bucari acknowledged that he directed the change in Ms. McKenzie 2013-2014 PARS. He stated that based on his firsthand knowledge of Ms. McKenzie's work as it related to litigation, he assessed that the rating should have been "exceeds." Mr. Bucari also acknowledged that Ms. Clark disagreed and indicated to him something to the effect that Ms. McKenzie should then report to Mr. Bucari. He advised Ms. Clark that next year he would assess Ms. McKenzie's performance as Ms. McKenzie's work was all in litigation and he was the best person to make the assessment.
- Mr. Bucari did not recall indicating to Ms. Clark that he was not sure why Ms. McKenzie sent him her 2015-2016 PARS Goals. It made sense to him that Ms. McKenzie sent it to him based on the previous year's discussion in which he indicated that he would be assessing Ms. McKenzie's performance in the future.
- Mr. Bucari reported there was no intentional exclusion of Ms. Clark in the Utopia, or any other matter. There may have been circumstances that Ms. Clark was not available when certain discussion and/or meetings occurred and cases had to move along.
- Mr. Bucari reported all litigation staff worked on the Home Depot matter there was no intentional exclusion of any staff member for either the Home Depot or the Allen matter. Again, there may have been circumstances that Ms. Clark was not available when certain discussions and or meetings occurred.
- The contact outside of working hours is limited to occasional texts when necessary for work purposes.
- With regard to salary upgrade of the Tax Attorney 1 classification, Mr. Bucari stated that he simply reinitiated a matter which he had addressed with one of the previous HR

Administrators, Steven Shapiro (retired in 2009) when the AAG series received a salary upgrade a few years back and DRS attorney series did not. He viewed this as a recruitment and retention matter. When asked why he did not seek salary upgrades for the Tax Attorney 3 or the Tax Legal Director classifications, Mr. Bucari reported that he viewed the AAG 4 (Department Head comparable to his level and the Tax Legal Director and Tax Litigation Director comparable to the AAG 3 and the salaries were already comparable.

- Mr. Bucari stated Ms. Clark is involved in the approval process as she advises him of time off staff taken and that he simply did not think it necessary to go through the process of changing it in Core. Regarding the approval of 8/21/15 as a regular day worked for Ms. McKenzie, Mr. Bucari reported that he simply must have forgotten to have Ms. McKenzie revise her time.
- Mr. Bucari acknowledged making the decision to remove Ms. McKenzie from performing Penalty Waivers. He stated the decision was based on his opinion that while Ms. McKenzie could process a few hundred penalty waivers in addition to her litigation work, the other 4 attorneys assigned struggled with completing as few as 50 in the same time frame.

Mr. Bucari stated he holds Ms. McKenzie in high regard and values her opinion and input. As a result, he relies on her on a variety of matters.

Findings

- Mr. Bucari exercised poor judgment in asking a subordinate her interest in establishing a personal relationship and subsequently not maintaining clear boundaries so as to avoid so much as the perception of impropriety or special treatment.
- Examples which reasonably leads one to believe that Mr. Bucari was demonstrating preferential treatment towards Ms. McKenzie are 1) Mr. Bucari forwarding emails to Ms. McKenzie in matters that she did not have any reason to be involved in and/or had no business reason to know; 2) the removal of Penalty Waiver duty; and 3) the changing of Ms. Clark's rating on Ms. McKenzie's PARS. His intent at this point, is irrelevant. Had Mr. Bucari never inquired with Ms. McKenzie as to her interest in establishing a personal relationship, his treatment of her could reasonably be construed as mentoring/rewarding great work. However, the fact that he did expressed his interest in a personal relationship, completely changed the dynamics of the situation.
- There is no basis in fact that Ms. Clark was constructively demoted. Her job responsibilities, salary, opportunity for advancement and prestige of position were not and have not changed.
- Mr. Bucari exercised poor judgment in not including Ms. Clark when necessary and/or relevant to her role as Tax Legal Director. However, his conduct did not rise to the level of creating a hostile work environment.

Violations

13. Engaging in an activity which is detrimental to the best interest of the agency or of the state.

DRS:

Employee Code of Conduct and Code of Ethics

Recommendations

Discipline:

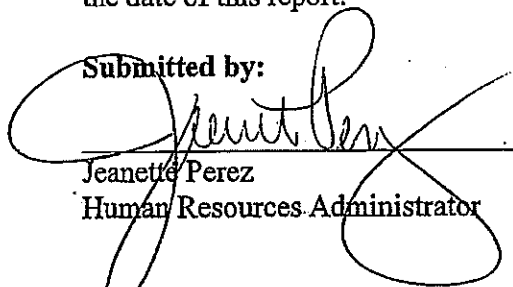
Based on the information and evidence gathered during this investigation, disciplinary action at the level of reprimand is recommended.

Remedial recommendations:

- Mr. Bucari shall attend leadership skill building training to develop fair, consistent, and free of micro-management strategies.
- Mr. Bucari shall attend conflict resolution training to develop a more affirmative approach in handling conflict in the workplace (both with and in between subordinates)
- Mediation sessions will be conducted between Mr. Bucari and Ms. Clark and Ms. Clark and Ms. McKenzie to re-establish their positive working relationship.
- Team building exercises shall be conducted to establish a collaborative atmosphere within all units/divisions under the Office of the Counsel.
- Voluntary EAP participation shall be offered to all individuals involved.

Remedial progress review to be conducted by Human Resources no later than six months from the date of this report.

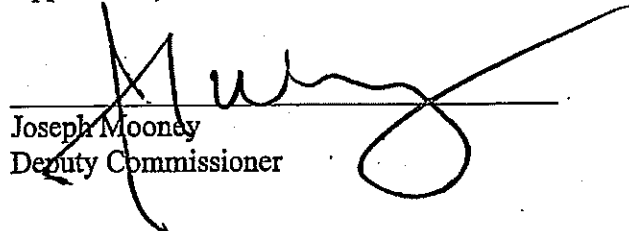
Submitted by:



Jeanette Perez
Human Resources Administrator

10/16/15
Date

Approved by:



Joseph Mooney
Deputy Commissioner

10/19/15
Date

