



Public Synopsis

OIG Report #IG 2012-0023

BCFD Employee Listed on Military Leave Receiving Full Pay
for Over 7 Years



**OFFICE OF THE INSPECTOR GENERAL
BALTIMORE CITY**

100 N. Holliday Street, Rm 640
BALTIMORE, MD 21202



Public Synopsis

Synopsis of OIG Report #IG 2012-0023: BCFD Employee Listed on Military Leave Receiving Full Pay for Over 7 Years

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| FROM | NAME & TITLE | David N. McClintock – Inspector General <i>D.N.M.</i> | CITY of BALTIMORE MEMO |  |
| | AGENCY NAME & ADDRESS | Office of Inspector General 640 City Hall | | |
| | SUBJECT | Synopsis of OIG Final Report #2012-0023 (BCFD) | | |

TO Hon. President and Members of the City Council
400 City Hall

DATE: 11/19/2012

Please find the Office of Inspector General’s Public Synopsis of investigation #2012-0023 involving a Baltimore City Fire Department (hereinafter “BCFD”) employee who was listed as being on military leave status serving with the Maryland National Guard and also found to be receiving full pay from the City. The dual payments were determined to not be consistent with City policy.

On 03/07/2012, the BCFD notified the OIG of an issue involving pay and requested an OIG review. The OIG’s investigation determined that the employee’s Military Orders were erroneously processed. Further review found that these errors placed him in a full-pay status during his leave, which was from 11/23/2004 through 02/15/2012 (when the City ceased payments). The circumstances of the employee’s position with the Maryland National Guard, which was voluntary, permanent in nature, and not deployed in the manner required, was not eligible for benefits under City policy.

Ultimately, the City erroneously paid the employee a total of **\$478,711.14** between his City salary and benefits. At this time, the Fire and Police Pension System is reviewing his employment to determine any potential pension pay out. In the absence of intervention, which is pending, and according to existing City policy pertaining to retirement and employee specific criteria, the employee could have received:

- A lump sum pay out of approximately **\$84,128.00**, bringing the total amount of questioned payments/benefits disbursed to approximately **\$559,069.70** (pay, benefits, pension), or
- Annual pension payments amounting to approximately **\$560,000.00** over a period consistent with an average life expectancy of 25-years, bringing the potential total amount of payments/benefits disbursed to **\$1,034,941.70** (pay, benefits, pension).

The Department of Human Resources and the Baltimore City Fire Department have both provided written responses to our review. Both responses are included as attachments to this synopsis. In addition, the Department of Law has advised that action to recover prior inappropriate payments is underway. We look forward to continuing our partnership to strengthen policy, procedure, and internal oversight protocols.

- This report is available to the public in print or electronic format.
- To obtain a printed copy, please call or write:

Office of Inspector General
100 Holliday Street
Suite 640, City Hall
Baltimore, MD 21202

- Baltimore City employees, citizens, and vendors or contractors doing business with the City should report fraud, waste, and abuse to the fraud hotline. Call 1-800-417-0430 24 hours a day, 7 days a week.

Public Synopsis



**OFFICE OF THE INSPECTOR GENERAL
BALTIMORE CITY**

100 N. Holliday Street, Room 640
BALTIMORE, MD 21202



Public Synopsis

Synopsis of OIG Report #IG 2012-0023: Misapplication of Military Leave - BCFD

ISSUE

A Baltimore City Fire Department (hereinafter “BCFD”) employee who was listed as being on military leave status serving with the Maryland National Guard and was also found to be receiving full pay from the City. The dual payments were determined to be inconsistent with City policy.

INTRODUCTION/EXECUTIVE SUMMARY

On 03/07/2012, the BCFD notified the OIG of an issue involving pay and requested an OIG review. The OIG was advised that a BCFD employee, who was currently a Maryland National Guard Reservist, has been listed as on military leave continually for almost eight years and receiving full City pay. Further, it was believed that the employee was receiving his full City salary in error. This belief was rooted in the City policies addressing military leave that outline the circumstances in which City employees can receive full pay, differential pay, or leave without pay during military service. Chief James Clack requested the OIG’s assistance in determining if these payments were out of compliance and in conflict with City policies that governed military leave for employees and to identify how much in payments/benefits had been disbursed in error.

The OIG’s investigation determined that the employee’s Military Orders were erroneously processed. Further review found that these errors placed him in a full-pay status during his leave starting from 11/23/2004 through 02/15/2012 (when the City stopped issuing him paychecks). The specific employee under review should not have received full pay for his military service as the employee voluntarily applied for the military position, and it was not a temporary deployment. Essentially, he had accepted full-time, permanent employment with the Maryland National Guard and was not deployed in any qualifying manner. This was not one of the many military deployments that the City has effectively managed since the Afghanistan and Iraq deployments began. To effectively address the wide range of military orders that City employees may receive, the City utilizes Administrative Manual Policy *AM 204-11 Military Leave*. This policy was originally issued in 1977 and then waived in late 2001 to evaluate military orders on a case-by-case basis after the 09/11/2001 attacks. The policy was then reinstated on 01/01/2006 with revisions. During the interim period between late 2001 and 01/01/2006 the City utilized a Department of Human Resources (hereinafter “DHR”) memorandum to address military leave. In this instanced matter, the employee’s military service did not qualify for full City pay under any of the City regulations addressing military leave.

The employee under review entered City employment with the BCFD on 07/18/1988. In or

about 07/2004, the employee applied for the full-time permanent position of Medical Operations Officer which is an Active Guard Reserve (hereinafter “AGR”) position and signed a “Certificate of Understanding and Agreement” with the National Guard, confirming the terms of his AGR service. The employee was accepted into the AGR position of Medical Operations Officer and received Orders to commence his full-time, permanent position on 11/23/2004; the National Guard would review and renew (pending satisfactory completion of service) his employment after three years, on or about 11/22/2007. The position was renewed on 11/23/2007, and the employee received Orders which placed him in AGR status “indefinitely.” He currently remains in that status.

Since it was determined that the City policy was misapplied to the employee’s military service, the BCFD sent him a letter on 03/05/2012 informing him that his last City paycheck was issued on 02/15/2012 and that he would no longer receive paychecks from the City. On 08/08/2012, the BCFD sent another letter advising him that his benefits were also being terminated.

Ultimately, the City erroneously paid the employee a total of **\$478,711.14** between his City salary and benefits. At this time, the Fire and Police Pension System is reviewing his employment to determine his potential pension pay out.

In the absence of intervention, which is pending, and according to existing City policy pertaining to retirement and employee specific criteria the employee could have received:

- A lump sum pay out of approximately **\$84,128.00**, bringing the total amount of questioned payments/benefits disbursed to approximately **\$559,069.70** (pay, benefits, pension), or
- Annual pension payments amounting to approximately **\$560,000.00** over a period consistent with an average life expectancy periods bringing the potential total amount of payments/benefits disbursed **\$1,034,941.70** (pay, benefits, pension).

With the discovery and vetting of this issue, the City has the option of intervening in various capacities to possibly eliminate or significantly reduce the financial impact on the City.

INVESTIGATIVE SCOPE

Based on the 03/05/2012 BCFD request, the OIG initiated inquiries to review the City’s policy on military leave (AM 204-11) and the specific employee’s military service while employed by the BCFD.

The OIG undertook an investigation to determine the following:

- 1) What was the date of the employee’s Orders which placed him in full military and City pay status?
- 2) What type of Military Orders did the employee receive that placed him in full pay status?
- 3) Were these Military Orders processed properly and according to City policy?

- a. If these Military Orders were processed improperly and not in accordance with City policy, how much did the City erroneously pay out to the employee, including pay, health benefits, and potential pension?
- b. Did the employee accept his Military Orders with the knowledge that he was not eligible for full pay according to City policy?
- c. Did the employee accept his Military Orders with the knowledge that he was entering a full-time, permanent position with the Maryland National Guard, while concurrently representing to the BCFD that he was on military leave by issuance of involuntary Orders?

Document/Report Examination

In the course of the investigation, the OIG obtained and reviewed the following documents and/or reports:

- 1) E-Time records pertaining to the specific employee – 07/15/2005 through 02/15/2012
- 2) HRIS Payroll records pertaining to the specific employee’s salary payment history – 01/06/2004 through 02/15/2012
- 3) Department of Human Resources (hereinafter “DHR”) Memo dated 11/21/2001 issued by the Human Resources (hereinafter “HR”) Director – Military Duty Allowance for Reservists
- 4) DHR Memo dated 09/18/2001 issued by HR Director – Activation of Employees in Military Reserves and National Guard
- 5) Board of Estimates Memo dated 10/24/2001 – Waiver of AM 204-11
- 6) Maryland National Guard Orders – 10/14/1988 through 10/01/2004
- 7) Maryland National Guard AGR Orders – 11/23/2004 through 11/22/2007
- 8) Maryland National Guard AGR Orders – 11/23/2000 through “indefinite”
- 9) Maryland National Guard AGR Program “Certificate of Understanding and Agreement”
- 10) Maryland National Guard “Application for Active Guard Reserve (AGR) Position”
- 11) Maryland National Guard Payroll Printout – period of 06/01/2012 through 06/30/2012
- 12) National Guard Reserve Code 600-5 – Requirements and Eligibility for AGR
- 13) National Guard Active Reserve AR 135-18 - Active Reserve Program Requirements
- 14) BCFD “Notice of Cut Off” Letter dated 03/05/2012
- 15) BCFD “Notice of Expiration of City Health Benefits” Letter dated 08/08/2012
- 16) DHR Letter - “Revised AM Policy on Military Leave – AM-204-11” dated 12/20/2005
- 17) BCFD Manual of Procedure – MOP 325 – Policy on Military Leave
- 18) AM 204-11 dated 06/09/1977 – Military Leave

- 19) AM 204-11 dated 01/01/2006 – Military Leave
- 20) AM 217-3 dated 06/12/2003 – Collection of Payroll Overpayment

Background – City Policy: Military Leave - AM 204-11

In order to adequately address and answer the above questions, the OIG conducted research regarding City military leave policies and the City’s administration of employees’ military leave according to this policy.¹

AM-204-11 dated 06/09/1977 (EXHIBIT 1)

The advent of the City’s policy administering military leave was issued on 06/09/1977. This policy classified military leave in two distinct categories, as defined below:

- 1) “Leave With Pay” was applied to permanent employees who received full pay for 15 days each calendar year for active duty training and for active duty ordered by the Governor of Maryland.
- 2) “Leave Without Pay” was applied to permanent employees who enlisted in the United States Armed Forces, Reserves, or National Guard for full active duty.

The policy notes the criteria for filling an employee’s position when he/she has taken leave for military service. The policy states that if the employee’s military leave is *less than* six months in duration, the agency may not fill the position with a permanent employee.

The policy states that if the employee’s military leave is *more than* six months in duration, the agency may fill the position with a permanent employee.

The policy states that an employee will be reinstated to his/her former position provided the following:

- 1) The employee was honorably discharged (reflected on the DD-214 Form).
- 2) The employee applies for reinstatement in writing to his/her Appointing Officer within 90 calendar days of his/her discharge.
- 3) The employee is capable of performing the duties required in the position.
- 4) The employee’s position has not been abolished.

Board of Estimates – Waiver of AM 204-11 dated 10/24/2001 (EXHIBIT 2)

As a result of the significant number of City employees who were called up for military service after the 09/11/2001 attacks, the Board of Estimates issued a temporary waiver of AM 204-11 so that each employee’s circumstances (Military Orders) could be reviewed on a case-by-case

¹ The City’s minimum requirement for military leave pay is compliant with Uniformed Services Employment and Reemployment Rights Act. The Act stipulates that persons who have served in the Armed Forces, Reserves, National Guard, or other “uniformed services” are not disadvantaged in their civilian careers because of their service; are promptly reemployed in their civilian jobs upon their return from duty (if it has not exceeded five years); and are not discriminated against based on their military service.

basis, and the appropriate salary (full pay, differential, or leave without pay) applied.

After the issuance of this waiver the DHR Director at the time also released a memo dated 11/21/2001 advising that DHR had formulated policies and procedures to address the Board of Estimates' waiver. The memo stated that the City would provide differential pay to employees who were Armed Services Reservists (not National Guard) who were called for active duty. After this memo was issued, the BCFD requested that HR consider and include employees called up for National Guard service under the differential pay guideline. Ultimately, the HR Director issued a subsequent memo dated 01/17/2002 stating that HR, the Finance Department, and the Labor Commissioner agreed that employees who were called up for National Guard duty (even outside of the state of Maryland) were eligible for differential pay under the 11/21/2001 memo of military leave policy.

AM-204-11 dated 01/01/2006 (EXHIBIT 3)²

AM 204-11 was updated on 01/01/2006 to provide definitions of terminology and greater detail around the types of military leave employees may take.

The policy continued to grant City employees 15 days pay for annual National Guard training. The revised policy also outlined and clarified two different types of military leave status for City employees who are ordered for involuntary military service. The following is a summary of the updated language reflected in the policy:

- 1) With respect to involuntary Orders for Federal National Guard service relating to anti-terrorism activities (i.e., Operation Iraqi Freedom, Enduring Freedom, etc.), which is outlined under Title 32 of the United States Code, City employees are eligible for one month of full pay upon their deployment. After one month, employees are placed into a differential pay status - that is, the City pays employees the difference between employees' City salary and military salary, if the City salary is the greater of the two.
- 2) With respect to Orders from the Governor, any City employee who is a member of the Maryland organized militia who is ordered to state active duty by the Governor of Maryland (usually in times of natural disaster or other public crisis) will be granted full paid leave for all time spent in active-duty service to the state (as provided by MD. CODE ANN., Public Safety § 13-706). These employees will receive their full City salary in addition to military pay, with no loss of vacation, seniority, or performance rating.
- 3) City employees who are ordered to National Guard duty for either Federal or State service must complete a Salary Data Report and submit it to DHR.

² DHR is in the process of drafting an updated military leave policy. HR plans to institute these updates to the military leave policy in part due to the misapplication of military leave pay with respect to the employee and also in part to strengthen and clarify the language and stipulations in the policy.

When a City employee completes his/her service, he/she is entitled to reinstatement, provided the following:

- 1) The total period of active duty does not exceed five years over the course of their City employment. Periods of active duty for training or active duty during war or emergency are not included in the five-year calculation.
- 2) The employee complies with federally established time limits (EXHIBIT 1 – Time Limit for Reinstatement table in the policy).
- 3) The employee’s position was not a temporary job or a job expected to last for a brief period.
- 4) The employee provides written or verbal notice to the department prior to leaving for military service (unless the employee was not able to give prior notice due to military service constraints).
- 5) The employee provides documentation to the department reflecting the nature of the military service of 30 days or more and was not discharged under dishonorable conditions.³

Reviewed Employee’s Military Leave, 1988-2004

The employee under review joined the Maryland National Guard on 04/15/1988, receiving his first Orders for active duty training starting on 10/14/1988 through 01/06/1989. Between 1988 and 2004, he was called up several times each year for active duty training and used a combination of paid leave (including paid leave granted for 15 days of training annually) and leave without pay during this period. On 10/01/2004, he received Orders for annual training through 11/30/2004. During this training period, the employee received another set of Orders on 11/23/2004 that were issued in response to his application and acceptance as a full-time AGR employee with the Maryland National Guard.

Reviewed Employee’s 1st AGR Orders: 11/23/2004 – 11/22/2007

In 07/2004, the employee voluntarily applied for a full-time, permanent AGR position (AGR position announcement 04-160) to be a Medical Operations Officer (he was commissioned as an Officer on 08/15/1996 and currently holds the rank of Captain) with the Maryland National Guard. Records reflect that he was accepted to this position and received Orders on 11/23/2004 to commence his permanent, full-time employment with the Maryland National Guard for a period of three years, and his full-time position would come up for review and renewal at the duration of his service.⁴ The Orders reflected the following significant language:

³ On 12/20/2005, DHR sent letters to all City employees who were out on military leave and advised them of the updates to the military leave policy that would be effective on 01/01/2005. The employee was sent one of these letters.

⁴ The three-year period is a probationary period. If a full-time Reservist completes his/her probationary period sufficiently, the National Guard will review and renew his/her “Certificate of Understanding and Agreement.” Subsequently, a new set of Orders are issued at the conclusion of the three-year period which are “indefinite” and

Reporting Date: 23, November 23, 0001 hours
Assigned To: Serve as MEDICAL OPERATIONS OFFICER (Vac# - - - -) (SEQ #----).
Period: (Active Duty Commitment): 3 Yrs, 0 Mths, 0 Dys (23 Nov 04 – 22 Nov 07)
Ending Date: 22 November 2007 plus allowable travel time
Purpose: Initial Officer Active Guard Reserve/Tour
Additional Instructions:

- (a) You are ordered to AGR *with your consent* and the consent of the Governor of Maryland [emphasis added]
- (b) You are subject to the state Military Code of Justice
- (c) Orders to OCONUS TDY will constitute an order to active duty in AGR status under Title 10 USC 672 (d) for the duration of the period of TDY.....You will be in a federal status during this period and will be subject to UCMJ.

The reviewed employee then advised his BCFD superiors and HR staff of his Orders and requested military leave using BCFD's "*Military Leave of Absence With Pay*" form. This form was processed by BCFD HR, and he was placed on military leave status with full pay.

Notably, the language in the Orders shows that this service is voluntary since the Order was issued "with your consent." Furthermore, these Orders reflect a vacancy number which confirms these Orders are in response to a permanent full-time position for which he would have applied for and then filled with the Maryland National Guard.⁵ Lastly, the Orders note that the employee is being ordered to a Federal status, but is not being called up by the Governor to serve for State purposes (i.e., disaster response, state emergencies).

The BCFD erroneously processed the employee's Orders and placed him in full-pay status despite his actions to secure the AGR full-time, permanent position. The employee's 11/23/2004 Orders were inconsistent with the requirement for full pay status under AM-204-11 (06/09/1977 was in effect at the time). Furthermore, there is no record that the BCFD reviewed the Orders when 204-11 AM was updated effective 01/01/2006.

After the OIG's examination of these Orders, no foundation could be found to support the BCFD HR decision to place the employee on military leave with full pay. The OIG identified the following issues with respect to his Orders that would prohibit the extension of the benefits provided:

- 1) The Orders were not issued under the authority of the Governor.

reflect that the Reservist has completed his/her probationary period and will serve for as long as he/she wishes.
5 The OIG further verified the employee's status with Maryland National Guard Master Sergeant Lee and Lieutenant Colonel Moon of the Maryland National Guard Armory/Station, 5th Battalion.

- 2) Even if the issued Order had been under the authority of the Governor, the employee would not have been placed in differential pay status intended for involuntary Federal National Guard service (with one- month initial full pay). The employee's voluntary application for a full-time, permanent position with the Maryland National Guard does not qualify as "involuntary" Federal service.
- 3) The employee applied for this permanent, full-time position, with the knowledge that he would be potentially working indefinitely for the Maryland National Guard and yet still requested military leave with pay from the City. The leave requested was under a policy that applied to involuntary military leave for tours of service in which the employee, as a Reservist, is called up for temporary duty.
- 4) The employee knew that he would have two full-time permanent jobs when he accepted his position with the Maryland National Guard and that these work hours would overlap between his position with the BCFD and the Maryland National Guard.
- 5) The OIG reviewed and verified the National Guard's policy and codes that indicate that the employee's Maryland National Guard position was full-time employment (with the initial three-year probationary period).

Internal BCFD Military Leave of Absence With Pay Form

The employee under review utilized his military leave pay under City Policy AM 204-11 but failed to fully disclose the nature of his Military Orders and received benefits under this policy that were inconsistent with the letter or the spirit of the policy.⁶

Internal BCFD records reflect that he did not properly communicate to his superiors and HR staff that his 11/23/2004 Orders were to commence full-time, permanent employment with the Maryland National Guard (with the condition that after his three years of service, his position would be reviewed and could become indefinite) rather than for a finite period of deployment with the expectation he would return to his position at the BCFD.

On 11/24/2004, he completed BCFD's "*Military Leave of Absence With Pay*" form to inform his superiors and HR staff of his 11/23/2004 Orders. The form reflected that his Orders required a three-year service time period, commencing on 11/23/2004 and ending on 11/22/2007. Under the "Purpose" section of the form, the employee noted the following statement: "*I have been ordered to active duty for full-time National Guard duty.*" This statement failed to accurately and fully inform the BCFD that he voluntarily applied for a full-time, permanent position.

Reviewed Employee's 2nd AGR Orders: 11/23/2007 - Indefinite

On 11/23/2007 (at the conclusion of his first three-year probationary service), the employee received and forwarded another set of Military Orders to BCFD staff which reflected the following significant language:

⁶ The BCFD maintains a "Manual of Procedure Policy" for administering AM-204-11. The "Leave of Absence With Pay" form is part of these procedures.

Reporting Date: 23 November 27, 0001 hours

Assigned To: Serve as MEDICAL OPERATIONS OFFICER

Period: (Active Duty Commitment): Indefinite

Purpose: Continuation of Initial Active Guard/Reserve Tour

Additional Instructions:

(a) You are ordered to AGR with your consent and the consent of the Governor of Maryland

(b) You are subject to the state Military Code of Justice

(c) Orders to OCONUS TDY will constitute an order to active duty in AGR status under Title 10 USC 672 (d) for the duration of the period of TDY.....You will be in a federal status during this period and will be subject to UCMJ.

As reflected above, these Orders were issued for an “indefinite” period and confirmed that these Orders were a continuance of the employee’s initial Orders for a full-time, permanent position. These were the last Orders provided to the BCFD regarding his military status. As a result, the employee received a bi-weekly paycheck from the City from 11/23/2004 until 02/15/2012 (when BCFD sent a letter advising him that he would no longer be paid by the City) in the amount of **\$2,090.20**, which equates to an annual salary of **\$54,358.00**. Once again, the BCFD erroneously processed the Orders so that the employee received full pay while he was simultaneously employed full time in AGR status for the Maryland National Guard. As previously stated, full pay is only available under policy to employees called up to service by the Maryland State Governor. During this period, he also received a monthly salary from the Maryland National Guard in the amount of **\$6,135.60**. Therefore, the employee’s total annual compensation between his City pay and National Guard pay totaled **\$127, 985.20**.

Correspondence and Other Contact with the City since 11/23/2007

After identifying the misapplication of the military leave policy to the employee’s full-time military service position, the BCFD sent him a letter dated 03/05/2012 informing him that his last City pay check will be issued effective 02/15/2012. The letter also advised that his Military Orders did not fall within the definition of “state active duty” or service “under the state active duty Orders” as provided in Maryland Public Safety Code Ann. 13-706(b). The letter indicated that he should not have received full pay for his military leave. Furthermore, the letter stated that BCFD reserves the right to attempt to collect overpayments issued to him and that further correspondence will follow related to repayment.

A few weeks later, in or around 05/2012, the employee called BCFD’s Payroll Administrator to inquire about his job and asking what would be required in order for him to regain his position with the BCFD. The BCFD responded that they would need his DD-214 discharge form reflecting his discharge from the military service, and he would need to recertify his credentials to perform his duties with the BCFD. The employee purportedly responded that the Maryland National Guard would not give him his DD-214 discharge form, so he could not provide it. At

that point, the employee ended the phone call and has not had any additional contact with pertinent City employees concerning his status.

Although there is no City policy prohibiting employees from obtaining other full-time positions with other employers, this specific employee's full-time position with the Maryland National Guard conflicted with his City employment in a manner that prohibited the possibility of performing both functions. The employee ultimately elected to apply for and was granted military leave pay under the City's military policy which was intended for employees ordered to involuntary military service. Nevertheless, he was able to accept the full-time, permanent position with the Maryland National Guard and use the City's military leave policy to effectively retain his employment status and full pay from the City, despite not performing any functions for the City since 2004.

On 08/08/2012, the BCFD sent the employee in question another letter advising him that he was no longer eligible to receive City-sponsored health insurance benefits and that his health benefits will expire on 11/08/2012. It is unclear to the OIG what rationale was applied to the decision to delay the cessation of benefits for an additional 90 days past the issuance of the letter. While still listed as "employed" with the BCFD, he was placed in a "non-pay" status for payroll purposes, effective 02/15/2012.

On 08/15/2012, the OIG contacted the employee and requested to meet with him and obtain a statement regarding his Military Orders, pay status, and his understanding of the City's military leave policy. Ultimately, the employee cancelled an agreed upon meeting and indicated he would not be available to meet in the near future. He did indicate that he was currently stationed at Fort Meade, and his schedule was unpredictable with little flexibility.

City Funds/Benefits Erroneously Disbursed and Potential Pension

The OIG found that the City erroneously paid the employee a total of **\$478,711.14**. Further, analysis of the figure reflects \$392,790.81 in pay between 11/23/2004 and 02/15/2012 and \$85,920.33 in benefits between 11/23/2004 and 11/08/2012.

The BCFD and the Fire and Police Pension System are in the process of determining what pension benefits the employee may be eligible and/or should receive based on the 16.5 years of service actually rendered by the employee.

The OIG has collected and reviewed all Military Orders on file with the DHR. The OIG did not identify any other City employees who accepted full-time employment with the Armed Services or the National Guard who are being paid (either differential or full) by the City.

FINDINGS AND VIOLATIONS

After reviewing the various documentation, considering applicable policy, and speaking with key staff, the OIG has made a series of findings concerning the processes and actions noted above. In addition, the OIG has identified violations of the Civil Service

Commission/Department of Human Resources rules (hereinafter “CSC/DHR”) and Baltimore City AM Policy that merit consideration.

FINDINGS

- 1) The employee in question enlisted in the Maryland National Guard on 04/15/1988.
- 2) He was hired by the BCFD on 07/18/1988.
- 3) From 10/14/1988 to 11/22/2004 he was ordered to Maryland National Guard active duty for numerous training activities.
- 4) From 11/23/2004 to the present, he applied for and was accepted to the permanent full-time AGR position of Medical Operations Officer.
 - a) Since 11/23/2004 he has not performed any work-related duties for BCFD.
 - b) From 11/23/2004 to 02/15/2012, the City erroneously issued his full pay each pay period.
 - i) During this period he was paid a total of **\$392,790.81** from the City over this period which was not due to him.
 - (1) His annual City salary was **\$54,358.00**.
 - (2) His annual Maryland National Guard salary is **\$73,627.20**.
 - (a) Between 11/23/2004 and 02/15/2012 his combined annual compensation was **\$127,985.20** from using his military leave with the City in full-pay status and working full time with the Maryland National Guard.
 - ii) He received a total of **\$85,920.33** in City health insurance benefits which were not due him and which the BCFD extended through 11/08/2012.
 - (1) Therefore, he received a total of **\$474,941.70** in payments and benefits over this period that was not due him.
 - (2) Potential Fire and Police Pension payouts that may have occurred without intervention ranged between **\$84,128.00** and **\$560,000.00**. Thus, the potential compensation from the City, inclusive of all sources, could have been **\$1,034,941.70** (\$474,941.70 + \$560,000.00).
- 5) No other City employees were identified as accepting full-time Armed Services or National Guard AGR positions.

VIOLATIONS

Military Leave – AM 204-11

Baltimore City AM Policy 204-11 states the following: “*Under Maryland Code, a City employee who is a member of the Maryland organized militia and who is ordered to state active duty under authority of the Governor is entitled to administrative leave for the actual period of state active duty.*”

The BCFD misapplied AM 204-11 and placed the employee in question in full pay status while he was working full time for the Maryland National Guard AGR between 11/23/2004 and 02/15/2012. The BCFD assessment of the employee application for benefits and associated Orders should have identified the full-time Maryland National Guard position as one that was applied for and voluntarily accepted. The Orders read, “*You are ordered to AGR with your consent and the consent of the Governor of Maryland.*”

As the Orders were issued on the condition of the employee’s consent, they did not fall within any type of military status covered by City policy and procedure, including AM 204-11. Full pay is only provided for periods of involuntary service under the Governor’s authority, and differential pay is only provided for involuntary service under Title 32 Presidential authority. The BCFD’s decision to extend benefits was not in compliance with policy.

Military Leave – AM 204-11

Baltimore City AM Policy 204-11 states the following: “*Under Maryland Code, a City employee who is a member of the Maryland organized militia and who is ordered to state active duty under authority of the Governor is entitled to administrative leave for the actual period of state active duty.*”

The employee under review violated this policy when he applied for a military leave of absence with pay and represented to his superiors the following: “*I have been ordered to active duty for full-time National Guard duty*” on the BCFD’s “Military Leave of Absence With Pay” form. His representations were inaccurate and facilitated the erroneous processing. Further, he made no mention in his submission that he had accepted a full-time position with the Maryland National Guard and that his military leave would be indefinite (pending his completion of a three-year probationary period). Further, he failed to represent that he would not be returning to the BCFD unless he resigned from his AGR position or the position was not extended after probation. Lastly, with the employee’s history with the Maryland National Guard, it is believed that he likely possessed the knowledge to understand that AM 204-11 was intended to benefit only employees who are involuntarily called up for federal or state military service. As such, the employee’s actions were in violation of the relevant Military Leave Policy.

Collection of Payroll Overpayment - AM 217-03

Baltimore City AM Policy 217-03 states that: “*City employees are sometimes overpaid, usually through no fault of their own. . . . [and that] all employees are expected to exercise a degree of diligence by monitoring their pay and reporting any discrepancies to the immediate supervisor or agency payroll clerk.*”

AM 217-03 requires that “all employees are expected to exercise a degree of diligence by monitoring their pay and reporting any discrepancies to the immediate supervisor or agency payroll clerk.” The employee under review violated this provision when he was routinely paid a monetary benefit by the BCFD based upon inaccurate information supplied by him during the process of applying for the pay to the BCFD.

During the course of the following seven years and eight months the employee failed to take any action to contact BCFD superiors or HR staff to inquire why he was still being paid his full salary while he was voluntarily working in a full-time permanent position with the Maryland National Guard.

Standards of Conduct and Performance - CSC/DHR Rule 40

CSC/DHR Rule 40, Part L states the following: *“Employees shall conduct themselves at all times in a manner becoming a City employee and shall not bring scandal, expense, or annoyance upon the City through crime, conflict of interest, failure to pay, or other improper or notorious behavior.”*

The employee under review violated this policy through his actions to seek voluntary, full-time, permanent employment with the Maryland National Guard while applying for military leave with pay under the City’s policy for involuntary military service. The employee’s improper behavior has brought expense to the City.

The employee’s representation of his AGR service period as “deployed” and the absence of information concerning the volunteer nature of the position, combined with his application for benefits under a policy that he was not eligible to receive, present serious integrity questions. Further, his actions resulted in his receipt of full pay and benefits in the amount of \$474,941.70 while not carrying out any BCFD work-related duties over a seven-year, eight-month period. Additionally, there is no indication that the employee made any effort to seek clarification or corrective actions over this extended period.

RECOMMENDATIONS

1) *The OIG recommends that DHR review and update AM 204-11. Additionally, the OIG recommends that DHR conduct a training session for City Agencies’ HR personnel charged with processing military leave to ensure that the updated policy is administered properly. The OIG also recommends DHR develop a procedure for City Agencies’ HR personnel to follow when processing military leave requests for employees.*

DHR is currently reviewing and updating AM 204-11 to strengthen the language that provides the types of military leave (paid or unpaid) to which employees are entitled and clarify some of the terminology used in the policy. Specifically, the OIG believes the policy should cover prohibition of employees using military leave while employed by the City and accepting full-time, permanent positions with the Armed Forces or National Guard that would ordinarily conflict with their City positions’ schedules/shifts.

DHR should also administer training to Agencies’ HR personnel who are processing military leave for employees. This training should review AM 204-11 and cover the types of military leave that are covered by the policy and the applicable pay status. Lastly, DHR should develop procedures so that Agencies’ HR personnel are provided with a uniform way to administer military leave for employees. This procedure will allow for more consistent application of

military leave for payroll purposes and provide more transparency as to how military leave is administered.

2) *The OIG recommends City Agencies' HR personnel perform an annual review of employees who are on military leave status, determine if the military leave was appropriately processed, and confirm the status of the employees' military leave.*

The primary reason the amount of overpayment in this matter is excessive is that the erroneous payments continued for almost eight years. Other than the renewal of his Orders, which were processed on 11/23/2007, there is no evidence that the City conducted additional status and policy compliance reviews to determine continued eligibility prior to the BCFD bringing the matter forward in 03/2012.

The DHR should institute a procedure requiring that Agency-based HR personnel perform an annual review of employees in military leave status and confirm continued compliance with the program. This type of review will provide for more accurate recordkeeping and also proactively prevent over- and under-payment events related to military leave status. In addition, the action would serve to significantly mitigate the duration of any misapplication of policy.

3) *The OIG recommends that HR personnel be required to process military leave by implementing a two-approval level practice to ensure military leave is administered properly and accurately.*

The OIG recognizes that not all staff is familiar with the various elements and nuances of military postings/deployments and recommends that all military leave requests be reviewed and approved by at least two HR personnel prior to the initiation of benefit payments. It is further suggested that the dual review be based on the initial review and approval conducted by Department/Agency-based HR staff and a confirmation from the DHR. A purposeful, two-tier review provides greater scrutiny of each military leave request and provides a higher degree of assurance to both the City and the employee seeking the benefits.

4) *The OIG recommends the Law Department conduct a periodic review of the existing AM 204-11 Policy to assess if the current policy is compliant with state and federal codes and identify any potential legal issues or liability that relate to the policy's administration.*

Although the benefits extended in this case were not in compliance with the policy as it existed, the OIG believes that the policy did not provide administrators with parameters that were as clear as possible regarding the various types of military leave and/or address other issues that may arise when employees request military leave. For example, AM 204-11 differentiates between federal military service and state service for payroll status purposes, but does not clearly outline how the 15 days of annual pay for military training would be administered along with federal service - that is, one month of full pay is in addition to 15 days of pay or the 15 days of training is included in the one month of full pay. Furthermore, the policy does not specifically address how to administer employees' pay status for circumstances such as AGR

service or other military service that may be permanent in nature.

Therefore, the OIG recommends that the Department of Law conduct a periodic review of this policy (biennially or every three years) to ensure the policy is compliant with respect to state and federal codes and does not expose the City to legal liability due to ambiguity in the policy or failure to address certain employees' circumstances related to their military leave.

Report Response

Baltimore City Fire Department



October 4, 2012

David McClintock
Baltimore City Inspector General
100 Holliday Street, 6th Floor
Baltimore, MD 21201

Re: OIG case 2012-0023 – BCFD Comments

Dear Mr. McClintock,

I write on behalf of Chief Clack in response to your August 22, 2012 letter and draft report concerning OIG case 2012-0023. Concerning your draft report, the BCFD offers the following comments:

Pgs. 1 and 2.

Chief Clack requested the assistance of the OIG in investigating whether, as a factual matter, any fraudulent or criminal behavior occurred on behalf of BCFD employees, specifically, whether any employees of BCFD HR conspired with

Pg. 8, para. 2, no. 2.

The statement "_____ was placed in a differential pay status" is incorrect.

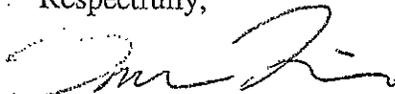
Pgs. 15, Recommendation 1.

The BCFD has already worked closely with DHR to review and update AM 204-11. As with all citywide HR matters, any future assistance provided by DHR to the BCFD regarding military leave processing would be welcomed and appreciated.

Pg. 15-16, Recommendations 2-4.

The OIG may want to inquire with DHR and the Law Department further before making these recommendations to determine if they are already in place.

Respectfully,



Spencer Nichols

Report Response

Department of Human Resources



CONFIDENTIAL

October 3, 2012

Mr. David N. McClintock
Inspector General
Office of the Inspector General
640 City Hall
100 North Holiday Street
Baltimore, Maryland 21202

Re: OIG Report 2012-0023

Dear Mr. McClintock,

Thank you for the opportunity to review and comment on the above-referenced Draft Report of Investigation concerning Baltimore City Fire Department (BCFD) member [redacted]. Although the Department of Human Resources (DHR) will defer to the BCFD to provide feedback on the report's factual summary and conclusions, I would like to share with you several initiatives undertaken by DHR to improve the administration of military leave going forward. All of these initiatives appear well in-line with your recommendations to DHR, and I am confident they will provide the necessary safeguards to prevent future leave abuse.

By way of background, the situation involving Mr. [redacted] came to DHR's attention in early 2012. In response, DHR promptly launched a thorough internal review of citywide policy and procedures relating to military leave administration. We found many areas in need of improvement.

As a result of the review, DHR made a number of immediate adjustments to military leave procedures. For example, we added an additional layer of oversight to the review of differential pay applications. DHR also increased coordination with agencies to ensure closer scrutiny of documentation provided in support of applications for paid leave and benefits.

Simultaneous with this, DHR began the process of updating the City's military leave policy (AM-204-11). The new draft policy, which is now in the final stages of review and approval,

will provide greater clarity with respect to the administration of military leave, particularly in the area of paid leave and benefits. It will also provide a uniform approach to the administration of leave by agencies, including the use of standard forms, templates, and checklists. Under the new policy, all paid leave must be approved by DHR together with the agency.

In addition, with the new policy, DHR plans to roll out new procedures for tracking military leave through the City's payroll system. Central Payroll is in the process of developing a series of new pay codes that will allow agencies and DHR to track both paid and unpaid military leave. The new tracking system will promote transparency and consistency and will further enhance our ability to monitor for inappropriate leave usage. Both DHR and the agencies will be responsible for regular monitoring.

Finally, DHR agrees that staff training is critical to the proper administration of military leave. To that end, DHR has begun to introduce new training initiatives on the subject of military leave. In June of this year, for example, DHR launched an introductory course on equal employment opportunity (EEO) compliance for supervisors that includes a segment on military leave and related laws. The EEO course also has been incorporated into DHR's thirteen-week *New Supervisor Orientation Training*.

Also in June, and as a precursor to our publication of the new policy, DHR conducted "refresher" training on military leave for agency HR professionals at our Spring HR Symposium. This is just the first in a series of training offerings that will be available as the new AM policy rolls out. In the coming months, we expect to provide targeted training and/or guidance on such topics as the state and federal military leave laws, leave administration under the new City policy, payroll processing, and tracking and monitoring.

I hope you have found this information useful, and let me thank you again for this opportunity to offer comments. If you have any question or concerns, or if you have further suggestions, please do not hesitate to contact me.

Sincerely,



Ronnie E. Charles
Director

cc: Mr. Alexander Sanchez
Mr. George Nilson
Mr. Harry Black
Mr. Spencer Nichols