

Sample Investigation Report¹

Introduction

On August 3, 2023, Agency received a complaint from XX, Public Service Representative I (“Complainant”) alleging that XX, Customer Service Manager (“Respondent”) engaged in inappropriate conduct towards Complainant.

Agency initiated an investigation of Complainant’s allegation resulting in this investigatory report.

Allegations Summary

Below are the specific allegations and factual issues to be assessed and determined by this investigation:

- (1) Does Respondent scrutinize Complainant’s work more than Complainant’s peers in violation of the Discrimination and Harassment-Free Workplace Policy?
- (2) Is Respondent dismissive of Complainant’s ideas and recommendations in violation of the Discrimination and Harassment-Free Workplace Policy?

Complainant alleges that she believes Respondent treats her differently because of her race/ethnicity and because she speaks English with an accent, i.e., national origin. Complainant’s Workday profile lists Complainant as “Latina.” Complainant stated that she was born in Chile and emigrated to the United States 10 years ago. Complainant stated that she is fluent in Spanish and English and that she grew up speaking Spanish and learned English when she came to the U.S. Complainant stated that receives a language allowance of 5% for Spanish, that she qualified for the allowance after passing

¹ This is a sample report that shows an approach to making credibility findings and reaching conclusions on policy violations. This format is not presented as a full report and contains some edits for brevity. Among objectives is to show how close or inconclusive issues might be approached and how credibility findings are carried forward in the analysis section of the report. We recognize the input and drafting assistance from Janice Kim, Civil Rights and Inclusion Section Director, Equity Inclusion Division, Oregon Health Authority, in preparing this sample report.

the Agency's language proficiency screening and that she regularly uses Spanish in her work.

Respondent is Complainant's manager. Respondent's Workday profile lists Respondent as "White." Respondent stated that she was born and raised in Oregon.

Witnesses Interviewed:

The investigator interviewed the following five people either in-person or on Microsoft Teams.

1. Complainant on August 15, 2023. In-person. Complainant is a represented employee and requested that a union steward attend her interview.
2. Witness 1. PSR1 who works with Complainant and reports to Respondent. August 22, 2023. In-person.
3. Witness 2. PSR2 who trained Complainant and reported to Respondent until they promoted to a different position reporting to a different manager. August 30, 2023. In-person.
4. Witness 3. Respondent's manager. September 16, 2023. On Teams.
5. Respondent on September 20, 2023, September 30, 2023. In-person.
Respondent was represented by an attorney at her interviews. Accordingly, an attorney from Oregon DOJ attended Respondent's interviews.

Credibility Assessments

Of the above people, the investigation finds Witnesses 1 and 2 to be the most credible for the following reasons:

1. Their statements were generally corroborated by one or more of the other parties or documentary evidence or both.
2. None of their statements were contradicted by another party or documentary evidence.
3. These parties readily admitted when they did not know or could not recall information.

4. These parties corrected themselves without prompting when they realized that they had made an erroneous or exaggerated statement. Witness 1 did so during the interview and Witness 2 did so in an email to the investigation two days after their interview).
5. These parties have no personal interest in the outcome of the investigation.

Additionally, the investigation finds Complainant to be credible but slightly less credible for reasons 1 through 3.

As to Witness 3, the investigation finds Witness 3 to be less credible for the following reasons:

1. Witness 3 appears to have an interest in the outcome of the investigation because they and Respondent are friends as well as “mentor-mentee;” Witness 3 and Respondent socialize outside of work including at their children’s school events and church.

Finally, the investigation finds Respondent to be less credible for the following reasons:

2. Respondent frequently avoided answering questions she or her attorney thought were irrelevant (“why are you asking this?”) by responding, “I don’t remember” or “I don’t recall.” However, when the purpose of the question became apparent to her later in the interview or after a brief recess to speak privately with her attorney she recalled detailed information.
3. Respondent voluntarily provided to the investigation documentary information that was supportive of her position. However, when the investigation requested information in addition to what Respondent provided, Respondent was equivocal about its existence or her ability to produce it or both. Respondent eventually provided most of the requested information. The investigation obtained the remainder from human resources who indicated that the information HR provided should have been within the possession and control of Respondent. The investigation notes that some but not all of the information provided by HR was inconsistent with Respondent’s statements during her interview.

4. In her second interview, when asked about the discrepancies between her statements and the documentary evidence, Respondent was non-responsive or stated that the documentary evidence was incorrect. Respondent did not explain how the documentary evidence was incorrect or acknowledge that she may have had incorrect recollections or made misstatements in her interviews.

Documents and Evidence Considered

1. DAS Discrimination and Harassment and Discrimination-Free Workplace Policy
2. Notes from Complainant dated [x date] and sent to investigator on [x date].
3. Complainant's performance reviews dated [x date], and notes from Respondent's supervisory file.
4. Emails provided by Complainant and Respondent
5. Quarterly phone call audits.

FINDINGS

Allegation 1. Does Respondent scrutinize Complainant's work more than Complainant's peers in violation of the Discrimination and Harassment-Free Workplace Policy?

Finding 1: It is Substantiated that Respondent scrutinizes Complainant's work more than her peers in violation of the Discrimination and Harassment-Free Workplace policy.²

Factual Background

As PSR1s, Complainant and her peers frequently speak with clients on the telephone. Those calls are recorded for record-retention and quality assurance. Complainant stated that she learned that while Respondent will frequently review Complainant's customer phone calls in their check-in meetings, that Respondent does not do so with many of Complainant's peers. Complainant stated that Respondent will sometimes ask

² Some agencies may have investigation processes that result in factual conclusions and leave the determination of whether any substantiated facts rise to the level of a policy violation to an appointing authority or other designee. Such direction is within an agency's operational discretion to designate and consistently apply a process.

Complainant why it is that callers seem confused by the information that Complainant provides. Complainant stated that the programs about which people ask are complicated and that it often takes multiple explanations, by phone and in writing, before clients understand. Complainant stated that she felt as if Respondent was saying that people did not understand Complainant because she is Latina and speaks with an accent.

All interviewed parties acknowledged that the programs they service are complicated and that many of the callers are confused and have a hard time understanding. Witnesses 1 and 2 stated that the lack of understanding is exacerbated when the caller speaks a language other than English and that they are thankful that they have teammates like Complainant who receive a language differential and can communicate with callers in Spanish. Witnesses 1 and 2, separately stated that their primary language is English and that Respondent has never reviewed their calls with them during a check-in or evaluation. Neither Witness 1 nor Witness 2 receive a language allowance. Witnesses 1 and 2 stated that it is not uncommon for callers to continue to have questions even after they have gone through the program details repeatedly.

Neither Witness 1 nor Witness 2 had race/ethnicity details in their Workday profiles. When asked by the investigation what their racial/ethnic background is, Witness 1 stated if they had to pick they would select "White/Non-Hispanic." Witness 2 indicated that they would select "White/Hispanic."

The investigation reviewed HR files that indicated that at all times relevant to the Complaint that Complainant was the only PSR1 who reported to Respondent who received a language allowance.

Witness 3 stated that a good manager will review PSR1's calls with them for performance management purposes. Witness 3 stated that how many calls a manager reviews with an employee varies. When asked by the investigation if it would ever be appropriate for a manager to never review a call with an employee, Witness 3 stated that they would not do so but that there are many reasons why a manager may do or

not do something. When asked by the investigation why a manager would never review a call with an employee, Witness 3 could not provide a reason.

Respondent denied that she scrutinizes Complainant more than other employees. Respondent stated that she customizes her supervision based on the needs of an employee and other factors. Respondent stated that she regularly reviews recorded phone calls with employees as part of their check-ins or evaluations. Respondent stated that she may review more calls with some employees than others, but that reviewing calls is a regular part of her supervision of all employees.

The investigation provided to Respondent a quarterly audit report of phone calls that Respondent pulled. The report showed that there were some employees, including Complainant, for whom Respondent pulled multiple recordings and others for whom Respondent did not pull any recordings. (The majority of employees whose calls Respondent pulled were trial service employees or employees about whom clients had complained.) There was no evidence that any client had complained about Complainant's calls, and Respondent confirmed that she had not received any complaints.

Respondent stated that the report showed information which differed from her recollection and practice. When asked by the investigation why it is that the audit showed information which did not align with what Respondent believed had happened, Respondent said that she is not familiar with the audit program so could not say. Respondent could not provide a specific business reason why she had pulled multiple recordings for the Complainant. When asked whether it was more likely that the audit was incorrect or if Respondent's recollection was incorrect, Respondent stated, "I know what I do."

Based on the above, the investigation substantiates that Respondent scrutinizes Complainant's work. The investigation also demonstrates that Respondent's treatment of Complainant was influenced by one or more protected class categories including Complainant's national origin (i.e. speaking with a discernable accent) in violation of the DAS Discrimination and Harassment-Free Workplace Policy. Respondent focused on

the evaluation of Complainant's performance much differently than she evaluated colleagues who do not share any protected class attributes. Respondent did not offer a persuasive explanation or otherwise provide documentation of an alternate, business-related rationale supporting the difference in management approaches among similarly situated workers.

Allegation 2. Is Respondent dismissive of Complainant's ideas and recommendations in violation of the Discrimination and Harassment-Free Workplace Policy?

Finding 2. The investigation revealed that Respondent can be dismissive of the Complainant's ideas and recommendations, but evidence demonstrates that Respondent treats everyone on her team similarly regardless of protected class status as described below and there was no substantiated violation of the Discrimination and Harassment-Free Workplace Policy.

Factual Background

Complainant stated that at team meetings that whenever Respondent asks for suggestions that Respondent rarely calls on Complainant. Complainant stated that she believes Respondent does so because Complainant is Latina and has an accent. Complainant stated that she believes she has much to contribute to the team and that she is more comfortable making suggestions in a group setting because of how Respondent treats Complainant when it is just the two of them.

Witnesses 1 and 2 separately stated that they perceive that while Respondent asks for suggestions that it does not matter what anyone says because Respondent has already decided what will happen. Witnesses 1 and 2 separately stated that when they first started working they would raise their hands to contribute and that they stopped after a while because Respondent always asked at the end of a meeting when there was no more time. Respondent would ask employees to email her with their suggestions. Witnesses 1 and 2 stated that they did not email Respondent because if Respondent wanted their ideas she would make time for that to happen or follow up with them directly and that the workload was such that there was no time to send a separate email. Witnesses 1 and 2 observed Complainant continue to try to contribute and that

they did not say anything to Complainant because Complainant would eventually figure it out.

Witness 3 stated that they do not regularly attend Respondent's team meetings and has not observed what Complainant alleged in the few meetings that Witness 3 has attended.

Respondent stated that she welcomes input from everyone. Respondent stated that she has never noticed Complainant wanting to contribute and that if she had noticed she would welcome it. Respondent acknowledged that there is frequently too much to discuss, not enough time and that she often has to ask folks to send her their ideas by email. Respondent stated that she has never received an email suggestion from Complainant. When asked by the investigation if during her check-ins if Respondent asks the employees whom she supervises for their suggestions, Respondent stated that she does not explicitly ask but that her team should know that her "door is always open."

The information available to the investigation indicates that Respondent treats everyone on her team similarly.