

Letter to the Workers' comp executive regarding the California State Auditor's Investigation Report Issued in March 2019

As many of you have read by now, the California State Auditor (CSA) has issued a report criticizing my handling of personnel issues involving my daughter while I served as Director of the Department of Industrial Relations. In hindsight, I wish I had handled some situations differently. I fully support the mission of the CSA and its commitment to promoting good government.

But everyone needs to understand the origin of the report. The audit process can be vulnerable to underperforming employees trying to claim "retaliation" as a way to deflect the focus from themselves. That is what happened here.

I also am fully aware and supportive of the need for genuine whistleblowers to be protected from harassment or retaliation for conveying information to the CSA, or for that matter, to any other organ of government in the interest of exposing improper conduct.

However, it is the obligation of any agent in the state involved in responding to a whistleblower complaint to see through attempts to use the process to convey false or misleading information in the interest of promoting personal gain, pursuing an agenda of personal vengeance, or indeed engaging in the very kind of harassment or retaliation that the whistleblower process is meant to protect against.

I believe the whistleblower process was misused in that manner in this case, and I will provide a few examples below. Before I go into those examples however, I want to make clear how one-sided this process was.

Please note the report does not mention that I presented copious documentation with information directly relevant to and contradicting what the CSA alleges in the Report. I did so despite being at a disadvantage in a process that was distinctly adversarial from the moment I was interviewed, having to guess at what the CSA was trying to prove from the accusatory questions I was asked when interviewed by a staff member of the CSA. None of the information I provided is mentioned in the report.

The only information relied upon and presented is the perspective and unchallenged statements of a group of people whose concerns had nothing to do with transparency. I had no opportunity to review the report before its issuance to refute the allegations before it was made public, and despite my request to do so, I was not granted an interview with the Auditor to present my side of the matter.

The following are three examples of misinformation in the Report.

The core allegations of the CSA report state that I engaged in nepotism by taking improper action to secure the hiring of my daughter Julianna Baker and insinuating that

my brother Jim Culbeaux was in the position of Chief Information Officer at the Department of Industrial Relations as a result of my being appointed director of the department.

Jim was in the highest position that existed in the department's IT unit long before my appointment as director. When I was appointed, I went directly to the Labor Agency to which I reported to arrange, with the Agency's approval, for Jim to report to the Agency and not to me.

I also reported to the Labor Agency at the time that Julianna was being hired by the department's Division of Labor Standards Enforcement (DLSE), to make sure they were aware and approved of that hire. I was completely transparent and tried to hide nothing, but the CSA report makes no mention of that.

(1) "The Director preselected her daughter for a bad faith appointment to a Staff Services Analyst position."

The CSA report starts out by claiming that Julianna was hired improperly at my insistence. That claim could not be further from the truth, and it was made because the CSA staff members collecting their "evidence" were so intent on finding fault that they ignored the information I gave them. To this day, either they misunderstand or do not care to understand the civil service rules that applied to what the report labels the "bad faith" hiring of Julianna's.

As the report notes, Julianna had been a former state employee at EDD in 2009. What the report fails to note is that she left employment there in good standing, and she was entirely eligible under civil service rules for *permissive reinstatement* at the department to a position at the same level she had held at EDD.

Permissive reinstatement does not require an examination announcement or the taking of an examination. All that is necessary is to apply to fill an existing open position that is at the same level as the position earlier resigned from.

Julianna's reinstatement is exactly what happened. She reinstated to a position at the department's DLSE at a time when DLSE had a vacant Staff Services Analyst (SSA) position, which was at the same level as her former EDD position. This was a particularly difficult time for the department when every division in the department was struggling to fill a huge backlog of empty positions that had accumulated due to a hiring freeze that had just been lifted.

The report goes into great detail about the impropriety of Julianna's application to take an examination that had been publicly announced for a higher-level position (Associate Government Program Analyst or AGPA) at DLSE. However, it omits the fact that she scored at the top of the list after taking the exam, and most importantly, it ignores the fact that she did not attempt to take the position--instead she simply reinstated pursuant

to a perfectly legal and proper process that does not require publishing a civil service examination announcement or taking a civil service examination.

The report goes on to allege that I improperly secured the downgrading of the open AGPA position on which the public announcement was based in order to allow Julianna to fill it as an SSA.

If that occurred as the report alleges, it was not necessary and would have made no sense. There was already an open, unfilled SSA position in DLSE at the time, and there were probably many others across the department. Why would the HR department take an existing AGPA position and downgrade it when there was already an existing SSA position for Julianna to fill?

As far as the alleged arranging of an “internal transfer exam” is concerned, I have no idea what the relevance of that is. I had nothing to do with it and have no idea why it was given.

No exam was necessary for a permissive reinstatement, yet Julianna actually took two SSA exams in addition to the AGPA exam on the advice of the department’s HR staff, who had no business giving her that advice or forcing her to do that.

As the report states, I did ask the “hiring manager” if Julianna could be hired as the CSA report states. I would have done for anyone I knew who was qualified and wanted to work for DIR, especially at a time when all divisions were struggling to hire more staff. I relied on the judgment and personnel expertise of the hiring manager, who was no more “a long-time friend” than any other colleague I had worked with collaboratively over the years.

Julianna is and was extremely qualified. Besides being fluent in French and Spanish and certified by the state as bilingual in English and Spanish, she had earned a BA in History from San Francisco State University and had completed a successful year of study at the New College of the Law in San Francisco. The department always needs workers who are bilingual in Spanish, and in fact heavily relied on her bilingual Spanish skills as a major part of her assigned work duties.

(2) “The director prevented a corrective action against her daughter.”

The report alleges that I intervened in May 2012 to prevent Julianna’s supervisor from issuing her a “counseling memo,” which is the first step in the department’s disciplinary process to address employee performance. Without going into any detail, the report states in one sentence that the memo was to be issued in May 2012 for “problematic attendance,” and in the next sentence for “tardiness and failure to complete work in a timely manner.”

Here is what really happened:

In early May 2012, I was scheduled to attend my confirmation hearing before the Senate Rules Committee in Sacramento. Those attending confirmation hearings are encouraged by the Legislature to have family members attend, and Julianna wanted to attend.

Even though Julianna reported to work in San Francisco, she was remotely supervised from a Sacramento office she had never been to. She asked to take the afternoon of my hearing off to attend, and to report that morning to the Sacramento office where her remote supervisor was based. She obtained approval from her supervisor for that.

On her way to the Sacramento office that morning, she got lost, and at some point she called her supervisor, who told her not to worry and take the whole day off. Julianna went to the Sacramento office after the confirmation hearing to finish up the day there, but reported it as a full vacation day just the same. That is the “problematic attendance” being referred to in the report.

The report fails to mention what her “failure to complete work in a timely manner” was. That is because there was no failure.

(3) “The director instructed her staff to take punitive disciplinary action against the daughter’s supervisor without due process.”

The following is what actually happened:

As the report states, in July 2014 Julianna had been working as a special investigator in the department’s HR office for approximately three months. This is a position that investigates improper conduct of the department’s employees when it appears misconduct may be occurring.

As the report states, Julianna did indeed disagree with the “investigative direction” of her supervisor. That is because her supervisor and team were planning to take extended stays, including weekends, in Southern California with travel and lodging costs to be covered by the department, when there was a Governor’s Office-issued ban on unnecessary travel.

I don’t remember intervening, but if I did I would not change anything. The supervisor had no business taking those extended trips to Southern California when they were completely unnecessary.

Whether I intervened or not, the action taken was NOT “punitive” or “disciplinary.” The supervisor was moved to a different unit, at the same supervisory level and salary. This was not a matter of discipline, it was a legitimate exercise of managerial authority to ensure implementation of policy coming from the Governor’s Office.

Final thoughts on this Investigation.

(1) Harassment of Julianna.

Julianna was subjected to ongoing harassment and bullying, which probably began as she was being hired. Several times she went to the Chief Counsel for protection, but she got none. The reason for the Chief Counsel's lack of response became obvious to me when I learned that one of the people Julianna was complaining about had been sleeping with him for over a 4-year period.

The mistreatment of Julianna began shortly after she was hired by DLSE when she was sexually harassed by a DLSE staff member. When the department's HR staff members and the Assistant Chief Counsel in charge of HR took action to address the situation, *they deliberately mischaracterized Julianna's gender status* in a potentially public document. Not only was their characterization incorrect, they had no business mentioning it at all, and they knew it. This was tremendously embarrassing to Julianna, and the obvious intent was to victimize her further.

After this, there was continuing harassment of Julianna by HR staff members, one of whom was Socorro Tongco, who has erroneously alleged in a lawsuit that she was terminated for complaining to the CSA about me.

The real reason for Ms. Tongco's termination was an allegation, which turned out to be true, that she had been bullying a staff person in the office of the director. That matter was investigated by the Office of the Attorney General, and the finding was that Ms. Tongco had engaged in gross negligence and lied to cover it up.

Based on the AG's investigation, the department's adverse action goes into detail about her abuse of state time and lying to her supervisors about being unable to come into the office when she was traveling on state time with Chris Jagard. Please see the accompanying Notice of Adverse Action.

(2) I Ordered a legal and appropriate review of departmental emails, which was approved by my Chief Counsel.

The CSA report concludes by criticizing me for requesting this review. However, I had information that a person in a high position outside of the department was attempting to orchestrate action against me and the department. No state agency would tolerate an outsider trying to interfere with official state business. To be absolutely certain my action was appropriate, I went to the Chief Counsel and asked for his opinion. He confirmed in writing that it was.

I will not comment further here on the other allegations in the report other than to state they do not establish misconduct and are based on evidence selected to justify a

preconceived desired result other than to elucidate what took place during the period the report covers.

Finally, I wish to make it clear that I have provided the above information to illustrate the kinds of omissions and factual errors that appear throughout the CSA report. I have never retaliated against anybody. I have devoted my entire career to bring effectiveness, efficiency, and fairness to government, and those who have worked with me throughout all these years know that.

