

NEW YORK STATE OFFICE OF THE STATE COMPTROLLER

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STATE COMPTROLLER**



***WORKERS' COMPENSATION BOARD OFFICE
OF FRAUD INSPECTOR GENERAL***

MANAGEMENT OF FRAUD INVESTIGATIONS

2001-S-1

**DIVISION OF MANAGEMENT AUDIT AND
STATE FINANCIAL SERVICES**

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H. Carl McCall
STATE COMPTROLLER

Report 2001-S-1

Mr. Robert R. Snashall
Chairman
New York State Workers' Compensation Board
20 Park Street
Albany, NY 12207

Dear Mr. Snashall:

The following is a report of our audit of the Office of Fraud Inspector General's management of fraud investigations in the workers' compensation system of New York State.

This audit was performed pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; and Article II, Section 8 of the State Finance Law. We list major contributors to this audit report in Appendix A.

Office of the State Comptroller
Division of Management Audit
and State Financial Services

August 8, 2002

Division of Management Audit and State Financial Services

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EXECUTIVE SUMMARY

WORKERS' COMPENSATION BOARD OFFICE OF FRAUD INSPECTOR GENERAL MANAGEMENT OF FRAUD INVESTIGATIONS

SCOPE OF AUDIT

The Workers' Compensation Office of Fraud Inspector General (OFIG) is responsible for investigating allegations of fraud in the workers' compensation system of New York State (State) on a Statewide basis and for developing evidence that can be used in fraud referrals. A toll-free fraud hotline was established in March 1997 to handle telephone calls from the public regarding individuals suspected of committing workers' compensation fraud. Allegations are investigated, and cases involving fraud are presented to the State Attorney General's Office or to local District Attorneys for criminal prosecution.

OFIG's main administrative office is in Albany. It also has nine district offices organized into four geographic regions. Ten workers' compensation fraud investigators are assigned to the nine district offices. Each regional office is managed by an Assistant Inspector General, who does fraud investigations in addition to administrative and supervisory work.

Our audit addressed the following questions for the period from January 1, 1998 through September 30, 2001:

- Does OFIG handle workers' compensation fraud complaints efficiently, effectively, and timely?
- Has OFIG established controls over its investigators' case workload?
- Has OFIG established controls that will alert management to possible duplicative investigations by other entities?

AUDIT OBSERVATIONS AND CONCLUSIONS

We found that workers' compensation cases are not always investigated in a timely manner. There were delays in initiating investigations, and cases remained open for months or years, even though the files contained neither

documentation that investigative work was being performed nor evidence that the cases had been reviewed. For 18 of the 50 closed cases and 11 of the 75 open cases we reviewed, more than 3 months had elapsed before an investigation was initiated. For example, on average, it took OFIG more than 2 years to begin investigating the 18 closed cases, despite the fact that the Deputy Inspector General considered at least 2 of them to be high-priority. OFIG case records did not indicate why investigations had not been initiated, even though OFIG policy requires investigators to record their steps and retain their notes. We found significant time gaps of more than 6 months, during which it appeared that no investigative steps had been taken for 13 of the closed cases and 35 of the open cases we reviewed. (See pp. 7-11)

OFIG's annual report indicated that 2,481 cases were closed, as if they were all closed for the same type of investigation; however, we found that fewer than half of the cases (1,058) had been sent to the field for investigation. Most of the cases were closed on intake or referred to other agencies, or were requests for information. (See pp. 13-14)

OFIG needs to manage the investigator caseloads more effectively. During 1999 and 2000, the average caseload for each investigator at the end of each quarter ranged from 175 to 325 cases. When we contacted other agencies involved in investigating workers' compensation fraud, we found that their investigator caseload ranged from 10 to 40 cases, depending on the complexity of the case. OFIG should decide on a reasonable workload for its investigators and establish a threshold for caseloads, refer more cases to other investigative agencies instead of sending them to its district offices for investigation, fill vacant investigator positions more promptly, and consider hiring more investigators in geographic areas where a higher number of fraud complaints are filed. (See pp. 17-24)

If a complaint concerns an individual who has not received benefits, the case should be closed on intake. However, when we reviewed 50 cases that had been closed on intake and thus not sent to the field for investigation, we found no indication for 16 of the 50 that the OFIG administrative staff had checked the Workers' Compensation Board's Claims Information System to determine whether the object of the complaint was actually a benefits recipient. We also found that 3 of the 16 cases could have been worth investigating if staff had been more skilled at soliciting information from the complainant. OFIG should develop guidelines for the handling of hotline calls, and should train staff in techniques for obtaining essential information. It should also strengthen its controls to ensure that it is not duplicating investigations already underway at other agencies. (See pp. 25-28)

At the district offices, we found that several cases were closed, but the closing reports and case files had not been forwarded promptly for the appropriate reviews. The IG System did not reflect the status of these cases and the investigator workload was overstated. OFIG needs to establish controls for

safeguarding data entered in the IG System, as well as standards for updating data when cases are reassigned. We found that the database is not kept up to date because of a shortage of staff. IG System output is also unreliable because staff do not enter data consistently or accurately, and must enter an unnecessary amount of data manually. (See pp. 29-31)

COMMENTS OF WCB AND DEPARTMENT OFFICIALS

A draft copy of this report was provided to officials of the Workers' Compensation Board and its Office of the Fraud Inspector General for their review and comment. These officials indicated they have implemented some of the recommendations and are evaluating the remainder. However, they did not identify which recommendations were in each group. Their comments have been considered in preparing this final report and are included as Appendix B.

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Response of WCB and OFIG Officials

INTRODUCTION

Background

Workers' compensation insurance reimburses injured workers for a portion of their lost wages and associated medical expenses. The Workers' Compensation Law of New York State (State) requires employers to have insurance coverage for the cost of these wages and medical expenses. The Workers' Compensation Board is responsible for ensuring that all employers in the State have this insurance coverage and for monitoring the payments to injured employees and adjudicating disputed claims.

Employers in New York State may obtain workers' compensation coverage through private insurance carriers, the State Insurance Fund, or self-insurance. The State Insurance Fund (SIF) is a State agency financed through assessments paid by private insurance companies; it underwrites workers' compensation and disability benefits insurance coverage. SIF is the insurer of last resort for high-risk employers in hazardous industries or businesses that can not obtain coverage from private carriers, but it is a competitive insurer for other segments of the market. During calendar year 2000, the Workers' Compensation Board accepted about 174,000 claims. It is estimated by insurance experts that between 10 percent and 20 percent of all workers' compensation claims may be fraudulent.

The Employment, Safety and Security Act of 1996 established the Workers' Compensation Office of Fraud Inspector General (OFIG). OFIG is responsible for investigating allegations of fraud in the workers' compensation system on a Statewide basis and for developing evidence that can be used in fraud referral. A toll-free fraud hotline was established in March 1997 to handle telephone calls from the public regarding individuals suspected of committing workers' compensation fraud. Allegations are investigated, and cases that appear to involve fraud are presented to the State Attorney General's Office or to local District Attorneys for criminal prosecution.

OFIG has its main administrative offices in Albany, and nine district offices organized into four geographic regions. All ten of the workers' compensation fraud investigators are assigned to

the district offices. Each regional office is managed by an Assistant Inspector General (AIG), who does fraud investigations in addition to administrative and supervisory work.

OFIG's Annual Report for 2000 (Report) states that, the Workers' Compensation Board created the Office of Special Projects (Special Projects), which works closely with OFIG. Special Projects is responsible for developing and implementing systems that use computer data matching and tracking to disclose possible fraud patterns, trends, and illegal schemes. As a result of research by Special Projects, potential fraud cases are turned over to OFIG for review. The Inspector General determines the likelihood of fraud, then either opens an investigation, refers the case to an appropriate authority, or closes the file if no fraud is indicated. Between June and December 2000, this process resulted in the identification of 2,471 cases of alleged fraud. The Report also indicates that, when combined with fraud referrals from all other sources, OFIG received a total of 3,884 cases in 2000. In addition, it notes that 1,213 cases were referred to outside agencies and 2,481 cases were closed. The closed cases include some that were never part of an active field investigation, such as those that were closed on intake, data-matching cases that were closed at the main office and referred to other State agencies or private insurance carriers, requests for information, and duplicate cases. Excluding such never-active cases from the cases reported as closed, we determined that OFIG investigated and closed 1,058 cases during 2000. Of these, 115 were sent to the State Attorney General and/or local District Attorneys for criminal prosecution. Another 71 led to arrests and prosecutions; most defendants in these cases pled guilty once the evidence was revealed.

Audit Scope, Objectives and Methodology

We audited selected operating practices at the Workers' Compensation Board's Office of Fraud Inspector General for the period of January 1, 1998 through September 30, 2001. The objectives of our performance audit were to determine whether OFIG was processing workers' compensation fraud investigation cases efficiently, effectively, and timely; to determine whether OFIG had established controls that provide accountability over the investigators' case workload; and to determine whether OFIG was coordinating the efforts of the various workers' compensation fraud units. We also did a

follow-up review on whether OFIG had implemented the issues for consideration included in our previous OFIG study, which was issued in 1997. (The results of this follow-up review were issued as Report 2001-F-34 on January 11, 2002.)

To accomplish our objectives, we interviewed OFIG officials and reviewed OFIG policies and procedures regarding the investigation of alleged workers' compensation fraud. We obtained OFIG's electronic database of workers' compensation fraud investigations as of March 31, 2001; and verified the reliability of the records by tracing entries in the database to investigation files. There were a total of 2,219 open cases for all of the district offices as of March 31, 2001. We judgmentally selected 3 district offices based on such factors as the number of open cases per investigator, and the number of cases. The three district offices had a total of 1,095 cases that were open as of March 31, 2001. We selected and reviewed a total of 75 open cases (25 at each of the 3 district offices). We divided these open cases into four groups (those that were open for less than one year, from two to three years, from three to four years, etc.) and used computer software to randomly select cases from the groups for review. Using a similar technique for the 2,057 cases closed from January 1, 2000 to March 31, 2001, we divided the total into five groups (those that had been closed within one year, those that were closed within the second year, and so on for the previous five years). Then we randomly selected 10 cases from each group, for a review sample of 50. In addition, we discussed fraud issues with officials at three other State agencies who conduct fraud investigations, and sent a questionnaire to officials working at workers' compensation fraud investigation units in 16 other states.

We conducted our audit in accordance with generally accepted government auditing standards. Such standards require that we plan and perform our audit to adequately assess those OFIG operations that are within our audit scope. Further, these standards require that we understand OFIG's internal control structure and compliance with those laws, rules and regulations that are relevant to our audit scope. An audit includes examining on a test basis evidence supporting transactions in the accounting and operating records and applying such other procedures we consider necessary under the circumstances. An audit also includes assessing the estimates, decisions and judgments made by management. We believe our audit

provides a reasonable basis for our findings, conclusions and recommendations.

We use a risk-based approach to select activities for audit. We therefore focus our efforts on those activities we have identified as having the greatest potential for needing improvement. Consequently, by design, we use finite audit resources to identify where and how improvements can be made. We devote little audit effort to reviewing operations that may be relatively efficient and effective. As a result, we prepare our audit reports on “an exception basis.” This report, therefore, highlights those areas needing improvement and does not address activities that may be functioning properly.

Response of WCB and OFIG Officials to Audit

We provided a draft copy of this report to officials of the Workers’ Compensation Board and its Office of the Fraud Inspector General for their review and comment. Their comments were considered in preparing this final report, and are included as Appendix B.

These officials stated that they implemented some of our recommendations and will assess the appropriateness of the remaining recommendations, but did not identify which recommendations were in each group. They emphasized that our audit work included the review of many Workers’ Compensation fraud investigations started before OFIG’s new case management procedures were implemented after the current Inspector General was appointed in 2000. These procedures have addressed some of the issues raised in the audit such as, resolving older cases, increasing referrals to other agencies, and completing fraud investigations more promptly. They added that the audit did not comment on the fact that OFIG has developed a good working relationship with local district attorneys, which has resulted in the successful prosecution of Workers’ Compensation fraud cases. We agree that OFIG has improved how it manages Workers’ Compensation fraud investigations, and are of the opinion that further improvements are possible and necessary, especially since staffing is limited. They added that it is unlikely OFIG will receive State funding for additional staff in the near future.

Within 90 days after final release of this report, as required by Section 170 of the Executive Law, the Chairman of the Workers’

Compensation Board shall report to the Governor, the State Comptroller, and leaders of the Legislature and fiscal committees of the State of New York, advising what steps were taken to implement the recommendations contained herein, and where recommendations were not implemented, the reasons therefor.

INVESTIGATING AND CLOSING CASES

We reviewed 50 of the workers' compensation fraud cases that OFIG had closed during the period from January 1, 2000 to March 31, 2001. We also reviewed 25 open cases each at the Binghamton, Hauppauge, and Manhattan district offices that were active as of March 31, 2001.

We found that several of the cases had not been investigated in a timely manner. There were delays in initiating the investigations, and cases remained open for several months or years even though the files contained no documentation that any investigative work was being performed on the cases or evidence that the cases had received periodic reviews. OFIG needs to monitor active investigations more closely to ensure that work is done and the closing reports and case files are forwarded promptly to the appropriate officials for review, as soon as an investigation is completed. To reflect the closed status of the case, OFIG should also update the case management database – the IG System – in a timely manner.

Initiating Investigations

OFIG does not require its investigators to begin work on a suspected workers' compensation fraud case within a specified time frame. Even cases that the Deputy Inspector General considers a high priority when he evaluates their merits upon intake are not given formal special attention with regard to starting the investigation. In the absence of an established standard, we used three months after the New Case Intake Form (Intake Form) was prepared or, if the case was received before July 1997 (when OFIG started to use the pre-printed Intake Form), three months after the complaint was received to measure delays in the initiation of investigations. We found the investigation was delayed for 11 of the 75 cases reviewed, as shown in the following table:

Workers' Compensation Board Office of Fraud Inspector General Delays in Starting Fraud Investigations – Open Cases				
District Office	Number Reviewed	Number with Delays	Number of Days Elapsed Before Investigation Started	
			Low	High
Binghamton	25	5	593	1,310
Hauppauge	25	1	100	100
Manhattan	25	5	185	1,216
<i>Note: We classified as "delayed" those cases in which investigations had not been started within three months. The number of days that elapsed before the investigation started represents the low and high for the delayed cases in our sample.</i>				

For 18 of the 50 closed cases reviewed, more than 3 months passed between the time the complaint was received (or the Intake Form was prepared) and the first investigative steps. On average, it took OFIG more than 2 years to begin investigating these 18 cases. In two of these cases, the Deputy Inspector General considered them as high-priority.

Delaying the start of an investigation can affect both the quality and results of the inquiry. For example, in one closed fraud investigation the complaint was received in August 1998, but the investigator's notes show that the claimant's insurance company was not contacted to discuss the case until June 1999, about 10 months later. The investigator learned that, in the meantime, the claimant had obtained a \$1 million settlement from the insurance company, and OFIG closed the case. We were advised that a local District Attorney would not normally pursue a case in which the parties involved have already arrived at a settlement. However, the possibility exists that if OFIG had contacted the insurance company and initiated an investigation promptly, the company may have withheld settlement discussions pending the outcome of the inquiry.

In another example of how delays could affect the outcome of a case, OFIG received a complaint in July 1997 but did not take the first investigative step until December 2001 – more than four years later. When the work was finally initiated, the investigator could not obtain more information because the complainant could not be located.

OFIG officials explained that investigations did not begin promptly because the available investigators had such a heavy workload. They stated that, since February 1999, investigators are required to prepare an Investigative Action Report (Report) that briefly identifies the investigative actions they plan to take in each case. This Report is an important document because the investigator uses it to explain his or her plan for investigating the case, and it enables the Deputy Inspector General to review and critique the plan. Officials expected that submission of the Reports, which are supposed to be sent to the Albany office within 10 days from the date the case is received, would expedite the initiation of investigations. However, as indicated in the section of this report entitled *Documenting Investigative Work*, we found that the Reports are not always prepared.

The President's Council on Integrity and Efficiency (PCIE) has published general and qualitative standards (guidelines) for investigative efforts conducted by criminal investigators working for the Offices of Inspector General at various Federal agencies. These guidelines suggest that an investigative plan of action should be prepared if an organization decides to initiate an investigation, and that a time-phased approach should be established to ensure that leads are pursued in a timely manner. We concluded that OFIG's Investigative Action Reports should also provide more assurance that an investigation will be started and completed promptly. This can be accomplished by including estimated completion dates for each step in the plan described in the Report.

Investigative Activities

Investigations should, to the extent possible, be completed within a reasonable period. For several of the cases reviewed, we found that no investigative work was done for significant periods, and the case records provided no documentation explaining why. OFIG policy requires investigators to record the steps taken to complete the investigation for each case, and to retain manual and/or electronic notes documenting their work.

Our review of the case notes for the 50 closed cases disclosed significant time gaps of more than 6 months between investigative steps in 13 cases. The records contained no notes from an Assistant Inspector General that would have explained why the delays had occurred in any of these 13 cases – 3 of which had been rated as high-priority. For 10 cases, the time

delays ranged from 6 months to 17 months and averaged about 10 months. The notes for some of these cases showed that initial investigative work had been performed, but that work was followed by long periods of time when nothing was done. The cases were closed shortly after investigation was resumed. For 3 of the 13 cases, the time delays exceeded 2 years for each one.

We also found significant time gaps (more than 6 months long) between investigative steps for 35 of the 75 open cases reviewed:

Workers' Compensation Board Office of Fraud Inspector General Delays between Investigative Steps – Open Cases				
District Office	Number Reviewed	Number With Delays	Days Elapsed Between Investigative Steps	
			Low	High
Binghamton	25	6	223	1,547
Hauppauge	25	21	305	1,144
Manhattan	25	8	335	1,222
<i>Note: We took exception to cases in which no investigative steps had been taken within a six-month period. For some cases, the days elapsed since the last investigative step is as of the date of our review. The number of days that elapsed between investigative steps represents the low and high for the delayed cases in our sample.</i>				

Delays in investigations at the Manhattan district office could be attributed, at least in part, to staff turnover. One investigator left that office in August 2000; although OFIG hired two investigators in February 2001, this office did not have any investigators for more than five months. During that time the fraud cases in this district were transferred to an investigator at another district office. After the new investigators were hired, the cases were brought back to the Manhattan district office. (Investigator vacancies are discussed in another section of this report.)

Acknowledging that the office has many older open cases, OFIG officials explained that the long gaps between investigative steps occur because of the large caseload of their investigators, who at times need to defer work on some fraud investigations to work on other higher-priority cases. During our audit, officials were in the process of reviewing the open cases to determine which ones could be referred to other agencies

and which ones could be closed. We concluded OFIG has to manage its caseload more effectively so that investigators can devote the proper amount of effort to each case. (Caseload management is discussed in another section of this report.)

OFIG also needs to improve its system for monitoring the investigative activity for each case. The Assistant Inspector General at each regional office is supposed to monitor the cases in his/her region to verify that they are being administered properly. OFIG uses an electronic case management system called the IG System to track case information; this microcomputer database allows each Assistant Inspector General to review the electronic files, including the investigators' progress notes, for each case. However, these notes list both the date and action/results in a single field of the database. In our view, the information in these files, which can help Assistant Inspectors General in their supervision of investigators, would be more usable if the progress notes narrative and the date were entered in separate fields which the AIGs could use to sort the database chronologically, to prepare reports listing all of the cases each investigator worked on during a given period and identifying cases that are not investigated in a timely manner for appropriate action.

Closing Cases

Fraud cases should be promptly investigated and closed, referred for prosecution, or referred to another agency. We found that 15 of the 50 closed cases we reviewed had been open for a lengthy period before they were closed or referred.

Seven of the 50 closed cases reviewed were open for an average of about four years before they were closed; yet the case files for five of the seven contained no indications that investigative work had been done. Our audit indicated that all seven could have been closed timely if even a limited amount of investigative work had been performed when the cases were initially referred to the field. For example, the target of the complaint in one of the cases never received workers' compensation benefits. A brief review of the workers' compensation database would have confirmed that fact and the case could have been closed promptly. In another case, the individual had received benefits, but the complaint was received more than five years after the benefits were last paid and the statute of limitations had expired.

Eight of the closed cases reviewed contained no notes to indicate they were investigated when they were assigned to the district offices. As part of an initiative to address the backlog, OFIG is reviewing the older cases to determine whether they can be closed or referred. This review led to the closing of six of these cases and the referral of the other two to another agency. However, an average of 2.8 years had passed without any documented investigative work before this action was taken.

As previously noted, OFIG needs to establish a better system for monitoring investigative activity and identifying cases that are waiting to be investigated. Such a system should provide more assurance that cases are worked on promptly or referred.

Forwarding Closed Cases to the Main Office

When a fraud investigation is complete, the investigator is supposed to prepare a case-closing report and forward the report and case file to an AIG for review and then it is forwarded to the Deputy Inspector General for review. If both of these officials approve the report, the fraud investigation can be closed and administrative staff in the main office can update the IG System.

In 4 of the 25 open cases reviewed at the Binghamton district office, the investigations were actually completed; but the cases were not closed in a timely manner and forwarded to the main office in Albany. We determined that the closing reports were prepared but were not forwarded to the AIG and Deputy Inspector General for review. We view this as another indication that OFIG needs to improve how it monitors the cases each investigator worked on during a given period, and alert the investigator of those cases where an action is needed. If such a process had been in place during the AIG might have identified the four completed cases at the Binghamton district office.

We used the IG System to identify open cases at the district offices for review. However, when we visited the district offices, we learned that 29 of the 75 cases that the IG System reported as being open were actually closed (15 in the Binghamton district office, 11 Hauppauge district office, and 3 in the Manhattan district office). These cases had been closed, and the investigations had resulted in either a referral to a District Attorney for prosecution or the arrest of the claimants. But

because the case-closing reports had not been sent to the Deputy Inspector General for review, the IG System incorrectly showed the cases as open. To maintain our sample size, we replaced these cases with other randomly-selected open cases.

District office officials told us they wanted to keep the fraud investigation files on hand in case they were needed to provide answers to questions from the District Attorneys. They said the files are held at the district office until the District Attorneys notify them about the outcome of the case.

OFIG needs reliable information in the IG System so it can monitor the number of fraud investigations assigned to each investigator. However, by reporting a number of closed cases as open, the IG System overstates the investigator workload. Agreeing that the IG System should show these cases as closed, OFIG officials indicated they would establish a system that would allow the district offices to keep the fraud investigation case files on hand until the District Attorneys have completed their prosecution. However, the investigator is still required to file a closing report so the Deputy Inspector General can review the case and verify that the case-closing information is noted in the IG System.

Statistical Reporting

The IG System should be capable of providing managers summary information on the different types of closed cases so they can be reported separately. OFIG officials use the database to produce statistics for their annual report. However, the IG System does not have a data field that can be used to categorize the various types of closed cases so they can be summarized and reported separately. For its annual report, OFIG reports closed cases as if they are all the same type of investigation. For example, OFIG's *2000 Annual Report to the Governor* reported that 2,481 cases were closed during the past year. This total includes cases that were never part of an active field investigation, such as cases that were closed on intake, data-matching cases closed at the main office and referred to other State agencies or private insurance carriers, requests for information, and duplicate cases. Excluding these cases, we determined that OFIG actually closed 1,058 cases that went to field investigation, less than half of the closed cases.

(OFIG officials disagree that cases closed on intake and data matching cases should be excluded from the total number of cases OFIG closed because they were never part of an active field investigation. They indicate that modern fraud investigations substitute computerized data searches for time-consuming searches of manual files. We do not disagree that these cases should be reported as closed, but recommend they be reported as such for reasons other than a field investigation so that the actual number of cases in which a field investigation was done is not overstated. In addition, we note that OFIG was not successful in closing 2,481 cases because the process includes requests for information.)

Because the number of completed fraud investigation cases has been inflated in OFIG's annual reports by grouping all of the various types of closed cases into one category, the report's statistical information has not provided an accurate accounting of OFIG productivity and performance. Another field should be established in the database so that each type of closed case can be categorized and reported separately.

Recommendations

1. Initiate and conduct investigations in a more-timely manner.
2. Remind the investigative staff that they are required to prepare an Investigative Action Report for each case assigned to the field for investigation.
3. Use a time-phased approach for the plans outlined in the Investigative Action Report.
4. Facilitate case monitoring by establishing a separate field in the IG System for recording the date of each investigative activity.
5. Monitor the cases assigned to the district offices more closely to verify that they are being investigated in a timely manner, referred promptly to another agency, and closed as soon as the investigation is completed. Updates should be entered into the IG System to reflect the closing.

Recommendations (Cont'd)

6. Modify the IG System so it will account for cases that are closed for reasons other than a field investigation, such as cases closed on intake, requests for information, etc. Report these items separately in the annual report.

CASELOAD MANAGEMENT

OFIG has received many fraud complaints since it started operations in 1997. From 1997 through 2000, field investigators received an average of 1,256 cases each year, not including data-matching cases that OFIG closes on intake and refer to other investigative agencies. OFIG has a staff of 14 investigators, including Assistant Inspectors General, to handle fraud investigations.

We found that the reported caseload for OFIG investigators is much higher than that carried by investigators at other agencies. To manage the caseload more effectively, OFIG should establish a standard number of cases that is considered a reasonable workload for its investigators. It should also refer more cases to other investigative agencies, fill vacant investigator positions more promptly, and consider hiring more investigators in geographic areas where more fraud complaints are filed.

Investigator Caseload

Each investigator should be assigned a reasonable number of cases to allow enough time to gather sufficient evidence for each case, and determine whether a fraud has been committed.

OFIG investigators have large caseloads. The following table shows the average number of open cases assigned to the investigative staff at the end of each quarter from March 1997 through March 2001.

Workers' Compensation Board Office of Fraud Inspector General Average Caseload per Investigator – at End of Calendar Quarter March 1997 through March 2001					
Quarter Ended	1997	1998	1999	2000	2001
March	730	149	175	188	152
June	422	155	175	212	-
September	393	188	184	325	-
December	153	180	206	241	-

As shown in the table, the caseload per investigator decreased significantly during 1997, when OFIG was a relatively new organization, as more investigators were hired, the number of investigators increased to 11 and the average number of cases assigned to each investigator decreased. During 1998 and 1999, the number of OFIG investigators was relatively stable (between 10 and 12), but then the number of fraud complaints began to increase as the average caseload per quarter gradually increased from 149 to 206. By 2000, the size of the average caseload increased significantly because the number of investigators declined from 11 to 8. OFIG hired three new investigators in the first quarter of 2001, which again reduced the size of the average caseload.

When an investigator has a large caseload, there is a risk that some cases will be ignored or not investigated so timely or thoroughly as they might have been. When a case is not investigated in a timely manner, it is more difficult to obtain vital information and locate the right people. Moreover, if an individual obtains workers' compensation benefits fraudulently and the fraud is not investigated promptly, the aggregate amount of fraudulent payments will increase and restitution may be more difficult to obtain because of the larger dollar amount. In another section of this report, we also noted that OFIG does not always investigate suspected workers' compensation fraud cases in a timely manner because some cases are set aside for long periods because investigators need to work on other higher-priority cases.

We visited three of the nine district offices and interviewed the four investigators assigned there; we discussed caseload size and asked them how many cases they could handle effectively. One investigator stated that he could handle as many as 100 claimant fraud cases at one time. The other three said the number of cases they could handle would vary, depending on the type of case. These investigators said they could handle between 10 and 40 claimant cases at one time. (Most of the cases that OFIG investigates involve claimants who receive workers' compensation benefits. However, the investigators also work on fraud cases involving health care providers, insurance carriers, employers, and attorneys that, according to OFIG officials, generally require more time to investigate.)

We queried the workers' compensation fraud investigative units of 16 states to determine, among other things, the caseload

their investigators normally handle. In 5 of the 8 states that responded to our questionnaire information on typical caseloads, ranged from 10 to 28 cases per investigator. We also sought to determine the normal caseload for fraud investigators at three New York State agencies involved with insurance or welfare fraud investigation.

An official from one State agency stated that he categorizes fraud investigations as either individual or institutional. He defined individual cases as short-term investigations with a target completion time of six months or less, although, in practice, the average time his office takes to investigate individual cases is four to eight months. On the other hand, noting that institutional cases are complex, long-term investigations, he said his investigators are typically working on 1 or 2 institutional investigations and about 15 individual investigations at any given time. An official from another State agency advised us that his investigators are assigned an average of about 30 ongoing fraud investigations – fewer if the cases are complicated. An official from the third State agency told us that an investigator on his staff might be responsible for between 20 and 40 cases.

The average caseload for OFIG investigators is significantly higher than that carried by investigators working for the five states that provided caseload information and for the three New York State agencies contacted. During our audit, OFIG officials started to review its “stale” fraud cases for which no investigative work had been done for several months. They told us they intend to either close the cases or refer them to other investigative agencies.

OFIG officials have not established the number of cases that should reasonably be assigned to each investigator. Consequently, investigators were given more cases than they could handle, and investigation delays occurred. Moreover, except for the Brooklyn district office, OFIG has not asked permission to employ more than one investigator for each district office. OFIG officials should establish a caseload standard for its investigators that would take into consideration the type and complexity of the cases. They should also evaluate their caseloads in light of that standard and the number of investigators required to handle cases in a timely manner.

Referrals to Other Agencies

OFIG could also reduce the number of investigations assigned to its investigators by referring some cases to other State agencies, such as those dealing with insurance fraud, or to insurance carriers with established fraud investigation units.

For example, the New York State Insurance Department (State Insurance Department), which is responsible for supervising and regulating all insurance business in New York State, investigates insurance fraud through its Insurance Frauds Bureau (IFB). In addition, the State Insurance Fund investigates both workers' compensation and disability insurance fraud cases. The following table shows the number of workers' compensation cases that OFIG referred to IFB and the SIF (not including data-matching cases) during the period of January 1, 1997 through March 31, 2001. (Since 1998, the total number of referrals to IFB decreased dramatically and, except for the year 2000, OFIG referred relatively few cases to the SIF.)

Workers' Compensation Board Office of Fraud Inspector General OFIG Referrals to Insurance Fraud Bureau and State Insurance Fund 1997 through 2001		
Year	Referrals to Insurance Fraud Bureau	Referrals to State Insurance Fund
1997	14	4
1998	127	12
1999	69	99
2000	29	491
2001*	0	45
Total	239	651
<i>* Through March 31, 2001.</i>		

OFIG signed a memorandum of understanding (MOU) with IFB in November 1997 that outlined ways in which the two agencies would collaborate to combat workers' compensation fraud. According to this MOU, both OFIG and the IFB are to provide technical and investigative assistance to each other. They agreed to collaborate and coordinate activities for major investigation projects, and to assist each other in any way possible to combat fraud in the workers' compensation system. However, OFIG could use IFB resources to greater advantage than it currently does. Although OFIG officials advised us that

they had previously been unsuccessful at achieving cooperation with SIF, and consequently referred very few cases to that agency, the current Inspector General has established an improved relationship. As a result, more cases are referred to SIF now and are planned for the future.

Section 409 of the Insurance Law, effective September 10, 1996, requires every major insurance carrier that writes insurance policies in New York State to have a plan for detecting, investigating, and preventing fraudulent insurance activities. (This provision of Section 409 does not apply to carriers that write fewer than 3,000 policies per year in the State.) This plan must include a full-time special investigation unit that is separate from the underwriting or claims functions. Although OFIG officials have recently referred 73 data-matching cases to private insurance carriers' special investigation units, they referred just 16 workers' compensation cases to these special units through March 31, 2001. We believe OFIG can utilize this option more often to help investigate suspected fraud in workers' compensation.

OFIG also needs to refer more cases before they are sent to the field. The following table shows the number of cases sent to the field for investigation, the number referred to other agencies from the field, and the number referred to other agencies at intake:

Workers' Compensation Board Office of Fraud Inspector General Cases Sent to Field, Referred from Field, and Referred on Intake (Not Including Data-Matching Cases) 1997 through 2001			
Year	Cases Sent to Field Investigators	Cases Referred to Other Agencies from Field	Cases Referred to Other Agencies on Intake
1997	1,572	163	20
1998	1,315	440	139
1999	974	335	155
2000	1,163	674	106
2001*	198	118	55

* Through March 31, 2001.

As the table indicates, OFIG referred a large number of cases from the field to other agencies during the past three calendar years. However, several of these referrals occurred because OFIG recognized that its investigator caseload was too large and steps needed to be taken to resolve the problem. Consequently, many of the older fraud investigation cases were

closed or referred to other agencies, as appropriate. Our review of OFIG's closed and open cases showed that investigator workloads were large, and there were extended delays in the investigation of many of the suspected fraud cases. In addition, several cases were not investigated in a timely manner; and, in other cases, either no investigative work occurred or long periods of time passed in which no steps were taken. To avoid these situations, OFIG could refer more suspected fraud cases to other agencies upon intake, when the complaint is received and initially evaluated.

OFIG officials advised us that they plan to retain the current size of their investigative staff, but agreed they could be more selective in their case assignments. They added that they would consider referring more fraud investigation cases to other agencies at the time of receipt.

Filling Vacancies

The OFIG investigative staff has had a high turnover rate, and the vacant positions have not always been filled in a timely manner. As a result, the workload of the remaining investigators has increased. Investigator caseloads could be managed more effectively if replacement investigators were hired promptly to fill vacant positions. Each of OFIG's four regional offices is managed by an Assistant Inspector General, who performs fraud investigations in addition to administrative and supervisory work. Eight of the nine district offices have just one investigator each; the Brooklyn district office has two.

For the two and one-half years ended June 30, 2001, eight investigators or AIGs either left or were transferred to other positions within the Workers' Compensation Board. Between September and November 2000, OFIG had filled just 7 of the 14 available investigative positions. OFIG officials told us it took between 6 and 28 months to fill some of these positions because the salary levels make it difficult to hire qualified investigators to work for the State in the New York City area.

Cases Assigned to District Offices

OFIG tries to assign fraud cases to investigators assigned to the geographic area where the investigative work is to be done, a practice that should improve the economy and

efficiency of fraud investigations. Although we found a wide variation in the number of fraud cases handled by each district office, the same number of investigators is assigned to each district office except for the one in Brooklyn. Consequently, the investigators' caseloads vary widely based solely on geographical considerations. OFIG should consider either hiring more investigators for some of the district offices that have a higher number of fraud complaints, or assigning some of the excess investigations to other district offices.

We calculated the number of cases that OFIG officials assigned to their investigators (or AIGs) at each district office during a four-year period that ended in 2000. The averages are as follows:

Workers' Compensation Board Office of Fraud Inspector General Average Number of Cases Assigned for Investigation by District Office 1997 through 2000					
District Office	Authorized Staff (14 Positions)	1997	1998	1999	2000
Albany	1-a	197	143	120	112
Binghamton	1-a	87	72	39	55
Brooklyn	2-½	185	146	83	54
Buffalo	1-½	72	69	87	84
Hauppauge	1-½	78	129	91	80
Hempstead	1-½	59	51	53	36
Peekskill	1-½	49	33	84	77
Rochester	1-½	97	59	55	63
Syracuse	1-a	150	118	128	128

Note: The number of staff includes a factor for AIGs who also do investigative work. The data assumes that the AIGs share their work evenly among district offices and can have the same workload as the investigators they supervise.

As indicated in the table, the average number of cases assigned to investigators in the Albany and Syracuse district offices has remained consistently higher than the number assigned in the seven other offices. During 1997 and 1998, the number assigned to the Brooklyn office was higher than the number assigned in several other district offices; but in the two years that followed, the caseload at this office declined significantly. To deal with the variance in caseload from one district office to another, OFIG moved an investigator from the Hauppauge district office to the Manhattan district office. However, OFIG has not gone a step further and requested permission to hire additional investigators for the district offices.

OFIG is funded through the Workers' Compensation Board's State appropriation. If funding is not available to hire additional investigators, OFIG may want to explore the possibility of funding its operations from an assessment levied on insurance carriers, in an arrangement that is similar to the State Insurance Department's method of financing its fraud investigation staff.

Recommendations

7. Establish a caseload standard for workers' compensation fraud investigators.
8. Make a stronger effort to attract more candidates for investigator positions, especially at district offices in geographic regions that receive the most workers' compensation fraud complaints.
9. Refer more cases at the point of intake to insurance carriers that have established fraud investigation units and work with the other State agencies that are involved with insurance fraud so that more cases can be referred to them in intake, as appropriate.
10. Hire replacement investigators promptly, as soon as positions are vacated.
11. Evaluate the merits of establishing an assessment on insurance carriers to generate funds to be used to investigate allegations of fraud in the workers' compensation system and decrease the rate of occurrence.

DOCUMENTING INVESTIGATIVE WORK

OFIG procedures require that workers' compensation fraud cases be documented adequately so it is clear what investigative work was done and the results. Before a case is closed, it must be reviewed by an AIG, as well as the Deputy Inspector General, who verify that the proper steps were taken and the correct decision was made (close the case, refer it for prosecution, etc.). They should also make sure that all of the required documents, such as the New Case Intake Form, Investigative Action Report, investigator notes, and case-closing report are on file.

Some of the required documents were missing for 18 of the 50 closed investigations reviewed and for 9 of the 75 open investigations reviewed.

Complaint Form

OFIG requires the completion of a Complaint Form for each case, either by the complainant or by the OFIG employee who takes the complainant's hotline telephone call. It is important because it explains the nature of the complaint and provides a basis for initiating an investigation.

Complaint Forms were missing for 2 of the 50 closed cases and for 2 of the 25 open cases reviewed at the Binghamton district office. It is the responsibility of the administrative staff in the main office to accumulate all relevant documents before cases are sent to the district offices for investigation. Greater care should be exercised to make sure the Complaint Form is included in the case folder.

New Case Intake Form

After OFIG is notified of a possible workers' compensation fraud, Albany staff are supposed to prepare a New Case Intake Form. For the 50 open cases reviewed at the Binghamton and Manhattan District Offices, the New Case Intake Form was not in the files for one case at each of these District Offices.

Investigative Action Report

An Investigative Action Report (Report) must be submitted to the Inspector General no later than 10 days from receipt of the case. Although a Report should have been prepared for 18 of the 50 closed cases reviewed because the complaints were received after February 1999, there were not on file for 14 of the 18 cases. A Report should also have been completed for 19 of the 75 open cases we reviewed because they, too, were based on complaints received after February 1999; but there were none for 6 of these 19 cases. Officials should remind the investigative staff that a Report must be prepared for each case assigned for field investigation.

Investigator Notes

PCIIE standards for investigations require that investigative findings, conclusions, and accomplishments be supported by adequate documentation, including investigator notes. OFIG policy requires its investigators to keep a record of the steps they take in investigating each case. The investigators should prepare manual and/or electronic notes to document these steps, as well as the results of their investigations. We found that the required documentation was not always present in the case files we reviewed.

In fact, no investigative steps were documented for 14 of the 25 open cases reviewed in the Binghamton district office. It appeared that the fraud investigations had not started, even though 13 of the 14 cases were received more than 2 years earlier.

No investigative steps were documented for 3 of the 25 open cases reviewed in the Hauppauge district office. Although it appeared that some investigation work had been done for one of these cases, no written or electronic investigative notes were recorded as required. The other two involved uninsured employers, whose cases are usually sent to the district office and then to the Workers' Compensation Board's Compliance Bureau for additional work. If the Compliance Bureau determines that there is fraud, it refers the case back to the district office, where fraud documentation is prepared to support the District Attorney's prosecution effort. Even though one of the cases was open for five months, and the other for ten,

neither had been referred to the Compliance Bureau. Delays in initiating the investigation can inhibit and have an adverse effect on the results of the investigation. OFIG officials advised us that there were about 130 uninsured employer cases that had accumulated at the district office, and that they planned to forward them to the Compliance Bureau in stages so their arrival would not overwhelm the staff. Based on the delays at the time we reviewed the cases at OFIG should not wait so long before referring these cases.

No investigative steps were documented for 8 of the 25 open cases reviewed in the Manhattan district office. It appeared that the investigations were not started for six of these cases, some investigation was done for one but there were no written or electronic notes, as required. The eighth case involved an uninsured employer, and was open at the district office for several months; however, it should have been referred promptly to the Compliance Bureau.

We concluded that investigator notes are not being recorded or retained because OFIG procedures do not require the AIG to review open cases and document their reviews; they are required only to review completed cases. We were advised that, due to the large caseload, regional AIGs do not have time to review each case. However, as noted in another section of this report, we maintain that time would not be an issue if OFIG established a better electronic system for monitoring investigative notes, particularly regarding cases for which notes have not been prepared for an extended period of time. At a minimum, we believe that the regional AIGs should review the latter group of cases, then document their reviews.

Case-Closing Report

Investigators are required to prepare a case-closing report if he/she concludes the matter is insufficient for prosecution, is unfounded, or lacks unobtainable evidence. The report must be signed by the AIG in the region where the case was assigned and by the Deputy Inspector General in the Albany office. The dual-signature requirement is an important control procedure, because only these officials can certify that the appropriate work has been performed before the case is closed. In the final review, the administrative staff in the Albany office should check for proper approvals that would authorize a case to be closed before they update the case status in the IG System.

The case-closing report was missing for 5 of the 50 closed cases reviewed. For two of these cases, the envelope designed to contain the case folder was missing. Normally, the case-closing report is placed inside the case envelope, but not inside the case folder; thus the lack of envelopes may be related to the lack of reports. Without access to these reports, we could not review and evaluate the reasons they were closed. Case-closing reports for 6 other closed cases reviewed were on file, but each was missing the signature of the AIG and/or the Deputy Inspector General. Since these cases may have been closed without the necessary approvals, we provided OFIG officials with a list of the cases for which the closing reports were missing so they could review the records and determine whether the cases should have been closed. The administrative staff in the Albany office should verify that a properly-approved case-closing report is in the file before the case is closed.

Recommendations

12. Verify that the New Case Intake Form is included in each case folder before the case is sent to the district offices for investigation.
13. Remind the investigative staff that an Investigative Action Report must be prepared for each case assigned to the field, and that they are required to prepare notes that will document the work they perform.
14. Promptly refer uninsured-employer cases to the Compliance Bureau.
15. Remind the appropriate Assistant Inspector General and the Deputy Inspector General that the required documentation must be in the case file.
16. Strengthen the case-closing system so that properly-approved case-closing reports are prepared and filed with the case records before cases are closed.
17. Closely monitor open cases to verify that investigative steps are done in a timely manner and are documented, that completed investigations are closed promptly, and that the IG System is updated as each case is closed.

IG SYSTEM

The OFIG uses the IG System to manage workers' compensation fraud investigations, monitor investigator caseloads, generate management reports, and provide data for the annual report to the Governor. The IG System contains information regarding case status, priority, type of investigation, names and addresses of all parties, investigator field notes, case disposition, date of referral to prosecutors or other investigative agencies, and the date the case was closed. If management is to perform meaningful data analysis and to supervise and manage its operations effectively, the IG system must be current and accurate.

Protection of Data

When a workers' compensation fraud complaint is received, it is assigned a case number. Administrative staff in the main office enter case information into the IG System from authorized Intake Forms. The date of entry is normally recorded in the date-received field of the database, and case numbers are assigned in ascending order. The IG System should include controls that will prevent unauthorized removal of information recorded in key database fields. We found that, on occasion, even after a case number has been assigned, case information that was entered and saved has been deleted and replaced with data from another case. OFIG needs to establish controls for safeguarding data that has been entered in the IG System.

We reviewed the information in the IG System database as of March 7, 2001. There were nearly 10,000 case records in the database. We judgmentally selected 22 recently received cases for review because they appeared to contain discrepancies, such as information that was inconsistent with other data. When we reviewed the hard copy files for these cases, we found that OFIG had re-used the sequential numbers from three of these cases, replacing the old information with data from a new case. We were also advised that duplicate cases occasionally occur; if the same complaint is received more than once, but the information was misspelled in the original entry, it might not be recognized as a duplication and assigned a new

case number. OFIG told us they normally rely on field investigators to identify duplicate cases. When one is found, they said it has been customary to delete the most-recently-entered information and then re-use the case number for another case. However, this practice provides no audit trail for identifying any information that was previously recorded. Thus, there is no assurance that the IG System accurately accounts for all cases; and there is a risk that fraud investigation case information can be deleted inappropriately and overwritten with other information.

More safeguards over data entry should be designed for the IG System. The only data fields currently protected from deletion are the case number and the date-received fields; the administrative staff in the main office can delete data from all of the other fields. Controls should be established that will protect a name that has been entered and saved in the claimant's name data field from deletion or modification. If there is a duplicate case, the database should reflect that fact and provide a reference to the originally-assigned case number.

Data Reliability

Databases can be an important tool for managing programs and reporting results. They should contain information that is current and accurate enough to produce reliable reports that management can use to analyze activities. We identified several ways in which OFIG can improve the timeliness and accuracy of the information in the IG System, as well as the consistency of the data entries.

Updating the Database

The IG System is not updated as soon as important changes occur. Moreover, OFIG has no standards or procedures for updating the database when cases are reassigned to different investigators. For example, although it indicates the name of the investigator assigned to each workers' compensation fraud case, a change of assignment does not trigger an update. As of March 7, 2001, the IG System showed that 3 investigators were responsible for a total of 318 fraud cases, even though they had not worked for OFIG since September 2000 or earlier. The cases were reassigned, but the names of the new investigators were not entered. In addition, the names of two recently hired

investigators and their assignments were not added to the database.

We found that the IG System is not kept up to date because of a staff shortage and an increasing workload. OFIG currently employs three administrative staff at the main office to make entries, but they have other responsibilities and have not always been able to update the database. Three temporary employees were recently hired to update the data entry backlog and to perform other administrative tasks, but they stayed only a short period.

Inconsistent Data Entry

Staff did not enter data consistently. For example, the database field that is supposed to show the county where the claimant lived sometimes listed the city or town instead. In addition, there were a number of typing errors in both the district and county fields. Inconsistent and inaccurate data entry makes data sorting and analysis difficult. Management reports generated from the database will not be accurate if the database information is inaccurate.

Human error is the primary cause of inconsistent data entry. The IG System, which was not designed to minimize the risk of human error, requires an unnecessary amount of manual data entry. Some of these errors could be corrected if the database had more “pull-down” menus with standardized information or “auto-fill” capabilities.

Recommendations

18. Revise the IG System so that information entered and saved in the claimant name data field cannot be subsequently modified or deleted.
19. Update the IG System database promptly when there are changes, such as when a case is reassigned to a different investigator.
20. Continue efforts to hire temporary employees who can aid in data entry and updating the IG System database.

Recommendations (Cont'd)

21. Automate the IG System more fully (e.g., with more “drop-down menus”) to facilitate consistent data entry of common information, such as the county and district fields.

CASES CLOSED ON INTAKE

OFIG receives tips regarding workers' compensation fraud in a number of ways. Its fraud "hotline" telephone line provides the public with a frequently-used means of communicating complaints. Administrative staff in the Albany office receive these hotline calls and encourage the callers to complete and return a complaint form to OFIG. The Workers' Compensation Board maintains its own electronic database, known as the Claims Information System (CIS), that provides information on recipients of workers' compensation benefits. When OFIG is notified of a possible instance of workers' compensation fraud, Albany staff are supposed to prepare a New Case Intake Form and check the CIS to determine whether the subject of the complaint has received or is receiving workers' compensation benefits. Printouts of the results of this check are supposed to be included with the complaint and case intake forms, and forwarded to the Deputy Inspector General for review and a decision, whether the case should be closed on intake without further investigative work, assigned for investigation, or referred to another agency.

To determine whether the files contained appropriate documentation to justify closing the case on intake, without any field investigation, we randomly selected 50 of the 336 cases that OFIG had closed on intake between January 1, 2000 and March 31, 2001. We concluded from the available documentation three of these cases might have been viable if the staff had obtained more information.

Claims Information Database

If a complaint concerns an individual who has not received benefits, the case should be closed on intake, subject to the approval of the Deputy Inspector General and that determination should be documented in the case folder.

Twelve of the 50 cases we reviewed were not complaints but requests to OFIG for criminal information checks from the Workers' Compensation Board's Office of Security. However, for 16 (42 percent) of the remaining 38 cases, there was no

documentation that administrative staff had checked the CIS to find out whether the person had received workers' compensation benefits. We concluded that these 16 had been closed prematurely. As part of our audit, we checked the CIS for the 16 and found that 5 of the individuals in question had received benefits. Upon further review of the complaint forms, we concluded that three of these five cases might have been viable if the administrative staff had been able to obtain more information. These three cases are discussed in the next section of this report.

We found that, when OFIG's staff checked the CIS and learned that the individual had not received benefits, they either recorded or attached a note to the Intake Form indicating there was no CIS. The Intake Form does not provide space for noting that the CIS was checked or for noting the results of the check. OFIG should revise the Intake Form to include a section where staff can note that the CIS was reviewed; it would serve as a reminder that the CIS should be checked.

Cases Closed Due to Insufficient Information

OFIG may also close cases on intake if the information it receives from informants does not provide a sufficient basis for an investigation. For example, an informant may make an anonymous hotline call after office hours but neglect to include key data, including his/her name or telephone number, that would make it possible to obtain more information.

However, when OFIG staff receive a tip through the telephone hotline, they often complete the complaint form on behalf of the informant. Instructions on the complaint form indicate that as much detail as possible should be provided to describe the alleged fraudulent activity. As previously noted, when we examined the folders for the five cases in which we found that the individuals suspected of fraud had, in fact, received benefits, we noted that the folders contained no record that OFIG had checked the CIS to clarify their benefit status. In one of these cases, the Deputy Inspector General determined that the circumstances did not warrant an investigation. In another, the informant hung up the telephone before the staff person could obtain more information. However, for the remaining three, even though a staff person had obtained the information by telephone, the cases were still closed because of insufficient information. For example, the information recorded on one of

the complaint forms indicated only that the individual "...is more active than she should be." The callers for these cases did not provide personal information, such as their telephone numbers. Some callers preferred to remain anonymous, which made it impossible to obtain additional information from them.

OFIG employees received the telephone calls and prepared the complaint forms for these three cases. If an informant cannot or will not provide more details, that fact should be noted on the complaint form to explain why the details are lacking. However, such notations were not noted. We concluded that not enough information had been collected for these cases, but it is possible that more information could have been obtained during the initial calls. These informants may have had legitimate complaints that could have been investigated if more information had been obtained.

The handling of fraud complaint calls is an essential part of the process in combating workers' compensation fraud. Generally, informants call the OFIG fraud hotline; but staff in the Albany office and district offices also receive some complaint calls directly. OFIG does not have guidelines for the handling of these calls, however, such guidelines should be established to provide more assurance that the calls are being handled properly and that staff are trained to obtain as much information as possible.

Recommendations

22. Document that the CIS has been checked for all workers' compensation fraud complaints.
23. Revise the New Case Intake Form to include a section where the CIS review must be noted.
24. Train staff who take telephone calls in techniques for obtaining as much descriptive detail as possible from the caller concerning the alleged fraudulent activity.
25. Develop and issue guidelines to the staff on how to handle fraud complaint telephone calls.

OTHER MATTERS

Allegations of workers' compensation fraud can be investigated by several other entities throughout New York State besides OFIG. These investigative entities include the State Insurance Department's Insurance Frauds Bureau (IFB) and the State Insurance Fund, as well as units established or hired by insurance carriers that write more than 3,000 policies in the State each year.

Individuals can file a workers' compensation complaint with more than one entity; thus there is a risk that more than one could be investigating the same case. We found that OFIG needs to strengthen its controls to ensure that it is not investigating cases that are already being investigated by others.

Duplication of Effort

Section 404 of the State Insurance Law provides that all insurance carriers, including SIF, are to report suspected cases of fraud to the State Insurance Department, where they are handled by the IFB. These reports enable the Department to identify duplicate complaints and to advise carriers about them. To avoid a duplication of effort, OFIG staff need to work more closely with the Department, sharing complaint data with the IFB.

The memorandum of understanding that OFIG and IFB entered into in November 1997 stipulates that the IFB is responsible for investigating complaints made by insurance carriers to either OFIG or IFB. On the other hand, if the IFB receives complaints regarding self-insured individuals or associations, it is to report them to OFIG for investigation. To eliminate duplication, the MOU further provides that representatives of the two agencies are to meet periodically to review and discuss their respective workers' compensation fraud cases. If both agencies have received the same complaint, they are to conduct a joint investigation of the case under the supervision of the first agency that received the complaint.

We were advised that officials of the two agencies meet informally once or twice a month. However, there was no evidence that a system had been established for comparing cases that would avoid duplication. Thus there is a risk that OFIG may be investigating a case that is also being investigated by another agency.

Handling Complaints

Fraud complaints are received by telephone, including the hotline, and by mail, including e-mail. OFIG's staff often receive fraud complaints by telephone and complete the Intake Form based on the information provided by the caller. However, the OFIG telephone hotline staff frequently does not ask the caller whether he or she has already filed the same complaint with another agency.

A section on the Intake Form requires the preparer to note whether the caller has filed a complaint with another investigative agency. When we reviewed the same 50 cases, we sought to determine whether OFIG staff had asked the caller about the possibility that he/she had filed the same complaint with another agency. In 18 of the 50 cases we selected, OFIG staff had handled the telephone call. For 17 of these 18, we found that the staff did not make such an inquiry. Thus there is a risk that OFIG may be investigating a case that is also being investigated by another agency.

Recommendations

26. Adhere to the MOU with the Insurance Fraud Bureau. Periodically compare OFIG's workers' compensation fraud cases with those filed with the State Insurance Board to identify duplications.
27. Remind staff who take fraud complaints by telephone that they should complete the New Case Intake Form, and note whether the caller had filed the same complaint with another agency.

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ROBERT F. SNASHALL
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July 22, 2002

Ms. Carmen Maldonado
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Dear Ms. Maldonado:

This letter presents the Workers' Compensation Board's (WCB's) response to OSC's draft audit report (2001-S-1) of the Office of Fraud Inspector General's (OFIG's) management of fraud investigations in the Workers' Compensation System of New York State. OFIG was established just six years ago by the Employment, Safety and Security Act of 1996 to address the growing problem of Workers' Compensation fraud in New York State. As a relatively new function with a staff of 14 investigators and an investigator caseload of 152 (see OSC report page 13) which dwarfs that carried by comparable agencies' investigators, it is not surprising that OSC's audit revealed some minor problems with OFIG's case paperwork.

Overall, your report presents a case for expanding OFIG's investigatory and support staff so it can become even more successful in investigating WC fraud and working closely with state and local prosecutors to insure that all fraud perpetrators are vigorously prosecuted. However, given the State's current fiscal condition it is unlikely that the State will be funding significant additions to OFIG's staff in the near future. Therefore, as part of OFIG's constant quest to enhance its operations, OFIG is in the process of implementing some of your recommendations and is carefully assessing the appropriateness of instituting the remainder.

However, the Board would like to offer the following comments to clarify certain issues and place your audit report in proper perspective for the reader:

- Rather than choosing not to respond in writing to OSC's preliminary audit findings as stated on page S-3, OFIG officials waived their right to do so at OSC's

request during the December 11, 2002 exit conference, but OSC did not issue its draft audit report until nearly six months later on June 7, 2002.

- During the exit conference OFIG officials alerted OSC auditors to the fact that the weighting of small, non-statistical open and closed case samples towards OFIG's older cases (see page 2) resulted in two samples where the majority of the cases were investigated under OFIG's old rather than new case management procedures. In fact, these two samples even included cases which predated OFIG's establishment on November 14, 1996. OFIG's new and improved case management procedures were instituted after the present Inspector General's appointment in June 2000 and have already addressed some of the issues raised by the OSC audit, including the resolution of our older cases and the need to increase referrals to other agencies involved in investigating Workers' Compensation fraud.
- OFIG review of Board CIS and insurer information for the claimant fraud case involving a \$1 million Workers' Compensation insurance settlement questioned by OSC on page 6 revealed that no fraud was involved and this claimant was appropriately compensated for the serious work related injuries sustained in a scaffold collapse.
- OSC did not disclose on page 8 as agreed to at the exit conference that its broader analysis of OFIG's entire closed case population for this 15 month period showed that OFIG does an excellent job of successfully closing over half of its fraud cases in less than one year.
- OSC did not factor into its management analysis what OFIG regards as the ultimate measure of its investigatory performance, the fine reputation OFIG has built with local district attorneys located throughout the State for performing quality WC fraud investigations. Over the last six years, this has resulted in the successful prosecution of scores of individuals, employers and doctors for committing Workers' Compensation fraud. Through these efforts Governor Pataki has made it clear that bilking the system, lying about a claim, or assisting someone who is committing fraud, is like stealing money from law abiding citizens and will be met with stiff consequences.
- OFIG disagrees with OSC's position taken on page 11 that certain cases closed on intake and data matching cases developed by the Board's Office of Special Projects should be excluded from the total number of cases OFIG closed in 2000, because they were never part of an active field investigation. This stance reflects a very dated view of what a fraud investigation entails, since the modern fraud investigation substitutes more efficient computerized data searches from networked microcomputers located on investigators' desktops for the time consuming searches of dusty manual files located in remote locations used in the past. This more accurate and progressive definition of fraud investigation

supports the Board's position that ORIG successfully closed 2,481 cases as stated in its 2000 Annual Report.

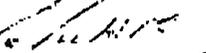
I understand that a copy of this response letter will be included as appendix to OSC's final ORIG audit report. Thank you for granting WCB the opportunity to respond to this audit report.

Very truly yours,



Robert R. Snashall
Chairman

Very truly yours,



John H. Burgher
Inspector General