

# STATE OF NORTH CAROLINA

## INVESTIGATIVE REPORT

EMPLOYMENT SECURITY COMMISSION OF NORTH CAROLINA

RALEIGH, NORTH CAROLINA

MARCH 2011

OFFICE OF THE STATE AUDITOR

BETH A. WOOD, CPA

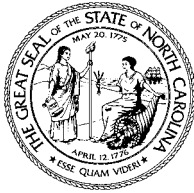
STATE AUDITOR

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**Beth A. Wood, CPA**  
State Auditor

STATE OF NORTH CAROLINA

# Office of the State Auditor

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## AUDITOR'S TRANSMITTAL

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The Honorable Beverly Perdue, Governor  
Lynn Holmes, Chairman, Employment Security Commission of North Carolina  
Members of the North Carolina General Assembly

Ladies and Gentlemen:

Pursuant to North Carolina General Statute §147-64.6(c)(16), we have completed an investigation of an allegation concerning employees of the Employment Security Commission of North Carolina. The results of our investigation, along with recommendations for corrective action, are contained in this report.

Copies of this report have been provided to the Governor, the Attorney General and other appropriate officials in accordance with G.S. §147-64.6 (c) (12).

Respectfully submitted,

A handwritten signature in cursive script that reads "Beth A. Wood".

Beth A. Wood, CPA  
State Auditor

March 22, 2011

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## INTRODUCTION

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The Office of the State Auditor received a complaint through the *State Auditor's Hotline* concerning inappropriate activity by an employee and inaction by management in the Information Services Section of the Employment Security Commission of North Carolina (ESC).

To conduct our investigation of this complaint, we performed the following procedures:

- Review of applicable North Carolina General Statutes, Office of State Personnel regulations, and ESC policies and procedures
- Examination of relevant ESC documents and records
- Interviews with ESC employees and management and individuals external to ESC

This report presents the results of our investigation. The investigation was conducted pursuant to North Carolina General Statute § 147-64.6 (c) (16).

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## ORGANIZATION OVERVIEW

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The Employment Security Commission of North Carolina (ESC) was created as the Unemployment Compensation Commission by the General Assembly in a special session in 1936. The Unemployment Compensation Act provided for the payment of unemployment compensation through local employment offices.

Originally established as a three-member body, ESC was changed to a seven-member commission effective July 1, 1941. The name changed by law to the Employment Security Commission effective April 1, 1947. Currently, ESC is led by a Chairman, a deputy chairman/chief operating officer, an assistant chairman for organizational effectiveness, an assistant chairman for finance and administration, and a chief legal counsel.

ESC's mission is to provide North Carolinians with high quality and accessible workforce-related services. ESC provides employment services, unemployment insurance, and labor market information to the State's workers, employers, and the public. ESC provides these services through four divisions: the Employment Services Division, the Unemployment Insurance Division, the Labor Market Information Division, and the Administrative Division.<sup>1</sup>

The Information Services Section within the Administrative Division has overall responsibility for ESC's information technology systems. Information Services has 118 positions<sup>2</sup> and is led by an Information Services Director who is the agency's Chief Information Officer. Information Services is sub-divided into program areas such as Operations/Help Desk, Network/Software Technical Support, Enterprise Applications, and UNIX Systems Administration Solaris/Linux. The Enterprise Applications area focuses on developing and maintaining databases that accumulate unemployment data and process unemployment benefit payments.

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<sup>1</sup> <http://www.ncesc.com/pms/aboutesc/history.asp>

<sup>2</sup> Beacon--OrgPlus Enterprise, Organizational Chart

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## **FINDINGS AND RECOMMENDATIONS**

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### **1) THE APPLICATIONS ANALYST'S PERFORMANCE EVALUATIONS DID NOT REFLECT HIS EXCESSIVE TARDINESS AND ABSENTEEISM.**

The Applications Analyst habitually reported to work late and charged sick leave for his tardiness in violation of State regulations and Employment Security Commission (ESC) policies. In addition, he often failed to notify his supervisor or co-workers that he would be late or absent. Nevertheless, the Applications Analyst's annual performance evaluations did not reflect his excessive tardiness, absenteeism, or non-compliance with policies because ESC management did not believe it affected his work performance.

The Applications Analyst's official, approved work schedule began at 9 a.m. According to his supervisor and co-workers, the Applications Analyst often arrived at work after 11 a.m. Co-workers told us that they had complained to management about his repeated tardiness but the behavior continued. The Applications Analyst's supervisor confirmed his regular tardiness and informed us that she called him if she had not heard from him by 11 a.m. The Deputy Information Services Director said that the Applications Analyst habitually arrived late without notification and that she instructed his supervisor to call him "for a wellness check" on five or six occasions in the past year. While there was no written State or ESC policy, an ESC informal expectation exists that employees notify their supervisor or another team member when they are late.

The supervisor provided e-mails documenting the Applications Analyst's inability to report to work on time as well as his failure to notify anyone of his tardiness. Listed below are a few examples.

- A March 23, 2009 e-mail sent at 11:31 a.m. from the supervisor to the Deputy Information Services Director stated, "(The Applications Analyst) is not in. I do not believe I have any notification from him regarding coming in late or so today. I called his house number, to check if all is well. He was not available so I left a message."
- A June 26, 2009 e-mail sent at 10:23 a.m. from the supervisor to the Applications Analyst noted, "Your work hours are mentioned as 9:00-5:30.... Please send an update...if those should be changed."
- A June 18, 2010 e-mail sent at 11:43 a.m. from the supervisor to the Applications Analyst and copied to the Deputy Information Services Director stated, "It is 11:30 a.m. and I have not heard from you. I have repeatedly requested you let me or someone on the team know if you are running late."

The Applications Analyst admitted that he has had problems arriving at work on time but did not believe his tardiness occurred often. In addition, the Applications Analyst agreed that there had been "about five times" when he was late and did not notify anyone and that management had to call him to check on his safety. However, he noted that he had always recorded leave when he was late.

## FINDINGS AND RECOMMENDATIONS (CONTINUED)

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Our analysis of time sheets<sup>3</sup> from June 2008 through June 2010 revealed that the Applications Analyst recorded sick leave on 259 of the 522 (49.6%) work days reviewed. He was absent the entire work day only 17 of those 259 days. On the remaining 242 days (93.4%) with sick leave recorded, he took leave for partial days. The Applications Analyst told us that he had not suffered from any serious illnesses that would have necessitated continuous sick leave. Instead, it appears that the Applications Analyst arrived late on those days. Because he charged sick leave on nearly half of the total work days and was at work an average of only 32 hours per week during the 25-month period reviewed, the Applications Analyst essentially worked a part-time schedule.

Despite the repeated tardiness and absenteeism and failure to notify anyone, the Applications Analyst's annual performance evaluations never reflected any work schedule problems. The supervisor told us that she did not include any comments about his tardiness because he always recorded sick leave for these absences. The Deputy Information Services Director said that she had spoken to the Applications Analyst about his tardiness and failure to notify on multiple occasions but she did not believe it warranted disciplinary action. She reasoned that they were not in a position to know his individual circumstances and that he had leave available to take. The Information Services Director did not believe that excessive tardiness or absenteeism should be reflected on the performance evaluation because it did not affect performance or productivity. However, the Information Services Director said that the Applications Analyst's supervisor had "numerous coaching/counseling sessions" about the tardiness.

Office of State Personnel (OSP) officials said that the repeated tardiness and absenteeism "clearly" should have been documented in the Applications Analyst's performance evaluations. OSP officials believed that the magnitude of the Applications Analyst's tardiness would impact his job performance and potentially cause morale issues for his entire work unit. In addition, OSP officials said that failure to notify anyone could qualify as "personal misconduct."<sup>4</sup> Further, an OSP official said that the Applications Analyst's supervisor and ESC management were not properly performing their duties by allowing the continued tardiness without taking disciplinary action.

The State Personnel Manual and the ESC "Leave Guidelines" require that "time lost for late reporting" should be charged as vacation leave. As a result, an employee who arrives after their scheduled work time should record vacation leave. In addition, the Guidelines note that "deductions should be made from the employee's pay where excessive tardiness or absenteeism occurs." Further, the Guidelines specify circumstances in which sick leave may be used. The Applications Analyst told us that he always used sick leave in lieu of vacation. He said he used sick leave instead of vacation leave for appointments such as vehicle repairs and errands so that he could convert excess vacation leave to sick leave at

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<sup>3</sup> "Monthly Time Distribution Report"

<sup>4</sup> Section 7 ("Disciplinary Action, Suspension and Dismissal") of the State Personnel Manual defines actions that rise to the level of "Unacceptable Personal Conduct."

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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calendar year-end.<sup>5</sup> Based on interviews with the Applications Analyst and his supervisor, he should have used vacation leave rather than sick leave for the majority of his absences. In addition, the Applications Analyst's supervisor and ESC management did not properly fulfill their responsibilities to adequately monitor his leave reporting.

The habitual tardiness and absenteeism have essentially turned the Applications Analyst from a full-time to a part-time employee. In addition, his work schedule can be disruptive to the team and affects the morale of his work unit as evidenced by the frustration expressed by team members. The failure of management to take action regarding his excessive tardiness and absenteeism may adversely affect the entire work unit's productivity.

### **RECOMMENDATION**

**ESC management should take disciplinary action against the Applications Analyst for his excessive tardiness and absenteeism and his violation of ESC policy. In addition, management should ensure that annual performance evaluations properly reflect both performance and behaviors by including all information observed during the review period. Failure to adequately document all behaviors could prevent ESC management from taking proper disciplinary action for future incidents. Further, given the reduced hours that the Applications Analyst actually worked and ESC management's assertion that he still fulfilled his duties, ESC management should evaluate the Application Analyst's position and job responsibilities to determine whether a need exists to justify a full-time position.**

#### **2) THE APPLICATION ANALYST'S WRITTEN WARNING WAS NOT REFLECTED IN HIS PERFORMANCE EVALUATION.**

On June 19, 2007, the Applications Analyst received a written warning for unacceptable personal conduct. The Applications Analyst was reprimanded for engaging "in a verbal exchange" that included the use of profanity toward a co-worker. This May 21, 2007 incident was considered a violation of "the ESC Workplace Violence Policy." The warning suggested methods of improving conduct and noted that "any future incident of unacceptable personal conduct will result in further disciplinary action up to and including dismissal." However, the Application Analyst's performance evaluation for the period April 1, 2007 through March 31, 2008 did not include any reference to the written warning or altercation.

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<sup>5</sup> State policy requires that employees may only accumulate 240 hours vacation leave at calendar year-end that can be carried forward to the next calendar year. Any vacation leave in excess of 240 hours shall be converted to sick leave each January 1.

## **FINDINGS AND RECOMMENDATIONS (CONTINUED)**

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The Applications Analyst received a “Very Good” overall rating during that evaluation period. Even under the “Teamwork” category,<sup>6</sup> the performance evaluation did not mention the written warning or the incident. Instead, he received a “Good” rating for “Teamwork” despite the category’s “Expectations” of “treats team members with respect and understanding.”

The Applications Analyst’s supervisor and co-workers cited other incidents in which he engaged in verbal confrontations both before and after the 2007 written warning. Multiple co-workers said that they reported various incidents, including other verbal confrontations, to management but that no apparent action was taken. Some co-workers expressed concerns that the confrontations could escalate to workplace violence. The Deputy Information Services Director said that employees had not expressed their concerns to management. She said that management had not been made aware of their concerns but added, “Maybe I should have been aware.”

The Applications Analyst admitted that he had multiple verbal incidents and “personality conflicts” with co-workers. He said that he had “a strong personality” and that he raises his voice “when excited.” He acknowledged that he “blew a fuse” during the incident that warranted a written warning.

Our review of the Applications Analyst’s performance evaluations from April 1, 2002 through March 31, 2010 revealed no references to any issues with team members other than a “needs to be more tactful” comment in the evaluation for April 1, 2003 through March 31, 2004 and “has improved on his verbal interface with others” on the April 1, 2004 through March 31, 2005 evaluation. The Applications Analyst confirmed that none of the verbal confrontations had been reflected in his performance evaluations.

However, on September 17, 2010, the Applications Analyst received an “Employee Counseling Form”<sup>7</sup> that cited an incident of “personal conduct” involving “inappropriate communication with a coworker.” The Information Services Director told us that action was taken because “the OSA investigators were around.”

OSP officials said that incidents that warrant written warnings “clearly” should be included in performance evaluations. OSP officials believed that these incidents impacted his job performance as well as the morale of the entire work unit. An OSP official said that the altercations appeared to be disruptive to the team. Finally, an OSP official stated that failure to address these issues may prevent the agency from taking future disciplinary action against the Applications Analyst.

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<sup>6</sup> ESC performance evaluations contain two primary areas for review: Primary Responsibilities and Key Behavioral Competencies. For the Applications Analyst, the Primary Responsibilities were “Systems Analysis,” “Project Coordination,” “Programming,” and “Documentation.” Key Behavioral Competencies were “Analysis,” “Initiative,” “Planning and Organizing,” “Teamwork,” and “Technical/Professional Knowledge.”

<sup>7</sup> ESC Employee Counseling Forms are “used to document unsatisfactory job performance or unacceptable personal conduct.” The form “can be used to show a pattern of unsatisfactory job performance and unacceptable personal conduct, and may become the basis for disciplinary action, up to and including dismissal.”

## **FINDINGS AND RECOMMENDATIONS (CONCLUDED)**

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### **RECOMMENDATION**

**ESC management should adequately address the Applications Analyst's interaction and communication issues. If incidents continue to occur, strong disciplinary action may be warranted. In addition, management should ensure that annual performance evaluations properly reflect both performance and behaviors by including all information observed during the review period. Failure to adequately document all behaviors could prevent ESC management from taking proper disciplinary action for future incidents.**

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**Employment Security Commission of North Carolina**

*Post Office Box 25903, Raleigh, NC 27611 919-733-7546*

**Beverly Eaves Perdue**  
*Governor*

March 18, 2011

**Lynn R. Holmes**  
*Chairman*

Beth A. Wood, CPA  
State of North Carolina  
Office of State Auditor  
20601 Mail Service Center  
Raleigh, NC 27699-0601

RE: Investigative Report

Dear Ms. Wood:

Enclosed please find the Employment Security Commission's (ESC) response to your office's investigation of a complaint made by an anonymous letter dated June 21, 2010. The letter, received in my office on June 22, 2010, concerned the conduct and attendance of a Business and Technology Application Analyst (Analyst) in the ESC's Information Systems Division. Pursuant to N.C.G.S. §147-64.6(c)(16), your office began an investigation of the matter on or about Monday, June 28, 2010. The ESC received the official report of the investigation on February 18, 2011.

**Recommendations:** ESC management should take disciplinary action against the Analyst for his excessive tardiness and absenteeism and his violation of ESC policy. In addition, management should ensure that annual performance evaluations properly reflect both performance and behaviors by including all information observed during the review period. Failure to adequately document all behaviors could prevent ESC management from taking proper disciplinary action for future incidents. Further, given the reduced hours that the Analyst actually worked and ESC management's assertion that he still fulfilled his duties, ESC management should evaluate the Analyst's position and job responsibilities to determine whether a need exists to justify a full-time position.

**Responses:** ESC management will use the agency's progressive discipline process to address the Analyst's excessive tardiness and absenteeism and his violation of ESC policy. The Analyst has taken vacation leave appropriately since the fall of 2010. Management will ensure that annual performance evaluations properly reflect both performance and behaviors by including accurate information observed during the review period.



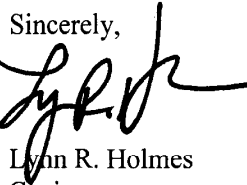
Beth A. Wood  
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ESC facilitates Performance Management Plan (PMP) workshops quarterly. ESC will provide additional PMP workshops for its managers and supervisors. The Analyst's immediate supervisor will receive additional training on ESC and OSP policies concerning absenteeism, tardiness, and sick and annual leave issues. ESC will also re-evaluate the Analyst's position and job responsibilities to determine whether a need exists to justify a full-time position.

In an effort to improve organizational efficiency and accountability, the IS Director's reporting chain of command has been changed as of February 1, 2011, and he now reports directly to the Chairman.

**Recommendation:** ESC management should adequately address the Analyst's interaction and communication issues. If incidents continue to occur, strong disciplinary action may be warranted. In addition, management should ensure that annual performance evaluations properly reflect both performance and behaviors by including all information observed during the review period. Failure to adequately document all behaviors could prevent ESC management from taking proper disciplinary action for future incidents.

**Responses:** ESC management will continue to address the Analyst's interaction and communication with co-workers. ESC management has discussed these issues with the Analyst when these issues have been brought to management's attention. If incidents continue to occur, additional disciplinary action, if warranted, will be taken to include mandatory referral to the Employee Assistance Program.

Sincerely,  
  
Lynn R. Holmes  
Chairman



## ORDERING INFORMATION

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Copies of this report may be obtained by contacting the:

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