



**The City of New York Department of Investigation
Rose Gill Hearn
Commissioner**

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TO: Commissioner Nicholas Scoppetta

FROM: Commissioner Rose Gill Hearn
FDNY Inspector General Jayme Naberezny

DATE: December 2006

RE: Investigation of Light Duty Abuse by Firefighter John Mayo

The following is a summary of an allegation received by the Department of Investigation that, while on Light Duty, Firefighter John Mayo was absent without leave for several months in the spring of 2006. This report summarizes DOI's findings that substantiated that Mayo was in fact absent without leave while on Light Duty, and his misconduct was facilitated by inadequate regulations and oversight regarding personnel who are placed on Light Duty. Thus, Mayo exploited the lack of regulations and received payment for approximately 9 weeks during which time he did not show up for work.

ALLEGATION

On July 12, 2006, Inspector General Naberezny was notified by the New York City Fire Department ("FDNY") Deputy Commissioner Mylan L. Denerstein that Firefighter John Mayo ("Mayo") had been Absent Without Leave ("AWOL") from the FDNY from April until June 2006. The initial allegation was made on June 28, 2006 by Chief Raymond Goldbach, Chief of FDNY Personnel. In fact, DOI learned that Mayo was put on Light Duty in January 2006. He took vacation from January 2006 through April 2006. This investigation concentrated on his whereabouts from April 2006 through June 2006. Thereafter, his whereabouts and assignment are accounted for.

THE INVESTIGATION

According to Chief Goldbach, on June 13, 2006 the Light Duty Desk notified the Bureau of Personnel that it would be receiving a Light Duty firefighter from Division 7, which includes fire companies serving in the Bronx.¹ On June 14, 2006, Mayo reported for duty at the Bureau of Personnel and was interviewed by Goldbach and Chief Rory Houten, Goldbach's executive officer. Goldbach told investigators that Mayo had been assigned to Light Duty at Division 7, but was AWOL from April until June 14, 2006. Goldbach and Houten questioned Mayo about his absence from duty since the completion of his vacation in April 2006. According to Chief Goldbach, when he questioned Mayo as to his whereabouts, Mayo was "uneasy and reluctant to answer" and stated simply that he was "on vacation." Mayo admitted to Goldbach that he had not been granted a six month vacation leave. Chief Goldbach then contacted BITS to pursue AWOL charges against Firefighter Mayo.

On June 28, 2006 the FDNY Bureau of Investigations and Trials ("BITS"), FDNY's disciplinary unit, began an investigation into the matter. BITS investigators went to Division 7 to interview Chief James Mulrenan, the Deputy Chief in Division 7, and Lt. Matthew Donachie, the Division's Administrative Officer, and to retrieve relevant documents. Mulrenan was responsible for supervising Mayo's original Light Duty assignment in Division 7. Donachie was responsible for administering the Light Duty personnel for Division 7. BITS also obtained payroll, Bureau of Health Services ("BHS") and personnel records regarding Firefighter Mayo.

On July 11, 2006, the case was transferred to the Office of Inspector General (OIG) of the Department of Investigation. All of the officers from Ladder 50 (Mayo's original home assignment) and Division 7, as well as Firefighter Mayo, were interviewed by the OIG.

INTERVIEWS

Ladder 50 Officers

Captain Jeffrey Smithwick, the Captain in charge of Ladder 50, was interviewed regarding the preparation process for Time Keeping and Payroll Reports (TPRs) at Ladder 50, Mayo's home assignment. (Firefighters keep track of sick leave, medical leave, Light Duty, overtime and other "exceptions" to regular duty assignments. The officer on duty is supposed to initial each firefighter's TPR at the end of each shift.) Smithwick stated that TPRs are filled out at the completion of each tour by the officer on duty. He advised that even though the officers are required by regulations to initial each tour on the TPR, they do not always comply. The TPRs are then finalized on the following Saturday's day tour. (Finalized means separating the TPRs, which are two-part

¹ A Firefighter is placed on "Light Duty" when he is capable of some work, but is unable to perform full firefighting duties because of injury or illness, as determined by a doctor at the FDNY Bureau of Health Services ("BHS"). A firefighter is given an appropriate assignment, based on his skills and the nature of his disability, by the Light Duty Desk, which is located in FDNY Operations at Metrotech Center.

forms, and batching them for delivery to FDNY Payroll Office at Metrotech.)

Captain Smithwick was shown copies of Mayo's TPRs obtained from Ladder 50 for the period of April to June 2006. He could not recall completing any of the TPRs although it would have been his job to do so on the tours that he worked. Mayo's TPRs for April to June 2006 did not reflect any medical leave, Light Duty, or vacation. Thus, the TPRs as submitted erroneously suggested that Mayo was working regularly scheduled tours during the April to June 2006 time period. The TPRs did not contain the initials of any officer on them and they were accepted without those initials. Indeed, an "X" was placed on almost every one of Mayo's TPRs. By placing an "X" on the TPR, one or more of the three officers assigned to Ladder 50 was attesting that Mayo was actually present for duty and working; that he was not on Light Duty; and there were no other exceptions to Mayo's regular tour of duty. In fact, all three officers have admitted that Mayo was not physically in the firehouse from April to June 2006. They also admitted that they did not initial the TPRs, they never do so, and the rule requiring the initial is not enforced.²

Captain Smithwick was asked about the Light Duty policy and how the Ladder Company is notified by Personnel when a member is assigned to Light Duty. He stated that the firehouse is sometimes notified by fax of the member's status and assignment. He recalled learning of Mayo's Light Duty status by fax (he did not recall when) but did not recall seeing him in the firehouse after January 2006. The Ladder 50 "pass along book" (a diary of events noted during the tour) contains a notation, dated March 8, 2006, stating "Mayo calls and states going full duty 3/15." Smithwick did recall, as did Lt. Daniel Conklin of Ladder 50, being told by a "Light Duty lieutenant at the division" to give Mayo vacation marks for five weeks beginning at the end of January. His vacation would have ended on April 3, 2006. Sometime later, in May or June 2006, Smithwick recalled receiving a call from Lt. Conklin stating that Division 7 was looking for firefighter Mayo. Conklin also expressed concern to Smithwick that they (Ladder 50) "were going to get in trouble because Division 7 could not find Mayo and Ladder 50 was filling out his TPRs." Captain Smithwick knew that Mayo had been assigned on Light Duty to Division 7 and responded "it's not our problem, he is not assigned to us."

Lt. Christian Delessio, also assigned to Ladder 50, stated that he first became aware that there was a problem with Mayo when a "Light Duty officer" called the firehouse looking for Mayo in June 2006. The Light Duty officer asked Delessio if he had seen Firefighter Mayo. The Light Duty officer told Delessio that no one knew where Mayo was. Delessio made attempts to contact Mayo, including by calling Mayo and leaving him a message. Delessio denied marking an "X" on Mayo's TPRs.

Lt. George Diaz, assigned to Ladder 50, confirmed that Mayo's TPRs were done at the firehouse during the time he was on Light Duty although he stated he did not recall

² The failure to have initials of officers on TPRs is a chronic problem Department-wide, not just Ladder 50. While the officers know the Department rules require the initials, they stated that the rule is honored in the breach. This makes for little to no accountability for the firefighters whereabouts for which they are being paid.

completing any of them. Diaz stated that he did not recall getting any official notification of Mayo's Light Duty status. Diaz stated he saw Mayo at the firehouse in April or May, sometime after Diaz returned from his own vacation in 2006. During this encounter, Mayo asked Diaz to complete the paperwork to carry over his vacation from 2005 to 2006. Within a day after this request, a chief from the 7th Division called the firehouse and instructed Diaz not to fill out the request. Diaz then informed Mayo that he was instructed not to fill out the carry over request. Several weeks later, Diaz recalled Mayo was at the firehouse looking for his TPRs because, Mayo said, "he needed the records in relation to his TPR/vacation issues."

Although all of the officers from Ladder 50 recall Mayo's TPRs for April through June 2006 were housed at the firehouse, none of them could recall completing them. There were no initials on any of the TPRs to identify the officers who may have completed them. The TPRs were completed with "X"s signifying Mayo was on regular duty for which he was paid, and yet he was not at the firehouse at that time. Whoever processed them should have known that. None of the officers interviewed admitted to doing the TPRs.

Division 7

Mayo was apparently transferred from Ladder 50 to Division 7 in December 2005, after "an incident with the media" had occurred.³ **Lt. Brian Singer** is currently a "covering officer"⁴ in Division 7 and has been assigned to the Division since June 2005. Singer's duties at the Division included basic office management, distribution of paperwork and assignments. Singer stated that a fax with a list of Light Duty members would arrive by fax from the Light Duty Desk every Thursday. Singer was interviewed at DOI on September 28, 2006.

In December 2005, Mayo was assigned to Division 7. He worked there until he went on approved vacation that began at the end of January 2006. Prior to going on vacation, Singer recalls Mayo telling him that he (Mayo) had received notice that he would be "boarded"⁵ at the end of March due to a medical condition. Singer and Mayo totaled up Mayo's vacation hours from Ladder 50 for 2005 and found that Mayo had accumulated enough time to be on vacation until on or about April 1. According to Singer, even though Mayo was assigned to Division 7, Singer understood that Mayo's TPRs would nevertheless continue to be completed at Ladder 50.⁶ Lt. Singer advised an officer at Ladder 50 (Singer could not recall which officer) to give Mayo a vacation mark for five weeks beginning January 23, 2006 ending on approximately April 3, 2006.

³ In January 2005, on "Black Sunday," three firefighters died in two different fires in the Bronx and Brooklyn. The deaths in the Bronx were attributed to illegal apartment conversions. Mayo appeared in several media articles because, allegedly, he owned buildings with illegally converted apartments.

⁴ A "covering officer" is a substitute for the regular officer on duty.

⁵ A firefighter who believes that he has become disabled due to a work related injury or illness must appear before the "1B" board, established by the Pension Law, and prove his disability. A firefighter who has been granted a disability pension by the 1B board is considered "boarded."

⁶ This practice is another systemic accountability problem that should be analyzed by the Department.

Unbeknownst to Lt. Singer, Firefighter Mayo never returned to work in April. In June, when questions were being asked about Mayo's whereabouts, Singer called Mayo on his cell phone and asked where he was. Mayo responded that he was not at work and was on medical leave. Mayo then asked Singer if his vacation could be extended until June. Singer told Mayo that he could not do that. About a week later, Singer received a call from Mayo. Mayo told Singer that he was put on medical leave effective April through June 2006 and stated that he had a note from BHS. As more fully discussed below, that was not accurate.

Chief Mulrenan, a Deputy Chief in Division 7, stated that in late December or January 2006, Mayo spoke to Lt. Singer regarding taking vacation leave and the amount of hours that he had accrued in 2005. Mulrenan confirmed that Mayo was granted vacation leave from on or about January 23, 2006 until on or about April 1, 2006. Chief Mulrenan stated, however, that after April, Mayo stopped appearing on the Light Duty sheets for Division 7 that were sent every Thursday to the Division from the Light Duty Desk.⁷ Mulrenan stated that because of this, everyone at the Division assumed that Mayo was no longer on Light Duty or had been reassigned. Chief Mulrenan made no further inquiry as to where Mayo was at that point. Mulrenan also stated that, to his knowledge, the TPRs for Mayo were never forwarded to the Division for preparation but remained at Ladder 50.

In June 2006, Mulrenan asked Lt. Matthew Donachie, who was then acting in a Light Duty capacity at Division 7, to find Firefighter Mayo. Mulrenan stated that Donachie eventually tracked Mayo down and found him in Atlanta, Georgia at his grandmother's house. Mulrenan has not had any contact with Mayo since then.

Lt. Matthew Donachie was interviewed at DOI on September 28, 2006. Lt. Donachie was a Light Duty officer at Division 7 from January to August 2006, where his duties included managing the Light Duty firefighters assigned to the Division. He stated that during the period from February to March 2006 there was a large influx of Light Duty members assigned to the Division and no procedure to manage their whereabouts. Division 7 was responsible for approximately 100 Light Duty personnel and Donachie created a system to manage these personnel. Every Thursday the Light Duty Desk would fax the Light Duty list to the Division. From this list, Donachie created a spreadsheet of all members assigned to the Division and their assignments. Further, Donachie began doing "spot checks" of their whereabouts. He explained that he would choose about seven members at random from the list and contact their captains. Donachie stated that "for the most part, everyone was where they were supposed to be."

In June of 2006, Donachie discovered that two members were missing from the list. Donachie began a search for these two firefighters and discovered that one of them had resigned from the FDNY to obtain employment elsewhere. The other member, John

⁷ In fact, Mayo does not appear on any Light Duty sheets obtained by BITS and DOI from the Light Duty Desk from April through June 2006.

Mayo, did not appear on the Light Duty sheet so Donachie began to make phone calls in search of him, beginning with Ladder 50. Donachie went through all of the contact numbers that were on file for Mayo and eventually located him in Atlanta, Georgia. Donachie informed Mayo that he had to report to work. A couple of days after this conversation, Mayo reported to the Division, out of uniform, and Donachie directed him to see Chief Rory Houten at Headquarters.

Firefighter John Mayo

According to pension records, Mayo filed an application for disability retirement in November 2005. His case was sent to the 1-B board on March 16, 2006. According to FDNY records he has been on Light Duty assigned to Division 7 since December 1, 2005. His duty status did not change until July 5, 2006 when he was put on medical leave. BHS records indicate that Mayo visited BHS doctors six times between December 1, 2005 and June 29, 2006 and was kept on continued Light Duty after every examination. On June 22, 2006, Mayo was interviewed and examined by the 1-B physicians and was awarded disability.

Firefighter Mayo was interviewed at DOI on October 2, 2006. On January 23, 2006, Mayo stated that he began an approved extended vacation from which he was due back on or about April 1, 2006. He admitted that he did not return to duty after the vacation. Mayo claimed that he was never told when he had to return from vacation even though he admitted he understood that he was approved for about ten weeks beginning January 23, 2006 and ending on or about April 1, 2006. Mayo admitted that he didn't have "unlimited vacation," and he asserted that he should have been on medical leave when his vacation ended. In fact, according to the Department records discussed above, Mayo should have gone back on Light Duty following his vacation as he had not been placed on medical leave. Mayo maintained that in his view, he "should have been" placed on medical leave and didn't think he had to come back to work "until they called him." Indeed, Mayo made what was approximately his fourth visit to BHS on May 13, 2006, where he again saw Dr. Weiden, the doctor did not put him on medical leave, but instead, continued to keep him on Light Duty as a result of this visit. Mayo returned to BHS again on June 3, 2006 and was again kept on Light Duty as a result of this visit. Thus his claim that he "should have been on" medical leave is baseless and was admittedly his view, not that of the Department.

Mayo stated that on June 10 or 11, he received a call on his cell phone from an officer at Division 7. This officer was later determined to be Lt. Matthew Donachie. While Donachie told DOI that he believed Mayo was in Georgia when he made the call, Mayo stated that he was at the airport in New York when he received the call. Nevertheless, Mayo stated that he continued his trip to Georgia and returned to Division 7 upon his return. Three days later, on June 13, Mayo arrived at FDNY headquarters and spoke to Chief Goldbach.

RECOMMENDATIONS AND CONCLUSIONS

Mayo should be disciplined for his failure to show up for work and required to repay any monies owed to the City in connection therewith. Mayo's misconduct makes manifest the main conclusion that is drawn from this investigation, which is that there is virtually no accountability for members assigned to Light Duty positions within the FDNY. Due to the prevalence of members on Light Duty, it cannot be known whether others are or have similarly exploited their Light Duty status. To be sure the majority of members on Light Duty are not exploiting their Light Duty status. However, currently there are no rules and regulations, other than a memo distributed to all borough commands by the Chief of Operations, governing Light Duty assignments of injured members. That memo, dated December 15, 2004, simply states that Light Duty members are required to work 8 hours per day except when they require physical therapy, that they must sign the company journal of the command where they are assigned, and that their supervisors are responsible for filling out their TPRs.

As it stands presently, members are assigned to Light Duty status by the Bureau of Health Services. Their work status is given to the Light Duty Desk which then notifies the command where that member will report to work. A list of Light Duty members is faxed to each division on Thursday of each week. The division is responsible for the assignment and coordination of Light Duty members.

Clearly, a written regulation is needed to manage members on Light Duty. The FDNY should be required to strengthen the communication link among BHS, the Light Duty Desk, and commands where the members are assigned to achieve maximum accountability. This can be accomplished by granting BHS and Divisions computer access to the Light Duty Desk to ensure that information on members is readily available.

Further, officers who are responsible for Light Duty members must be held accountable for their whereabouts. All of the officers in this case, with the exception of Lt. Donachie, failed to notice that Mayo had been missing from work for an extended period of time. Officers should be diligent in making appropriate notifications (e.g. Light Duty Desk) if a Light Duty member fails to report for duty. At the very least, officers should know who is assigned to them and ask questions if the member is absent.

TPRs must be filled out truthfully and accurately according to the guidelines established by the FDNY. Officers should be required to initial TPRs at the end of each tour. No "X" marks should be entered on TPRs if the member is on Light Duty; only the appropriate Light Duty codes should be used. The FDNY should also consider using technology to keep track of assignments and hours and eliminate TPRs altogether.

We have shared preliminary findings of this investigation with the FDNY and they have initiated a number of reforms. Specifically, the FDNY has drafted a new Light Duty Policy that will address these aforementioned issues. DOI reviewed the draft policy and the DOI recommendations discussed above are reflected in the draft policy.

FIRE DEPARTMENT ACTIONS TO DATE

The Fire Department has implemented a new Light Duty Policy to improve both the utilization and tracking of Light Duty personnel. This seven-page Policy, the first of its kind to meet this long-standing issue, contains numerous provisions that improve the Department's ability to ensure that members on Light Duty fulfill the work assignments they are given. Among other new accountability measures, the Light Duty Policy: (1) requires officers and other supervisors to print their initials and badge number on every approved Time and Payroll Report (TPR) for Light Duty members. The Policy also prohibits Officers from using "X" marks on TPR or other forms as substitutes for correct Light Duty codes; (2) requires all Light Duty members to sign in and out of bound unit journals, which will be provided at all Light Duty work locations; (3) provides for random, unannounced audits of Light Duty work locations to confirm the assigned member's presence and that the member has properly signed the unit journal. Audit results will be submitted within two work days to the Fire Commissioner, First Deputy Commissioner and Chief of Department; and (4) requires Officers and other supervisors to contact the Department's Light Duty Desk (which assigns members to Light Duty jobs) if a member on Light Duty fails to report to his or her scheduled work assignment. The Department is confident that strict enforcement of these and other provisions of the new Light Duty Policy will significantly increase performance and member accountability.