

March 19, 2009

Mr. Howard H. Roberts Jr.  
President  
MTA New York City Transit  
2 Broadway, 30th Floor  
New York, NY 10004

**Re: Michael Pautke, Pass No. 685571  
MTA/OIG #2009-01**

Dear Mr. Roberts:

The Metropolitan Transportation Authority Office of the Inspector General (OIG) has substantiated an anonymous complaint that Michael Pautke, Transit Electro-Mechanical Maintainer, Pass No. 685571, is performing contracting work while out on sick leave and collecting Workers Compensation.

### **INVESTIGATION**

On July 15, 2008, Pautke tripped on a raised concrete threshold while exiting a Fan Plant Motor Control Room injuring his right hand. The incident, which was witnessed by his supervisor, Clarence Facey, was diagnosed as a sprained right wrist ultimately requiring surgery.<sup>1</sup> He was found to be fit to return to work with restrictions including no lifting, pushing or pulling objects over 10 pounds, as well as no driving or operating mechanical equipment. However, the Hydraulics Infrastructure Department had no work available within the scope of those restrictions and Pautke remained at home. He has received full compensation since July 15, 2008.

OIG investigators conducted surveillances to determine if Pautke was performing contracting work. On November 3, 2008, OIG investigators videotaped Pautke carrying two large plastic bags, placing them into the back of a pickup truck with his right hand and removing a red jug container from the truck.

The following day, November 4, 2008, Pautke filed a Daily Activities Questionnaire certifying that he spends his day watching television and that he does not perform exercise or physical activities of any type either at home or on the outside. He also claimed that he “has not worked in any capacity for any employer, self-employment or for pay or as a volunteer” since the injury. In addition, he claimed he requires assistance from his wife “with lifting and carrying.” On November 12, 2008, OIG investigators conducted a second surveillance and videotaped Pautke lifting a ladder from the back of a pick-up truck and carrying it into a laundromat where he was observed behind a row of washing machines pulling an electrical cord.

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<sup>1</sup> Cubital Tunnel surgery was performed on Pautke’s right elbow December 2, 2008.

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On December 22, 2008, Pautke was interviewed by OIG personnel and shown the surveillance videotapes. He admitted that he was the individual performing the tasks on videotape and that the two plastic bags he placed in the back of the pick-up truck weighed "about 20 pounds." He admitted that the ladder he removed from the truck bed and carried into the laundromat weighed "about 20 to 25 pounds." He stated he received \$500.00 for his work at the laundromat.

A check with NYC Transit Division of Maintenance of Way revealed that Pautke's Dual Employment Questionnaire stated that he has no outside employment. When questioned, Pautke stated he was unaware that he had to file a dual employment form for outside employment.

OIG consulted Jill Johnson, Senior Director, Workers Compensation/No Fault regarding eligibility for Workers Compensation. She stated that employees cannot work in any capacity while receiving full compensation. She cited New York Workers Compensation Law Section 114-a, "Disqualification for False Representation," which reads in pertinent part:

If for the purpose of influencing any determination regarding any such payment, a claimant knowingly makes a false statement or representation as to a material fact, such person shall be disqualified from receiving any compensation directly attributable to such false statement or representation.

### **FINDINGS**

OIG's investigation substantiated that Pautke made false representations as to his physical activities on his November 4, 2008 Daily Activities Questionnaire in violation of New York Workers Compensation Law Section 114-a.

We are referring this matter to you and to the NYC Transit Law Department, Workers Compensation Division for appropriate action.

Please advise me of any actions that you plan to take with regard to the foregoing. If you have any questions or need additional information, please contact Chris Prather, Deputy Inspector General, Legal and Investigation Unit.

Very truly yours,

Michael L. Boxer  
Special Counsel

cc: George Perry, Executive Agency Counsel  
NYC Transit Law Department, Workers Compensation Division