

March 5, 2003

WILLIAM J. BROWN
VICE PRESIDENT, SOUTHEAST AREA OPERATIONS

SUBJECT: Audit Report – Sexual Harassment Prevention Measures in
the Central Florida and South Georgia Districts - Southeast Area
(Report Number LH-AR-03-005)

This report presents the results of our audit of sexual harassment prevention measures in the Central Florida and South Georgia Districts - Southeast Area (Project Number 02YG010LH007). Our overall objective was to determine if the districts had adequate policies and procedures in place to prevent sexual harassment in the workplace, and to effectively address sexual harassment complaints to mitigate liability. This report is based on a self-initiated review, and is the fifth in a series of ten reports we will be issuing regarding sexual harassment prevention measures Postal Service-wide.

We found that the Central Florida and South Georgia Districts' sexual harassment policies and procedures were adequate and that employees found responsible for sexual harassment or inappropriate actions/comments were appropriately disciplined or corrective action was taken. We also found that although no Postal Service national policy existed regarding the retention time for informal complaint files, both districts were retaining files indefinitely and storage of files was adequate. We also found, however, that some areas needed improvement. Specifically, some managers/supervisors found responsible for sexual harassment or inappropriate actions/comments in the Central Florida District were not considered for exclusion from the Pay for Performance Program and some sexual harassment complaints in both districts were not effectively addressed.

The report included two recommendations to help the Central Florida and South Georgia Districts improve their sexual harassment prevention program. Management agreed with recommendation 1 and part of recommendation 2. The actions taken or planned should correct some of the issues identified in this report. Management disagreed, however, with the finding that some complaints were not effectively addressed, and disagreed with part of recommendation 2 to fully document detailed evidence of the actions taken to address complaints. The Office of Inspector General (OIG) considers that part of recommendation 2 as unresolved and will address it in a separate capping report to the senior vice president, Human Resources.

Management's comments and our evaluation of these comments are included in this report.

The OIG considers recommendation 2 significant, and therefore, requires OIG concurrence before closure. Consequently, the OIG requests written confirmation when corrective actions are completed. This recommendation should not be closed in the follow-up tracking system until the OIG provides written confirmation that the recommendation can be closed.

We appreciate the cooperation and courtesies provided by your staff during the audit. If you have any questions, please contact Chris Nicoloff, director, Labor Management, at (214) 775-9114, or me at (703) 248-2300.

B. Wayne Goleski
Assistant Inspector General
for Core Operations

Attachment

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EXECUTIVE SUMMARY

Introduction

This report presents the results of our audit of sexual harassment prevention measures in the Central Florida and South Georgia Districts, located in the Southeast Area. This review was self-initiated to determine if the districts had adequate policies and procedures in place to prevent sexual harassment in the workplace, and to effectively address sexual harassment complaints to mitigate liability.

Results in Brief

The audit revealed that the Central Florida and South Georgia Districts' sexual harassment policies and procedures were adequate and that employees found responsible for sexual harassment or inappropriate actions/comments were appropriately disciplined or corrective action was taken. We also found that although no Postal Service national policy existed regarding the retention time for informal complaint files, both districts were retaining files indefinitely and storage was adequate. We also found, however, that some areas needed improvement. Specifically, some managers/supervisors found responsible for sexual harassment or inappropriate actions/comments in the Central Florida District were not considered for exclusion from the Pay for Performance Program, and some sexual harassment complaints in both districts were not effectively addressed.

Summary of Recommendations

The report included two recommendations to help the Central Florida and South Georgia Districts improve their sexual harassment prevention program. We recommended the vice president, Southeast Area Operations, instruct the Central Florida District manager, to establish controls to ensure managers/supervisors disciplined for sexual harassment or inappropriate actions/comments of a sexual nature are considered for exclusion from all pay for performance or other bonus programs; and that both districts establish controls to ensure managers and supervisors effectively address all sexual harassment complaints and inappropriate actions/comments of a sexual nature, and fully document detailed evidence of the actions taken to address complaints.

Summary of Management's Comments

Management agreed with recommendation 1 and stated it would establish controls that were consistent with program guidelines. They said, however, no instruction or controls could be established at this time because there is no pay for

performance program in place for Executive and Administrative Schedule employees. They said there is a new pilot program for Postal Career Executive Service employees; however, any controls initiated at the district level would need to occur after national implementation of that program.

Management agreed with the part of recommendation 2 that managers and supervisors must effectively address all sexual harassment complaints. Management disagreed, however, with the finding that some sexual harassment complaints were not effectively addressed and with the part of recommendation 2 to fully document detailed evidence of the actions taken to address complaints. They stated Postal Service guidelines and policies allow managers' maximum flexibility to address complaints simply and directly between the parties without a formal written record; and although all matters of sexual harassment will be fully investigated, not all will result in a full written record.

Management's comments, in their entirety, are included in Appendix B of this report.

**Overall Evaluation of
Management's
Comments**

Management's actions taken or planned are responsive to recommendation 1 and part of recommendation 2. Management's comments are not responsive to the second part of recommendation 2. We believe documentation plays an important role in determining credibility and mitigating liability. We do not agree with management's rationale for not documenting actions taken to address complaints. Postal Service policy is clear that serious complaints must be documented, and further provides that "When in doubt, document." The Office of Inspector General considers recommendation 2 unresolved and will address it in a separate capping report.¹

¹ We will issue a capping report on the audit results for the nine areas we visited, including Southeast Area, where recommendations regarding national policy will be made to the senior vice president, Human Resources.

INTRODUCTION

Background	Sexual harassment is defined by law as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature that becomes a term or condition of employment. According to a Postal Service Law Department report, in fiscal years (FY) 2000 and 2001, the Postal Service paid approximately \$394,833 ² for sexual harassment judgments and settlements in the Southeast Area.
Objective, Scope, and Methodology	Our overall objective was to determine if the districts had adequate policies and procedures in place to prevent sexual harassment in the workplace, and to effectively address sexual harassment complaints to mitigate liability. Our objective, scope, and methodology are discussed in Appendix A.
Prior Audit Coverage	We did not identify any prior audits or reviews related to the objective of this audit in these two districts.

² This amount represents eight complaints. None of these complaints were within the scope of our review.

AUDIT RESULTS

Policies and Procedures Adequate

We found that the Central Florida and South Georgia Districts had adequate policies and procedures that should enable district management to identify and prevent sexual harassment or inappropriate actions/comments, and provide management with guidance to respond effectively to complaints, thus mitigating liability and costs.

We also found that the districts:

- Established as district policies, Postal Service Publication 552, Manager's Guide to Understanding Sexual Harassment, and Publication 553, Employee's Guide to Understanding Sexual Harassment.
- Established investigative teams at the district level to investigate all complaints.

Additionally, we found:

- The Southeast Area partnered with diversity, law, and Equal Employment Opportunity departments and developed a tool-kit to assist managers in addressing sexual harassment complaints.
- The Central Florida District established a sexual harassment awareness week and sent reminders to all employees of the Postal Service's zero tolerance policy. In addition, the district provided a booklet to employees during orientation entitled, How to Recognize and Prevent Sexual Harassment in the Workplace.

Employees Appropriately Disciplined or Corrective Action Taken

We found that employees responsible for sexual harassment or inappropriate actions/comments were appropriately disciplined, or corrective action was taken.

Equal Employment Opportunity Commission 1990 and 1999 guidelines recommended agencies take immediate and appropriate corrective action, including discipline, when sexual harassment occurred. Postal Service policy stated employees engaged in sexual harassment would be subject to disciplinary action, up to and including removal. The policy also stated that disciplinary action might result even if the conduct was not sexual harassment as defined by the law, but was inappropriate and of a sexual nature.

Our review of formal and informal³ complaints in the Central Florida and South Georgia Districts showed that:

- Of the 24 formal and informal sexual harassment complaints filed in the Central Florida District, sexual harassment or inappropriate actions/comments were not substantiated in 17, substantiated in 4, and inconclusive in 2. For the one remaining complaint, management did not conduct an inquiry or investigation to determine whether sexual harassment or inappropriate actions/comments had occurred, and thus no discipline or corrective action was considered or taken.
 - In the four substantiated complaints, four employees were involved and three were appropriately disciplined or corrective action was taken. The remaining employee retired before discipline could be issued.
 - In the one inconclusive complaint, corrective action in the form of service talks, were given to all employees in the facility.

³The term "informal" complaint refers to those not filed in the Equal Employment Opportunity process.

- Of the 12 formal sexual harassment complaints filed in the South Georgia District, sexual harassment or inappropriate actions/comments were not substantiated in 8, and substantiated in 4.
 - In the four substantiated complaints, four employees were involved and all were appropriately disciplined or corrective action was taken.

**Some Managers/
Supervisors Not
Considered for
Exclusion from Pay
for Performance**

We found four employees in the South Georgia District were found responsible for sexual harassment or inappropriate actions/comments, and none were eligible for the Pay for Performance Program.

We also found that four employees in the Central Florida District were found responsible for sexual harassment or inappropriate actions/comments. Two were managers/supervisors who were eligible for the Pay for Performance Program.⁴ However, neither was considered for exclusion. One manager/supervisor received \$2,052 and the other received \$2,824.

According to Central Florida District management, the only employees excluded from the Pay for Performance Program were those who: (1) received an unacceptable performance evaluation, (2) were downgraded from a management/supervisory position to a craft employee, or (3) were terminated.

Equal Employment Opportunity Commission guidelines included a reduction in wages as an effective corrective measure to stop harassment and ensure it does not reoccur. Postal Service policy stated an employee whose conduct was clearly unacceptable may be excluded from the Pay for Performance Program. The Postal Service described unacceptable behavior as “notoriously disgraceful or immoral conduct, or other conduct prejudicial to the Postal Service.”

We believe sexual harassment meets the Postal Service’s definition of unacceptable behavior or immoral conduct and all managers/supervisors found responsible for sexual harassment or inappropriate actions/comments of a sexual nature should be considered for exclusion from pay for performance and bonus programs. Such exclusion could be an effective corrective measure to stop harassment and ensure it does not reoccur.

⁴ The Pay for Performance Program, formerly referred to as the Economic Value Added Program, was an incentive award program for nonbargaining employees. The amount of money received by each employee was based on a group achievement of performance targets and financial measurements.

Recommendation	We recommend the vice president, Southeast Area Operations, instruct the Central Florida District manager to: 1. Establish controls to ensure managers/supervisors disciplined for sexual harassment or inappropriate actions/comments of a sexual nature are considered for exclusion from all pay for performance or bonus programs.
Management's Comments	Management agreed with our recommendation that managers/supervisors disciplined for sexual harassment or inappropriate actions/comments of a sexual nature should be considered for exclusion from the pay for performance or bonus programs, if such consideration is consistent with program guidelines. Management stated, however, no instruction or controls can be established at this time because there is no pay for performance program for Executive and Administrative Schedule employees. Management stated that a new program is currently being piloted for Postal Career Executive Service employees, and any controls initiated at the district level for exclusion consideration would need to occur after the national program is implemented.
Evaluation of Management's Comments	Management's actions taken or planned should correct the issues identified in the report.

**Some Complaints Not
Effectively Addressed**

Our audit disclosed that 8 of the 36 sexual harassment complaints were not effectively addressed in the Central Florida and South Georgia Districts. Equal Employment Opportunity Commission guidelines defined an “effective” investigation as a prompt, thorough, and impartial review with documented evidence. Postal Service policy required managers to conduct sexual harassment inquiries promptly and investigate all complaints, and document “serious” complaints with detailed evidence.⁵

We found that:

- Postal Service national policy did not require that “all” complaints be documented—only those that managers believed were “serious.”
- Of the 24 formal and informal complaints filed in the Central Florida District, 20 were effectively addressed and 4 were not.
 - In the four not effectively addressed, one was not prompt, one was not impartial or documented, one was not documented, and one was not investigated.
 - District management provided numerous reasons why the four complaints were not effectively addressed. For example, for the complaint that was not prompt, we found it was not addressed for 9 days. Management stated this was the amount of time necessary to assemble trained investigators to conduct the investigation.
- Of the 12 formal and informal complaints filed in the South Georgia District, 8 were effectively addressed and 4 were not.
 - In the four not effectively addressed, one was not prompt, two were not documented or thorough, and one was not impartial.

⁵ Publication 552 was revised effective September 2001, and replaced the term “serious” with the statement “some complaints can be resolved simply and directly between the parties without the need for a formal written record.” The revised policy also provided that managers/supervisors needed to decide early in the process whether formal documentation was warranted, and that a good rule of thumb was when in doubt, document.

- District management provided numerous reasons why the four complaints were not effectively addressed. For example, in the complaint we determined was not impartially investigated, the files contained allegations that the postmaster, who was the alleged harasser, coached witnesses before they were interviewed by the investigative team. District management disagreed that the postmaster's involvement was a factor because witnesses were instructed to be truthful during their interview.

Complaints not effectively addressed could result in liability because the Postal Service cannot demonstrate it exercised reasonable care to prevent and promptly correct harassing behavior. We believe the lack of a Postal Service policy requiring documentation of all complaints may have been a factor. We will address this issue in a separate report.

Recommendation

We recommend the vice president, Southeast Area Operations, instruct the Central Florida and South Georgia District managers to:

2. Establish controls to ensure managers and supervisors effectively address all sexual harassment complaints and inappropriate actions/comments of a sexual nature, and fully document detailed evidence of the actions taken to address complaints.

**Management's
Comments**

Management agreed with part of the recommendation that all sexual harassment complaints be promptly, thoroughly, and impartially investigated. However, management disagreed with the finding that some complaints were not effectively addressed. Management also disagreed, with the part of the recommendation to fully document detailed evidence of the actions taken to address complaints. They stated that all matters of sexual harassment would be fully investigated, however, not all of them will result in a full written record.

Management stated that the finding that some complaints were not effectively addressed, was based on subjective standards that were not clearly defined or consistent with current policy. For example, they stated that timely was defined as, within 48 hours, and that there was no 48-hour standard in any published policies regarding investigations of sexual harassment. They said the time required to investigate allegations will vary depending on the circumstances of each case. Further, management stated the categorization of one South Georgia complaint as “not impartial” was apparently based on an “allegation” that the postmaster “coached” witnesses—telling them to tell the truth—before they were interviewed by an investigative team. Management stated this allegation was not supported.

Regarding the recommendation to fully document actions taken to address complaints, management stated that Postal Service policy allows some matters to be resolved simply and directly between the parties without a formal written record. They said this allows managers’ maximum flexibility and speed to deal with those minor, one-time events such as an off-color joke or careless remark. Management stated to require documentation on every minor incident of inappropriate workplace behavior would potentially undermine the ability of supervisors to quickly and effectively resolve minor workplace issues. Additionally, they stated when frivolous and baseless charges of harassment are levied, managers need not create a written record on the unjustly accused employee. Management stated that although all matters will be fully investigated, not all complaints would result in a full written record with detailed evidence.

**Evaluation of
Management’s
Comments**

Management’s actions taken or planned is responsive to the first part of our recommendation. However, management’s comments were not responsive to the second part of the recommendation. We believe the audit results support the assertion that the eight complaints were not effectively addressed. We do not agree that the complaints identified as not effectively addressed were based on subjective categorizations. The 48-hour timeframe for responding to complaints was based on Equal Employment Opportunity Commission and Postal Service guidelines, the definitions of “prompt” and “immediate” (used in guidelines and policy),

and discussions with Postal Service Headquarters officials. One vice president told us he expected his managers or supervisors to respond to a complaint within 24 hours. Additionally, we did not make our determination of promptness based on how long it took to complete the inquiry or investigation, but rather how long it took management to respond when they became aware of the allegation.

Our determination that one South Georgia District complaint was not impartial was based on information contained in the complaint file that strongly indicated the postmaster, who was the alleged harasser, was involved in the interview process. The allegation was that he “coached” witnesses. We believe that the alleged harasser should not have any involvement or influence that could affect the objectivity of the witnesses or the process.

We do not agree with management that documenting actions would potentially lead to a failure in the ability of supervisors to quickly resolve minor workplace issues. Documenting action management took after they address the complaint has no impact on how quickly a matter can be resolved. It does, however, play an important role in determining credibility and mitigating liability in future cases. In addition, it provides a record of the action taken which could be significant in the event of future sexual harassment complaints against the same person. Postal Service policy is clear that serious complaints must be documented, and further provides that “When in doubt, document.” We believe the policy does not limit management from documenting all actions, it simply establishes a floor, not a ceiling for addressing complaints. We view the disagreement on this part of the recommendation as unresolved and it will be addressed in our capping report.

**File Retention and
Storage Adequate**

Our audit found there was no Postal Service policy regarding the retention time for informal complaint files. However, both districts retained informal complaint files indefinitely and storage of files was also adequate.

Equal Employment Opportunity Commission guidance stated formal sexual harassment complaint files should be retained for at least 4 years after resolution of the complaint. Postal Service policy stated once an inquiry/investigation was conducted, files should be forwarded for storage, to the district Human Resources manager. According to a headquarters senior Postal Service manager, the intent of this policy was to centrally locate the files with the Human Resources manager.

Retaining and storing informal complaint files in a central location ensures file availability if needed to mitigate liability. We will address the need for a national retention policy in a separate report.

APPENDIX A. OBJECTIVE, SCOPE, AND METHODOLOGY

Our objective was to determine if the Central Florida and South Georgia Districts, in the Southeast Area, implemented adequate policies and procedures to prevent sexual harassment⁶ in the workplace and to effectively address sexual harassment complaints to mitigate liability. Our district selections were based on interviews with the senior vice president, Human Resources; vice president, Diversity Development; and the vice president, Southeast Area Operations. We also considered the number of closed formal sexual harassment complaints in each of the nine Southeast Area districts.

To accomplish our objective, we reviewed applicable laws, policies, procedures, and other documents including Equal Employment Opportunity Commission guidelines, Postal Service national policies, the Southeast Area, and Central Florida and South Georgia District policies for preventing sexual harassment in the workplace. We also reviewed Postal Service national policy regarding the Pay for Performance Program. In addition, we reviewed previously issued OIG reports related to sexual harassment issues. Further, we interviewed Postal Service Headquarters, Southeast Area, and Central Florida and South Georgia District officials.

To determine if adequate policies and procedures were in place to prevent sexual harassment from occurring in the workplace, we identified Equal Employment Opportunity Commission key recommendations to agencies regarding policies and procedures that should be in place to prevent sexual harassment and reduce the risk of agency liability. We then reviewed the Postal Service national, Southeast Area, and Central Florida and South Georgia Districts' policies and procedures to determine if the recommendations were included.

To determine whether district managers effectively addressed informal sexual harassment complaints to mitigate liability, we analyzed the documentation contained in formal and informal complaint files that were filed and closed⁷ in FYs 2000 and 2001,⁸ for the two districts, we selected. We recorded information related to promptness, thoroughness, impartiality and the level of documentation. These fiscal years were chosen because they were the most recent and complete fiscal years at the time of our fieldwork. The number of formal and informal closed complaints was obtained from the Postal Service

⁶ For the purpose of this report, we used the legal definition of sexual harassment defined in part, in 29 C.F.R. § 1604.11(a), as unwelcome sexual conduct that is a term or a condition of employment. In addition, we included the Postal Service policy regarding inappropriate actions/comments of a sexual nature when reviewing sexual harassment complaint files.

⁷ Sexual harassment complaints may be considered closed for a number of reasons including: (1) the inquiry/investigation was completed, (2) a settlement had been reached, (3) the complaint was withdrawn, or (4) discipline or corrective action was taken.

⁸ We used the Postal Service fiscal years that started September 11, 1999, and ended September 7, 2001.

Equal Employment Opportunity case file database, and district management respectively. We then excluded those complaints where the employees filed their complaints directly with the Equal Employment Opportunity office and requested confidentiality. These were excluded because honoring the request for confidentiality precluded the Equal Employment Opportunity office from notifying district management that a complaint had been made. This in turn precluded management from conducting an investigation. We then determined there were 36 closed complaint files as follows:

District	Complaints		Total Complaints Per District
	Formal	Informal	
Central Florida	9	15	24
South Georgia	3	9	12
Total	12	24	36

We also determined if the retention and storage of informal files were adequate using Postal Service national, area, and district policies as well as Equal Employment Opportunity Commission guidelines.

In addition, we determined whether employees found responsible for sexual harassment received appropriate discipline using Equal Employment Opportunity Commission guidelines, Postal Service policies and procedures, and some elements of the Douglas Factors.⁹ We included in this determination whether or not managers or supervisors found responsible for sexual harassment or inappropriate actions/comments were considered for exclusion from the Pay for Performance Program.

This audit was conducted from February 2002 through March 2003 in accordance with generally accepted government auditing standards and included such tests of internal controls as were considered necessary under the circumstances. We discussed our conclusions and observations with appropriate management officials and included their comments, where appropriate.

⁹ The Douglas Factors were developed as a result of case law (*Douglas v. the Veterans' Administration*) where the Merit Systems Protection Board ruled that management must document certain factors to be considered in making a determination of appropriate disciplinary action.

APPENDIX B. MANAGEMENT'S COMMENTS

WILLIAM J. BROWN
VICE PRESIDENT, AREA OPERATIONS
SOUTHEAST AREA



January 31, 2003

MEMORANDUM FOR: B. Wayne Goleski
Assistant Inspector General for Core Operations
Office of Inspector General
1735 North Lynn Street
Arlington, VA 22209-2020

SUBJECT: Response to Draft Audit Report-Sexual Harassment Prevention
Measures in Central Florida and South Georgia Districts--
Southeast Area (Report Number LH-AR-03-DRAFT)

This is the management response to the above draft audit report. The management response will address the findings and recommendations of the draft report.

FINDINGS:

We agreed with the finding that the Central Florida and South Georgia Districts' sexual harassment policies and procedures were adequate and that employees found responsible for sexual harassment or inappropriate comments were appropriately disciplined or corrective action was taken. However, it is interesting to note that the exit conference described the District's policies and procedures as very good. Also, we agree generally that improvement can be made in some areas.

However, we disagree with the finding that 8 of 36 complaints were not effectively addressed in Central Florida and South Georgia Clusters based on the subjective manner in which those determinations were made. The report cites EEOC guidelines defining an "effective" investigation as a prompt, thorough, and impartial review with documented evidence. The categorization of "not effectively addressed" is apparently based on this definition. The problem with this subjective categorization is that the basis for those standards are not clearly defined nor were those standards consistent with current policy. For instance, timely was apparently defined as within 48 hours. However, there is no 48-hour standard contained in any published policies regarding the investigation of sexual harassment complaints. The time required to investigate allegations will vary depending on the circumstances of each case. In one South Georgia complaint categorized as "not impartial", this categorization was apparently based on an "*allegation*" that the postmaster "coached" witnesses before they were interviewed by an investigative team by telling witnesses to tell the truth. However, management's information did not support this allegation.

RECOMMENDATIONS:

1. *Establish controls to ensure managers/supervisors disciplined for sexual harassment or inappropriate actions/comments of a sexual nature are considered for exclusion from all pay for performance or bonus programs.*

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Generally, we agree that managers/supervisors disciplined for sexual harassment or inappropriate actions of a sexual nature should be **considered** for exclusion from pay for performance or bonus programs provided that such consideration is consistent with program guidelines. However, at this point, no instruction or controls can be established, as currently there is no pay for performance program in place for EAS employees. Currently, a new pay for performance program is being piloted for PCES employees. Therefore, any controls initiated at the District level for exclusion consideration would need to occur after national pay for performance program implementation.

2. *Establish controls to ensure managers and supervisors effectively address all sexual harassment complaints and inappropriate actions/comments of a sexual nature, and fully document detailed evidence of the actions taken to address complaints.*

Management agrees with the recommendation that all sexual harassment complaints be promptly, thoroughly, and impartially investigated. However, management disagrees with the latter part of the recommendation that all sexual harassment complaint investigations fully document detailed evidence of the actions taken to address complaints of sexual harassment regardless of whether or not the allegations actually amount to sexual harassment. Postal policy found in Publication 552 allows some matters to be resolved simply and directly between the parties without a formal written record. The rationale is to allow managers maximum flexibility and speed to deal with those minor, one-time events such as an off-color joke or careless remark. To require documentation regarding every minor incident of inappropriate workplace behavior would potentially undermine the ability of supervisors to quickly and effectively resolve minor workplace issues. In addition, when frivolous and baseless charges of harassment are levied, managers need not create a written record on the unjustly accused employee. In accordance with Postal Service guidelines identified above, although all matters of alleged sexual harassment will be fully investigated, not all complaints will result in a full written record with detailed evidence of the actions taken to address the complaints.

Thank you for the opportunity to respond to your draft audit report. If you have any questions regarding the response, please contact Karen Borowski, Area Manager, Human Resources at 901-747-7200.



William J. Brown

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