

# Chapter 4

## Case Disposition

### **I. Scope.**

This chapter sets forth the policies and procedures for arriving at a determination on the merits of a whistleblower case; policies regarding withdrawal, settlement, dismissal, postponement, deferrals, appeals, and litigation; adequacy of remedies; and agency tracking procedures for timely completion of cases.

### **II. Preparation.**

#### **A. Investigator Reviews the File.**

After completing the investigation, the investigator must thoroughly review the file and its contents to collate and organize all pertinent data in preparation for writing the Report of Investigation (ROI). When appropriate, the investigator may wish to discuss the case with the IA/Legal Staff prior to writing the ROI.

#### **B. Investigator and IA/Legal Staff Discuss the Case.**

Once the investigator has thoroughly reviewed the file and compiled all pertinent data, the IA/Legal Staff may be contacted to discuss the facts and merits of the case prior to writing the ROI. The IA/Legal Staff can advise the investigator of any issues and, as appropriate, assist in reaching a decision on the merits or decide whether additional investigation is necessary.

### **III. Report of Investigation**

The investigator must report the results of the investigation by means of a Report of Investigation (ROI) following the policies and format described in detail in Chapter 5 of this Manual.

### **IV. Case Review.**

#### **A. Review.**

After the investigation is completed, the IA may review the file to ensure technical accuracy, thoroughness of the investigation, applicability of law, completeness of the report, and merits of the case. Appropriate determination letters will be prepared by the investigator.

## **B. Approval**

If the Supervisor concurs with the analysis and recommendation of the investigator, he or she will sign on the signature block on the last page of the ROI and record the date the review was completed. The Supervisor's signature on the ROI serves as approval of the recommended determination. Therefore, a thorough review of the case file is essential prior to issuing any determination letters. Appropriate determination letters must be issued to the parties via certified U.S. mail, return receipt requested (or via a third-party commercial carrier that provides delivery confirmation. Should either party request the determination letter electronically, documentation of such will be placed in the Case Activity/Phone Log and a copy of the email placed in the case file along with the determination letter – a Delivery Receipt and Read Receipt will be attached with the email). Proof of receipt must be preserved in the file with copies of the letters to maintain accountability.

### **1. Withdrawal.**

A complainant may withdraw his or her complaint at any time during IOSHA's processing of the complaint. However, it should be made clear to the complainant that by entering a withdrawal on a case, he or she is forfeiting all rights to appeal or object, and the case will not be reopened. Withdrawals may be requested either orally or in writing. It is advisable, however, to obtain a signed withdrawal whenever possible. In cases where the withdrawal request is made orally, the investigator must send the complainant a letter outlining the above information and confirming the oral request to withdraw the complaint. Once the supervisor reviews and approves the request to withdraw the complaint, a second letter must be sent to the complainant, clearly indicating that the case is being closed based on the complainant's oral request for withdrawal. Both letters must be sent via certified U.S. mail, return receipt requested (or via a third-party commercial carrier that provides delivery confirmation. Should either party request the determination letter electronically, documentation of such will be placed in the Case Activity/Phone Log and a copy of the email placed in the case file along with the determination letter – a Delivery Receipt and Read Receipt will be attached with the email). Proof of delivery of both letters must be preserved in the file with copies of the letters to maintain accountability.

### **2. Dismissal.**

For recommendations to dismiss, the investigator will prepare letters of dismissal to the complainant and the respondent. The letters must include the necessary information regarding the complainant's rights to appeal the findings.

### **3. Settlement.**

Voluntary resolution of disputes is desirable in many whistleblower cases, and investigators are encouraged to actively assist the parties in reaching an agreement, where possible. Ideally, these settlements are reached solely through the utilization of IOSHA's standard settlement agreement. The language of this agreement generally should not be altered, but certain sections may be included or removed to fit the circumstances of the complaint or the stage of the investigation. The investigator should use his/her judgment as to when to involve Legal Staff in settlement discussions. The investigator will obtain approval by the supervisor of the settlement agreement language prior to the parties signing the agreement. For recommendations to approve settlement, the supervisor's approval will be indicated by signature on both the settlement agreement and the ROI. The investigator will issue appropriate letters to the parties forwarding copies of the signed settlement agreement, posters, the Notice to Employees, the back pay check, or any other relevant documents, including tax-related documents. (Settlement procedures and settlement negotiations are discussed in detail in Chapter 6).

Once an employee has filed a complaint and if the case is currently open, any settlement of the underlying claims reached between the parties must be reviewed by IOSHA to ensure that the settlement is just, reasonable, and in the public interest. At the investigation stage, this requirement is fulfilled through IOSHA's review of the agreement. A copy of the reviewed agreement must be retained in the case file. If IOSHA is unable to obtain a copy of the settlement agreement, then IOSHA must reach a determination on the merits of the complaint, based on the evidence obtained. Investigators should make every effort to explain this process to the parties early in the investigation to ensure they understand our involvement in any resolution reached after a complaint has been initiated.

#### **4. Deferral.**

Voluntary resolution of disputes is desirable in many whistleblower cases. By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to complaints under 88.9(3). The investigator must review the results of any proceeding to ensure all relevant issues were addressed; that the proceedings were fair; regular; and free of procedural infirmities; and that the outcome of the proceedings was not repugnant to the purpose and policy of the IOSHA whistleblower statute. Repugnancy deals not only with the violation, but also the completeness of the remedies. If the other action was dismissed without an adjudicatory hearing, deferral is ordinarily not appropriate. If the determination is accepted, Iowa OSHA may defer to the decision as outlined above.

In cases where the investigator recommends a deferral to another agency's decision, grievance proceeding, arbitration or other appropriate action, letters of deferral will be issued to the complainant and respondent. The

case will be considered closed at the time of the deferral and will be recorded in IMIS as “Dismissed.” If the other proceeding results in a settlement, it will be recorded as “Settled Other,” and processed in accordance with the procedures set forth in chapter 6. IOSH may defer to the determination of another agency, grievance, etc. in accordance with IAC 875-36.10(1). Determination must be made on a case by case basis.

**5. Postponement.**

Where the rights asserted in other proceedings are substantially the same as rights under 88.9(3), and those proceedings are not likely to violate the complainant’s rights and the outcome would be the same, the investigator or the IA would be justified in postponing a determination. However, if the other action is dismissed, such dismissal may not be determinative of the complaint, and IDOL may proceed with the investigation, settlement or dismissal (IAC 875-9.18). The investigator will apprise the complainant as to the reason for the postponement and letters will be sent to both the Complainant and Respondent informing them of the postponement. This action would be done on a case by case basis.

**6. Merit Finding.**

For recommendations of merit cases under 88.9(3), the investigator or IA will draft a letter to Legal Staff recommending litigation.

**7. Further Investigation Warranted.**

If, for any reason, the IA/Legal Staff does not concur with the investigator's analysis and recommendation, or finds that additional investigation is warranted, the file will be returned to the investigator for follow-up work.

**C. Legal Requirements.**

The investigator should confer with Legal Staff for advice or consultation at this point, if necessary, or at other appropriate times during the conduct of the investigation to ensure that legal requirements are met. This is particularly important if preliminary, immediate reinstatement of the complainant is being ordered.

**V. Appeals and Objections.**

For cases in which the investigator has made a non-merit determination and the case is dismissed, the complainant is given an opportunity to appeal the decision to the

Commissioner of Labor/Designee within 15 days of receipt of the dismissal letter.

1. Upon receipt of the copy of the appeal, under 88.9(3), the investigator will immediately forward the original case file to Legal Staff.
2. Legal Staff will review the file and any other documentation supplied by the complainant, and issue a decision to sustain the appeal, deny the appeal or remand the case for additional investigation.

**VI. Approval for Litigation.**

- A.** Procedures provide that cases recommended for litigation will be forwarded to Legal Staff for review and approval for filing in District Court. If Legal Staff determines that additional investigation is required, the IA normally will return the case file to the investigator for further investigation. Legal Staff will address additional communication directly with the investigator.
- B.** Additional investigation authorized as a result of the review for litigation shall have priority over all other cases pending investigation.