

SCCE Internal Investigations Workshop San Diego, California



Reaching a Conclusion

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Discussion of the Evidence

- Acknowledge the positions of each party
- Describe the evidence in support of each position
- Identify the relevant facts
- Include any admissions of improper conduct
- Discuss exculpatory evidence and mitigating circumstances
- As to disputed facts, assess credibility of the witness
- State the findings of fact that are needed to reach each conclusion
- State the conclusion reached as to each policy element

Assessing Credibility

- Is the explanation you are given inherently plausible?
- Does the explanation follow the known timeline of events?
- Is there corroborating evidence to support the explanation?
- Does the person have actual knowledge of that information, or is it hearsay?
- Are there other objective factors that give it credibility?
- Avoid personal interpretations of the other person's credibility.

Making a Determination

- Did you complete your investigation plan?
- Did you follow your investigation protocol?
- Did you look for proof on each policy element?
- Do you need to re-interview any witnesses?
- Are there any gaps, and how can they be closed?
- Are there any new issues to be investigated?
- Do you need a second opinion?

Making a Determination

- Investigations are not based on what you believe happened.
- Your gut feelings are not a substitute for proof.
- The burden of proof is a “preponderance of evidence”
- The criminal justice burden of proof does not apply to workplace investigations

Types of Conclusions

- **Substantiated:** An allegation is substantiated when an investigation identifies sufficient evidence to show that it is more likely than not that each element of the policy / business standard occurred.
- **Unsubstantiated:** An allegation is unsubstantiated when an investigation either (i) cannot meet the burden of proof to substantiate the allegation, or (ii) proves affirmatively that the alleged conduct did not occur.
- **Inconclusive:** An allegation is inconclusive if the investigation is unable to determine whether the allegation **can be** substantiated.

Framing Your Investigation Finding	
Don't Say This	Say This
<ul style="list-style-type: none">Larry Green violated the company's conflict of interest policy when he became a consultant for a company vendor.	<p>The investigation determined that:</p> <ul style="list-style-type: none">Larry Green is a company employee;Larry engaged in business transactions on the company's behalf;The business transaction was with another entity;Larry had a personal interest in that entity; andLarry failed to obtain the approval of the CEO before engaging in the transaction.

Closing Thoughts
<ul style="list-style-type: none">You must make a determination, unless you can't.Credibility assessments are needed for each piece of evidence.Make a determination as to each element of your business-conduct standard, not the policy as a whole.