

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Jacqueline Fluaitt
Respondent.

No. 2014-036

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, JACQUELINE FLUAITT, and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through Kate Reynolds, Executive Director pursuant to chapter 42.52 RCW, chapter 34.05 RCW, and WAC 292-100-090(1). The following stipulated facts, conclusions of law, and agreed order will be binding upon the parties if fully executed, and if accepted by the Board without modification(s), and will not be binding if rejected by the Board, or if the Respondent does not accept the Board's proposed modification(s), if any, to the stipulation. This stipulation is based on the following:

A. STIPULATED FACTS

1. On June 4, 2014, the Executive Ethics Board (Board) initiated an investigation based on a complaint alleging that Jacqueline Fluaitt (Ms. Fluaitt), Grievance Coordinator with the Washington State Department of Corrections (DOC), may have violated the Ethics in Public Service Act by taking personal time away from work without submitting the proper leave requests.

2. Ms. Fluaitt's work schedule since at least April of 2010 was Monday through Friday, 8:00 am to 4:30 pm. DOC policy 825.010 allows a DOC employee to flex their work schedule with approval of the appointing authority and also requires prior written approval.

3. On August 23, 2010, Ms. Fluaitt sent an email to Mr. Sawyer requesting to change her work schedule to 5:30 am to 2:00 pm. The change in schedule would allow her to attend daily 3:00 pm volleyball practices at Othello High School. Mr. Sawyer responded, "[W]e can make it work, I will get a hold of you to see what we can do."

4. On August 23, 2010, Ms. Fluaitt submitted a request for outside employment with DOC for the Othello High School girls' volleyball coach. On August 24, 2010, the request was approved by Mr. Sawyer and on August 30, 2010 the request was approved by CRCC Superintendent Jeffery Uttecht.

5. A review of Ms. Fluaitt's emails for the time period of August 24, 2010 through December 13, 2012 revealed that she sent/received 81 emails regarding Othello High School Volleyball. Some of these emails contained attachments indicating that Ms. Fluaitt created or edited the documents during work hours.

6. In 2013, Ms. Fluaitt was hired as the head volleyball coach for Pasco High School. She did not submit outside employment authorization to her agency as required per DOC policy but Mr. Sawyer told Board staff that he was aware of her outside employment and that he would allow her to flex her work schedule during volleyball season.

7. A review of Ms. Fluaitt's emails for the period of August 13, 2013 through October 27, 2014 revealed that she sent/received 23 emails regarding Pasco High School Volleyball. Some of these emails contained attachments indicating that Ms. Fluaitt created or edited the documents during work hours.

8. Board staff looked at Ms. Fluaitt's emails, key logs, internet access, training and meeting schedules, as well as leave taken in an effort to determine if Ms. Fluaitt was being paid for time not worked. The period looked at was from September 2013 through December 2014, a 15 month period. For the period of January 4, 2014 through May 26, 2014, every workday was examined by comparing sent emails, key logs, available internet access data, scheduled training and meetings and leave taken, in an effort to determine if Ms. Fluaitt worked her required eight hours per work day. Internet access data was available for only the month of May. As a result of the examination of the available data it appears more likely than not that Ms. Fluaitt was paid for at least 50 hours that she did not work.

9. Ms. Fluaitt indicated in her response to the Board's reasonable cause determination that she has taken on many extra duties and has put in many hours of work on her own time.

10. Mr. Sawyer told Board staff that Ms. Fluaitt was not authorized to work from home.

11. Ms. Fluaitt told Board staff that she would, on occasion, send emails when she was away from work by logging onto the DOC web site and using the Outlook Web App but did not have remote access to conduct work from home. Email sent using the web application would appear to have been sent from a DOC computer.

12. At the time of the investigation, Ms. Fluaitt was continuing her education to obtain a Bachelor's Degree at Washington State University located in the Tri-Cities. Ms. Fluaitt advised Board staff that she started taking classes at WSU's Tri – Cities campus in January of 2015.

13. Ms. Fluaitt told Board staff that her college course schedule was 1:00 pm to 1:50 pm on Monday, Wednesday, and Friday and 9:00 am to 10:30 am on Tuesday and Thursday. Ms.

Fluaitt further stated that while she has been able to make all of her classes, she has been late to a few classes because of her work responsibilities.

14. The WSU Tri-City campus is located in Richland, Washington. According to MapQuest round trip from CRCC to the WSU Tri-City campus is 98.74 miles and would take 1 hour and 48 minutes to drive. Based on the travel and class time, Board staff used 2.5 and 3 hours respectfully to determine the minimum time Ms. Fluaitt would be away from work each day. That time would need to be made up or accounted for to complete an 8-hour workday.

15. Board staff contacted DOC to determine if Ms. Fluaitt had a current approved flex schedule on file. Board staff was advised by DOC that Ms. Fluaitt did not have the required written approval to allow her to work a flex schedule but that they had contacted Mr. Sawyer and he had advised them that he had given verbal approval for Ms. Fluaitt to flex her work schedule as shown below:

Mondays, Wednesdays, and Fridays

- 6:30 – 12:00 (5.5 hours)
- 3:00 – 5:30 (2.5 hours)

Tuesdays and Thursdays

- 6:30 – 8:30 (2 hours)
- 11:30 – 5:30 (6 hours)

16. Wendy Gilbert (Ms. Gilbert), Ms. Fluaitt's Office Assistant, told Board staff that she started working for Ms. Fluaitt on February 13, 2015. Ms. Gilbert's scheduled work hours are 6:30 am to 3:00 pm. Ms. Gilbert told Board staff that when Ms. Fluaitt was not in the office she always knew where she was.

17. Ms. Gilbert was asked if she knew Ms. Fluaitt was attending college classes during the day. She replied that she was aware and provided Ms. Fluaitt's work schedule. Ms. Gilbert stated that on Monday, Wednesday, and Friday, Ms. Fluaitt would leave CRCC around 11:30 am

and return between 3:00 and 3:30 pm. Ms. Gilbert further stated that, "Sometimes I pass her coming in when I'm leaving for the day at 3:00 pm. Ms. Gilbert indicated that on Tuesday and Thursday Ms. Fluaitt would arrive at the office between 12:30 and 1:00 pm.

18. Mr. Sawyer advised Board staff that he allowed Ms. Fluaitt to flex her work schedule to attend college courses as long as she still fulfilled her eight hours of daily work and that it did not interfere with her workload responsibilities. Mr. Sawyer further stated that his approval to allow Ms. Fluaitt to flex her schedule was given verbally. This agreement was in place until May 1, 2015.

19. Mr. Sawyer told Board staff that he had no concerns with Ms. Fluaitt's timeliness on completing tasks that she is assigned, that she works well beyond her normal duties, and that he does not have trouble getting in touch with her and believes that others do not either. He further stated that Ms. Fluaitt is currently going back to college to be an even better asset to DOC.

20. Mr. Sawyer told Board staff that there had been other times that he has allowed Ms. Fluaitt to flex her schedule, stating that, "she puts in many extra hours for us." Evidence examined by Board staff revealed that Ms. Fluaitt very seldom, if ever, worked the agreed upon flex schedule.

21. Co-worker #1 was contacted regarding Ms. Fluaitt's proper use of work time. Co-worker #1 told Board staff that Ms. Fluaitt is currently away from the facility each day for extended periods of time. Co-worker #1 believes that Ms. Fluaitt is going back to school but does not believe that type of absence is extended to DOC employees. Co-worker #1 further stated that because Ms. Fluaitt is away so much, the work load has increased for other members of the unit. Co-worker #1 stated that they were not aware of any arrangement between Ms. Fluaitt and Mr. Sawyer that would allow her to take so much time off away from work.

22. Co-worker #2 told Board staff that they were aware of Ms. Fluaitt not being at work a lot but did not know if leave slips were submitted. Co-worker #2 further stated that they have seen Ms. Fluaitt using the computer, email, and printer/copier to conduct non-work related business.

23. As a result of the information obtained from talking with Ms. Fluaitt's co-workers regarding her attending college during the work day, Board staff extended the time period examined to include dates from January 1, 2015 through March 31, 2015.

24. On April 1, 2015, Board staff made an additional request of DOC to also provide the computer hard drive from Ms. Fluaitt's work computer, entry and key log data, emails, travel and training documents, and leave taken.

25. For the period of January 1, 2015 through March 31, 2015, every workday was examined by comparing available information on sent emails, key logs, entry logs, internet excess, scheduled training, meetings, and leave taken, in an effort to determine if Ms. Fluaitt worked her required hours. As a result of the examination of the available data it appears more likely than not that Ms. Fluaitt was paid for at least 45 hours that she did not work.

26. From January 27 through April 30, 2015 Ms. Fluaitt accessed the WSU Tri-City internet site on fifteen days. On seven of those days, she uploaded documents to wsu.edu/angleuploads. The total amount of time spent on the WSU Tri-City internet site during this period was 4 hours and 10 minutes.

27. The computer hard drive search for the period of January 27, through March 13, 2015, revealed 14 Word documents and 7 PowerPoint presentations related the Ms. Fluaitt's college course work.

28. On February 2, 2015, Ms. Fluaitt sent an email to her co-worker Michael McCourtie (Mr. McCourtie), requesting that he read and provide feedback on her English 210

Essay, "Competitive Coaching." Lacking a response from Mr. McCourtie she sent another request on February 4th to see if McCourtie had the time to review the document. Mr. McCourtie did not respond via email to either request.

29. On February 5, 2015, Ms. Fluaitt sent an email to her co-worker Roberto Figueroa (Ms. Figueroa) requesting that that she read her essay "Competitive Coaching" and provide feedback. On February 7, 2015, Ms. Figueroa responded back telling Ms. Fluaitt to "[c]heck my desk and good luck trying to decipher my chicken scratch. I got it done while multitasking at number of other activities." On February 7, 2015, Ms. Fluaitt responded, "Thank you!"

B. CONCLUSIONS OF LAW

1. The Ethics in Public Service Act, Chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. RCW 42.52.160(1) states:

No state officer or state employee may employ or use any person, money, or property under the officer's or employee's official control or direction, or in his or her official custody, for the private benefit or gain of the officer, employee, or another.

2. WAC 292-110-010 Use of state resources states, in part:

.....

(2) The following are permitted uses:

(a) Use of state resources that is reasonably related to the conduct of official state duties, or which is otherwise allowed by statute.

(b) An agency head or designee may authorize a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty.

(c) An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee.

(d) A state officer or employee may make an occasional but limited personal use of state resources only if each of the following conditions are met:

- (i) There is little or no cost to the state;
- (ii) Any use is brief;
- (iii) Any use occurs infrequently;

- (iv) The use does not interfere with the performance of any officer's or employee's official duties; and
- (v) The use does not compromise the security or integrity of state property, information, or software.

3. Based on the stipulated facts above, Ms. Fluaitt used state resources (time, computer, email) for a personal benefit in violation of RCW 42.52.160 and WAC 292-110-010.

4. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360. The Board has set forth criteria in WAC 292-120-030 for imposing sanctions and consideration of any mitigating or aggravating factors.

C. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. In the matter at hand, it is aggravating factors that these types of violations significantly reduce the public respect and confidence in state government employees, Ms. Fluaitt benefitted financially as a result of these violations, and that the violations were continuous in nature. It is a mitigating factor that Ms. Fluaitt has taken on many extra duties within the DOC and it is likely that she has performed some of that work on her own time.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Jacqueline Fluaitt and over the subject matter of this complaint.

2. Under RCW 34.05.060, the Board can establish procedures for attempting and executing informal settlement of matters in lieu of more formal proceedings under the

Administrative Procedures Act, including adjudicative hearings. The Board has established such procedures under WAC 292-100-090.

3. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein, subject to Board approval.

4. Jacqueline Fluaitt agrees that if any or all of the alleged violations were proven at a hearing the Board may impose sanctions, including a civil penalty under RCW 42.52.480(1)(b) of up to \$5,000, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW, for each violation found. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

5. Jacqueline Fluaitt further agrees that the evidence available to the Board is such that the Board may conclude she violated the Ethics in Public Service Act. Therefore, in the interest of seeking an informal and expeditious resolution of this matter, the parties agree to entry of the stipulated findings of fact, conclusions of law and agreed order.

6. Jacqueline Fluaitt waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2).

7. If the Board accepts this stipulation, the Board agrees to release and discharge Jacqueline Fluaitt from all further ethics proceedings under chapter 42.52 RCW for any allegations arising out of the facts in this matter subject to payment of the full amount of the civil penalty due and owing, any other costs imposed, and compliance with all other terms and conditions of the stipulation. Jacqueline Fluaitt in turn agrees to release and discharge the Board, its officers, agents and employees from all claims, damages, and causes of action arising out of this complaint and this stipulation.

8. If the Board accepts this stipulation, it does not purport to settle any other claims between Jacqueline Fluaitt and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

9. If the Board accepts this stipulation, it is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

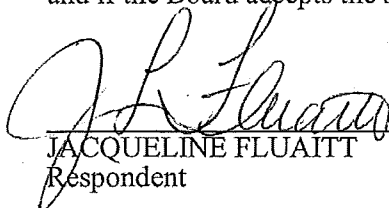
10. If the Board rejects this stipulation, or if Jacqueline Fluaitt does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing before the Board. If an administrative hearing is scheduled before the Board, Jacqueline Fluaitt waives any objection to participation by any Board member at the hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Jacqueline Fluaitt understands and agrees that this stipulation as well as information obtained during any settlement discussions between the parties shall not be admitted into evidence during the administrative hearing, unless otherwise agreed by the parties.

11. Jacqueline Fluaitt agrees to pay a civil penalty in the amount of five thousand, five hundred dollars (\$5,500). The Board agrees to suspend two thousand, two hundred and fifty dollars (\$2,250.00) on the condition that Jacqueline Fluaitt complies with all terms and conditions of this stipulation and commits no further violations of chapter 42.52 RCW for a period of two years from the date this stipulation is signed and accepted by the Board.

12. The civil penalty in the amount of three thousand, two hundred and fifty dollars (\$3,250) is payable in full to the Washington State Executive Ethics Board within forty-five (45) days after this stipulation is signed and accepted by the Board, or as otherwise agreed to by the parties.


II. CERTIFICATION

I, Jacqueline Fluaitt, hereby certify that I have read this stipulation in its entirety, that my counsel of record, if any, has fully explained the legal significance and consequence of it. I further certify that I fully understand and agree to all of it, and that it may be presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter and if the Board accepts the stipulation, I understand that I will receive a signed copy.


JACQUELINE FLUAITT
Respondent

12/21/15
Date

Presented by:


KATE REYNOLDS
Executive Director

1/4/16
Date

III. ORDER

Having reviewed the proposed stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

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ACCEPTED in its entirety;

REJECTED in its entirety;

MODIFIED. This stipulation will become the order of the Board if the

Respondent approves* the following modification(s):

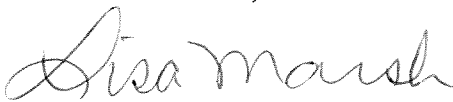
DATED this 15th day of January 2016



Anna Dudek Ross, Chair



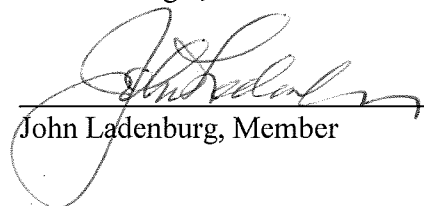
Samantha Simmons, Vice-Chair



Lisa Marsh, Member



Sumeer Singla, Member



John Ladenburg, Member

* I, Jacqueline Fluaitt, accept/do not accept (circle one) the proposed modification(s).

Jacqueline Fluaitt, Respondent

Date