

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Denise Stewart
Respondent.

No. 2014-041

STIPULATED FACTS,
CONCLUSIONS OF LAW AND
AGREED ORDER

THIS STIPULATION is entered into by Respondent, DENISE STEWART, 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 July 15, 2014, the Executive Ethics Board (Board) received a complaint alleging that Denise Stewart (Ms. Stewart), Medical Transcription Supervisor with the Washington State Department of Social and Health Services (DSHS), Western State Hospital (WSH), may have violated the Ethics in Public Service Act by taking time off from work without submitting the proper leave slips.
2. Ms. Stewart was employed as the Medical Transcription Supervisor for the Center for Forensic Services (CFS) located at Western State Hospital since 2007 and for all times pertinent to this investigation.

3. The CFS is a highly secure facility housing patients requiring mental health treatment ordered by the courts. Entry into the CFS requires employees to check out their assigned keys using the Key Watcher System and returning those key prior to leaving the CFS grounds.

4. One of Ms. Stewart's job duties is to submit, on a daily basis, the "Staff Out Log." This log provides information to staff members about other staff members' absences, late arrivals and those leaving early. The "Staff Out Log" also provides information regarding personnel covering for the absent employees. Ms. Stewart told Board staff that she had been sending out the log for the past four or five years and that she would do so in an all staff email by 8:00 am Monday through Friday.

5. Ms. Stewart told Board staff that when staff members would not be coming in to work or were going to be late they would call or text her and she would complete the log using that information.

6. Ms. Stewart further stated that if she was not at work, Debra Van Horn (Ms. Van Horn) would get the information and submit the log to staff.

7. Ms. Van Horn confirmed with Board staff that she would submit the "Staff Out Log" for those times that Ms. Stewart was not at work. She stated that she would receive either an email or a personal text from Ms. Stewart advising her that she would either be in late or not in at all. Ms. Van Horn further stated that she has never been asked to do this when Ms. Stewart was at work.

8. A review of the "Staff Out Logs" from January 27 through July 11, 2014, indicated that Ms. Stewart left work early on nine different days without submitting a leave slip. Ms. Stewart told Board staff that on those occasions when she would come in late and leave early she would have used comp time, exchange time, or not taken her breaks or lunch.

9. Board staff contacted Ms. Stewart's current supervisor, Roberta Kresse (Ms. Kresse). Ms. Kresse told Board staff that she could not imagine the circumstance that would lead to Ms. Stewart's use of exchange or comp time.

10. The Collective Bargaining Agreement between the State of Washington and the Washington Federation of State Employees, in Article 6.5 (Meal periods) and 6.7 (Rest periods), states, in part, that meal and rest periods may not be used for late arrival or early departure from work and that rest and meal periods will not be combined.

11. The Key Watcher System was able to provide data on the removal and return of keys for the period of January 27 through July 15, 2014. From the review of the Key Watcher System, emails, and the "Staff Out Logs" it appears that for the period of January 27 to July 11, 2014, Ms. Stewart received pay for at least 73.85 hours of time that she was not at work and did not submit the proper leave slips. Some examples of days are shown below:

Date	Keys Removed	Keys returned	Hours worked (h:m)	Time short (minutes)	Notes
1/27/2014	6:25 am	2:48 pm	8:23	7 min	
1/28/2014	6:27 am	2:00 pm	7:33	57 min	Last email sent 1:02 pm
1/29/2014	6:24 am	2:26 pm	8:02	28 min	
1/30/2014	6:21 am	10:01 am	3:40	260 min	An email sent on 1/31 suggesting she went home early on 1/30; not feeling well
1/31/2014	6:27 am	2:58 pm	8:31	-1 min	
2/24/2014	6:23 am	3:01 pm	8:38	-8 min	
2/25/2014	6:19 am	12:32 pm	6:13	107 min	Last email sent @ 10:42, staff in/out log shows no early out
2/26/14	6:23 am	1:44 pm	7:21	69 min	Last email sent 11:01 am, in/out log shows out @1:45 pm
2/27/2014	6:18 am	2:29 pm	8:11	19 min	
2/28/2014	6:21 am	1:34 pm	7:13	77 min	Last email sent from

					work computer @ 12:58 pm, staff in/out log shows no early out
3/10/2014	5:24 am	1:42 pm	8:18	12 min	
3/11/2014	5:19 am	1:34 pm	7:52	38 min	Staff in/out log shows no early out
3/12/2014	DNR	DNR	0:0	480 min	No sent emails, no staff in/out log, no leave slip submitted
3/13/14	5:21 am	1:37 pm	8:16	14 min	
3/14/14	5:16 am	1:52 pm	8:36	-6	

12. A summary of the time analysis for the period of January 27 through July 11, 2014 is shown below:

January 27 through July 11, 2014	
117 Total Work Days	936 work hours @ 8 hrs/day
73.85 hours of pay without work	7.9 % of total time
37 days of the 117 > 30 minutes	31.6 % of the 117 days
34 days of the 117 < 30 minutes	29.9 % of the 117 day
20 of the 37 days > 1 hour	54 %
10 of the 37 day > 2 hours	27 %
4 of the 37 days > 3 hours	10.8 %
3 of the 37 days = 8 hours	8.1 %
25 days worked over for a total of 231 minutes (3.85 hours) of time.	21.3 % of 117 days and .41% of total time.
6 Days of 117 did not return or remove keys from Key Watcher.	4.3 % of 117 days
14 days of leave	11.1 % of 117 days

13. Board staff contacted several of Ms. Stewart's co-workers. Co-worker #1 was asked if they were aware of Ms. Stewart's alleged abuse of time. Co-worker #1 indicated to Board staff that there were many days that Ms. Stewart was out but she would claim that she had worked eight hours. Co-worker #1 further stated that when questioned about the missing time Ms. Stewart would state that she was taking comp time.

14. Ms. Frederickson told Board staff that they have noticed a couple of times when Ms. Stewart has come in late and left early. Ms. Frederickson stated that just recently Ms. Stewart left work an hour early and she didn't tell her supervisor or turn in a leave slip. Ms. Frederickson further stated that Ms. Stewart's scheduled work hours are from 7:30 am to 4:30 pm but she works 6:00 am to 2:30 pm so that no one knows when she is arriving except the Key Watcher System.

15. Ms. Frederickson also told Board staff that she is responsible for Ms. Stewart's payroll and works in the office next to hers. Ms. Frederickson further indicated that she has had a discussion with her supervisor, Ms. Kreese, about Ms. Stewart's attendance and failure to submit leave slips.

16. Board staff contacted Ron Alder (Mr. Alder), Ms. Stewart's supervisor for the time pertinent to this investigation. Mr. Alder told Board staff that he did not recall ever having to discuss attendance or time issues with Ms. Stewart. Mr. Alder stated that he would, on occasion, allow her to adjust her work schedule for personal reasons. Mr. Alder told Board staff that he did not recall ever being asked to allow Ms. Stewart to use her lunch and breaks to leave work early and/or arrive to work late, but that if he had he would not have allowed it as a normal practice.

17. A review of the Key Watcher System revealed several days when Ms. Stewart would retrieve her keys after her stated start time of 6:00 am. Board staff asked Ms. Stewart about two of those days; May 16, 2015 when keys were removed at 10:02 am and on July 11, 2014 when keys were removed at 7:31 am. Ms. Stewart replied that there were some days that the Key Watcher System kiosk would malfunction and she would not be able to get her keys. She indicated when the Key Watcher System malfunctioned; she would go up to her office and then come back later to get her keys. Ms. Stewart stated that she did not report these malfunctions.

18. Ms. Frederickson told Board staff that since the Key Watcher System has been in place, it has malfunctioned only one time resulting in staff not being able to retrieve their keys. When this

happened they contacted Christine Campbell (Ms. Campbell), the Key Watcher System Administrator, to report the problem.

19. Board staff contacted Ms. Campbell to determine whether the Key Watcher System would report a malfunction. Ms. Campbell told Board staff that it was possible that the system would show an attempt to remove keys. At staff's request, Ms. Campbell looked at the two days mentioned above in an effort to determine if Ms. Stewart had tried to remove her keys earlier as she had stated. Based on the Key Watcher System report, Ms. Campbell concluded that Ms. Stewart had not made any prior attempts to remove her keys on the days in question. Ms. Campbell did indicate that if Ms. Stewart's "Smart Key" was damaged and not registering at the kiosk it is possible that the system would not show anything.

20. The Key Watcher System showed that for three of the 117 days reviewed, Ms. Stewart did show up to work at all. On these three days there is no evidence that Ms. Stewart sent "Staff Out Logs," sent any other emails, or that any type of leave request was submitted. When asked about the three days Ms. Stewart replied that she assumes she was working those days.

21. Staff/Out log submitted by Debra Van Horn for those three days, March 12, March 27, and April 11, 2014, indicated that Ms. Stewart was not at work and did not submit a leave request.

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 unrelated 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. Stewart used state resources (time) 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 an aggravating factor that, these types of violations significantly reduce the public respect and confidence in state government employees and that they were continuous in nature.

D. STIPULATION AND AGREED ORDER

1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Denise Stewart 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. Denise Stewart 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. Denise Stewart 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. Denise Stewart waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or her 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 Denise Stewart 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. Denise Stewart 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 Denise Stewart and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future. No other claims of alleged violations are pending against Denise Stewart at this time.

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 Denise Stewart 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, Denise Stewart 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, Denise Stewart 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.

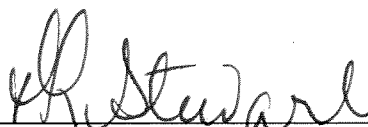
11. Denise Stewart agrees to pay a civil penalty in the amount of three thousand dollars (\$3,000) associated with the improper use of public resources, RCW 42.52.160. The Board agrees to suspend one thousand, five hundred dollars (\$1,500) on the condition that Denise Stewart complies

with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

12. The non-suspended portion of the civil penalty in the amount of one thousand, five hundred dollars (\$1,500) 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, Denise Stewart, 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.


DENISE STEWART
Respondent

3-29-16
Date

Presented by:


KATE REYNOLDS
Executive Director

4/8/16
Date

