

1 **BEFORE THE WASHINGTON STATE**
2 **EXECUTIVE ETHICS BOARD**

3 In the Matter of:

EEB Case No. 2015-055

4 Eugene Payne,

FINAL ORDER

5 Respondent
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8 **I. PROCEDURAL HISTORY**

9 On March 24, 2017, the Executive Ethics Board (Board) found reasonable cause to
10 believe that the Respondent, Eugene Payne, violated the Ethics in Public Service Act while
11 employed as a Custodial Supervisor at Wenatchee Valley College (WVC). Notice of the
12 Reasonable Cause Determination and the right to request a hearing was served upon Mr. Payne
13 by regular mail and certified mail on March 27, 2017. Mr. Payne failed to respond to the
14 Reasonable Cause Determination within 30 days as required by WAC 292-100-060(2).

15 The Board entered an Order of Default on July 14, 2017. On July 17, 2017, Board staff
16 provided Mr. Payne with notice of the Board's Order of Default by regular and certified mail.

17 Pursuant to WAC 292-100-060(4) Mr. Payne was allowed 10 days to request vacation
18 of the Order of Default. Mr. Payne has not moved to vacate the order entered on July 14,
19 2017.

20 **II. FINDINGS OF FACT**

21 1. Mr. Payne hired by WVC on August 13, 2012 as a Custodial Supervisor and
22 was in that position until his resignation from state service on June 3, 2016. Mr. Payne's
23 resignation was not related to this or any other complaint filed against him.

24 2. On February 20, 2015, the SAO received a whistleblower report alleging that
25 Mr. Payne was using state his state computer to listen to music and watch videos for many
26 hours during his workday. After receiving the whistleblower complaint, the SAO requested a

1 copy of Mr. Payne's work computer hard drive for analysis of the alleged non-work related
2 internet activity.

3 3. The SAO investigators reviewed Mr. Payne's internet activities for the period
4 of February 2014 through March 2015. The significant amount of non-work related internet
5 activity occurred between the periods of December 21, 2014 through March 16, 2015. See the
6 chart below for details of their findings:

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8 Month/Year	Entertainment	Pandora/YouTube	Shopping/	Other	Total
	/News	Music Videos	Guns		Minutes
9 December 2014	0	154	67	16	237
10 January 2015	50	133	95	0	278
11 February 2015	194	320	19	11	544
12 March 2015	<u>269</u>	<u>59</u>	<u>15</u>	<u>28</u>	<u>371</u>
13 Total Minutes	513	666	196	55	1,430

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15 4. Mr. Payne was shown his non-work related internet history (above) by the SAO
16 investigator. Mr. Payne admitted to the non-work related internet usage. Mr. Payne told the
17 SAO investigator that he mostly streamed music or YouTube videos in the background as he
18 was completing his paperwork.

19 5. On August 5, 2015, Board staff requested a copy of Mr. Payne's computer hard
20 drive from WVC. On September 2, 2015, Board staff received Mr. Payne's actual hard drive
21 by US Mail from WVC. On September 10, 2015, Board staff made a forensic copy of the hard
22 drive to be used for analysis. On June 8, 2016, the forensic copy of Mr. Payne's hard drive
23 was analyzed using Internet Evidence Finder (IEF) software.

24 6. For the period of January 2014 through March 16, 2015, Board staff found the
25 following non-work related internet activity by Mr. Payne :
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1 **PANDORA** Internet Radio (January 13, 2014 through March 9, 2015)

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Month/Year	No. of visits	No. of days	No. of days worked
January 2014	11	10	15
February 2014	3	3	20
July 16, 2014	1	1	23
December 2014	13	7	16
January 2015	10	7	19
February 2015	9	10	15
March 2015	2	2	5
TOTALS	49	40	113

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10 Other non-work related Internet sites visited (December 24, 2014 through March 16, 2015):

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- Entertainment/News
 - YouTube.com
 - MSN
 - Rollingstone.com
 - Kpopstarz.com
 - Huffingtonpost.com
 - Setlist.com
 - Yardbarker.com
 - Bloomberg.com
 - Shopping
 - GunBroker.com
 - Armslist.com
 - Budsgunshop.com
 - Toyotacenter.com/upcoming events
 - Windermerewenatchee.com
 - Realtor.com
 - Zillow.com
 - Sears.com
 - Guitar-King.com
 - AutoTrader.com
 - Campbellsresort.com
 - Chelanresortssuites.com
 - Craigslist.com
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1 enhances job-related skills. Additionally, state employees are allowed occasional but limited
2 use of state resources as long as the following conditions are met:

- 3 (i) There is little or no cost to the state;
- 4 (ii) Any use is brief;
- 5 (iii) Any use occurs infrequently;
- 6 (iv) The use does not interfere with the performance of any officer's or
employee's official duties; and
- 7 (v) The use does not compromise the security or integrity of state
property, information, or software.

8 3. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction
over Mr. Payne and over the subject matter of this complaint.

9 4. Based on the evidence, Mr. Payne used his state issued computer and time for
10 his private benefit or gain in violation of RCW 42.52.160. Mr. Payne's activities do not meet
11 the exceptions for the use of state resources as permitted in WAC 292-110-010.

12 5. The Board is authorized to impose sanctions for violations to the Ethics Act
13 pursuant to RCW 42.52.360.

14 6. In determining the appropriateness of the civil penalty, the criteria in WAC 292-
15 120-030 have been reviewed.

16 **IV. FINAL ORDER**

17 Based on the foregoing:

18 IT IS HEREBY ORDERED Respondent Eugene Payne is liable for and shall pay a
19 civil penalty of two thousand dollars (\$2,000). The payment shall be made to the Executive
20 Ethics Board within forty-five (45) days of this Order.

1 **V. AUTHORITY AND PROCEDURE**

2 Pursuant to RCW 34.05.470, Respondent has the right to file a Petition for
3 Reconsideration stating the specific grounds upon which relief is requested. The Petition must
4 be filed with the Executive Ethics Board at 2425 Bristol Court SW, Olympia, Washington
5 98504, or by U.S. Mail at P.O. Box 40149, Olympia, Washington 98504-0149, within ten (10)
6 days of service of the Final Order upon Respondent.

7 The Petition for Reconsideration shall not stay the effectiveness of this order nor is a
8 Petition for Reconsideration a prerequisite for seeking judicial review in this matter. A timely
9 Petition for Reconsideration is deemed denied if, within twenty (20) days from the date the
10 petition is filed, the Board does not (a) dispose of the petition or (b) serve the parties with a
11 written notice specifying the date by which it will act on a petition.

12 Respondent has the right to petition the superior court for judicial review of the Board's
13 action under the provisions of chapter 34.05 RCW. For the requirements for filing a Petition
14 for Judicial Review, see RCW 34.05.510 and sections following.

15 DATED this 8th day of September, 2017

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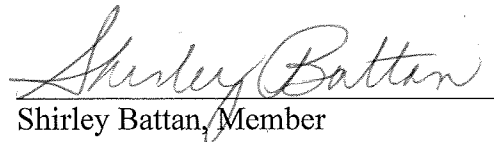
18
19 Anna Dudek Ross, Chair



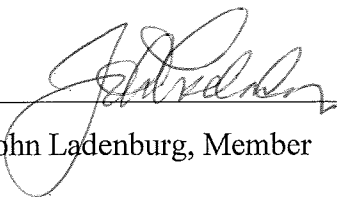
Lisa Marsh, Member

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22 Samantha Simmons, Vice-Chair



Shirley Battan, Member

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John Ladenburg, Member