

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

NO. 07-051

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, Withheld and Board Staff of the Washington State Executive Ethics Board (Board) through Melanie de Leon, Executive Director. The following stipulated facts, conclusions, 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.

Section 1: PROCEDURAL FACTS

1.1. In May 2007, the Board received an anonymous complaint that alleged that Withheld Chief Administrator for the state Department of Health (DOH) Office of Community and Family Health, was using state resources to conduct tax preparation business on behalf of H&R Block. On or about August 3, 2007, the Board received a Report of Whistleblower Investigation from the State Auditor's Office (SAO) that contained the Auditor's finding of reasonable cause to believe Withheld used state resources for non-work-related purposes.

1.2. A preliminary review of the Whistleblower Investigation was conducted by Board staff, and on July 13, 2007, the Board initiated a complaint based on the facts contained in the Whistleblower report. On March 14, 2008, the Board expanded the complaint to include the allegation that Withheld also made significant personal use of state resources not related to the conduct of H&R Block business.

1.3. The Board is authorized under RCW 34.05.060 to 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.

1.4. [Withheld] understands that if Board staff proves any or all of the alleged violations 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).

1.5. [Withheld] recognizes that the evidence available to the Board staff is such that the Board may conclude Mr. [Withheld] 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 set forth below.

1.6. [Withheld] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or acceptance of any modification(s) proposed by the Board, pursuant to the provisions of WAC 292-100-090(2) which provides in part:

The board has the option of accepting, rejecting, or modifying the proposed stipulation or asking for additional facts to be presented. If the board accepts the stipulation or modifies the stipulation with the agreement of respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or respondent does not agree to the board's proposed modification to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussion shall not be admitted into evidence at a subsequent public hearing.

1.7. If the Board accepts this stipulation, the Board will release and discharge [Withheld] [Withheld] from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in the complaint 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 agreed order. Mr. [Withheld] 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 and Agreed Order.

1.8. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between [Withheld] and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

1.9. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.10. If the Board rejects this Stipulation, or if [Withheld] does not accept the Board's proposed modification(s), if any, Mr. [Withheld] waives any objection to participation at any subsequent hearing by any Board member to whom this Stipulation was presented for approval under WAC 292-100-090(2). Further, Mr. [Withheld] understands and agrees that, if this proposed Stipulation is rejected by Mr. [Withheld] with any applicable modification by the Board, this Stipulation and information obtained during any formal settlement discussions held between the parties shall not be admitted into evidence at a subsequent public hearing, unless otherwise agreed by the parties.

Section 2: FINDINGS OF FACT

2.1. When the complaint in this matter was filed, and at all times material hereto, [Withheld] was employed as the Chief Administrator of the DOH Office of Community and Family Health.

2.2. During the week of March 12, 2007, [Withheld] supervisor became aware that he may have been using DOH work time to conduct work for H&R Block, where he was a tax preparer during his off-hours.

2.3. On March 22, 2007, following a review of [Withheld] Internet access log and email activity, DOH Assistant Secretary for Community and Family Health, Patty Hayes, issued a Letter of Reprimand to [Withheld] for violating DOH policies on ethics and use of the internet

and electronic communications systems. Mr. [Withheld] was instructed to attend "Ethical Leadership and Decision Making," a one-day course offered by the state Department of Personnel.

2.4. On May 8, 2007, the State Auditor's Office (SAO) received a Whistleblower Complaint regarding [Withheld] use of state resources for personal benefit. DOH began a second internal investigation into [Withheld] internet and email use on May 14, 2007. The investigation focused on [Withheld] computer use following his receipt of the March 22, 2007 Letter of Reprimand. Found on [Withheld] state computer were non-agency-related materials.

2.5. The internal investigation also found that [Withheld] had accessed non-work-related internet sites, including personal and church banking, tax preparation, timeshare and sports websites.

2.6. [Withheld] was interviewed on June 11, 2007, by the investigator who was conducting the internal investigation and admitted to using his state email to correspond with a tax client and to access non-work-related websites after receiving the Letter of Reprimand. [Withheld] submitted his resignation on June 22, 2007.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [Withheld] and over the subject matter of this complaint.

3.2. 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.

3.3. A state officer or employee is prohibited under RCW 42.52.160 from using state 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."

3.4. [Withheld] used his state computer to create and send personal emails and to access Internet sites of personal interest. Based on Findings of Fact 2.1 through 2.6, [Withheld] used state resources in violation of RCW 42.52.160.

3.5. The Board is authorized to impose sanctions for violations of 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.

II. AGGRAVATING & MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. Aggravating factors include that [Withheld] as the Chief Administrator for the DOH Office of Community and Family Health, had significant official, management or supervisory responsibility; that he had received a Letter of Reprimand from the agency in March 2007 regarding his personal use of the state resources, but continued the behavior after receiving the letter. It is a mitigating factor that Mr. [Withheld] submitted his resignation on June 22, 2007.

III. AGREED ORDER

Mr. [Withheld] will pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500.00). The civil penalty of \$1,500.00 is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board, or as to agreed to by the parties.

CERTIFICATION

I, [Withheld] hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; 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 and Agreed Order, I understand that I will receive a signed copy.

Withheld
[Redacted]

3/31/2008
Date

Respondent

Stipulated to and presented by:

Melanie de Leon 3/31/08
Melanie de Leon Date
Executive Director

IV. 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

- 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 11th day of April, 2008.

Judith K. Golberg
Judith K. Golberg, Chair

Evelyn P. Yenson
Evelyn P. Yenson, Member

Neil Gorrell
Neil Gorrell, Vice-Chair

Linnaca Jablonski
Linnaca Jablonski, Member

Michael Connolly
Michael Connolly, Member

*I, [Redacted] accept/do not accept (circle one) the proposed modification(s).

Withheld Respondent Date