

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:)	No. 08-122 & 08-123
)	
)	ORDER AND JUDGMENT
GERALD HEBERT)	
)	
Respondent.)	
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I. APPLICABLE PROCEDURAL ISSUES

- I.1. On March 12, 2010 the Executive Ethics Board (Board) found reasonable cause to believe that the Respondent, Gerald Hebert, violated the Ethics in Public Service Act while employed with the Human Rights Commission. Notice of the Reasonable Cause Determination and the right to request a hearing was served upon Mr. Hebert by regular mail and certified mail on March 18, 2010.
- I.2. More than 30 days have passed since notice of the Reasonable Cause Determination and of the right to request a hearing was served upon Mr. Hebert. He did not respond to the notice, either by filing an answer, requesting a hearing, or otherwise.
- I.3. On May 18, 2010, Board staff provided Mr. Hebert with notice by regular and certified mail of the Board's Order of Default and Temporary Adjournment of Further Proceedings entered on May 14, 2010.
- I.4. Pursuant to WAC 292-100-060(4) Mr. Hebert was allowed 10 days to request vacation of the Order of Default. Mr. Hebert has not moved to vacate the order entered on May 14, 2010.

II. FINDINGS OF FACT

- II.1. Gerald Hebert is a former commissioner with the WSHRC and an ordained minister. There are five Commissioners appointed by the Governor. The Commissioners provide policy direction, adopt regulations, and meet monthly to consider investigative finding determinations recommended by staff, review and approve settlement agreements, and issue Board Orders setting forth the terms of legally binding agreements and may vote to grant or deny requests for reconsideration of previously issued investigative findings. RCW 49.60.120.
- II.2. The WSHRC enforces the Washington Law against Discrimination (RCW 49.60) (WLAD). The Commission works to prevent and eliminate discrimination by investigating civil rights complaints and providing education and training opportunities throughout the state.

- II.3. Mr. Hebert attended an event in Yakima on June 14, 2008 in his official capacity as a WSHRC Commissioner. He received WSHRC approval for this trip and flew over the afternoon of June 13 and flew home on June 15. The flyer for the event notes that Mr. Hebert was a Keynote Speaker.
- II.4. Mr. Hebert remained at the event after his keynote speech to perform a private function.
- II.5. Mr. Hebert was issued a state credit card for purchase of items that were necessary to carry out his job requirements. The State Administrative and Accounting Manual states: *It is the card user's responsibility to purchase only items that are necessary to carry out their job requirements and to comply with state statutes, rules, policies and procedures.* WSHRC policy states that: *Each individual assigned a credit card is responsible for paying the balance within 30 days of receipt of the statement.*
- II.6. Mr. Hebert was issued a state credit card in 2005. The 2005 credit card was cancelled due to his failure to pay the bill.
- II.7. In July 2006, Mr. Hebert began using another state credit card that was issued to him. Mr. Hebert used the state-issued credit card to purchase items that were not reimbursable as Commission expenses. Out of a total of \$4,763.98 purchases made with Mr. Hebert's state credit card, \$939.01 were determined to be reimbursable Commission expenses. Mr. Hebert failed to timely pay the expenses charged to the credit card and the bank closed the account in January 2007. No interest was charged on the card; however, \$67.03 was assessed in late payment fees. Mr. Hebert subsequently paid the balance in March of 2007.
- II.8. The Auditor's investigation notes several questionable car rentals, which consist of:
- On October 7, 2005, Mr. Hebert traveled to Yakima and rented a vehicle for three days. On the morning of October 8, he flew to Spokane and rented a vehicle at 9:12 a.m., which he used for two days, while rental fees on the vehicle in Yakima continued to accrue. The Spokane rental vehicle was returned at 12:22 p.m. on October 9. The Commissioner's travel vouchers show he returned to SeaTac on October 9. The rental vehicle was noted as returned on October 10 at 7:30 a.m., the morning after the subject flew home from Spokane. The Yakima rental company was open from 9 a.m. until noon on Saturday and closed on Sunday. If the vehicle had been returned the morning the subject traveled to Spokane, it would have been checked in early Saturday morning, October 8. Mr. Hebert stated he did not know why he would have two vehicles in two different places during the same time period.
 - The subject rented a vehicle from December 9, 2005, through December 12, 2005. Although the subject did not submit a travel voucher for travel during these days, an email from the Commission Director indicated there was a Return of the Militias conference in Bellingham on December 10. Additionally, the Whatcom County Human Rights Web site showed a vigil on the night of December 9. The subject stated he had attended these two events

and confirmed they were Commission business. When the Auditor asked why the Commission hadn't reimbursed these costs, Mr. Hebert stated he had not requested reimbursement as he thought this was just part of his job.

- In May 2006, Mr. Hebert remained in travel status to attend events that were not Commission reimbursed business. He traveled to Spokane to attend a Commission meeting on May 25-26. The subject received approval to remain in a Spokane hotel a second additional night to attend a Pride Event and the Commission paid the additional hotel charge. The subject chose to remain an additional night, May 27, which was not approved or paid for by the Commission. However, the subject continued to use the rental vehicle in Spokane at Commission expense. Additionally, the subject submitted, and was reimbursed, for SeaTac airport parking charges for the entire time he was in Spokane. The subject stated he thought the additional night was Commission business and was not aware he had not been reimbursed for the hotel charge. A witness from the Commission stated he had only been approved to remain one extra night.
- On January 10, 2007, the subject rented a vehicle at 9:58 a.m. and returned it the following day at 2:30 p.m. Although the subject's calendar shows only one entry of Commission business beginning at 10 a.m. on January 11, an email from the Commission Director stated there was a luncheon in Bremerton on January 10. The vehicle was picked up in Poulsbo the day of the luncheon in Bremerton and returned to Poulsbo the following day, 30 minutes after the conclusion of the meeting in Seattle. Fuel use was approximately 13 gallons. Mr. Hebert declined the opportunity to respond to the Auditor's inquiries about this matter.

- II.9. On March 7, 2009, Mr. Hebert contacted the Board and requested that the Board investigate the findings of the Auditor's office.
- II.10. On April 6, 2009, the Board notified Mr. Hebert that it had initiated a complaint regarding the Auditor's allegations and requested that he respond to the allegations by May 12, 2009. Mr. Hebert has not sent a response to the allegations.

III. APPLICABLE LAW

- III.1. 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."

IV. CONCLUSIONS OF LAW

- IV.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Gerald Hebert and over the subject matter of this complaint.
- IV.2. 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.”
- IV.3. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360.


V. AGGRAVATING AND MITIGATING FACTORS

- V.1. In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. In the case at hand, it is a aggravating factor that Mr. Hebert was issued a state credit card previously that he did not pay in a timely fashion.


VI. ORDER AND JUDGMENT

- VI.1. Based on the foregoing Findings of Fact and Conclusions of Law, we, the Executive Ethics Board, hereby find that Gerald Hebert has violated RCW 42.52.160 and WAC 292-110-010 and order him to pay a civil penalty in the amount of ~~Twelve~~ ^{Seven} Thousand dollars (12,000). (~~\$7,500~~) ^{\$7,500}
- VI.2. Payment of the civil penalty of \$12,000 shall be made to the Executive Ethics Board within forty-five (45) days of this Order.

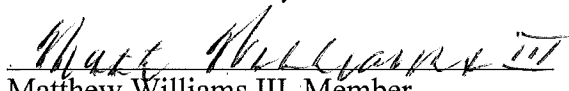
DATED this 9th day of July 2010.


 Linnaea Jablonski, Chair


 Neil Gorrell, Member


 Michael F. Connelly, Vice-Chair


 Martin Biegelman, Member


 Matthew Williams III, Member