

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 08-134

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. On November 17, 2008, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that Withheld an employee of the State of Washington, Department of Social and Health Services (DSHS), may have violated state law when she used state resources for personal benefit. The Board reviewed this referral and issued a complaint on February 13, 2009.

1.2. 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.

1.3. [Redacted] recognizes that the evidence available to the Board staff 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 set forth below.

1.4. [Redacted] 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) 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 the respondent, the board shall enter an order in conformity with the terms of the stipulation. If the board rejects the stipulation or the respondent does not agree to the board's proposed modifications to the stipulation, the normal process will continue. The proposed stipulation and information obtained during formal settlement discussions shall not be admitted into evidence at a subsequent public hearing.

1.5. If the Board accepts this stipulation, the Board will release and discharge [Redacted] 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. Ms. [Redacted] 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.

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

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

1.8. If the Board rejects this stipulation, or if [Withheld] does not accept the Board's proposed modification(s), if any, Ms. [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, Ms. [Withheld] understands and agrees that this proposed 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. [Withheld] is an Administrative Assistant with DSHS.

2.2. A review of Ms. [Withheld] state computer revealed that Ms. [Withheld] used the state computer to access the Internet to obtain documentation relating to her college classes, shopping, music, weight loss programs, and contests.

2.3. The computer revealed 41 sets of documents pertaining to college class assignments, personal correspondence, a radio station, a casino, copies of her tax returns, a grant and job applications. Personal documents included a letter to her landlord, a letter to Muckleshoot Bingo, copies of income tax for herself and her daughter, along with correspondence regarding her college courses.

2.4. Ms. [Withheld] e-mail folder contained 98 e-mail messages to friends, family and her instructors at the college. Some of the email related to her finances, housing, her daughter's schooling, and letters of complaint to private businesses.

2.5. A review of Ms. [Withheld] Internet history showed between October 19, 2007 and May 12, 2008, she accessed 42 non-work related websites on 15 separate dates. The SAO found that Ms. [Withheld] spent more than 14 hours visiting these sites. Some of the sites were YouTube, music, lottery, department stores, airlines, coupons and court TV.

2.6. Ms. [Withheld] had received previous counseling by the Regional Administrator that using state time and equipment for personal benefit was not allowed.

2.7. Mrs. [Withheld] asserts that the former Regional Administrator allowed her to use state resources to complete her school projects.

2.8. On October 4, 2008, Abel Hewitt, the former Regional Administrator provided a letter that stated in part:

...Abel Hewitt and Ms. [Withheld] did have a discussion of her future within the agency. ...At that time Ms. [Withheld] did inform me she was attending college to pursue a degree in Business Administration.

Under my direction, I did inform Ms. [Withheld] that because her degree was work related she would be able to complete her homework during her breaks and lunch period.

2.9. Ms. [Withheld] completed and signed the DSHS annual review checklist in September 2007 that included a review of DSHS Administrative Policy 18.64 Standards of Ethical Conduct and Administrative Policy 15.15 Use of Electronic Messaging System and the Internet. Ms. [Withheld] took the state Ethics Board online quiz in July 2008 and October 2008, reviewed the DSHS ethics policy and the Ethics in Public Service Act in July 2008 and completed the DSHS annual checklist in September 2008.

2.10. The complainant alleged Ms. [Withheld] signed up for the Commute Trip Reduction (CTR) Program; however, she did not carpool with another state employee. The

evidence revealed that Ms. [Withheld] carpooled with another individual and completed the appropriate documents for the CTR program.

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.

3.4. 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.”

3.5. Based on Findings of Fact 2.1 through 2.09, Ms. [Withheld] used state resources to pursue personal interests in violation of RCW 42.52.160.

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

II. MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. It is an aggravating factor that Ms. [Withheld] was previously warned not to misuse state resources. It is a mitigating factor that Ms. [Withheld] previous supervisor gave her permission to complete her college homework using state resources.

III. AGREED ORDER

[Withheld] will pay a civil penalty in the amount of seven hundred and fifty dollars (\$750.00). The Board agrees to suspend two hundred fifty dollars (\$250.00) of the civil penalty on the condition that [Withheld] complies with all terms and conditions of this

II. 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

 X

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 12th day of March, 2010.

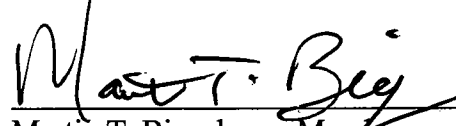


Linnaea Jablonski, Chair

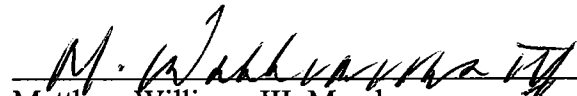
Michael F. Connelly, Vice-Chair



Neil Gorrell, Member



Martin T. Biegelman, Member



Matthew Williams III, Member

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

Withheld Respondent Date