

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:) No. 09-065
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)
KYLE GUBBE) ORDER AND JUDGMENT
)
)
Respondent.)
_____)

I. APPLICABLE PROCEDURAL ISSUES

- I.1. On March 12, 2010 the Executive Ethics Board (Board) found reasonable cause to believe that the Respondent, Kyle Gubbe, violated the Ethics in Public Service Act while employed with the Public Disclosure Commission. Notice of the Reasonable Cause Determination and the right to request a hearing was served upon Mr. Gubbe by regular mail at the Thurston County Jail on March 16, 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. Gubbe. He did not respond to the notice, either by filing an answer, requesting a hearing, or otherwise.
- I.3. On May 17, 2010, Board staff provided Mr. Gubbe 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. Gubbe was allowed 10 days to request vacation of the Order of Default. Mr. Gubbe has not moved to vacate the order entered on May 14, 2010.

II. FINDINGS OF FACT

- II.1. Kyle Gubbe was an employee of the PDC at all times pertinent as an Information Technology Specialist 3.
- II.2. From 2003 on, Mr. Gubbe ordered, purchased and removed from the PDC's premises 98 equipment items valued at \$21,467.81. Mr. Gubbe eventually returned 23 of these items, with the value of the remaining 75 missing items totaling \$12,573.96.

- II.3. For at least two billing cycles in 2009, Mr. Gubbe used an agency assigned cell phone to make personal calls and personal text messages, incurring additional charges to the agency of \$260.84. Specifically, from April 27 to May 26, 2009, the bill showed an increase of \$132.46 with the allowed minutes of calling time exceeded by 880 minutes and 121 text messages. From June 27 to July 26, 2009, the bill showed an increase of \$128.38, with the allowed minutes of calling time exceeded by 864 minutes and 135 text messages.
- II.4. Over a 24-month period, Mr. Gubbe used his agency's e-mail account for personal use on at least 1,153 occasions, including receiving sports e-mails updates, viewing videos of his son's sporting events, sending and receiving e-mails from family members and other non-work related matters.
- II.5. On several occasions, Mr. Gubbe used the agency's credit card to make unauthorized purchases of equipment for his personal use. He did so without any authority and took measures to hide his transactions from the confidential secretaries that process payment of these items. On several occasions, Mr. Gubbe made these purchases at Best Buy and Circuit City that were during non-working hours.
- II.6. On August 13, 2009, Mr. Gubbe was interviewed by his supervisor, the Chief Technology Officer, and admitted to personal use of agency equipment including his desktop computer, an agency purchased laptop computer, the agency credit card, cell phone and e-mail account. Mr. Gubbe admitted to taking agency equipment out of the agency for his personal use and using the agency credit card to make personal purchases.
- II.7. Mr. Gubbe purchased three pieces of equipment (two speakers and a video camera lens) with the agency's credit card and then removed these items from the agency for his personal use. The local police found these items at a local pawnshop after being pawned by Mr. Gubbe's wife.
- II.8. On September 23, 2009, the Thurston County Prosecuting Attorney's Office charged Kyle Gubbe with nine counts of felony theft. On February 1, 2010, Kyle Gubbe pled guilty to one count of Theft in the First Degree and three counts of Theft in the Second Degree. He was sentenced to 10 months in the county jail and ordered to pay restitution to the PDC in the amount of \$12,746.92.

III. APPLICABLE LAW

- III.1. RCW 42.52.160(1), Use of persons, money, or property for private gain, 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.

III.2. WAC 292-110-010, Use of State Resources, states, in pertinent part:

(1) **Statement of principles – stewardship.** The proper stewardship of state resources, including funds, facilities, tools, property, and employees and their time, is a responsibility that all state officers and employees share. Accordingly, state employees may not use state resources for personal benefit or gain or for the benefit or gain of other individuals or outside organizations.

III.3. WAC 292-110-010(6)(f) prohibits state employees from any private use of any state property that has been removed from state facilities or other official duty stations, even if there is no cost to the state.

IV. CONCLUSIONS OF LAW

IV.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Kyle Gubbe 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. Under WAC 292-110-010, a state employee is prohibited from removing state resources from state facilities and converting them to their own private use.

IV. 4. 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 mitigating factor that Mr. Gubbe has been court-ordered to provide \$ 12,746.92 in restitution to the Public Disclosure Commission. Mr. Gubbe is currently serving a 10-month jail sentence for his conviction on one count of first degree theft and three counts of fourth degree theft.

ORDER AND JUDGMENT

VI.1. Based on the foregoing Findings of Fact and Conclusions of Law, we, the Executive Ethics Board, hereby find that Kyle Gubbe has violated RCW 42.52.160 and WAC 292-110-010 and order him to pay a civil penalty in the amount of Seventeen Thousand dollars (\$17,000).

VI.2. Payment of the civil penalty of \$17, 000 shall be made to the Executive Ethics Board within forty-five (45) days of this Order.

DATED this 9th day of July 2010.



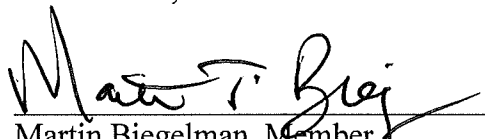
Linnaea Jablonski, Chair



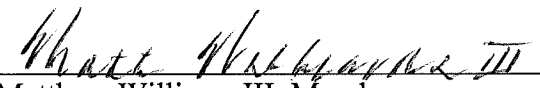
Neil Gorrell, Member

(Recused)

Michael F. Connelly, Vice-Chair



Martin Biegelman, Member



Matthew Williams III, Member