

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

██████████

Respondent.

NO. 01-06

STIPULATION AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090 between the Respondent, ██████████ Respondent, and the EXECUTIVE ETHICS BOARD (“Board”) through Brian R. Malarky, Executive Director. The following findings, conclusions, and agreements will be binding upon the parties to this agreement, if the agreement is fully executed, and if accepted by the Washington State Executive Ethics Board, and not otherwise.

A. FACTS

2. On December 15, 2000, the State Auditor’s Office (SAO) referred the final report of Whistleblower Case No. 01-001 to the Executive Ethics Board.

3. ██████████ is an employee of the Washington State Department of Transportation (DOT) subject to the jurisdiction of the Washington State Executive Ethics Board under RCW 42.52.360. ██████████ during all relevant times hereto, was employed as a Transportation Tech 2 at the DOT materials lab in Tumwater, Washington.

Conduct Disclosed in the State Auditor’s Investigation

4. The SAO investigation of the Whistleblower complaint revealed that from May 1998 to December 2000, ██████████ used his work computer to send and receive over 30 personal emails, including subscribing to several automatic email subscription services and receiving a 26 page document unrelated to his DOT duties. The SAO investigation revealed ██████████ repeatedly accessed internet sites which were not related to his official duties.

5. On June 8, 2000, DOT management notified its employees at the DOT Materials Lab that personal use of the office internet access was not allowed under state law, and that DOT would strictly enforce its prohibition on the personal use of e-mail.

6. At a June 16, 2000 meeting with three DOT supervisors, [REDACTED] was notified that his use of the DOT e-mail system was inappropriate. Additionally, he was specifically directed not to use state e-mail for personal use. In response, [REDACTED] stated that he was a taxpayer and should be able to use state equipment.

7. On July 26, 2000, [REDACTED] was interviewed by a representative of the SAO. During the interview, [REDACTED] admitted that he had used the state assigned computer for personal use and that he was aware that it was an ethics violation.

8. On January 2, 2001, in response to the SAO findings issued December 15, 2000, [REDACTED] received a letter of reprimand from his supervisor, Kurt Williams, noting that his use of e-mail and the internet for personal use was a violation of state law. [REDACTED] was directed to use state resources only for official state business.

Conduct that Occurred After the State Auditor's Investigation

9. On January 10, 2002, [REDACTED] again used his work computer to access an internet site which was unrelated to his official duties.

10. On February 6, 2002, [REDACTED] used his work computer to access an internet web site which was unrelated to his official duties.

11. On February 28, 2002, [REDACTED] used his work computer to send himself a joke related to marital humor.

12. On May 3, 2002, in connection with the conduct described in paragraphs 8, 9 and 10 above, [REDACTED] received a letter of reprimand for unacceptable job performance related to his personal use of state resources in violation of the ethics laws. [REDACTED] did not dispute that he used his work computer to send and receive e-mail and access internet sites which are unrelated to his official duties.

13. Although [REDACTED] has received two written reprimands from his employer for the conduct outlined above, these corrective actions have not resulted in loss of pay or benefits.

14. In addition to the written reprimands, [REDACTED] and DOT have taken additional corrective actions, including unsubscribing to email servers that are not related his official duties, changing his official email address, and notifying several private individuals that they should not send emails to his work address.

B. APPLICABLE LAW

RCW 42.52.160(1) 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.

C. AGGRAVATING AND MITIGATING FACTORS

1. In determining the appropriateness of the civil penalty, Board staff reviewed criteria in WAC 292-120-030. In the case at hand: (1) the violations were continuing in nature (WAC 292-120-030(2)(a)); and (2) the violations significantly reduced the public respect for, and the confidence in, state government employees (WAC 292-120-030(2)). In addition, it is an aggravating factor that [REDACTED] intentionally committed the violations with knowledge that the conduct constituted a violation (WAC 292-120-030(3)(a)).

2. It is a mitigating factor that [REDACTED] has taken steps to curb unauthorized use of his office computer by unsubscribing to email servers and having his office e-mail address changed. (See Fact # 14 above)

D. RESOLUTION

1. [REDACTED] admits that he violated provisions of RCW 42.52.160 by using his state computer to send and receive e-mail that was unrelated to his official duties, and by using his state computer to access internet sites which were unrelated to his official duties.

2. Recognizing that he is personally responsible for his conduct, [REDACTED] will pay a civil penalty in the amount of two thousand five hundred dollars (\$2,500.00). The Board agrees

to suspend one thousand four hundred dollars (\$1,400.00) on the condition that [REDACTED] complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW while employed by the State of Washington.

3. The civil penalty (\$1,100.00) is payable to the state Executive Ethics Board within thirty (30) days of approval of this Stipulation and Order by the Board.

II. CONCLUSIONS OF LAW

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

2. Pursuant to WAC 292-100-090(1), the parties have the authority to resolve this matter under the terms contained herein.

3. Settlement of this matter on the terms herein is subject to WAC 292-100-090(2) which states 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.

III. RELEASE / EFFECT OF ORDER

1. If the Board accepts this Stipulation, the Board releases and discharges [REDACTED] from all further ethics proceedings under chapter 42.52 RCW for matters arising out of the facts contained in this complaint, subject to payment in full of the civil penalty owed in the amount of \$1,100.00 and compliance with all other conditions of this Stipulation. [REDACTED] 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 Order.

2. 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.

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

4. If this Stipulation and Order is not accepted, it shall be null and void, and may not be used for any purpose in connection with the above-entitled action.

IV. CERTIFICATION

I, [REDACTED] hereby certify that I have read this Stipulation and Order in its entirety; that I knowingly and voluntarily waive my right to a hearing in this matter; that I fully understand and voluntary agree to this Stipulation.

[REDACTED]

Stipulated to and presented by:

B. R. Malarky 10/30/02
Brian R. Malarky Date
Executive Director

V. 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 following modifications are approved by _____.

DATED this 8th day of November, 2002.

Laquita Fields
Laquita Fields, Chair

Marilee Scarbrough
Marilee Scarbrough, Vice-Chair

James M. Vache
James M. Vache, Member

Sutapa Basu, Member

Paul Zellinsky
Paul Zellinsky, Member

I, _____, accept/do not accept (circle one) the proposed modification.



Respondent

Date