

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

████████████████████

Respondent.

No. 06-022

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, ██████████ ██████████ and Board Staff of the WASHINGTON STATE EXECUTIVE ETHICS BOARD (Board) through SUSAN HARRIS, 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 October 31, 2005, the Executive Ethics Board received a Whistleblower referral from the State Auditor's Office (SAO) alleging that ██████████ an employee of the State of Washington, Department of Transportation (WSDOT), may have violated the Ethics in Public Service Act when he used state resources for non-work related purposes. The Board reviewed this referral and initiated a complaint on January 13, 2006.

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] 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).

1.4. [REDACTED] recognizes that the evidence available to the Board staff is such that the Board may conclude he 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.

1.5. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his 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.

1.6. 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. [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.

1.7. 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.

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

1.9. If the Board rejects this stipulation, or if [REDACTED] does not accept the Board's proposed modification(s), if any, [REDACTED] 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, [REDACTED] 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. When the complaint in this matter was filed, and at all times material hereto, [REDACTED] was employed by the State of Washington. [REDACTED] is a Transportation Engineer 2 with WSDOT, Northwest Region. He has worked for the state for over four years. His job duties including working the traffic operation section, writing orders for maintaining low cost enhancements along the roadway and writing work orders when questions and concerns arise regarding signs or stripping.

2.2. [REDACTED] completed ethics training in March 2005, which included training on the proper use of state resources and the Internet.

2.3. The SAO reviewed [REDACTED] computer usage. The investigation revealed that [REDACTED] checked his personal e-mail account using his state computer. The SAO located 56 items relating to Instant Messenger including conversation logs that show the communication between multiple individuals.

2.4. Personal documentation was found on [REDACTED] computer that was not related to his official duties. The documentation on his computer and his explanations are as follows:

- a. 17 documents relating to the American Society of Civil Engineers (ASCE). These documents included fundraising and donation letters.
- b. A personal letter and an Excel document that appears to be a tournament outline for the NCAA basketball playoffs.
- c. Documents regarding [REDACTED] home purchase including pictures of the home, a sales agreement, inspection report and statutory warranty deed. [REDACTED] indicated to the SAO that he had these documents on his home computer and e-mailed them to his work computer.
- d. [REDACTED] 2004 income tax records. He indicated to the SAO he did not prepare the taxes on the state computer. He sent the documents from his home computer to his work computer. The person that did his taxes e-mailed them to him at his Yahoo account and then [REDACTED] accessed his Yahoo account from work.
- e. Two documents related to a tentative travel schedule for a trip to China and a wedding event.

2.5. The SAO reviewed [REDACTED] computer and recovered nine days of Internet use. He visited 80-90 separate Internet sites; some multiple times in one day. On at least two days [REDACTED] spent a minimum of two to three hours each day surfing the web. The SAO found that:

- a. [REDACTED] visited websites for shopping; newspapers; travel; a friend's site; gaming, and on-line personal journals and diaries (blogs). Some of the websites were *Circuit City*, *LandsEnd*, *Fatwallet*, *HSN*, *Bausch*, *JCREW*, and *Jordans*. Although [REDACTED] did not remember visiting all of the sites, he indicated that he may have gone to those websites.
- b. The software application I-Tunes was downloaded and 14 items related to the I-tunes media player application were found on the computer.
- c. [REDACTED] visited gaming sites such as: *priest.worldofwar.net* and *rpgtraders.net*. [REDACTED] stated to the SAO that he read the forums for the games or the message boards and the tips section. He states he did not download the information or play the game on the state computer.

- d. Four items related to online dating, one item related to cooking and 18 documents relating to comic strips.
- e. [REDACTED] [REDACTED] read Internet blogs that are on-line diaries or journals of various people. He indicated that he did not communicate with anyone on the Blog sites; he would read the diaries. He has a friend that wrote a diary on one of the blogs.
- f. 54 personal documents were saved on the computer. Most of the documents were graphics; however, this count also includes the personal letter noted above and the Excel spreadsheet of the NCAA Basketball Tournament.

2.6. DOT's policy regarding Employee Use of Electronic Communication Systems No. 3-1021.00 prohibits personal use of the DOT computer systems. This policy states:

A.3. Authorized, limited (de minimis) personal use per WAC 292-110-010. The purpose of the agency electronic communication system is to support agency business activities. A WSDOT employee may make occasional but limited personal use of state electronic communication system, including e-mail and Internet resources, if subject matter is not related to activities listed as prohibited and;

- a. Little or no cost to the state.
- b. Does not interfere with the performance of official duties.
- c. Duration is brief, occurs infrequently.
- d. Does not distract from the conduct of state business
- e. Does not compromise the security of state information or software.

B. Prohibited Use Established

10. No web surfing of shopping sites.

2.7. On November 17, 2005, the WSDOT disciplined [REDACTED] by reducing his salary by 5% for three months from \$4570 to \$4351 effective December 5, 2005. This discipline was based on the SAO investigation report and a WSDOT internal investigation of [REDACTED] Internet usage from September 1, 2005 to October 4, 2005. The internal investigation revealed that even after the SAO investigation [REDACTED] [REDACTED] continued to use the Internet for personal use.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [REDACTED] 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. The Ethics in Public Service Act allows for *de minimis* personal use of state resources. WAC 292-110-010 states that employees may make occasional but limited personal use of state resources such as electronic messaging systems and the Internet if the use conforms with ethical standards. Those standards include that the use is of little or no cost to the state, brief in duration and frequency, does not disrupt other state employees and does not obligate them to make a personal use of state resources. [REDACTED] use of state resources, when viewed collectively, did not meet the *de minimis* standard.

3.5. Based on Findings of Fact 2.1 through 2.7, [REDACTED] used state resources in violation of RCW 42.52.160, WAC 292-110-010 and violated agency policy.

3.6. The Board is authorized to impose sanctions for violations to 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. Aggravating factors in this matter include that the violation was continuing in nature and [REDACTED] committed the violation with knowledge that the conduct constituted a violation as [REDACTED] continued to engage in the conduct after the SAO investigation (WAC 292-120-030(3)(a)). It is a mitigating factor that the agency disciplined [REDACTED] for his personal use of the state computer (WAC 292-120-030(4)(a)).

Section 4: AGREED ORDER

4.1. For the violation of RCW 42.52.160, [REDACTED] will pay a civil penalty in the amount of one thousand one hundred fifty dollars (\$1,150.00). The civil penalty of \$1,150.00 is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board.

CERTIFICATION

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

[REDACTED]

Respondent

Stipulated to and presented by:



Susan Harris Date
Executive Director

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

- 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 8 day of September, 2006.

Trish Akana
Trish Akana, Chair

Approved via telephone
Evelyn Yenson, Vice-Chair

Judith K. Golberg
Judith Golberg, Member

Absent
Paul Zellinsky, Member

Neil Gorrell
Neil Gorrell, Member

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

[redacted] Respondent Date