

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

NO. 07-028

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. A Whistleblower complaint was received by the State Auditor's Office (SAO) on or about February 1, 2007. On February 5, 2007, the Executive Ethics Board received a complaint that contained allegations similar to those contained in the Whistleblower complaint. The SAO investigated the allegations made in the Whistleblower complaint and concluded that reasonable cause existed to believe that Withheld used his state computer for personal activities in violation of RCW 42.52.160, Use of persons, money, or property for private gain. The SAO referred the Report of Whistleblower Investigation to the Board in April 2007.

1.2. Board staff reviewed the SAO working papers, and on July 13, 2007, the Board initiated a complaint to consolidate the findings of the SAO investigation with the complaint received by the Board, to consider whether [Withheld] used state resources for personal benefit.

1.3. 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.

1.4. [Withheld] 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 for each violation found, or the greater of three times the economic value of anything received or sought in violation of chapter 42.52 RCW. The Board may also order the payment of costs, including reasonable investigative costs, under RCW 42.52.480(1)(c).

1.5. [Withheld] 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.

1.6. [Withheld] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or 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 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.

1.7. If the Board accepts this stipulation, the Board will release and discharge ^{Withheld} ~~id~~ ^{Withheld} 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. Mr. ^{Withheld} 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.

1.8. If this Stipulation is accepted, this Stipulation and Order does not purport to settle any other claims between ^{Withheld} and the Washington State Executive Ethics Board, the State of Washington, or other third party, which may be filed in the future.

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

1.10. If the Board rejects this Stipulation, or if ^{Withheld} does not accept the Board's proposed modification(s), if any, Mr. ^{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, Mr. ^{Withheld} understands and agrees that if this proposed Stipulation, with any applicable modification by the Board, is rejected by Mr. ^{Withheld} this 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. At all times material hereto ^{Withheld} was employed by the state Commission on Asian Pacific American Affairs as an Executive Assistant.

2.2. Mr. [Withheld] used his state-issued computer to send and receive personal email; to store more than 140 graphics related to his private business, SOY Clothing Company; to visit non-work-related Internet sites, including dating websites; and to store numerous documents relating to his SOY Clothing business including product price lists, client lists, press releases, and advertising layouts.

2.3. On October 31, 2006, Jovi Legaspi was verbally reprimanded by Ellen Abellera, Executive Director of the Commission on Asian Pacific American Affairs, for using his state computer to benefit his outside business. Ms. Abellera again warned [Withheld] on February 12, 2007, that he was not to use his state computer for personal business. [Withheld] tendered his resignation from state employment effective March 16, 2007.

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.

3.3. The Ethics in Public Service Act, chapter 42.52 RCW, prohibits state employees from using state resources for their benefit. 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.

WAC 292-110-010 allows state employees to make occasional but limited use of state resources under certain circumstances, but prohibits at all times the use of state resources to conduct an outside business or private employment. (WAC 292-110-010(6)(a))

Withheld violated RCW 42.52.160(1), Use of persons, money or property for private gain, and WAC 292-110-010(6)(a) when he used his state computer to: send, receive and store personal email; store more than 140 graphics related to his private business, SOY Clothing Company; visit non-work-related Internet sites, including dating websites; and store numerous documents relating to his SOY Clothing business including product price lists, client lists, press releases, and advertising layouts.

3.4. Based on Findings of Fact 2.1 through 2.3, Withheld used state resources in violation of RCW 42.52.160 and WAC 292-110-010.

3.5. The Board is authorized to impose sanctions for violations of 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.

II. AGGRAVATING 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 Withheld was verbally reprimanded in October 2006 by his supervisor for using state resources to benefit his outside business, but continued to do so, and was again warned against such use in February 2007.

III. AGREED ORDER

Withheld will pay a civil penalty in the amount of two hundred fifty dollars (\$250.00). The civil penalty of two hundred fifty dollars (\$250.00) is payable to the state Executive Ethics Board within forty-five (45) days of approval of this Stipulation and Order by the Board, or as otherwise agreed to by the parties.

CERTIFICATION

I, Withheld hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that this Stipulation may be

presented to the Board without my appearance. I knowingly and voluntarily waive my right to a hearing in this matter; and if the Board accepts this Stipulation and Agreed Order, I understand that I will receive a signed copy.

Withheld

5/22/09
Date

Respondent

Stipulated to and presented by:

Melanie de Leon 5/21/09

Melanie de Leon Date
Executive Director

IV. 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):

 Civil penalty of \$500⁰⁰

DATED this 16th day of June, 2009.

Neil Gorrell
Neil Gorrell, Chair

Linnaea Jablonski
Linnaea Jablonski, Vice-Chair

Judith K. Golberg
Judith K. Golberg, Member

Michael F. Connelly
Michael F. Connelly, Member

Martin Biegelman
Martin Biegelman, Member

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

Withheld
 7/6/09
Date