

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:)
)
)
Withheld)
)
)
)
 Respondent.)
_____)

No. 2009-012
ORDER AND JUDGMENT

I. APPLICABLE PROCEDURAL ISSUES

- I.1. On November 12, 2010 the Executive Ethics Board (Board) found reasonable cause to believe that the Respondent, **Withheld** violated the Ethics in Public Service Act while employed with the Department of Social and Health Services (DSHS). Notice of the Reasonable Cause Determination and the right to request a hearing was served upon Ms. **Withheld** by regular mail and certified mail on November 22, 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 Ms. **Withheld**. She did not respond to the notice, either by filing an answer, requesting a hearing, or otherwise.
- I.3. On March 17, 2011, Board staff provided Ms. **Withheld** with notice by regular and certified mail of the Board's Order of Default and Temporary Adjournment of Further Proceedings entered on March 11, 2011.
- I.4. Pursuant to WAC 292-100-060(4) Ms. **Withheld** was allowed 10 days to request vacation of the Order of Default. Ms. **Withheld** has not moved to vacate the order entered on March 11, 2011.

II. FINDINGS OF FACT

- II.1. **Withheld** was a Human Resources Consultant for the Department of Social and Health Services.
- II.2. In June 2008, the State Auditor's Office (SAO) received a Whistleblower complaint alleging that **Withheld** was using state resources for personal gain.
- II.3. During its investigation of the Whistleblower complaint, the SAO found reasonable cause to believe an improper governmental action occurred by **Withheld** use of state resources to access websites of personal interest and to place orders for her personal business as a Mary Kay Cosmetics consultant.

- II.4. The SAO published its findings in Whistleblower Report No. 1000643 dated February 9, 2009 and referred the matter to the Board on that date.
- II.5. On March 23, 2009, [Withheld] was permanently demoted from a Human Resources Consultant 1 to a Human Resources Consultant Assistant 2, resulting in an annual loss of salary of \$4,428.00.
- II.6. On June 12, 2009, the Board considered the SAO findings and initiated an ethics complaint.
- II.7. Board staff's analysis of the computer records provided by the SAO shows that for 29 workdays during the period April – June 2008, [Withheld] spent a total of 46 hours accessing shopping, news, vacation, school and Mary Kay Cosmetics websites. Ms. [Withheld] is a Mary Kay consultant. Some days, websites such as the KOMO news website were open for most of the day, while other days the internet use amounted to just a few minutes. Dividing the total time spent (46 hours) by the number of workdays when internet usage occurred (29) results in an average of 1.6 hours per day. Such use is beyond the de minimis use allowed by RCW 42.52.160 and WAC 292-110-010. Additionally, use of state resources to support an outside business is strictly prohibited and not subject to the de minimis rule

III. APPLICABLE LAW

- III.1. 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. CONCLUSIONS OF LAW

- IV.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [Withheld] 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. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360.

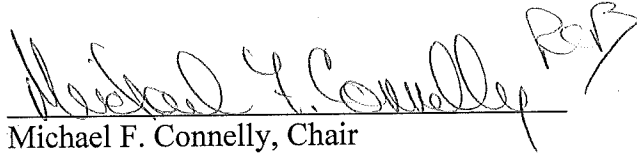
V. AGGRAVATING AND MITIGATING FACTORS

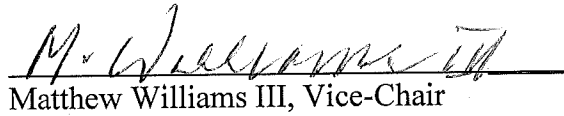
- V.1. It is a mitigating factor that, as a result of this violation, [Withheld] was permanently demoted from her position as a Human Resources Consultant 1 to a Human Resources Consultant Assistant 2, resulting in an annual loss of salary of \$4,428.00.

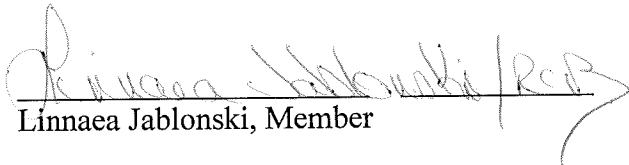
VI. ORDER AND JUDGMENT

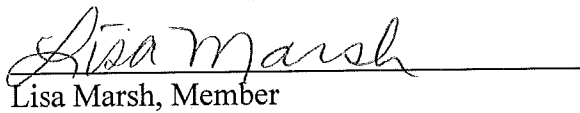
- VI.1. Based on the foregoing Findings of Fact and Conclusions of Law, we, the Executive Ethics Board, hereby find that **Withheld** has violated RCW 42.52.160 and WAC 292-110-010 and order her to pay a civil penalty in the amount of one thousand dollars (\$1,000.00).
- VI.2. Payment of the civil penalty of \$1,000.00 shall be made to the Executive Ethics Board within forty-five (45) days of this Order.

DATED this 13th day of May, 2011.


Michael F. Connelly, Chair


Matthew Williams III, Vice-Chair


Linnaea Jablonski, Member


Lisa Marsh, Member