

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 09-014

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 DeLEON, 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 February 9, 2009, the State Auditor's Office (SAO), published Whistleblower Report No. 1000687 that contained the finding that reasonable cause existed to believe that an improper governmental action occurred when Withheld used state facilities to record a video, later posted on You-Tube, and used state resources to visit non-work-related websites and to send and receive non-work-related emails, in violation of the Ethics in Public Service Act, RCW 42.52.

1.2. On June 12, 2009, the Executive Ethics Board considered the evidence contained in the SAO report and initiated a complaint against Withheld

1.3. On March 12, 2010, based upon a preliminary investigation conducted by Board staff, the Board found reasonable cause to believe that a violation of RCW 42.52.160, Use of persons, money, or property for private gain, was committed by [Withheld]

1.4. 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.

1.5. [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, 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).

1.6. [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.

1.7. [Withheld] 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.

1.8. If the Board accepts this stipulation, the Board will release and discharge [Withheld] [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. [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.

1.9. 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.

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

1.11. If the Board rejects this stipulation, or if [Withheld] does not accept the Board's proposed modification(s), if any, [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, [Withheld] 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. At all times pertinent, [Withheld] was employed by Department of Social and Health Services as a Financial Services Specialist at the Spokane Valley Community Services Office.

2.2. On August 19, 2008, the State Auditor's Office (SAO) received a Whistleblower complaint that alleged that [Withheld] was using state resources for personal gain.

2.3. The SAO investigation found that [Withheld] had spent greater than 13 hours, between January 1 and August 18, 2008, visiting non-work-related websites. The SAO investigation also revealed that [Withheld] used his state computer to send or receive 123 non-work-related emails between February 1 and August 19, 2008. In addition to the computer use [Withheld] used his work cubicle as the location for filming a video, later posted on You-Tube, entitled "I am not James Bond".

2.4. On February 9, 2009, the State Auditor's Office (SAO), published Whistleblower Report No. 1000687 that contained the finding that reasonable cause existed to believe that [Withheld] violated the Ethics in Public Service Act, RCW 42.52.

2.5. On June 12, 2009, the Executive Ethics Board (Board) considered the evidence contained in the SAO report and initiated a complaint against [Withheld]

2.6. On March 12, 2010, the Board found reasonable cause to believe that [Withheld] [Withheld] had committed one or more violations of RCW 42.52.

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.

3.4. A state officer or employee is prohibited under RCW 42.52.160 from using state resources for private gain.

3.7. Based on Findings of Fact 2.1 through 2.6, Michael Robinson used state resources in violation of RCW 42.52.160.

3.8. 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.

II. AGGRAVATING AND MITIGATING FACTORS

In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed. It is a mitigating factor that [Withheld] received a verbal reprimand on February 6, 2009, and received refresher training on the proper use of state resources.

III. AGREED ORDER

3.1. For the violation of RCW 42.52.160, [Withheld] will pay a civil penalty in the amount of three hundred dollars (\$300). The Board agrees to suspend one hundred dollars (\$100) of the civil penalty on the condition that [Withheld] complies with all terms and conditions of this Stipulation and Order and commits no further violations of chapter 42.52 RCW for a period of two years from the date this agreement is executed.

3.2. The civil penalty of \$200.00 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 it 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 the Stipulation and Agreed Order, I understand that I will receive a signed copy.

[Withheld]

4/18/10
Date

Respondent

Stipulated to and presented by:

Melanie deLeon 4-26-10

Melanie deLeon 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):

Penalty of \$500⁰⁰ with \$200⁰⁰ suspended
with no further violations of 42.52 RCW for 2 years.

DATED this 14th day of May, 2010.

Linnaea Jablonski
Linnaea Jablonski, Chair

Martin Biegelman
Martin Biegelman, Member

Michael F. Connelly
Michael F. Connelly, Vice-Chair

Absent
Matthew Williams III, Member

Neil Gorrell
Neil Gorrell, Member

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

Withheld Respondent _____ Date