

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2010-083

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, [REDACTED] 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 November 1, 2010, the Executive Ethics Board received a referral from the State Auditor's Office (SAO) alleging that [REDACTED] a program assistant with the Washington State Department of Transportation (WSDOT) failed to report leave and used state resources for a personal benefit. The Board reviewed this referral and issued a complaint on March 11, 2011.

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 she 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 her 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. [REDACTED] has been employed as a Human Resource Consultant 1 with WSDOT since February 18, 2009. She completed the WSDOT Ethical Standards course in February 2009. [REDACTED] works in the Human Resources Staff Development Office, which is responsible for administering the Ethical Standards Course to WSDOT employees statewide.

2.2. The SAO and WSDOT substantiated that [REDACTED] falsely submitted 3.5 and 4.5 hours of sick leave on May 28 and June 23, 2009.

2.3. A review of [REDACTED] computer hard drive, internet use and emails revealed that [REDACTED] used the state computer, Internet, email and the state-owned scanner for personal use during the time period of February 20, 2009 through August 18, 2009.

2.4. [REDACTED] used the Internet for personal use on nine dates between May 4, and August 20, 2009. The SAO found that [REDACTED] spent 10 hours on sites related to colleges, shopping, travel, finances, celebrity gossip, legal issues, military, automobiles and web-based

personal email accounts. [REDACTED] visited Internet websites and performed Internet searches that did not relate to her official duties at WSDOT. A sampling of some of the websites/searches include:

- News articles
- Her personal email account multiple times
- Financial Aid information website
- Colorado Technical University online
- Article about teens and lying
- Dog training website that included shopping for dog accessories
- News articles about Michael Jackson
- Websites regarding guardianships
- Insurance websites

2.5. [REDACTED] was attending an online university and did homework using her state computer during work hours. [REDACTED] supervisor stated that [REDACTED] had permission to work on school assignments during work hours when she had nothing else to do, but the understanding was that it would be infrequent.

2.6. [REDACTED] sent and received 206 non-work-related emails on 51 dates between February 20, 2009 and August 18, 2009. The emails were exchanged with family members, colleges, financial institutions, military personnel, potential employers and auto repair shops. Some of the emails contained links to websites related to military, newspapers, weddings, fishing and hunting licenses and income taxes. Some emails contained attachments including credit reports, income tax forms and applications for financial aid.

2.7. [REDACTED] used the state-owned scanner to scan personal documents to her state email account on at least five occasions which included personal bills, transcripts (2 times), a request for Larry Mays' transcripts, and applications for REACH.

2.8. The following non-work related documents were found on [REDACTED] computer hard drive: a resume, a temporary guardianship agreement, a letter from a college

regarding subject's academic record and grade point average, a report on terrorism that was a school assignment, a fee estimate from a veterinary clinic, an Army National Guard tuition assistance application, instructions for assessment and GED testing, and Washington Administrative Codes regarding eligibility to take a GED test.

2.9. On January 21, 2011, WSDOT issued a letter to [REDACTED] indicating that they were considering taking formal disciplinary action against her based on the SAO investigation report. A letter of reprimand was placed in [REDACTED] personal file and she was required to re-take the Agency Ethical Standards Course and review pertinent agency policies and guidance.

2.10. Permissible use of state resources is defined as communications that are reasonably related to the conduct of official state duties pursuant to WSDOT Executive Order 1021.00 Employee Use of Electronic System and WAC 292-110-010. Authorized, limited (de minimis) personal use is allowed if "... subject matter is not related to activities listed as prohibited and is little or no cost to the state, does not interfere with performance of official duties, duration is brief and occurs infrequently, does not distract from the conduct of state business, and does not compromise the security of state information of software..."

2.11. Each time [REDACTED] logged into her computer a message regarding email and Internet use is displayed on the login screen. The message states "Use of WSDOT computers and computing services, including use of e-mail and the Internet, must conform to authorized usage under WSDOT policies. Usage may be monitored and disclosed by authorized personnel, WSDOT Executive Order E 1021.00 – Employee Use of Electronic Systems. RCW 42.52 – Ethics in Public Service."

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.

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

3.5. 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 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 went beyond the *de minimis* standard.

3.6. Based on Findings of Fact 2.1 through 2.11, [REDACTED] used state resources in violation of RCW 42.52.160 and WAC 292-110-010.

3.7. 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.

Section 4: AGGRAVATING AND MITIGATING FACTORS

4.1 It is a mitigating factor that [REDACTED] received a letter of reprimand from WSDOT.

4.2. Aggravating factors: [REDACTED] was employed in the Human Resource area that monitors the Ethical Standards Course, that she had attended this course shortly after she was hired and her personal use of state resources was continuing in nature.

Section 5. AGREED ORDER

5.1. For the violation of RCW 42.52.160, [REDACTED] will pay a civil penalty in the amount of one thousand five hundred dollars (\$1,500.00).

5.2. The civil penalty of \$1,500.00 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, [REDACTED] 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.

[REDACTED]
Respondent

3/6/2012

Stipulated to and presented by:

Melanie deLeon 3/12/12
Melanie deLeon 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):

Penalty of \$2500 with \$1000 suspended for
three years based on violation of
42.50 RCW. And compliance with all terms and conditions
of this order.

DATED this 16th day of March, 2012.

M. Williams III
Matthew Williams III, Chair

Lisa Marsh
Lisa Marsh, Vice Chair

Linnaea Jablonski
Linnaea Jablonski, Member

Nancy Biery
Nancy Biery, Member

* [Redacted]

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

[Redacted]

3/21/12
Date