

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Edwina Smith

Respondent.

No. 2011-033

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, EDWINA SMITH, 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 October 21, 2011, the Executive Ethics Board (Board) received a complaint alleging that Edwina Smith, Support Enforcement Officer, Department of Social and Health Services, may have violated the Ethics in Public Service Act by using state resources for personal gain and to conduct an outside business.

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. Edwina Smith 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. Edwina Smith 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. Edwina Smith 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 Edwina Smith 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. Edwina Smith 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 Edwina Smith 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 Edwina Smith does not accept the Board's proposed modification(s), if any, this matter will be scheduled for an administrative hearing in front of the Board and Edwina Smith waives any objection to participation by any Board member at any subsequent hearing to whom this stipulation was presented for approval under WAC 292-100-090(2). Further, Edwina Smith 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. Edwina Smith was a Support Enforcement Officer for the Department of Social and Health Services for all times pertinent to this investigation.

2.2. There is evidence to show that Edwina Smith used her state issued computer to visit sites on the internet and that she sent/received e-mail for personal benefit and to conduct a personal business. The SOA conducted a forensic examination of Edwina Smith computer hard drive in an effort to determine the validity of the allegations. As a result of the examination the following evidence was found, January 2008 to February 2010, supporting the allegation of misuse by Ms. Smith:

a. Personal use and emails were found regarding the following subjects:

- Income Taxes
- A direct-sales business product – PartyLite candles.
- Personal Utility bill payment.
- Photos of her Child
- Other personal matters between family and friends.

b. Internet use indicated that:

- During January and February 2010, Ms. Smith visited wedding-related websites 348 times.
- From March 2008 through February 2010, Ms. Smith visited social networking sites 475 times.
- Between March 2008 and June 2009, Ms. Smith visited a direct-sales website (PartyLite) 295 times.
- Ms. Smith visited the Avon website 95 times from March 7 to April 3, 2008
- Between 2008 and 2010, Ms. Smith visited a tax preparation site(s) 87 times.
- Between February 2009 and February 2010, she frequented an online university site 236 times.
- She accessed her personal email accounts 935 times in 19 months.
- Between February 2009 and February 2010, Ms. Smith visited several sites for ordering and sharing photos, 84 times.

2.3. There is evidence to show that Ms. Smith used her state issued computer to visit sites on the internet, which are directly related to her outside business, PartyLite candles, and sent/received emails related to the sales of PartyLite products.

2.4. There is evidence to show that Ms. Smith sent/received personal e-mail and visited internet sites more than would be considered *de minimis* use.

2.5. There is evidence to show that Ms. Smith visited social networking sites like Facebook, Craig's List, and eBay more than would be considered *de minimis* use.

2.6. Ms. Smith installed e-mail products on her computer that were not supported by DSHS (Comcast.net, Yahoo.com, and Hotmail.com). Ms. Smith visited these sites 935 times in 19 months, violating both state law and DSHS Policy 15.15(3)(i).

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Edwina Smith 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.

3.4. Based on Findings of Fact 2.1 through 2.6, Edwina Smith used state resources for personal benefit in violation of RCW 42.52.160 and WAC 292-110-010.

3.5. 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

In determining the appropriateness of the civil penalty, the Board reviewed the criteria in WAC 292-120-030. It is an aggravating factor that the misuse of state resources by Ms. Smith was excessive and continuing in nature.

Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, Edwina Smith 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 in full, to the State Executive Ethics Board within 45 days after this stipulation is accepted by the Board, or as otherwise agreed to by the parties.

II. CERTIFICATION

I, Edwina Smith, 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.

Edwina Smith 6/13/12
EDWINA SMITH Date
Respondent

Stipulated to and presented by:

Melanie deLeon
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 \$3,000⁰⁰ with \$1,500⁰⁰ suspended based
on no further violations of RCW 42.52 for a
period of two years

DATED this 14th day of September, 2012.

M. Williams III
Matthew Williams, III, Chair

Lisa Marsh
Lisa Marsh, Vice-Chair

Linnaea Jablonski
Linnaea Jablonski, Member

Anna Dudek Ross
Anna Dudek Ross, Member

Michael Bahn
Michael Bahn, Member

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

EDWINA SMITH, Respondent _____ Date _____