

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 2012-07

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 January 30, 2012, the Executive Ethics Board (Board) received a complaint alleging that Withheld Interviewer for the Employment Security Department may have violated the Ethics in Public Service Act by using state resources for personal gain.

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.

STIPULATED FACTS,
CONCLUSIONS AND ORDER
Withheld - 2012-07

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 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.

1.5. [Redacted] 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.

1.6. If the Board accepts this stipulation, the Board will release and discharge [Redacted] [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 [Withheld] 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 [Withheld] 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 [Withheld] 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, [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. Mr. [Withheld] is employed by ESD and has been so for all times pertinent to this investigation.

2.2. On July 28, 2011, ESD Human Resource Consultant Jeanette Sills received a report from ESD's Technology Division entitled the IronPort report that summarized Mr. [Withheld] use of the internet. As a result of that report, she concluded that a more in-depth report was needed from the Office of Special Investigations (OSI) concerning the computer use of Mr. [Withheld]

2.3. The IronPort reporting summary from the Technology Division provided evidence that Mr. [Withheld] may have used the agency's internet for personal business.

Information from a 51 day period (May 11, 2011 to June 30, 2011), revealed that 34.3 percent of

Mr. [Withheld] internet use was for personal business. Some examples are listed below:

- Arts and Entertainment – 5.6 %
- Sports and Recreation – 4.4 %
- Shopping – 4.0 %
- Social Networking – 2.9 %.
- Streaming Media – 2.2 %.

2.4. On August 4, 2011, ESD requested that OSI retrieve data stored on Mr.

[Withheld] work computer, PC IT04636. OSI retrieved data from Mr. [Withheld] computer on August 16 and again on August 17, 2011. An analysis of Mr. [Withheld] internet history for August 15, 16, and 17, of 2011, supports the allegations of abuse. Some samples are listed below:

- Kelly Blue Book – 96 visits
- News - Mexico Elmundo de Cordoba – 59 visits
- News – Mexico Elmundo de Orizaba – 15 visits
- Balanced diet for animals – 21 visits

2.5. In October of 2009, Brian Barta, ESD Security Manager, sent emails to all users advising them to remove any music, movies and personal pictures. Mr. Barta informed all users that having these files on ESD computers violated ESD policy (#2016) and State laws.

However, the analysis of Mr. [Withheld] computer revealed in the “My Document” folder on the server contained 117 music/sound files. These 117 music/sound files appeared to be “ripped” from CDs because of the file structure and file type of WMA often associated with CD ripping. In addition pictures of the associated music covers for the CD appeared on the network that is also associated with this process.

2.6. [Withheld] had an area on the network where it appears he stored emails. This area was reviewed and there were many non-work related emails contained in the folders for February, May and June 2011.

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.

3.4. Based on Findings of Fact 2.1 through 2.6, Rudy Aparicio used state resources for personal gain.

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 a mitigating factor that [Withheld] received discipline from his Agency in the form of a six-month salary reduction starting on January 1, 2012, ending on June 29, 2012, equaling \$1,092.00. It is also a mitigating factor that the above-mentioned violation(s) were unintentional.

Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160 [Withheld] will pay a civil penalty in the amount of, two thousand, five hundred dollars (\$2,500.00). The Board agrees to suspend (\$1500.00) on the condition that [Withheld] complies with all terms and conditions of this Stipulation and Order and commits no further violations of RCW 42.52 for a period of two years from the date this agreement is executed.

5.2 The civil penalty of \$1,000 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 [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]

7-18-12

Respondent

Stipulated to and presented by:

Melanie deLeon 7-18-12

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):

Section 4
Remove last sentence in Paragraph 4 under
Apparition and Deliberate Circumstances regarding
violations being intentional.

DATED this 14th day of September, 2012.

Matthew Williams III
Matthew Williams, III, Chair

Lisa Marsh
Lisa Marsh, Vice-Chair

Lynnaea Jablonski
Lynnaea 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).

Withheld	Respondent	Date
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