

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2012-009

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 January 30, 2012 the Executive Ethics Board (Board) received a complaint alleging that [REDACTED] former Disabled Veterans Outreach Program Specialist, Employment Security Department (ESD) 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.

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 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, this matter will be scheduled for an administrative hearing in front of the Board and [REDACTED] 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, [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] was a Disabled Veterans Outreach Program Specialist for ESD 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 [REDACTED]

use of the internet. Because 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 [REDACTED]

2.3. The IronPort reporting summary from the Technology Division provided evidence that [REDACTED] may have used the agency's system for personal business. Information gathered over a 51-day period (May 11, 2011 to June 30, 2011), revealed that 46.7 percent of [REDACTED] internet use was for personal business. Some examples are listed below:

- Shopping – 18.0 %
- Sports and Recreation – 8.8 %
- News – 5.2 %
- Streaming Media – 4.2%

2.4. On August 4, 2011, ESD requested that OSI retrieve data stored on [REDACTED] work computer, ID# IT04629. OSI retrieved the data from [REDACTED] from computer on August 15 and again on August 17, 2011. An analysis of [REDACTED] internet history for those two days supports the allegation of abuse. Some samples are listed below:

- Yahoo Mail account - 198 visits
- Fantasy Football – over 1000 visits
- CBS Sports news – 755 visits
- On-line Banking – Wells Fargo – 29 visits
- Online shopping – 216 visits

2.5. The analysis of [REDACTED] computer also revealed 50 MP3 music/sound files. Music files of this type (MP3) are mostly associated with peer-to-peer file sharing programs and the music files taken using these programs are commonly not paid for. Without some documentation showing they were paid for by [REDACTED] the agency could be at risk (liability) to lawsuits from the Recording Industry Association of America (RIAA).

2.6. 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.

2.7. One work related document found on [REDACTED] computer appears to be an official agency communication letter as it has [REDACTED] ESD email address, work telephone and title (DVOP) contained in the body and closing within the document. This document appears to be a master letter for the clients he serves as an ESD employee. This document, under the closing at the bottom, contains a color reproduction of the official Department of the Army Seal. The use on official ESD communication with clients and others may be in violation of the "Seal's stated official use."

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.

3.3. 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 2.7, Leonard Little used state resources 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. Mitigating factors include [REDACTED] resigning from the agency. Aggravating factors include that the violation was intentionally committed with knowledge that the conduct constituted a violation.

Section 5: AGREED ORDER

[REDACTED] will pay a civil penalty in the amount of one thousand dollars (\$1,000.00). Payment is due in full 45 days after this stipulation is accepted by the Board, or as otherwise agreed to by the parties.

II. 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]

June 18, 2012
Date

Respondent

Stipulated to and presented by:

Melanie deLeon 6/17/12
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):

DATED this 13th day of JULY, 2012.

Absent

Matthew Williams, III, Chair
Limnaea Jablonski

Limnaea Jablonski, Member
Michael Bahn

Michael Bahn, Member

Revised

Lisa Marsh, Vice-Chair
Anna Dudek Ross

Anna Dudek Ross, Member

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

_____ Respondent _____ Date