

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Withheld

Respondent.

No. 2012-044

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 November 9, 2012, the Executive Ethics Board (Board) initiated a complaint alleging that Withheld Emergency Management Specialist for the Emergency Management Division (EMD) of the Washington Military Department (WMD) 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. [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).

1.4. [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.

1.5. [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.

1.6. If the Board accepts this stipulation, the Board will release and discharge [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.

1.7. 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] was an Emergency Management Specialist with the Emergency Management Department for the WMD for all times pertinent to this investigation.

2.2. In the spring of 2010, the WMD network servers were becoming overloaded. In May of 2010, WMD's IT department conducted an audit of the server to determine the cause of the problem. WMD discovered that the servers contained a large amount of stored files, many of which were non-work related. It appeared that EMD personnel were the main violators.

2.3. EMD Assistant Director Tim Clark sent an email to all EMD personnel on August 20, 2010, advising them to remove all personal, non-work related files from their computer by August 25, 2010.

2.4. In January 2011, the network server was still having operational difficulties due to large files still being stored on it. On January 13, 2011, IT conducted a second audit of the network servers. During this audit, EMD management requested IT to obtain screen shots of inappropriate non-work related information stored on their workstations and network servers.

2.5. On March 27, 2012, the EEB staff requested documents from WMD. A review of the files from a January 19, 2011 workstation audit showed that Mr. **Withheld** violated RCW 42.52.160, when he used his state issued computer for his personal. Some examples of his misuse include:

Personal Documents:

- BAE-9416 DutyGear Catalog (m) lr - pdf.file (11/9/10)
- CMC 41R Introduction to Rifle Combat - word doc (1/14/11)
- Company Officer - pdf.file (1/18/11)
- General Guide to Peace Keeping - pdf.file (4/16/09)
- German Cold WX - pdf.file (1/18/11)
- German Mil Tng - pdf.file (1/18/11)
- German Mtn - pdf.file (1/18/11)
- German Squad - pdf.file (1/18/11)
- German Weapons - pdf.file (1/18/11)
- InfantryCombatDeputy -pdf.file (9/27/10)
- Lupfer- pdf.file (11/4/2010)
- swain3_pt1 (9/27/10)
- swain3_pt2 & pt3 (9/28/10)
- USAAuto ID Cards - pdf. File (1/10/11)

Internet favorites

- 9X19mm Parabellum - wikipedia. (12/6/10)
- Army Military Korean Wool Shirt - Charle... (1/4/2011)
- At the front - Home (military Web page) (11/10/10)
- Bokor Knives Boker Jim Wagner Reality B... (12/10/10)
- Bokorplus Reality Based Blade Tactical Fo.. (12/10/10)
- CIA -World Fact Book (11/10/2010)
- German tactics (11/10/10)

- gunsamerica.com (11/12/10)
- Israel Military Surplus (12/15/10)
- Israeli-Weapons.com Ltd. Store IDF surplus (12/3/10)
- Israeli military online Shop (12/3/10)
- Jugle Ghost HQ (11/17/10)
- Military warfighter.com (12/16/10)
- Secretes of World War II (4 Discs) – DVD (11/10/10)
- You Tube - Facing the German MG-42 M... (12/16/10)
- You Tube - MG42 Machine Gun - Hitler's... (12/16/10)

Audio Files – over 100

- Five_Graves_to_Cairo MP3 format (3/12/10)
- Guadalcanal_Diary MP3 Format (8/10/10)
- Destry_rides_again MP3 format (10/11/10)
- Awful_truth MP3 (3/12/10)
- The Canterville Ghost Mp3 format (3/12/10)
- Road to Morocco (3/12/10)

You Tube Video's

- A different Christmas poem (12/10/10)
- Collier's Welsh Rarebit (12/17/10)
- Facing the German MG-42 (12/16/10)
- Marlena Dietrich, 1940-1945 (11/10/10)
- MG42 Machine Gun – Hitler's... (12/16/10)
- Welsh Rarebit (1/10/11)

2.6 Mr. Withheld stated in his response to these allegation that he believed that he was allowed to go to these internet sites on his breaks, before and after work, and in the evening while he was in travel status away from his home (state issued laptop computer).

2.7 Mr. Withheld indicated in his response to these allegations that as the Search and Rescue Coordinator he often assists local law enforcement agencies. His background as a career military Army officer with the Airborne, Rangers, and Special Forces often would generate questions from law enforcement officers about weapons, tactics, leadership, counter terrorism, etc. Because of these types of questions, he felt that it was a part of his job duties to research

these types of things on the internet to be better able to respond and establish a better rapport with these law enforcement agencies.

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 2.9, [Withheld] used state resources for his personal benefit.

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 abuse of state computer resources by Mr. [Withheld] was continuing in nature over a long period of time. It is a mitigating factor that Mr. [Withheld] was not aware that his use of the computer was a violation of the ethics act and he considered most of the internet sites that he would visit to be work related.

Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, [Withheld] will pay a civil penalty in the amount of, three thousand, dollars (\$3,000.00). The Board agrees to suspend one thousand dollars (\$1000) 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 \$2,000 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

2013-01-31

Date

Respondent

Stipulated to and presented by:

Melanie deLeon 2-5-13

Melanie deLeon
Executive Director

Date

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 8th day of March, 2013

Lisa Marsh
Lisa Marsh, Chair

Anna Dudek Ross
Anna Dudek Ross, Vice-Chair

M. Williams III
Matthew Williams, III, Member

Michael Bahn
Michael Bahn, Member

Samantha Simmons
Samantha Simmons, Member

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

Withheld Respondent Date