

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2012-046

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 11, 2012, the Executive Ethics Board (Board) initiated a complaint alleging that [REDACTED] former Emergency Management Specialist with the Emergency Management Division (EMD) for 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. [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] believes her personal use of state resources described below was permissive use under WAC 292-110-010(3), but recognizes that the Board may conclude she violated the Ethics in Public Service Act by such use. 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 Military Department, the Emergency Management Division, 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 hired as an Emergency Management Specialist with the Emergency Management Division (EMD) for the WMD on December 21, 2007, and was in that position 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, the WMD's IT department conducted an audit of the server in an attempt to discover the problem.

2.3. The problem was identified as being due to a large amount of files being stored, many of which were discovered to be non-work related. It appeared that the EMD personnel were the main violators.

2.4. EMD personnel, which included [REDACTED] were advised to remove all personal non-work related files from the server.

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

2.6. On March 27, 2012, the EEB staff requested documents from WMD. A review of the files from a January 19, 2011 workstation audit showed the non-work related items listed below:

Personal Documents:

- Solitaire - internet shortcut (4/27/10)

- Spider Solitaire - internet shortcut (6/30/09)

Personal Photograph Folder (My Documents)

- Approximately 12 personal images, which were photos of her grandchildren.

Internet Favorites Folder

- Babble the ultimate word game (6/9/10)
- Daffy Jump (internet Game) (6/9/10)
- Monster Buck (internet Game) (6/9/10)
- Online Brain Games at mylifetime.com (1/19/11)
- Online Games at mylifetime.com (12/16/10)
- Online Games at mylifetime.com (6/9/10)
- Two Peas in a Pod Baby Shower Invitatio... (6/9/10)

2.7. [REDACTED] acknowledges that she would play Solitaire internet games during her lunch hour and/or breaks, and acknowledges that the other bulleted items above were saved on her computer.

2.8. During the times pertinent to this investigation [REDACTED] was struggling with a major health issue that significantly affected all aspects of her behavior.

2.9. On September 6, 2011, the WMD terminated [REDACTED] allegedly for other WMD policy violations.

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, [REDACTED] used state resources for personal use 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 a mitigating factor that at the time pertinent to this investigation, Ms. [REDACTED] was affected by a medical condition that caused her to use poor judgment and make poor decisions at times. It is also a mitigating factor that [REDACTED] is no longer an employee of the state.

Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, Deanna Cleman will receive a civil penalty in the amount of, five hundred dollars (\$500.00). The Board agrees to waive the \$500 civil penalty based on medical documentation that [REDACTED] behavior and judgment was affected by her medical condition at the time the violations were being committed.

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]

01/07/2013

Respondent

Stipulated to and presented by:

Melanie deLeon 1-8-14

Melanie deLeon
Executive Director


Date

II. ORDER

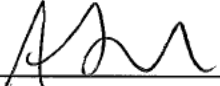
Having reviewed the proposed Stipulation, WE, THE STATE OF WASHINGTON EXECUTIVE ETHICS BOARD, pursuant to WAC 292-100-090, HEREBY ORDER that the Stipulation is

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 10th day of January, 2014.



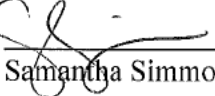
Lisa Marsh, Chair



Anna Dudek Ross, Vice-Chair



Matthew Williams III, Member



Samantha Simmons, Member

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

Respondent Date