BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:	)	No. 2012-048
	)	
	)	ORDER AND JUDGMENT
[redacted]	)	
	)	
Respondent.	)	
	)	

I. APPLICABLE PROCEDURAL ISSUES

I.1. On January 11, 2013 the Executive Ethics Board (Board) found reasonable cause to believe that the Respondent, [redacted] violated the Ethics in Public Service Act while employed with the Washington State Military department. Notice of the Reasonable Cause Determination and the right to request a hearing was served upon Ms. [redacted] by regular mail and certified mail on January 14, 2013.

I.2. More than 30 days have passed since notice of the Reasonable Cause Determination and of the right to request a hearing was served upon [redacted] She did not respond to the notice, either by filing an answer, requesting a hearing, or otherwise.

I.3. On May 15, 2013, Board staff provided [redacted] with notice by regular and certified mail of the Board's Order of Default and Temporary Adjournment of Further Proceedings entered on May 13, 2013.

I.4. Pursuant to WAC 292-100-060(4) [redacted] was allowed 10 days to request vacation of the Order of Default. [redacted] has not moved to vacate the order entered on May 13, 2013.

II. FINDINGS OF FACT

II.1. [redacted] was an Emergency Management Specialist, Training Coordinator, with the Emergency Management Department (EMD) for the WMD for all times pertinent to this investigation.

II.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.

II.3. EMD Assistant Director Tim Clark sent an email to all EMD personnel on August 20, 2010, advising all EMD personnel to remove all personal, non-work related files from their computer by August 25, 2010.

II.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.

II.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 [redacted] violated RCW 42.52.160, when she used her state issued computer for her personal benefit. Some examples of her misuse include:

Personal Documents:

- 2009 Tax Folder containing 2009 tax documents. Audit Support Center Installer installed on 9/28/09 and Turbo Tax online –Deluxe 2009 confirmation.
- Bank Statement Folder containing 2009 & 2010 bank statements
- Credit Report folder containing Experian Personal Credit reports for 2010.

Internet favorites – 100 plus non-work related sites

- Bakeralla. (12/15/10)
- Becoming an Outdoors - Women (12/15/10)
- Dealing with Dept collections (12/16/10)
- Delta Dental (12/15/10)
- USGS Store-National Parks (12/15/10)
- Wa. St. Parks online Reservations (12/15/10)
- Wash. Wines and Winery Chateau… (12/15/10)
- Winjama - Adventures in Paradise(12/15/10)
- Free Thank you eCards from Evite (12/15/10)
- Saint Martin's University - MBA Programs (12/15/10)
- Seattle University (12/15/10)
- UW Tacoma Admissions Tuition exempt… (12/15/10)
- UW Tacoma MBA Admission Req. (12/15/10)
- Yes.com – Streaming Audio (12/15/10)
- Political4all (12/15/10)
- 6th Ave. - Tacoma Home (12/15/10)
- First Night Tacoma (12/15/10)
- Blockbuster online (12/15/10)

You Tube - The Cactus Cutie Sing The N…. (12/15/10)

II.6. At the request of Tim Clark, EMD Assistant Director, a third audit was completed by the IT staff. On April 25, 2011, IT Operations Branch Manager, Dennis Trout sent a memo to Mr. Clark informing him of the results of a recent file server scan. At that time Mr. Trout had seen a tremendous reduction in the amount of personal files on the server. However, he was able to identify fifteen EMD personnel still having personal files stored on the file server. [redacted] was one of those fifteen mentioned in the report.

II.7. In late May or early April 2011, [redacted] received verbal counseling from her supervisor, Littleton Dudly regarding her misuse of state resources. At that time Ms. [redacted] was directed by Mr. Dudly to remove any and all of her personal files from the computer system.

III. APPLICABLE LAW

III.1. RCW 42.52.160(1) – Use of persons, money, or property for private gain, 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.

WAC 292-110-010 Use of state resources states, in part:

(1) **Statement of principles - stewardship.** The proper stewardship of state resources, including funds, facilities, tools, property, and employees and their time, is a responsibility that all state officers and employees share. Accordingly, state employees may not use state resources for personal benefit or gain or for the benefit or gain of other individuals or outside organizations. Responsibility and accountability for the appropriate use of state resources ultimately rests with the individual state officer or state employee, or with the state officer or state employee who authorizes such use. State officers and employees should ensure that any personal use of state resources permitted by this section is the most efficient in terms of overall time and resources.

(2) **The following are permitted uses:**
(a) Use of state resources that is reasonably related to the conduct of official state duties, or which is otherwise allowed by statute.
(b) An agency head or designee may authorize a use of state resources that is related to an official state purpose, but not directly related to an individual employee's official duty.
(c) An agency may authorize a specific use that promotes organizational effectiveness or enhances the job-related skills of a state officer or state employee.
(d) A state officer or employee may make an occasional but limited personal use of state resources only if each of the following conditions are met:
(i) There is little or no cost to the state;
(ii) Any use is brief;
(iii) Any use occurs infrequently;

(iv) The use does not interfere with the performance of any officer's or employee's official duties; and
(v) The use does not compromise the security or integrity of state property, information, or software.

(3) **Permitted use of computers, electronic mail, the internet, and other technologies.** A state officer or employee may use equipment such as the telephone, the internet, and electronic mail provided such use conforms to ethical standards under subsection (2) of this section, and the use is not otherwise prohibited under subsection (5) of this section. . . .

(5) **Prohibited uses.**
(a) Any use for the purpose of conducting an outside business, private employment, or other activities conducted for private financial gain;
(b) Any use for the purpose of supporting, promoting the interests of, or soliciting for an outside organization or group, including, but not limited to, a private business, or a political party, or supporting, promoting the interests of, or soliciting for a nonprofit organization unless provided for by law or authorized by an agency head or designee;
(c) Any use for the purpose of assisting a campaign for election of a person to an office or for the promotion of or opposition to a ballot proposition. Such a use of state resources is specifically prohibited by RCW 42.52.180, subject to the exceptions in RCW 42.52.180(2);
(d) Any use for the purpose of participating in or assisting in an effort to lobby the state legislature, or a state agency head. Such a use of state resources is specifically prohibited by RCW 42.17.190, subject to the exceptions in RCW 42.17.190(3);
(e) Any use related to conduct that is prohibited by a federal or state law or rule, or a state agency policy; and
(f) Any private use of any state property that has been removed from state facilities or other official duty stations, even if there is no cost to the state.

IV. CONCLUSIONS OF LAW

IV.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over [redacted] and over the subject matter of this complaint.

IV.2. A state officer or employee is prohibited under RCW 42.52.160 from using state 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."

IV.3. The Board is authorized to impose sanctions for violations to the Ethics Act pursuant to RCW 42.52.360.

V. AGGRAVATING AND MITIGATING FACTORS

V.1. In determining the appropriateness of the civil penalty, the criteria in WAC 292-120-030 has been reviewed.

VI. ORDER AND JUDGMENT

VI.1. Based on the foregoing Findings of Fact and Conclusions of Law, we, the Executive Ethics Board, hereby find that [redacted] has violated RCW 42.52.160 and WAC 292-110-010 and order her to pay a civil penalty in the amount of three thousand dollars ($3,000).

VI.2. Payment of the civil penalty of $3,000 shall be made to the Executive Ethics Board within forty-five (45) days of this Order.

DATED this 12th day of July 2013.

Lisa Marsh, Chair

Matthew Williams III, Member

Anna Dudek Ross, Vice-Chair

Samantha Simmons, Member