

BEFORE THE WASHINGTON STATE  
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2012-77

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 December 13, 2012, staff received an agency referral from the Employment Security Department (ESD). The referral alleges that [REDACTED] former Performance Management Analyst, ESD used agency time and resources to conduct work related to his private business, used agency resources outside of working hours to conduct his private business and used agency time and resources for his own personal benefit. In addition, [REDACTED] stored numerous pictures, music and video files on his agency assigned computer. He has since

resigned his position. The Board initiated the complaint on January 11, 2013 and found Reasonable Cause on May 10, 2013.

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 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] 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 employed as a Performance Management Analyst for ESD since 2010 and was employed for all times pertinent to this investigation. As of March 5, 2012, [REDACTED] was assigned to work a 9-hour day with every other Friday off. Prior to that date, [REDACTED] work 8-hour days, Monday through Friday.

2.2. [REDACTED] was the owner and sole proprietor of Affordable Income Tax and Interpreter Services. The business was registered with the Secretary of State's Office on April 1, 2012.

2.3. On July 30 and 31, 2012, the Office of Special Investigations (OSI) accessed [REDACTED] [REDACTED] computer to examine his files. As a result of the examination, OSI found the following documents:

- Nine invoices for interpreter services. (PDF files, various dates, 4/17 to 7/12, 2012)
- 2012 Language Interpreter Tracker. (Excel doc, 8/30/12)
- Business license (PDF file 6/5/12)
- copier@esd.wa.gov\_2012728\_064159.pdf (Invoice scanned from ESD copier, 7/27/12)
- CTS Language Link, Interpreter Information Sheet. (PDF file, 6/18/2012)
- CTS telephone Jobs, Spread Sheet, (excel doc, 7/27/2012)
- Dynamic language Center, Interpreter Contact Information, (PDF file, 6/25/2012)
- Blank Hopelink, Interpreter Service forms, electronic (word doc. 4/25/12)
- Language Fusion Application form (PDF file 5/29/12)

For a lot of these documents, the date and time last modified would indicate that they were at least looked at during times [REDACTED] should have been working for the state.

2.4. OSI reviewed [REDACTED] internet use and determined that from March 1 through April 27, 2012, 48 percent of [REDACTED] internet use was not work related, some examples of his use is listed below:

- Interpreter Services
- Online secure Gmail/ Gmail attachments
- Banking
- Entertainment
- Immigration
- Shopping
- Travel

2.5. As a result of the forensic examination, OSI found 807 non-work related audio files stored on [REDACTED] desktop computer, 12 stored on the network server, 28 non-work

related video files stored on the desktop computer and 1,964 photos stored on his desktop. Three of the photos found on [REDACTED] computer were of a nude woman in the shower.

2.6. OSI compared the interpreter invoices found on [REDACTED] computer to his work schedule to determine if he was completing his personal interpreter services while he was being paid by the state. As a result of that review, OSI determined that [REDACTED] did perform interpreter services while he was also supposed to be working for the state.

2.7. Originally, [REDACTED] had a work schedule of 40 hours per week, eight hours/day, Monday through Friday. On March 5, 2012, at [REDACTED] request, his work schedule changed to a 9-hour schedule with four 9-hour and one 8-hour day with every other Friday off. Some examples of his outside work schedules are listed below:

- Tuesday, May 9, 2012, a Hopelink invoice for interpreter services [REDACTED] performed at 4040 S. 188th Street, SeaTac Washington, starting at 2:22 p.m. and concluding at 3:50 p.m. The invoice indicated that he left from 2707 I Street NE, Auburn, (Washington State WorkSource) and drove 11.1 miles to the SeaTac address. [REDACTED] signed the invoice as performing the service and it is initialed by a staff person at the location indicating that they verified [REDACTED] from a valid ID. [REDACTED] did not submit leave for this interview.
- Thursday, June 14, 2012, a Hopelink invoice for interpreter services [REDACTED] performed at 4400 37th Ave. S., Seattle, Washington starting at 3:30 p.m. and concluding at 5:30 p.m. [REDACTED] submitted leave for that day.
- Monday, June 18, 2012, a Hopelink invoice for interpreter services [REDACTED] performed at 34503 9th Ave S. Federal Way, Washington starting at 3:20 p.m. and concluding at 4:10 p.m. The invoice indicated that he left from 3221 S. 208th Street, Unit 102, SeaTac (home address) and drove 21.5 miles round trip. [REDACTED] signed the invoice as performing the service and it is initialed by a staff person at the location indicating that they verified [REDACTED] from a valid ID. [REDACTED] did not submit leave for this interview.
- Friday July 27, 2012, a Hopelink invoice for interpreter services [REDACTED] performed at 9725 3rd Ave. NE, Seattle, Washington starting at 12:56 p.m. and concluding time not indicated. The invoice indicated that he left from his home address and drove 47.9 miles round trip. [REDACTED] signed the invoice as performing the service and a staff person initialed it at the location

indicating that they verified [REDACTED] from a valid ID. [REDACTED] did not submit leave for this interview.

2.8. [REDACTED] indicated in his response to these allegations that he worked with his brother and not all the jobs that were completed necessarily meant that he had done them. He indicated that he signed for all of the jobs they did, for convenience reasons and that he did all the accounting and filing activities. He stated that he did not travel to appointments on his work time.

2.9. On May 30, 2012, [REDACTED] signed a policy review list indicating that he had read, understood, and agreed to adhere to the listed policies. Policy number 2016, Acceptable Use of Computing and Communication Resources was one of the policies he reviewed.

### **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 2.8, [REDACTED] 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 a aggravating factor that these types of violations significantly reduce the public's respect and confidence in state government employees, were continuing in nature and impaired a function of the Agency. It is a mitigating factor that [REDACTED] no longer works for the state.

**Section 5: AGREED ORDER**

5.1 For the violation RCW 42.52.160, [REDACTED] will pay a civil penalty in the amount of, two thousand five hundred dollars (\$2,500.00).

5.2 The civil penalty of \$2,500 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, [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] 07/25/2013  
Date  
Respondent

Stipulated to and presented by:

Melanie deLeon 7/29/13  
Melanie deLeon Date  
Executive Director



