

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Robert Nelson
Respondent.

No. 2013-003

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, ROBERT NELSON, 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 March 8, 2013, the Executive Ethics Board (Board) initiated a complaint alleging that Robert Nelson, Tax Specialist, Employment Security Department (ESD) may have violated the Ethics in Public Service Act by using state resources, especially the Internet, for his personal benefit as well as taking more time on breaks than allowed. The Board found Reasonable Cause on July 12, 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. Robert Nelson 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. Robert Nelson 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. Robert Nelson 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 Robert Nelson 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. Robert Nelson 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 Robert Nelson 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 Robert Nelson 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 Robert Nelson 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, Robert Nelson 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. Nelson was employed as a Tax Specialist 3 for the Employment Security Department during all time pertinent to this investigation.

2.2. On August 10, 2012, ESD Human Resources (HR) division received a whistleblower complaint from the State Auditor's Office (SAO) indicating that they had received an anonymous complaint alleging that Robert Nelson was using his state owned computer to access the Internet for personal reasons. Per SAO policy they do not investigate allegations made by an anonymous source.

2.3. As a result of the SAO notification of a possible ethics violation, HR completed an initial review of Mr. Nelson's computer. The result showed that from July 24 to August 27, 2012, (35 days) 51.6 percent of Mr. Nelson's Internet usage was for personal reasons. Some examples of use are shown below:

- Society and Culture – 34.5 %
- News – 9.8 %
- Job Search – 3.8 %

2.4. OSI conducted two data pulls from Mr. Nelson's work computer, the first was on September 5 and the second on September 19, 2012. The two data pulls represented thirteen days (13) days of activity. As a result of the two data pulls, OSI recovered the following information that would support the allegation that Mr. Nelson was using state resources for his personal benefit. The following table represents general site types as opposed to the specific site visits:

- Ancestry.com – 2,769 page views
- Search.ancestry.com – 1,180 page views
- Banking Wells Fargo (Secure) 452 – page views
- Banking Chase (Secure) – 194 page views
- On-line School payment Portal (Secure) – 155
- Banking Bank of America (Secure) – 14 page views
- Real estate (apartment rentals) – 395 page views

2.5. An approximation of site clicks summary shows the percentages of non work related activity, work related activity and activity that was questionable as to it being work related or not:

- 34 percent non-work related
- 49 percent work related
- 17 percent was questionable activity

2.6. Mr. Nelson told ESD management that he would use the Internet while he was on breaks and his lunch hour. Mr. Nelson was not aware that he could not use the Internet during these times.

2.7. As a result of the ESD investigation and discipline process Mr. Nelson's salary was reduced by 2.5 percent for one month, equating to \$97.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Mr. Nelson 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 2.6, Mr. Nelson used state resources for personal benefit 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 Mr. Nelson's violations of the Ethics Act were unintentional in that he believed that his internet use during his lunch break was allowed and Mr. Nelson's salary was reduced by 2.5 percent for one month.

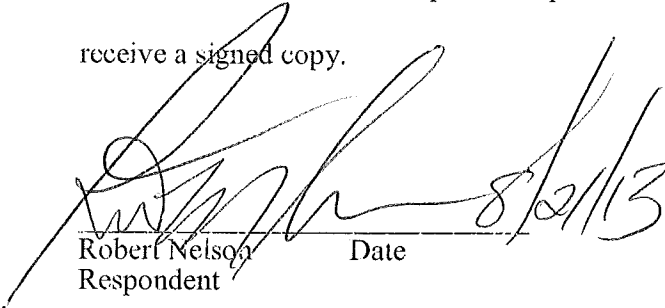
Section 5: AGREED ORDER

5.1 For the violating RCW 42.52.160, Robert Nelson will pay a civil penalty in the amount of, two thousand, five hundred dollars (\$2,500.00). The Board agrees to suspend (\$1,750.00) on the condition that Robert Nelson 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 \$750.00 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, Robert Nelson, 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.


Robert Nelson
Respondent

Date

Stipulated to and presented by:

 9/10/13
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 13 day of September 2013

 Recused
Lisa Marsh, Chair

 Ann
Anna Dudek Ross, Vice-Chair

 M. Williams III
Matthew Williams III, Member

 SS
Samantha Simmons, Member

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

Robert Nelson, Respondent Date