

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2013-004

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 March 8, 2013, the Executive Ethics Board (Board) initiated a complaint alleging that [REDACTED] Employment Specialist, Employment Security Department (ESD) may have violated the Ethics in Public Service Act by using state computer resources for her personal benefit. 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. [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 she 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 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 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 an Employment Specialist for the Employment Security Department during all time pertinent to this investigation.

2.2. On November 4, 2011, [REDACTED] signed the North Central Workforce Development Area 8, ESD, Expectations, stating that she received a copy of the expectations. The proper use of ESD resources is part of these Expectations.

2.3. On January 30, 2012, the Executive Ethics Board (Board) received an agency referral from the ESD alleging that [REDACTED] an Employment Specialist, may have violated the Ethics in Public Service Act by using state SCAN number to make personal calls. The Board initiated a complaint on March 16, 2012.

2.4. On May 11, 2012, the Board found there to be reasonable cause that [REDACTED] violated the Ethics Act and in July of 2012, [REDACTED] signed a stipulated agreement with the Board agreeing to pay a civil a penalty of \$250.

2.5. On September 27, 2012, Jeanette Sills, ESD, HR, requested the Office of Special Investigation (OSI) to conduct a review of [REDACTED] workstation data, internet log, and personal files located on her state issued computer workstation.

2.6. On September 28, 2012, [REDACTED] signed a required policies list acknowledging that she had read, understood and agreed to adhere to the standards set forth in each of the policies and procedures. Two of these policies were ESD Policy 2016 – Acceptable use of Computing and Communication Resources and ESD Policy 1016 – Employee Conduct.

2.7. On October 2 and 30, 2012, OSI conducted two data pulls from [REDACTED] state computer. [REDACTED] had her computer updated to Windows 7 operating system on August 17, 2012. This upgrade erased the existing Internet History, cookies and Temporary Internet files.

2.8. There were 802 “Cookies” located on [REDACTED] upgraded computer. The cookies resulted from internet activity between August 17, 2012 and October 30, 2012, a period

encompassing 52 working days. Cookies are placed on a computer when the user visits a web page. Cookies on web pages can be from the actual web page and can also be tracking cookies used by advertisers. The cookies mentioned below are commonly associated with the actual web page visited as opposed to external company tracking cookies. Some examples are shown below:

- Banking (6)
- Kittitas PUD
- Health (5)
- Entertainment (6)
- Facebook (2)
- News (18)
- Real Estate (9)
- Shopping (19)
- Travel (15)

2.9. [REDACTED] "History" represented in the Internet History covered only October 30, 2012. Only one day of history was found because either IT configured the installation of Window's 7 and user settings to delete the internet history every time Internet Explorer is closed or the settings were set this way by the user.

- Halloween Costumes – 34 page views
- Halloween Costumes #13 – 6 page views
- Halloween Costumes #6 – 8 page views
- Search Day of the dead costumes – 31 page views
- Search Homemade Day of the dead costumes – 8 page views

2.10. OSI found the following two documents in the Recycle Bin.

- D@46 is a document containing images that appear to be tattoo related artwork. This document was created by [REDACTED] as evidenced by the properties user name of mruiz and was last modified on July 13, 2012. The document was deleted and was sent to the recycler bin but the recycler bin was never emptied.
- D@25 is a document, when opened contains a document with a heading "Martinez Deleon Family Reunion 2012" Under the "Bernadina" entry at the

bottom left are what appear to be family members of this branch and list [REDACTED] and Ricardo [REDACTED] and what appear to be children under them of Mario II and Marcos. This document was created by [REDACTED] as evidenced by the properties user name of [REDACTED] and was last modified on June 19, 2012.

2.11. OSI found the following questionable documents.

- Two documents Marcos_Res.rtf and marcos.docx found in the “My Documents\Resumes&Apps” area on the network appear to be documents related to the same person named Marcos contained in both the images and in the “Martinez Deleon Family Reunion 2012” document found in the recycle bin. The Marcos Res.rtf document lists the name of Marcos Macias (the same last name used by [REDACTED] Ruiz in 2011 MMACIAS logon.) This document also lists [REDACTED] as a friend who would be a reference and lists [REDACTED] [REDACTED] ESD working title and ESD desk phone number. It also lists [REDACTED] as an employer who employed Marcos as a seasonal lawn care worker. The Marcos.docx file contains seven sentences. The 6th and 7th sentence indicate the person actively plays baseball. [REDACTED] has pictures stored on the internet of someone playing baseball named Marcos. The MarcosRes.rtf file was last written to the [REDACTED] My Documents area on Thursday, March 22, 2012 9:55:40 a.m. The marcos.docx file was created by [REDACTED] as evidenced by the properties user name of mruiz and was last modified on Thursday, March 22, 2012 11:15:00 am.
- Two documents an invoice sample Ricardo.rtf and LETTEROFGUARANTEE-Ricardo.docx found in the Network “My documents” area appear to be related to the business of Ricardo [REDACTED] R & R Hardscape. Ricardo Ruiz appears to be the husband of [REDACTED] based on the recycled document D@25.docx mentioned in the first bullet above. The invoice sample Ricardo.rtf was last modified and written to [REDACTED] network area on Friday, September 16, 2011 4:31:53 p.m. The summary tab in the properties indicates that “Scott” originated this document. The date on the actual invoice is September 17, 2011. This date is the date following the date it was saved to [REDACTED] network area. This indicates that [REDACTED] reviewed and may have entered some or all of the data. The LETTER OF GUARANTEE-Ricardo.docx was last modified on Tuesday, July 31, 2012 1:57:43 p.m. This document was created by [REDACTED] as evidenced by the properties user name of [REDACTED] This document appears to be related to the business of Ricardo [REDACTED] R & R Hardscape.
- One document “Cover Letter 2012.rtf” is a letter from [REDACTED] dated July 20, 2012. This letter is a cover letter for a Housing Assistant job [REDACTED]

was applying for. This document was last modified and saved on Friday, July 20, 2012 4:54:24 p.m. to [REDACTED] "My Documents\Resumes & Apps" area.

2.12. As a result of the ESD investigation and discipline process [REDACTED] salary was reduced by 5 percent for one pay period, March 1, 2013 to March 15, 2013 equating to \$79.50.

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 2.7 through 2.12, [REDACTED] 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 an aggravating factor that Ms. Ruiz intentionally committed the

violation with knowledge that the conduct constituted a violation and that she had committed a prior violation. The Board sanctioned [REDACTED] in July of 2012, for inappropriate use of state resources requiring her to pay a \$250 penalty, however she has not made timely payments. Ms. [REDACTED] still owes \$200 of the initial penalty assessed by the Board in July 2012. It is a mitigating factor that [REDACTED] salary was reduced by \$79.50 for one pay period by her agency.

Section 5: AGREED ORDER

5.1 For violating RCW 42.52.160, [REDACTED] will pay a civil penalty in the amount of, four thousand, five hundred dollars (\$4,500.00). The Board agrees to suspend (\$2,000.00) on the condition that [REDACTED] 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 \$2,500.00 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.

5.3 It is further agreed that [REDACTED] will pay the remaining amount of two-hundred dollars (\$200.00) owed from EEB case# 2012-012 by January 1, 2014, or the remaining amount plus \$250 will be added to the amount (\$2,500) shown above.

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]

9/24/13

Respondent

Stipulated to and presented by:

Melanie deLeon 10/2/13

Melanie deLeon Date
Executive Director

RECEIVED
SEP 30 2013
EXECUTIVE
ETHICS BOARD

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 November 2013

Lisa Marsh
Lisa Marsh, Chair

Anna Dudek Ross
Anna Dudek Ross, Vice-Chair

Matthew Williams III
Matthew Williams III, Member

Samantha Simmons
Samantha Simmons, Member

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

 Respondent Date