

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2013-009

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 April 4, 2013, the Executive Ethics Board (Board) received a confidential complaint alleging that [REDACTED] Property and Acquisition Specialist, Washington State Military Department (WMD), may have violated the Ethics in Public Service Act by taking time off from work without using the appropriate type of leave. The Board found Reasonable Cause on September 13, 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 hired by the WMD on September 16, 2008 as a Property and Acquisition Specialist and was in that position for times pertinent to this investigation. Ms.

work schedule is Monday through Friday from 8:00 a.m. to 4:30 p.m. with a 30-minute lunch break.

2.2. The WMD HR Department received a formal complaint against [REDACTED] on December 3, 2012. At that time, HR requested an audit of [REDACTED] computer to include emails and her calendar. HR also reviewed leave and attendance records from June 2012 to November 30, 2012.

2.3. During the WMD internal investigation, several staff members stated that Ms. [REDACTED] had missed a lot of work. This included her arriving late to work, leaving early, being absent from work and not submitting the proper leave requests, taking extended lunches and absences from her work station.

2.4. A document provided to HR showing days and times when [REDACTED] was not at work was compared to WMD documentation showing the following :

2012

- There were 45 days that matched when [REDACTED] was on leave with the proper leave request.
- There were 26 days in which [REDACTED] did not submit a leave request for hours she did not work totaling 151.5 hours.
- There was one occasion where [REDACTED] submitted a leave request for three hours of sick leave on January 25, 2012 and the tracking indicated that she was out on January 25, 2012.
- There were three occasions in which [REDACTED] submitted leave requests that were not listed.

2011

- There were 13 days that matched when [REDACTED] was on leave and had submitted leave requests.
- There were 50 days in which [REDACTED] did not submit leave requests when she should have done so, totaling 156.6 hours. Note: the tracking of actual times arriving late/leaving early did not start until October 2011.
- There were six times when [REDACTED] submitted leave requests that were not listed as days from work by the tracking.

- One leave slip was submitted for March 16, 2011, but tracking showed she was actually off on March 17, 2011.

2.5. As a result of their investigation, the WMD concluded that [REDACTED] falsified time and attendance records by not appropriately accounting for leave and attendance on timesheets as well as not submitting the required leave request that corresponded with her absences on the following days:

- February 24 and 25, 2011 (16 hours)
- October 18, 2011 (left early 3.5 hours)
- December 7, 2011 (8 hours)
- January 4, 2012 (8 hours)
- March 1-2, 2012 (16 hours)
- June 18 and highly likely 19 (8 hours)
- August 24, 2012 (8 hours)
- September 17-18, 2012 (16 hours)

2.6. [REDACTED] did not submit any documentation to support that she was at work on the days listed above.

2.7. The WMD investigation concluded that [REDACTED] demonstrated a pattern of excessive unscheduled leave use and regularly exhausted her allotted leave. Therefore, even if she had submitted leave slips, she would not have had the leave to use. This resulted in her receiving \$1,571.85 in pay that she was not entitled to receive.

2.8. As a result of the WMD investigation, [REDACTED] received a Letter of Reprimand and was instructed to repay the \$1,571.86.

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 personal benefit in regards to taking unauthorized leave 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 [REDACTED] received a letter of reprimand and she has repaid \$1,571.86 to the agency.

Section 5: AGREED ORDER

5.1 For the violating RCW 42.52.160, [REDACTED] will pay a civil penalty in the amount of, two-thousand five-hundred dollars (\$2,500). The Board agrees to suspend (\$1,750) 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 \$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, [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]

5-8-14

Respondent

Stipulated to and presented by:

Evelyn Lopez 5/9/2014

Evelyn Lopez Date

Acting Executive Director

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 9th day of May 2014

 Lisa Marsh
Lisa Marsh, Chair

 Absent
Anna Dudek Ross, Vice-Chair

 Matthew Williams III
Matthew Williams III, Member

 Samantha Simmons
Samantha Simmons, Member

 Absent
Sumeer Singla, Member

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

 Respondent Date