

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2013-011

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 May 10, 2013, the Executive Ethics Board (Board) initiated a complaint referred by the Employment Security Department (ESD) alleging that [REDACTED] Intake Agent, may have violated the Ethics in Public Service Act by using state resources for her personal benefit. 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 employed as an Intake Specialist for the Employment Security Department during all times pertinent to this investigation.

2.2. On October 12, 2012, [REDACTED] supervisor, Rosemary Reagan, was conducting a routine monitoring of a phone call from an ESD Customer. The customer was inquiring if ESD had received one of the requested military documents. [REDACTED] told the customer she needed to look at his file and placed the customer on hold. Instead of reviewing the customer's file for the form, [REDACTED] used her state issued computer and email system to compose a personal email to a homebuilder about the placement of an air conditioning unit. Once the email was completed, [REDACTED] returned to the customer stating, "How may I help you today?" This created confusion for the customer and even though the customer had correctly submitted his claim [REDACTED] informed him that she thought he had sent his military documents to the wrong location, resulting in further confusion and poor customer service.

2.3. After the phone call, Ms. Reagan met with [REDACTED] to discuss her poor customer service and inappropriate use of state resources for her personal benefit regarding the email to the builder. Ms. Reagan directed [REDACTED] to read several ESD policies, one of which was ESD Policy 2016 – Acceptable use of Computing and Communication Resources. [REDACTED] acknowledged that she had read, understood, and agreed to adhere to the standards set forth in the policies by her signature on October 12, 2012.

2.4. On January 10, 2013, Ms. Reagan was again monitoring a phone conversation between [REDACTED] and a claimant. [REDACTED] placed the claimant on hold and responded to a personal email from a private home insurance agent. When [REDACTED] returned to the claimant, she abruptly told the claimant that he did not have the required 680 hours of work needed, which was not accurate. [REDACTED] failed to properly review the claimant's claim by verifying his dates

of employment and his wages and earning information in TAXIS. Instead she took the time she should have been using to properly review the claimant's case to respond to a personal email.

2.5. [REDACTED] told ESD management that she was having a house built and the builder and developer were sending her emails at work and she felt she needed to respond in a timely manner not to delay the construction process. She indicated that her goal was to be at work daily doing the best job she could do and at the same time make some important decision regarding the construction of her new home.

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 2.5 [REDACTED] used state resources for personal benefit in regards to the construction of her new home 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] was suspended for five (5) days without pay by her 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 (\$1,250.00) 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 \$1,250.00 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] 11/3/13
Respondent

Stipulated to and presented by:

Melanie deLeon 11-13-13

Melanie deLeon Date
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 10th day of January 2014.

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