

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

Hoa Huynh

Respondent.

No. 2013-016

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, HOA HUYNH, 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 July 12, 2013, the Executive Ethics Board (Board) initiated a complaint alleging that Hoa Huynh, Office Assistant, Department of Labor and Industries(LNI) 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. Hoa Huynh 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. Hoa Huynh 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. Hoa Huynh 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 Hoa Huynh 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. Hoa Huynh 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 Hoa Huynh 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 Hoa Huynh 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 Hoa Huynh 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, Hoa Huynh 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. Ms. Huynh was employed as a Office Assistant 3 for LNI during all time pertinent to this investigation.

2.2. On June 27, 2013, the Executive Ethics Board (EEB) received a whistleblower complaint from the State Auditor's Office (SAO) indicating that they had received a complaint

alleging that Hoa Huynh was using her state owned computer to access the Internet for personal reasons.

2.3. As a result of the SAO investigation into the allegations of a possible ethics violations, they conducted a forensic examination of Ms. Huynh's computer hard drive and internet history from March 27, 2012 to November 14, 2012. Some examples of use are shown below:

- Society Networking – 342 clicks
- Vietnam Sites – 232 clicks
- Shopping – 220 clicks
- Personal Email Account – 483 clicks
- Banking – 128 clicks

2.4. The SAO conducted a review of Ms. Huynh's email activity from January 12, 2012 to October 12, 2012, and found 151 emails sent/received that were not work related.

2.5. The forensic examination completed by the SAO revealed documents related to Ms. Huynh's outside employment as a landlord, e.g., lease agreements.

2.6. As a result of the SAO investigation Ms. Huynh was suspended without pay for 15 days. This suspension equated to \$1,879.00 in lost wages.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over Ms. Huynh 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 2.3 through 2.6, Ms. Huynh 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 Ms. Huynh was suspended without pay by her Agency for 15 day resulting in a lost of wages of \$1,879.00.

Section 5: AGREED ORDER

5.1 For the violating RCW 42.52.160, Hoa Huynh will pay a civil penalty in the amount of, one thousand, five hundred dollars (\$1,500.00). The Board agrees to suspend eight hundred dollars (\$800.00) on the condition that Hoa Huynh 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 \$700.00 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.

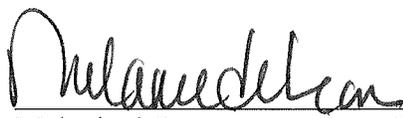
II. CERTIFICATION

I, Hoa Huynh, 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.

 09/26/2013

Hoa Huynh Date
Respondent

Stipulated to and presented by:

 10/2/13

Melanie deLeon Date
Executive Director

