

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2013-018

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, [REDACTED] (formally [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 July 12, 2013, the Executive Ethics Board (Board) initiated a complaint referred by the State Auditor's Office (SAO) Whistleblower program alleging that [REDACTED] [REDACTED] Spill Responder, Department of Ecology (ECY) may have violated the Ethics in Public Service Act by using state resources for personal gain. 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 a Spill Responder, working for the Department of Ecology (ECY) at the North West Regional Office (NWRO) located in Bellevue. [REDACTED] was so employed for all times pertinent to this investigation.

2.2. In February of 2011, [REDACTED] started massage therapy classes at the Discovery Point School of Massage. This course required [REDACTED] to perform practice massages as homework assignments. [REDACTED] was required by Discovery Point to perform and document two hours of out-of-class practice massage each week.

2.3. In March of 2012, [REDACTED] asked and received permission to use the wellness room to conduct her massages from her supervisor and the NWRO Business Administrator as long as they were on her break and no other state resources were used.

2.4. [REDACTED] work schedule was Monday through Friday, 8:00 a.m. to 4:30 p.m., with a 30-minute lunch break. [REDACTED] stated that she would combine her 30 minute lunch break with her two 15 minute breaks to conduct the hour-long sessions. She used her own equipment (table, chair, towels, sheets and blankets) to conduct the sessions.

2.5. The State Auditor's Office (SAO) investigators looked at [REDACTED] emails and Outlook calendar to identify dates and times massages were provided by [REDACTED]. As a result of their analysis, they concluded that [REDACTED] had scheduled 67 massages from January through December 2012.

2.6. [REDACTED] kept a log of the massages she performed for the class and her records indicated that she performed 33 massages at work during her break times. She stated that

these massages could be as long as one hour but never any longer. There were times Ms. [REDACTED] would have to leave if she was called to respond to a hazardous material spill.

2.7. The SAO analysis revealed 271 emails (sent/received), related to [REDACTED] scheduling massages.

2.8. [REDACTED] was not compensated with anything for the massages she gave to her coworkers and she made it very clear to everyone that the massages were for practice as a requirement for massage schooling. No evidence was uncovered to suggest otherwise.

2.9. On one occasion, [REDACTED] used the department's scanner to scan blank health history and HIPPA forms that she subsequently emailed to a person outside of the agency requesting that the forms be filled out and emailed back to her regarding a massage session.

2.10. [REDACTED] used the state email system to send/receive 135 personal emails from January to December 2012. Many of these emails had attachments and included links to internet sites.

2.11. An analysis of [REDACTED] emails revealed that on several occasions she would download or receive downloaded internet jokes or stories and forward them to her coworkers.

2.12. [REDACTED] resigned from state service on April 19, 2013.

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 2.12, [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 the violation was continuing in nature and tended to significantly reduce public respect for or confidence in state government. It is a mitigating factor that [REDACTED] informed her supervisor of her intentions and was given permission to conduct the massages as long as they were conducted on her breaks.

Section 5: AGREED ORDER

5.1 For violating RCW 42.52.160, [REDACTED] will pay a civil penalty in the amount of, one-thousand, nine-hundred, and fifty dollars (\$1,950.00).

5.2 The civil penalty of \$1,950.00 is payable in payments of \$25.00 per month until the amount of the civil penalty is paid in full. The first payment is due 45 days from the date this agreement is approved by the Board.

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]

12-4-13

Respondent

I, [REDACTED] do not agree with all of the Findings of Fact nor am I admitting that I am guilty of them. I am accepting this settlement in the interest of concluding this matter expeditiously.



Stipulated to and presented by:

Melanie deLeon 12/11/13
Melanie deLeon Date
Executive Director

