

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2013-48

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 Ruthann Bryant, Acting 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 December 19, 2013, the Executive Ethics Board (Board) received a complaint alleging that [REDACTED] Steam Plant Supervisor, Joe Brown, Stationary Engineer, and Ron Thompson, Stationary Engineer, (DSHS) may have violated the Ethics in Public Service Act providing a special privilege and conducting activities incompatible with their public duties in

the hiring of Chad Dean to a full time Stationary Engineer position and how overtime was being allocated.

1.2. As a result of the initial investigation evidence was produced that would indicate that [REDACTED] may have inappropriately used state resources for his person benefit. The Board found Reasonable Cause on May 9, 2014.

1.3. 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.

1.4. [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).

1.5. [REDACTED] recognizes that the evidence available to the Board staff is such that the Board may conclude he 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.

1.6. [REDACTED] waives the opportunity for a hearing, contingent upon acceptance of this stipulation by the Board, or his 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.

1.7. 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.

1.8. 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.

1.9. If this Stipulation is accepted, this Stipulation and Order is enforceable under RCW 34.05.578 and any other applicable statutes or rules.

1.10. 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] became employed by DSHS as a temporary Heating, Ventilation, and Air Conditioning (HVAC) Technician in November 2000. For all times pertinent to this investigation [REDACTED] was the Steam Plant Supervisor for the DSHS Medical Lake Complex.

2.2. The EEB Investigator reviewed [REDACTED] state emails to ascertain if there was any evidence regarding the allegations. As a result of that review there was no evidence found to support the allegations by the complainant. However, the review did reveal evidence that Mr. [REDACTED] was using the state email and internet for his personal benefit.

2.3. Board staff notified [REDACTED] of the evidence found and offered him the opportunity to respond. Some examples of his personal use is shown below:

- 15 personal emails to Andrew Reed (Nephew) – 7/11/11 through 8/2/12.
- 18 personal emails to Ruth Hoback (Sister) – 7/26/11 through 6/28/12. One of the emails had an attachment of his travel itinerary download from an airline website indicating that [REDACTED] purchased his ticket using the state computer and internet connection.
- 15 personal emails to “kelfari@comcast.net” (friend) – 3/4/11 through 1/7/13
- 12 emails regarding paying items from Craigslist – 7/14/11 through 9/6/12. This would also indicate that [REDACTED] was spending time on the Craigslist internet site during work hours.

2.4. [REDACTED] indicated in his response that he visited Craigslist but he never purchased any items from the site while at work. That he did purchase airline tickets from work to return home to see his dying mother. He stated that at the time, his home computer was not working and he received permission from his supervisor to use the internet to purchase his tickets and to arrange his travel plans.

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 personal 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 2.2 through 2.4, [REDACTED] used state resources for his personal benefit by making a purchase of ticket for air travel over the internet and by sending over 60 emails to friends and relatives in about a one-year period.

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 aggravating factor that [REDACTED] is in the position of supervision within DSHS and these types of violations significantly reduce the public respect and confidence in state government employees. It is a mitigating factor that, [REDACTED] received permission from his supervisor to use a state resource for his personal benefit.

Section 5: AGREED ORDER

5.1 For the violation of RCW 42.52.160, [REDACTED] will pay a civil penalty in the amount of, five hundred dollars (\$500.00). The Board agrees to suspend (\$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 \$250 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]

8-12-2014

Respondent [REDACTED]

Stipulated to and presented by:

Ruthann Bryant 8-12-14
Ruthann Bryant 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 12th day of September 2014

Lisa Marsh

Lisa Marsh, Chair

Approved via telephone

Anna Dudek Ross, Vice-Chair

M. Williams III

Matthew Williams III, Member

Samantha Simmons

Samantha Simmons, Member

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Sumeer Singla, Member

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

 Respondent Date