

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2014-004

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 Kate Reynolds, 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 January 21, 2014, the Executive Ethics Board (Board) received a complaint referred by the State Auditor's Office (SAO) alleging that [REDACTED] Unit Supervisor, Department of Social and Health Services (DSHS) may have violated the Ethics in Public Service Act by using state resources for his personal outside business as a sports official. The Board initiated the complaint on March 14, 2014.

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 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.

1.5. [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.

1.6. 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] has worked for DSHS for 19 years and has been in his current position as a unit supervisor for the last 11 years. For all times pertinent to this investigation [REDACTED] was a Unit Supervisor for DSHS.

2.2. [REDACTED] has had outside employment as a sports referee for the past 20 years. He has reported his outside employment each year by submitting a request for outside employment form DSHS 03-013.

2.3. An anonymous whistleblower complaint was received by the SAO on February 19, 2013. The complaint alleged that [REDACTED] was using state resources to conduct outside employment from work.

2.4. As a result of the complaint the SAO initiated an investigation. DSHS was contacted by the SAO investigator to obtain a copy of [REDACTED] computer hard drive and his email usage. [REDACTED] received a new computer in January 2013 and the old computer hard drive was wiped. As a result, a review of [REDACTED] internet activity could only be conducted for the period of January 7, 2013, through May 1, 2013. A review of emails was from December 3, 2012 through May 1, 2013.

2.5. The SAO forensic examination of [REDACTED] work computer revealed the following evidence to support the allegation:

Emails: (December 3, 2012 through May 1, 2013)

- Forty-five (45) emails directly related to [REDACTED] outside employment.
- One hundred seventy-nine (179) emails sent/received from family and friends that were not work related.
- Five hundred eighty-three (583) emails with the subject line related to sporting events.
- Two hundred forty-three (243) emails related to a tournament involving his children for which [REDACTED] was coordinating referee services. These emails were sent during an 11-day period in March 2013.
- [REDACTED] remotely accessed DSHS email system outside of work hours to view, create, and/or respond to emails related to sports tournaments.

Internet: (January 7, 2013 through May 1, 2013)

- [REDACTED] often logged into internet websites related to his outside employment as a referee to check the game status.
- In March of 2013, [REDACTED] spent eighty (80) minutes using the internet to remotely access DSHS email system over a three (3) day period.
- In April 2013, [REDACTED] accessed the internet for personal reasons on 13 days. On four (4) of those days he spent twenty-seven (27), Forty-seven (47), one hundred (100), and one hundred and ten (110) minutes accessing music videos and sports related sites.

2.6. In 2012 and 2013, [REDACTED] signed an Annual Review Checklist with all boxes checked as "reviewed". One of the required policies to be reviewed was Admin Policy 15.15, Use of Electronic Messaging Systems and the Internet.

2.7. Effective April 16, 2014, [REDACTED] was demoted by his agency from Financial Services Specialist 5 to a Financial Services Specialist 4. The demotion reduced [REDACTED] monthly income by approximately \$400.00.

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 2.7, Tim Baker used state resources for his personal benefit and in support of his outside business.

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. Aggravating factors are that [REDACTED] was in a supervisory position within DSHS; these types of violations significantly reduce the public respect and confidence in state government employees. Mitigating factors are [REDACTED] did not realize his internet use was a violation of the ethics act and he was demoted from a supervisory position because of the improper email and internet usage.

Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, [REDACTED] will pay a civil penalty for three thousand dollars (\$3,000.00). The Board agrees to suspend (\$1,250.00) on the condition that Tim Baker 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 \$1,750 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]

9/10/14

Respondent

Stipulated to and presented by:

K. Reynolds 9/22/14
Kate Reynolds 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 14th day of November, 2014

Lisa Marsh
Lisa Marsh, Chair

Anna Dudek Ross / RR
Anna Dudek Ross, Vice-Chair

M. Williams III
Matthew Williams, III, Member

Absent
Samantha Simmons, Member

Absent
Sumeer Singla, Member

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

[redacted] Respondent Date