

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

David Graves

Respondent.

No. 2014-005

STIPULATED FACTS,
CONCLUSIONS AND ORDER

I. STIPULATION

THIS STIPULATION is entered into under WAC 292-100-090(1) between the Respondent, DAVID GRAVES, 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 January 27, 2014, the Executive Ethics Board (Board) received a complaint referred by the State Auditor's Office (SAO) alleging that David Graves, Support Procurement Officer 3, Department of Social and Health Services (DSHS) may have violated the Ethics in Public Service Act by using state internet access for his personal benefit and that he was allowing other DSHS employees that he supervised to access the internet on state computers for their personal benefit. 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. David Graves 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. David Graves 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. David Graves 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 David Graves 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. David Graves 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 David Graves 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 David Graves 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 David Graves 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, David Graves 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. Mr. Graves has worked for DSHS for approximately 32 years. For the past nine years, and for all times pertinent to this investigation, Mr. Graves was a Support Procurement Officer 3, which is a supervisory position.

2.2. An anonymous whistleblower complaint was received by the SAO on March 14, 2013. The complaint alleged that Mr. Graves was using state resources for his personal benefit and that he was allowing his subordinates to use state resources to access the internet for their

personal benefit. DSHS was contacted by the SAO investigator to obtain a copy of Mr. Grave's computer hard drive and his email usage.

2.3. The SAO examination of Mr. Graves's work computer revealed internet history data covering September 2010 through April 2013. The SAO investigation focused on a time range of April 2012 through April 2013. A large number of the dates in that time range had been over written and could not be retrieved. Only data from dates in February, March, and April of 2013 could be reviewed. The SAO report revealed the following about Mr. Grave's access to non-work related internet sites:

- February 2013 – 50 minutes over three days browsing for a microwave oven and a boat.
- March 2013 – 53 minutes in 12 days browsing sports news and browsing for a boat.
- April 2013 – 72 minutes over 11 days browsing for a boat. Overall use in April occurred on 17 of 20 work days with a high use of 24 minutes, a low of one minute, and an average daily use of 10.24 minutes per day.

2.4. The SAO computer analysis revealed that for a time period of September 29, 2010, through April 26, 2013, Mr. Graves visited 781 non-work related internet sites. The top sites and number of visits are shown below:

- Craigslist – 116 visits
- News – 65 visits
- Foxsports – 43 visits
- Boat Trader – 32 visits
- Others – 525

2.5. Mr. Graves told SAO investigators that he would browse the internet during down times but that he never purchased or sold anything using his state computer.

2.6. Mr. Graves told SAO investigators and DSHS internal investigators that he was aware that one of his employees, Dan Standish, was frequently browsing the internet but felt as long as it did not impact his work he didn't think it was a problem. Mr. Graves further stated, even though he was aware of Mr. Standish's use of the internet to browse non-work related sites, he was unaware of the extent of his browsing.

2.7. In Mr. Grave's response to the EEB he stated that even though he was aware that Mr. Standish's was visiting non-work related internet site he was not aware of the extent of that use. That he was not in a position to monitor Mr. Standish's internet activities and he was not made aware of it until after this investigation.

2.8. On February 24, 2009, Mr. Graves signed the Internet Access Request and Agreement attesting that he had read and understood DSHS Policy 15.15 – Use of Electronic Messaging Systems and the Internet. On January 24, 2007, Mr. Graves signed the CSS Annual Review Checklist indicating that he had reviewed, signed, and understood DSHS Administrative Policy 15.15 – Use of Electronic Messaging Systems and the Internet. Mr. Graves last signed an Annual Review Checklist on September 26, 2011.

2.9. As a result of the SAO investigation Mr. Graves was demoted to a Procurement and Supply Specialist 2, a non supervisory position.

Section 3: CONCLUSIONS OF LAW

3.1. Pursuant to chapter 42.52 RCW, the Executive Ethics Board has jurisdiction over David Graves 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 2.9, David Graves used state resources for his personal benefit.

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. Mitigating factors are David Graves did not realize his internet use was a violation of the ethics act and he was temporarily demoted from a supervisory position because of the improper internet usage for a loss in wages of \$1,230.

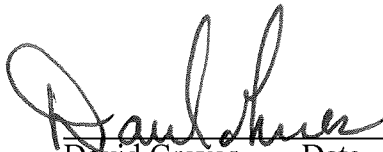
Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, David Graves will pay a civil penalty in the amount of two thousand dollars (\$2,000.00). The Board agrees to suspend (\$1,250.00) on the condition that David Graves 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 \$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, David Graves, 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.

 8/25/14
David Graves Date
Respondent

Stipulated to and presented by:

 8/28/14
Ruthann Bryant Date
Acting Executive Director

