

BEFORE THE WASHINGTON STATE
EXECUTIVE ETHICS BOARD

In the Matter of:

[REDACTED]

Respondent.

No. 2014-006

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 the 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 [REDACTED] Procurement and Supply Specialist 2, 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. 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

STIPULATED FACTS,
CONCLUSIONS AND ORDER

[REDACTED] 2014-006

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 approximately 30 years with most of that time working in Consolidated Support Services (CSS). For the past ten years, and for all times pertinent to this investigation, Mr. Standish was a Procurement and Supply Specialist 2.

2.2. An anonymous whistleblower complaint was received by the SAO on March 14, 2013. The complaint alleged that [REDACTED] was using state resources for his personal benefit. As a result of the complaint the SOA initiated an investigation. DSHS was contacted by the SAO investigator to obtain a copy of [REDACTED] computer hard drive and his email usage.

2.3. The SAO forensic examination of [REDACTED] work computer covering May 9, 2012 through April 26, 2013, revealed the following evidence to support the allegation:

- On Friday, December 14, 2012, [REDACTED] was on the internet accessing non-work related sites for 110 minutes. 80 minutes was used browsing for a chainsaw. [REDACTED] spent another 70 minutes browsing for a chainsaw on December 20, 2012.
- On nineteen (19) days between August 24, 2012 and December 23, 2013, Mr. [REDACTED] spent 132 minutes browsing for sporting goods.
- On sixteen (16) days between August 14, 2012, and January 22, 2013, Mr. [REDACTED] spent 77 minutes browsing for motorcycles and/or ATVs.
- On twelve (12) days between December 27, 2012 and January 22, 2013, Mr. [REDACTED] spent 224 minutes browsing for and aquarium and/or fish.

2.4. Some examples of the amount of time [REDACTED] used the internet to browse for non-work related items:

- January 2013 – nineteen (19) working days, all had personal use activity.
 - High of 102 minutes
 - Low of one (1) minute.
 - Total for the month 554 minutes or 9.23 hours.
 - Daily average 28.6 minutes
- February 2013 – nineteen (19) working days, all with personal use activity.
 - High of 119 minutes.
 - Low of eight (8) minutes.
 - Total for the month 1,122 minutes or 18.7 hours.
 - Daily average of 59 minutes.
- March 2013 – 19 working days, [REDACTED] was absent for two days and the remaining 17 all had personal use activity.
 - High of 113 minutes
 - Low of 29 minutes
 - Total for the month 1,257 minutes or 21 hours
 - Daily average 74 minutes

- April 2013 – 22 working days, data does not include April 29 and 30. Mr. [REDACTED] was absent for one day leaving 19 working days. All of the 19 day had personal use activity.
 - High of 156 minutes
 - Low of 29 minutes
 - Total for the month 1,583 minutes or 26.4 hours
 - Daily average 83.3 minutes

2.5. On February 24, 2009, [REDACTED] 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. [REDACTED] has signed an Annual Review Checklist with all boxes checked as “reviewed” for the past four years. One of the required policies to be reviewed was Admin Policy 15.15, Use of Electronic Messaging Systems and the Internet.

2.6. [REDACTED] was terminated from employment with DSHS as a result of his inappropriate use of the internet, effective April 4, 2014.

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 2.3 through 2.6, [REDACTED] 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. It is a mitigating factor that [REDACTED] was terminated from state service as a result of this violation.

Section 5: AGREED ORDER

5.1 For the violation RCW 42.52.160, [REDACTED] will pay a civil penalty in the amount of two thousand dollars (\$2,000.00).

5.2 The civil penalty of \$2,000 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

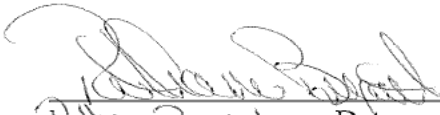
I, [REDACTED] hereby certify that I have read this Stipulation and Agreed Order in its entirety; that my counsel of record, if any, has fully explained the legal significance and consequence of it; that I fully understand and agree to all of it; and that it may be presented to the Board without my appearance. 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]

8/18/2014

Respondent

Stipulated to and presented by:


Richard Bryant Date 8/25/14
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

Sumeer Singla

Sumeer Singla, Member

M. Williams III

Matthew Williams, III, Member

Samantha Simmons

Samantha Simmons, Member

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

Respondent

Date